

<p style="text-align: center;">COMMISSION OF INQUIRY ON HORMONE RECEPTOR TESTING</p> <p style="text-align: center;">BEFORE THE HONOURABLE JUSTICE CAMERON - COMMISSIONER</p> <p style="text-align: center;">June 3, 2008</p> <p>Appearances:</p> <p>Bernard Coffey, Q.C. Commission Co-counsel Sandra Chaytor, Q.C. Commission Co-counsel</p> <p>Rolf Pritchard/Stephen Mills Her Majesty in Right of NL</p> <p>Peter Browne/Kelly Hopkins Doctors Kara Laing et al</p> <p>Daniel Simmons Eastern Regional Integrated Health Authority</p> <p>Pamela Taylor Members of the Breast Cancer Testing Class Action</p> <p>Jennifer Newbury Canadian Cancer Society (NL Division)</p> <p>Blair Pritchett. Central, Western and Labrador-Grenfell Regional Integrated Health Authorities</p>	<p style="text-align: center;">LIST OF EXHIBITS</p> <p>EXHIBITS P-1671 THROUGH 1675 Pg. 21 EXHIBITS P-1067 THROUGH 1069 Pg. 200 EXHIBIT P-1071 Pg. 200 EXHIBIT P-1074 Pg. 200 EXHIBITS P-1676 THROUGH 1686 Pg. 200 EXHIBIT P-1695 Pg. 200 EXHIBITS P-1723, 1724, 1725 Pg. 327</p>
<p style="text-align: center;">TABLE OF CONTENTS</p> <p>MR. REGINALD COATES - SWORN</p> <p>Examination by Bernard Coffey, Q.C. Pgs. 4 - 172 Examination by Daniel Simmons Pgs. 172 - 175 Examination by Rolf Pritchard Pgs. 175 - 182</p> <p>MS. CATHI BRADBURY - SWORN</p> <p>Examination by Bernard Coffey, Q.C. Pgs. 182 - 328</p> <p>Certificate</p>	<p style="text-align: right;">Page 4</p> <p>1 COMMISSIONER: 2 Q. Please be seated. Mr. Coffey. 3 COFFEY, Q.C.: 4 Q. Commissioner, the next witness is Reginald 5 Coates, Registrar, please? 6 MR. REGINALD COATES (SWORN) EXAMINATION-IN-CHIEF BY 7 BERNARD COFFEY, Q.C. 8 REGISTRAR: 9 Q. Would you please state and spell your complete 10 name for the Commission? 11 MR. COATES: 12 A. My name is Reginald Lewis Coates, R-e-g-i-n-a- 13 l-d, L-e-w-i-s, C-o-a-t-e-s. 14 REGISTRAR: 15 Q. Thank you. 16 COFFEY, Q.C.: 17 Q. Mr. Coates, could you give the Commissioner, 18 please, a brief overview of your educational 19 background and your work experience, your 20 professional background? 21 MR. COATES: 22 A. I started with the Department of Health in 23 1976 and I've been working throughout--I'll 24 start with work experience first, Mr. Coffey. 25 I worked throughout the province in a number</p>

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1 of satellite locations starting in Grand
 2 Falls, Gander, St. Anthony, Stephenville,
 3 Clarenville, Holyrood and now Confederation
 4 Building in St. John's. My early part of my
 5 career, I guess the first--up until 1998, '99
 6 was in the field of environmental health and
 7 that is in the public health arena, and I
 8 worked at various positions across the
 9 province from the inspectorate level to the
 10 management level and to the provincial
 11 management level in that area. My--and then,
 12 of course, I became the director legislative
 13 and regulatory affairs in '99.

14 COFFEY, Q.C.:
 15 Q. I'm sorry, you became the?
 16 MR. COATES:
 17 A. Director of legislative and regulatory
 18 affairs.
 19 COFFEY, Q.C.:
 20 Q. Okay.
 21 MR. COATES:
 22 A. In 1999, I've been at that role since. My
 23 educational background is I have bachelors
 24 degree in science in the environmental health
 25 field. And in terms of the current role, I've

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1 done innumerable number of courses and
 2 certificates related to the area of
 3 management, the area of access and privacy and
 4 those kinds of arenas. So in a nutshell, I
 5 guess, that's my background.

6 COFFEY, Q.C.:
 7 Q. Yes, sir. And in your various postings across
 8 the province, from the '70s until the late
 9 '90s your occupation was?
 10 MR. COATES:
 11 A. I was basically a public health inspector or
 12 manager of public health inspectors.
 13 COFFEY, Q.C.:
 14 Q. And then you became director of regulatory and
 15 legislative affairs?
 16 MR. COATES:
 17 A. Legislative and regulatory affairs.
 18 COFFEY, Q.C.:
 19 Q. I'm sorry, I apologize.
 20 MR. COATES:
 21 A. It is a bit of a mouthful.
 22 COFFEY, Q.C.:
 23 Q. Okay. No, that's just, I got to get the order
 24 right. Legislative and regulatory affairs.
 25 And with what department was that?

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1 MR. COATES:
 2 A. Health and Community Services.
 3 COFFEY, Q.C.:
 4 Q. And do you recall which year that was?
 5 MR. COATES:
 6 A. I think it was 1999, I think it was probably
 7 in April. It arose as a result of
 8 restructuring in the department that started
 9 in 1998. They--we merged with elements of
 10 what was the Department of Human Resources and
 11 Labour Employment, particularly the Child
 12 Welfare, Child Care and Youth Corrections
 13 components to form the Department of Health
 14 and Community Services, I believe, April 1st,
 15 1999. I stand to be corrected, but I think
 16 that was the time line.

17 COFFEY, Q.C.:
 18 Q. Was this a new position?
 19 MR. COATES:
 20 A. Yes. It was created for the new structure.
 21 What happened is all the previous existing
 22 managerial positions within the Department of
 23 Health and those that were merged with the
 24 Department of Health were realigned into a new
 25 structure. So in essence, a new

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1 organizational structure was created, new
 2 positions were created, and expressions of
 3 interest were asked from the existing
 4 management staff for those positions. I
 5 expressed an interest in this particular
 6 position because of my regulatory background
 7 in public health, as well as a couple of
 8 others and I was appointed to this particular
 9 position.

10 COFFEY, Q.C.:
 11 Q. So had there been any such director of
 12 legislative and regulatory affairs, you know,
 13 in the earlier existing -
 14 MR. COATES:
 15 A. Not precisely within the Department of Health.
 16 Certainly that was the scope and mandate of
 17 what I had. There were elements that were
 18 done through our director of policy
 19 previously.
 20 COFFEY, Q.C.:
 21 Q. So could you tell the Commissioner then what
 22 the director of legislative and regulatory
 23 affairs for the Department of Health and
 24 Community Services does? Well, first of all
 25 I'll ask you, has it changed since 1999, since

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1 you took the position?
 2 MR. COATES:
 3 A. It's been evolving.
 4 COFFEY, Q.C.:
 5 Q. Evolving.
 6 MR. COATES:
 7 A. And it has changed.
 8 COFFEY, Q.C.:
 9 Q. Perhaps you could take the Commissioner
 10 through then the evolution?
 11 MR. COATES:
 12 A. It started in 1999 to have a focus on
 13 coordinating and managing the legislative
 14 mandate, regulatory mandate of the department
 15 so that when I would be the champions in
 16 moving forward in working with Department of
 17 Justice and new legislation, new regulations,
 18 network with our policy people. I would write
 19 submissions for Cabinet consideration related
 20 to legislation, those kind of dimensions, and
 21 that was the core component. When it started
 22 in 1999, it was me. I was one employee and I
 23 begged for administrative support from others.
 24 So it was just a division of one, per se.
 25 COFFEY, Q.C.:

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1 Q. And you reported at that time to whom?
 2 MR. COATES:
 3 A. I reported to an assistant deputy minister.
 4 And the names have changed over time as its
 5 restructured a little bit. I think at that
 6 time it was called, oh, forgive me, Mr.
 7 Coffey, I can't remember the exact title of
 8 the branch, but it was an assistant deputy
 9 minister.
 10 COFFEY, Q.C.:
 11 Q. Okay.
 12 MR. COATES:
 13 A. We also had responsibility, I also had
 14 responsibility for freedom of information
 15 requests under the old Freedom of Information
 16 Act.
 17 COFFEY, Q.C.:
 18 Q. Yeah.
 19 MR. COATES:
 20 A. We had responsibility for Cabinet submission,
 21 providing advice because we wrote so many
 22 Cabinet submissions, or I wrote so many
 23 Cabinet submissions to others in the
 24 department, so there was sort of a tacit
 25 relationship with assisting others in writing

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1 submissions. And I dealt with other various,
 2 you know, sordid events that related to legal
 3 issues in terms of acting as a central point
 4 of contact with the Department of Justice and
 5 Department of Health and Community Services.
 6 COFFEY, Q.C.:
 7 Q. And in relation to Freedom of Information Act
 8 requests, you became responsible for
 9 responding or responsible for those how in
 10 1999?
 11 MR. COATES:
 12 A. I would do, not too dissimilar to what I do
 13 today, although the process was quite
 14 simplistic compared to today. Researching and
 15 finding the documents, assessing them in terms
 16 of the context of the requirements of the
 17 Freedom of Information Act, preparing a
 18 package for executive to review and make a
 19 determination on disclosure provisions or
 20 exemption provisions in the context of the
 21 Freedom of Information Act and making a
 22 recommendation for their consideration and
 23 ultimately preparing whatever package of
 24 material and correspondence that they wish to
 25 sign in terms of responding to the requester.

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1 COFFEY, Q.C.:
 2 Q. Now, if you could then take us on through
 3 time, you say the role has evolved, the
 4 division has evolved over time, perhaps
 5 hitting the high points -
 6 MR. COATES:
 7 A. I'll try not to get into too much detail.
 8 I'll probably start as is now and sort of try
 9 to fill in the middle, if that's okay with
 10 you, Mr. Coffey?
 11 COFFEY, Q.C.:
 12 Q. If you would, please?
 13 MR. COATES:
 14 A. Right now I am responsible for a staff of, I
 15 think, ten. If I miss somebody along the way,
 16 forgive me, academy (phonetic). But we have
 17 responsibility for the things that I've said
 18 before. Of course, the Freedom of Information
 19 Act has manifested itself into the Access to
 20 Information and Protection of Privacy Act. I
 21 am now the central point of contact officially
 22 for Cabinet submissions and the Cabinet
 23 submission tracking and monitoring, editing
 24 and assisting folks in the department with
 25 developing submissions as well as liaisons

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1 with Cabinet Secretariat and Cabinet
 2 submissions. So that role has expanded
 3 greatly as one can appreciate the size and
 4 scope of the Department of Health and
 5 Community Services. With the creation of the
 6 office of the citizen's representative with,
 7 to some degree, the creation of the office of
 8 child and youth advocate and certainly the
 9 creation of the office of the information and
 10 privacy commissioner our roles expanded in
 11 response to their inquiries for information or
 12 inquiries respect to respective
 13 investigations.

14 COFFEY, Q.C.:

15 Q. So you are responsible for responding on
 16 behalf of the department to requests for
 17 information from those three offices?

18 MR. COATES:

19 A. They all differ slightly or in some cases
 20 significantly. The involvement will vary in
 21 terms of degree of activity. With the
 22 citizens representative, for instance, is an
 23 investigative issue, we provide information,
 24 we assist them in carrying out their
 25 investigation, we go through interviews with

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1 them, those kinds of things, so it's a little
 2 bit more hands on, per se. With the child
 3 youth advocate, is really, from our context,
 4 more of an information, if they're looking
 5 formally for information. The actual
 6 investigations and processes is really with
 7 the director of child, youth and family
 8 services. So it's a little bit different
 9 there. With the information and privacy
 10 commissioner we're joined at the hip,
 11 basically, in terms of anything to do with
 12 access and privacy, so.

13 COFFEY, Q.C.:

14 Q. Could you elaborate on that -

15 MR. COATES:

16 A. Joined at the hip?

17 COFFEY, Q.C.:

18 Q. Yes.

19 MR. COATES:

20 A. Well, the information and privacy commissioner
 21 has many responsibilities. In terms of access
 22 requests, of course, when respondents or
 23 requesters are looking for reviews, then we
 24 assist them in that process. They -

25 COFFEY, Q.C.:

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1 Q. So when people who are requesting information
 2 under the Access to Information and Privacy
 3 Act?

4 MR. COATES:

5 A. Yeah.

6 COFFEY, Q.C.:

7 Q. Okay. That goes through a process, and I'll
 8 have to take the Commissioner through that.

9 MR. COATES:

10 A. Absolutely.

11 COFFEY, Q.C.:

12 Q. But if there's a review requested, a review of
 13 the decision by the department in terms of its
 14 response, that ends up with the information
 15 and privacy commissioner?

16 MR. COATES:

17 A. Yes.

18 COFFEY, Q.C.:

19 Q. The review goes to that -

20 MR. COATES:

21 A. Yes.

22 COFFEY, Q.C.:

23 Q. - individual and then you end up dealing with
 24 the information and privacy commissioner in
 25 relation to the review?

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1 MR. COATES:

2 A. Yes. Do you wish me to finish?

3 COFFEY, Q.C.:

4 Q. Yes, go ahead, sir.

5 MR. COATES:

6 A. In terms of the information and privacy
 7 commissioner, there's also issues of things
 8 like privacy breaches. We engage the--we went
 9 to the privacy commissioner with respect to
 10 the public health laboratory breach that was
 11 reported late last year and asked him to
 12 investigate on our behalf. We've also, we
 13 liaison with the privacy commissioner, for
 14 instance, in the recent passage of Bill 7, the
 15 Personal Health Information Act, the privacy
 16 commissioner worked with us very closely in
 17 providing policy advice for the development of
 18 legislation. So when I say joined at the hip,
 19 we have very close communications and contact
 20 in that area.

21 COFFEY, Q.C.:

22 Q. Now, sir, what about in dealing with what I'll
 23 refer to as outside agencies, for example, the
 24 health authorities, do you have many--what
 25 kind of dealings do you have in your role as

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1 director of legislative and regulatory
 2 affairs?
 3 MR. COATES:
 4 A. In many cases it can be conduited through
 5 others in the department. For instance, our
 6 assistant deputy minister for regional health
 7 operations and her staff. If it's a direct
 8 legislative issue such as, for instance, when
 9 we created the Regional Health authorities
 10 Act, we dealt with, I dealt specifically with
 11 CEOs directly on many of those issues. So it
 12 would vary. Certainly anything that we
 13 develop has to have, if it's affecting the
 14 programs and services of regional health
 15 authorities, we consult with them in various
 16 ways, depending on the nature and scope of the
 17 activity. But I wouldn't say my leanings are--
 18 -you know, it's not a weekly or monthly thing,
 19 it really depends on the product.
 20 COFFEY, Q.C.:
 21 Q. Sir, within your own office in terms of
 22 dealing with access to information requests
 23 under the current legislation--well, first of
 24 all, can you tell the Commissioner since that
 25 act, the current act came into force, have you

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1 been the person primarily responsible for its
 2 administration within the department?
 3 MR. COATES:
 4 A. I would say, yes, that's true, yeah.
 5 COFFEY, Q.C.:
 6 Q. Okay. On a day to day--I say primarily
 7 responsible, on a day-to-day basis?
 8 MR. COATES:
 9 A. In terms of the process of that, yes,
 10 absolutely.
 11 COFFEY, Q.C.:
 12 Q. And when was--when did the Act come into
 13 force?
 14 MR. COATES:
 15 A. The access component, I believe, Mr. Coffey, I
 16 think came in January 17th, 2005.
 17 COFFEY, Q.C.:
 18 Q. Um-hm.
 19 MR. COATES:
 20 A. I think that was the date. Of course, that's
 21 memory. The privacy component came in
 22 January, early, I think, this year. Well, not
 23 this year, 2007, I'm sorry, I believe.
 24 COFFEY, Q.C.:
 25 Q. And in terms of the access component, as you

Page 19

1 put it, what does--and you characterize it as
 2 access component. Can you explain to the
 3 Commissioner, please, from your perspective,
 4 what that entails, I mean, in terms of your
 5 involvement?
 6 MR. COATES:
 7 A. In terms of my involvement or what -
 8 COFFEY, Q.C.:
 9 Q. And the process itself, from the Department's
 10 perspective?
 11 MR. COATES:
 12 A. Well, the access component basically is a core
 13 component of the Act and it relates to
 14 philosophically the public right to know,
 15 which is a core provision of that piece of
 16 legislation. From a process point of view, it
 17 involves requesters who are looking for--
 18 seeking for specific documents. Our
 19 assessment of those documents, in the context
 20 of the Act and the specific exemptions or in
 21 some cases exclusions, the process of review
 22 and vetting those various third parties or
 23 legal counsel or Cabinet Secretariat in
 24 assessing whether or not something should be
 25 exempted or should be disclosed, the

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1 preparation of a package for executive
 2 consideration, and then ultimately the
 3 decision then rests with the executive,
 4 particularly the department head or the deputy
 5 minister in what should be disclosed or not
 6 disclosed.
 7 COFFEY, Q.C.:
 8 Q. Okay, and your recollection, of course, is
 9 that the access component of the Act came into
 10 effect, proclaimed in effect or came into
 11 effect as of, you know, sometime in January of
 12 2005?
 13 MR. COATES:
 14 A. I think so, Mr. Coffey.
 15 COFFEY, Q.C.:
 16 Q. Early that year.
 17 MR. COATES:
 18 A. Yeah.
 19 COFFEY, Q.C.:
 20 Q. And that's a matter of public record.
 21 MR. COATES:
 22 A. Sure.
 23 COFFEY, Q.C.:
 24 Q. What preparation, if any, was made within the
 25 Department, you know, to handle the change

1 from the Freedom of Information request
2 process to the Access to Information process?
3 Was there any change in the structure put in
4 place or contemplated at the time?

5 MR. COATES:

6 A. Not structurally. Certainly there was no
7 additional resources. There were no--it was
8 simply, I was doing FOI and now I'm doing
9 ATIPPA. From personal construct, of course, I
10 engaged in various workshops and educational
11 activities, including a certificate from the
12 University of Alberta in access and privacy.

13 COFFEY, Q.C.:

14 Q. You actually did these courses yourself?

15 MR. COATES:

16 A. I did that program, yes, and I received
17 Government support that I did those courses.

18 COFFEY, Q.C.:

19 Q. Now Commissioner, if we could, please, if I
20 could enter certain exhibits. They're
21 Exhibits P-1671, P-1672, 1673, 1674 and 1675.
22 That's 1671 through 1675 inclusive.

23 THE COMMISSIONER:

24 Q. Entered.

25 EXHIBITS ENTERED AND MARKED EXHIBITS P-1671 THROUGH 1675

1 Community Services between March 1, 2005 and
2 December 1, 2005 regarding hormone receptor
3 tests for people with breast cancer."

4 And then you go on to say "the Access to
5 Information and Protection of Privacy Act
6 requires that we make every reasonable effort
7 to respond to your request in writing within
8 30 days after receiving it, unless we extend
9 the 30-day time period under Section 16 of the
10 Act or the time for responding is suspended
11 under subsection 68(4) of the Act pending a
12 response to a fee estimate, or notice is given
13 to an affected party under Section 28 of the
14 Act," and then I'm just going to--it continues
15 and concludes, "if you have any further
16 questions, please feel free to contact the
17 undersigned by telephone at" and the number is
18 given or e-mail. That's your e-mail address.
19 Signed by yourself, access and privacy
20 coordinator.

21 Mr. Coates, at that point, in February of
22 2006, whom did you report to?

23 MR. COATES:

24 A. In February 2005?

25 COFFEY, Q.C.:

1 COFFEY, Q.C.:

2 Q. Thank you, Commissioner. Now sir, I'm going
3 to be asking you about the response by the
4 Department in handling of certain requests for
5 information, particular ones. If I could,
6 please, Exhibit--let me see here, Exhibit P-
7 1672? Sir, this is a--I guess, you do have
8 the mouse there. Mr. Pritchard had pointed
9 that out to you. You can access the document
10 by moving the mouse. This is a letter of
11 February 3rd, 2006. It's from--the second
12 page--yourself to Mr. Mark Quinn of the
13 Canadian Broadcasting Corporation here in St.
14 John's and it's "re: your request for access
15 to information under part 2 of the Access to
16 Information and Protection of Privacy Act,"
17 and the file number is specified there. You
18 write "this is to confirm that on February
19 3rd, 2006, the Department of Health and
20 Community Services received your request for
21 access to the following records/information."
22 The request is articulated as, recorded as,
23 "all memos, letters, briefing notes and e-
24 mails between the members of Eastern Health
25 and the Provincial Department of Health and

1 Q. No, this would be 2006, this particular -

2 MR. COATES:

3 A. Oh, sorry, it was 2005 before, my apologies.
4 In 2006, I reported to the assistant deputy
5 minister of Policy and Planning.

6 COFFEY, Q.C.:

7 Q. And who was that at the time?

8 MR. COATES:

9 A. I believe it would have been Joy Maddigan. If
10 it wasn't, it was Loretta Chard.

11 COFFEY, Q.C.:

12 Q. I'm sorry?

13 MR. COATES:

14 A. If it wasn't Joy, it would have been Loretta
15 Chard, because she retired, and I'm not sure--
16 I can't remember exactly which year Loretta
17 retired.

18 COFFEY, Q.C.:

19 Q. Now sir, this -

20 THE COMMISSIONER:

21 Q. Mr. Coffey, before you go on, the witness is
22 quite correct. On one page, this says
23 February the 3rd, 2006. On the next page, it
24 says February 2005.

25 COFFEY, Q.C.:

Page 25

1 Q. Yes, well -
 2 THE COMMISSIONER:
 3 Q. Can we -
 4 COFFEY, Q.C.:
 5 Q. Clarify that, thank you, Commissioner.
 6 THE COMMISSIONER:
 7 Q. - clarify? Thank you.
 8 COFFEY, Q.C.:
 9 Q. Well, Mr. Coates, you're the author of the
 10 letter. So perhaps if we could just--at the
 11 top of page two of the exhibit, in the--the
 12 kind of typical page two fashion in formal
 13 letters, it has "Mr. Mark Quinn, February 3rd
 14 2005, page two." But in the actual letter
 15 itself, page one, the opening of the letter,
 16 it's February 3rd, 2006, and you do refer to
 17 confirm a request received on February 3rd,
 18 2006, so.
 19 MR. COATES:
 20 A. I would say, Mr. Coffey, that it's a cut and
 21 paste error.
 22 COFFEY, Q.C.:
 23 Q. Okay, where, on the second page?
 24 MR. COATES:
 25 A. On the second page.

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1 COFFEY, Q.C.:
 2 Q. Okay. So the actual date of this letter would
 3 be February 3rd, 2006?
 4 MR. COATES:
 5 A. Absolutely.
 6 COFFEY, Q.C.:
 7 Q. Yes, and the letter itself, is this a form
 8 letter?
 9 MR. COATES:
 10 A. Pretty much, yeah.
 11 COFFEY, Q.C.:
 12 Q. Okay.
 13 MR. COATES:
 14 A. That's the reason I think there's a cut and
 15 paste error there.
 16 COFFEY, Q.C.:
 17 Q. Could you tell the Commissioner, please, in
 18 terms of what parts are the generic parts and
 19 what parts are particular to Mr. Quinn's
 20 response?
 21 MR. COATES:
 22 A. Well, of course, in terms of Mr. Quinn and his
 23 addressing information, the substance, which
 24 would be, in essence, the first paragraph and
 25 the indented paragraph and the file number.

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1 Beyond that, most of it pretty well would be
 2 pretty well standard form letter type
 3 material.
 4 COFFEY, Q.C.:
 5 Q. So that Mr. Quinn's name, address, your own
 6 file number would change from time to time?
 7 MR. COATES:
 8 A. It would change with each request.
 9 COFFEY, Q.C.:
 10 Q. With each request, and "this is to confirm
 11 that" is probably standard. On a particular
 12 day would change?
 13 MR. COATES:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. And "the Department received your request for
 17 access to the following records information"
 18 would be standard, and though the actual
 19 request -
 20 MR. COATES:
 21 A. The indented paragraph would always be
 22 different obviously.
 23 COFFEY, Q.C.:
 24 Q. - different, and then the rest of it is -
 25 MR. COATES:

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1 A. Pretty standard fare.
 2 COFFEY, Q.C.:
 3 Q. - standard fare, okay. Now, sir, look at
 4 that, and I'm going to ask, please, bring up
 5 Exhibit, please, P-0401? Now this, the
 6 Commission received this from Eastern Health,
 7 as you can see with that received stamp, but
 8 I'm referring you to it because it's a memo on
 9 Legislative and Regulatory Affairs, Department
 10 of Health and Community Services letterhead.
 11 It's to Mr. George Tilley, CEO, dated February
 12 23rd, 2006. The organization is Eastern
 13 Health. It's from Reg Coates. The subject is
 14 HCS AT-
 15 MR. COATES:
 16 A. ATI.
 17 COFFEY, Q.C.:
 18 Q. - I 06003 and then there's a request here.
 19 There's a text, George, and a text, and I'll
 20 be taking you through that. It's copied to
 21 Tansy Mundon and Moira Hennessey. Could you--
 22 bearing in mind that that is an exhibit here,
 23 could you go back, please, to Exhibit P-1672?
 24 Could you explain then to the Commissioner how
 25 this was handled, this particular request,

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1 bearing in mind what happened, if anything,
 2 between February 3rd, 2006, your letter, and
 3 the letter to Mr. Tilley?
 4 MR. COATES:
 5 A. On February 23rd?
 6 COFFEY, Q.C.:
 7 Q. Yes.
 8 MR. COATES:
 9 A. Fairly typical in process, Commissioner, is
 10 that the day we receive--as you can see by our
 11 acknowledgement letter is the day we
 12 acknowledge. So we try and let the requester
 13 know right away that we received their request
 14 and the process has started. So that's sort
 15 of an automatic. Hence, the sort of form
 16 letter nature of the letter. Our next process
 17 is, internally within the Department, is to
 18 say where responsive documentation could be
 19 found, to, usually through e-mail, ask the
 20 particular ADM, director or staff person to
 21 retrieve documents and return them to me or a
 22 copy to me, in essence.
 23 COFFEY, Q.C.:
 24 Q. How is that done?
 25 MR. COATES:

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1 A. In terms of?
 2 COFFEY, Q.C.:
 3 Q. The request.
 4 MR. COATES:
 5 A. The request to the staff?
 6 COFFEY, Q.C.:
 7 Q. Yes.
 8 MR. COATES:
 9 A. It's usually done by e-mail. Sometimes it's
 10 done face to face, if it's in one place. I'll
 11 bring down a copy of the request and say "get
 12 me this information." If it involves
 13 executive, we do a search of our record centre
 14 through the Trim system, in terms of executive
 15 correspondence, but often, a request of this
 16 nature involves multiple people. In this
 17 case, I believe it involved records that may
 18 have been held by Ms. Hennessey, by the Deputy
 19 Minister. There may have been records in our
 20 record centre. There may be ministerial
 21 correspondence that we were looking for and
 22 certainly briefing notes that we were looking
 23 for. So we would have channelled, I think, by
 24 e-mail, if my memory serves me correct, saying
 25 "here's the request. This is information."

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1 We usually give them a week to retrieve the
 2 documents and return a copy to me, and once we
 3 receive them, then begin the process of
 4 assessment.
 5 COFFEY, Q.C.:
 6 Q. And they understand, I take it, that when you
 7 say a copy, it's an unedited -
 8 MR. COATES:
 9 A. Oh yeah, absolutely.
 10 COFFEY, Q.C.:
 11 Q. - unredacted version?
 12 MR. COATES:
 13 A. Yeah, absolutely.
 14 COFFEY, Q.C.:
 15 Q. And then certainly by February of 2006, the
 16 Act had been in place for about a year, just
 17 over a year?
 18 MR. COATES:
 19 A. Yes.
 20 COFFEY, Q.C.:
 21 Q. The current Act, and there was a process in
 22 place whereby people, "this is Reg again, this
 23 is what he wants."
 24 MR. COATES:
 25 A. Absolutely.

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1 COFFEY, Q.C.:
 2 Q. "I got about a week to do it." Go out and
 3 search for it and they would know, from your
 4 perspective, what to search for and to send it
 5 on to yourself?
 6 MR. COATES:
 7 A. Yes, absolutely.
 8 THE COMMISSIONER:
 9 Q. Sorry, Mr. Coffey. Mr. Coates, do I take it
 10 then, an important part of your job is to know
 11 who does what within the Department of Health?
 12 MR. COATES:
 13 A. Absolutely. A corporate memory is essential.
 14 THE COMMISSIONER:
 15 Q. So you, on the basis of the request, are
 16 expected to know whether or not that falls
 17 within any particular division of the
 18 Department?
 19 MR. COATES:
 20 A. Absolutely.
 21 THE COMMISSIONER:
 22 Q. And perhaps even who in the Department is
 23 likely to be dealing with it?
 24 MR. COATES:
 25 A. Absolutely.

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1 THE COMMISSIONER:
 2 Q. Okay, thank you.
 3 COFFEY, Q.C.:
 4 Q. So sir, what then happens or happened with
 5 respect to this? The information would come
 6 in.
 7 MR. COATES:
 8 A. We received information, and I can't remember
 9 how many searches, but I believe the amount of
 10 information in this particular request in 2006
 11 was perhaps only a few pages.
 12 COFFEY, Q.C.:
 13 Q. And I'll be taking you through the materials
 14 itself.
 15 MR. COATES:
 16 A. And once we receive it, then we assess it line
 17 by line, in terms of context of the Act.
 18 COFFEY, Q.C.:
 19 Q. Who's we, we access?
 20 MR. COATES:
 21 A. Well, you have to forgive me, it's part of the
 22 bureaucratise. We is generally an--in
 23 anything leading up to the final decision,
 24 it's me.
 25 COFFEY, Q.C.:

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1 Q. Okay.
 2 MR. COATES:
 3 A. So that if I use the term "we", I mean me.
 4 COFFEY, Q.C.:
 5 Q. Unless stipulated otherwise, it means
 6 yourself?
 7 MR. COATES:
 8 A. Unless stipulated, it's myself. So I'll say
 9 we again, but I will go through the
 10 correspondence line by line. I'll make a
 11 preliminary assessment, in terms of what I
 12 believe should or should not be disclosed.
 13 Sometimes I will have questions that I will
 14 ask of others, and I'll just notate, I'm not
 15 sure I had one in this case, notate a
 16 question, either on the correspondence or the
 17 sort of copied correspondence for others to
 18 give me a response to. Then I'll prepare a
 19 package, a draft disclosure package and then
 20 I'll vet it to appropriate people, and I say
 21 people, normally we vet our potential
 22 responses through Department of Justice, in
 23 terms of legal advice, because there are legal
 24 issues in terms of interpretation, and in this
 25 case, with briefing notes, we'll certainly run

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1 it through Cabinet Secretariat, and in this
 2 particular case, we also did a courtesy--I use
 3 the term "courtesy" because it involved
 4 materials supplied by Eastern Health, we also
 5 sent it to the CEO of Eastern Health and
 6 saying "this is what we think. Can you give
 7 us your input?"
 8 COFFEY, Q.C.:
 9 Q. Sorry, a courtesy?
 10 MR. COATES:
 11 A. Well, basically it's a third party, an
 12 opportunity for them to make a third party
 13 representation, and while the Act doesn't
 14 stipulate we have to do it, in this context,
 15 because it's part of the health system, health
 16 continuum, it's something we do as a matter of
 17 practice. We'd also do the same matter of
 18 practice if it involved another health
 19 jurisdiction, such as another province or the
 20 Federal Government, and do, as well,
 21 reciprocate in the same vein.
 22 COFFEY, Q.C.:
 23 Q. Now sir, and I take then when you're going
 24 through and doing this review, you're looking
 25 for what?

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1 MR. COATES:
 2 A. I'm looking for, in the first instance,
 3 mandatory requirements, so for instance if
 4 there was personal sensitive information, as
 5 an example pursuant to Section 30, that would
 6 an exemption and it's important to--that would
 7 be a very significant exemption.
 8 COFFEY, Q.C.:
 9 Q. So--and with a view then of identifying it and
 10 redacting it.
 11 MR. COATES:
 12 A. Redact it.
 13 COFFEY, Q.C.:
 14 Q. Or blocking it--or blacking it out.
 15 MR. COATES:
 16 A. Absolutely. In some of the mandatory
 17 exemptions, although not black and white are
 18 certainly quite easy to find and quite easy to
 19 make a determination on. Solicitor/client
 20 privilege would be another example of
 21 information that we would tend to redact
 22 automatically. Most of the Access to
 23 Information Act, though, in terms of exemption
 24 is discretionary, and those get a little bit
 25 trickier, so -

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1 COFFEY, Q.C.:

2 Q. Perhaps you could tell, explain it to the

3 Commissioner, then, you know, from your

4 perspective, your understanding of how you are

5 to administer that, how in practice you do

6 administer it and, you know, your views on it?

7 MR. COATES:

8 A. Depending on exemption criteria, so, for

9 instance, if we're looking at Section 27, 28,

10 which deals with third party business

11 interests, in the statute it has a harm's test

12 already built there--a harm's test or an

13 injury test. So the criteria are fairly well

14 defined. So if it is a third-party business

15 interest, we'll apply the harm's test to

16 determine whether it should or should not be

17 exempted. If it doesn't meet the harm's test

18 and probability, it's not exempted on

19 recommendation. Some other sections have no

20 explicit harm's test built into the statute,

21 nor do many of the guidance documents have a

22 lot of sort of criteria to go on, so we tend

23 to look at those, and a good example is

24 Section 20 in terms of policy advice. So we

25 try to look at it from the point of view of

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1 harm, harm to the system in developing policy,

2 is there harm to the public in releasing the

3 material in terms of creating some sort of

4 mass asteria of, you know, something very

5 extreme. But for all intents and purposes

6 what we're trying to look at is the disclosure

7 of this information--and disclosure being our

8 default position, but if we were to disclose,

9 would there be harm or injury caused and it

10 has to be a probability situation, as opposed

11 to a mere possibility.

12 COFFEY, Q.C.:

13 Q. At least in the first instance, the

14 probability determination is made by whom?

15 MR. COATES:

16 A. Me.

17 COFFEY, Q.C.:

18 Q. So you review the materials with those

19 criteria in mind, make your notes as to what

20 you're going to do or what you're going to ask

21 others about their views on what you might do

22 or should do.

23 MR. COATES:

24 A. Yes.

25 COFFEY, Q.C.:

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1 Q. And the package, as it were, is prepared?

2 MR. COATES:

3 A. Yes.

4 COFFEY, Q.C.:

5 Q. What then is done with the package, the

6 unredacted version of the package, but with

7 your notes and your views on it?

8 MR. COATES:

9 A. We send it to, in this case in this specific

10 case it was sent to the CEO in Eastern Health.

11 COFFEY, Q.C.:

12 Q. Okay, if we could please, the next exhibit, if

13 we could look at exhibit P-0401.

14 MR. COATES:

15 A. And that's what this would be. It would also

16 be sent for legal counsel to make sure that we

17 are legally and technically correct. And it

18 would also, in this case, because it involved

19 briefing notes, would have been sent to

20 Cabinet Secretariat.

21 COFFEY, Q.C.:

22 Q. And in relation to that, briefing notes,

23 because it involved briefing notes, what types

24 of briefing notes are we talking about here?

25 MR. COATES:

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1 A. I can't remember the specific ones here, but

2 generally they are issues briefing notes or

3 House of Assembly briefing notes.

4 COFFEY, Q.C.:

5 Q. Okay, so even departmental briefing notes,

6 internally, you're not just talking about

7 Cabinet Secretariat briefing notes, but

8 departmental briefing notes -

9 MR. COATES:

10 A. Absolutely, our process has always been to

11 send anything with briefing notes to Cabinet

12 Secretariat.

13 COFFEY, Q.C.:

14 Q. To Cabinet Secretariat. And with a view to

15 what?

16 MR. COATES:

17 A. Soliciting their view points, advantage points

18 and having them assess our assessments to

19 provide a secondary lens or tertiary lens.

20 COFFEY, Q.C.:

21 Q. And that, is that just your department does

22 that or your understanding is that government

23 wide?

24 MR. COATES:

25 A. I think it's government wide, Mr. Coffey, but

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1 I have no way of knowing for sure.
 2 COFFEY, Q.C.:
 3 Q. Now in relation to that and of the overall
 4 structure because you report within the
 5 department to an ADM and it's changed from
 6 time to time.
 7 MR. COATES:
 8 A. That's right.
 9 COFFEY, Q.C.:
 10 Q. Do you report to anyone else within the
 11 government structure? Is there any other kind
 12 of structure within government that deals with
 13 -
 14 MR. COATES:
 15 A. I guess that depends on how you define
 16 reporting, I mean, administratively I report
 17 to an ADM. Most, on any given project I could
 18 be reporting to any other ADM, I could be
 19 reporting directly to the deputy minister.
 20 COFFEY, Q.C.:
 21 Q. Is there any centralized agency dealing with -
 22 MR. COATES:
 23 A. The Access to Information and Protection of
 24 Privacy Office in Department of Justice, we
 25 provide them statistical information.

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1 COFFEY, Q.C.:
 2 Q. Okay, could you explain their role as we
 3 haven't mentioned that, their role in your
 4 activities in terms of what you report to them
 5 and what, if any, guidance they provide or
 6 overall--perhaps you could just take us
 7 through that?
 8 MR. COATES:
 9 A. Well from my understanding, the Department of
 10 Justice is a government department responsible
 11 for the administration of the Access to
 12 Information and Protection of Privacy Act.
 13 The Minister of Justice, as I understand it,
 14 is responsible to report annually on the
 15 aspects of the Act. Any time we have an
 16 access request, it is entered into a trimmed
 17 database that's linked--that is in the
 18 Department of Justice, but linked to us. So
 19 all the details of our investigation, minus
 20 any identifiers, including the name of the
 21 requester, is entered in that database, so the
 22 subject matter, the request and our responses
 23 and our issues, whether it's fees, whether we
 24 did third party, those kind of things. And so
 25 the Department of Justice trimmed database

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1 rolls up and as I understand it, Cabinet
 2 Secretariat has access to that database. So
 3 we do that kind of thing. We also have what
 4 they call community practice meetings where
 5 access co-ordinators, of which I'm named one,
 6 across government meet, perhaps every couple
 7 of months, but depending on the issues, maybe
 8 more frequent, or less frequent, to discuss
 9 common themes, common problems, trying to look
 10 for solutions, trying to share experiences,
 11 those kinds of things as we build our body of
 12 expertise, I mean, for most of us, this is a
 13 new exercise. For most of us, this is a new
 14 territory, for most of us, of course, it's a
 15 learning process. They also, the Department
 16 of Justice, the ATIPP office, they establish
 17 guidelines and protocols for us to use to help
 18 us, that's the way we've viewed them in terms
 19 of if we're looking for something, they have
 20 something posted, it's a resource, you know,
 21 like in that sense.
 22 COFFEY, Q.C.:
 23 Q. So they have a, I'm sorry, kind of a policy
 24 manual or guidance manual?
 25 MR. COATES:

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1 A. They have policy manuals and they're there and
 2 available for us to use. We also, in my case,
 3 I use policy manuals and look at material from
 4 across the country in terms of decision
 5 making. Particularly in the issue of
 6 determining harm.
 7 COFFEY, Q.C.:
 8 Q. So the package is prepared and it goes to
 9 Justice, in this particular instance -
 10 MR. COATES:
 11 A. In this particular case.
 12 COFFEY, Q.C.:
 13 Q. - the Cabinet Secretariat.
 14 MR. COATES:
 15 A. The Cabinet Secretariat.
 16 COFFEY, Q.C.:
 17 Q. Would it always go to Justice?
 18 MR. COATES:
 19 A. Pretty well, yes.
 20 COFFEY, Q.C.:
 21 Q. Pretty well, so it went to Justice here
 22 because almost all do go to Justice anyway.
 23 MR. COATES:
 24 A. That's routine practice.
 25 COFFEY, Q.C.:

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1 Q. In this particular instance it went to the
 2 Cabinet Secretariat because it involved
 3 briefing notes.
 4 MR. COATES:
 5 A. That's correct.
 6 COFFEY, Q.C.:
 7 Q. And it went to Mr. Tilley at Eastern Health
 8 because it fell into the courtesy consultation
 9 or referral category.
 10 MR. COATES:
 11 A. Yes, because the package contained information
 12 that was provided by Eastern Health and
 13 because they are part of Health continuum.
 14 COFFEY, Q.C.:
 15 Q. I take it provided not pursuant to the request
 16 -
 17 MR. COATES:
 18 A. No, provided in terms it was material sent to
 19 the department from Eastern Health.
 20 COFFEY, Q.C.:
 21 Q. Okay. Now here in this memo, you say,
 22 "George, please find attached a draft response
 23 to HCS ATI 06003 regarding a request for
 24 information concerning the issue of breast
 25 screening tests, ER/PR receptors. Must of the

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1 information related to this request would
 2 reside with your organization. In reviewing
 3 our records, we found several e-mail and a
 4 number of briefing notes. Based on our
 5 assessment, we have determined that the e-mail
 6 traffic from Ross Reid is essentially personal
 7 information. Even if we sever Mr. Reid's
 8 name, the potential exists that someone could
 9 recognize the individual based on
 10 circumstances described; therefore based on
 11 Section 30 of ATIPPA, we have decided to sever
 12 three e-mail in their entirety. With respect
 13 to the briefing notes, we viewed them in the
 14 context of paragraph 20(1)(a) of ATIPPA, but
 15 do not believe that any of the materials
 16 subject to that exemption texted in the
 17 briefing notes, does not, in our opinion,
 18 amount to policy advice. We would like your
 19 opinion on our draft response as soon as
 20 possible. Regards, Reg." As I indicated
 21 earlier, it's copied to Ms. Mundon and Ms.
 22 Hennessey. Why would you copy it to them?
 23 MR. COATES:
 24 A. Generally we try to keep our communication
 25 folks in the loop and I think, as I said

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1 earlier, most of our--most of my direct
 2 involvement with the regions would be through
 3 the conduit of Regional Health Operations and
 4 Moira Hennessey would be the ADM.
 5 COFFEY, Q.C.:
 6 Q. And in this context, would she have been the
 7 one you primarily tasked of going and finding
 8 information?
 9 MR. COATES:
 10 A. Yes.
 11 COFFEY, Q.C.:
 12 Q. And then here on page three of the exhibit,
 13 there's a draft response, it's stamped
 14 "draft". It's on Department of Health and
 15 Community Services Legislative and Regulatory
 16 Affairs letterhead.
 17 MR. COATES:
 18 A. Yes.
 19 COFFEY, Q.C.:
 20 Q. It's to Mr. Quinn and it's the draft, of
 21 course--it is a draft dated February 23rd,
 22 2006 and you acknowledge again that you had
 23 received a request and you quote the request
 24 by Mr. Quinn and you then, in this draft
 25 response say, "The Department of Health and

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1 Community Services have decided to give
 2 partial access to the file documents that are
 3 in response to your request. Some information
 4 has been determined to be personal information
 5 and is therefore exempt from disclosure,
 6 pursuant to Section 30 of the Act. You should
 7 be aware that you are required to pay \$6.75 in
 8 fees before final access may be provided.
 9 Details of the fee requirements are set out
 10 below." And there's a category for search and
 11 preparation fee and the time in excess of two
 12 hours is not applicable, estimated cost, they
 13 have a cost there, photocopies, the number of
 14 copies, so much per copy and there's a total
 15 cost. And it goes on then, and I take it that
 16 the portion of it, up to this point, other
 17 than the reference to the decision to give
 18 partial access, an exemption from disclosure
 19 based on Section 30. The rest of what I've
 20 covered, other than the dollar and cents
 21 figures would be -
 22 MR. COATES:
 23 A. Format, it's kind of a form response.
 24 MR. COATES:
 25 A. Yes.

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1 COFFEY, Q.C.:

2 Q. The next top paragraph on the next page

3 advising as to who to make the cheque or money

4 order out to, that would be a form, I take it?

5 MR. COATES:

6 A. Yes.

7 COFFEY, Q.C.:

8 Q. And you do then go on to say, "We wish to

9 advise you as well that much of the documented

10 material related to your request is in the

11 custody or under the control of the Eastern

12 Regional Integrated Health Authority." I take

13 it that would be particular to this response?

14 MR. COATES:

15 A. Yes.

16 COFFEY, Q.C.:

17 Q. "Therefore, by copy of this letter, we are

18 also transferring your request to the Eastern

19 Regional Integrated Health Authority under

20 Section 17 of the Act."

21 MR. COATES:

22 A. Now could you tell the Commissioner what

23 that's about, this idea of transferring?

24 MR. COATES:

25 A. In the context of a request that we receive,

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1 there is an obvious division, for instance, if

2 we received a request tomorrow for

3 information, say related to the Provincial

4 ferry system, say somebody sent us an access

5 request, by context we would not have any

6 documentation on the Provincial ferry system.

7 So under the Act we have, I think, seven days

8 to transfer that request to the appropriate

9 public body. And that public body in this

10 case, I guess, would be transportation and we

11 would transfer the request, we would notify

12 the requester -

13 COFFEY, Q.C.:

14 Q. The pertinent body here would be?

15 MR. COATES:

16 A. If we were talking of the ferry, the example,

17 the analogy.

18 COFFEY, Q.C.:

19 Q. Oh, the ferry, I'm sorry, go ahead.

20 MR. COATES:

21 A. In this case we were considering whether or

22 not there was a larger body of information in

23 Eastern Health and even though we had some

24 material, did it qualify for a transfer of the

25 request to Eastern Health. We later

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1 determined that because we had some

2 information it wouldn't fit with precisely

3 within the definition of transfer, about, you

4 know, that the person had the option to file a

5 separate request with Eastern and perhaps did

6 so, we have no idea of knowing for sure.

7 COFFEY, Q.C.:

8 Q. And then you go on to write, "This public body

9 is required to make every reasonable effort to

10 respond to your request within 30 days after

11 receiving it", that would be the referred -

12 MR. COATES:

13 A. Absolutely.

14 COFFEY, Q.C.:

15 Q. Public body, and that's a form.

16 MR. COATES:

17 A. Absolutely.

18 COFFEY, Q.C.:

19 Q. Response. And you also go on to say, "As you

20 may be aware, you may file a complaint with

21 the information privacy commissioner pursuant

22 to Section 44 of ATIPP with respect to the

23 fees being charged for disclosure." And you

24 advise him as to the address in question.

25 That's a form response, I take it.

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1 MR. COATES:

2 A. Absolutely.

3 COFFEY, Q.C.:

4 Q. And then if you have any further questions,

5 please feel free to contact yourself, and that

6 would be a form response.

7 MR. COATES:

8 A. Absolutely.

9 COFFEY, Q.C.:

10 Q. Okay, so at the time this was--your initial

11 package, it was ready by February 23rd, 2006,

12 the draft response was ready and as a courtesy

13 referral, you were asking for input from Mr.

14 Tilley?

15 MR. COATES:

16 A. That's correct.

17 COFFEY, Q.C.:

18 Q. And the only exemption then contemplated was

19 the application of Section 30 to the--on the

20 basis of personal information?

21 MR. COATES:

22 A. That's correct.

23 COFFEY, Q.C.:

24 Q. Okay. If we could then, sir, while we're at

25 it, I'm just going to--this is a, page 5 of

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1 the exhibit, this now would have been part of
 2 the package, as it were, I take it?
 3 MR. COATES:
 4 A. That's correct.
 5 COFFEY, Q.C.:
 6 Q. I'm just going to go, if we could, please,
 7 Registrar, page 40? This is a briefing note
 8 of October 3rd, 2005 and I can--I'll just go
 9 back in the numbers through as we go and stop
 10 me if you need to, but is this generally all
 11 the pages in between seem to be the draft
 12 package?
 13 MR. COATES:
 14 A. Seem to be, sir.
 15 COFFEY, Q.C.:
 16 Q. Okay. I shouldn't say they all--it's another
 17 copy, multiple copies here, same thing. Now
 18 here, the pages, while I'm at it now, page 26
 19 here, okay, of the exhibit. I think I said
 20 40, I should have taken you all the way to
 21 page 40, even 49, which is the end of December
 22 5th, 2005. It appears just to be two copies
 23 of the same item, but at page 44 there's an e-
 24 mail from Ross Reid.
 25 MR. COATES:

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1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. To a number of--Denise Dunn and to John
 4 Abbott, Moira Hennessey, October 25, 2005 and
 5 there's a blacked out portion, somebody,
 6 redacted, called last night.
 7 MR. COATES:
 8 A. Yes.
 9 COFFEY, Q.C.:
 10 Q. And there's kind of an overall stroke through
 11 this, do you see that?
 12 MR. COATES:
 13 A. Yes.
 14 COFFEY, Q.C.:
 15 Q. What does that signify or what did that
 16 signify at the time?
 17 MR. COATES:
 18 A. The black, I mean the very clear blackened
 19 areas in this particular case, because these
 20 three e-mails were provided to me from the
 21 deputy minister, those blacked out portions
 22 were blacked out before I received it. The
 23 clear ones.
 24 COFFEY, Q.C.:
 25 Q. The clear ones in a sense of -

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1 MR. COATES:
 2 A. The ones your mouse curser is on now and if
 3 you go to the top, John Abbott and the first
 4 part of the paragraph.
 5 COFFEY, Q.C.:
 6 Q. Right here?
 7 MR. COATES:
 8 A. Yes, that would have been blacked out before I
 9 received it.
 10 COFFEY, Q.C.:
 11 Q. And that's the first word in the first
 12 paragraph.
 13 MR. COATES:
 14 A. That's correct.
 15 COFFEY, Q.C.:
 16 Q. Okay.
 17 MR. COATES:
 18 A. The scrawl line through it basically, probably
 19 is reflective of a highlighter marking
 20 indicating that we're in--when we send it to
 21 people, we just web through it as opposed to
 22 highlight every particular word.
 23 COFFEY, Q.C.:
 24 Q. Okay. And from the perspective of indicating
 25 what? What did -

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1 MR. COATES:
 2 A. Section 30 exemption -
 3 COFFEY, Q.C.:
 4 Q. - it's kind of a, it's a stylized Z and then
 5 some, really is what it looks -
 6 THE COMMISSIONER:
 7 Q. The mark of Zoro.
 8 MR. COATES:
 9 A. The mark of Zoro, yes. Basically it was being
 10 slashed. I don't know if there any figurative
 11 explanation for it other than we're indicating
 12 that the entire e-mail, the intent was the
 13 entire e-mail was being exempted pursuant to
 14 Section 30, I think, in terms of personal
 15 information.
 16 COFFEY, Q.C.:
 17 Q. Okay. So, this was one of the three that was
 18 -
 19 MR. COATES:
 20 A. That would be one of the three.
 21 COFFEY, Q.C.:
 22 Q. Page 43 of the exhibit -
 23 MR. COATES:
 24 A. And that would be the second part of it.
 25 COFFEY, Q.C.:

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1 Q. Second one, and again, the really -
 2 MR. COATES:
 3 A. Clear blacks were before I received the
 4 material.
 5 COFFEY, Q.C.:
 6 Q. So, even in the form it came to you -
 7 MR. COATES:
 8 A. Yes.
 9 COFFEY, Q.C.:
 10 Q. - the department itself or other people in the
 11 department, for example Mr. Abbott perhaps,
 12 had already -
 13 MR. COATES:
 14 A. Severed.
 15 COFFEY, Q.C.:
 16 Q. - severed out or redacted the actual names of
 17 the individual in question.
 18 MR. COATES:
 19 A. Yes, that's correct.
 20 COFFEY, Q.C.:
 21 Q. And at pages 41 and 42 of the exhibit, I take
 22 it, is this the third of those -
 23 MR. COATES:
 24 A. Yes.
 25 COFFEY, Q.C.:

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1 Q. - e-mails that you proposed to redact?
 2 MR. COATES:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. And again we have a large Z on the first of
 6 those pages, page 41 of the exhibit and 42 of
 7 the exhibit, again, you've kind of
 8 MR. COATES:
 9 A. It was just meant -
 10 COFFEY, Q.C.:
 11 Q. - as indicated -
 12 MR. COATES:
 13 A. - to indicate to the reviewer that these are
 14 in their entirety as opposed to highlighting
 15 every single line.
 16 COFFEY, Q.C.:
 17 Q. Okay. I take it then that with the
 18 combination of your reference in the draft
 19 letter, I'm sorry not in the draft letter, in
 20 the memo to Mr. Tilley to, actual specific
 21 reference you had e-mail traffic from Ross
 22 Reid that you -
 23 MR. COATES:
 24 A. Yes, those would connect the dots.
 25 COFFEY, Q.C.:

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1 Q. - anticipate Mr. Tilley would understand
 2 clearly?
 3 MR. COATES:
 4 A. Yes.
 5 COFFEY, Q.C.:
 6 Q. Okay. What then happened with this? Do you
 7 recall?
 8 MR. COATES:
 9 A. Well, certainly we received responses from
 10 legal counsel, obviously. We received
 11 responses from Cabinet Secretariat and we
 12 prepared a final package, I believe, on the
 13 day of or day before we were preparing to send
 14 out a disclosure package. I received a call
 15 from Mr. Tilley who had a concern with some
 16 aspects of the documents being disclosed. And
 17 -
 18 COFFEY, Q.C.:
 19 Q. And I'll take you then through that.
 20 MR. COATES:
 21 A. Yes. So, rather than--I'll wait for you.
 22 COFFEY, Q.C.:
 23 Q. Sure. If we could, please, Exhibit P-0394.
 24 Now sir, this is--well, page one of this
 25 exhibit is a draft of a letter. I shouldn't

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1 say it's a draft, it's a letter, you can't see
 2 the actual typed data on this because there's
 3 a post it note, use the proper term, is that--
 4 who's handwriting is that?
 5 MR. COATES:
 6 A. Oh, that would be mine.
 7 COFFEY, Q.C.:
 8 Q. Okay. And what's that date?
 9 MR. COATES:
 10 A. I think it's March 5 or could be March 8th.
 11 It was the day before, if I remember because I
 12 remember pulling this apart some time ago, I
 13 think it was the day before the actual letter
 14 we sent out went out. So, if the letter that
 15 went out was the 9th, then that's the 8th.
 16 COFFEY, Q.C.:
 17 Q. Okay. Now, what does it say? Could you just
 18 read that?
 19 MR. COATES:
 20 A. "I spoke to Mark Quinn, apologized for the
 21 delay, he stated it was okay" and basically I
 22 expressed that he had a right to make a
 23 representation to the information and privacy
 24 commissioner because we were past the 30 day
 25 statutory timeline and he said he was okay

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1 with it, he didn't need to, and he accepted
 2 our apology.
 3 COFFEY, Q.C.:
 4 Q. Stated it was okay, would not file -
 5 MR. COATES:
 6 A. Appeal with the IPC.
 7 COFFEY, Q.C.:
 8 Q. Appeal with the IPC?
 9 MR. COATES:
 10 A. Yeah.
 11 COFFEY, Q.C.:
 12 Q. I take it you were indicating to Mr. Quinn at
 13 the time, look, they'll be along shortly?
 14 MR. COATES:
 15 A. Yeah, yeah. We were probably three or four
 16 days, maybe a week at the most, like, beyond
 17 the 30 day statutory requirement.
 18 COFFEY, Q.C.:
 19 Q. Okay. And if we could, please, I'm just
 20 looking through this, there's a--page 2 of the
 21 exhibit, it's a line down through it there.
 22 And then the third page is actually signed by
 23 John Abbott, the deputy minister?
 24 MR. COATES:
 25 A. That's fair.

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1 COFFEY, Q.C.:
 2 Q. And it's copied to George Tilley. Now, sir,
 3 do you recall how it was that Mr. Abbott came
 4 to sign this version of the response?
 5 MR. COATES:
 6 A. Well, I think we're about to find another cut
 7 and paste there. But in essence, the package
 8 was presented. The letter that you have there
 9 was part of that package. It was vetted
 10 through the appropriate process of ADMs and
 11 then to Mr. Abbott to sign. He signed it and
 12 we do, before we send anything out, even after
 13 signature, we do a final error check and there
 14 was an error in that letter, so we crossed it
 15 out, basically.
 16 COFFEY, Q.C.:
 17 Q. If I could, please, if we could look at
 18 Exhibit P-1675? Now, sir, this begins with a,
 19 it's a letter dated--the first page of the
 20 exhibit is a letter dated 14, November, 2007.
 21 It's addressed to Sandra Chaytor and Bernard
 22 Coffey, it's Commission counsel. It's from
 23 Mr. Pritchard, counsel for Her Majesty in this
 24 matter. And it say, "RE: Disclosure." And he
 25 writes, "Further to my conversation with

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1 Bernard Coffey on 7, November, 2007, please
 2 find attached the following. Copy of pages
 3 HMQ-1 through HMQ-3, Tab 1, Volume 4, binder 1
 4 with overlay removed exposing date March 8th,
 5 2006 and a colour photo copy of page HMQ-15,
 6 Tab 1, Volume 4, Binder 1. With respect to
 7 the latter," which would be the colour
 8 photocopy, "Mr. Reg Coates confirms that this
 9 is his handwriting on the document. I trust
 10 this is satisfactory. And I'm going to just
 11 take you through the--that's, the second page
 12 of the exhibit is just that post it note we
 13 just looked at a moment ago.
 14 MR. COATES:
 15 A. Right.
 16 COFFEY, Q.C.:
 17 Q. And then page 3 of the exhibit is one page,
 18 you look here at the bottom right-hand side
 19 it's dated, "Prepared July 20th, 2005." It's
 20 on Eastern Health letterhead.
 21 MR. COATES:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. It's entitled "Actions."
 25 MR. COATES:

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1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. Or there is a title "Actions." And I'll take
 4 you to that in a moment. I take it that's
 5 the--in Mr. Pritchard's letter I just referred
 6 to, that's the highlighted portion and your
 7 handwriting?
 8 MR. COATES:
 9 A. Absolutely.
 10 COFFEY, Q.C.:
 11 Q. Okay. And here then at page 4 of the exhibit
 12 there's a letter dated March 8th, 2006. And -
 13 MR. COATES:
 14 A. That was the one with the post it note on top
 15 of it.
 16 COFFEY, Q.C.:
 17 Q. Post it note originally, and this is a
 18 photocopy with the post it note removed?
 19 MR. COATES:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. And there's a stroke all the way through the
 23 letter?
 24 MR. COATES:
 25 A. That's right.

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1 COFFEY, Q.C.:

2 Q. Here. And then there's, I'm sorry, a stroke

3 through that page. Page 5 of the exhibit is

4 the second page of that March 8th letter with

5 a stroke through it. And page 6 is Mr.

6 Abbott's signature?

7 MR. COATES:

8 A. Correct.

9 COFFEY, Q.C.:

10 Q. Okay. Now, sir, with respect to the matter at

11 page 2, I'm sorry, page 3 of the exhibit,

12 which is the third page of a July 20th, 2005

13 briefing note, the highlighting and the

14 handwriting, could you tell us, please--well,

15 first of all, could you read it to us and then

16 explain how this came about?

17 MR. COATES:

18 A. The passage says, "Eastern Health vice

19 president of quality and diagnostic and

20 medical services, Dr. Robert Williams, has

21 also asked that an investigation be conducted

22 into the five-week stoppage of

23 immunoperoxidase staining for ER/PR receptors

24 in 2003 by Dr. Ejeckam." This -

25 COFFEY, Q.C.:

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1 Q. And that's the underlying text?

2 MR. COATES:

3 A. That's the underlying -

4 COFFEY, Q.C.:

5 Q. And it's all highlighted in green?

6 MR. COATES:

7 A. Yes. In terms of my notes, it's March 8, '06

8 and I spoke to George Tilley. My note is "QA

9 measures should be kept out", measure is the

10 word.

11 COFFEY, Q.C.:

12 Q. Measure, and should be kept out.

13 MR. COATES:

14 A. That's correct.

15 COFFEY, Q.C.:

16 Q. Now, could you tell us please how it came

17 about that this got highlighted in the way it

18 did and you wrote this note?

19 MR. COATES:

20 A. Well, because this is part of the materials

21 being reviewed and I think I indicated earlier

22 that Mr. Tilley phoned me, I think, on the day

23 before it went out which would have been March

24 8th as it turns out here and I think it went

25 out March 9th. He indicated to me on the

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1 phone that while they had concerns with some

2 of the other materials, they had particular

3 concern with this because it was part of their

4 quality assurance measures and review and that

5 he believed, being quality assurance, that it

6 was subject to Section, I think, 8.1 of the

7 Evidence Act. Which, in turn, under the

8 Access to Information and Protection Act, in

9 terms of the regulations, puts it in the

10 category of an exclusion. As such as an

11 exclusion, as I understand it and I stand to

12 be corrected, means that the Access to

13 Information and Protection and Privacy Act

14 does not imply into this particular clause.

15 So, we couldn't refer to it and we couldn't

16 disclose it because it is exempted as evidence

17 under 8.1, exempted from the application of

18 the Act or excluded from the application of

19 the Act. And so we said that particular

20 paragraph based on Mr. Tilley's assertion that

21 this is quality assurance material.

22 COFFEY, Q.C.:

23 Q. And do you know the actual provision in the

24 regulations?

25 MR. COATES:

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1 A. Not the actual section, but it is in the

2 regulations in reference to Section, I think,

3 8.1 of the Evidence Act.

4 COFFEY, Q.C.:

5 Q. And so it was not only not discloseable -

6 MR. COATES:

7 A. But the Act didn't apply to it.

8 COFFEY, Q.C.:

9 Q. - but the fact that it even existed was -

10 MR. COATES:

11 A. That's the way we understand exclusion, yes.

12 COFFEY, Q.C.:

13 Q. Okay, so exclusion under the regulations,

14 under -

15 MR. COATES:

16 A. No, exclusion from the application of the Act.

17 COFFEY, Q.C.:

18 Q. Oh yes. And your understanding is that then

19 means that it's not even to be referred to in

20 the response letter.

21 MR. COATES:

22 A. That was--in the absence of anything to the

23 contrary, that's always been my understanding

24 from an exclusion point of view.

25 COFFEY, Q.C.:

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1 Q. So that in drafting what turned out to be the
 2 final response to Mr. Quinn, there'd be no
 3 reference to the Evidence Act at all.
 4 MR. COATES:
 5 A. No reference, no.
 6 COFFEY, Q.C.:
 7 Q. Or quality assurance or anything like that?
 8 MR. COATES:
 9 A. No sir.
 10 COFFEY, Q.C.:
 11 Q. Sir -
 12 THE COMMISSIONER:
 13 Q. Just want to make sure I'm understanding the
 14 sort of sequence of things that you're
 15 getting.
 16 MR. COATES:
 17 A. Absolutely.
 18 THE COMMISSIONER:
 19 Q. As I understand it, you're saying that when
 20 you are assessing a request and examining the
 21 documents which you receive, there are a
 22 number of different criteria by which you look
 23 at things.
 24 MR. COATES:
 25 A. That would be correct.

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1 THE COMMISSIONER:
 2 Q. One is items which the Act directs to be
 3 excluded.
 4 MR. COATES:
 5 A. Exempted.
 6 THE COMMISSIONER:
 7 Q. Exempted, sorry. The other are items where
 8 there may be a discretion regarding exemption.
 9 MR. COATES:
 10 A. And that would be a discretionary exemption.
 11 THE COMMISSIONER:
 12 Q. Okay. In the case of the first, as soon as
 13 you come to the conclusion that it's out, it's
 14 out; in the case of the second, it's perhaps
 15 more complicated in the sense that one has to
 16 reply -
 17 MR. COATES:
 18 A. Correct.
 19 THE COMMISSIONER:
 20 Q. - either policies that have been developed or
 21 some kind of a standard, presumably for
 22 orderly application of the Act you have to
 23 have a standard by which you make these
 24 determinations.
 25 MR. COATES:

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1 A. Correct.
 2 THE COMMISSIONER:
 3 Q. And you apply those and come to a conclusion
 4 that either the discretion will be exercised
 5 or not.
 6 MR. COATES:
 7 A. Correct.
 8 THE COMMISSIONER:
 9 Q. And now you're telling me that there is a
 10 third kind of beast, as it were.
 11 MR. COATES:
 12 A. Absolutely.
 13 THE COMMISSIONER:
 14 Q. And that is one that is not even covered by
 15 the Act.
 16 MR. COATES:
 17 A. That's correct.
 18 THE COMMISSIONER:
 19 Q. And do I take it that you're also saying, in
 20 respect of ones that are not even covered by
 21 the Act, your position is that you don't even,
 22 unlike the first two where you say to someone,
 23 you're not getting this information because of
 24 this section or this reason. If it falls
 25 within the third, you don't even tell them

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1 they're not getting the information. Have I
 2 got it right?
 3 MR. COATES:
 4 A. That's my understanding, Commissioner.
 5 THE COMMISSIONER:
 6 Q. Thank you.
 7 COFFEY, Q.C.:
 8 Q. And you obtained that understand from whom?
 9 MR. COATES:
 10 A. Well, the Act has no particular guidance on
 11 the notion of exclusion. As far as I know,
 12 there is no guidance in the provincial
 13 documentation on how to report on exclusion.
 14 And in my training through course work and
 15 evaluation of other jurisdictions, what I
 16 found very limited is, is that the Act doesn't
 17 apply. If the Act doesn't apply, then the
 18 material is not subject to the requirements to
 19 report under the Act. So, the determination
 20 was made by me, in this particular instance,
 21 because we don't often come across exclusions,
 22 that it was not appropriate to, and I say
 23 technically appropriate--I mean, one can make
 24 different moral judgments to report on the
 25 exclusion because the Act didn't apply and the

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1 Act doesn't state that we should report
 2 exclusion. So, it's a matter of
 3 interpretation, Mr. Coffey.
 4 COFFEY, Q.C.:
 5 Q. Now sir, just looking at this page, I take it
 6 that before Mr. Tilley ever called, that some
 7 time between February 3 and -
 8 MR. COATES:
 9 A. March 8?
 10 COFFEY, Q.C.:
 11 Q. No, some time between February 3 and February
 12 23, you would have reviewed the materials that
 13 you were sending over to Mr. Tilley on the
 14 23rd? On the 23rd you were sending materials
 15 to Mr. Tilley.
 16 MR. COATES:
 17 A. That's correct.
 18 COFFEY, Q.C.:
 19 Q. And you'd already kind of made a tentative -
 20 MR. COATES:
 21 A. Absolutely.
 22 COFFEY, Q.C.:
 23 Q. - judgment call yourself.
 24 MR. COATES:
 25 A. Yes.

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1 COFFEY, Q.C.:
 2 Q. And you would have reviewed the materials in
 3 question carefully, yourself.
 4 MR. COATES:
 5 A. Correct.
 6 COFFEY, Q.C.:
 7 Q. So, in looking at, for example, here, page 3,
 8 I take it the fact that--well, I shouldn't say
 9 the fact that, the idea that this was a
 10 quality assurance measure, I take it, didn't
 11 leap off the page to you?
 12 MR. COATES:
 13 A. No sir, and in my position, particularly given
 14 that this is an organization I have no direct
 15 involvement with, I would have no idea whether
 16 to determine if it a QA measure or if it is
 17 not in their QA program. Because I cannot
 18 access their material directly or their
 19 programming directly from my role. So, I had
 20 to rely exclusively on Mr. Tilley's assertion
 21 that this was a QA measure. If indeed Mr.
 22 Tilley had said that entire page was QA
 23 measure, it would have all been highlighted
 24 green because I'd have no way to determine,
 25 unless it was absolutely via language,

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1 impossible to be, but if it felt within the
 2 realm of possibility that it was a QA measure,
 3 I had to accept his word.
 4 COFFEY, Q.C.:
 5 Q. Now sir, did you actually have any discussion
 6 with him about it?
 7 MR. COATES:
 8 A. In terms of the phone conversation, that's
 9 about it.
 10 COFFEY, Q.C.:
 11 Q. In the sense of--he says it's a QA measure, it
 12 should be -
 13 MR. COATES:
 14 A. He basically told me it was a QA measure. I
 15 didn't question if that's what you're asking.
 16 COFFEY, Q.C.:
 17 Q. Yes.
 18 MR. COATES:
 19 A. No. I have no technical capacity because I
 20 have no documentation to do so.
 21 COFFEY, Q.C.:
 22 Q. Now sir, you said to Mr. Tilley, open, though
 23 the conversation was saying while he had other
 24 concerns, this--in the materials he proposed
 25 to release, this was the one he then went to.

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1 MR. COATES:
 2 A. That's the one he specified up front. His
 3 other -
 4 COFFEY, Q.C.:
 5 Q. Okay. Did he talk about anything else? Go
 6 ahead.
 7 MR. COATES:
 8 A. I think his other concerns were the
 9 generalities, I mean, if I recall, like, the
 10 whole issues and the way things were coming
 11 out, I think it's more of a general discussion
 12 concern as opposed to specific section. I had
 13 the sense or at least, I recall I think I had
 14 the sense that his preference would be not to
 15 disclose material.
 16 COFFEY, Q.C.:
 17 Q. What material?
 18 MR. COATES:
 19 A. The briefing note in its entirety.
 20 COFFEY, Q.C.:
 21 Q. The entire briefing note, okay.
 22 MR. COATES:
 23 A. That was my sense. I mean, I can't--I think
 24 that may have been a reflection or a wish as
 25 opposed to understanding reality on his part.

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1 But this section in particular, he was fairly
 2 adamant in it was a QA measure. So, I
 3 accepted his word.
 4 COFFEY, Q.C.:
 5 Q. As an example, now just use one that's on the
 6 screen here right now.
 7 MR. COATES:
 8 A. Sure.
 9 COFFEY, Q.C.:
 10 Q. That particular paragraph that you highlighted
 11 in green, "an investigation be conducted into
 12 the five week stoppage of immunoperoxidase
 13 staining for ER/PR receptors in 2003 by Dr.
 14 Ejeckam". So, what did you understand was the
 15 QA measure? Was it the 2003 matter or the
 16 current investigation?
 17 MR. COATES:
 18 A. The notion of asking an investigation in terms
 19 of the activity, it was a quality assurance
 20 review, a quality assurance investigation to
 21 basically stop the presses and look at it from
 22 a quality point of view to see what issues
 23 would be, those kinds of things. I mean, you
 24 have to understand, Mr. Coffey, these issues
 25 in themselves, I have no technical knowledge

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1 of.
 2 COFFEY, Q.C.:
 3 Q. I appreciate that.
 4 MR. COATES:
 5 A. And the importance of the issue in 2006 for me
 6 was absent, almost in totality, because we
 7 were just at the beginning of this becoming an
 8 issue publicly.
 9 COFFEY, Q.C.:
 10 Q. And so you weren't aware that this had been an
 11 issue back--or had become public in October of
 12 '05?
 13 MR. COATES:
 14 A. Not something that would have been in my
 15 particular radar screen.
 16 COFFEY, Q.C.:
 17 Q. And I take it that's so from your perspective
 18 as a member of the public, just in listening
 19 to the--or watching the media?
 20 MR. COATES:
 21 A. Um-hm.
 22 COFFEY, Q.C.:
 23 Q. But as well, even within the Department?
 24 MR. COATES:
 25 A. Yes, that would be correct. I mean, the only-

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1 -my only involvement began with this issue in
 2 any kind of specific form with the access
 3 request, and subsequently later, as the
 4 inquiry rolled on, in terms of searching for
 5 information.
 6 COFFEY, Q.C.:
 7 Q. Sir, if we just go three paragraphs above the
 8 green one, highlighted in green, there's a
 9 paragraph which reads "a technology consultant
 10 from Mount Sinai will be reviewing our
 11 laboratory to assess the immunoperoxidase
 12 system. At that time, we will ask the
 13 consultant his/her opinion of the past several
 14 years results under the DAKO methodology and
 15 for advice on the future direction of the
 16 immuno service."
 17 MR. COATES:
 18 A. Yes, sir.
 19 COFFEY, Q.C.:
 20 Q. Now that sort of activity, and you know, when
 21 you look down to the green paragraph, or now
 22 green paragraph, "asked that an investigation
 23 be conducted."
 24 MR. COATES:
 25 A. Yes.

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1 COFFEY, Q.C.:
 2 Q. They deal with current investigations, don't
 3 they?
 4 MR. COATES:
 5 A. They do, and if -
 6 COFFEY, Q.C.:
 7 Q. Did it strike you at the time that "Mr.
 8 Tilley, or George, why here, as opposed to
 9 three paragraphs above?"
 10 MR. COATES:
 11 A. I can't say it struck me at the time, Mr.
 12 Coffey, because I think my primary focus was
 13 we had reached the stage in the game that we
 14 were late on our request. I was trying to get
 15 as much information out to the requester as
 16 possible, which was my duty. I didn't have
 17 any recognition that this particular paragraph
 18 had any sense of importance in the public
 19 domain. It seemed to be a technical piece
 20 that didn't seem to have any kind of
 21 newsworthy information in this case. If Mr.
 22 Tilley had indicated that the paragraph he
 23 referred to was also a QA, it would have been
 24 highlighted in green, from my perspective, at
 25 that point in time. Because I have no

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1 expertise--I shouldn't say no expertise,
 2 that's kind of a false statement, but because
 3 I'm not involved with the quality assurance
 4 programming at the regional level, I have no
 5 way of determining whether or not something is
 6 QA or whether it is not, and I have to
 7 exclusively rely on what Mr. Tilley said to
 8 me. My breadth or depth or scope of
 9 questioning on whether or not this should or
 10 should not be in is exceedingly limited.

11 COFFEY, Q.C.:

12 Q. Now did you ask Justice for an opinion on
 13 this?

14 MR. COATES:

15 A. In this particular case, I would say no,
 16 because the time line was too short to go back
 17 to them.

18 COFFEY, Q.C.:

19 Q. Did you ask Ms. Moira Hennessey, because she
 20 is the person within the Department who would
 21 primarily deal with Eastern Health, for her
 22 views on it?

23 MR. COATES:

24 A. In this case, I would say the same would be
 25 true, no.

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1 COFFEY, Q.C.:

2 Q. The fact that the paragraph referred to a
 3 five-week stoppage of immunoperoxidase
 4 staining for ER/PR receptors in 2003 -

5 MR. COATES:

6 A. Yes.

7 COFFEY, Q.C.:

8 Q. - and this document was dated '05.

9 MR. COATES:

10 A. Yes.

11 COFFEY, Q.C.:

12 Q. And I'm going to take you to the whole of the
 13 subject matter of that three-page briefing
 14 note.

15 MR. COATES:

16 A. Sure.

17 COFFEY, Q.C.:

18 Q. Is, in the main, concerns activity in 2005,
 19 when we look at the briefing note itself.

20 MR. COATES:

21 A. Correct.

22 COFFEY, Q.C.:

23 Q. Did it cross your mind, like kind of, why are
 24 we concerned about '03? Why are you prepared
 25 to let out all of '05 and the only thing you

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1 want me to exclude is '03, or reference to the
 2 fact that there was some kind of a problem or
 3 a stoppage anyway in '03?

4 MR. COATES:

5 A. I can honestly say it didn't cross my mind,
 6 Mr. Coffey, and that would be the truth, and
 7 again, I think my perspective, in reflection,
 8 would be I've already phoned Mr. Quinn. I've
 9 indicated we're being late. I'm interested in
 10 getting the information in the context of the
 11 Act as soon as possible, and the relevance of
 12 the paragraph and the importance of the
 13 paragraph that was severed didn't seem to me,
 14 at the time--now, today if I were to look at
 15 it, I think I'd look at it with much different
 16 lenses because I know more--to be particular
 17 significant.

18 COFFEY, Q.C.:

19 Q. Sir, do you recall whether--did you go looking
 20 for, on March 7th-8th, you know, 6th, 7th,
 21 8th, like in the days just before the deadline
 22 was coming up, did you go looking for input
 23 from Mr. Tilley? Because you knew you had
 24 sent him the material back in February. Or
 25 was it Mr. Tilley on the 8th just called of

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1 his own volition?

2 MR. COATES:

3 A. It would be of his own volition. If it were
 4 something that we were required to do, like
 5 for instance, legal opinion, I would have
 6 phoned.

7 COFFEY, Q.C.:

8 Q. Yes.

9 MR. COATES:

10 A. If it was a third party notification required
 11 by the Act, I would have phoned. As a
 12 courtesy representation, we gave him an
 13 opportunity. If he didn't respond, he didn't
 14 respond.

15 COFFEY, Q.C.:

16 Q. If by the 8th, at the time, on the time that
 17 he called on the 8th, if by then the actual
 18 letter had gone, as you proposed -

19 MR. COATES:

20 A. That would be it.

21 COFFEY, Q.C.:

22 Q. And your response to him at the time would be
 23 "sorry, George, but -

24 MR. COATES:

25 A. Too late.

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1 COFFEY, Q.C.:

2 Q. - too late." But as it turns out, the actual

3 deadline was what day? Was it the 8th itself?

4 MR. COATES:

5 A. We received the request February 3rd.

6 COFFEY, Q.C.:

7 Q. Yes.

8 MR. COATES:

9 A. So the deadline would have been generally

10 March 3rd. So we were already now about four

11 or five days over.

12 COFFEY, Q.C.:

13 Q. Did you speak to anyone else--just go back a

14 bit. Do you recall--if we could, please, look

15 at Exhibit P-0394? Now sir, this is the--

16 well, can't see it here, but I take it this is

17 the original response that you proposed to

18 send, not the draft response, but the actual

19 original final response you had proposed to

20 send as of March 8th?

21 MR. COATES:

22 A. That's correct.

23 COFFEY, Q.C.:

24 Q. We just looked at that page, single page that

25 Mr. Pritchard sent over. There's a March 8th

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1 underneath this post it note?

2 MR. COATES:

3 A. Correct.

4 COFFEY, Q.C.:

5 Q. Okay. Now when we look through this, this is

6 the one that's signed by Mr. Abbott?

7 MR. COATES:

8 A. Yes.

9 COFFEY, Q.C.:

10 Q. Okay, and here, on page four of the exhibit,

11 there's a post it note here, what does that

12 say? Whose handwriting is it and -

13 MR. COATES:

14 A. Well, that would John Abbott, I recognize JGA.

15 "For this Q & A, please include the full

16 document, not this one, okay." I think that's

17 what it says.

18 COFFEY, Q.C.:

19 Q. Okay.

20 MR. COATES:

21 A. Two-page briefing note.

22 COFFEY, Q.C.:

23 Q. And that's the briefing note of--just so the

24 Commissioner can see it, it's the departmental

25 briefing note, Q & A briefing note of November

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1 7th 2005?

2 MR. COATES:

3 A. That's correct.

4 COFFEY, Q.C.:

5 Q. So this material was originally sent to Mr.

6 Abbott.

7 MR. COATES:

8 A. The deputy minister.

9 COFFEY, Q.C.:

10 Q. It was proposed that the anticipated questions

11 be left out.

12 MR. COATES:

13 A. It was being proposed, based on a

14 representation from Cabinet Secretariat in

15 that case, that they be left out.

16 COFFEY, Q.C.:

17 Q. And Mr. Abbott was here telling you include

18 it?

19 MR. COATES:

20 A. Not to leave them out.

21 COFFEY, Q.C.:

22 Q. Not to leave it out.

23 MR. COATES:

24 A. That's correct.

25 COFFEY, Q.C.:

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1 Q. Could you tell the Commissioner, please, about

2 that, that idea of these anticipated questions

3 in briefing notes, the Q & A briefing notes

4 and, you know, from your perspective, and

5 this, I take it, is an example of it, how that

6 works?

7 MR. COATES:

8 A. As I indicated, we send briefing notes to

9 Cabinet Secretariat when we have those

10 requests. The section that's often used for

11 these kinds of exemptions is 20.1(a) or

12 paragraph, I guess, 20.1(a), which -

13 COFFEY, Q.C.:

14 Q. 20.1.A

15 MR. COATES:

16 A. Yeah, and it's based on the policy advice or

17 the advice to ministers type criteria

18 exemption. It's discretionary. As I indicated

19 earlier, we try to look at discretionary

20 exemptions in the potential of harm or injury

21 test. There's no particular injury test built

22 into the statute, that I'm aware of, for

23 20.1(a). So we try to look at it objectively,

24 as much as possible, in terms of context, if

25 this material would harm Government, in terms

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1 of policy making, or ministers or would it
 2 harm the public, in terms of any kind of
 3 catastrophic impact, and that's the way we
 4 approach it at the Department. That's the
 5 way--when I use again "we" that would be me,
 6 approach it at the Department.
 7 Cabinet Secretariat has a policy that
 8 they overlay across Government that these
 9 kinds of questions, if you will, are always
 10 considered to be subject to 20.1(a) and in
 11 essence, their policy is that we should view
 12 them as being always exempted. For me, that
 13 then makes it mandatory.
 14 COFFEY, Q.C.:
 15 Q. Okay.
 16 MR. COATES:
 17 A. And the statute is discretionary.
 18 COFFEY, Q.C.:
 19 Q. Yes, the statute wording, from your
 20 perspective, is discretionary?
 21 MR. COATES:
 22 A. That's correct.
 23 COFFEY, Q.C.:
 24 Q. But your understanding is the Government's
 25 approach -

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1 MR. COATES:
 2 A. From the Cabinet Secretariat.
 3 COFFEY, Q.C.:
 4 Q. Cabinet Secretariat's approach is to exclude
 5 the anticipated questions on the basis of
 6 20.1.(a)?
 7 MR. COATES:
 8 A. That's correct.
 9 COFFEY, Q.C.:
 10 Q. Of the Act, and did you speak with Mr. Abbott
 11 then, you know, bearing in mind that you
 12 understood, in March of '06, what the Cabinet
 13 Secretariat's views were, and now Mr. Abbott,
 14 the deputy minister, is telling you "Reg, put
 15 it back in."
 16 MR. COATES:
 17 A. Well -
 18 COFFEY, Q.C.:
 19 Q. Did you speak to him about it?
 20 MR. COATES:
 21 A. I think our discussions were before I received
 22 a note back from Mr. Abbott.
 23 COFFEY, Q.C.:
 24 Q. Could you tell the -
 25 MR. COATES:

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1 A. I mean, my feeling on those particular set of
 2 questions were that much of the information
 3 was public domain already, that there was, in
 4 my estimation, little harm of releasing that
 5 information that was being propose to be
 6 severed and that I didn't really agree with
 7 the submission from Cabinet Secretariat that
 8 that should be severed on the basis of
 9 20.1(a).
 10 COFFEY, Q.C.:
 11 Q. And you would have made that representation or
 12 told Mr. Abbott that?
 13 MR. COATES:
 14 A. I had that conversation with John, I'm pretty
 15 well sure I did, or Mr. Abbott. I'm pretty
 16 well sure I did.
 17 COFFEY, Q.C.:
 18 Q. And I take it this was his final response?
 19 MR. COATES:
 20 A. Yes, and I believe that response was garnered
 21 after a conversation with Minister
 22 Ottenheimer.
 23 COFFEY, Q.C.:
 24 Q. And in the course of Mr. Abbott making this or
 25 giving you this direction here on page four of

Page 92

1 the exhibit, would he have had knowledge of or
 2 access to the views expressed by Cabinet
 3 Secretariat?
 4 MR. COATES:
 5 A. Absolutely.
 6 COFFEY, Q.C.:
 7 Q. So any correspondence, the correspondence or
 8 communications in relation to that, he would
 9 have known about what their views were as
 10 well?
 11 MR. COATES:
 12 A. Absolutely.
 13 COFFEY, Q.C.:
 14 Q. Listened to you, and you understand, talked to
 15 Mr. Ottenheimer?
 16 MR. COATES:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. Okay.
 20 MR. COATES:
 21 A. I mean, in the context of the opinion provided
 22 by Cabinet Secretariat, it's a valid opinion.
 23 I mean, and I don't mean to say it isn't.
 24 It's just I differed with the opinion, in
 25 terms of exercise of discretion.

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1 COFFEY, Q.C.:

2 Q. And on that point, I take it that when you

3 look at the final documents that went out,

4 they do include the anticipated questions.

5 MR. COATES:

6 A. Yes, they do.

7 COFFEY, Q.C.:

8 Q. So can you tell the Commissioner who has the

9 final call, as it were, on this?

10 MR. COATES:

11 A. Well, under the Act, the Minister does, and as

12 I understand it, Mr. Coffey, in many cases,

13 the Minister can delegate that to the deputy

14 minister who has signing authority under the

15 Interpretation Act.

16 COFFEY, Q.C.:

17 Q. And in fact, the March 8th letter or draft of

18 the final version, in fact, has Mr. Abbott's

19 signature on it, dated and signed it.

20 MR. COATES:

21 A. Yes, sir.

22 COFFEY, Q.C.:

23 Q. Do you recall--because that particular letter,

24 when we look at it, if we could, I'll just go

25 back, Commissioner, to page one of the

Page 94

1 exhibit. That's Exhibit 0394. And here, at

2 the bottom of the page, you've written--I say

3 you, I take it that--just find out here.

4 Here, under John Abbott's signature on page

5 three, there's an ROC.

6 MR. COATES:

7 A. That's correct.

8 COFFEY, Q.C.:

9 Q. That's -

10 MR. COATES:

11 A. That signifies I typed it.

12 COFFEY, Q.C.:

13 Q. Yourself, Mr. Coates. So you prepared the

14 letter for Mr. Abbott's signature?

15 MR. COATES:

16 A. Correct.

17 COFFEY, Q.C.:

18 Q. And here you've typed "access to parts of the

19 documents are being denied in accordance with

20 paragraph 20.1(a) of the Act."

21 MR. COATES:

22 A. That's correct.

23 COFFEY, Q.C.:

24 Q. And that relates to whereby the information is

25 considered to be advice or recommendations

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1 prepared for the Minister?

2 MR. COATES:

3 A. Correct.

4 COFFEY, Q.C.:

5 Q. The next page, page two of the exhibit,

6 paragraph B, "paragraph 23.1(b) of ATIPP,

7 whereby disclosure would reveal information

8 provided in confidence from another province."

9 MR. COATES:

10 A. And in this context, that was an error.

11 COFFEY, Q.C.:

12 Q. And well, there's no -

13 MR. COATES:

14 A. That's B.

15 COFFEY, Q.C.:

16 Q. Yes, there's another B. "Section 30 of ATIPP

17 whereby personal information cannot be

18 disclosed."

19 MR. COATES:

20 A. That's correct.

21 COFFEY, Q.C.:

22 Q. And that would be the e-mails involving Mr.

23 Reid?

24 MR. COATES:

25 A. Absolutely.

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1 COFFEY, Q.C.:

2 Q. If we could, please, Registrar, Exhibit P-

3 0129? Sir, here this is a letter dated March

4 9th, 2006. It's on Government of Newfoundland

5 and Labrador letterhead, Department of Health

6 and Community Services, Office of the Deputy

7 Minister. It's to Mr. Quinn. It involves a

8 response to his February 3rd, 2006 ATIPP

9 request. I'm just going to take you through

10 to the third page where we see Mr. Abbott's

11 signature.

12 MR. COATES:

13 A. That's correct.

14 COFFEY, Q.C.:

15 Q. Again, the ROC signifies you prepared this

16 version of the letter, and it's copied to

17 George Tilley.

18 MR. COATES:

19 A. Correct.

20 COFFEY, Q.C.:

21 Q. Like the earlier draft had been. Now here, on

22 March 9th, after citing his request, you've

23 prepared for Mr. Abbott's signature and it's

24 the one he actually sent--I gather this is the

25 actual document that was sent out, a photocopy

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1 of it?

2 MR. COATES:

3 A. That's correct.

4 COFFEY, Q.C.:

5 Q. So you've written, "the Department of Health

6 has decided to give partial access to the file

7 documents that are responsive to your request.

8 Information that is non-responsive to the

9 request has been severed." What does that

10 mean "non-responsive to the request"?

11 MR. COATES:

12 A. In some document files, for instance,

13 particularly in briefing notes, there may be

14 multiple issues being dealt with, and some of

15 that information may not be relevant to the

16 request at hand. So we sever it because it's

17 non-responsive.

18 COFFEY, Q.C.:

19 Q. And for example, it's talking about another

20 topic entirely?

21 MR. COATES:

22 A. Absolutely.

23 COFFEY, Q.C.:

24 Q. Within the document?

25 MR. COATES:

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1 A. Yeah.

2 COFFEY, Q.C.:

3 Q. So that the idea of advising Mr. Quinn that

4 information that is non-responsive to his

5 request has been severed, it would be

6 information that is not covered by his

7 request?

8 MR. COATES:

9 A. That's correct.

10 COFFEY, Q.C.:

11 Q. And then you go on to write "access to parts

12 of the documents are being denied in

13 accordance with paragraph 23.1(b) of ATIPP

14 whereby disclosure would reveal information

15 provided in confidence from another province."

16 Okay?

17 MR. COATES:

18 A. Correct.

19 COFFEY, Q.C.:

20 Q. And "B. Section 30 of ATIPP whereby personal

21 information cannot be disclosed."

22 MR. COATES:

23 A. Correct.

24 COFFEY, Q.C.:

25 Q. So here then the reference, in this version,

Page 99

1 of the response to Mr. Quinn, the reference to

2 paragraph 20.1(a) has been removed?

3 MR. COATES:

4 A. That's correct, because we, or the Minister, I

5 should say, in this case, and the Deputy

6 Minister decided to disclose the Q & A's which

7 were being thought of 20.1.(a).

8 COFFEY, Q.C.:

9 Q. The anticipated questions under the briefing

10 note.

11 MR. COATES:

12 A. Yes.

13 COFFEY, Q.C.:

14 Q. So of course, that having been--that decision

15 having been made, the cover letter had to be

16 changed?

17 MR. COATES:

18 A. Absolutely.

19 COFFEY, Q.C.:

20 Q. If we could, please, sir, just looking at some

21 of the pages that follow, page four of the

22 exhibit is an Eastern Health briefing note,

23 ER/PR receptors. The Commission has seen this

24 quite a number of times now. This is the

25 prepared July 20th, 2005, that's the first

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1 page of that three-page briefing note. It's

2 the second page at page five of the exhibit.

3 Page six of the exhibit entitled "actions".

4 When we look down through it, the paragraph

5 that we had seen earlier that you had

6 highlighted in green is not there. Just

7 looking at that, again looking at the page,

8 are you able to tell that there's anything

9 severed there? There's a blank space, but is

10 it apparent that it's actually severed?

11 MR. COATES:

12 A. I guess it really depends on your background.

13 If you're asking for me, I would automatically

14 know it's severed because of my experience in

15 the area. The layperson, I'm not sure, Mr.

16 Coffey. I would see that as an unusually

17 large space between paragraphs in text and I

18 would think that there might be something

19 missing there.

20 COFFEY, Q.C.:

21 Q. And there might or might not?

22 MR. COATES:

23 A. And there might not.

24 COFFEY, Q.C.:

25 Q. Now are you aware of whether or not, in

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1 providing responses under ATIPP, you know,
 2 various Government departments, that some
 3 departments at least there's a reference out
 4 in the margins.
 5 MR. COATES:
 6 A. Yeah, they actually section--annotated section
 7 numbers in the margins.
 8 COFFEY, Q.C.:
 9 Q. For example, you know, where I have the cursor
 10 here now to the right-hand side, there might
 11 be a paragraph number or section number cited.
 12 MR. COATES:
 13 A. Yes.
 14 COFFEY, Q.C.:
 15 Q. Or out to the left.
 16 MR. COATES:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. Or even right here in the middle where it's
 20 gone, where the redacted version is. What was
 21 your approach to that? I mean, because we
 22 look through this, and I can take you through
 23 it, you don't use that identifier.
 24 MR. COATES:
 25 A. We didn't use that. Historically, under FOI,

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1 and right into ATIPP, our approach has always
 2 been to follow the tenets of the Act which
 3 indicates--and we do that in a letter form,
 4 where we have severed and why we have severed.
 5 COFFEY, Q.C.:
 6 Q. Does the letter say where you have severed?
 7 MR. COATES:
 8 A. Where we have severed in general context.
 9 COFFEY, Q.C.:
 10 Q. Yes.
 11 MR. COATES:
 12 A. Not in specific context, and I say that we've
 13 severed based on--I'm referring to the
 14 sections of the Act when I say where in that
 15 context.
 16 THE COMMISSIONER:
 17 Q. So you would--are identifying the fact that
 18 you have severed?
 19 MR. COATES:
 20 A. Absolutely, and why.
 21 THE COMMISSIONER:
 22 Q. Okay.
 23 MR. COATES:
 24 A. And that falls to the tenets of both the FOI
 25 Act and now of course the Access Act, and that

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1 process has been institutionalized in our
 2 system. We've always done that. So it's a
 3 matter of past practice carried forward. So
 4 we didn't treat this particular request any
 5 different than, you know, several dozens or
 6 hundreds that we've done before in severing
 7 from annotation point of view. The other
 8 thing I'll point -
 9 COFFEY, Q.C.:
 10 Q. When you say "we" though, we as the Department
 11 of Health?
 12 MR. COATES:
 13 A. We as the Department of Health, me as the
 14 individual providing the recommendation.
 15 COFFEY, Q.C.:
 16 Q. Are you aware of what the practice is by other
 17 access coordinators?
 18 MR. COATES:
 19 A. I have no evidence to substantiate one way or
 20 the other, but my sense is that it's
 21 inconsistent, at best. In other words, some
 22 do, some don't.
 23 COFFEY, Q.C.:
 24 Q. Some actually not only send the cover letter
 25 citing the sections -

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1 MR. COATES:
 2 A. But some annotate and some do not.
 3 COFFEY, Q.C.:
 4 Q. And some within the documents -
 5 MR. COATES:
 6 A. Yes.
 7 COFFEY, Q.C.:
 8 Q. - themselves, actually in the body of the
 9 documents where something is redacted, they
 10 actually cite the paragraph that is applying
 11 to that particular redaction?
 12 MR. COATES:
 13 A. Yeah. I would also point out, in this -
 14 COFFEY, Q.C.:
 15 Q. Is there any written policy or procedure in
 16 relation to that?
 17 MR. COATES:
 18 A. Well, as I found out earlier this year, the
 19 Department of Justice does have a recommended
 20 guideline that you annotate in the lines to
 21 the outside.
 22 COFFEY, Q.C.:
 23 Q. I'm sorry, I apologize, could you just -
 24 MR. COATES:
 25 A. The Department of Justice does have a written

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1 policy that the annotation be indicated on
 2 each area, as you've indicated that others do,
 3 and that's there.
 4 COFFEY, Q.C.:
 5 Q. How long has that been there?
 6 MR. COATES:
 7 A. I guess it's been there since they wrote the
 8 guidelines in 2005.
 9 COFFEY, Q.C.:
 10 Q. So it would have been there in March of '06?
 11 MR. COATES:
 12 A. Oh yes, yes. Oh yes, definitely.
 13 COFFEY, Q.C.:
 14 Q. And have you ever adopted that approach?
 15 MR. COATES:
 16 A. The Department never did and I never did. It
 17 never was raised as an issue from requesters
 18 in past. It never was raised by an issue from
 19 reviewers in past. It was also never raised
 20 as an issue by the Information and Privacy
 21 Commissioner, upon review of documents that
 22 were partially severed in reviews that were
 23 done in past. So it didn't seem to be a
 24 problem for us, and until you had mentioned
 25 earlier this year, it wasn't an issue that I

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1 thought we had missed. I will say, Mr.
 2 Coffey, since the issue, you raised the issue
 3 with me earlier this year, we have changed our
 4 process. We now add a detailed summary sheet
 5 in behind the letter indicating where in the
 6 volume of material that has been severed and
 7 on what basis. We're also moving forward to
 8 instituting electronic racket redact systems
 9 to be fully clear in identifying where spaces
 10 occur for requesters. So I take your advice
 11 and point made earlier this year.
 12 COFFEY, Q.C.:
 13 Q. I don't know if I'd phrase it as advice. I'd
 14 hesitate in that regard, but it was raised at
 15 the time when we interviewed yourself. You
 16 did say, in answer to--I don't know, about 15-
 17 20 minutes ago when we were discussing this
 18 paragraph in the highlighted green and your
 19 views, your understanding at the time of where
 20 this kind of stood on March 8th, you got the
 21 phone call and why you acted the way you did.
 22 MR. COATES:
 23 A. Sure.
 24 COFFEY, Q.C.:
 25 Q. Based upon the knowledge you then had. You

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1 said, I believe, that now, knowing what you
 2 do, you might have responded differently,
 3 bearing in mind how much more you know now.
 4 You know so much more about the matter
 5 overall. Could you explain that to the
 6 Commissioner? Why, what is it you've learned
 7 since that might have made you, at the time,
 8 at least make more inquiries about the request
 9 to redact that paragraph?
 10 MR. COATES:
 11 A. Well, I think understanding the context and
 12 understanding the implications in some of the
 13 questions that you've asked me, in terms of,
 14 you know, why 2003 forward. Why not the other
 15 sections. Given more time to look at it and
 16 given greater understanding of the issues, I
 17 think always provides an opportunity for
 18 additional scrutiny or additional analysis and
 19 whether it's this or any other issue, the more
 20 you know, the more you're able to question,
 21 the more you're able to analyze and come up
 22 with a better determination. I think the
 23 fact, the information I have about these
 24 documents and subsequent documents today,
 25 whether or not the end result would be any

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1 different, in terms of the product, I don't
 2 know. But certainly the level of scrutiny
 3 would be much higher than it would have been
 4 in 2006.
 5 COFFEY, Q.C.:
 6 Q. Here, if we could, that paragraph referring to
 7 Dr. Ejeckam in 2003 and in '05, the current
 8 investigation being requested is redacted.
 9 Now, sir, if you just go through this,
 10 different pages of Exhibit P-0129, that's the
 11 October 3rd, 2005 briefing note. And the
 12 background is there, there's nothing redacted
 13 in that. But we go to--I apologize. This is
 14 the November 7, 2005 Q and A briefing note.
 15 And the anticipated questions are here,
 16 they're actually--you certainly followed Mr.
 17 Abbott's direction in that regard and Mr.
 18 Ottenheimer's. Just in looking through that,
 19 page 18 is the last page of the exhibit. I'm
 20 given to understand that's the full package
 21 that went out, that's our copy of the full
 22 package?
 23 MR. COATES:
 24 A. As far as I recall.
 25 COFFEY, Q.C.:

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1 Q. Yes. Sir, looking at that package, is there
 2 any reference to--well, there is a reference
 3 certainly to Section 30, the fact that you are
 4 relying upon that to not disclose certain
 5 information. And that would be Mr. Reid three
 6 e-mails?
 7 MR. COATES:
 8 A. That would be correct.
 9 COFFEY, Q.C.:
 10 Q. Would there be any way of Mr. Quinn knowing
 11 that there was three or 30 e-mails?
 12 MR. COATES:
 13 A. No. And -
 14 COFFEY, Q.C.:
 15 Q. Or that there was even one?
 16 MR. COATES:
 17 A. No, absolutely. And I guess, Mr. Coffey, a
 18 reflection of my earlier comment about taking
 19 your advice, which was not really what I
 20 meant. The implications of that discussion
 21 was that the issue of volume in determining
 22 whether or not a requester may ask for a
 23 further review with the IPC was a very salient
 24 point and to that end we've changed process.
 25 COFFEY, Q.C.:

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1 Q. And in relation to the cover letter here, if I
 2 could just go back, there is, in the cover
 3 letter, no reference to, I'm sorry, Section
 4 8.1 of the Evidence Act?
 5 MR. COATES:
 6 A. No.
 7 COFFEY, Q.C.:
 8 Q. And the reason -
 9 MR. COATES:
 10 A. As I've indicated -
 11 COFFEY, Q.C.:
 12 Q. - you've explained?
 13 MR. COATES:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. Had you ever come across such a request before
 17 to remove something under Section 8.1 of the
 18 Evidence Act?
 19 MR. COATES:
 20 A. I don't think so, sir. It was unique for me.
 21 It was on the spur decision because of
 22 timeline. It was a judgment made. I guess
 23 the way I looked at access requests, that
 24 there was always the safeguard that the
 25 requester could go to the information and

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1 privacy commissioner and if we had erred, we
 2 would get at least some documented, you know,
 3 objective response from the IPC of whether or
 4 not the decision we made was correct or not.
 5 And that's happened in the past and it's been
 6 very helpful.
 7 COFFEY, Q.C.:
 8 Q. And -
 9 MR. COATES:
 10 A. So several things came to mind in terms of,
 11 one, trying to meet a timeline and getting it
 12 out, two, the fact that there was opportunity
 13 for further review by the request through the
 14 IPC and, four, I guess the final thing is is
 15 we stress to the requesters that they do have
 16 that opportunity, that avenue.
 17 COFFEY, Q.C.:
 18 Q. To request a review?
 19 MR. COATES:
 20 A. Request a review.
 21 COFFEY, Q.C.:
 22 Q. Yeah. Although, in terms of in making a
 23 decision about whether to request a review
 24 with there not being, or at least in this
 25 instance Mr. Quinn was not advised that

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1 Section 8.1 even existed, in the sense of what
 2 was being relied upon?
 3 MR. COATES:
 4 A. That's true, but characteristically in reviews
 5 in the past they simply asked for a review
 6 knowing this information severed. Whether or
 7 not it refers to the particular section of the
 8 Act has not been relevanced, in my experience,
 9 on reviews in the past.
 10 COFFEY, Q.C.:
 11 Q. If we could, then, in relation to this matter,
 12 could you explain to the Commissioner the
 13 process that then follows if there is a review
 14 request made?
 15 MR. COATES:
 16 A. Well, the requester would contact the
 17 information and privacy commissioner's office,
 18 would indicate that they made a request to our
 19 department, say, by example, it was Mr. Quinn,
 20 and that there was material left off or
 21 severed or not disclosed to him, partially or
 22 otherwise, and ask that the IPC review the
 23 file to determine whether or not that material
 24 should have been disclosed. That's sort of a
 25 very brief explanation. They have particular

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1 forms and things that they have to fill out.
 2 The IPC notifies us of the request, us being
 3 the department, usually directly to me, that
 4 we have request for a review. They ask us to
 5 provide them with a full copy of our entire
 6 file, including whether severances, redacted
 7 versions. The only thing that we don't
 8 disclose to them is client, solicitor/client
 9 privileged material.
 10 COFFEY, Q.C.:
 11 Q. Okay.
 12 MR. COATES:
 13 A. And so we prepare a package, we send it to
 14 them within, I think, 14 days, usually within
 15 a couple. Fourteen days is statutory
 16 requirement. They try a process of informal
 17 resolution, in other words, they deal with us,
 18 they deal with the requester and say, well,
 19 you know, can we negotiate this issue. If
 20 that doesn't work, then they go through a
 21 process of formal review, and in that process
 22 they solicit the evidence that they already
 23 have, they may ask us to come and sit with
 24 them and give evidence, and then they make--
 25 they review, I guess, and again, this is more

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1 about their operation, but I assume they
 2 review things in consult with their legal
 3 counsel. They prepare a report, they file a
 4 report, they make a series of recommendations.
 5 I will say, Mr. Coffey, that in my experience
 6 with the, I guess, half or dozen or so reviews
 7 we had done on files from the IPC we have
 8 always followed the recommendations of the
 9 privacy commissioner.
 10 COFFEY, Q.C.:
 11 Q. Yes. Whatever they might ultimately be?
 12 MR. COATES:
 13 A. Whatever they might ultimately be.
 14 COFFEY, Q.C.:
 15 Q. Yes. If we--if you want to take the morning
 16 break, Commissioner? I'll come back then, one
 17 final topic, sir, okay.
 18 MR. COATES:
 19 A. Thank you.
 20 (RECESS)
 21 COMMISSIONER:
 22 Q. Please be seated. Mr. Coffey.
 23 COFFEY, Q.C.:
 24 Q. Thank you, Commissioner. If we could, please,
 25 Registrar, Exhibit P-0480? Sir, this is an e-

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1 mail, if we could, of, let me see, it's
 2 likely--I take it probably July 11, 2007 from
 3 Joyce Penney to yourself and others, Reg
 4 Coates to Louise Jones. And it's, the subject
 5 is "Office of the information and privacy
 6 commissioner report, 2007-2008, Eastern Health
 7 re: hormone receptor tests." And Ms. Penney
 8 writes, "Mr. Coates, on behalf of Louise
 9 Jones, interim president and CEO, please
 10 advise your feedback on the attached
 11 document." And she then provides Ms. Jones'
 12 phone number. And the e-mail before that
 13 that's attached to it is one of July 4, 2007
 14 to yourself and it's forwarded on behalf of
 15 George Tilley. "Good morning, Mr. Coates.
 16 Further to your conversation with Mr. Tilley,
 17 attached please find the 2007-2008 report from
 18 the office of the information and privacy
 19 commissioner, Eastern Health re: hormone
 20 receptor test, pages 1 to 27 for your review
 21 and feedback to Mr. Tilley." Mr. Coates, do
 22 you recall what this was about?
 23 MR. COATES:
 24 A. I think so. I understand that Eastern Health
 25 received an access to information request for

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1 anonymized specified data in terms of the
 2 client. Anonomized.
 3 COFFEY, Q.C.:
 4 Q. Anonomized, okay.
 5 MR. COATES:
 6 A. Specified data. And the requester, and I
 7 think it was a media person, was looking for
 8 the test results, the raw data with the names
 9 and personal identifiers removed. I think
 10 that was the nature of the request. From my
 11 recollection, the information going through
 12 their process, which may or may not be similar
 13 to the process I use, denying access outright
 14 on the basis of Section 30, personal
 15 information of clients, in essence. The
 16 requester requested a review with the
 17 information and privacy commissioner, who I
 18 would think by the fact that they produced a
 19 report, were unsuccessful in the information
 20 resolution resolving the issues on both
 21 parties, and in a formal report had
 22 recommended that Eastern Health disclose the
 23 anonymized information to the requester. And
 24 Eastern Health was in now the position of
 25 responding to the recommendations of the

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1 information and privacy commissioner. So I
 2 think that's the context.
 3 COFFEY, Q.C.:
 4 Q. Yes. And so what did they want of you?
 5 Because this involved Eastern Health?
 6 MR. COATES:
 7 A. It involved Eastern Health. Well, I think
 8 they wanted an opinion from somebody that was
 9 outside their area. They may have, and I
 10 you'd have to ask them, thought that I had
 11 some expertise in this area, given my
 12 experience in the department and that my
 13 opinion might be of some value to them in
 14 their decision making process.
 15 COFFEY, Q.C.:
 16 Q. And did you provide your views?
 17 MR. COATES:
 18 A. Yes, I did.
 19 COFFEY, Q.C.:
 20 Q. And what did you tell the -
 21 MR. COATES:
 22 A. I told them that the information should be
 23 disclosed and that Section 30 didn't apply to
 24 anonymized data.
 25 COFFEY, Q.C.:

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1 Q. To anonymized, ie -
 2 MR. COATES:
 3 A. Data that -
 4 COFFEY, Q.C.:
 5 Q. - identifiers being removed, personal
 6 information?
 7 MR. COATES:
 8 A. Identifiers being removed.
 9 COFFEY, Q.C.:
 10 Q. And it was your view after that was done,
 11 Section 30 would not apply?
 12 MR. COATES:
 13 A. That's correct.
 14 COFFEY, Q.C.:
 15 Q. Because from your perspective, I take it, you
 16 couldn't identify the person or a person?
 17 MR. COATES:
 18 A. That's correct.
 19 COFFEY, Q.C.:
 20 Q. So you provided that view to whom, do you
 21 recall who you -
 22 MR. COATES:
 23 A. I'm pretty well sure, and again, I stand to be
 24 corrected, but I'm pretty well sure I said it
 25 certainly verbally to Mr. Tilley and verbally,

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1 well, verbally to the people around him and
 2 that later, I guess, would have been the
 3 acting CEO.
 4 COFFEY, Q.C.:
 5 Q. Ms. Jones, I take it?
 6 MR. COATES:
 7 A. Yeah, I think that she appeared in that
 8 timeline somewhere.
 9 COFFEY, Q.C.:
 10 Q. Yes. So and that related to a decision that
 11 the information and privacy commissioner had
 12 already made vis-a-vis the -
 13 MR. COATES:
 14 A. It was the recommendation, the report referred
 15 to as public and it's on the internet.
 16 COFFEY, Q.C.:
 17 Q. Yeah. Now, I take it that this matter, that
 18 particular request did not actually involve
 19 yourself and the department, per se?
 20 MR. COATES:
 21 A. No, sir, no.
 22 COFFEY, Q.C.:
 23 Q. If we could, please, look at Exhibit P-1673?
 24 Sir, this is on Legislative and Regulatory
 25 Affairs, Department of Health letterhead.

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1 It's June 12th, 2007. It's a letter, it's
 2 addressed to Mr. Rob Antle, the Telegram. And
 3 you write, "This is to confirm that on June
 4 12th, 2007 the department," and I'm going to
 5 skip the full description of the department--
 6 "receive your request for access to the
 7 following records/information: briefing notes
 8 in any and all formats, including paper and
 9 electronic prepared for the minister on ER/PR
 10 cancer testing issue at Eastern Health. Time
 11 frame of request is January 1, 2005 to March
 12 14th, 2006, inclusive." And you then, it
 13 continues on kind of in the form, form
 14 response saying we'll get back to you within a
 15 particular period of time?
 16 MR. COATES:
 17 A. Correct.
 18 COFFEY, Q.C.:
 19 Q. And if we could, please, looking at page 3 of
 20 the exhibit there's a form here, "Access to
 21 Information and Protection of Privacy
 22 Coordinating Office" form?
 23 MR. COATES:
 24 A. That's correct.
 25 COFFEY, Q.C.:

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1 Q. And what type of form is this?
 2 MR. COATES:
 3 A. This is a form that is actually in the
 4 Department of Justice, the ATIPP office
 5 website and it's a form for applicants to use
 6 when requesting information from public
 7 bodies. So, for instance, when we receive an
 8 access request, it's typically on this form.
 9 COFFEY, Q.C.:
 10 Q. Okay. And this happens to be the one from Mr.
 11 Antle?
 12 MR. COATES:
 13 A. That's correct.
 14 COFFEY, Q.C.:
 15 Q. And the text of his actual request which you
 16 have quoted in your letter?
 17 MR. COATES:
 18 A. Absolutely.
 19 COFFEY, Q.C.:
 20 Q. He's printed out here in handwriting?
 21 MR. COATES:
 22 A. Yes, correct. The acknowledgement letter that
 23 you referred to earlier, normally what we do
 24 is we do a verbatim list of their request and
 25 place in that letter so that there's no

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1 mistaking what they're asking for.
 2 COFFEY, Q.C.:
 3 Q. Sure. And here in the bottom right-hand
 4 corner there's a--because his request is dated
 5 September--I'm sorry, June 11th?
 6 MR. COATES:
 7 A. Yeah.
 8 COFFEY, Q.C.:
 9 Q. 2007. The received June 12th, 2007 stamp, is
 10 that your office's stamp?
 11 MR. COATES:
 12 A. That's correct. Again, that's to look at the
 13 time sequencing in terms of the 30 day
 14 calendar clock.
 15 COFFEY, Q.C.:
 16 Q. Now, sir, if we could, I'm just going to ask
 17 to go, please, to Exhibit P-0962? Now, here,
 18 this is two e-mails of June 12th, 2007. The
 19 first of them is from yourself to Robert
 20 Thompson, Ed Hunt and Joy Maddigan, Jim
 21 Strong, Moira Hennessey, Tansy Mundon, copied
 22 to Yvonne Power, Betty Donahue, Bev Power,
 23 Danny Barrett, Pamela Bennett, John Rumboldt
 24 at 2:43 p.m. The subject is a ATIPPA request.
 25 And you write, "We have received three

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1 individual access to information requests
 2 respecting the ER/PR issue at Eastern Health.
 3 Three requests are as follows," and it's
 4 paragraphs 1, 2 and 3. And I'll just read the
 5 first one. "The briefing note in any and all
 6 formats, including paper and electronic
 7 prepared for the minister on the ER/PR cancer
 8 testing issue at Eastern Health. Time frame
 9 of request is January 19th, 2007 to the
 10 present." Paragraph 2 is the same thing
 11 except the time frame of request is March
 12 14th, 2006 through January 19th, 2007,
 13 inclusive. And the third paragraph is the
 14 same wording except the time frame of request
 15 is January 1, 2005 through March 14th, 2006,
 16 inclusive. And you continue, "In essence, the
 17 requester is looking for briefing notes from
 18 January 1, 2005 to the present. Please search
 19 your paper and electronic files respecting
 20 briefing notes related to this issue. Do not
 21 worry about sending me duplicate copies. We
 22 will remove any duplicates. I will need a
 23 response from all of you by the middle to the
 24 end of next week. Regards, Reg." And then,
 25 it's copied to Ms. Mundon and -

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1 MR. COATES:
 2 A. John Rumboldt.
 3 COFFEY, Q.C.:
 4 Q. John Rumboldt. So I take it there were three
 5 such requests with different time frames?
 6 MR. COATES:
 7 A. Um, yes.
 8 COFFEY, Q.C.:
 9 Q. What did you attribute the difference to in
 10 the dates?
 11 MR. COATES:
 12 A. There is--well, I guess I'm trying to
 13 characterize what I think the requester may
 14 have had in mind and it may not necessarily be
 15 appropriate.
 16 COFFEY, Q.C.:
 17 Q. Yes.
 18 MR. COATES:
 19 A. But Mr. Antle, I guess, made the request.
 20 There were three separate filings of
 21 essentially the same information, the only
 22 difference being the timelines. There is a
 23 propensity in access to information, it
 24 certainly happens at the federal level quite a
 25 bit, that if a request comes in that's so

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1 huge, the automatic response is that we can't
 2 respond because it would take so much time and
 3 it would cost so much and those costs would
 4 have to be passed on to the requester. I
 5 think what Mr. Antle did this in case, in this
 6 case was try to break it down into three,
 7 indicating that, okay, we have three small
 8 pieces, so if you can deal with one
 9 individually at a time, then they're, in
 10 essence, three small requests as opposed to
 11 looking for huge volumes of information. Now,
 12 I'm projecting what I think may have been his
 13 motivation; I don't know what his motivation
 14 was.

15 COFFEY, Q.C.:

16 Q. Do you know if, for example, on March 14th--do
 17 the time periods in question generally
 18 correspond, to your knowledge, to the tenure
 19 as minister of health?

20 MR. COATES:

21 A. Oh, absolutely. I mean, that certainly looks
 22 very close to that, as well. And that may
 23 also have been part of his motivation, to sort
 24 of get a segregated file on each line. What
 25 we simply did, and I think we either had a

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1 conversation or in correspondence between us,
 2 between me and Mr. Antle, indicated, look, we
 3 have to deal with it as one request, as one
 4 body of documents we're trying to compile. To
 5 separate them out into three piles adds to the
 6 process and may delay our response.

7 COFFEY, Q.C.:

8 Q. Now here the e-mail at the top, exhibit P-
 9 0962, page 1, you say or you receive an e-mail
 10 that day at 8:58 p.m. that evening from Moira
 11 Hennessey. She writes, "Reg, Tansy has
 12 recently prepared an ER/PR binder which
 13 includes the notes that were prepared by the
 14 Regional Health Authorities"--branch, I
 15 suppose, "It would be better to use that as a
 16 source document for any notes from this branch
 17 as we participated in a similar exercise last
 18 month. She also has the notes since then,
 19 based on our records, the first verbal
 20 briefing with the Health and Community
 21 Services Minister was in July, 2005 and our
 22 first note was in October of 2005. So I take
 23 it this was Ms. Hennessey giving you some
 24 heads up as to how you might proceed?"

25 MR. COATES:

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1 A. Yeah, when we were looking for documents, as
 2 you can see by the large list of individuals
 3 we went this e-mail to, and if you recall what
 4 I said earlier about process, we send e-mails
 5 out to looking for documents in the first
 6 stage of the process and this is what this is.
 7 Moira responded saying, look, there's a
 8 composite list of briefing notes with our
 9 communications director, so that's a place to
 10 start.

11 COFFEY, Q.C.:

12 Q. Now, sir, if we could please look at exhibit
 13 P-1617? This is an e-mail, well it's actually
 14 two e-mails of June 26th, 2007. The first
 15 from yourself to Robert, and the Robert in
 16 this context I take it is Robert Thompson. I
 17 apologize, I was looking--exhibit P-0965, I
 18 apologize. This is an e-mail from or these
 19 are two e-mails of June 26, 2007, the first
 20 one at 2:01 p.m. is from yourself to Mr.
 21 Thompson, I take it?

22 MR. COATES:

23 A. Yes.

24 COFFEY, Q.C.:

25 Q. "Robert, I have started reviewing the ER/PR

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1 access request. It is likely that we will be
 2 disclosing at least some material, given that
 3 you are the taskforce, should I prepare our
 4 final response for signature by the Minister?
 5 Technically speaking, an ADM cannot sign an
 6 access request disclosure letter. The ATIPP
 7 Act says the Minister, the Interpretation Act
 8 allows the DM to sign on his/her behalf." And
 9 then that same day at 4:02 p.m., Mr. Thompson
 10 responds, "Yes, the Minister."

11 MR. COATES:

12 A. Correct.

13 COFFEY, Q.C.:

14 Q. So I take it at that point you're thinking
 15 about responding to and proceeding towards
 16 responding to Mr. Antle's requests.

17 MR. COATES:

18 A. We were at the stage then that I had done the
 19 first reviews, so we were developing the sort
 20 of vetting review.

21 COFFEY, Q.C.:

22 Q. And you're asking Mr. Thompson should it be
 23 for his signature as the acting deputy
 24 minister or for Mr. Wiseman as the Minister?

25 MR. COATES:

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1 A. That's correct.
 2 COFFEY, Q.C.:
 3 Q. If we could please look at exhibit P-1674?
 4 Now these are again two e-mails, the first is
 5 June 28th, 2007. It's from Mr. Thompson to
 6 yourself at 7:43 p.m. He writes, "Reg, George
 7 Tilley called about the ATIPP request which
 8 they are completing. They want to know how we
 9 are approaching it in the department. I told
 10 him to have his people call you, Reg, about
 11 how we interpret the Act in regard to specific
 12 documents. He is very concerned that some of
 13 this disclosure will have an impact on the way
 14 medicine is practised. In addition, would you
 15 ensure while I'm away that the Minister is
 16 well briefed on this file as we approach
 17 disclosure date, and also Cabinet Secretariat.
 18 Thanks, Robert." And then you responded the
 19 next morning at 7:42 a.m., saying "Will do,
 20 have a well deserved vacation." So I take it
 21 Mr. Thompson, you understood, was going on
 22 vacation?
 23 MR. COATES:
 24 A. That was my understanding.
 25 COFFEY, Q.C.:

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1 Q. Did you ever speak to Mr. Tilley, you know,
 2 around this time or afterward about the ATIPP
 3 request that he had received?
 4 MR. COATES:
 5 A. I don't think -
 6 COFFEY, Q.C.:
 7 Q. And this, I take it, is not the same ATIPP
 8 request as the one we just looked at, the
 9 decision.
 10 MR. COATES:
 11 A. No.
 12 COFFEY, Q.C.:
 13 Q. Involving the anonymized information.
 14 MR. COATES:
 15 A. No, I don't think so. I mean, Eastern Health
 16 receives--may receive parallel requests that
 17 we receive, most times I am not aware of it.
 18 Certainly in 2007 this issue had reached
 19 extraordinary proportions in terms of
 20 engagement and involvement, both publicly and
 21 internally. It's not unusual but it is rare
 22 that the level of involvement I would have in
 23 the affairs of another organization, because
 24 Eastern Health is another organization in
 25 terms of access. In this case, it appeared to

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1 me at least, in terms of being asked to
 2 communicate, that Eastern Health had some
 3 value in my opinions on these things, as well
 4 as the Deputy Minister and Minister had some
 5 belief that I could add value to the process
 6 in terms of what Eastern Health was going
 7 through. In this particular case, Mr.
 8 Thompson was referring to the request we had
 9 received from Mr. Antle. He wanted to make
 10 sure that I was keeping George abreast of the
 11 material, as well as the Minister and Cabinet
 12 Secretariat, because, of course, now we're in
 13 a different timeline in 2007 and my response
 14 to Mr. Thompson was we'll do. I will say that
 15 the things that Mr. Thompson had asked of me I
 16 would have done as a matter of course anyhow.
 17 COFFEY, Q.C.:
 18 Q. And what about, he says there, Mr. Thompson
 19 says, "I"--Robert--"told him"--George--"to
 20 have George's people call you, Reg, about how
 21 we interpret the Act." Did they actually call
 22 you?
 23 MR. COATES:
 24 A. Yeah, I can't say with great certainty. I
 25 know during that period there were

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1 communications between me and some of his
 2 staff, perhaps even him directly. If I didn't
 3 document it in the file line, it wouldn't have
 4 been long conversations. Any long
 5 conversations of length or duration or
 6 substance, I tend to write down in the file,
 7 so if it's not there, then I can't be certain.
 8 COFFEY, Q.C.:
 9 Q. Sir, if we could, please, exhibit P-1618? Now
 10 here this is a memo on Legislative and
 11 Regulatory Affairs letterhead, it's to Tansy
 12 Mundon dated July 4, 2007. It's from
 13 yourself, the subject is "Access to
 14 Information Requests" and I'll cite your file
 15 numbers, 7010, 7011 and 7012.
 16 MR. COATES:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. And you advise Ms. Mundon that the Department
 20 of Health has received three requests for
 21 information respecting the ER/PR hormone
 22 receptor testing issue, as follows, and these
 23 are, in fact, you spell out here Mr. Antle's
 24 three requests. "We have collected and
 25 reviewed the relevant documents in the context

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1 of the Act. Attached please find a copy of the
 2 responsive documents. We have highlighted our
 3 preliminary screen of passages that may be
 4 severed and exempted from disclosure. You
 5 will also note a couple of highlighted
 6 questions on two notes. These questions are
 7 intended for our legal counsel. Our response
 8 date is July 12th, 2007. We also have to
 9 brief the Minister prior to that time, so I
 10 would appreciate your response, comments
 11 and/or opinions by Tuesday, July 10th, 2007.
 12 We have already sent this morning a copy of
 13 these documents for review by Justice, Cabinet
 14 Secretariat, Communications, Executive
 15 Council"--I'm sorry, I apologize, "A copy of
 16 these documents for review by Justice"--and I
 17 take it that would be the Department of
 18 Justice?
 19 MR. COATES:
 20 A. Absolutely.
 21 COFFEY, Q.C.:
 22 Q. "Cabinet Secretariat"--
 23 MR. COATES:
 24 A. Correct.
 25 COFFEY, Q.C.:

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1 Q. "Communications-Executive Council"?
 2 MR. COATES:
 3 A. That would be the tenth floor, communications
 4 for government.
 5 COFFEY, Q.C.:
 6 Q. So Cabinet Secretariat would be where--who, in
 7 this context, would be Cabinet Secretariat?
 8 MR. COATES:
 9 A. The precise person would be Renee Pendergast
 10 who would be my counterpart in Cabinet
 11 Secretariat.
 12 COFFEY, Q.C.:
 13 Q. Communications-Executive Council would be who,
 14 in this context?
 15 MR. COATES:
 16 A. I think the person we sent it to would have
 17 been Elizabeth Matthews.
 18 COFFEY, Q.C.:
 19 Q. And Eastern Health. "I understand from you
 20 that the Premier's office is requesting three
 21 copies for review by Elizabeth Matthews, Brian
 22 Crawley and Brian Taylor. Copies are attached
 23 as requested. If you have any further
 24 questions concerning this ATIPP request,
 25 please contact me by e-mail"--at your e-mail

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1 address. You sign as the director. Now, "I
 2 understand from you"--that is from Ms.
 3 Mundon?" You write here, "I understand from
 4 you"--that is from Ms. Mundon?
 5 MR. COATES:
 6 A. Yes.
 7 COFFEY, Q.C.:
 8 Q. "That the Premier's office is requesting three
 9 copies for review by"--well the three
 10 individuals in question.
 11 MR. COATES:
 12 A. The three people initially.
 13 COFFEY, Q.C.:
 14 Q. So Ms. Mundon told you -
 15 MR. COATES:
 16 A. That's correct.
 17 COFFEY, Q.C.:
 18 Q. What do you recall about that?
 19 MR. COATES:
 20 A. At this point in time, once we had alerted -
 21 COFFEY, Q.C.:
 22 Q. Yeah, because this is July 4th.
 23 MR. COATES:
 24 A. Yeah. At this point in time, once we had
 25 alerted, you know, the appropriate officials

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1 that we've received these requests and that we
 2 developed some response, the preliminary, it
 3 seemed to take on a bit of an extraordinary--
 4 and I say "extraordinary", not to mean that it
 5 was unusual, but extraordinary in the sense
 6 that the level of intensity of involvement
 7 from officials at a higher level, particularly
 8 the Premier's office, is not something that
 9 I've experienced frequently, so it was taking
 10 on a different context, a different
 11 proportion, if you may. I'm not saying that
 12 it was in any way inappropriate, it's simply
 13 because, I guess because of the time, because
 14 of the issue and because of the interest. So
 15 Ms. Mundon simply came to me and said, you
 16 know, yes, you've sent documents over, but
 17 they want three copies prepared for these
 18 three individuals, which is what we did.
 19 COFFEY, Q.C.:
 20 Q. Exhibit P-1620? Now this is a series of e-
 21 mails, the one at the bottom of page one of
 22 the exhibit, Mr. Coates, is an e-mail from
 23 Tansy Mundon, July 11th, 2007 at 9:35 p.m.,
 24 that would be the evening of July 11th. She
 25 writes, "Reg, we need a copy of the ATIPP

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1 request sent to Elizabeth, Brian Crawley and
 2 Brian Taylor first thing tomorrow. This is
 3 one section included that was previously
 4 severed. Can you please call me, thanks."
 5 And then the next morning at July 12th, at
 6 8:12 a.m., you write to Brian Crawley--you e-
 7 mail Brian Crawley, Brian Taylor and Elizabeth
 8 Matthews, copy Ms. Mundon. The subject is
 9 "The Request". "As per the request from your
 10 office, please find attached ATIPPA request
 11 respecting ER/PR. Requests were submitted
 12 separately and reflect the same information
 13 for different time periods. Our statutory
 14 response is today. If we do not respond
 15 today, the requester can request a review by
 16 the information privacy commissioner. If you
 17 require further information, please advise
 18 accordingly." And then the same day, July
 19 12th at 8:49 a.m., Ms. Mundon writes, e-mails
 20 you saying, "Reg, we need the updated--they
 21 need the updated package, most recent version
 22 of what you intend to release, not the actual
 23 request. This needs to be delivered ASAP."
 24 And then at the same day, July 12th, at 9:18
 25 a.m. you e-mail Ms. Mundon saying, "It is

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1 being scanned and I will send it via e-mail in
 2 the next few minutes." Signed Reg. So I take
 3 it that's what you just referred to then in
 4 terms of the involvement by the Premier's
 5 office?
 6 MR. COATES:
 7 A. Yes, the final package that was sent to Mr.
 8 Antle was signed off by the Premier's officer,
 9 Cabinet Secretariat and ultimately the
 10 Minister who gets, make the final decision.
 11 So before we prepared it, we had received sign
 12 off or had to receive sign off from both the
 13 Premier's office and Cabinet Secretariat.
 14 COFFEY, Q.C.:
 15 Q. Now there is, if I could please, to put this
 16 in context for the Commissioner, if you could
 17 look, please, same exhibit, P-1620, but just a
 18 little bit further along in the page numbers.
 19 Page 6 of the exhibit, on July 11th, which
 20 would be the day before, 2007, you had e-
 21 mailed Ms. Mundon at 7:41 a.m. Subject is
 22 "Request", well actually the day before that
 23 on July--I'm sorry, July 10th, 2007 at 8:51
 24 p.m., Ms. Mundon had e-mailed you saying
 25 "Premier's office has not yet signed off on

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1 request." So I take it that at the time you
 2 understood that the Premier's office had to
 3 approve of what was going out?
 4 MR. COATES:
 5 A. That was my understanding.
 6 COFFEY, Q.C.:
 7 Q. To Mr. Antle.
 8 MR. COATES:
 9 A. Yes.
 10 COFFEY, Q.C.:
 11 Q. You had presumably made some kind of an
 12 inquiry of Ms. Mundon as to where that was.
 13 MR. COATES:
 14 A. That is correct.
 15 COFFEY, Q.C.:
 16 Q. Then on July 11th, 7:41 the next morning, you
 17 responded to Ms. Mundon's July 10th e-mail
 18 saying, "Legally, the request has to be
 19 responded to by the 12th. If the Minister
 20 does not sign today, then the applicant has a
 21 right of appeal with the IPC. If that
 22 happens, I would suggest that the Minister may
 23 have another embarrassing moment. The
 24 requester asked about this response last
 25 week." So what were you trying to convey to

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1 Ms. Mundon there?
 2 MR. COATES:
 3 A. My concern in the process, partly had to do
 4 with my philosophy and access to information
 5 and public right to know. It also has to do
 6 with my responsibility to ensure that the
 7 tenets of the Act are being followed. For the
 8 record, I wanted to make sure that Ms. Mundon,
 9 in particular, who I seen as the centrepiece
 10 between me and Premier's office, was aware
 11 that if we didn't send it, then we're beyond
 12 the tenets of the 30 day calendar timeline,
 13 and as such, if this went for a review before
 14 the information and privacy commissioner, then
 15 you engage a whole new process of review and
 16 scrutiny on an issue that had already, at this
 17 time, was receiving a high degree of public
 18 scrutiny and anxiety. So I thought that a
 19 request of simply documentation shouldn't--we
 20 should not in any stretch of the imagination,
 21 miss a statutory timeline; particularly with
 22 the heightened anxiety around these issues.
 23 COFFEY, Q.C.:
 24 Q. If we could, please, I'm just going to go to,
 25 go a little bit further through this exhibit,

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1 this exhibit P-1620 to page 13. And again,
 2 this is a copy of a memo that you had, on the
 3 same day that you had sent the memo to Ms.
 4 Mundon, concerning this matter, July 4th,
 5 2007, sent a memo to Gerrie Smith, Department
 6 of Justice; Paula Burt, Cabinet Secretariat;
 7 Josephine Cheeseman, Communications Executive
 8 Council; and George Tilley, CEO of Eastern
 9 Health. Copied it to Dr. Hunt, Ed Hunt,
 10 Department of Health, Moira Hennessey and
 11 Tansy Mundon. And here, I take it, this is
 12 the initial communication throughout
 13 government concerning a request, what's
 14 referred to as "the department has received
 15 three requests for information respecting
 16 ER/PR receptors." And again this is, I take
 17 it, Mr. Antle's request.
 18 MR. COATES:
 19 A. Mr. Antle's, yes.
 20 COFFEY, Q.C.:
 21 Q. And this is the kind of, the initial send out-
 22 -well would this be the initial send out?
 23 MR. COATES:
 24 A. I think so.
 25 COFFEY, Q.C.:

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1 Q. I think we looked at one back in June too.
 2 MR. COATES:
 3 A. It could be, I mean, I'd have to sort of
 4 pattern them together, Mr. Coffey, but it
 5 looks like, because in this particular case,
 6 in this particular timeline, there was so much
 7 communication and so many people involved,
 8 which I use the term "extraordinary" because
 9 in most cases, it's Department of Justice and
 10 us, sometimes Cabinet Secretariat. In this
 11 case, there were a lot of players. But this
 12 looks to me like, at least at the way it's
 13 phrased, it's either the first go around and
 14 in this case there were multiple go arounds in
 15 terms of preparation of the package, so it
 16 could have been a secondary vet. It depends
 17 on the timeline.
 18 COFFEY, Q.C.:
 19 Q. And in any case, as you point out here towards
 20 the bottom, "Our response date is June 12th",
 21 so it would be Mr. Antle's -
 22 MR. COATES:
 23 A. Absolutely.
 24 COFFEY, Q.C.:
 25 Q. Now, sir, there's a reference here to okay

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1 with release, July 10th, '07, do you know what
 2 that is?
 3 MR. COATES:
 4 A. Off the top of my head, no.
 5 COFFEY, Q.C.:
 6 Q. Okay. Now, if I could please, and again
 7 there's some e-mails I'd just like to take you
 8 to in relation to this, exhibit P-1621. At
 9 the bottom of this first page, we see that e-
 10 mail of July 12th, 8:12 a.m. we looked at
 11 earlier to Mr. Crawley, Mr. Taylor, Ms.
 12 Matthews and Ms. Mundon advising them if we
 13 don't respond today, they can--a review can be
 14 requested. And you are advised by Ms. Mundon
 15 that they need the updated package. And then
 16 you've written at 9:36 a.m. to Mr. Crawley,
 17 Ms. Matthews, Renee Pendergast and Brian
 18 Taylor. "As per the request from Tansy,
 19 please see attached the final response
 20 submitted to the Minister for consideration.
 21 You will note that the documents intended for
 22 disclosure will not be released until the fee
 23 payment is received. Cabinet Secretariat has
 24 advised me that there is some concern over
 25 multiple versions of the notes in circulation.

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1 The package that was earlier sent to you for
 2 review has been modified slightly based on
 3 legal advice received from the Department of
 4 Justice. This is normal process for ATIPP
 5 requests. If you have any questions, please
 6 contact me directly. Regards, Reg Coates,
 7 Director." So I take it then as Ms. Mundon
 8 had requested or passed on the request for an
 9 updated package, you were now, at 9:36,
 10 sending that updated package?
 11 MR. COATES:
 12 A. Correct.
 13 COFFEY, Q.C.:
 14 Q. If we could, please, exhibit P-1622? Now
 15 these are a series of e-mails, going to page 2
 16 we see that the first of them is from Renee
 17 Pendergast, Manager of Information Services
 18 Access and Privacy Co-ordinator, Cabinet
 19 Secretariat. So she was your equivalent in
 20 the Cabinet Secretariat.
 21 MR. COATES:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. And on July 12th, 2007 at 2:08 p.m., just past
 25 noon, she writes, "Reg, lease review the legal

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1 opinion that we received from Justice." And
 2 then, of course, I gather that the redacted
 3 portion here is redacted legal advice. And
 4 then at the same day, at 1:05 p.m., about an
 5 hour later, you respond to Renee Pendergast,
 6 copied a number of individuals, Moira
 7 Hennessey and Tansy Mundon amongst them,
 8 saying, "Thank you Renee, as you're aware,
 9 Section 20(1)(a) is discretionary." And then
 10 there's a redacted portion here. "What Cabinet
 11 Secretariat and the Premier's office have
 12 directed verbally in the current context makes
 13 the application of Section 20(1)(a) mandatory.
 14 You have indicated that as a matter of policy
 15 that for any request respecting Q and A
 16 briefing notes, the anticipated questions
 17 should not be disclosed. I refer you to an
 18 excerpt from the IPC report which probably
 19 generated your opinion as follows, 'I find
 20 several aspects of this case to be disturbing,
 21 including the amount of time involved, the
 22 withholding of information that had already
 23 been publicly released, the application of a
 24 blanket approach to information.'" And you go
 25 on to write to Ms. Pendergast, "The assessment

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1 I made on the current ER/PR request is that
 2 the anticipated questions should be disclosed
 3 and from a technical vantage point, I stand by
 4 that assessment." And then there's a redacted
 5 material here, I gather that's probably due to
 6 it being solicitor/client privileged. And
 7 then it says, "Notwithstanding, I respect the
 8 direction of Cabinet Secretariat and the
 9 Office of the Premier and you will find
 10 attached a copy of the original documentation
 11 and the revised severed documents, as per your
 12 request. Regards, Reg Coates." And then to
 13 finish this off at about 3:17 p.m. that
 14 afternoon, Tansy Mundon e-mailed you asking
 15 you "any response yet?" So I take it she was
 16 looking for any response that you would have
 17 received from the Premier's office?
 18 MR. COATES:
 19 A. Yes or Cabinet Secretariat.
 20 COFFEY, Q.C.:
 21 Q. Cabinet Secretariat. Now, sir, what was going
 22 on here, I take it these redacted things here
 23 refer to legal advice and if so, I don't want
 24 to hear what's in them, okay.
 25 MR. COATES:

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1 A. No. They do.
 2 COFFEY, Q.C.:
 3 Q. So what was going on?
 4 MR. COATES:
 5 A. I think I've alluded to it earlier, at this
 6 point in time I had received direction that
 7 the Q and A's should be severed. As I've
 8 indicated earlier in my testimony, I believe
 9 that severance on discretionary exemption
 10 should be based on the potential or
 11 probability of harm or injury. I disagree
 12 with their assessment that there was harm in
 13 disclosing the Q and A's in this context; in
 14 fact, I thought that there was harm in not
 15 disclosing.
 16 COFFEY, Q.C.:
 17 Q. And why is that?
 18 MR. COATES:
 19 A. The public have a right to know and that's the
 20 central tenet and focus of the Act and I
 21 believed that much of this was already in
 22 public domain. To indicate by severing Q and
 23 A's of information that was already openly
 24 discussed in the public forum, did not make
 25 sense to me and signalled a lack of openness

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1 and transparency to the general public,
 2 contrary to the central tenets of the Act. I
 3 also disagree with blanket policy on
 4 discretionary exemptions because of reasons I
 5 received from Cabinet Secretariat that these
 6 should be exempt, didn't contain any
 7 recollection or basis of criteria or harm, but
 8 merely a blanket statement: you can't
 9 disclose.
 10 COFFEY, Q.C.:
 11 Q. You can't disclose anticipated questions.
 12 MR. COATES:
 13 A. That's correct. So I disagreed with that
 14 assessment.
 15 COFFEY, Q.C.:
 16 Q. And if we could look, please, at exhibit P-
 17 1620 again? I'm just going to go back,
 18 Commissioner, now to page 4. This is an e-mail
 19 that you had sent, it's from Reginald Coates
 20 to Renee Pendergast, July 11th, 2007 at 10:28
 21 a.m. The subject is "ATIPP Request". And
 22 you've written to Ms. Pendergast saying,
 23 "Please see attached, this PDF was lifted from
 24 the website upon a simple search. You asked
 25 the question on how we would know these names

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1 would be in the public domain? We knew." And
 2 you signed it "Reg". So what's this aspect of
 3 the matter about?
 4 MR. COATES:
 5 A. Part of the document in question contained
 6 phrases that referred to those names of
 7 individuals that were in the class action
 8 suit.
 9 COFFEY, Q.C.:
 10 Q. For example lawyers?
 11 MR. COATES:
 12 A. Lawyers, the justices and some of the
 13 individuals named in the class action.
 14 COFFEY, Q.C.:
 15 Q. Yes.
 16 MR. COATES:
 17 A. The website referred to, was actually Mr.
 18 Crosbie's website and the Statement of Claim.
 19 So the phrases in the later redacted versions
 20 of the briefing notes, were that those names
 21 were severed, were on the website and the
 22 Statement of Claim of Mr. Crosbie. From my
 23 vantage point, this was simply public domain
 24 information, albeit I appreciate the argument
 25 that Section 30 is mandatory on personal

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1 information in that the information in the
 2 briefing note was in the context of the
 3 briefing note, so I kind of understand--I kind
 4 of could go both ways on those named, but the
 5 argument here was is this is public domain
 6 information, the public are aware of the
 7 Statement of Claim, it's readily accessible to
 8 anybody through the web. Why redact
 9 information that is already out there? And
 10 that's the context.
 11 COFFEY, Q.C.:
 12 Q. Now if we could, please, Registrar, exhibit P-
 13 0130? This is a letter, it's stamped July
 14 17th, 2007, it's from the office of the
 15 Minister of the Department of Health. It's
 16 addressed to Mr. Rob Antle, The Telegram. And
 17 if you look at page 2 of the exhibit, we see,
 18 I take it that's Mr. Wiseman's signature?
 19 MR. COATES:
 20 A. That's correct.
 21 COFFEY, Q.C.:
 22 Q. And the RLC at the bottom and the RLC is
 23 yourself?
 24 MR. COATES:
 25 A. Correct.

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1 COFFEY, Q.C.:
 2 Q. You prepared it. And so you prepared this for
 3 Mr. Wiseman's signature?
 4 MR. COATES:
 5 A. That's correct.
 6 COFFEY, Q.C.:
 7 Q. And the material then that's attached and you
 8 can flip through it, if you like, I take it is
 9 the, or correspond to the actual material that
 10 went out.
 11 MR. COATES:
 12 A. Yes, I think so.
 13 COFFEY, Q.C.:
 14 Q. Now, did you have--what if any dealings did
 15 you have with Mr. Wiseman in relation to this
 16 particular request and the final response
 17 going out?
 18 MR. COATES:
 19 A. Given the fact that Mr. Wiseman was my point
 20 of contact at an executive level, every piece
 21 of correspondence that was prepared was vetted
 22 through my normal Assistant Deputy Minister,
 23 even before it went to the Minister.
 24 COFFEY, Q.C.:
 25 Q. And in this context that was who?

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1 MR. COATES:
 2 A. That would have been Joy Maddigan.
 3 COFFEY, Q.C.:
 4 Q. Yes.
 5 MR. COATES:
 6 A. But from a one on one, you know, update, it
 7 was sort of question type thing, the Minister
 8 would either call me into his office and I
 9 would speak to him or I would attempt to see
 10 the Minister to give him information they
 11 needed to get to him right away, so I had a
 12 closer relationship with the Minister which
 13 is--I won't say it's unusual but it's rare, on
 14 this particular case. So in terms of my
 15 concerns on the issues in the difference of
 16 opinion I had with Cabinet Secretariat, I made
 17 those views known to all my superiors.
 18 COFFEY, Q.C.:
 19 Q. Including Mr. Wiseman.
 20 MR. COATES:
 21 A. Including the Minister.
 22 COFFEY, Q.C.:
 23 Q. And whose view prevailed? Yours or the
 24 Cabinet Secretariat's?
 25 MR. COATES:

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1 A. Even in my own e-mail, I follow the direction
 2 of Cabinet Secretariat, so their direction
 3 prevailed.
 4 COFFEY, Q.C.:
 5 Q. Now, sir, just looking at this and again
 6 there's a fair amount of material here, I'm
 7 not going to take you through all of it, but
 8 just looking at the cover letter, here the
 9 letter you prepared for Mr. Wiseman that he
 10 signed, at the bottom of the first page of the
 11 exhibit says, "Information that is non
 12 responsive to the request has been severed.
 13 Access to parts of the documents are being
 14 denied in accordance with paragraph 20(1)(a)
 15 of ATIPP whereby disclosure would reveal
 16 advice or recommendations developed by or for
 17 a public body or a minister." And you've
 18 spoken about that. You go on to say, b)
 19 Section 21 of ATIPP whereby disclosure would
 20 disclose legal opinions provided to a public
 21 body by a law officer of the Crown"--which is
 22 legal advice, that's quite standard and your
 23 understanding is that's mandatory.
 24 MR. COATES:
 25 A. Yes.

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1 COFFEY, Q.C.:
 2 Q. So Section 20(1)(a) is discretionary provision
 3 in the Act from your perspective being
 4 mandatorily applied here to remove the
 5 anticipated questions.
 6 MR. COATES:
 7 A. That is my impression.
 8 COFFEY, Q.C.:
 9 Q. Your own view, okay. Paragraph C on page two
 10 of the exhibit, "Section 24 of ATIPP whereby
 11 disclosure would harm the financial or
 12 economic interest of the province," and D.
 13 "Section 30 of ATIPP whereby personal
 14 information cannot be disclosed," and you
 15 point out that, of course, Mr. Antle can
 16 appeal and where he can do so. Section 24, do
 17 you recall what application that had here?
 18 MR. COATES:
 19 A. I can't recall which actual section was
 20 severed. I can recall that the section, what
 21 was severed was, I believe, either one
 22 paragraph or part of a paragraph and the
 23 direction to sever, based on Section 24, came
 24 entirely from Cabinet Secretariat.
 25 COFFEY, Q.C.:

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1 Q. So it was Cabinet Secretariat told you. They
 2 identified it and they told you to remove it
 3 and the basis for removing it?
 4 MR. COATES:
 5 A. Yes.
 6 COFFEY, Q.C.:
 7 Q. Do you recall whether you agreed or disagreed,
 8 from your perspective, with that at the time?
 9 MR. COATES:
 10 A. I recall that I disagreed.
 11 COFFEY, Q.C.:
 12 Q. Did you make your disagreement known to
 13 anybody?
 14 MR. COATES:
 15 A. Yes, executive.
 16 COFFEY, Q.C.:
 17 Q. The executive being your immediate supervisor
 18 and the Minister at the time?
 19 MR. COATES:
 20 A. I'm fairly certain, although I stand to be
 21 corrected, that I also let the Minister know
 22 of my concerns.
 23 COFFEY, Q.C.:
 24 Q. Do you recall what it was about?
 25 MR. COATES:

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1 A. Without having the documents in front of me,
 2 Mr. Coffey, because it is a large volume of
 3 material, I couldn't be sure.
 4 COFFEY, Q.C.:
 5 Q. And again, when we look through this, back at
 6 that time, you hadn't yet adopted the idea of
 7 the practice of identifying the basis within
 8 the document for redaction, so you'd have to
 9 go now through all of it to actually identify
 10 where Section 24 was applied?
 11 MR. COATES:
 12 A. That would be correct.
 13 COFFEY, Q.C.:
 14 Q. Okay. In fact, it would be possible that a
 15 document would be left out entirely?
 16 MR. COATES:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. I'm not suggesting it happened here. You told
 20 me it didn't happen.
 21 MR. COATES:
 22 A. No, I'm pretty certain it was only, at most, a
 23 paragraph.
 24 COFFEY, Q.C.:
 25 Q. Okay.

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1 MR. COATES:
 2 A. It certainly wasn't a full document.
 3 COFFEY, Q.C.:
 4 Q. Now sir, on this, and I'm just going to go to
 5 the next, the first, well, page three of the--
 6 this is a question and answer briefing note
 7 and just to put this in context here, this
 8 particular one, this is one dated June 14th,
 9 2007, and the anticipated questions, of
 10 course, are redacted. The key messages though
 11 are there. Now for example, here under key
 12 messages, the first of them, the text is all
 13 there except the second line then reads "we
 14 understand from the media that 'blank' will be
 15 speaking to Eastern Health's lawyer and we
 16 will monitor these discussions. I will be
 17 refraining from any further public comment."
 18 So the blank here would be what?
 19 MR. COATES:
 20 A. It would be somebody, a person, and it would
 21 have been severed pursuant to Section 30.
 22 That would be my -
 23 COFFEY, Q.C.:
 24 Q. Your understanding of that?
 25 MR. COATES:

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1 A. - my understanding.
 2 COFFEY, Q.C.:
 3 Q. Just go on to--now here, on the sixth page of
 4 the exhibit, the fourth page of the briefing
 5 note, what went out then to Mr. Antle, I'm
 6 just going to--the fourth bullet here reads,
 7 this is what actually went out to Mr. Antle,
 8 "a hearing of the certification application
 9 for the class action suit was held on May 23rd
 10 to 25, 2007. On May 28th, 'blank' certified
 11 the class action suit." So I take it that
 12 would be the name of the judge who certified
 13 it?
 14 MR. COATES:
 15 A. I believe so.
 16 COFFEY, Q.C.:
 17 Q. Even though it's just blanked out there. It
 18 goes on "the lawyer, 'blank'" and the blank
 19 here, I take it, would be the name of the
 20 lawyer?
 21 MR. COATES:
 22 A. Yes, and I believe that's probably Mr.
 23 Crosbie.
 24 COFFEY, Q.C.:
 25 Q. Would have been Crosbie, "who filed the

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1 certification, advised the press that there
 2 was a possibility of an out-of-court
 3 settlement before the matter is heard in
 4 court," and the next, I'll just use one other
 5 as an example, next bullet "on May 29th, The
 6 Telegram reported that according to 'blank'
 7 there could be about 2800 women to received a
 8 hormone receptor test between 1997 and 2005
 9 are now eligible to sign on to the--who
 10 received that are now eligible to sign on to
 11 the class action. This number, according to
 12 'blank', includes mental distress claimants"
 13 and it goes on with the full text. And I take
 14 it that the reference here to The Telegram
 15 reporting something, that would actually have
 16 been in The Evening Telegram--I'm sorry,
 17 within The Telegram newspaper?
 18 MR. COATES:
 19 A. Yeah, I would think so, sir.
 20 COFFEY, Q.C.:
 21 Q. So from the perspective of being in the public
 22 domain, what was being redacted here, on the
 23 basis of Section 30 -
 24 MR. COATES:
 25 A. The person's name.

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1 COFFEY, Q.C.:
 2 Q. - it was the person's name and the person, you
 3 understood the person's name had been reported
 4 in The Telegram.
 5 MR. COATES:
 6 A. That is correct.
 7 COFFEY, Q.C.:
 8 Q. And in terms of whoever the judge would happen
 9 to be, Justice Carl Thompson, who presided
 10 over the certification application for the
 11 class action, I take it that that was no
 12 secret.
 13 MR. COATES:
 14 A. Well, it was on the statement of claim on the
 15 website of Mr. Crosbie's law firm.
 16 COFFEY, Q.C.:
 17 Q. Yes, and the fact that Mr. Crosbie had filed
 18 or was the lawyer acting for the claimants,
 19 that was well known?
 20 MR. COATES:
 21 A. That was also on his website.
 22 COFFEY, Q.C.:
 23 Q. His website, and was well known anyway, wasn't
 24 it?
 25 MR. COATES:

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1 A. I believe so. I mean, the only context of
 2 Section 30 here, in terms of severing, and the
 3 only potential argument has to do with the
 4 fact that the Act on personal information is
 5 mandatory, as opposed to discretionary. So
 6 there's a limitation in looking at the harm
 7 injury test type criteria in that application.
 8 So I guess the technical argument could be
 9 made, it is personal information, and the Act
 10 is mandatory on severing of personal
 11 information. So you know, it should be
 12 severed. Upon a practical application, and
 13 this is, I guess, where I had my debate, this
 14 information was public domain. So you know,
 15 was there any allowance to say "look, this
 16 doesn't make sense to sever it because
 17 everybody knows it anyhow."
 18 COFFEY, Q.C.:
 19 Q. If we could, please, page 52, of the same
 20 exhibit, P-0130? Now here, this, page 52 and
 21 53 of the exhibit, you'll look at page 53,
 22 you'll see that's a November 7th, 2005
 23 briefing note.
 24 MR. COATES:
 25 A. Yes.

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1 COFFEY, Q.C.:
 2 Q. Question and answer briefing note for the
 3 Department of Health and Community Services.
 4 Anticipated questions, of course, are gone
 5 because the Cabinet Secretariat wants them -
 6 MR. COATES:
 7 A. 20.1(f)
 8 COFFEY, Q.C.:
 9 Q. The Premier's office wants them gone.
 10 MR. COATES:
 11 A. Yes.
 12 COFFEY, Q.C.:
 13 Q. Now when we look at--if we could bring up,
 14 please, Exhibit P-0129, and go to page 17,
 15 please? This is the actual material that you
 16 had had Mr. Abbott release back in March of
 17 2006.
 18 MR. COATES:
 19 A. The year before.
 20 COFFEY, Q.C.:
 21 Q. Yes, the year before, and here, page 17,
 22 you'll see it's a question and answer briefing
 23 note, Department of Health and Community
 24 Services, and when we look at the bottom of
 25 the page, that's November 7th, 2005. It's the

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1 same briefing note.
 2 MR. COATES:
 3 A. Oh, it is.
 4 COFFEY, Q.C.:
 5 Q. So but here, the anticipated questions, of
 6 course, are included.
 7 MR. COATES:
 8 A. That's correct.
 9 COFFEY, Q.C.:
 10 Q. And they've been included because Mr. Abbott
 11 and Mr. Ottenheimer instructed you to do so.
 12 MR. COATES:
 13 A. Correct.
 14 COFFEY, Q.C.:
 15 Q. Despite Cabinet Secretariat's views?
 16 MR. COATES:
 17 A. Correct.
 18 COFFEY, Q.C.:
 19 Q. Now here, while we have it up on the screen,
 20 at page 18 of the exhibit, here, when we look
 21 here at the paragraph on the fifth last bullet
 22 on the one that went out in March, of course
 23 it's not redacted at all, is it? There's
 24 nothing -
 25 MR. COATES:

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1 A. No, sir.
 2 COFFEY, Q.C.:
 3 Q. And it reads, the second sentence, "it has
 4 included an internal review of testing
 5 processes and an external review by the chief
 6 pathologist at the B.C. Cancer Institute and
 7 the chief technologist at Mount Sinai
 8 Hospital."
 9 MR. COATES:
 10 A. Correct.
 11 COFFEY, Q.C.:
 12 Q. Okay. If we could go back, please, to Exhibit
 13 P-0130, page 53? Here, when we look at the
 14 equivalent paragraph, as to the redacted
 15 version that went out in July of 2007 to Mr.
 16 Antle, that same paragraph, same sentence
 17 reads, "it has included an internal review of
 18 testing processes and an external review by
 19 the 'blank' at the B.C. Cancer Institute and
 20 the 'blank' at Mount Sinai Hospital." So what
 21 did you understand was the basis for
 22 redacting, in July 2007, the job titles or job
 23 descriptions?
 24 MR. COATES:
 25 A. I was advised by Cabinet Secretariat that they

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1 considered it personal information and that it
 2 should be severed. I advised them that it had
 3 been disclosed, the same note, the year
 4 previous, and they said we shouldn't have done
 5 it the year previous, and they said you need
 6 to sever in this package.
 7 COFFEY, Q.C.:
 8 Q. Now, sir, if we could, please, this is the
 9 redacted version, if I could go back, please,
 10 to Exhibit P, I apologize, P-0129, page 18.
 11 And we'll get down to the last bullet on the
 12 November 7th, 2005 briefing note, the one you
 13 actually had Mr. Abbott send out in March of
 14 '06. It reads, "Eastern Health, Dr. R.
 15 Williams, VP, Quality and Diagnostic and
 16 Medical Services, has done a number of
 17 interviews. Peter Dawe, Canadian Cancer
 18 Society spoke very strongly on this issue
 19 saying, 'There's actually no doubt that
 20 there's a group of women out there that didn't
 21 get proper treatment and that could have very
 22 dire consequences.'" Now, if we could go back
 23 then, please, to Exhibit P-0130? This is
 24 again, Commissioner, page 53. If we look at
 25 that last bullet, this is the version that

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1 went out in July of '07 to Mr. Antle, okay.
 2 And it reads, "Eastern Health (Dr. R.
 3 Williams, VP, Quality Diagnostic and Medical
 4 Services), has done a number of interviews."
 5 And then there's a blank which we just saw is
 6 Mr. Dawe, Canadian Cancer Society?
 7 MR. COATES:
 8 A. Correct.
 9 COFFEY, Q.C.:
 10 Q. Blank, anyway, "spoke very strongly on this
 11 issue saying" and they actually leave in a
 12 quote. Whose idea was it to take out Mr.
 13 Dawe, Canadian Society?
 14 MR. COATES:
 15 A. The recommendation came from Cabinet
 16 Secretariat, as well.
 17 COFFEY, Q.C.:
 18 Q. And here, though, Dr. Williams' name is here,
 19 see that?
 20 MR. COATES:
 21 A. Yes, correct.
 22 COFFEY, Q.C.:
 23 Q. And do you know Dr. Williams' name remained in
 24 the material that went out?
 25 MR. COATES:

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1 A. The act, as I understand it, is fairly clear
 2 in that fact that employees of public bodies,
 3 their names and positions are not considered
 4 personal information, so Dr. Williams being an
 5 employee of Eastern Health, there is no
 6 particular clause that can be used to
 7 determine that that, albeit his personal name,
 8 could be severed, on a technical plane, that
 9 is.
 10 COFFEY, Q.C.:
 11 Q. I'm sorry?
 12 MR. COATES:
 13 A. On a technical plane, that is. I couldn't
 14 even make a technical argument. On the others
 15 you could make a technical argument, albeit it
 16 challengeable.
 17 COFFEY, Q.C.:
 18 Q. I'm sorry, I -
 19 MR. COATES:
 20 A. In terms of, for instance, the names that were
 21 severed in 2007, they are personal
 22 information, it is a mandatory exemption, so
 23 you can make a technical argument,
 24 irrespective of whether one was released a
 25 year before or after, but they're still

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1 personal information and we are required to
 2 sever them and that we may have erred the
 3 previous year, at least on the name issue.
 4 The issue is for me, in terms of assessing it,
 5 is it's public domain, is there any way out
 6 that we can achieve the goal of public right
 7 to know and, in essence, fill in the obvious
 8 blanks. Because I think anybody reading even
 9 with the blanks would figure out fairly
 10 quickly who this person is.
 11 COFFEY, Q.C.:
 12 Q. Now, if we could look then at Exhibit, we have
 13 up P-0130, don't we? Yes. I'm just going to,
 14 if I could, because this is the July material
 15 as it went out, I understand, beginning at
 16 page 60 of P-0130 we have that July 20th
 17 briefing note?
 18 MR. COATES:
 19 A. Correct.
 20 COFFEY, Q.C.:
 21 Q. Okay. Now, here, though, on the first page of
 22 it, on, beginning with "Background, May 11,
 23 2005" we have, blank, "oncologist contacted"
 24 blank, "of laboratory medicine to retest a
 25 patient." So those, that particular page, for

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1 example, had been sent out back in March of
 2 '06 without any redactions in it?
 3 MR. COATES:
 4 A. That's correct.
 5 COFFEY, Q.C.:
 6 Q. And here Dr. Joy McCarthy's name is redacted
 7 in July of '07, she's the oncologist.
 8 "Contacted Dr. Donald Cook," is what read in
 9 the original, "Chief of Laboratory Medicine."
 10 MR. COATES:
 11 A. Correct.
 12 COFFEY, Q.C.:
 13 Q. Now, as chief of laboratory medicine would he
 14 be employed by a public body?
 15 MR. COATES:
 16 A. I would think so, and I would think that both
 17 of them probably were. The difficulty with
 18 physicians sometimes, at least from my
 19 perspective, is is that a lot of them have
 20 private practice, as well, so that makes it a
 21 little bit more convoluted and conflicting to
 22 know whether or not they're acting in the
 23 capacity of their private practice in
 24 reference to the briefing note or in reference
 25 to their public responsibilities. So while I

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1 would have been perfectly comfortable in
 2 releasing the information, I'm not sure that I
 3 would have technically correct, if you read
 4 the act verbatim. I was prepared to disclose
 5 the names, even in the second year and the
 6 recommendations that I received from
 7 representations from Cabinet Secretariat and
 8 some others were that those names should be
 9 redacted, despite the fact that they were
 10 released a year previously.
 11 COFFEY, Q.C.:
 12 Q. I take it despite the fact that within the
 13 memo itself Dr. Cook is described as chief of
 14 laboratory medicine?
 15 MR. COATES:
 16 A. Absolutely.
 17 COMMISSIONER:
 18 Q. Of laboratory medicine?
 19 COFFEY, Q.C.:
 20 Q. Pardon me? Well, I apologize, in the actual
 21 original he's described as -
 22 COMMISSIONER:
 23 Q. In the document.
 24 COFFEY, Q.C.:
 25 Q. Oh yes, in the document, I apologize. "Dr.

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1 Don Cook, Chief of Laboratory Medicine" in the
 2 original. Here it's just "contacted" blank
 3 and you can make out the word "of Laboratory
 4 Medicine."
 5 MR. COATES:
 6 A. Yeah.
 7 COFFEY, Q.C.:
 8 Q. And I could go on at some length, I'm not
 9 going to, comparing things. Mr. Coates,
 10 you're generally, you'd be generally aware of
 11 the mandate of the Commission overall?
 12 MR. COATES:
 13 A. I think so, sir.
 14 COFFEY, Q.C.:
 15 Q. Is there--it involves the response by the
 16 responsible authorities, you know, to--in this
 17 matter. And bearing in mind the world in
 18 which you work, legislative and regulatory
 19 affairs, is there anything that we haven't
 20 covered that you think the Commissioner should
 21 be made aware of?
 22 MR. COATES:
 23 A. In a technical plane, no. I mean, other than
 24 to make the general statement that at least
 25 from my small vantage point of the world I

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1 believe very strongly in the philosophy of
 2 access to information and the public right to
 3 know. And I think I've demonstrated, at least
 4 I think it's been demonstrated in this process
 5 that we made every attempt to ensure that as
 6 much information got to the requester in a
 7 timely fashion. It is a difficult process, it
 8 does take a lot of time. It does chew up a
 9 lot of our time in terms of workload and at
 10 the same time it is a very small percentage of
 11 our work responsibility. But we do pay a lot
 12 of--I do pay a lot of attention, I guess the
 13 we being me, being I, to this, and I've always
 14 believed very strongly in public engagement in
 15 the democratic process.
 16 COFFEY, Q.C.:
 17 Q. They're the questions I have, unless there's
 18 something further, Mr. Coates, they're the
 19 questions I have, Commissioner.
 20 MR. COATES:
 21 A. Thank you.
 22 COMMISSIONER:
 23 Q. Mr. Simmons?
 24 MR. REGINALD COATES, EXAMINATION BY MR. DANIEL SIMMONS
 25 MR. SIMMONS:

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1 Q. Good afternoon, Mr. Coates, I'm Dan Simmons,
 2 I'm here for Eastern Health. I won't be very
 3 long with you. You've told us about in 2006
 4 when you were responding to the first of the
 5 access to information requests that Mr. Coffey
 6 talked to you about that you had a
 7 conversation with Mr. Tilley the day before
 8 the response actually went out to Mr. Quinn at
 9 CBC. And you told us that the proposed
 10 documents that were going to be released had
 11 been sent to Eastern Health through Mr.
 12 Tilley's office and you described it as a
 13 courtesy, I think?
 14 MR. COATES:
 15 A. That would be correct.
 16 MR. SIMMONS:
 17 Q. So at that point there is no, you didn't
 18 understand there to be any obligation under
 19 the legislation for you to have to consult
 20 with Eastern Health regarding the decisions
 21 made about releasing that material?
 22 MR. COATES:
 23 A. That would be correct.
 24 MR. SIMMONS:
 25 Q. Right. And the final decision on what was

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1 going to be released rested with the minister
 2 or his delegate, the deputy minister?
 3 MR. COATES:
 4 A. Absolutely.
 5 MR. SIMMONS:
 6 Q. And is that where the final decisions were
 7 made in respect to that release of that
 8 information?
 9 MR. COATES:
 10 A. Yes, sir.
 11 MR. SIMMONS:
 12 Q. Right. Did Eastern Health or Mr. Tilley have
 13 any kind of veto or other ability to direct or
 14 otherwise determine what was going to be
 15 released?
 16 MR. COATES:
 17 A. Not at all.
 18 MR. SIMMONS:
 19 Q. Okay. Thank you, very much.
 20 COMMISSIONER:
 21 Q. Thank you, Mr. Simmons. Now, you're Ms.
 22 Hopkins? Do you have any questions?
 23 MS. HOPKINS:
 24 Q. No questions, Commissioner.
 25 COMMISSIONER:

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1 Q. Mr. Pritchett?
 2 MR. PRITCHETT:
 3 Q. I have no questions, Commissioner.
 4 COMMISSIONER:
 5 Q. Ms. Newbury?
 6 MS. NEWBURY:
 7 Q. No questions.
 8 COMMISSIONER:
 9 Q. Ms. Taylor?
 10 MS. TAYLOR:
 11 Q. No questions.
 12 COMMISSIONER:
 13 Q. Mr. Pike?
 14 MR. PIKE:
 15 Q. No questions for Mr. Coates, thank you.
 16 COMMISSIONER:
 17 Q. Mr. Pritchard?
 18 MR. REGINALD COATES, EXAMINATION BY MR. ROLF PRITCHARD
 19 MR. PRITCHARD:
 20 Q. Just a few questions, Commissioner. Thank
 21 you, Commissioner. Good morning, Mr. Coates.
 22 MR. COATES:
 23 A. Good morning.
 24 MR. PRITCHARD:
 25 Q. Mr. Coates, just a few things I wanted to

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1 clarify. First of all, you mentioned earlier
 2 when you were describing the process you went
 3 through in dealing with the 2006 ATIPP request
 4 that it would be your habit to send out copies
 5 of the proposed disclosure to various third
 6 parties. And do I understand correctly that
 7 that is done when you are proposing to
 8 disclose materials actually from those third
 9 parties?
 10 MR. COATES:
 11 A. Yes, yes, that would be a fair representation.
 12 In some cases we're required to. For
 13 instance, if it's a business interest issue
 14 pursuant to Section 27 and 28, there's a third
 15 party notification process for those business
 16 interests and it's a full arms test. In cases
 17 like Eastern Health in this vantage point or
 18 in terms of FPT jurisdictions, we do that as a
 19 matter of practice.
 20 MR. PRITCHARD:
 21 Q. Okay.
 22 COMMISSIONER:
 23 Q. Sorry, Mr. Pritchard, just to make sure I
 24 understand this, does it make a difference in
 25 terms of your courtesy of providing this

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1 information whether the information is a
 2 document produced by that -
 3 MR. COATES:
 4 A. Oh, yes.
 5 COMMISSIONER:
 6 Q. - third party or the information in the
 7 document comes from the third party?
 8 MR. COATES:
 9 A. Certainly if it's documents provided by a
 10 third party, we're more apt to do the
 11 courtesy. If it is information about a third
 12 party, less apt to do so.
 13 COMMISSIONER:
 14 Q. All right. Thank you.
 15 MR. PRITCHARD:
 16 Q. Mr. Coates, you made reference to the fact
 17 that the ATIPP office in the Department of
 18 Justice made available guidelines and
 19 protocols. Now, at the time that you were
 20 processing these various requests, was that, I
 21 don't know if you'd call it policy book or
 22 protocol book and guidelines, were those
 23 mandatory guidelines?
 24 MR. COATES:
 25 A. Not that I'm aware, Mr. Pritchard. As I think

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1 I indicated earlier, we use a variety of
 2 sources of information to provide guidance in
 3 the absence of clear direction in the Act.
 4 MR. PRITCHARD:
 5 Q. Okay. And, Mr. Coates, Mr. Coffey, when he
 6 was examining you, took you through the, some
 7 aspects of the disclosure that was prepared
 8 for Mr. Antle, and we saw how the names of
 9 individuals such as Mr. Crosbie's name were
 10 removed from briefing notes and so forth, and
 11 you pointed out that in some cases that
 12 material had been released unredacted before.
 13 But just I'm not sure if we have an
 14 understanding, though, what's the principle
 15 behind removing the names of those individuals
 16 when it is done?
 17 MR. COATES:
 18 A. The names of individuals are considered
 19 personal information as defined by the Act.
 20 Section 30 of the Act, and I believe it's even
 21 Sub 1, requires that personal information, and
 22 I say requires, it is a shall, it's a
 23 mandatory requirement, be redacted from
 24 government documents that are up for
 25 disclosure. There are some exceptions to that

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1 and some of the exceptions would be employees,
 2 for instance, names like my name or your name.
 3 So technically speaking the names should be
 4 redacted based on the Act.
 5 MR. PRITCHARD:
 6 Q. Okay. Mr. Coates, now when Mr. Coffey was
 7 examining you, he asked if there was any
 8 comment that you would like to make and I
 9 don't know if you exhausted that right or if
 10 there's anything further that you'd like to
 11 comment on?
 12 MR. COATES:
 13 A. There are a couple of things I would like to
 14 say. And first off, Madam Commissioner, I'd
 15 like to thank you for the opportunity for
 16 appearing here. And that may sound like a
 17 strange comment, I'm not sure, but for me
 18 everything is about learning and improving in
 19 terms of the system that I am responsible for.
 20 And this process and this avenue of event has
 21 provided that avenue of event has provided
 22 that opportunity. I've learned a lot in the
 23 last few months, and I thank you for that and
 24 I thank Commission attorney.
 25 One of the things that became apparent to

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1 me as an observer as we move forward in this
 2 process is the issue of documents and records
 3 management, which is part of my
 4 responsibility, as well, and they do link into
 5 the issue of access to information because
 6 good documents management makes it much easier
 7 for access in terms of beagles trying to look
 8 for information or good, get good records.
 9 There are a lot of difficulties in records
 10 management in government. Obviously some of
 11 the e-mail traffic and trail has been very
 12 difficult to retrieve or to find. But even in
 13 the paper world it's very difficult to find
 14 records unless you have corporate memory, as
 15 again I think you've pointed out in terms of
 16 my knowledge of the department to find the
 17 right people or the right set of documents.
 18 We've been doing a lot of work to try and make
 19 systems electronic so they're not, we're not
 20 relying on corporate memory, but we have a lot
 21 of work to go, a lot of work to do in the
 22 future in terms of records management. And if
 23 there's anything that comes from this exercise
 24 in my small world that can be of benefit is to
 25 have shed some more focus and to have

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1 government shed some more focus on the whole
 2 area of records management so that we can
 3 ensure openness and transparency in a much
 4 fashionable way, and I thank you for that
 5 opportunity, as well.
 6 COMMISSIONER:
 7 Q. Thank you, sir.
 8 MR. PRITCHARD:
 9 Q. Thank you, Mr. Coates. Those are all my
 10 questions. Mr. Coffey may have some follow-up
 11 questions.
 12 COMMISSIONER:
 13 Q. Do you have anything arising, Mr. Coffey?
 14 COFFEY, Q.C.:
 15 Q. No.
 16 COMMISSIONER:
 17 Q. All right, thank you. Thank you, very much,
 18 Mr. Coates, for both your comments and for
 19 shedding some light on this particular
 20 process, in particular. It's been a very
 21 interesting morning. Mr. Coffey?
 22 COFFEY, Q.C.:
 23 Q. The next witness will be Cathi Bradbury, Dr.
 24 Cathi Bradbury. I've arranged, because I
 25 understood because of the timing that for her

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1 to be here at 2:00, so if we break until then?
 2 Thank you.
 3 COMMISSIONER:
 4 Q. All right, then. Well, why don't we adjourn
 5 until 2? Thank you.
 6 (LUNCH BREAK)
 7 COMMISSIONER:
 8 Q. Please be seated. Mr. Coffey?
 9 COFFEY, Q.C.:
 10 Q. Thank you, Commissioner. The next witness is
 11 Cathi Bradbury.
 12 DR. CATHERINE BRADBURY (SWORN) EXAMINATION BY BERNARD
 13 COFFEY, Q.C.
 14 REGISTRAR:
 15 Q. Would you please state and spell your complete
 16 name for the Commission?
 17 DR. BRADBURY:
 18 A. Doctor Catherine Bradbury, C-a-t-h-e-r-i-n-e,
 19 B-r-a-d-b-u-r-y.
 20 REGISTRAR:
 21 Q. Thank you.
 22 COFFEY, Q.C.:
 23 Q. And I take it, Doctor, that you go by the name
 24 Cathi?
 25 DR. BRADBURY:

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1 A. Correct.
 2 COFFEY, Q.C.:
 3 Q. In the correspondence we'll see. Could you
 4 please give the Commissioner kind of an
 5 overview of your educational and professional
 6 background?
 7 DR. BRADBURY:
 8 A. Educational background, I have a Bachelor of
 9 Medical Science from Memorial in 1980, and MD
 10 from Memorial in 1982, a diploma in Health
 11 Service Management from the Canadian Hospital
 12 Association in 1987 and an MBA from Memorial
 13 University in 1996.
 14 COFFEY, Q.C.:
 15 Q. And that's your education. How about your
 16 work life.
 17 DR. BRADBURY:
 18 A. From a clinical point of view as a physician
 19 I've been a family practitioner at various
 20 places throughout the country since 1982. And
 21 in 1993 I began a mostly fulltime
 22 administrative career with the MCP Commission
 23 as well as the Department of Health.
 24 COFFEY, Q.C.:
 25 Q. In the MCP Commission, what was your role

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1 there?
 2 DR. BRADBURY:
 3 A. When I began in 1993, I was the acting medical
 4 director and became the medical director
 5 shortly thereafter, and I remained in that
 6 position until MCP was decommissioned in the
 7 late '90s. And following that I became the
 8 director of medical services within the
 9 Department of Health.
 10 COFFEY, Q.C.:
 11 Q. So in your days with MCP, in that position,
 12 those positions, what was your role, what was
 13 your primary duties?
 14 DR. BRADBURY:
 15 A. The duties changed over the years that I was
 16 with MCP. Initially it would have been much
 17 more internally orientated and focused
 18 primarily on the MCP payment schedule, insured
 19 services, rates that were paid to physicians.
 20 And then over the course of the years became
 21 more externally orientated and took on more of
 22 a medical services role and dealing with
 23 external groups to MCP.
 24 COFFEY, Q.C.:
 25 Q. Okay. And so when MCP was phased out, as it

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1 were, in the organization, I think you've
 2 described it, I don't think--you didn't use
 3 the word "phased out" but you used the word -
 4 DR. BRADBURY:
 5 A. Decommissioned.
 6 COFFEY, Q.C.:
 7 Q. Decommissioned, yes. You went to work as the
 8 -
 9 DR. BRADBURY:
 10 A. As the director of physician services with the
 11 Department of Health and Community Services.
 12 COFFEY, Q.C.:
 13 Q. And in that capacity what has your role been?
 14 DR. BRADBURY:
 15 A. Primarily the implementation, development and
 16 maintenance of medically insured services.
 17 COFFEY, Q.C.:
 18 Q. And what does that mean?
 19 DR. BRADBURY:
 20 A. It really relates to the services that are
 21 provided to the public by physicians as well
 22 as, you know, the policies and payments for
 23 those services.
 24 COFFEY, Q.C.:
 25 Q. And those duties involve you in what sorts of

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1 activities?
 2 DR. BRADBURY:
 3 A. I sit on various committees and I receive a
 4 lot of correspondence and basically sit and
 5 monitor the budgets that are affected by
 6 physician payments.
 7 COFFEY, Q.C.:
 8 Q. And I take it that's physician payments by the
 9 government?
 10 DR. BRADBURY:
 11 A. Correct.
 12 COFFEY, Q.C.:
 13 Q. And what does that monitoring involve?
 14 DR. BRADBURY:
 15 A. I receive a monthly budget statement with
 16 regards to the various components of the
 17 physician services budget, as well as a couple
 18 of other small budgets that I monitor, as
 19 well.
 20 COFFEY, Q.C.:
 21 Q. And as the director of medical services of the
 22 Department of Health, do you--is that the
 23 position you currently occupy?
 24 DR. BRADBURY:
 25 A. The director of physician services.

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1 COFFEY, Q.C.:
 2 Q. Physicians, I apologize, director of physician
 3 services. That's still your role since the
 4 late '90s?
 5 DR. BRADBURY:
 6 A. Correct.
 7 COFFEY, Q.C.:
 8 Q. Are you involved in any other duties, because
 9 you're monitoring the budget, are you involved
 10 in preparation of budgets?
 11 DR. BRADBURY:
 12 A. I would be involved in the submission of the
 13 budgets through the Department of Health
 14 through Treasury Board each fall.
 15 COFFEY, Q.C.:
 16 Q. And what's the nature of your involvement?
 17 DR. BRADBURY:
 18 A. We would be involved with developing our
 19 estimations for what the funds would be needed
 20 in the following year.
 21 COFFEY, Q.C.:
 22 Q. And with respect to physician services, who
 23 would you consult with about that? Like, for
 24 example, with what are now the health
 25 authorities, would you have any interaction

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1 with them?
 2 DR. BRADBURY:
 3 A. To a certain degree, yes.
 4 COFFEY, Q.C.:
 5 Q. And could you tell us, please, about that?
 6 DR. BRADBURY:
 7 A. Well, a large component of the budget would be
 8 the salaried physician budget, and salaried
 9 physicians are employed by the regional health
 10 authorities, and so as we were looking towards
 11 what our, you know, what our projected
 12 expenditures would be in the next fiscal year,
 13 we would have discussions with them as to
 14 their estimation or understanding about the
 15 number of salaried physicians that they would
 16 have in their employ.
 17 COFFEY, Q.C.:
 18 Q. I take it to enable you to figure out how much
 19 the figure should be that should go into the
 20 budget request?
 21 DR. BRADBURY:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. Like to actually just to do the arithmetic?
 25 DR. BRADBURY:

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1 A. Correct.
 2 COFFEY, Q.C.:
 3 Q. Okay. Are you involved in any negotiations?
 4 DR. BRADBURY:
 5 A. Yes, I am.
 6 COFFEY, Q.C.:
 7 Q. Could you tell us, please, how long you've
 8 been involved in negotiations and what those
 9 involve? Does that go back to your days with
 10 MCP?
 11 DR. BRADBURY:
 12 A. Yes. My involvement with negotiations would
 13 be limited to physicians.
 14 COFFEY, Q.C.:
 15 Q. Um-hm.
 16 DR. BRADBURY:
 17 A. And it dates back to the first time would have
 18 been 1997. Physicians have had formal
 19 agreements with the government since 1991,
 20 '92, and they've had four or five agreements
 21 over that period of time. And I've been
 22 involved with all of them beginning in the
 23 '96, '97 agreement.
 24 COFFEY, Q.C.:
 25 Q. And so there's the '96, kind of dash '97

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1 agreement. How many more have there been, do
 2 you remember the other years?
 3 DR. BRADBURY:
 4 A. There would have been another agreement in
 5 2002 and the most recent agreement would have
 6 been in 2005.
 7 COFFEY, Q.C.:
 8 Q. And what does your involvement in those, those
 9 negotiations, what input do you have?
 10 DR. BRADBURY:
 11 A. Twofold. I would be involved in making
 12 recommendations as to government position,
 13 response to proposals from the NLMA, as well
 14 as some of the costing exercises for any
 15 proposals that either we were considering or
 16 the NLMA had asked for.
 17 COFFEY, Q.C.:
 18 Q. Now, in that regard do you have anyone
 19 assisting you?
 20 DR. BRADBURY:
 21 A. Yes.
 22 COFFEY, Q.C.:
 23 Q. Okay. How many, like, how many support staff
 24 do you have in that regard?
 25 DR. BRADBURY:

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1 A. I have an assistant medical director and I
 2 have a liaison position that's helped in the
 3 past with regards to negotiation, and I also
 4 have a fulltime statistician.
 5 COFFEY, Q.C.:
 6 Q. And you would be negotiating or the
 7 negotiations would involve the government on
 8 one side, I take it?
 9 DR. BRADBURY:
 10 A. Yes.
 11 COFFEY, Q.C.:
 12 Q. And who's on the other side?
 13 DR. BRADBURY:
 14 A. The NLMA.
 15 COMMISSIONER:
 16 Q. Is Treasury Board involved in that process?
 17 DR. BRADBURY:
 18 A. Treasury Board would lead all negotiations on
 19 behalf of government.
 20 COMMISSIONER:
 21 Q. Thank you.
 22 COFFEY, Q.C.:
 23 Q. So you're there where physicians' remuneration
 24 is concerned, okay, that's being paid out of
 25 the public purse, as it were, okay. That

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1 would involve, I take it, fee for service
 2 physicians, whatever the rates should be?
 3 DR. BRADBURY:
 4 A. Yes.
 5 COFFEY, Q.C.:
 6 Q. That's--and salaried physicians, as well?
 7 DR. BRADBURY:
 8 A. Yes.
 9 COFFEY, Q.C.:
 10 Q. And from government's side during the
 11 negotiations--well, perhaps you could
 12 elaborate on this somewhat for the
 13 Commissioner. Who is on the government side,
 14 who's on the government's team, as it were,
 15 and who performs what roles?
 16 DR. BRADBURY:
 17 A. As I had just indicated to Madam Cameron,
 18 Treasury Board would be the lead for
 19 government during the formal negotiation
 20 process and they would have one or two staff
 21 with them, and then one or two senior
 22 administrators from the Department of Health
 23 would be there as well as myself.
 24 COFFEY, Q.C.:
 25 Q. And the senior administrators from the

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1 Department of Health would tend, over the
 2 years, to be what sort of senior
 3 administrators, what level?
 4 DR. BRADBURY:
 5 A. It really could vary. Typically it would
 6 often be the deputy minister and the medical
 7 consultant to the Department of Health. At
 8 times the minister has been involved in
 9 negotiations.
 10 COFFEY, Q.C.:
 11 Q. And the medical consultant to the Department
 12 of Health, who is--what position is that?
 13 DR. BRADBURY:
 14 A. That, he would be, or that position is my
 15 direct line supervisor.
 16 COFFEY, Q.C.:
 17 Q. Okay, I was going to ask you who you reported
 18 to. So you report to the medical -
 19 DR. BRADBURY:
 20 A. To the medical consultant to the Department of
 21 Health, and they would report directly then to
 22 the deputy minister.
 23 COFFEY, Q.C.:
 24 Q. So the medical consultant to the Department of
 25 Health is kind of another way of saying an

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1 assistant deputy minister, that's the level
 2 that you're talking about?
 3 DR. BRADBURY:
 4 A. It would be seen as an ADM equivalent.
 5 COFFEY, Q.C.:
 6 Q. And who is that?
 7 DR. BRADBURY:
 8 A. At the present time the position is vacant.
 9 COFFEY, Q.C.:
 10 Q. And who last occupied it?
 11 DR. BRADBURY:
 12 A. Dr. Ed Hunt.
 13 COFFEY, Q.C.:
 14 Q. And how long was Dr. Hunt in that position?
 15 DR. BRADBURY:
 16 A. Eight to ten years.
 17 COFFEY, Q.C.:
 18 Q. Okay. So was he in that position when you
 19 first went to work?
 20 DR. BRADBURY:
 21 A. No.
 22 COFFEY, Q.C.:
 23 Q. Was he in that position at the time you became
 24 the director of physician services?
 25 DR. BRADBURY:

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1 A. I'm not certain.
 2 COFFEY, Q.C.:
 3 Q. Okay. And if he wasn't, he was certainly
 4 there shortly thereafter?
 5 DR. BRADBURY:
 6 A. Yes.
 7 COFFEY, Q.C.:
 8 Q. If he wasn't your first boss in that position,
 9 the person you reported to, he was shortly -
 10 DR. BRADBURY:
 11 A. Yes.
 12 COFFEY, Q.C.:
 13 Q. - thereafter he would have become your boss?
 14 And during the negotiations involving the NLMA
 15 who from Treasury Board, not so much who as
 16 what positions, what sorts of people would be
 17 along--leading the negotiations?
 18 DR. BRADBURY:
 19 A. It varied. Sometimes it would be one of
 20 their, you know, managers, sometimes it would
 21 be the director of negotiations, occasionally
 22 the deputy minister would be involved.
 23 COFFEY, Q.C.:
 24 Q. That would be the deputy minister of?
 25 DR. BRADBURY:

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1 A. Finance.
 2 COFFEY, Q.C.:
 3 Q. Finance. When you say--I think you just
 4 pointed out, "take the lead" as a practical
 5 matter, what does that mean, does that mean
 6 call the shots, to use the vernacular?
 7 DR. BRADBURY:
 8 A. They would be the point person with regards to
 9 receiving any proposals from the medical
 10 association as well as responding to them.
 11 COFFEY, Q.C.:
 12 Q. Okay. And as between the Department of Health
 13 people, yourself in the Department of Health
 14 and others from the Department of Health and
 15 Treasury Board, if there was to be a
 16 difference of opinion about the approach that
 17 should be taken or the position that should be
 18 taken, who would determine that, yourself or
 19 Treasury Board?
 20 DR. BRADBURY:
 21 A. Ultimately it would be Treasury Board.
 22 COFFEY, Q.C.:
 23 Q. Okay. Again, just to flesh it out, that's the
 24 kind of the formal contracts, the longer term
 25 contracts, three or four or five year

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1 contracts with the NLMA. Are there any other
 2 agreements involving financial remuneration
 3 for physicians reached?
 4 DR. BRADBURY:
 5 A. Yes, there are.
 6 COFFEY, Q.C.:
 7 Q. Could you explain those to the Commissioner,
 8 how that works?
 9 DR. BRADBURY:
 10 A. In between formal agreements being signed,
 11 which would be at the provincial level, we
 12 have negotiated essentially what's called
 13 alternate payment plans, and these are
 14 examples involving, you know, either discreet
 15 services or a select group of physicians that
 16 we identify, you know, historical payments
 17 that we've made to this group, whether it's
 18 fee for service or salaried, or you know,
 19 whatever the means of payment, and once we
 20 identify what the historical payments are, we
 21 have the authority then to pay those out in an
 22 alternate form say then they had been
 23 originally.
 24 COFFEY, Q.C.:
 25 Q. So what's the relationship between the

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1 alternate payment plan or plan agreements,
 2 because there are various ones I take it?
 3 DR. BRADBURY:
 4 A. Yes.
 5 COFFEY, Q.C.:
 6 Q. What's the relationship between them and the
 7 overall NLMA Government contract?
 8 DR. BRADBURY:
 9 A. The alternate payment plans are certainly
 10 recognized as part of the provincial
 11 agreement. There's an appendix that's
 12 included in each provincial agreement where
 13 the list is updated, and then it's just a
 14 question of from agreement to the next,
 15 whether any other alternate payment plans have
 16 been negotiated.
 17 COFFEY, Q.C.:
 18 Q. And I take it then, if they are negotiated,
 19 they come into force according to their terms?
 20 DR. BRADBURY:
 21 A. Correct.
 22 COFFEY, Q.C.:
 23 Q. If it's in the middle of kind of a larger
 24 contract duration, say a year into the larger
 25 contract, if an APP is agreed to, then that's

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1 the agreement and that continues in force
 2 until the next round of negotiations?
 3 DR. BRADBURY:
 4 A. Correct.
 5 COFFEY, Q.C.:
 6 Q. And it gets dealt with there. Would I have
 7 that -
 8 DR. BRADBURY:
 9 A. When the alternate payment plans come in,
 10 while there are terms under which they can be
 11 terminated, they don't actually have a set,
 12 you know, sunset or expiry date. So as long
 13 as they're in sort of the best interest of all
 14 parties, the intention is that they remain in
 15 effect.
 16 COFFEY, Q.C.:
 17 Q. And they get recognized then in the next
 18 large--if they're not already in the appendix,
 19 as it were, the listing to a general
 20 agreement, the next round they'll be included
 21 in it, as a recognized one?
 22 DR. BRADBURY:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. Okay. If we could, Commissioner, I have some

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1 exhibits for the Registrar, please?
 2 THE COMMISSIONER:
 3 Q. Yes.
 4 COFFEY, Q.C.:
 5 Q. I'd ask you to bear with me, Commissioner.
 6 The exhibit numbers are P-1067, 1068, 1069,
 7 1071, 1074, and then we go to P-1676, 1677,
 8 1678, 1679, 1680, 1681, 1682, 1683, 1684, 1685
 9 and then we go to 1686 and 1695.
 10 THE COMMISSIONER:
 11 Q. Entered.
 12 EXHIBITS ENTERED AND MARKED EXHIBITS P-1067 THROUGH 1069
 13 EXHIBIT ENTERED AND MARKED EXHIBIT P-1071
 14 EXHIBIT ENTERED AND MARKED EXHIBIT P-1074
 15 EXHIBITS ENTERED AND MARKED EXHIBITS P-1676 THROUGH 1686
 16 EXHIBIT ENTERED AND MARKED EXHIBIT P-1695
 17 COFFEY, Q.C.:
 18 Q. Again, to help the Commissioner put some of
 19 what we've already heard in context, I want to
 20 ask, please, that Exhibit P-1676 be brought
 21 up. Now this is a Department of Health,
 22 Institutions Branch, letterhead memorandum
 23 dated November 18th, 1996. It's to all--it
 24 should be pathology chiefs, presumably,
 25 managers and pathologists, from Roy Manuel,

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1 dated November 18th, 1996. The subject is
 2 pathology specimens referred outside the
 3 province, and it's copied to yourself, Mr.
 4 John Peddle. Who's John Peddle?
 5 DR. BRADBURY:
 6 A. John Peddle is the executive director of the
 7 Newfoundland and Labrador Health Boards
 8 Association.
 9 COFFEY, Q.C.:
 10 Q. And here it reads "the attached outlines the
 11 policy regarding referring pathology specimens
 12 outside the province. Please note that this
 13 policy refers only to the facility fee and the
 14 associated pathologists costs would be the
 15 responsibility of the Newfoundland Medical
 16 Care Plan. Please ensure that the appropriate
 17 staff in your organization are aware of this
 18 policy." And it's indicated to be forwarded
 19 to Vern Whelan, handwritten there.
 20 And then on page two of the exhibit,
 21 there's a note here, the actual memorandum the
 22 subject of which is "pathology specimens
 23 referred out of province," and it reads
 24 "hospital/facilities outside this province are
 25 utilized on occasion to analyze pathology

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1 specimens referred from this province. The
 2 factors that determine whether or not a
 3 specimen should be referred outside the
 4 province for analysis is the responsibility of
 5 the laboratory department/hospital providing
 6 the patient care in accordance with their
 7 established policies and guidelines. To
 8 ensure the pathology specimens referred
 9 outside the province are paid for in a
 10 consistent manner, the hospital referring the
 11 specimen is responsible for payment of the
 12 out-of-province expenses invoiced by the
 13 service provider for the facility fee. When
 14 referring pathology specimens outside the
 15 province, please advise the receiving
 16 hospital/facility to submit their invoice for
 17 the facility fee to your hospital/regional
 18 health board."
 19 Now, and as well, at the top here, top
 20 right-hand side at page two, there's a number,
 21 IP-4. I take it that's an insurance plan
 22 programs division, and this is from some kind
 23 of a policy manual or administrative manual, I
 24 take it?
 25 DR. BRADBURY:

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1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. And this would have been early in your days
 4 with MCP?
 5 DR. BRADBURY:
 6 A. Correct.
 7 COFFEY, Q.C.:
 8 Q. Were you involved in this sort of matter?
 9 DR. BRADBURY:
 10 A. Not that I recall.
 11 COFFEY, Q.C.:
 12 Q. Okay. I take it that you would have been
 13 cc'ed on this because it involved--at least
 14 the subject matter seems to deal with, or
 15 refers to, "the hospital referring the
 16 specimen is responsible for payment of out-of-
 17 province expenses invoiced by the service
 18 provider for the facility fee." And when we
 19 look back at the covering memo, it refers to,
 20 as Mr. Manuel's text, he says "any associated
 21 pathologists costs would be the responsibility
 22 of the Newfoundland Medical Care Plan." See
 23 that?
 24 DR. BRADBURY:
 25 A. Yes.

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1 COFFEY, Q.C.:
 2 Q. How does that work, at the time?
 3 DR. BRADBURY:
 4 A. Okay.
 5 COFFEY, Q.C.:
 6 Q. I take it it's because of that, that's a
 7 physician fee?
 8 DR. BRADBURY:
 9 A. Yes.
 10 COFFEY, Q.C.:
 11 Q. Okay.
 12 DR. BRADBURY:
 13 A. With the exception of Quebec, all provinces
 14 have a reciprocal billing agreement, and when
 15 a host province sees a patient--so for
 16 example, if Ontario is hosting a patient from
 17 Newfoundland, the facility fees are billed
 18 back to the province and the physician fees
 19 are billed--in Ontario, it would be OHIP, and
 20 then OHIP subsequently would recover the cost
 21 then from the Medical Care Plan.
 22 COFFEY, Q.C.:
 23 Q. So that's a patient who -
 24 DR. BRADBURY:
 25 A. A patient as well as any diagnostic services

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1 provided to a patient.
 2 COFFEY, Q.C.:
 3 Q. So that's somebody who's seen locally. So if
 4 somebody is seen locally here, maybe somebody
 5 from out of the province, in the end, it gets
 6 billed back, because of these reciprocal
 7 agreements, to the province, the residency
 8 province of the patient in question?
 9 DR. BRADBURY:
 10 A. Yes.
 11 COFFEY, Q.C.:
 12 Q. And Ontario is the one you used as an example.
 13 This, on page two, this particular policy here
 14 refers to "hospitals/facilities outside this
 15 province are utilized on occasion to analyze
 16 pathology specimens referred from this
 17 province." So this is specimens going, for
 18 example, from St. John's or Corner Brook or
 19 wherever to Ontario or British Columbia or
 20 Alberta, Nova Scotia, wherever. How does that
 21 work?
 22 DR. BRADBURY:
 23 A. In the example that I just gave, specimens
 24 that were referred out would have a facility
 25 or a technical fee associated with them, as

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1 well as a professional fee.
 2 COFFEY, Q.C.:
 3 Q. That would be charged by, for example, an
 4 Ontario facility?
 5 DR. BRADBURY:
 6 A. Correct, and this memo indicates that
 7 responsibility of payment of the technical or
 8 facility fee was from the RHA who had
 9 forwarded the initial sample, and that the
 10 physician fees or the professional fees
 11 associated with that then, as I said, would be
 12 billed reciprocally, you know, through their
 13 host program, and then subsequently sent on to
 14 MCP for payment.
 15 COFFEY, Q.C.:
 16 Q. It would come into MCP in St. John's?
 17 DR. BRADBURY:
 18 A. Yes.
 19 COFFEY, Q.C.:
 20 Q. Like the bill from the pathologists or related
 21 pathologist services in Ontario, for example?
 22 DR. BRADBURY:
 23 A. Well, actually, the pathologists in Ontario
 24 would actually bill OHIP.
 25 COFFEY, Q.C.:

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1 Q. Yes.
 2 DR. BRADBURY:
 3 A. And then OHIP would subsequently bill us.
 4 COFFEY, Q.C.:
 5 Q. For the pathologist fee?
 6 DR. BRADBURY:
 7 A. On behalf of the pathologists, yes.
 8 COFFEY, Q.C.:
 9 Q. And here then, in St. John's, when the bill
 10 came in from OHIP, it would be charged to
 11 whom?
 12 DR. BRADBURY:
 13 A. To MCP for the professional fee.
 14 COFFEY, Q.C.:
 15 Q. And do you recall under whose budget that then
 16 came out of, in the sense of -
 17 DR. BRADBURY:
 18 A. Well, the professional fees would be the MCP
 19 budget. It would be the fee-for-service
 20 physician budget.
 21 COFFEY, Q.C.:
 22 Q. Okay. Pathologists at that time, I take it,
 23 in 1996 up to the present, have they been--in
 24 your experience, were they ever fee for
 25 service within Newfoundland?

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1 DR. BRADBURY:
 2 A. Within Newfoundland?
 3 COFFEY, Q.C.:
 4 Q. Yes.
 5 DR. BRADBURY:
 6 A. No.
 7 COFFEY, Q.C.:
 8 Q. So, if, for example, OHIP, and I'm just using
 9 them because it's easy to pick the Ontario
 10 plan as it is any other outside the province,
 11 if they sent a bill for pathologist services
 12 within a facility in Ontario, for something
 13 that they did for a Newfoundland referral, is
 14 there any set fee within the MCP structure to
 15 pay that? Like how would you decide how much
 16 to pay the Ontario pathologist?
 17 DR. BRADBURY:
 18 A. Ontario is somewhat unique. I mean, the vast
 19 majority of pathologists in the country are
 20 paid by some form other than fee for service.
 21 Ontario is a province though where it has a
 22 mixed pattern of compensation for
 23 pathologists. It does have private laboratory
 24 as well as diagnostic services, and so in a
 25 lot of those cases, the physicians, say, that

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1 are working out of the private laboratories
 2 would be on a fee-for-service basis, as
 3 opposed to say the physicians in the hospitals
 4 in Ontario typically would be salaried.
 5 COFFEY, Q.C.:
 6 Q. So we'll deal with both instances, okay. The
 7 salaried physicians, Ontario salaried
 8 physicians' work, how would that be paid here?
 9 How much would you decide to pay them?
 10 DR. BRADBURY:
 11 A. OHIP does have a menu for pathology services
 12 that are eligible to be billed fee for
 13 service.
 14 COFFEY, Q.C.:
 15 Q. And so they would bill you that amount for
 16 that particular service, they would bill the
 17 MCP?
 18 DR. BRADBURY:
 19 A. Yes.
 20 COFFEY, Q.C.:
 21 Q. And MCP would, out of the physicians' fee-for-
 22 service budget, cut a cheque to pay the bill?
 23 DR. BRADBURY:
 24 A. Yes.
 25 COFFEY, Q.C.:

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1 Q. Okay, and with respect to then the
 2 pathologists working in private or the fee-
 3 for-service pathologists in Ontario, not the
 4 salary ones, the fee-for-service ones, how
 5 would you decide how much to pay them?
 6 DR. BRADBURY:
 7 A. Same mechanism. They would bill from the fee-
 8 for-service manual.
 9 COFFEY, Q.C.:
 10 Q. Has that change up to the present or is that
 11 still the general arrangement in that regard?
 12 DR. BRADBURY:
 13 A. I would describe it as the general
 14 arrangement.
 15 COFFEY, Q.C.:
 16 Q. Now with respect to referrals coming, for
 17 example, the other way, if not a referral,
 18 then as you pointed out, for example, a
 19 resident of Ontario being treated here in
 20 Newfoundland and eventually a bill would be
 21 generated and sent off to OHIP. For
 22 pathologist work, if a pathologist who's a
 23 salaried physician in Newfoundland, would that
 24 be billed to OHIP? If a pathologist did some
 25 work for a patient from Ontario here, would

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1 that be billed back to OHIP?
 2 DR. BRADBURY:
 3 A. I don't know.
 4 COFFEY, Q.C.:
 5 Q. And I raise that because there is--and I'm
 6 going to be asking you about the idea of
 7 pathologists having any concerns or expressing
 8 any dissatisfaction about not being paid for
 9 kind of work over, above and beyond, you know,
 10 their expected workload, I suppose, and that's
 11 why I ask it. Okay, just so you understand.
 12 DR. BRADBURY:
 13 A. Um-hm.
 14 COFFEY, Q.C.:
 15 Q. Did you ever become aware of any concerns
 16 expressed by pathologists concerning the
 17 amount of remuneration they were paid in
 18 Newfoundland?
 19 DR. BRADBURY:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. And when did you first become aware of that?
 23 DR. BRADBURY:
 24 A. The Newfoundland Association of Pathologists
 25 had, as I understand it, been doing work with

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1 the Medical Association in late 2004 with
 2 regards to concerns they had about recruitment
 3 and retention compensation, and as a result of
 4 the work that they did with the Medical
 5 Association, they did a presentation to the
 6 Physician Services Liaison Committee, I
 7 believe it was in March of 2005.
 8 COFFEY, Q.C.:
 9 Q. Who is the Physicians -
 10 DR. BRADBURY:
 11 A. Physician Services Liaison Committee?
 12 COFFEY, Q.C.:
 13 Q. Yes, who are they?
 14 DR. BRADBURY:
 15 A. It was a vehicle that was, a communications
 16 vehicle that was implemented, agreed to and
 17 implemented at the suggestion of the NLMA back
 18 in 2002 to really sort of, as I said,
 19 formalize a communications vehicle for the
 20 Department of Health and government to discuss
 21 any issues of mutual concern about medical
 22 services.
 23 COFFEY, Q.C.:
 24 Q. I take it there were representatives from the
 25 NLMA on this committee and government?

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1 DR. BRADBURY:
 2 A. Yes.
 3 COFFEY, Q.C.:
 4 Q. In fact, a liaison committee.
 5 DR. BRADBURY:
 6 A. Yes.
 7 COFFEY, Q.C.:
 8 Q. Was there much interaction or much activity by
 9 that committee between 2002 and 2005?
 10 DR. BRADBURY:
 11 A. Yes, it met pretty regularly.
 12 COFFEY, Q.C.:
 13 Q. And how long had the committee or did the
 14 committee continue in existence?
 15 DR. BRADBURY:
 16 A. Well the committee remains in existence, it
 17 has never been disbanded. It has, however,
 18 not been active for the last couple of years.
 19 COFFEY, Q.C.:
 20 Q. And why is that?
 21 DR. BRADBURY:
 22 A. I don't really have an explanation for it.
 23 COFFEY, Q.C.:
 24 Q. Okay. Do you know Rob Ritter? Do you know
 25 who Mr. Ritter is, Robert Ritter?

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1 DR. BRADBURY:
 2 A. Yes, I do.
 3 COFFEY, Q.C.:
 4 Q. Mr. Ritter has appeared before the
 5 Commissioner and did make some remarks about
 6 the committee and its work particularly
 7 involving the pathologists and he was
 8 certainly--he made positive comments about it.
 9 And if I recall what he testified to, that he
 10 had indicated that the--I don't know if he
 11 said the committee was disbanded, but
 12 certainly inactive, is your recollection. Do
 13 you know is that because the government's
 14 representatives are not participating in the
 15 committee or has the NLMA refused to
 16 participate?
 17 DR. BRADBURY:
 18 A. I'm not aware that anyone has refused to
 19 participate.
 20 COFFEY, Q.C.:
 21 Q. It just hasn't met in the past two years or
 22 so.
 23 DR. BRADBURY:
 24 A. Correct.
 25 COFFEY, Q.C.:

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1 Q. But before that, it had met fairly routinely?
 2 DR. BRADBURY:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. Between 2002 and 2006 or so.
 6 DR. BRADBURY:
 7 A. Yes.
 8 COFFEY, Q.C.:
 9 Q. The sorts of issues that it dealt with between
 10 2002 and 2006, did those sorts of issues
 11 continue to exist?
 12 DR. BRADBURY:
 13 A. There are always issues.
 14 COFFEY, Q.C.:
 15 Q. So it's not like all the issues went away in
 16 2006?
 17 DR. BRADBURY:
 18 A. No, they have not all been dealt with.
 19 COFFEY, Q.C.:
 20 Q. And you've indicated to the Commissioner you
 21 participated in three rounds of negotiations.
 22 Do you recall in those three rounds whether or
 23 not remuneration for pathologists in
 24 particular ever arose? I take it they would
 25 be categorized as specialists, pathologists

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1 would be?
 2 DR. BRADBURY:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. And they would fall into that category. But
 6 do you recall in those negotiations and they
 7 go all the way back to the middle of '90's,
 8 '96, '97, 2002 and then 2005. At any point in
 9 negotiations was there any attention in
 10 particular focused on the pathologists?
 11 DR. BRADBURY:
 12 A. Not that I recall in '97. In 2002, there were
 13 definitely groups, it was quite a long
 14 negotiation in 2002, went through both
 15 mediation as well as arbitration and certainly
 16 the Medical Association highlighted particular
 17 groups. I don't recall that pathology was a
 18 group that they, at least strongly
 19 highlighted, and the negotiations that
 20 occurred in 2005 were somewhat unique in that
 21 they were really at a, sort of what I would
 22 describe at a high level involving sort of the
 23 Minister, Deputy Minister level and so,
 24 whether there was conversation about
 25 pathologists in that round, I really can't

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1 comment on.
 2 COFFEY, Q.C.:
 3 Q. And if it occurred, you weren't privy to it.
 4 DR. BRADBURY:
 5 A. Correct.
 6 COFFEY, Q.C.:
 7 Q. Though you do recall that certainly in late
 8 '04 or so you began, the idea that the
 9 pathologists locally were expressing concerns
 10 about the amount they were being paid.
 11 DR. BRADBURY:
 12 A. Yes.
 13 COFFEY, Q.C.:
 14 Q. Certainly had surfaced within the department
 15 and in your world by late '04?
 16 DR. BRADBURY:
 17 A. Early '05.
 18 COFFEY, Q.C.:
 19 Q. Early '05, okay, and then by March of '05 it's
 20 in front of the Physician Services Liaison
 21 Committee?
 22 DR. BRADBURY:
 23 A. Correct.
 24 COFFEY, Q.C.:
 25 Q. You did indicate that in 2002 there were

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1 representations made, you will recall, by the
 2 NLMA in respect of certain groups of
 3 physicians. Is there any in particular that
 4 stand out in your mind?
 5 DR. BRADBURY:
 6 A. There were at least two physician groups that
 7 actually made a presentation to the
 8 arbitration panel, and they would be
 9 orthopedics and anesthesia.
 10 COFFEY, Q.C.:
 11 Q. Okay. Now we have heard references to an
 12 oncologist stipend?
 13 DR. BRADBURY:
 14 A. Correct.
 15 COFFEY, Q.C.:
 16 Q. What can you tell us about that? What do you
 17 know about that?
 18 DR. BRADBURY:
 19 A. The oncology stipend goes back to 1990, 1991.
 20 COFFEY, Q.C.:
 21 Q. So it predates you, even.
 22 DR. BRADBURY:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. And your involvement, okay.

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1 DR. BRADBURY:
 2 A. Yes, and actually predates sort of the formal,
 3 you know, contract negotiation process with
 4 the NLMA. As I understand it, a physician,
 5 Dr. Carl Robbins, did a review of oncology
 6 services at the time. When he did it, at the
 7 time we had three or four radiation
 8 oncologists and no medical oncologists in the
 9 province and so, he looked at it from the
 10 point of view of compensation and as part of
 11 his review process, he recommended that the
 12 oncology scale that was in effect be
 13 supplemented by an oncology stipend.
 14 COFFEY, Q.C.:
 15 Q. Okay, and that was already in effect when you
 16 came to work with the Department of Health.
 17 DR. BRADBURY:
 18 A. Yes.
 19 COFFEY, Q.C.:
 20 Q. What, if anything, can you tell the
 21 Commissioner about how, if at all, that
 22 changed over the years, the stipend itself,
 23 has that changed?
 24 DR. BRADBURY:
 25 A. The most significant change happened in 2002,

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1 again as part of the arbitration process
 2 where, who was eligible for the oncology
 3 stipend was clarified. There was also a
 4 significant increase made to the five-step
 5 oncology stipend scale and subsequent to that,
 6 the sort of the policy about eligibility, et
 7 cetera, was sort of formalized as an appendix
 8 to the 2002 agreement.
 9 COFFEY, Q.C.:
 10 Q. And you say clarified, use the word
 11 "clarified", what was clarified? What had to
 12 be clarified?
 13 DR. BRADBURY:
 14 A. Well initially the oncology stipend when it
 15 was brought in was specific to the oncologists
 16 who were working at the NCTRF at the time. So
 17 it was limited to radiation -
 18 THE COMMISSIONER:
 19 Q. Sorry, the NC?
 20 DR. BRADBURY:
 21 A. The Newfoundland Treatment Centre -
 22 COFFEY, Q.C.:
 23 Q. Newfoundland Cancer Treatment.
 24 DR. BRADBURY:
 25 A. Newfoundland Centre for Cancer Treatment and

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1 Research Foundation.
 2 THE COMMISSIONER:
 3 Q. All right, thank you.
 4 DR. BRADBURY:
 5 A. And so the stipend initially was limited to
 6 just the medical oncologists and radiation
 7 oncologists.
 8 COFFEY, Q.C.:
 9 Q. And then in 2002?
 10 DR. BRADBURY:
 11 A. It was at least clarified that other
 12 oncologists, specifically the pediatric
 13 oncologists, the hematologists oncologists and
 14 the gyne oncologists would be eligible for the
 15 stipend as well. And some of those may have
 16 already been receiving it prior to that
 17 clarification.
 18 COFFEY, Q.C.:
 19 Q. And in relation to oncology, okay, of whatever
 20 sort, are there any other arrangements,
 21 financial arrangements involving oncologists?
 22 I take it they're paid as specialists,
 23 salaried specialists.
 24 DR. BRADBURY:
 25 A. Yes.

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1 COFFEY, Q.C.:
 2 Q. Number one, that's kind of a base, but just as
 3 pathologists are paid a salary, specialists.
 4 DR. BRADBURY:
 5 A. Yes.
 6 COFFEY, Q.C.:
 7 Q. And it's not limited to oncology and
 8 pathology, there'd be other specialists. I'm
 9 correct on that, am I?
 10 DR. BRADBURY:
 11 A. Correct.
 12 COFFEY, Q.C.:
 13 Q. But the oncologists dating back to before your
 14 time, received an oncology stipend. That was
 15 clarified in 2002 as to what sorts of
 16 oncologists would receive it, and the amounts
 17 and so on, and I take it from what you've told
 18 the Commissioner that it varied over the
 19 years.
 20 DR. BRADBURY:
 21 A. Yes.
 22 COFFEY, Q.C.:
 23 Q. Is there any other payment that oncologists
 24 receive or any oncologist received?
 25 DR. BRADBURY:

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1 A. The oncologists also have an alternate payment
 2 plan.
 3 COFFEY, Q.C.:
 4 Q. Yes, could you tell us, please, what you know
 5 about that? When it began and how it's
 6 evolved?
 7 DR. BRADBURY:
 8 A. Okay, they've actually had two separate
 9 alternate payment plans, both based a similar
 10 principle. The payment plan basically
 11 establishes, based on sort of national
 12 standards what the number of new patient
 13 consultations a salaried medical or radiation
 14 oncologist should see in a year, and then
 15 based on those thresholds and their salary
 16 scales, establishes a rate so that if they see
 17 more patients than they would normally to
 18 receive their salary, they receive an
 19 additional payment.
 20 COFFEY, Q.C.:
 21 Q. Per patient, I take it?
 22 DR. BRADBURY:
 23 A. Per patient.
 24 COFFEY, Q.C.:
 25 Q. Did that apply to all oncologists originally?

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1 DR. BRADBURY:
 2 A. It was negotiated for medical and radiation
 3 oncologists.
 4 COFFEY, Q.C.:
 5 Q. And when was that, do you recall?
 6 DR. BRADBURY:
 7 A. There was an initial one that lasted for six
 8 to 12 months around 2003, 2004 and then at the
 9 request of the oncologists, it was
 10 discontinued. And then it was restarted again
 11 in September of 2004, I believe.
 12 COFFEY, Q.C.:
 13 Q. And what type of oncologists did it apply to?
 14 DR. BRADBURY:
 15 A. Medical and radiation oncology.
 16 COFFEY, Q.C.:
 17 Q. And just those?
 18 DR. BRADBURY:
 19 A. Just those two.
 20 COFFEY, Q.C.:
 21 Q. And I think you indicated to the Commissioner,
 22 you started to say there were two APP's for
 23 oncologists?
 24 DR. BRADBURY:
 25 A. Yes.

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1 COFFEY, Q.C.:

2 Q. So that's one of them, I take it, was the plan

3 you just described.

4 DR. BRADBURY:

5 A. Yes, well initially the initial short-term APP

6 applied to both groups.

7 COFFEY, Q.C.:

8 Q. Medical and radiation?

9 DR. BRADBURY:

10 A. Yes, and as I said, was in place for six to

11 nine months and then that ended and when the

12 new APP's were negotiated, they were

13 negotiated with one separate for medical

14 oncology and another one then for radiation

15 oncology.

16 COFFEY, Q.C.:

17 Q. And the differences between them, I take it,

18 are as to the basic number of patients they're

19 expected to see per year

20 DR. BRADBURY:

21 A. Yes.

22 COFFEY, Q.C.:

23 Q. And the difference between medical and

24 radiation oncologists in that regard.

25 DR. BRADBURY:

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1 A. Yes.

2 COFFEY, Q.C.:

3 Q. And are they otherwise, though, similar?

4 DR. BRADBURY:

5 A. Yes.

6 COFFEY, Q.C.:

7 Q. The amount per patient is the same, it's just

8 the thresholds are different?

9 DR. BRADBURY:

10 A. No, the amount per patient will vary as well

11 because if it's based on their existing salary

12 scale and the number of patients they're

13 expected to see for their salary, then the

14 payment rate varies between both groups.

15 COFFEY, Q.C.:

16 Q. How about other types of oncologists?

17 DR. BRADBURY:

18 A. There is one other group, the haematologist

19 oncologists, they have an alternate payment

20 plan in place as well and that became in

21 effect January 2007, perhaps.

22 COFFEY, Q.C.:

23 Q. And that's based upon what?

24 DR. BRADBURY:

25 A. Unlike the medical and radiation oncologists,

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1 the haematologist oncologists don't have any

2 work load standards to sort of base sort of

3 additional payments on, and so that's an

4 example of where we identified the historical

5 pot of funds that we had paid out to that

6 specialty. The vast majority of which they

7 would have been under a salaried method of

8 remuneration and we sort of rejigged the pot

9 so that the physicians now receive those

10 amounts of money, but in a form other than

11 salary.

12 THE COMMISSIONER:

13 Q. I'm sorry, I didn't draw that, they received

14 that amount of money but in a form other than

15 salary.

16 DR. BRADBURY:

17 A. Right, well it goes back to once you identify,

18 say the historical payments that you've made

19 to either a particular group or for a

20 particular service -

21 THE COMMISSIONER:

22 Q. Uh-hm.

23 DR. BRADBURY:

24 A. Then you're not necessarily restricted to, you

25 know, paying it out in a fee-for-service

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1 piecemeal way or out in a salary based on the

2 established salary scales, and so the

3 physicians themselves can determine how they

4 want that block of funds to be divvied up

5 amongst themselves, with the caveat that they

6 take responsibility then to provide those

7 services.

8 COFFEY, Q.C.:

9 Q. And that's the hematologists oncologists?

10 DR. BRADBURY:

11 A. Correct.

12 THE COMMISSIONER:

13 Q. You said earlier that--you described the, what

14 I think was the third prong of compensation

15 for radiation and medical oncologists as the

16 alternate payment -

17 DR. BRADBURY:

18 A. Yes, an alternate payment plan.

19 THE COMMISSIONER:

20 Q. - plan. But is not really alternative to

21 something else, it's an addition to something,

22 isn't it?

23 DR. BRADBURY:

24 A. No, in the example that I just gave Madam

25 herein, it would be sort of, as an alternate

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1 to their normal salaried arrangement.
 2 THE COMMISSIONER:
 3 Q. Okay, but if you're an oncologist working in
 4 the, what I would call the centre in which
 5 they deal with the cancer patients, then
 6 presumably you know when you sign up and you
 7 walk through the door that you are going to be
 8 paid a certain amount per annum, do you not?
 9 DR. BRADBURY:
 10 A. If you chose the--just recently they have been
 11 given the option of remaining on a salary
 12 versus participating in the alternate payment
 13 plan. If they chose the salaried option, they
 14 would indeed walk through the door knowing
 15 what they would be paid at the end of the
 16 year.
 17 THE COMMISSIONER:
 18 Q. Okay.
 19 DR. BRADBURY:
 20 A. In an alternate -
 21 COFFEY, Q.C.:
 22 Q. That would be the May '07 -
 23 DR. BRADBURY:
 24 A. Yes.
 25 COFFEY, Q.C.:

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1 Q. Sorry, May '08, I apologize, okay.
 2 THE COMMISSIONER:
 3 Q. Okay, they get their salary and in addition to
 4 the salary, if you're going that route, you
 5 get the salary and you get the additional
 6 amount that was negotiated historically, quite
 7 some time ago, do you?
 8 DR. BRADBURY:
 9 A. There are two options. One you can have the
 10 salaried arrangement.
 11 THE COMMISSIONER:
 12 Q. Um-hm.
 13 DR. BRADBURY:
 14 A. And there was an increase made to the salary
 15 scale May of '08.
 16 THE COMMISSIONER:
 17 Q. Yes.
 18 COFFEY, Q.C.:
 19 Q. Okay, if I could, Commissioner, I'd like to--
 20 if I can just kind of back a bit, establish
 21 that and then go on to the May '08 one.
 22 THE COMMISSIONER:
 23 Q. I had understood that they were getting a
 24 salary as a specialist -
 25 COFFEY, Q.C.:

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1 Q. Yes, go back to '05, you see '05/'06.
 2 THE COMMISSIONER:
 3 Q. You're getting a salary as a specialist, just
 4 like every other specialist in the province
 5 gets a salary.
 6 DR. BRADBURY:
 7 A. Yes.
 8 THE COMMISSIONER:
 9 Q. And you, as an oncologist can expect to get
 10 that, except that over and above that you
 11 would get the stipend, if you were a medical
 12 or radiation oncologist. Is that right? If
 13 you're going that route?
 14 DR. BRADBURY:
 15 A. In 2005, all of the oncologists were
 16 participating in the alternate payment plan.
 17 COFFEY, Q.C.:
 18 Q. Which meant?
 19 DR. BRADBURY:
 20 A. So, they would receive their salary and the
 21 oncology stipend and the few other bits and
 22 pieces that all other salaried physicians
 23 receive.
 24 THE COMMISSIONER:
 25 Q. Um-hm.

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1 DR. BRADBURY:
 2 A. And then they receive the additional case
 3 payment when they saw the first or the second
 4 or the third patient above what their
 5 threshold was for their salaried employment.
 6 THE COMMISSIONER:
 7 Q. Okay.
 8 COFFEY, Q.C.:
 9 Q. The latter group included medical and
 10 radiation oncologists in there alone.
 11 DR. BRADBURY:
 12 A. Correct.
 13 THE COMMISSIONER:
 14 Q. Okay.
 15 COFFEY, Q.C.:
 16 Q. Is that -
 17 THE COMMISSIONER:
 18 Q. That's where I thought we were going, but then
 19 I thought that's not right. So, what's
 20 alternative?
 21 COFFEY, Q.C.:
 22 Q. Yes.
 23 COMMISSIONER:
 24 Q. You seem to be suggesting that you got two
 25 options to be paid. Now is that only because

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1 of the recent happenings -
 2 DR. BRADBURY:
 3 A. Yes.
 4 COMMISSIONER:
 5 Q. - or did you have that earlier? Okay, well,
 6 I'll wait until we get to the most recent ones
 7 before I get -
 8 COFFEY, Q.C.:
 9 Q. So back in 2005, 2004, certainly 2005 after
 10 the contract negotiation was concluded then in
 11 2005, the oncologists as a group, oncology
 12 simpliciter in Newfoundland, if one was an
 13 oncologist, you got paid your salary as a
 14 specialist, whatever the rate was, what was
 15 specified in the contract at the time, and you
 16 got the oncologists' stipend, assuming you
 17 fell within the definition of an oncologist
 18 for the stipend?
 19 DR. BRADBURY:
 20 A. Um-hm.
 21 COFFEY, Q.C.:
 22 Q. And if you were a medical or radiation
 23 oncologist, you fell under their particular
 24 APP plan?
 25 DR. BRADBURY:

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1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. And that APP plan at the time was labelled an
 4 alternate payment plan?
 5 DR. BRADBURY:
 6 A. The actual title of it might have been a block
 7 funding arrangement or block funding agreement
 8 might have been the official term.
 9 COFFEY, Q.C.:
 10 Q. But it was referred to, for short, I think you
 11 referred to it as an APP?
 12 DR. BRADBURY:
 13 A. Yes.
 14 COFFEY, Q.C.:
 15 Q. And I think what the Commissioner was puzzled
 16 about, I can't speak for her but just
 17 listening to her remarks, is was there really
 18 anything alternate about it in 2005? I mean,
 19 2005 if you're a medical oncologist, that was
 20 the only way you could be paid, would that be
 21 correct?
 22 DR. BRADBURY:
 23 A. Yes. I guess the term "alternate" meant that
 24 it was a form of payment that would certainly
 25 give a physician compensation, say, in excess

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1 than you would receive under just a normal
 2 salaried arrangement.
 3 COFFEY, Q.C.:
 4 Q. So that in relation to that and back in 2005
 5 for medical and radiation oncologists, in the
 6 way you've described it up to now, that was
 7 it? If I was a medical oncologist or
 8 radiation oncologist at the time and I wanted
 9 to work here in Newfoundland, I understood my
 10 salary was as a specialist, I knew what the
 11 stipend was, and if I choose to work, to
 12 accept more patients above and beyond the
 13 thresholds, I would be entitled to bill for
 14 those extra amounts under the APP?
 15 DR. BRADBURY:
 16 A. Yes.
 17 COFFEY, Q.C.:
 18 Q. And that was it, there was no other
 19 arrangement possible?
 20 DR. BRADBURY:
 21 A. No.
 22 COFFEY, Q.C.:
 23 Q. Okay. Does that assist, Commissioner?
 24 COMMISSIONER:
 25 Q. Yes, thank you.

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1 COFFEY, Q.C.:
 2 Q. Thank you. Now, that's all by the way of,
 3 okay, while we're on it, just while we're in
 4 this train of thought, the most recent changes
 5 or proposed changes, how, if at all, what
 6 effect have they had or would have, you know,
 7 when they're finally implemented? And I don't
 8 want to get into whether they're actually
 9 implemented or not, but the proposal would
 10 result in what for oncologists?
 11 DR. BRADBURY:
 12 A. As of May 1st oncologists now have the option
 13 of remaining purely salaried at the higher
 14 salary scale.
 15 COFFEY, Q.C.:
 16 Q. And this is this new salary scale?
 17 DR. BRADBURY:
 18 A. Yes.
 19 COFFEY, Q.C.:
 20 Q. This is not a specialist salary scale as
 21 you've referred to it earlier, this is a new
 22 particular salary scale for oncologists of a
 23 particular type, medical and radiation
 24 oncologists?
 25 DR. BRADBURY:

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1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. Okay. Kind of a--and it doesn't apply to
 4 other types of oncologists, just medical and
 5 radiation?
 6 DR. BRADBURY:
 7 A. Correct.
 8 COFFEY, Q.C.:
 9 Q. Okay. That's one.
 10 DR. BRADBURY:
 11 A. Okay. So they have that option.
 12 COFFEY, Q.C.:
 13 Q. Yes.
 14 DR. BRADBURY:
 15 A. Or they can remain on the old salary scale and
 16 participate and continue to participate in the
 17 alternate payment plan.
 18 COFFEY, Q.C.:
 19 Q. As you described it before?
 20 DR. BRADBURY:
 21 A. Yes.
 22 COFFEY, Q.C.:
 23 Q. Okay. Now, pathologists, okay, kind of come
 24 back and--come around to because now I've
 25 canvassed that with you, Dr. Bradbury,

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1 because, of course, ultimately, I gather that
 2 in May of '07 the government decided that the
 3 stipend given oncologists would be available
 4 to pathologists?
 5 DR. BRADBURY:
 6 A. Yes.
 7 COFFEY, Q.C.:
 8 Q. In fact, May of '07, so it's all by the way of
 9 trying to put it in perspective for the
 10 Commissioner. If we could return then and
 11 kind of get your head space back into March of
 12 '05? Do you remember the physician -
 13 DR. BRADBURY:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. - services liaison committee, you said it was
 17 a presentation made and you would have been
 18 there for that?
 19 DR. BRADBURY:
 20 A. Actually, I missed it.
 21 COFFEY, Q.C.:
 22 Q. You missed it, okay. But you would have been
 23 made aware of it afterward?
 24 DR. BRADBURY:
 25 A. Yes.

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1 COFFEY, Q.C.:
 2 Q. How did that matter unfold then, can you take
 3 the Commissioner through what you recall about
 4 how that whole thing involving pathologists'
 5 remuneration unfolded from your perspective?
 6 DR. BRADBURY:
 7 A. Okay. As I had indicated earlier, I
 8 understood that the Newfoundland Association
 9 of Pathologists had gone to their medical
 10 association in the fall of 2004 to begin these
 11 discussions. Following their discussions with
 12 the medical association it was brought forward
 13 to the physician services liaison committee in
 14 March, I believe, of '05. Following that
 15 presentation, the deputy minister asked that
 16 the information be forwarded to the vice
 17 presidents of medicine out in the regional
 18 health authorities, as well as the dean of
 19 medicine for their, sort of, knowledge,
 20 understanding and feedback. And the issue of
 21 pathology was discussed, I believe at the next
 22 physician services liaison committee. And it
 23 was decided at that point in time to refer it
 24 to the service coverage committee. And the
 25 service coverage committee was a working group

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1 of the Physician Services Liaison Committee.
 2 The service coverage committee set up a little
 3 working group consisting of several of the VPs
 4 of medicine and someone from the NLMA, someone
 5 from the department of health and perhaps a
 6 couple of the pathologists. And then they
 7 made a report then on some recommendations
 8 with regards to beginning to address some of
 9 the challenges that pathology was facing.
 10 The service coverage committee tabled
 11 that report at the PSLC meeting, I believe it
 12 was in September of 2005.
 13 COFFEY, Q.C.:
 14 Q. Okay, tabled the report and then what
 15 happened?
 16 DR. BRADBURY:
 17 A. The challenge for the department to do--the
 18 timing of the report and its recommendations
 19 was problematic for the Department of Health
 20 in that it was right around this time that
 21 provincial negotiations with the NLMA were
 22 finalized and had been completed. And they
 23 had unfortunately been completed without any
 24 note or any attention having been paid to the
 25 pathology group. And so it was sort of quite

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1 challenging then for the department to move
 2 forward in that, sort of, in that timeframe.
 3 COFFEY, Q.C.:
 4 Q. You mean move forward internally within
 5 government?
 6 DR. BRADBURY:
 7 A. Yes.
 8 COFFEY, Q.C.:
 9 Q. Okay, go ahead.
 10 DR. BRADBURY:
 11 A. So, following that our deputy minister made, I
 12 believe it was two overtures to treasury board
 13 to try and get, to begin to start to address
 14 the issue of pathology compensation. And the
 15 deputy minister at the time was sort of
 16 proposing that an external review be done and
 17 that the external review would consider things
 18 like workload, work effort as well as
 19 compensation. And then the review then would
 20 be submitted to treasury board for its
 21 consideration. After the second contact with
 22 treasury board around May or June, I believe,
 23 of 2006, the department received authority to
 24 move forward with the external review.
 25 So then the next challenge then was to

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1 find someone with the expertise particularly
 2 in the Canadian system to do the review. I
 3 think you can appreciate pathology as quite a
 4 specialized area. And so someone suggested a
 5 Dr. Raymond Maung, a practising pathologist in
 6 British Columbia who has had both sort of
 7 national and international publishing on
 8 workload work measurement tools for
 9 physicians.
 10 COFFEY, Q.C.:
 11 Q. Um-hm.
 12 DR. BRADBURY:
 13 A. And so I was tasked with, sort of, pursuing
 14 his interest in taking on the project which he
 15 agreed to. That brings us up to about
 16 September of 2006. And then over the fall,
 17 Dr. Maung did his review of pathology. He was
 18 supervised by a small working group consisting
 19 of myself, Dr. Nash Denic from Eastern Health
 20 and Mr. Steve Jerrett as a representative of
 21 the NLMA. And then as we sort of monitored
 22 and provided him with work and advice and some
 23 suggestions and background information, Dr.
 24 Maung then eventually submitted his report to
 25 the Department of Health mid January of '07.

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1 COFFEY, Q.C.:
 2 Q. And then what happened?
 3 DR. BRADBURY:
 4 A. When the working group received Dr. Maung's
 5 report, we felt that the report needed to be
 6 edited or reshaped somewhat. It was a very
 7 technical document and we didn't feel had
 8 placed quite enough emphasis on pathology
 9 compensation. And so I assumed the
 10 responsibility of summarizing as well as
 11 contextualizing Dr. Maung's report and I
 12 submitted that then to our deputy minister,
 13 once it had been signed off by the working
 14 group members.
 15 COFFEY, Q.C.:
 16 Q. So, in effect, did an executive summary?
 17 DR. BRADBURY:
 18 A. Yes.
 19 COFFEY, Q.C.:
 20 Q. From your perspective, concentrating on the
 21 remuneration issues.
 22 DR. BRADBURY:
 23 A. Yes, and as I said, with a little more sort of
 24 contextualizing sort of, you know, the current
 25 status of pathology recruitment and retention

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1 in the province.
 2 COFFEY, Q.C.:
 3 Q. And this then was submitted to whom?
 4 DR. BRADBURY:
 5 A. The deputy minister submitted the report then
 6 to treasury board. We're now up to, I believe
 7 the end of February. And then it was placed
 8 on treasury board agenda and then we received
 9 a positive response to the recommendations
 10 made in that report some time in May, I
 11 believe, '07.
 12 COFFEY, Q.C.:
 13 Q. When did your first hear that treasury board
 14 had approved of the application?
 15 DR. BRADBURY:
 16 A. The exact date?
 17 COFFEY, Q.C.:
 18 Q. Well, in the context--are you able to put it
 19 in context, this -
 20 DR. BRADBURY:
 21 A. May 17.
 22 COFFEY, Q.C.:
 23 Q. So, now in terms of then pathologist, just to
 24 conclude this aspect of the matter and try and
 25 finish it out, the report and we've seen Dr.

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1 Maung's report, the Commissioner has seen
 2 this, in effect, recommended that they be
 3 given the oncology stipend, the pathologists.
 4 DR. BRADBURY:
 5 A. I'm not sure that Dr. Maung's report actually
 6 recommended that. It talked about sort of
 7 compensation and that something needed to be
 8 done. I don't recall if he was actually
 9 specific in his recommendation. What we went
 10 forward with was -
 11 COFFEY, Q.C.:
 12 Q. I may be thinking of your executive summary.
 13 DR. BRADBURY:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. Okay. Certainly that did, your executive
 17 summary certainly recommended -
 18 DR. BRADBURY:
 19 A. Yes.
 20 COFFEY, Q.C.:
 21 Q. And do you recall at the time in May of 2007,
 22 did you get any feedback from the pathologist
 23 as to their views of the acceptance of the
 24 proposal? I mean, were they happy,
 25 discontented or what?

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1 DR. BRADBURY:
 2 A. I never received any specific feedback other
 3 than a thank you from Dr. Denic. It wasn't
 4 seen as the final attention being paid to
 5 pathology. I would view it more something to
 6 temporize the situation until we reach the end
 7 of the current contract.
 8 COFFEY, Q.C.:
 9 Q. And the current contract expires when?
 10 DR. BRADBURY:
 11 A. September 30, 2009.
 12 COFFEY, Q.C.:
 13 Q. So, that was May of '07.
 14 DR. BRADBURY:
 15 A. Yes.
 16 COFFEY, Q.C.:
 17 Q. Would have kind of, at least, patched matters
 18 up or make them okay for now, but you
 19 anticipated that it would come up again in '09
 20 in negotiations?
 21 DR. BRADBURY:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. What then has happened since then, from your
 25 perspective?

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1 DR. BRADBURY:
 2 A. From a negotiations point of view?
 3 COFFEY, Q.C.:
 4 Q. Yes.
 5 DR. BRADBURY:
 6 A. Okay. There's obviously been a lot of media
 7 attention and sort of, public awareness made
 8 about the status of pathology recruitment and
 9 retention in the province. And as a result of
 10 further loss of pathologists, the government
 11 sort of took the unusual action of stepping in
 12 to address the situation while a provincial
 13 contract is in place.
 14 COFFEY, Q.C.:
 15 Q. And that, I take it, relates to the
 16 announcement in May of 2008?
 17 DR. BRADBURY:
 18 A. Yes.
 19 COFFEY, Q.C.:
 20 Q. That pathologists are going to have available
 21 a different remuneration plan than the one
 22 that existed last year. What has the new one
 23 proposed or in place?
 24 DR. BRADBURY:
 25 A. For pathologists, we essentially took their

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1 existing salaried specialist scale and
 2 adjusted it upward, as well as put everybody,
 3 both the incumbents as well as any new hires
 4 would be at the top of the scale for the
 5 salary scale, the retention bonus and the
 6 oncology stipend.
 7 COFFEY, Q.C.:
 8 Q. And so the oncology stipend has stayed the
 9 same, I take it, in terms of the actual amount
 10 of money?
 11 DR. BRADBURY:
 12 A. Yes.
 13 COFFEY, Q.C.:
 14 Q. The retention bonus has changed, the figures?
 15 I'm just suggesting, I don't know, I'm asking
 16 -
 17 DR. BRADBURY:
 18 A. No, they have remained the same?
 19 COFFEY, Q.C.:
 20 Q. Okay, the actual amounts under the retention
 21 bonus, whatever the figures are, have remained
 22 the same. The thing that has primarily
 23 changed is the actual specialist salary?
 24 DR. BRADBURY:
 25 A. Yes, the salary scale.

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1 COFFEY, Q.C.:

2 Q. For pathologists. So, this is kind of a new

3 category for pathologists within the

4 specialists group.

5 DR. BRADBURY:

6 A. Yes.

7 COFFEY, Q.C.:

8 Q. And it's increased accordingly.

9 THE COMMISSIONER:

10 Q. Wait now, is it a new separate payment for a

11 pathologist or is every pathologist deemed to

12 go to the top of the line?

13 DR. BRADBURY:

14 A. There's a new salary scale for pathologists.

15 THE COMMISSIONER:

16 Q. As opposed to all other specialists.

17 DR. BRADBURY:

18 A. Yes.

19 THE COMMISSIONER:

20 Q. Okay.

21 DR. BRADBURY:

22 A. It is a five-step scale, but at the present

23 time and going into the future, until such

24 time as the policy is changed, all incumbents

25 as well as new hires would be at the top of -

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1 COFFEY, Q.C.:

2 Q. Step five.

3 DR. BRADBURY:

4 A. Yes, at the top of the scales.

5 COFFEY, Q.C.:

6 Q. And that's for the staff--for the pathologists

7 salary, the new pathologist salary scale, as

8 well as--or whatever the scale for the

9 retention bonus is. I take it that's a step

10 sort of thing too.

11 DR. BRADBURY:

12 A. Yes.

13 COFFEY, Q.C.:

14 Q. You'd be at the top of the retention bonus

15 scale?

16 DR. BRADBURY:

17 A. Yes.

18 COFFEY, Q.C.:

19 Q. And the oncology stipend, are there steps in

20 that or is that just a flat amount?

21 DR. BRADBURY:

22 A. It's a five-step scale that -

23 COFFEY, Q.C.:

24 Q. Five-step scale.

25 DR. BRADBURY:

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1 A. - mimics the salary scale.

2 COFFEY, Q.C.:

3 Q. Okay. And I take it they'd all go to the top

4 of that, too?

5 DR. BRADBURY:

6 A. Yes.

7 COFFEY, Q.C.:

8 Q. And that's effective?

9 DR. BRADBURY:

10 A. May 1st, 2008.

11 COMMISSIONER:

12 Q. And when does the retention bonus enter into

13 this?

14 COFFEY, Q.C.:

15 Q. Yes, now that was--thank you, Commissioner.

16 That kind of snuck in there. Could you tell

17 us -

18 COMMISSIONER:

19 Q. At what stage did a retention bonus enter into

20 the scheme of things?

21 DR. BRADBURY:

22 A. All salaried physicians are eligible for a

23 retention bonus. Like, there's a geographic

24 element to it as well as a three-step scale to

25 it. And retention bonuses have been in place

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1 for general practice going back into the '90s

2 and for specialists I believe in maybe the

3 late '90s.

4 COFFEY, Q.C.:

5 Q. Okay.

6 DR. BRADBURY:

7 A. So all salaried physicians receive retention

8 bonuses.

9 COFFEY, Q.C.:

10 Q. And it varies with the geography?

11 DR. BRADBURY:

12 A. Yes.

13 COFFEY, Q.C.:

14 Q. And that's stipulated in the agreement. And

15 it--and there's a step aspect to it?

16 DR. BRADBURY:

17 A. Yes.

18 COFFEY, Q.C.:

19 Q. Depending upon how long you've been retained,

20 as it were?

21 DR. BRADBURY:

22 A. Yes.

23 COMMISSIONER:

24 Q. Does it vary with what the nature of your

25 work, as well?

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1 DR. BRADBURY:
 2 A. There's a retention bonus for salaried
 3 specialists and then there's a separate
 4 retention bonus for general practitioners. So
 5 all specialists would receive the same
 6 retention bonus.
 7 COMMISSIONER:
 8 Q. Okay.
 9 COFFEY, Q.C.:
 10 Q. Now, if I could, Registrar, Exhibit P-1074?
 11 Dr. Bradbury, this is a, it's labelled as "VPs
 12 of Medical Services, Minutes of Meeting.
 13 Approved by VPs of Medical Services on
 14 December 22nd, 2005," but it's for date,
 15 Thursday, September 29th, 2005. The place is
 16 the Belvedere site. And in attendance there's
 17 Larry Alteen, Ken Jenkins, Ed Hunt and they're
 18 all Doctor Alteen, Jenkins and Hunt, Dr.
 19 Williams, yourself, Dr. Michael Jong, do I
 20 have that right?
 21 DR. BRADBURY:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. And Scarlet Hann and John Peddle, and Sheila
 25 Tucker was part of the meeting and Regina

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1 Coady is part of the meeting. So what is--and
 2 the top left-hand side is on Newfoundland and
 3 Labrador Health Board's Association
 4 letterhead. Could you tell the Commissioner,
 5 please, what this is about, this meeting of
 6 VPs of medical services and what your
 7 involvement is?
 8 DR. BRADBURY:
 9 A. The four regional health authorities have a VP
 10 of medicine designate, at least one. And the
 11 VPs of medicine get together on a regular
 12 basis to discuss sort of issues of common
 13 interest. It's also a vehicle for them to
 14 sort of formalize the contact with the
 15 Department of Health through either both my
 16 presence or Dr. Ed Hunt's presence. And the
 17 NLHBA is the secretariat for those meetings.
 18 COFFEY, Q.C.:
 19 Q. Now, just again to just help put some of this
 20 in context for the Commissioner, if we could
 21 go to, please, Exhibit P-1677? I'll return to
 22 that one in a moment. But this is again, I
 23 take it, similar sorts of minutes of meeting
 24 except this is for a meeting of April 14th,
 25 2005. Here, let me see, Dr. Blackie, Doctors

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1 Alteen, Blackie, Williams, Dankwa, Hunt,
 2 Rourke are there, Jenkins, Gardiner, Baker,
 3 Jong via telephone, Fleming and Bradbury and
 4 all the individuals I've just named are
 5 physicians. Scarlet Hann is?
 6 DR. BRADBURY:
 7 A. She's the office of provincial recruitment.
 8 COFFEY, Q.C.:
 9 Q. Provincial recruitment for what?
 10 DR. BRADBURY:
 11 A. For physicians.
 12 COFFEY, Q.C.:
 13 Q. Physicians, okay. And where is that located?
 14 DR. BRADBURY:
 15 A. Her office?
 16 COFFEY, Q.C.:
 17 Q. Yes.
 18 DR. BRADBURY:
 19 A. It's in the medical school.
 20 COFFEY, Q.C.:
 21 Q. And it's part of the medical school?
 22 DR. BRADBURY:
 23 A. No, it's an office that's funded by the
 24 Department of Health.
 25 COFFEY, Q.C.:

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1 Q. So it's funded by the Department of Health and
 2 she works for the Department of Health but
 3 she's located over in the medical school?
 4 DR. BRADBURY:
 5 A. She really has sort of a cross responsibility
 6 between the Department of Health and the NLHBA
 7 but her office is located over in the medical
 8 school.
 9 COFFEY, Q.C.:
 10 Q. Your office is where?
 11 DR. BRADBURY:
 12 A. In the Belvedere building.
 13 COFFEY, Q.C.:
 14 Q. That would be yourself and Dr. Hunt's?
 15 DR. BRADBURY:
 16 A. Yes.
 17 COFFEY, Q.C.:
 18 Q. When he was working there. Jennie House is
 19 whom?
 20 DR. BRADBURY:
 21 A. Jennie House is an employee of the NLHBA.
 22 COFFEY, Q.C.:
 23 Q. Now just looking at this, bearing in mind the
 24 date, April 14th, 2005, I'm going to go to
 25 page 5 of the minutes, which is page 4 of the

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1 exhibit. A lot of this is redacted. Under
 2 paragraph 16 "Other Business", there's a
 3 discussion there or minutes reflect a
 4 discussion about recruitment issues and
 5 possible approaches for recruiting different
 6 types of physicians. Would you agree that
 7 that's so?
 8 DR. BRADBURY:
 9 A. Yes.
 10 COFFEY, Q.C.:
 11 Q. And in particular under that paragraph number
 12 some of this certainly relates to recruiting
 13 pathologists, particularly the paragraph down
 14 below there referring to "Discussion returned
 15 to the pathology issue and the retirement
 16 numbers in the document were reviewed. Bob
 17 Williams stressed that this requires serious
 18 discussion since a very high level of
 19 retirement is predicted, around ten percent."
 20 So back in April of '05 at the VP medicals
 21 level this was at least part of the agenda in
 22 the meetings?
 23 DR. BRADBURY:
 24 A. Well, this would have been, as I had
 25 referenced earlier, in the PSLC had referred

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1 sort of the association's presentation to the
 2 VPs and no doubt this would be some of the
 3 commentary arising from their review of that
 4 presentation.
 5 COFFEY, Q.C.:
 6 Q. And here in the last paragraph on page 4 of
 7 the exhibit, page 5 of the document, there's a
 8 reference to Dr. Hunt talking about a certain
 9 possible approach to alternate funding package
 10 for academic health centres. And then it
 11 reads, "Jim Rourke." And what type of a
 12 doctor is Dr. Rourke?
 13 DR. BRADBURY:
 14 A. Jim Rourke is a family doctor, but he's the
 15 dean of medicine at Memorial.
 16 COFFEY, Q.C.:
 17 Q. Okay. Because he "reported that the second
 18 iteration of the CARMS match was exceptionally
 19 good and he is currently reviewing all the
 20 data to get the full picture. He says that
 21 the province needs a more competitive salary
 22 for pathologists saying that the increase in
 23 salary had already made a difference for
 24 family medicine. Bob Williams stated that
 25 they had six or seven applications for the two

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1 pathology positions. Physicians applying were
 2 comfortable the diversity of the job available
 3 and the equipment available, but were put off
 4 by the compensation package. Only one remains
 5 interested and the Health Care Corporation of
 6 St. John's is trying to get a job for his
 7 spouse in the IT sector." So, Doctor, I take
 8 it then that by early '05 was there any real
 9 disagreement within the Department of Health
 10 itself with the view that the pathologists had
 11 to be paid more?
 12 DR. BRADBURY:
 13 A. No.
 14 COFFEY, Q.C.:
 15 Q. And just while I'm on it because it's
 16 referenced here, the idea of possibly trying
 17 to obtain a job for the spouse of a potential
 18 applicant, pathologist applicant, that sort
 19 of, I'll refer to it as a creative approach to
 20 facilitating or enticing somebody to come to
 21 work as a pathologist, is that the sort of
 22 activity that sometimes has to be utilized?
 23 DR. BRADBURY:
 24 A. Well, certainly it's been recognized that as
 25 both a recruitment and a retention tool that

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1 you're not recruiting the physician, you're
 2 recruiting the physician's family. And if you
 3 can deal with whatever the needs of the family
 4 are, then you're much more likely to retain
 5 that person that you've recruited.
 6 COFFEY, Q.C.:
 7 Q. Thank you.
 8 COMMISSIONER:
 9 Q. Mr. Coffey, whenever you can find a convenient
 10 spot, we'll take the afternoon break.
 11 COFFEY, Q.C.:
 12 Q. Thank you, Commissioner. Perhaps we'll take
 13 it now then, Commissioner.
 14 COMMISSIONER:
 15 Q. All right, we'll take a few moments break.
 16 (RECESS)
 17 COMMISSIONER:
 18 Q. Please be seated. Mr. Coffey.
 19 COFFEY, Q.C.:
 20 Q. Thank you, Commissioner. Registrar, Exhibit
 21 P-1074, please? This then, Dr. Bradbury, are
 22 the minutes of the September 29, 2005 meeting
 23 of VPs of medical services. Just looking at
 24 page 2 of the exhibit, paragraph 5 is "Quality
 25 Issues." Just to give the Commissioner some

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1 sense of the various topics that come up at
 2 such meetings, this reads--and this is
 3 meeting you did attend, we looked at that
 4 earlier, there you are, second column, right,
 5 and the one on the right. Under "Quality
 6 Issues" it says, "This issue flows directly
 7 from the comments made by Sheila Tucker on
 8 what CCOHTA is doing as well as other work
 9 that needs to be done. Ed Hunt said that the
 10 feeling from the department is that the
 11 quality issues are provincial issues and not
 12 just for the department. A number of options
 13 were discussed for addressing quality issues
 14 such as the Provincial Quality Council or a
 15 quality council in each health authority or a
 16 quality council in the tertiary care centre.
 17 After a quick review around the table it was
 18 realized that each of the authorities has a
 19 different person responsible for quality
 20 issues. In some cases it is the VP of medical
 21 services and in other cases it is not. The
 22 VPs of medical services were asked for their
 23 input and comments. It was commented that
 24 quality issues should be part of the training
 25 and education for all health professionals.

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1 Standards for referral and tests are needed
 2 rather than leaving decisions up to the
 3 persons ordering the tests and referrals. It
 4 was generally felt that we need a provincial
 5 approach and if at all possible we need to
 6 have ways to make it enforceable. I was
 7 suggested that the regional authorities
 8 legislation should have a section setting up
 9 standards for tests, procedures and referrals.
 10 Bob Williams gave a detailed example of some
 11 situations that are occurring in Eastern." And
 12 then there's discussion about a report
 13 involving, by Michael Doyle. And the
 14 discussion continues. And it concludes with
 15 the comment, "It was also suggested that CEOs
 16 need to discuss quality issues for all
 17 jurisdictions within the health system and not
 18 just the medical area." Now, Dr. Bradbury,
 19 these meetings of VPs medical services had
 20 been going on for how long at this point?
 21 This is September of '05.
 22 DR. BRADBURY:
 23 A. Well, the medical directors have a meeting on
 24 a regular basis going back for several years.
 25 The VP of medicine, that's sort of a term

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1 that's really come in place since the RHAS
 2 have down sized to the four.
 3 COFFEY, Q.C.:
 4 Q. But the predecessor, equivalent predecessors
 5 in the earlier organizations had meet for a
 6 long--for years?
 7 DR. BRADBURY:
 8 A. Yes. Yes, for years.
 9 COFFEY, Q.C.:
 10 Q. Do you know if this, I mean, I've just taken
 11 you through a discussion of what is labelled
 12 "Quality Issues" and such as the Provincial
 13 Quality Council, quality--or quality council
 14 in each authority and quality issues in
 15 general. Had that come up before in this sort
 16 of way?
 17 DR. BRADBURY:
 18 A. At the VP of medicine meeting?
 19 COFFEY, Q.C.:
 20 Q. Yes.
 21 DR. BRADBURY:
 22 A. Specifically under the title of "Quality" I'm
 23 not certain.
 24 COFFEY, Q.C.:
 25 Q. But this is a broad strokes--I gather that

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1 this what I've just taken you through is the
 2 topic came up and even people around the room
 3 had to be canvassed about who is actually
 4 responsible in their organizations for it?
 5 DR. BRADBURY:
 6 A. Yes.
 7 COFFEY, Q.C.:
 8 Q. So that--and it concludes with the comment
 9 that the CEOs need--the CEOs, I suppose the
 10 VPs bosses, "Need to discuss quality issues
 11 for all jurisdictions." So, was this the
 12 beginnings of kind of a province wide
 13 discussion or approach to quality?
 14 DR. BRADBURY:
 15 A. I don't know if you could use the term
 16 "beginning". It would certainly suggest that
 17 nothing had been done to that point. So I
 18 would disagree with the word "beginning".
 19 Whether this was the first time it had been on
 20 the agenda, the VP of Medicine meeting, as I
 21 said, I can't comment.
 22 COFFEY, Q.C.:
 23 Q. And why I raise it in the context, I use the
 24 word "beginning" and I do so advisedly, I'm
 25 not suggesting it was. That first paragraph

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1 quotes Dr. Hunt, who is your boss, the ADM for
 2 Medical Services for the Department, I take
 3 it, said that "the feeling from the Department
 4 is that the quality issues are provincial
 5 issues and not just for the Department." Do
 6 you recall what the distinction was between
 7 them being provincial issues and not just for
 8 the Department?
 9 DR. BRADBURY:
 10 A. Ed has strong views about the value of, you
 11 know, such things as quality council and it
 12 was certainly an issue that he kept sort of
 13 active and in most people's viewpoint. He was
 14 also heavily involved in this organization
 15 called CCOHTA, which is now CADTH, and so this
 16 was a--so the emphasis on sort of evidence-
 17 based medicine and quality assurance and
 18 things is certainly an area that Ed has spent
 19 a lot of time and given a lot of attention to.
 20 COFFEY, Q.C.:
 21 Q. Now here, at that same meeting, in the same
 22 minutes, we go to page four of the exhibit,
 23 page six of the actual document. There's a
 24 reference to the model medical staff bylaws,
 25 and I take it--we've heard a certain amount

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1 here at the Commission about that. I take it
 2 that's a work in progress even now?
 3 DR. BRADBURY:
 4 A. Yes.
 5 COFFEY, Q.C.:
 6 Q. And I'll take you--but that would come up on
 7 occasion, I take it, at the VP Medicals
 8 meetings?
 9 DR. BRADBURY:
 10 A. It's pretty much a standing item.
 11 COFFEY, Q.C.:
 12 Q. Standing item, and take you then to page six
 13 of the exhibit, under the heading "pathology
 14 reports" and it reads "there was some
 15 discussion over the quality of pathology
 16 reports on breast cancer. Bob Williams went
 17 through a number of scenarios in which
 18 concerns were raised over the quality of the
 19 tests and the reports that were being
 20 received. He agreed to keep the VPs of
 21 Medical Services aware of what is happening."
 22 Do you recall what that was about?
 23 DR. BRADBURY:
 24 A. To the best of my knowledge, this was the
 25 first time where there had been sort of a

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1 formal discussion about, you know, the ER/PR
 2 issue and what was happening at Eastern
 3 Health. This was the first time that the
 4 issue had been sort of agendaed at this
 5 meeting.
 6 COFFEY, Q.C.:
 7 Q. How often do the VP Medicals meet?
 8 DR. BRADBURY:
 9 A. Anywhere from once a month to once every two
 10 months.
 11 COFFEY, Q.C.:
 12 Q. And what about in the summer time?
 13 DR. BRADBURY:
 14 A. Not typically in the summer time. We'll
 15 occasionally have a teleconference.
 16 COFFEY, Q.C.:
 17 Q. And now this would be September 29th meeting,
 18 so this may have been the first meeting after
 19 the summer, as it were, actual physical get
 20 together. Is that possible, this is the first
 21 meeting for the fall?
 22 DR. BRADBURY:
 23 A. It's possible.
 24 COFFEY, Q.C.:
 25 Q. Now had you known about the ER/PR issue before

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1 that?
 2 DR. BRADBURY:
 3 A. I was aware that there were problems, yes.
 4 COFFEY, Q.C.:
 5 Q. How did you become aware of that? What were
 6 you told?
 7 DR. BRADBURY:
 8 A. My husband and I knew the index patient.
 9 COFFEY, Q.C.:
 10 Q. Okay.
 11 DR. BRADBURY:
 12 A. And my husband works with the husband of the
 13 index patient, and so he had been informed
 14 that her test result had changed and there was
 15 some concern that there may be others.
 16 COFFEY, Q.C.:
 17 Q. Okay. So that would go all the way back to
 18 the spring of '05. That's Peggy Deane? We've
 19 heard it is Peggy Deane, I take it is who
 20 you're talking about is the patient?
 21 DR. BRADBURY:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. And you would have heard about it almost in
 25 real time, as it was happening, in the sense

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1 of not long after perhaps she was first told
 2 about the change?
 3 DR. BRADBURY:
 4 A. I can't date it other than to say it was
 5 before September. My husband works at the
 6 Health Sciences and he would have been in
 7 contact with Peggy's husband on a regular
 8 basis, and it would have been, sort of, a part
 9 of a conversation he would have had with Bob.
 10 COFFEY, Q.C.:
 11 Q. So you didn't hear in your professional
 12 capacity? You heard because of your personal
 13 relationship from your husband and where he
 14 works.
 15 DR. BRADBURY:
 16 A. Yes.
 17 COFFEY, Q.C.:
 18 Q. In your professional capacity, when did you
 19 first hear of it?
 20 DR. BRADBURY:
 21 A. At this meeting would have been the first time
 22 that I would have heard sort of in my position
 23 with the Department.
 24 COFFEY, Q.C.:
 25 Q. Do you recall what Dr. Williams said on

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1 September 29th? There's one line here. Do
 2 you recall what it was?
 3 DR. BRADBURY:
 4 A. No, I don't.
 5 COFFEY, Q.C.:
 6 Q. Was he very expansive in his explanation of
 7 what was going on?
 8 DR. BRADBURY:
 9 A. He certainly spoke about it at several
 10 meetings, sort of updating people. To be
 11 quite frank, this could have been the meeting
 12 where he explained to all the VP of Medicine
 13 what ER/PR meant. So you know, there was that
 14 type of background dialogue. Other than to
 15 say that it was discussed on a regular basis,
 16 I really can't give you sort of the details of
 17 what was said and when.
 18 COFFEY, Q.C.:
 19 Q. So after it was first brought up by Dr.
 20 Williams at the VP Medicals meetings, the
 21 first meeting, whenever he brought it up, if
 22 this is the first one, then afterward, you're
 23 telling the Commissioner, you recall that it
 24 came up from time to time and he'd give a
 25 status report?

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1 DR. BRADBURY:
 2 A. Yes.
 3 COFFEY, Q.C.:
 4 Q. That would be a fair summary of it?
 5 DR. BRADBURY:
 6 A. Yes.
 7 COFFEY, Q.C.:
 8 Q. And here then, finally, paragraph 12,
 9 recommendations to the CEOs, and I take it
 10 this is recommendations from the VP Medicals?
 11 DR. BRADBURY:
 12 A. Yes.
 13 COFFEY, Q.C.:
 14 Q. "B. Quality issues to be discusses with the
 15 CEOs." So I take it that everybody was being
 16 sent off to speak to his or her respective CEO
 17 about the quality issues referred to earlier
 18 in the minutes?
 19 DR. BRADBURY:
 20 A. Well, the NLHBA is the secretariat for both
 21 the VP of Medicine group, as well as the CEOs,
 22 who have their own comparable group that
 23 meets, and so John would be the common link
 24 between the two. So if there's
 25 recommendations arising from either group, he

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1 would bring them forward to a subsequent
 2 meeting. So sometimes recommendations go from
 3 the VP of Medicine to the CEOs or from the
 4 CEOs to the VPs.
 5 COFFEY, Q.C.:
 6 Q. Exhibit P-1679, please. Doctor, these are the
 7 VP Medical Services minutes for a meeting of
 8 December 22nd, 2005. You're there again,
 9 right-hand column, second name. Page two of
 10 the exhibit contains paragraph 20 entitled
 11 "update on screen for breast cancer." It says
 12 "Bob Williams gave an update on some of the
 13 problems incurred with getting results back
 14 from Mount Sinai Hospital. It is hoped by the
 15 end of January most of the backlog will be
 16 eliminated. There was a question raised about
 17 what is happening in Nova Scotia, as it was
 18 understood that Nova Scotia has started to do
 19 some of their own testing. Bob noted that one
 20 of the key recommendations coming from the
 21 consultants is that there be a smaller group
 22 of pathologists actually reading the test
 23 results with regard to breast cancer."
 24 Doctor, do you recall being aware that there
 25 were consultants engaged here?

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1 DR. BRADBURY:
 2 A. Yes.
 3 COFFEY, Q.C.:
 4 Q. And do you--well, this notes that Dr. Williams
 5 was advising you, as a group, as to what one
 6 of the key recommendations was, which is that
 7 the group of pathologists reading the actual
 8 test results and providing them narrowed. Was
 9 that discussed within the Department then?
 10 Did you go back and report to the Department
 11 about what was being brought up at these
 12 meetings or distribute these minutes yourself
 13 within the Department?
 14 DR. BRADBURY:
 15 A. No.
 16 COFFEY, Q.C.:
 17 Q. And you didn't distribute the minutes nor go
 18 back and report?
 19 DR. BRADBURY:
 20 A. No.
 21 COFFEY, Q.C.:
 22 Q. Of course, your immediate boss was actually in
 23 attendance, Dr. Hunt, so he'd be there anyway?
 24 DR. BRADBURY:
 25 A. Yes.

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1 COFFEY, Q.C.:
 2 Q. If we could, please, Exhibit P-1067? Here,
 3 these are the minutes of the same--minutes of
 4 meeting of the same group, VPs Medical
 5 Services, February 2nd, 2006. You are not in
 6 attendance or at least not noted to be there
 7 at the time, but the minutes would have been
 8 distributed to you afterward?
 9 DR. BRADBURY:
 10 A. Yes.
 11 COFFEY, Q.C.:
 12 Q. There in paragraph F on page two of the
 13 exhibit is the perennial medical service
 14 bylaws reference, and then paragraph G, ER and
 15 PR receptors. It states "Bob Williams
 16 provided an update on reports being returned
 17 from Mount Sinai Hospital. Larry advised
 18 there has been no follow up with any of the
 19 patients in the Central area," that would be
 20 Larry Alteen, I take it?
 21 DR. BRADBURY:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. And then "Bob Williams advised that by April
 25 2006, they hope to start testing patients in

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1 Eastern Health rather than continue to send
 2 tests to Mount Sinai Hospital. The difference
 3 will be that the report will include an
 4 interpretation of the slide. It is expected
 5 two or three pathologists will do all the work
 6 associated with breast cancer. There is some
 7 discussion on the type of correspondence that
 8 should go to families of patients who are
 9 deceased. It was agreed that we need to have
 10 a standard letter so that the same information
 11 would go to all families."
 12 Now this is February--yes, this is
 13 February 2006 and the minutes were approved
 14 March 13th, 2006, and we will be--I'll be
 15 taking you in a moment to the minutes of the
 16 March 13th 2006 meeting, and you were in
 17 attendance at that one, okay, and I appreciate
 18 you weren't there on February 2nd, 2006, but
 19 the idea that "there was discussion on the
 20 type of correspondence that should go to
 21 families of patients who are deceased," that
 22 that is in relation to the ER/PR matter, do
 23 you recall that being discussed at any point
 24 in time?
 25 DR. BRADBURY:

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1 A. No.
 2 COFFEY, Q.C.:
 3 Q. So you weren't at this particular meeting, and
 4 if it was discussed there, of course, you
 5 weren't in attendance. These minutes would
 6 have been reviewed at the next meeting, so you
 7 would have read them at the time, presumably?
 8 DR. BRADBURY:
 9 A. I would have read them.
 10 COFFEY, Q.C.:
 11 Q. Do you recall any discussion at all then, at
 12 any point, with anybody, about the idea of
 13 sending correspondence to the families of
 14 patients who are deceased?
 15 DR. BRADBURY:
 16 A. The only way would be if it was documented in
 17 the subsequent minutes.
 18 COFFEY, Q.C.:
 19 Q. And I appreciate that and I'll take you--I'll
 20 be going through some of those in a moment,
 21 but I say not only--I'm talking here not only
 22 about discussion at these meetings, but
 23 discussion anywhere, within the Department,
 24 for example?
 25 DR. BRADBURY:

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1 A. Not that I participated in.
 2 COFFEY, Q.C.:
 3 Q. If we could, please, Exhibit P-1068? Now
 4 this, again, are the minutes of that group of
 5 VPs of Medical Services for March 13th, 2006.
 6 Again, your name is there as present this
 7 time, and on page two of the exhibit,
 8 paragraph 11, and we have a passing reference
 9 again to medical staff bylaws, and Mr.--it's
 10 actioned Mr. Peddle is being tasked with doing
 11 something in relation to it. I'm not going to
 12 take you through the details of it now, but on
 13 page five of the exhibit, there is here a
 14 Medical Directors meeting, document dated
 15 March 15th, 2006, and the minutes we just
 16 looked at were Monday, March 13th, and now
 17 this again apparently is the medical directors
 18 meeting appended to this. So if you look at
 19 the top heading here, minutes March 13th and
 20 15th, 2006. So again, there must have been
 21 some kind of a medical directors meeting. Do
 22 you recall if you were in attendance at that?
 23 Paragraph six does refer to you by name having
 24 distributed -
 25 DR. BRADBURY:

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1 A. I don't recall whether I would have been at
 2 this meeting or not, unfortunately.
 3 COFFEY, Q.C.:
 4 Q. Now here in the document itself, because these
 5 minutes again would be subsequently approved?
 6 DR. BRADBURY:
 7 A. Right.
 8 COFFEY, Q.C.:
 9 Q. So you would have read them at some point?
 10 DR. BRADBURY:
 11 A. Yes.
 12 COFFEY, Q.C.:
 13 Q. Here it opens with Doctor--paragraph one, "Dr.
 14 Hunt gave an overview of some ideas around
 15 needs based funding for physicians as part of
 16 the new primary health care models and it's
 17 going to be refined over the next month or so
 18 and sent out for feedback. Pathology, Dr.
 19 Hunt gave overview of issues which include
 20 numbers of pathologists being down, few MUN
 21 graduates interested in pathology training.
 22 Last time workload looked at was 15 years ago
 23 by Dr. McKay and the Department of Health and
 24 Community Services has written Treasury Board
 25 requesting additional funding for pathology

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1 retroactive to April 1, 2006, but that will
 2 need a workload measurement tool before any
 3 dollars are allocated to ensure we actually
 4 get productivity for additional payment." And
 5 I take it that this--the problem with
 6 pathologist remuneration was being surfacing
 7 from time to time with this group?
 8 DR. BRADBURY:
 9 A. Well this would have been around the time that
 10 the Deputy Minister was writing to Treasury
 11 Board seeking authority to get the external
 12 consultant to do the workload, work
 13 measurement, compensation review.
 14 COFFEY, Q.C.:
 15 Q. So then that would have occasioned it being
 16 discussed within this group?
 17 DR. BRADBURY:
 18 A. We would have updated them as to say what the
 19 status of the request was, had it gone to
 20 Treasury Board, had we heard back from
 21 Treasury Board, et cetera.
 22 COFFEY, Q.C.:
 23 Q. Now here in paragraph four, it says,
 24 "Physician overhead payments outside MOA"--
 25 which is Memorandum of Agreement, MOA, do I

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1 have that right?
 2 DR. BRADBURY:
 3 A. Yes, Memorandum of Agreement.
 4 COFFEY, Q.C.:
 5 Q. "Agree that each medical director will put
 6 together a list of benefits paid outside the
 7 MOA for their region and forward to Larry for
 8 distribution so that it can be discussed at
 9 our next meeting, April 10th, 2006." Do you
 10 recall what that was about? What's the idea
 11 of overhead payments outside of MOA, what are
 12 we talking about there?
 13 DR. BRADBURY:
 14 A. It's recognized that physicians receive
 15 funding and payments in excess of what's
 16 agreed to at the Provincial level and they're
 17 typically funded by the regional health
 18 authorities and whether that's housing, you
 19 know, car allowance, travel, you know, living
 20 subsidies and so this was, it looks like an
 21 attempt to at least start to gather to put
 22 that information together as to what was being
 23 paid. It would certainly vary from board to
 24 board.
 25 COFFEY, Q.C.:

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1 Q. If I could please, exhibit P-1069? This,
 2 again, these are minutes of a meeting April
 3 10th, 2006, the VPs of Medical Services. You
 4 are noted to be in attendance. And it's noted
 5 here that Kara Laing, Christine Power, Jim
 6 Power and Terry Mouland present for part of
 7 meeting dealing with their issues and there's
 8 a heading here, "Presentation by Kara Laing,
 9 Christine Power re: cancer care, provincial
 10 standards." And then there's a description at
 11 some length about, apparently a presentation
 12 made by Dr. Laing to the group. Is that the -
 13 DR. BRADBURY:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. Do you recall why this was being made by Dr.
 17 Laing?
 18 DR. BRADBURY:
 19 A. This group sort of receives presentations from
 20 various groups, I mean, as you see there's
 21 another one there with Jim Brown and Terry
 22 Mouland with regards to some IT issues. So
 23 this group sort of commonly entertains
 24 presentations from various individuals for,
 25 you know, for medical services issues that

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1 have province-wide implications and so Kara
 2 would have presented in that context as to
 3 the, you know, the Provincial Cancer Care
 4 Program.
 5 COFFEY, Q.C.:
 6 Q. And we go and again, I'm not going to take you
 7 all the way through her presentation, but I
 8 gather this would be an attempt to summarize
 9 it.
 10 DR. BRADBURY:
 11 A. Yes.
 12 COFFEY, Q.C.:
 13 Q. And it concludes this part by saying, "The VP
 14 of Medical Services were asked to identify
 15 possible gaps in the Provincial Cancer Care
 16 Treatment Program as to how the support
 17 services are maintained, particularly if
 18 services are being provided in different parts
 19 of the province." And then the presenters
 20 were thanked, Dr. Laing and Ms. Power. So you
 21 say, I gather, that this group of VP Medicals
 22 from the various regions and their
 23 representatives from the department, yourself
 24 and Dr. Hunt, would receive presentations in a
 25 routine way from time to time?

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1 DR. BRADBURY:
 2 A. Yes.
 3 COFFEY, Q.C.:
 4 Q. If we could, please, exhibit P-0165? Now,
 5 this is a letter, the Commissioner has seen
 6 this before, it's dated April 18th, 2006, it's
 7 addressed to Dr. Banerjee and it's from Tom
 8 Osborne. Down at the bottom right-hand side,
 9 there's CB/MEM. Would the CB be you?
 10 DR. BRADBURY:
 11 A. Yes.
 12 COFFEY, Q.C.:
 13 Q. Okay, and I'm just going to take you to page
 14 two of the exhibit first, to put it in
 15 context. Page 2 is on Canadian Association of
 16 Pathologists letterhead, dated February 1,
 17 2006. It's a letter addressed to the
 18 Honourable John Ottenheimer, Minister of
 19 Health. There's a code out here stamped cc
 20 EH, which would be Ed Hunt?
 21 DR. BRADBURY:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. And this is a letter, again the Commissioner
 25 has seen this before, it's signed by Dr.

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1 Banerjee as president of the Canadian
 2 Association of Pathologists and it's
 3 addressed, it involves laboratory medicine
 4 specialists, pathologists in Newfoundland.
 5 And I take it you were involved in drafting
 6 the response that was sent out on April 18th,
 7 2006.
 8 DR. BRADBURY:
 9 A. Yes.
 10 COFFEY, Q.C.:
 11 Q. Could you tell the Commissioner what you
 12 recall about your involvement in this?
 13 DR. BRADBURY:
 14 A. The initial letter to the Minister of Health
 15 would have been forwarded to, it would have
 16 been identified as a medical issue, would have
 17 been forwarded to Ed Hunt and Ed would have
 18 given it to me to draft the initial response.
 19 Once a draft is done, it sort of goes back up
 20 through the administrative grid with a little
 21 yellow stickie on the front of the letter to
 22 identify, you know, the author and that it has
 23 been signed off by various people. I've
 24 actually gone back and looked at this letter
 25 or what was kept in my department or in my

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1 office from this letter and what that yellow
 2 stickie shows is that I signed it, Dr. Ed Hunt
 3 signed it, it went up to our Deputy Minister
 4 and it came back from the Deputy Minister with
 5 significant revisions. And then revisions
 6 were made and then it went back up for the
 7 Deputy Minister who approved it and then to
 8 the Minister for signature.

9 COFFEY, Q.C.:
 10 Q. And so the initial draft of the response was
 11 prepared by -

12 DR. BRADBURY:
 13 A. Myself.

14 COFFEY, Q.C.:
 15 Q. Yourself. Do you recall what the Deputy's
 16 revisions were?

17 DR. BRADBURY:
 18 A. No, I don't, the only comment I could really
 19 make is that they must have been significant
 20 because I actually wrote on the yellow stickie
 21 "revisions" and I wouldn't typically write
 22 that and so the fact that it was there, would
 23 certainly suggest that the letter had
 24 significant changes made to it.
 25 Unfortunately, we don't keep the original copy

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1 or the copy say that comes back with, you
 2 know, the cross out and you know, the
 3 handwritten notes.

4 COFFEY, Q.C.:
 5 Q. When we look at Dr. Banerjee's letter--well
 6 first of all, did you, other than he obviously
 7 has identified himself as the president of the
 8 Canadian Association of Pathologists and as
 9 director of Pathology and Laboratory Medicine
 10 at the British Columbia Cancer Agency. Did
 11 you know who Dr. Banerjee was, you know, in a
 12 wider sense?

13 DR. BRADBURY:
 14 A. You mean in the fact that he was one of the
 15 external consultants?

16 COFFEY, Q.C.:
 17 Q. Yes.

18 DR. BRADBURY:
 19 A. No.

20 COFFEY, Q.C.:
 21 Q. Now here, look at the actual text, I take it
 22 you would have had this letter that he sent,
 23 at least to begin the draft of your response.

24 DR. BRADBURY:
 25 A. Yes.

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1 COFFEY, Q.C.:
 2 Q. Would you have consulted with anybody about
 3 what you should say?

4 DR. BRADBURY:
 5 A. I sometimes do, depending on the nature of the
 6 letter. In this case I don't recall
 7 consulting with anyone.

8 COFFEY, Q.C.:
 9 Q. Now here in the second paragraph, Dr. Banerjee
 10 has written, he says "not addressing this"--
 11 the "this" I take it is the suggestion that
 12 pathologists in Newfoundland be paid more, "is
 13 false economy as patient care will be
 14 adversely affected by the lack of high quality
 15 pathologists in the province. You have
 16 already experienced a recent example of the
 17 effects of not investing in high quality
 18 pathology when the errors in breast cancer
 19 estrogen receptor status were discovered,
 20 affecting hundreds of patients in your
 21 province." And then he goes on to talk about
 22 Newfoundland having relied heavily
 23 historically on foreign trained pathologists
 24 who are unlikely to stay in the province.
 25 Now, the fact that he, in the letter to Mr.

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1 Ottenheimer, referred to the ER/PR problem,
 2 did that puzzle you at the time?

3 DR. BRADBURY:
 4 A. No.

5 COFFEY, Q.C.:
 6 Q. Did it catch your attention, first of all?

7 DR. BRADBURY:
 8 A. I think it's reasonable to say yes, it would
 9 have caught my attention. The--I mean the
 10 National Association of Pathologists is quite
 11 small and it's been quite evident and quite
 12 clear that the entire country, particularly in
 13 the pathology area are at least aware to a
 14 certain level of the ER/PR issue in this
 15 province.

16 COFFEY, Q.C.:
 17 Q. And if we can look then at page one of the
 18 exhibit, are you able to recognize any of the
 19 writing there, of the wording is yours?

20 DR. BRADBURY:
 21 A. The first sentence would be mine.

22 COFFEY, Q.C.:
 23 Q. So that's the acknowledgement of this
 24 correspondence, that's probably a safe one.

25 DR. BRADBURY:

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1 A. And the second one would again be sort of my
 2 knowledge, you know, the service coverage
 3 committee and the issue about physician
 4 compensation. The last paragraph, it wouldn't
 5 be the typical language that I would use on
 6 behalf of a Minister.
 7 COFFEY, Q.C.:
 8 Q. Mr. Osborne has told the Commissioner, in
 9 fact, it's fairly--coming from his
 10 perspective, I think, I don't think I'm
 11 mischaracterizing it by saying he agreed that
 12 it was perhaps confrontational in tone.
 13 DR. BRADBURY:
 14 A. Yeah.
 15 COFFEY, Q.C.:
 16 Q. And if you wrote something confrontational in
 17 tone for a minister and it was your idea to do
 18 it, do you think you would remember that?
 19 DR. BRADBURY:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. And this is, you don't recall then at least
 23 coming up with the idea of taking this
 24 approach?
 25 DR. BRADBURY:

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1 A. I don't, but -
 2 COFFEY, Q.C.:
 3 Q. You can't categorically rule it out, but you
 4 have no recollection -
 5 DR. BRADBURY:
 6 A. No, no. I was absolutely involved in the
 7 drafting of this letter.
 8 COFFEY, Q.C.:
 9 Q. Now it does say in the fourth line, it reads,
 10 "Once the possibility that patient slides may
 11 have been misinterpreted was recognized, the
 12 Department of Pathology was very proactive in
 13 scoping out the magnitude of the issue, as
 14 well as recommending a course of action to
 15 address the problem." The reference to "Once
 16 the possibility that patient slides may have
 17 been misinterpreted was recognized", what did
 18 you understand that to mean?
 19 DR. BRADBURY:
 20 A. I would assume he was, that this is in
 21 reference to the ER/PR, but I mean, I wouldn't
 22 have even used the term "patient slides" I
 23 might have used patient tests, but it's an odd
 24 way to describe it.
 25 COFFEY, Q.C.:

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1 Q. That's why I'm asking you in terms of -
 2 DR. BRADBURY:
 3 A. Yes, it wouldn't be typical language that I
 4 would expect to use.
 5 COFFEY, Q.C.:
 6 Q. And the usage of the word "misinterpreted" in
 7 the context, I mean, did you, at that point in
 8 time, in say April of '06, did you have any
 9 reason to believe that the patient slides had
 10 been misinterpreted?
 11 DR. BRADBURY:
 12 A. Well we had the discussions at the VP of
 13 Medicine going back to September 2005, so I
 14 was certainly aware that there was a problem.
 15 COFFEY, Q.C.:
 16 Q. Yes, but the nature of the problem?
 17 DR. BRADBURY:
 18 A. No.
 19 COFFEY, Q.C.:
 20 Q. The idea, for example, misinterpreting a
 21 slide, suggests something--some kind of an
 22 error in actually describing the reading of
 23 it.
 24 DR. BRADBURY:
 25 A. The reading of it, yes.

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1 COFFEY, Q.C.:
 2 Q. And did you have any reason to believe that
 3 that was so at the time?
 4 DR. BRADBURY:
 5 A. I would have had no knowledge of, you know,
 6 the variables, you know, the reasons why the
 7 patient results weren't accurate.
 8 COFFEY, Q.C.:
 9 Q. The lines above that in the third line, last
 10 paragraph, it says, "It's been recognized that
 11 the tests associated with this procedure are
 12 fraught with errors in reproduction, as well
 13 as changes in national standards." The idea
 14 that this procedure is fraught with errors in
 15 reproduction, was that something that you were
 16 aware of or a view that you held?
 17 DR. BRADBURY:
 18 A. That is certainly a sentence that I would have
 19 had backgrounder information or knowledge of
 20 to have written. The changes in national
 21 standard have to do with how back in 2000
 22 where they changed the scale as to what would
 23 now be reported, you know, as positive or
 24 negative, there was a significant change in
 25 2000. And I was aware of that.

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1 COFFEY, Q.C.:

2 Q. So how did you become aware of that?

3 DR. BRADBURY:

4 A. Hmm, what was the date of this letter?

5 COFFEY, Q.C.:

6 Q. Now this is April 18th, your response to April

7 18th, 2006--not your response, this response

8 is April 18th, 2006?

9 DR. BRADBURY:

10 A. You know, I may not have known that because

11 that may not have been apparent to me until we

12 had our, the teleconference in May.

13 COFFEY, Q.C.:

14 Q. Of '07.

15 DR. BRADBURY:

16 A. Yeah, of '07. I may not have known that back

17 then.

18 COFFEY, Q.C.:

19 Q. So if you didn't know it back then, I take it

20 you would hardly have written it?

21 DR. BRADBURY:

22 A. It makes it less likely.

23 COFFEY, Q.C.:

24 Q. Would you--well if you weren't aware of

25 something, are you the sort, would you draft

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1 something for the Minister to sign if you

2 weren't aware of it, just simply make it up?

3 DR. BRADBURY:

4 A. No.

5 COFFEY, Q.C.:

6 Q. If we could, please, exhibit P-1071? These

7 are again the minutes of the VP of Medical

8 Services group. This is the September 18th,

9 2006, you were in attendance there, you're

10 number three on the right-hand side. And

11 again, the Medical Staff bylaws are there and

12 page 2 of the exhibit, paragraph 7, the bottom

13 of the page, paragraph 9, "Review of

14 association services and recommendations on

15 services of CEO", I'll skip over that, but on

16 the fourth page of the exhibit, paragraph 14,

17 "Pathology Review. Cathi discussed the

18 workload measures for pathology. The

19 department has agreed to hire an external

20 consultant. It is hoped to have the work

21 completed by the end of December, 2006. The

22 report will then go to Treasury Board for

23 action." So this is again that periodic

24 report you described that is grouped to your

25 VPs. Doctor, at the time internally, I mean,

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1 hiring--looking for a) Dr. Maung, identifying

2 Dr. Maung and then getting his report and

3 doing, you know, the executive summary you

4 did, the workload study, as it were. The

5 group that was involved in that that you were

6 assisting, was it the view within the group,

7 do you think--and I'm going to suggest

8 something to you and if it wasn't, you tell me

9 it wasn't, that this was really a foregone

10 conclusion, it was just a matter of going

11 through the steps to reach the goal? In other

12 words, it was going to be a workload study

13 required but there was little doubt about how

14 the workload study was going to turn out

15 because it was understood that it would

16 support the pathologists?

17 DR. BRADBURY:

18 A. I don't think that was the view of everybody.

19 COFFEY, Q.C.:

20 Q. Okay. Do you recall, looking back on it, who

21 had to be convinced, as it were? I'm not

22 necessarily talking about names, so much as

23 positions.

24 DR. BRADBURY:

25 A. Right. There's often a lot of hearsay. I

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1 guess one of the challenges with the salaried

2 system is we don't have any workload

3 measurement, either tools or workload

4 documentation and over the years, you know,

5 these urban myths about physicians who, you

6 know, see a few number of patients or, you

7 know, perhaps don't pull their weight and you

8 know, whether this was applicable to the

9 practice of pathology or not, really remained

10 to be seen. The other thing with it being a

11 foregone conclusion really -

12 COFFEY, Q.C.:

13 Q. And I'll tell you why I phrased it that way,

14 just so you get some, perhaps, potential

15 comfort level, is that we have seen material

16 and I'm going to characterize it, without

17 exactly quoting from it, suggesting that at

18 least the pathologists involve saw this as

19 perhaps a foot dragging on the part of

20 Treasury Board or just another hurdle that

21 Treasury Board was putting in their way. So

22 it's in that context that I'm, you know, in

23 terms of foregone conclusion, that's why I use

24 that phrase.

25 DR. BRADBURY:

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1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. So you're saying that at the time the idea of
 4 actually requiring a workload study, you
 5 didn't feel was unreasonable?
 6 DR. BRADBURY:
 7 A. No. It was actually at the same time, Dr. Ed
 8 Hunt and the VPs of Medicine were doing, you
 9 know, were looking at sort of a provincial
 10 resource plan for physicians, and so having an
 11 understanding and sort of an evidenced based
 12 tool that would tell us the number of
 13 pathologists that we would need in the
 14 province would actually be quite helpful.
 15 COFFEY, Q.C.:
 16 Q. For that purpose, that side purpose alone, it
 17 would be as well.
 18 DR. BRADBURY:
 19 A. That would certainly be seen as a side benefit
 20 as the result of this exercise having been
 21 completed.
 22 COFFEY, Q.C.:
 23 Q. If we could please, exhibit P-1683? These are
 24 Eastern Health Laboratory Medicine Program
 25 minutes of November 7th, 2006. I appreciate

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1 you're not a member of that group, but on page
 2 of the exhibit, paragraph 5, I apologize,
 3 paragraph 6, "Pathologists Manpower". It
 4 says, "Dr. Denic is currently advertising for
 5 vacancies in pathology. The proposed workload
 6 study is in progress"--which is Dr. Maung's
 7 study. "Terry asked Dr. Howell to seek
 8 approval from Cathi Bradbury to extend our
 9 contract with Dynacare." I take it that in
 10 this context the Cathi Bradbury is yourself?
 11 DR. BRADBURY:
 12 A. Yes.
 13 COFFEY, Q.C.:
 14 Q. Could you tell the Commissioner, please, if
 15 you can recall in particular this Dynacare
 16 contract in generally what position Dynacare
 17 or their equivalent occupy?
 18 DR. BRADBURY:
 19 A. Okay, as I understand it, Dynacare is a
 20 private laboratory facility in Ottawa, Ontario
 21 and it was, I believe in February of 2006, I
 22 received either a phone call or an e-mail from
 23 Dr. Bob Williams which indicated because of
 24 resource issues in pathology, that Eastern
 25 Health was going to have to start sending

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1 specimens out of province and at that time I
 2 believe it was about 600 specimens per month
 3 and they intended then--he indicated to me
 4 that the specimens would be referred to
 5 Dynacare. So this really was a resource issue
 6 for them, and then I had some conversation
 7 with Dr. Williams then about who would pay for
 8 these services and so following the initial
 9 contact with Bob, with Dr. Williams, I brought
 10 the issue forward to the executive and then
 11 the executive sort of gave feedback as to the
 12 funding for these services.
 13 COFFEY, Q.C.:
 14 Q. And where did the funding come from?
 15 DR. BRADBURY:
 16 A. The direction given to Eastern Health was that
 17 the payment for these services would come out
 18 of their operational budget and that at some
 19 point in time if they needed an adjustment to
 20 their operational budget, you know, because of
 21 this additional expense, it would come forward
 22 sort of just part of the natural, you know,
 23 the natural budgeting process.
 24 COFFEY, Q.C.:
 25 Q. What, if anything, is your understanding

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1 about--I take it you understood that look,
 2 Eastern Health is saying we don't have enough
 3 pathologists to keep up with the workload.
 4 We'd like to use Dynacare. Would Eastern
 5 Health then have had the ability to use
 6 whatever money they weren't paying out in
 7 pathology salaries to fund Dynacare?
 8 DR. BRADBURY:
 9 A. No.
 10 COFFEY, Q.C.:
 11 Q. Okay, so the operational budget that they
 12 would have to pay Dynacare out of?
 13 DR. BRADBURY:
 14 A. Would be their own operational budget.
 15 COFFEY, Q.C.:
 16 Q. Okay. And not the salary for pathologists who
 17 are not--the empty pathology positions?
 18 DR. BRADBURY:
 19 A. Right.
 20 COFFEY, Q.C.:
 21 Q. They couldn't access that?
 22 DR. BRADBURY:
 23 A. Correct.
 24 COFFEY, Q.C.:
 25 Q. But if they wanted to, they said, look, go

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1 ahead, and if there are operating budget
 2 adjustments subsequently required, the
 3 department will deal with it?
 4 DR. BRADBURY:
 5 A. Would deal with it at that time.
 6 COFFEY, Q.C.:
 7 Q. Okay. Do you know what happened with respect
 8 to that?
 9 DR. BRADBURY:
 10 A. No, I don't. I mean, while I appreciate that
 11 sort of this, you know, document says seek
 12 approval from me, but the reality of it is, is
 13 it's not my position to say yea or nay to, you
 14 know, what Eastern Health did in this
 15 situation.
 16 COFFEY, Q.C.:
 17 Q. Okay. If we could, please, Exhibit P-1684?
 18 Now, these are minutes of a division of
 19 anatomic pathology meeting here in St. John's
 20 January 10th, 2007. On page 4 of the exhibit,
 21 paragraph 8, there's a reference to case
 22 referrals. And it says, Dr. N. Denic," Nash
 23 Denic, "asked who charges for referred in
 24 cases. The director of finance of western
 25 region health care asked Dr. Paul Neil,

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1 pathologist, Western Memorial why pathologists
 2 charge for referred in cases as this should be
 3 considered part of the workload in salary.
 4 This was also confirmed by Dr. Cathi Bradbury
 5 from MCP. Dr. Denic thinks that these cases
 6 would have to be performed after hours if
 7 charging for same. He will speak to the NLMA
 8 regarding this. For the present time
 9 discontinue with this practice until he
 10 consults with the vice president's office and
 11 the NLMA." I appreciate this is internal to
 12 Eastern Health, but that, at least the minutes
 13 are there. If we could look, please, at
 14 Exhibit P-1685? And these are minutes of a
 15 site chiefs' meeting and it would be of
 16 Eastern Health. I believe it's February 7th,
 17 I'm sorry, February 6th, 2007. And we look at
 18 page 3 of the exhibit -
 19 REGISTRAR:
 20 Q. (Inaudible).
 21 COFFEY, Q.C.:
 22 Q. Yes, it is, it's--and I'm fairly comfortable
 23 because we look at page 3, Commissioner, again
 24 it's--and page 2, in fact, the December is
 25 crossed out each time.

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1 COMMISSIONER:
 2 Q. They're all--yes.
 3 COFFEY, Q.C.:
 4 Q. February 6th is written in, 2007. Paragraph
 5 8, "Referred in cases. As per directive from
 6 Dr. Cathi Bradbury from MCP, these cases
 7 cannot be billed for by individual
 8 pathologists. This has increased frustration
 9 amongst pathologists and has had a negative
 10 effect on moral. Dr. Denic will address this
 11 issue at a later date." And it goes on to
 12 talk about development of a form. Do you
 13 recall what this was about, Doctor?
 14 DR. BRADBURY:
 15 A. Not this specific issue, but the--what I'll
 16 call the intra-provincial referral of
 17 laboratory tests or pathology tests has been
 18 an ongoing issue.
 19 COFFEY, Q.C.:
 20 Q. Now is that intra?
 21 DR. BRADBURY:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. Okay. We've seen -
 25 DR. BRADBURY:

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1 A. Sorry, intra -
 2 COFFEY, Q.C.:
 3 Q. No, no. Intra, within the province?
 4 DR. BRADBURY:
 5 A. Intra, within the province.
 6 COFFEY, Q.C.:
 7 Q. As an example, for example, if Corner Brook,
 8 Western Memorial, I'm sorry, Western Health
 9 sent a pathologist out there sent a case in to
 10 St. John's and asked a pathologist in St.
 11 John's to consult on it?
 12 DR. BRADBURY:
 13 A. Right.
 14 COFFEY, Q.C.:
 15 Q. For an opinion. I take it that's an intra?
 16 DR. BRADBURY:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. Provincial?
 20 DR. BRADBURY:
 21 A. Yes.
 22 COFFEY, Q.C.:
 23 Q. Consultation. Or conversely, St. John's out
 24 to Western Memorial, that could happen, as
 25 well, I take it, going the other direction?

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1 DR. BRADBURY:
 2 A. Potentially, but -
 3 COFFEY, Q.C.:
 4 Q. Most of them are in -
 5 DR. BRADBURY:
 6 A. I would assume most of it would come to St.
 7 John's.
 8 COFFEY, Q.C.:
 9 Q. St. John's, the tertiary care centre?
 10 DR. BRADBURY:
 11 A. Yeah.
 12 COFFEY, Q.C.:
 13 Q. And, I'm sorry, go ahead?
 14 DR. BRADBURY:
 15 A. So this has been an ongoing issue, I mean, it
 16 goes, I think the first piece of
 17 correspondence I recall just on this issue in
 18 general, I think, goes back to 1994 and -
 19 COFFEY, Q.C.:
 20 Q. So before your time?
 21 DR. BRADBURY:
 22 A. No, '93 was when I started with MCP.
 23 COFFEY, Q.C.:
 24 Q. I apologize.
 25 DR. BRADBURY:

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1 A. So there are, I think, sort of three issues
 2 that are sort of germane to this conversation.
 3 One would be if St. John's has been designated
 4 as a tertiary care referral centre, there will
 5 no doubt be specimens that will be and should
 6 be referred to St. John's for review by
 7 someone in a tertiary care facility. I mean,
 8 that's how the medical care system works, if
 9 you're in a primary or secondary care site,
 10 you're not comfortable or you're looking for
 11 additional expertise, you send it to the
 12 tertiary care site, so there's that natural
 13 pattern of sort of referral that you would
 14 expect to occur, okay. In addition to that
 15 back in the '90s the pathologists made, I
 16 believe it was the pathologists in St. John's
 17 approached MCP about the ability to bill for
 18 consultations during their work hours and that
 19 request went to the medical association and
 20 the medical association did not support
 21 pathologists being able to bill fee for
 22 service during work hours.
 23 COFFEY, Q.C.:
 24 Q. That's during regular work hours, I take it?
 25 DR. BRADBURY:

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1 A. During regular work hours, okay. And so that
 2 agenda item at the time didn't move forward
 3 because the minister of the day, not
 4 typically, say, would bring something forward,
 5 say, that wasn't recommended at that time by
 6 both parties, okay. There's also--so that was
 7 specifically to do with pathology. In 2002
 8 the issue of salaries physicians being able to
 9 bill fee for service and more particularly fee
 10 for service outside of the regular work hours
 11 was addressed or considered in the 2002
 12 arbitration award. And the model at the time
 13 that the medical association put forward was
 14 that salaried physicians would have hours of
 15 employment and then if they did work outside
 16 of their hours of employment, they would be
 17 able to bill fee for service for it. The
 18 arbitration board recognized that salaried
 19 physicians don't have hours of employment, you
 20 know, they're expected to do the work that's
 21 done, that this is a form of professional
 22 income and so they didn't accept the NLMAS
 23 proposed model. And so we're left with a
 24 situation of it was asked for, you know, the
 25 model of any salaried physician being able to

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1 bill fee for service after hours and not being
 2 accepted by the arbitration board. So that's
 3 generic to salaries physicians.
 4 COFFEY, Q.C.:
 5 Q. Um-hm.
 6 DR. BRADBURY:
 7 A. And therefore would have formed any response
 8 to a question that I was given about
 9 pathologists, you know, providing services
 10 after hours.
 11 COFFEY, Q.C.:
 12 Q. And in 2007, late 2006, early 2007, which is
 13 what the time period here in these two
 14 exhibits, do you recall who raised that with
 15 you?
 16 DR. BRADBURY:
 17 A. I don't recall having sort of specific
 18 conversation on it. I mean, certainly this
 19 would suggest that I had conversation with
 20 someone, but I don't, I don't recall who and
 21 when it would have been. But, as I said, the
 22 arbitration position of 2002 would have been
 23 the basis for my answer.
 24 COFFEY, Q.C.:
 25 Q. Now, in relation to that, I just want to be

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1 clear, the Commissioner is clear on this,
 2 there are--do you know how many pathologists
 3 there are, for example, in total at St.
 4 Clare's and the General Hospital, which is
 5 your tertiary care centre, do you recall, do
 6 you know how many off the top of your head?
 7 DR. BRADBURY:
 8 A. On any--you mean today?
 9 COFFEY, Q.C.:
 10 Q. Yes, today.
 11 DR. BRADBURY:
 12 A. There are 18 positions.
 13 COFFEY, Q.C.:
 14 Q. Okay.
 15 DR. BRADBURY:
 16 A. So there'll be less than that for FTE and I
 17 understand there's perhaps four vacancies,
 18 someone on leave and someone on maternity
 19 leave.
 20 COFFEY, Q.C.:
 21 Q. And now, assuming, just for the moment, that
 22 there are 18 positions there and there are 18
 23 actual pathologists working there in the sense
 24 of actually, you know, showing up, you know,
 25 for work each day. Can you tell the

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1 Commissioner, please, what's your
 2 understanding, then, as to what sorts of work
 3 they are supposed to perform in terms of, I
 4 take it if a sample comes down from the OR,
 5 then they are supposed to deal with that?
 6 That's their routine work? Would you agree
 7 that you understood that was so?
 8 DR. BRADBURY:
 9 A. Yes, yes.
 10 COFFEY, Q.C.:
 11 Q. And as a tertiary care centre, then, I take it
 12 if they get a call from Grand Falls, are asked
 13 to consult on it, are they obliged to consult?
 14 DR. BRADBURY:
 15 A. As a tertiary care centre, I would see that as
 16 one of their mandates, yes.
 17 COFFEY, Q.C.:
 18 Q. So assuming that the individual pathologist
 19 feels he or she has the individual expertise
 20 to actually provide the appropriate opinion,
 21 that no matter what their workload might be,
 22 that they have to provide the service to the
 23 pathologist in Corner Brook or Grand Falls?
 24 DR. BRADBURY:
 25 A. Ideally, yes.

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1 COFFEY, Q.C.:
 2 Q. Okay. Well, in a situation other than
 3 ideally, and, for example, it's a good example
 4 right now with the low numbers of physicians
 5 that are currently, you know, actually work.
 6 DR. BRADBURY:
 7 A. Right.
 8 COFFEY, Q.C.:
 9 Q. Today, for example. Is it your understanding
 10 that the pathologists, for example, of the
 11 General Hospital, Nash Denic, let's pick his
 12 name, that if he is asked by a pathologist in
 13 Corner Brook to do, to consult on something,
 14 that no matter what his workload, whatever
 15 else he's got on his plate, he has to do that
 16 today if it requires, if there's some urgency
 17 involved, he has to deal with it? Is that
 18 your -
 19 DR. BRADBURY:
 20 A. The alternate to that would be for the board
 21 who doesn't have the expertise or the
 22 resources to send it out of province.
 23 COFFEY, Q.C.:
 24 Q. Okay. And in terms of to deal with that
 25 particular matter, if he is to take it on and

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1 the only time he can do it, that particular
 2 consultation or three or four or 30 or 40 like
 3 it, okay, if that involves him coming back to
 4 work in the evenings and on the weekend as a
 5 salaried physician at the Health Sciences
 6 Centre he'd be expected to do so?
 7 DR. BRADBURY:
 8 A. Yes.
 9 COFFEY, Q.C.:
 10 Q. And he, under the former pay regime or even
 11 under the current pay regime, he would not get
 12 any more money for coming back in on a weekend
 13 to do that?
 14 DR. BRADBURY:
 15 A. Under the salaried system?
 16 COFFEY, Q.C.:
 17 Q. Yes.
 18 DR. BRADBURY:
 19 A. No.
 20 COFFEY, Q.C.:
 21 Q. Okay. And do you know a Dr. Khalifa?
 22 DR. BRADBURY:
 23 A. I recognize the name, but I can't take it
 24 beyond that, I'm afraid.
 25 COFFEY, Q.C.:

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1 Q. He is a pathologist in the late 1990s. And,
 2 Commissioner, I anticipate we'll hear more
 3 about Dr. Khalifa in due course. Do you know
 4 if in the late 1990s, do you recall anything
 5 about the idea of him being paid or requesting
 6 to be paid for consultation work intra-
 7 provincial consultation work ever came up?
 8 DR. BRADBURY:
 9 A. Not that I specifically recall.
 10 COFFEY, Q.C.:
 11 Q. Okay, don't recall, and so the situation, I
 12 take it, hasn't really, in that regard,
 13 changed, intra-provincial consultations even
 14 under the new salary regime?
 15 DR. BRADBURY:
 16 A. Under the new salaried regime, no. I have
 17 encouraged the pathology here to consider, you
 18 know, moving to an alternate payment plan that
 19 was workload based, and so, for example, if
 20 their workload was increased by external
 21 referrals, you know, from outside of their
 22 facilities, then under an alternate payment
 23 plan, it would indeed give them a mechanism to
 24 be financially recognized for the additional
 25 work.

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1 COFFEY, Q.C.:
 2 Q. If we could, please, Exhibit P-0430? So you -
 3 THE COMMISSIONER:
 4 Q. Mr. Coffey, sorry, but before we just leave
 5 this, it just seems to me that in this
 6 discussion there's a--the institution, if you
 7 look at this in terms of the institution
 8 employing certain persons, including
 9 pathologists, and what pathologists do is
 10 determined by the nature of the institution
 11 which you run, so if you're billing yourself
 12 as a tertiary care hospital or facility then
 13 don't you sign on to do not only the work that
 14 arises because of patients who are actually
 15 serviced in that place, but the work that
 16 comes from other places as well?
 17 DR. BRADBURY:
 18 A. Yes.
 19 THE COMMISSIONER:
 20 Q. Now I can see that perhaps there's a place at
 21 which the institution maybe has to say to
 22 other places, we can't accommodate you any
 23 more.
 24 DR. BRADBURY:
 25 A. Correct.

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1 THE COMMISSIONER:
 2 Q. Because we don't have enough bodies.
 3 DR. BRADBURY:
 4 A. Correct.
 5 THE COMMISSIONER:
 6 Q. But doesn't the institution itself have to
 7 step in and say how many tests can we
 8 accommodate, either internally or from other
 9 places, for that matter, because as I
 10 understand it, from time to time, Eastern
 11 Health itself has had to send tests outside to
 12 be completed by outside facilities like the
 13 DynaCare that you referred to.
 14 DR. BRADBURY:
 15 A. Right.
 16 THE COMMISSIONER:
 17 Q. Because they couldn't accommodate that with
 18 the staff that they had. So is it the
 19 institution's decision as to where you call a
 20 halt and say you got to look elsewhere?
 21 DR. BRADBURY:
 22 A. Yes, yes. Madam Cameron, just to clarify, to
 23 the best of my knowledge, I think Eastern
 24 Health continues to send out specimens to
 25 DynaCare and so, you know, to follow your

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1 train of thought, I mean, if an institution
 2 doesn't have enough resources to do its own
 3 work, then, you know, whether it should be
 4 accepting referrals from within the province
 5 does become an obvious question.
 6 THE COMMISSIONER:
 7 Q. Well, yes, but the other question, I suppose,
 8 is would they might be transcending out. Do
 9 they take referrals in and then send them on
 10 to some place like DynaCare?
 11 DR. BRADBURY:
 12 A. I'm not certain, Minister, excuse me, Madam
 13 Cameron.
 14 THE COMMISSIONER:
 15 Q. Not going there. But the other thing that
 16 occurs to me is that perhaps there's a--it's
 17 an organizational question, I suppose, but
 18 does the authority from Corner Brook, for
 19 example, pay Eastern Health for performing
 20 these tests within their laboratory and--
 21 because I do recall that there was some
 22 evidence prior to this about somebody wanting
 23 to make life easier by arranging, through
 24 Government, a compensation scheme where you
 25 would get compensated easily instead of having

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1 to do billings for particular tests being done
 2 at particular times and I guess they were
 3 complaining about the paperwork they had to
 4 do. So if Corner Brook pays Eastern Health
 5 for doing this kind of test, in the sense of
 6 Eastern Health sends back a report and a bill
 7 every quarter or whatever the payment would
 8 be, then presumably Corner Brook can say "gee,
 9 we'd rather contract with somebody else."
 10 DR. BRADBURY:
 11 A. I'm not aware of all of the details, Madam
 12 Cameron. There were certainly--over the
 13 years, I've heard at least of examples of
 14 invoices having been submitted between boards.
 15 What I can't tell you is whether those
 16 invoices were actually paid.
 17 THE COMMISSIONER:
 18 Q. Were actually paid, okay.
 19 COFFEY, Q.C.:
 20 Q. And there will be subsequent evidence -
 21 THE COMMISSIONER:
 22 Q. Further evidence on that? Oh, okay.
 23 COFFEY, Q.C.:
 24 Q. Oh yes. I gather, it'll be a--it's a topic of
 25 some interest to, I understand, some of the

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1 witnesses who will be appearing.
 2 THE COMMISSIONER:
 3 Q. Okay, thank you.
 4 COFFEY, Q.C.:
 5 Q. Exhibit P-1695, please. 1695. I'm just going
 6 to go here to page three of this. This is a
 7 letter of March 22nd, 2007. It's to Dr. Nash
 8 Denic, Clinical Chief, Lab Medicine Program,
 9 Eastern Health. It's from Dr. Carter,
 10 Beverley Carter, and she is writing to Dr.
 11 Denic saying "as clinical chief, do you feel
 12 you know"--she's requesting, in fact, a letter
 13 of recommendation from Dr. Nash because she
 14 proposes, as we see in the next paragraph, to
 15 apply for a position elsewhere. She says "as
 16 we have discussed, I love being back home in
 17 Newfoundland and am happy to work with my many
 18 pathology and clinical colleagues. However, I
 19 do have many difficulties with the current
 20 management structure for the laboratories. As
 21 well, I am not happy with the remuneration,
 22 especially Dr. Bradbury's recent unilateral
 23 decision to cancel all consultative fees for
 24 pathologists in Newfoundland and Labrador."
 25 Now, was this ever brought to your

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1 attention, Dr. Carter's views in this regard?
 2 DR. BRADBURY:
 3 A. No.
 4 COFFEY, Q.C.:
 5 Q. The subject matter she referred to there that
 6 your "recent unilateral decision to cancel all
 7 consultative fees for pathologists in
 8 Newfoundland and Labrador." Do you know
 9 anything about that?
 10 DR. BRADBURY:
 11 A. No.
 12 COFFEY, Q.C.:
 13 Q. Now with respect to this, if we could go back
 14 to page one of the exhibit, this is a letter
 15 of March 21, 2007. It's to John Abbott,
 16 Deputy Minister of the day. It's from Dr.
 17 Nash Denic. Enclosure is a letter from Dr. B.
 18 Carter and the job advertisement, and it's
 19 copied, that is Dr. Denic's letter is copied
 20 to Ross Wiseman, the Minister, and Dr. Oscar
 21 Howell, the Vice President of Medical Services
 22 at Eastern Health. So you see here he has
 23 sent along a copy of Dr. Carter's letter that
 24 I just referred you to and pointing out that
 25 he has concerns about her proposal to leave.

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1 If we could look at page five of the
 2 exhibit, which is a response, April 2nd, 2007,
 3 to Dr. Denic from John Abbott, the Deputy
 4 Minister, copied to Dr. Howell, and he
 5 responds acknowledging Dr. Denic's March 21,
 6 2007 letter. So this suggests that Dr.--I'm
 7 sorry, that Mr. Abbott responded to Dr. Denic
 8 acknowledging his letter about Dr. Carter and
 9 that presumably John Abbott had received that
 10 copy of Dr. Carter's letter. You were never
 11 asked about--by Mr. Abbott about--or Mr.
 12 Wiseman, for that matter, about this?
 13 DR. BRADBURY:
 14 A. No.
 15 COFFEY, Q.C.:
 16 Q. If we could, please, Exhibit P-0430? Now Dr.
 17 Bradbury, these are two e-mails. One from
 18 yourself on January 18th, 2007, 9:34 a.m. re:
 19 Dr. Ganguly. It's to John Abbott. And then
 20 the e-mail you're corresponding on is one from
 21 George Tilley to Tom Osborne, copied to Oscar
 22 Howell and John Abbott, January 17th, 5:32
 23 p.m., subject being Dr. Ganguly, and Mr.
 24 Tilley has written to the Minister and in
 25 fact, it's copied to Ed Hunt. Can you tell

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1 the Commissioner, please, and I'm not going to
 2 take you--if it's not necessary to, all the
 3 way through your very detailed e-mail here,
 4 but what was this about generally?
 5 DR. BRADBURY:
 6 A. As we had discussed earlier today, the medical
 7 and radiation oncologists had an alternate
 8 payment plan in place around September of 2004
 9 or certainly going back to 2004. Around
 10 August or September of 2005, I was contacted
 11 by Dr. Ganguly indicating that both groups
 12 wanted their APPs to be revisited and changes
 13 made, and we weren't able to deal with it
 14 immediately at the time. Again, it was all
 15 around that September/October 2005
 16 negotiations for the province on the go, and
 17 so it would have been sometime after that that
 18 we sat down with the NLMA and various people
 19 from the two groups and this is in follow up,
 20 I guess, a year later we're still talking to
 21 them.
 22 COFFEY, Q.C.:
 23 Q. Okay, and I take it, on behalf of the
 24 Department, who was tasked with dealing with
 25 this matter?

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1 DR. BRADBURY:
 2 A. Myself.
 3 COFFEY, Q.C.:
 4 Q. Okay, and did you have any warning or
 5 notification that Mr. Tilley was going to
 6 correspond directly with Mr. Osborne about
 7 this?
 8 DR. BRADBURY:
 9 A. No.
 10 COFFEY, Q.C.:
 11 Q. When you saw this, do you recall who forwarded
 12 this to you, the underlying e-mail, the one to
 13 Mr. Osborne? Would that perhaps be -
 14 DR. BRADBURY:
 15 A. I would imagine it was John Abbott.
 16 COFFEY, Q.C.:
 17 Q. And with a view, I take it, to you responding
 18 to it?
 19 DR. BRADBURY:
 20 A. Yes. He would have been looking, I would
 21 assume, for some background.
 22 COFFEY, Q.C.:
 23 Q. Now you conclude in your e-mail, now this is a
 24 long and detailed e-mail, you conclude by
 25 saying "bottom line, I continue to work with

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1 Oscar to find a 'reasonable' solution to their
 2 need for administrative support. You can
 3 assure the Minister that if and when this
 4 becomes a public issue, and if it creates
 5 political tension, that I am pre-emptively
 6 offering my resignation. The concept being
 7 that if I'm not part of the solution, then I
 8 must be part of the problem. I'll keep you
 9 posted. Cathi." How often in your career
 10 have you pre-emptively offered your
 11 resignation?
 12 DR. BRADBURY:
 13 A. I think about retiring a lot.
 14 COFFEY, Q.C.:
 15 Q. I appreciate that.
 16 THE COMMISSIONER:
 17 Q. Don't we all.
 18 COFFEY, Q.C.:
 19 Q. Some of us are eligible; some of us aren't,
 20 but -
 21 DR. BRADBURY:
 22 A. My response though would be relatively unique.
 23 COFFEY, Q.C.:
 24 Q. Yes. And at the time, why did you make sure a
 25 reference at the time?

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1 DR. BRADBURY:
 2 A. The negotiations of the APP for the medical
 3 and radiation oncology programs were
 4 extensive, frustrating and it must have been,
 5 I assume it must have been around the time
 6 when the Department of Health was on the front
 7 page of the newspaper over something that no
 8 doubt must have caused some embarrassment.
 9 COFFEY, Q.C.:
 10 Q. Because you do begin, I've recorded the last
 11 paragraph, but the first paragraph you do say,
 12 "John, I was somewhat surprised to see who the
 13 author of the e-mail was as well as who it was
 14 addressed to. I've been having active
 15 discussions with Oscar Howell on this issue
 16 for the last several weeks. I must apologize
 17 for not bringing the issue to your attention
 18 sooner" and you go on then to summarize and
 19 it's a very detailed summary. So, I take it
 20 that you were surprised that Mr. Tilley would
 21 interject himself into this in this way.
 22 DR. BRADBURY:
 23 A. Yes, up until this point in time, I mean,
 24 while it had taken an extensive period of
 25 time, I mean, we were sort of down to one or

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1 two of the last issues and we had managed to
 2 work our way successfully through, you know,
 3 quite a long list.
 4 COFFEY, Q.C.:
 5 Q. Now, with respect to this, was there--you
 6 received the copy of Mr. Tilley's e-mail, you
 7 responded, what then happened?
 8 DR. BRADBURY:
 9 A. Eventually negotiated an APP.
 10 COFFEY, Q.C.:
 11 Q. Okay. And so it did resolve itself in due
 12 course?
 13 DR. BRADBURY:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. Okay.
 17 DR. BRADBURY:
 18 A. Action arising from this e-mail itself, I
 19 didn't resign.
 20 COFFEY, Q.C.:
 21 Q. Yes, I gather.
 22 DR. BRADBURY:
 23 A. And I don't think that there was any sort of
 24 direct action.
 25 COFFEY, Q.C.:

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1 Q. Okay. After this, the negotiations process
 2 continued on and the e-mail, I take it, was
 3 just kind of passed off into history in the
 4 sense of you didn't take it up with anybody
 5 about the propriety or lack there of from your
 6 perspective of Mr. Tilley having gone directly
 7 to the minister.
 8 DR. BRADBURY:
 9 A. No.
 10 COFFEY, Q.C.:
 11 Q. Okay.
 12 THE COMMISSIONER:
 13 Q. Mr. Coffey -
 14 COFFEY, Q.C.:
 15 Q. Yes, we're at the end again. Commissioner,
 16 there is one other topic that I anticipate
 17 asking Dr. Bradbury about and she's already
 18 eluded to it, that's that conference call in
 19 May of 2007. Before we leave today I would
 20 ask, there are a couple of exhibits, three
 21 exhibits, I believe, ask that they be entered.
 22 In meantime then they'll be there available
 23 when she comes back.
 24 THE COMMISSIONER:
 25 Q. Okay.

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1 COFFEY, Q.C.:
 2 Q. They're P-1723, 1724 and 1725, they're
 3 handwritten notes.
 4 THE COMMISSIONER:
 5 Q. All right, entered
 6 EXHIBITS P-1723, 1724, 1725 ENTERED AND MARKED
 7 THE COMMISSIONER:
 8 Q. Have the other parties been given copies of
 9 these?
 10 COFFEY, Q.C.:
 11 Q. Yes, I think everybody has got them. They've
 12 seen them long ago.
 13 THE COMMISSIONER:
 14 Q. All right. Now, have you discussed the plans
 15 for the return of this witness because as I
 16 understand it, we have witnesses coming in
 17 from out of the province for next week.
 18 COFFEY, Q.C.:
 19 Q. Well, only in a sense that myself and Mr.
 20 Pritchard, at the beginning of the lunch break
 21 in passing, Mr. Pritchard and I acknowledge
 22 that Dr. Bradbury might not finish this
 23 afternoon and if she didn't, she'd have to
 24 come back at some time other than next week.
 25 THE COMMISSIONER:

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1 Q. All right.
 2 COFFEY, Q.C.:
 3 Q. You are aware, of course, Commissioner, as
 4 lawyers involved here are that next week we'll
 5 have a number of witnesses coming in from
 6 Ontario. So, we will arrange -
 7 THE COMMISSIONER:
 8 Q. So, leave it to you and Mr. Pritchard to
 9 arrange a time convenient to Dr. Bradbury,
 10 since we're putting her off, I regret having
 11 to do this, Dr. Bradbury, but these people are
 12 kind enough to come from Ontario for us.
 13 DR. BRADBURY:
 14 A. I understand.
 15 THE COMMISSIONER:
 16 Q. We'll adjourn then until 9:30 on Monday and
 17 I'm advised that there's the usual weekend
 18 gift of CDs available to you from
 19 administration offices before you go. Thank
 20 you.
 21 Upon conclusion at 4:46 p.m.

CERTIFICATE

1
2 I, Judy Moss, hereby certify that the foregoing is
3 a true and correct transcript in the matter of the
4 Commission of Inquiry on Hormone Receptor Testing,
5 heard on the 20th day of June, A.D., 2008 before
6 the Honourable Justice Margaret A. Cameron,
7 Commissioner, at the Commission of Inquiry, St.
8 John's, Newfoundland and Labrador and was
9 transcribed by me to the best of my ability by
10 means of a sound apparatus.
11 Dated at St. John's, Newfoundland and Labrador
12 this 20th day of June, A.D., 2008
13 Judy Moss

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