

COMMISSION OF INQUIRY
ON HORMONE RECEPTOR TESTING

BEFORE THE HONOURABLE JUSTICE CAMERON - COMMISSIONER

June 9, 2008

Appearances:

Bernard Coffey, Q.C. Commission Co-counsel
Sandra Chaytor, Q.C. Commission Co-counsel

Rolf Pritchard/Stephen Mills Her Majesty in Right of NL

Jane Hennebury Doctors Kara Laing et al

Daniel Simmons Eastern Regional Integrated
. Health Authority

Darlene Russell Members of the Breast Cancer
. Testing Class Action

Mark Pike NL Medical Association
Jennifer Newbury Canadian Cancer Society (NL Division)
Stacey O’Dea. Central, Western and Labrador-Grenfell
Regional Integrated Health Authorities

EXHIBIT LIST

EXHIBITS P-1520 THROUGH P-1527, INCLUSIVE Pg.

EXHIBITS P-1528 AND P-1529 Pg. 350

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Re-examination by Bernard Coffey, Q.C. Pgs. 368 - 386

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1 COMMISSIONER:
2 Q. Mr. Coffey. The next witness is Ms. Thomas.
3 MS. PENNELL:
4 A. Pennell, actually.
5 COFFEY, Q.C.:
6 Q. Pennell, okay.
7 MS. PENNELL:
8 A. You had a 50/50 chance.
9 COFFEY, Q.C.:
10 Q. I could never be certain. Deborah Thomas-
11 Pennell, Commissioner. Thank you.
12 MS. PENNELL (SWORN) EXAMINATION-IN-CHIEF BY BERNARD
13 COFFEY, Q.C.
14 REGISTRAR:
15 Q. Could you please state and spell your complete
16 name for the Commission?
17 MS. PENNELL:
18 A. Deborah Pennell, D-E-B-O-R-A-H, P-E-N-N-E-L-L.
19 REGISTRAR:
20 Q. Thank you.
21 COFFEY, Q.C.:
22 Q. Yes, Commission, if I could, please, certain
23 exhibits. Registrar, we have, Commissioner,
24 it’s Exhibits P-1520 through 1527, inclusive.
25 COMMISSIONER:

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1 Q. Entered.
 2 EXHIBITS P-1520 THROUGH P-1527, INCLUSIVE, ENTERED INTO
 3 EVIDENCE.
 4 COFFEY, Q.C.:
 5 Q. Thank you. Now, Ms. Pennell, could you tell
 6 the Commissioner, please, a bit about your
 7 educational and professional background?
 8 MS. PENNELL:
 9 A. Sure. Long version or the short one?
 10 COFFEY, Q.C.:
 11 Q. The short one.
 12 MS. PENNELL:
 13 A. Okay. I studied journalism at Southern
 14 Alberta Institute of Technology. I graduated
 15 in 1994. And I immediately began working
 16 right after graduation. Moved to Newfoundland
 17 and worked in the media for about 10 years,
 18 various media outlets, five years with CBC.
 19 And in 2003 I was successful in obtaining a
 20 communication specialist position with Health
 21 Care Corporation of St. John's. And in 2005
 22 reapplied for the Eastern Health position of
 23 media relations specialist and was successful
 24 with that in 2005. And in January, 2006 I
 25 became director of communications with the

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1 Department of Finance. I was moved to the
 2 Department of Justice in January, 2007. And
 3 in November of 2007 I was seconded to a policy
 4 position within the Department of Justice and
 5 I'm currently a senior policy and research
 6 consultant with the Department of Justice.
 7 COFFEY, Q.C.:
 8 Q. Ma'am, so you were communications specialist
 9 with the Health Care Corporation of St. John's
 10 beginning in when?
 11 MS. PENNELL:
 12 A. 2003, June, 2003.
 13 COFFEY, Q.C.:
 14 Q. Okay, June, '03. And when you reapplied for
 15 your job with Eastern Health, when was that?
 16 MS. PENNELL:
 17 A. I was--it would have been June, Julyish of
 18 2005. I was informed in August of 2005.
 19 COFFEY, Q.C.:
 20 Q. And your title there was?
 21 MS. PENNELL:
 22 A. Media relations specialist.
 23 COFFEY, Q.C.:
 24 Q. Okay.
 25 MS. PENNELL:

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1 A. Might have been media relations officer.
 2 COFFEY, Q.C.:
 3 Q. You say you worked with the Department of
 4 Health at one point?
 5 MS. PENNELL:
 6 A. I was seconded there for four months.
 7 COFFEY, Q.C.:
 8 Q. Do you recall when that was?
 9 MS. PENNELL:
 10 A. Yeah, that was January, it was January, 2005
 11 to April, 2005.
 12 COFFEY, Q.C.:
 13 Q. And seconded to the Department of?
 14 MS. PENNELL:
 15 A. Health and Community Services.
 16 COFFEY, Q.C.:
 17 Q. Seconded from where?
 18 MS. PENNELL:
 19 A. From Health Care Corporation at that point.
 20 COFFEY, Q.C.:
 21 Q. And what did that--what were you there, what
 22 was your job?
 23 MS. PENNELL:
 24 A. The communications specialist in the
 25 department took some educational leave and

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1 they needed someone to come up there and fill
 2 in for her, so I believe Ms. Chaplin spoke to
 3 Ms. Bonnell and asked if I would be
 4 interested.
 5 COFFEY, Q.C.:
 6 Q. So at that point you were working for,
 7 reporting to whom?
 8 MS. PENNELL:
 9 A. I was working for Susan Bonnell at that time.
 10 COFFEY, Q.C.:
 11 Q. When you were seconded to the Department of
 12 Health, I'm sorry?
 13 MS. PENNELL:
 14 A. Then I was working for Ms. Chaplin.
 15 COFFEY, Q.C.:
 16 Q. Chaplin, okay, Carolyn. And so then I take it
 17 in April of 2005 you returned to what was
 18 then, well, had just become Eastern Health?
 19 MS. PENNELL:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. Okay. Could you tell us, please, what a
 23 communications specialist with the Health Care
 24 Corporation of St. John's did during the time
 25 you occupied that position?

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1 MS. PENNELL:
 2 A. It was sort of a multi-faceted role. You
 3 know, I could do anything from some media
 4 relations, also newsletters, sort of campaign
 5 type things, you know, I have an idea
 6 campaigns, influenza campaigns, helping out
 7 departments with things they wanted to get
 8 their messages out. I had responsibility for
 9 updating the Health Care Corporation website,
 10 so I'd write the content for that. Or if
 11 there needed to be contact change, someone
 12 from one of the divisions would contact me and
 13 I would make those changes. And a whole bunch
 14 of different type of things. Sometimes we'd
 15 have contests, sometimes we had newsletters,
 16 they were on line, they were also printed, so
 17 I'd be responsible for that. There was a lot
 18 of different things that I did in that role.
 19 COFFEY, Q.C.:
 20 Q. And then when you--during that period, you
 21 reported to Ms. Bonnell?
 22 MS. PENNELL:
 23 A. Yes, I did.
 24 COFFEY, Q.C.:
 25 Q. And did anyone else work within the

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1 department, the Health Care?
 2 MS. PENNELL:
 3 A. Yes. We had an administrator and there was
 4 another half time person there.
 5 COFFEY, Q.C.:
 6 Q. You then, in early 2005, I take it, spent the
 7 period, the three to four months with the
 8 Department of Health?
 9 MS. PENNELL:
 10 A. Yes.
 11 COFFEY, Q.C.:
 12 Q. When you returned to the, what, I gather,
 13 legally had just then become the Eastern
 14 Health, you returned to what position,
 15 communications specialist, initially?
 16 MS. PENNELL:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. And who were you reporting to then?
 20 MS. PENNELL:
 21 A. Susan Bonnell.
 22 COFFEY, Q.C.:
 23 Q. And again, how many people worked in the
 24 department at that point?
 25 MS. PENNELL:

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1 A. The same.
 2 COFFEY, Q.C.:
 3 Q. Same. And your job function at that point?
 4 MS. PENNELL:
 5 A. Same thing, communication specialist.
 6 COFFEY, Q.C.:
 7 Q. When you became media relations officer in the
 8 middle of 2005, what, if anything, was the
 9 difference between that position and the
 10 communications specialist?
 11 MS. PENNELL:
 12 A. It narrowed in scope, but it broadened in
 13 responsibility to that I was the sole contact
 14 for media in Eastern Health. Prior to that
 15 myself and Susan would sort of whoever
 16 answered the phone would handle the media
 17 inquiries. But because of the sheer number of
 18 them coming into Eastern Health at that time
 19 and prior to that Health Care Corporation was
 20 very busy, as well, she had identified the
 21 fact that she needed somebody solely working
 22 on media, and so when she wrote the position
 23 descriptions, she decided to have a media
 24 person, and that's the role that I applied
 25 for, because there were other roles that I

Page 12

1 could have applied for, but I applied for that
 2 one. And -
 3 COFFEY, Q.C.:
 4 Q. And that was in June or July you actually
 5 applied?
 6 MS. PENNELL:
 7 A. I would think so, yes. Well, after April, so
 8 between April and August.
 9 COFFEY, Q.C.:
 10 Q. And August when you were actually appointed?
 11 MS. PENNELL:
 12 A. Yes.
 13 COFFEY, Q.C.:
 14 Q. Media relations officer. Could you tell the
 15 Commissioner, please, what, in a practical
 16 way, that actually--in a practical sense what
 17 that actually meant when you say primary
 18 point of contact?
 19 MS. PENNELL:
 20 A. Well, it lessens confusion for the media.
 21 They know who they can go to all the time to
 22 get the information that they need. And it
 23 keeps things more clear, also, within the
 24 organization because, you know, members of the
 25 executive or managers, whoever, you know, is

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1 dealing with the media issue, they know
 2 directly who to go to all the time. And plus,
 3 the director role is very, very busy,
 4 obviously, and at any time Ms. Bonnell would
 5 be all over the place dealing with other
 6 issues, whereas as a media person, media
 7 relations person, you sort of needed to be
 8 close to the office and, you know, close to
 9 your phone, dealing with media, because we
 10 had, you know, some days we'd have ten media
 11 inquiries in one day.

12 COFFEY, Q.C.:

13 Q. With respect to that, was there any
 14 understanding within Eastern Health at that
 15 point when you took over as media relationship
 16 officer, any particular understanding within
 17 the organization as to who, if anyone--I
 18 appreciate you said the media if they wanted
 19 to deal with or wanted to know something from
 20 Eastern Health knew to contact you.

21 MS. PENNELL:

22 A. Yes.

23 COFFEY, Q.C.:

24 Q. The media would know that?

25 MS. PENNELL:

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1 A. Yes.

2 COFFEY, Q.C.:

3 Q. How about within the organization responding
 4 to a media request?

5 MS. PENNELL:

6 A. I think -

7 COFFEY, Q.C.:

8 Q. Would they know to go through you?

9 MS. PENNELL:

10 A. I sort of carved that role out for myself as a
 11 communication specialist in Health Care
 12 Corporation. I think there was becoming a
 13 time when I was handling most of the media
 14 inquiries, anyway, so it was sort of a natural
 15 progression. Because I had a very close
 16 relationship with a lot of the members of the
 17 media, anyway, because I had worked in the
 18 media for some many years that I don't know if
 19 it would have been their preference, but
 20 certainly became habit to call me rather than
 21 Susan, anyway.

22 COFFEY, Q.C.:

23 Q. Okay. Can you tell the Commissioner, please,
 24 what, like, handle media inquiries, what does
 25 the word "handle" mean?

Page 15

1 MS. PENNELL:

2 A. Find out what they're looking for and
 3 facilitate it, find someone to speak to
 4 whatever it is that they want answered and get
 5 in touch with that person and either just line
 6 that interview up or a lot times I would
 7 actually go to that interview with the person.

8 COFFEY, Q.C.:

9 Q. Of course, that presumes or presupposes that
 10 the person in question actually wants to do
 11 the interview?

12 MS. PENNELL:

13 A. Um.

14 COFFEY, Q.C.:

15 Q. Or the--and that the organization presumably
 16 wants to do the interview. Would you have to
 17 check with anybody in that regard?

18 MS. PENNELL:

19 A. No, I didn't have to check with anybody. I
 20 would say you could probably count on one hand
 21 in three years how many times we, as an
 22 organization, would have even thought about
 23 not doing an interview. We were very open.
 24 You know, I always said yes. And it was
 25 never, you know, it was never me calling on

Page 16

1 the other line saying, "Oh, Doctor So and So,
 2 would you like to do this media interview?" it
 3 was "We have a media inquiry. What's your
 4 schedule?"

5 COFFEY, Q.C.:

6 Q. I take it though in relation to estrogen
 7 receptors and progesterone receptors, ER/PR,
 8 that fell into the category of, at one point,
 9 anyway, one of these two or three areas?

10 MS. PENNELL:

11 A. It did and it didn't.

12 COFFEY, Q.C.:

13 Q. Okay. And we'll come to that.

14 MS. PENNELL:

15 A. Yeah.

16 COFFEY, Q.C.:

17 Q. Okay. Could you--now, and as the media
 18 relations officer, I take it, you--for Eastern
 19 Health, you did report to Ms. Bonnell?

20 MS. PENNELL:

21 A. Yes, I did.

22 COFFEY, Q.C.:

23 Q. Okay. Could you tell us, please, when you
 24 first heard of ER and PR or estrogen receptors
 25 and progesterone receptors?

Page 17

1 MS. PENNELL:
 2 A. I would guess that it was a day or so before
 3 the first meeting that I attended, which,
 4 according to the notes, would have been around
 5 the 14th of July. I recall Ms. Bonnell
 6 calling me into her office and saying that she
 7 needed to speak with me about an issue and she
 8 proceeded to tell me that there had been, the
 9 word that stands out to me were some
 10 "inconsistencies", some results in the lab,
 11 and there was going to be a meeting, I believe
 12 it was the next day, so it was probably the
 13 13th.
 14 COFFEY, Q.C.:
 15 Q. This would be July, 2005?
 16 MS. PENNELL:
 17 A. Yes, it would be. That she would like me to
 18 attend with her and that we would possibly
 19 have to come up with a media strategy and
 20 communication strategy to deal with it.
 21 COFFEY, Q.C.:
 22 Q. And where was your office located at the time?
 23 MS. PENNELL:
 24 A. We moved two or three times, so I think there
 25 were four offices basically next to each

Page 18

1 other, mine was on one end and Susan's was on
 2 the other end at that point.
 3 COFFEY, Q.C.:
 4 Q. Okay. So I take it then it was in close
 5 proximity to her office and in the Waterford?
 6 MS. PENNELL:
 7 A. Yes, yes, we were -
 8 COFFEY, Q.C.:
 9 Q. Administrative site?
 10 MS. PENNELL:
 11 A. We were usually within earshot of each other.
 12 I think there was one point when we weren't,
 13 but most of the time we were within earshot of
 14 each other.
 15 COFFEY, Q.C.:
 16 Q. So you understood that there were
 17 inconsistencies in the lab?
 18 MS. PENNELL:
 19 A. Yes.
 20 COFFEY, Q.C.:
 21 Q. Results, and that you might have to, or be
 22 tasked with coming up with a, what type of a
 23 strategy, I'm sorry?
 24 MS. PENNELL:
 25 A. Well, it was my understanding I would have to

Page 19

1 do some sort media release. That's why she
 2 would bring me in.
 3 COFFEY, Q.C.:
 4 Q. Ma'am, where was the--I gather the meeting
 5 occurred and you attended?
 6 MS. PENNELL:
 7 A. Yeah.
 8 COFFEY, Q.C.:
 9 Q. Did you know anything else going into the
 10 meeting?
 11 MS. PENNELL:
 12 A. I do believe I knew it was something to do
 13 with breast cancer results, but I'm not sure
 14 if I had heard the term ER/PR or anything
 15 along those lines at that point.
 16 COFFEY, Q.C.:
 17 Q. Do you recall where the meeting was held?
 18 MS. PENNELL:
 19 A. Yes, it was in--out around Dr. Williams'
 20 office in the conference room in the basement
 21 of the Health Science Centre.
 22 COFFEY, Q.C.:
 23 Q. And could you tell the Commissioner, please,
 24 what you recall about it, about that first
 25 meeting?

Page 20

1 MS. PENNELL:
 2 A. I recall it was a very sunny day and there
 3 were a lot of people there, some I had met,
 4 some I hadn't. I remember I hadn't met Dr.
 5 Cook at that time. Dr. Laing was there, Dr.
 6 McCarthy was there, but I hadn't meet her at
 7 this time. Dr. Williams was there, Heather
 8 Predham was there, myself and Susan and a few
 9 other people, I think. And I was really there
 10 sort of to listen. I didn't really have a
 11 role to participate at all. And actually, I
 12 don't believe Susan participated, either,
 13 until at the end. But we sort of just
 14 listened to the various views around the room
 15 about what had happened here. And I was
 16 trying to piece it together because I didn't
 17 have a whole lot of information. And there
 18 was certainly a lot of concern around the
 19 table and the oncologists especially seemed
 20 very, I don't know agitated is the word, but
 21 certain very, very concerned.
 22 COFFEY, Q.C.:
 23 Q. Now, what did you observe happen?
 24 MS. PENNELL:
 25 A. I observed, I observed certainly Dr. Laing

Page 21

1 have the most concern on her face and
 2 basically, you know, saying to Dr. Williams,
 3 "What in the world is going on here? We need
 4 to certainly find out as fast as possible, and
 5 I need to talk to my patients." It seemed to
 6 be the over, you know, the biggest issue in
 7 the room that day was how can we find out why
 8 these few results, I think it was only five
 9 results or something at this time, had
 10 changed, why and what's the time frame here
 11 and when can I start--you know, what can I
 12 tell my patients.
 13 COFFEY, Q.C.:
 14 Q. Did you make any notes at the time?
 15 MS. PENNELL:
 16 A. I did make notes. I'm not sure if it was that
 17 meeting I made notes at.
 18 COFFEY, Q.C.:
 19 Q. Okay. And so you did, you attended not only
 20 this meeting, but others, as well?
 21 MS. PENNELL:
 22 A. There was a two or three week block there
 23 where I attended probably two or three
 24 meetings.
 25 COFFEY, Q.C.:

Page 22

1 Q. Okay. I'm going to, in terms of, if we could
 2 bring up, please, Exhibit P-0505? I'll just
 3 ask you, at this meeting, this first meeting
 4 you attended, was Mr. Tilley there, do you
 5 recall?
 6 MS. PENNELL:
 7 A. I don't believe he was. That's not mine.
 8 COFFEY, Q.C.:
 9 Q. No, no, these are not yours, I appreciate
 10 that. These are the handwritten notes of Dr.
 11 Williams of the same meeting. He's prepared a
 12 typed account.
 13 MS. PENNELL:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. Of the same ones, as well. And just the
 17 attendees are listed as Joy McCarthy, Kara
 18 Laing, Dr. Al Felix, Donald Cook, Paul
 19 Gardiner, as a physician, Dr. Alan Kwan, Ms.
 20 Predham, Ms. Bonnell, yourself and Dr.
 21 Williams, which is--does accord with your
 22 recollection of who was there -
 23 MS. PENNELL:
 24 A. Yes, and the others -
 25 COFFEY, Q.C.:

Page 23

1 Q. - with a couple of other names.
 2 MS. PENNELL:
 3 A. The others that I missed I had never met
 4 before, so probably wasn't aware of their
 5 names at the time.
 6 COFFEY, Q.C.:
 7 Q. And was there, at this point, did you see,
 8 observe any interaction between the
 9 oncologists and the pathologists concerning
 10 this matter?
 11 MS. PENNELL:
 12 A. I don't believe I saw any, no.
 13 COFFEY, Q.C.:
 14 Q. Not at this particular meeting?
 15 MS. PENNELL:
 16 A. Everyone sort of took their own turn to speak.
 17 I don't know that they really interacted. And
 18 the consensus to me was everyone was sort of
 19 looking to Dr. Williams for--you know, sort of
 20 people were speaking but they were speaking to
 21 him.
 22 COFFEY, Q.C.:
 23 Q. Okay. And what then happened? Okay, so
 24 you're at the meeting and from your
 25 perspective, coming out of the meeting, you

Page 24

1 were to do what?
 2 MS. PENNELL:
 3 A. I'm not sure if it was this meeting or the
 4 next one, but I am pretty sure it was the
 5 first meeting I attended, which would have
 6 been this one, I was--Susan had asked me
 7 afterwards to start putting something down on
 8 paper, start drafting releases, start thinking
 9 about key messages, start putting, getting all
 10 this together in a package.
 11 COFFEY, Q.C.:
 12 Q. Okay. And July 14th, 2003 was a Thursday.
 13 MS. PENNELL:
 14 A. Okay.
 15 COFFEY, Q.C.:
 16 Q. We know that, Thursday. And what did you do
 17 then? You've attended the meeting, you've
 18 been asked to prepare something.
 19 MS. PENNELL:
 20 A. I would say the next morning that's just what
 21 I did, went to work. And I believe we met
 22 even on the weekend, but I -
 23 COFFEY, Q.C.:
 24 Q. Who is we?
 25 MS. PENNELL:

Page 25

1 A. The same similar group, maybe give or take a
 2 person or two. I can remember immediately
 3 trying to gather up enough information as we
 4 had within the organization on what in the
 5 world ER/PR was and how I could, if I were
 6 going to write a media release, how I would
 7 write that so that it made sense to the
 8 general public, because at that point it
 9 certainly didn't make sense to me.

10 COFFEY, Q.C.:

11 Q. Okay. And how did you go about doing that?

12 MS. PENNELL:

13 A. I did obtain some informations from Dr.
 14 Williams, I believe. And I--there's a letter
 15 that he wrote that had a lot of information in
 16 it, I believe it is one of the exhibits, but I
 17 had a copy of that.

18 COFFEY, Q.C.:

19 Q. Okay, if we could, please, I'll just bring up
 20 one of them, a copy of P-0067, please, P-0067?
 21 Now this is a letter dated May 24th, 2005.
 22 It's to Dr. Williams and it's re: false
 23 negative results for estrogen and progesterone
 24 receptors, ER and PR, and this particular one
 25 is from Donald Cook.

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1 MS. PENNELL:

2 A. Okay.

3 COFFEY, Q.C.:

4 Q. Do you know if you were given a copy of this?

5 MS. PENNELL:

6 A. Yeah, that's the actual letter I was just
 7 referring to.

8 COFFEY, Q.C.:

9 Q. Okay, and -

10 MS. PENNELL:

11 A. I thought it was written by Dr. Williams, but
 12 my mistake, yes, but that is the letter I had.

13 COFFEY, Q.C.:

14 Q. But in your world, anyway, you received it
 15 from Dr. Williams or on behalf -

16 MS. PENNELL:

17 A. I actually think I got it from Susan.

18 COFFEY, Q.C.:

19 Q. Susan?

20 MS. PENNELL:

21 A. Yes.

22 COFFEY, Q.C.:

23 Q. And the purpose in you obtaining it though was
 24 to allow you to do what?

25 MS. PENNELL:

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1 A. To have as much factual information on the
 2 issue. I mean, I do admit I did go back and
 3 google because I didn't have a lot of
 4 information at this time, just to sort of, you
 5 know, get myself up to speed on it, but you
 6 know, keeping in mind that anything that I've
 7 written goes through two or three different,
 8 you know, medical people. Like you'd never
 9 get something from Google end up in a news
 10 release if it wasn't accurate, but just to
 11 sort of get myself up to speed as to what this
 12 issue was. But I did try and get as much
 13 information from around the organization as I
 14 could.

15 COFFEY, Q.C.:

16 Q. And so you do have a contacting--well, Susan
 17 to give you what she had and contacting
 18 others?

19 MS. PENNELL:

20 A. Yes. I think Dr. Williams also referred me to
 21 a medical journal. I can't remember which
 22 one, but I thought I had in my notes somewhere
 23 or they may be in my old notes that I left at
 24 Eastern Health, but I'm pretty sure I had some
 25 medical journal type stuff as well that he had

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1 photocopied for me.

2 COFFEY, Q.C.:

3 Q. And all with a goal, this gathering of
 4 information, is all with a goal to you doing
 5 what?

6 MS. PENNELL:

7 A. A media release.

8 COFFEY, Q.C.:

9 Q. Which is to, I take it, inform the public -

10 MS. PENNELL:

11 A. Public release, yes.

12 COFFEY, Q.C.:

13 Q. - of what it is happening?

14 MS. PENNELL:

15 A. Yes.

16 COFFEY, Q.C.:

17 Q. What's to be done.

18 MS. PENNELL:

19 A. Yeah.

20 COFFEY, Q.C.:

21 Q. And you've indicated to the Commissioner that
 22 in doing so, you feel somewhat comfortable in
 23 doing so in that it would be vetted.

24 MS. PENNELL:

25 A. Yes.

Page 29

1 COFFEY, Q.C.:

2 Q. Anything you wrote would be vetted by whom?

3 MS. PENNELL:

4 A. The normal channel for any news release that I

5 would write would be myself and then it would

6 go to Susan, and then through to whichever

7 division director or vice president which,

8 depending on the scope of the issue, was

9 involved. So in this case, it would have been

10 myself, Susan, Dr. Williams and then maybe up

11 to Mr. Tilley. I would say though for this, I

12 would say Heather Predham probably had a look

13 as well.

14 COFFEY, Q.C.:

15 Q. Okay.

16 MS. PENNELL:

17 A. But normally, for something not quite as large

18 of an issue as this, it would probably just go

19 through myself, Susan and one other person.

20 COFFEY, Q.C.:

21 Q. But you understood in--certainly from the

22 beginning, having attended that meeting, July

23 14th, that this was a big issue?

24 MS. PENNELL:

25 A. Yes, I did. It just felt like a big issue.

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1 COFFEY, Q.C.:

2 Q. And on July 14th, you understood, from your

3 perspective, approximately how many people,

4 how many patients did this involve? Do you

5 have any sense of the magnitude?

6 MS. PENNELL:

7 A. I didn't at that point. I think we were

8 talking about literally 25 people at that

9 point or less. I mean, I think Dr. Laing had

10 only talked about the one case, but even one

11 case was cause for major concern.

12 COFFEY, Q.C.:

13 Q. If we could, please, Exhibit P-0070? You

14 understood, as of Thursday, July 14th and then

15 when you went to work on the morning of the

16 15th, the Friday morning and set about

17 preparing these material for a media release

18 that the media release would occur when?

19 MS. PENNELL:

20 A. As soon as possible. I was thinking that next

21 week.

22 COFFEY, Q.C.:

23 Q. And you got that understanding from whom and

24 where?

25 MS. PENNELL:

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1 A. I would have gotten that from Susan, because

2 she was the one who directed me to get the

3 materials together. I mean, there was a sense

4 of urgency relayed to me. I'm not sure that a

5 date was given, but you know, I was working

6 towards finishing materials on that Friday and

7 having them ready for the next week.

8 COFFEY, Q.C.:

9 Q. For the next week, because it had to be vetted

10 too in the meantime?

11 MS. PENNELL:

12 A. Yes, exactly, and sometimes that can take a

13 while.

14 COFFEY, Q.C.:

15 Q. So coming out of the meeting of July 14th,

16 Thursday meeting, you understood that--well,

17 certainly under the impression that there'd be

18 a media release likely the next week?

19 MS. PENNELL:

20 A. Yes, oh, definitely.

21 COFFEY, Q.C.:

22 Q. Here, this is a e-mail at Friday, July 15th,

23 2005 from yourself to Ms. Bonnell at 2:01 p.m.

24 You write "here's today's update from Heather

25 Predham. Nancy is thinking about how to

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1 implement a hotline. Heather is providing an

2 overview/synopsis for George. George wants to

3 disclose this info to the Board next week.

4 Dr. Williams is trying to talk him out of it.

5 Lab has pulled names and numbers and thinks

6 they may be able to do retesting in house,

7 completing in about two weeks. Terry G. says

8 he has documentation that shows positive

9 controls were done daily. Heather yet to see

10 it. Heather checking other hospitals to see

11 if they have any issues pertaining to this.

12 Hoping this could just be a matter of a

13 dramatic improvement in technology, if indeed

14 all controls were in place. Thinking we may

15 want to release mid late next week. Have a

16 nice weekend, Deborah."

17 Ma'am, I take it Nancy in this context

18 is?

19 MS. PENNELL:

20 A. Nancy Parsons.

21 COFFEY, Q.C.:

22 Q. And George would be George Tilley?

23 MS. PENNELL:

24 A. Yes.

25 COFFEY, Q.C.:

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1 Q. And Terry G. would be Terry Gulliver?
 2 MS. PENNELL:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. The update from Ms. Predham, how did you
 6 obtain that?
 7 MS. PENNELL:
 8 A. On the phone.
 9 COFFEY, Q.C.:
 10 Q. And in sending this e-mail to Ms. Bonnell, the
 11 purpose of it was what? To let her know where
 12 you were with it?
 13 MS. PENNELL:
 14 A. She must have been out of the office or
 15 something, so I--just what it says, just to
 16 give her an update as to what Heather had to
 17 say.
 18 COFFEY, Q.C.:
 19 Q. Here, the first substantive line says "Nancy
 20 is thinking about how to implement a hotline."
 21 I take it Ms. Parsons, you understood was
 22 involved in what?
 23 MS. PENNELL:
 24 A. Well, her first--you know, she was patient
 25 relations officer, so she would--she was a

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1 very approachable person and very easy to talk
 2 to, so she was the obvious choice for patient
 3 contact, if people had questions or anything
 4 like that. So I'm not sure whose idea it was.
 5 I think it was probably Nancy's idea to have a
 6 dedicated phone number for people to call to
 7 ask about this issue and that she would be the
 8 one to facilitate that.
 9 COFFEY, Q.C.:
 10 Q. And Ms. Predham was providing an
 11 overview/synopsis for George, I take it
 12 Heather Predham, you understood, was providing
 13 something in writing?
 14 MS. PENNELL:
 15 A. Yes.
 16 COFFEY, Q.C.:
 17 Q. Now the reference to "George wants to disclose
 18 this info to the Board next week. Dr.
 19 Williams is trying to talk him out of it."
 20 Now that information, in the sense of that's
 21 contained there about George and about Dr.
 22 Williams, you obtained that from whom?
 23 MS. PENNELL:
 24 A. From Heather.
 25 COFFEY, Q.C.:

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1 Q. And so your recollection is Ms. Predham told
 2 you this?
 3 MS. PENNELL:
 4 A. Yes.
 5 COFFEY, Q.C.:
 6 Q. Do you recall anything else about this, the
 7 context?
 8 MS. PENNELL:
 9 A. You know, the first time I saw this was going
 10 through the exhibits and I didn't remember
 11 that conversation. I mean, as it sits with me
 12 a little longer, you know, pieces of it start
 13 to come back, but to me, and really I'm only
 14 going on my sense of working there for as long
 15 as I did, but--because I don't specifically
 16 remember that conversation, other than what's
 17 there in writing, but to me, I would think it
 18 would have been Dr. Williams' priority to
 19 inform the Minister before the Board.
 20 COFFEY, Q.C.:
 21 Q. Okay.
 22 MS. PENNELL:
 23 A. But I don't know--I can't say 100 percent,
 24 because I'm really--like I look at this e-mail
 25 as just a transcription of a telephone

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1 conversation, nothing more.
 2 COFFEY, Q.C.:
 3 Q. So at the time, on July 15th, you understood
 4 that the Minister had not yet been told?
 5 MS. PENNELL:
 6 A. I don't believe so.
 7 COFFEY, Q.C.:
 8 Q. The reference to Terry G., that line, "says he
 9 has documentation that shows positive controls
 10 were done daily. Heather yet to see it." The
 11 "Heather yet to see it," why did you write
 12 that?
 13 MS. PENNELL:
 14 A. I would say that I wrote it because just what
 15 it is, she hadn't seen it. She hadn't seen--
 16 you know, he--she probably had a telephone
 17 conversation with Mr. Gulliver saying that,
 18 you know, we've got a log, because I think
 19 that's how they did it, they had some type of
 20 log that they filled in, showing that controls
 21 were done every single day, but Heather hadn't
 22 actually laid her own eyes on it yet. I mean,
 23 that might just be casual language on my part,
 24 but I don't know if she ever did see it.
 25 COFFEY, Q.C.:

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1 Q. And the next line refers to "Heather checking
 2 other hospitals to see if they have any issues
 3 pertaining to this." Other hospitals you
 4 understood were where?
 5 MS. PENNELL:
 6 A. I believe in Canada, Montreal, Halifax
 7 particularly.
 8 COFFEY, Q.C.:
 9 Q. The reference to "hoping this could just be a
 10 matter of a dramatic improvement in
 11 technology, if indeed all controls were in
 12 place," well it says "if indeed all controls
 13 were in place" suggesting that perhaps there
 14 was some thought that maybe they weren't all
 15 in place, and so if they weren't all in place,
 16 what did you understand might be the problem?
 17 MS. PENNELL:
 18 A. I'm no expert in this field, but in my
 19 layman's mind, I thought if it wasn't
 20 technology then it would be human error. But
 21 if the controls were done, then it wouldn't
 22 have been. That's probably what I meant,
 23 because that's what I thought in those early
 24 days.
 25 COFFEY, Q.C.:

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1 Q. And -
 2 MS. PENNELL:
 3 A. But I certainly didn't know.
 4 COFFEY, Q.C.:
 5 Q. The "thinking we may want to release mid late
 6 next week," whose thinking is that?
 7 MS. PENNELL:
 8 A. I would assume that it's Heather's, from this.
 9 COFFEY, Q.C.:
 10 Q. Okay. In the context of was it yours?
 11 MS. PENNELL:
 12 A. It was probably a consensus between Heather
 13 and I.
 14 COFFEY, Q.C.:
 15 Q. Okay.
 16 MS. PENNELL:
 17 A. But you know, this is an update from Heather.
 18 But you know, as has been said here before is
 19 that everything was done by consensus, so the
 20 "we" is likely a collective we of that group
 21 of people who were meeting on this issue.
 22 COFFEY, Q.C.:
 23 Q. Your understanding as to the reason for the
 24 sense of urgency about this release is what?
 25 How was there an urgency about it?

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1 MS. PENNELL:
 2 A. I mean, I applied my ethics and expertise and
 3 everything else that I had learned about media
 4 relations over the years to this issue as I
 5 did any other, and that was that when you have
 6 information, you go out with it, because if
 7 not, it beats you anyway. So while this was,
 8 you know, a huge issue, I still looked at it
 9 as though it was a small issue or big issue,
 10 either way, it was--had potential to go
 11 public. So let's get out there and let's let
 12 it go public in a way that we want it to go
 13 public, not in any other way. So I mean, had
 14 they told me on the 14th that we wanted a
 15 release the next morning, I would have been
 16 happy with that. So the sooner the better was
 17 my thinking.
 18 COFFEY, Q.C.:
 19 Q. Your understanding over those first couple of
 20 days, well, presumably July 13th when you were
 21 asked to attend the meeting of July 14th and
 22 July 14th and then 15th, you had the sense as
 23 to how long had Susan Bonnell known about the
 24 issue?
 25 MS. PENNELL:

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1 A. I don't think she told me how long she knew.
 2 COFFEY, Q.C.:
 3 Q. Did you have the sense that she had known
 4 about it?
 5 MS. PENNELL:
 6 A. No, I didn't.
 7 COFFEY, Q.C.:
 8 Q. Before July 13th?
 9 MS. PENNELL:
 10 A. Well, she must have known a little bit before
 11 that day, but I was surprised to hear that she
 12 knew as long as she had known.
 13 COFFEY, Q.C.:
 14 Q. When you say "surprised to hear" in the sense
 15 of, I take it, through these proceedings?
 16 MS. PENNELL:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. When you look--I want to look at Exhibit P-
 20 0067, please? Ma'am, this is this May 24th
 21 letter and when you just look through the
 22 first two paragraphs, the first line in each,
 23 you'll see the first one refers to "on May
 24 11th, 2005," that would be I, Dr. Cook,
 25 "received a phone call from Dr. Joy McCarthy

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1 and then on May 17th, 2005, a meeting was held
 2 which included myself," that's Dr. Cook, "Dr.
 3 Bev Carter and Dr. Barry Dyer, and Doctors
 4 McCarthy and Laing," suggesting that well, at
 5 least, this had been going on for at least two
 6 months before you got involved or
 7 approximately two months before you got
 8 involved. When you read the letter, were you
 9 surprised by that, that it had been going on
 10 for as long as it had before you found out?
 11 MS. PENNELL:
 12 A. Yeah, I think I was. I think I was a little
 13 disappointed, but there was a lot going on in
 14 Eastern Health at that time frame.
 15 COFFEY, Q.C.:
 16 Q. And the purpose--well, disappointed in what
 17 sense or why, I'll put it? Why would you be
 18 disappointed?
 19 MS. PENNELL:
 20 A. Well, we struggled from time to time to get
 21 communications to be brought in on the loop at
 22 times and I thought that this was just one of
 23 those times, and so I was disappointed in
 24 that. But I mean, we only became an
 25 organization in April.

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1 COFFEY, Q.C.:
 2 Q. Pardon me?
 3 MS. PENNELL:
 4 A. We only became an organization in April.
 5 COFFEY, Q.C.:
 6 Q. Oh, became an organization, right.
 7 MS. PENNELL:
 8 A. So, you know, at this point, I probably would
 9 have chalked it up to that.
 10 COFFEY, Q.C.:
 11 Q. Now of course, as of mid July, you were still
 12 doing in effect, though, the same job you'd
 13 been doing in April when you came back from
 14 the Department of Health and Ms. Bonnell was,
 15 in effect, doing the same thing?
 16 MS. PENNELL:
 17 A. Yeah, I would say that I was probably still
 18 handling a lot of the media though, because I
 19 had morphed that way anyway, but officially,
 20 yes, I was still doing communications
 21 specialist work for the Health Care
 22 Corporation of St. John's.
 23 COFFEY, Q.C.:
 24 Q. And the people involved in this, you know, as
 25 of the letter anyway, Doctors Laing, McCarthy,

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1 Cook, Williams, they all worked in St. John's
 2 within -
 3 MS. PENNELL:
 4 A. Yes.
 5 COFFEY, Q.C.:
 6 Q. - I mean, this is not like it involved the
 7 Burin Peninsula.
 8 MS. PENNELL:
 9 A. No, the only person that worked for--the only
 10 two people that--oh no, three people that
 11 worked for Eastern Health at that time were
 12 Mr. Tilley, Ms. Bonnell and Mr. Tilley's
 13 secretary.
 14 COFFEY, Q.C.:
 15 Q. And all the others though involved in, as of
 16 the letter, this was a St. John's matter?
 17 MS. PENNELL:
 18 A. Yes.
 19 COFFEY, Q.C.:
 20 Q. Okay.
 21 MS. PENNELL:
 22 A. It was a Health Care Corporation of St. John's
 23 matter.
 24 COFFEY, Q.C.:
 25 Q. If we could, please, Exhibit P-0071? Now

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1 ma'am, this is an exhibit and it's a series of
 2 documents provided by yourself to Commission
 3 counsel. I'm just going to take you through
 4 the--well, you had a chance, I take it, to
 5 look at these before coming here?
 6 MS. PENNELL:
 7 A. Yes, I have.
 8 COFFEY, Q.C.:
 9 Q. What are these, in general?
 10 MS. PENNELL:
 11 A. These are the documents that I spoke about
 12 earlier, that after the July 14th meeting, Ms.
 13 Bonnell asked me to start working on a media
 14 release and everything that goes with it, and
 15 this is it.
 16 COFFEY, Q.C.:
 17 Q. Now here there's a briefing note-ER/PR
 18 receptors, and it starts out with background,
 19 goes on to a heading actions, and then on the
 20 second page of it notes, and of course, it's
 21 all on the watermark draft watermark paper,
 22 and then the next page, page four of the
 23 exhibit is "for immediate release, breast
 24 cancer test being reexamined." It's dated
 25 July 18th 2005, and then there's another

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1 briefing note-ER/PR receptors, background, and
 2 then it has a heading, current status, and
 3 then there's another at page nine of the
 4 exhibit "for immediate release, draft media
 5 release re: testing due to improved
 6 technology," dated July XX 2005. Then another
 7 draft media release, "Eastern Health reviews
 8 ER and PR test results," dated July XX 2005.
 9 And then another at page 13 of the exhibit,
 10 media release with a title "laboratory testing
 11 review to be completed by outside consultant,"
 12 July XX 2005.
 13 Why the different draft media releases?
 14 MS. PENNELL:
 15 A. First and foremost, that's sort of my style.
 16 It's not strange for me, on any issue, to do a
 17 couple of different drafts until I get my head
 18 around something. However, this issue, of
 19 course, was changing all the time. So this
 20 one, in particular, ends up with two or three
 21 or four different drafts, but it was my style
 22 to write a couple of different versions of
 23 things. I've been like that since I was a
 24 journalist. I used to write two or three or
 25 four different leads on a story and decide

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1 which one to use later.
 2 COFFEY, Q.C.:
 3 Q. So the purpose in writing the different
 4 versions or leads as you refer to it, what's
 5 the purpose of a lead?
 6 MS. PENNELL:
 7 A. For flow, for--I don't know. The first
 8 sentence to me always gets me going, however I
 9 start to write something and that's so with
 10 anything, a news release or a story or
 11 anything. Whenever I start to write my first
 12 sentence, that will guide me to my second
 13 sentence and my third sentence, so with issues
 14 like this, sometimes it can be difficult to
 15 get that flow when you're not a hundred
 16 percent sure what your--comfortable with the
 17 material that you're writing about, so
 18 considering I had so much going on in my head
 19 and so many different, you know, human error,
 20 technology error, Ventana, DAKO, so many
 21 different things being thrown at me in a
 22 matter of a few days about a topic that I knew
 23 very little about, you know, it made it easier
 24 for me to put it down in a couple of different
 25 ways and to offer it to Susan in a couple of

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1 different ways, what was her preference.
 2 COFFEY, Q.C.:
 3 Q. I take it the preference, depending up the
 4 approach one takes, delivers potentially a
 5 different message, doesn't it?
 6 MS. PENNELL:
 7 A. Certainly it does.
 8 COFFEY, Q.C.:
 9 Q. And in fact, just looking at these, the
 10 different headings -
 11 MS. PENNELL:
 12 A. Yes.
 13 COFFEY, Q.C.:
 14 Q. Each heading relates to the approach adopted
 15 in that particular release, doesn't it?
 16 MS. PENNELL:
 17 A. Yes. I don't think these were all done on the
 18 same day, though. I don't know, but I don't
 19 think they were written all in one day, and as
 20 I'm sure you've learned through this process
 21 that, you know, hourly this issue was
 22 changing, more information was coming in, we
 23 were learning different things. So it doesn't
 24 strike me strange, although there's been a lot
 25 of talk about these releases, but it doesn't

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1 strike me strange, having lived through it,
 2 that, you know, there are different approaches
 3 here because we just learned so much in such
 4 quick, you know, in such a short amount of
 5 time we learned so much about this issue.
 6 COFFEY, Q.C.:
 7 Q. So from your perspective, what was the purpose
 8 of issuing a media release at all?
 9 MS. PENNELL:
 10 A. To inform the media and the public.
 11 COFFEY, Q.C.:
 12 Q. About what?
 13 MS. PENNELL:
 14 A. About the retesting.
 15 COFFEY, Q.C.:
 16 Q. Did you anticipate that there would be a press
 17 conference as well?
 18 MS. PENNELL:
 19 A. No.
 20 COFFEY, Q.C.:
 21 Q. So whatever, you understood that whatever went
 22 out in the media release would be the sum
 23 total of what the public would be informed
 24 about at that point?
 25 MS. PENNELL:

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1 A. No, I don't necessarily agree with that
 2 because once something is out in the media
 3 then once, then updates are, you know, we
 4 would have provided updates. I would assume
 5 if that's the way this would have unfolded, if
 6 we would have done a media release, you know,
 7 then as more numbers would have come back, we
 8 would have done another media release and we
 9 probably would have updated the process as we
 10 went along.
 11 COFFEY, Q.C.:
 12 Q. Just so we're clear on this, I take it you
 13 understood when you were drafting the media
 14 releases, that there would just be a media
 15 release issued, initially, correct?
 16 MS. PENNELL:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. Whichever media release, one of these or some
 20 other ones.
 21 MS. PENNELL:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. A media release would finally be agreed upon
 25 and issued by Eastern Health.

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1 MS. PENNELL:
 2 A. Yes.
 3 COFFEY, Q.C.:
 4 Q. And that there would be no one though provided
 5 to speak to the matter.
 6 MS. PENNELL:
 7 A. Oh no, there would definitely be Dr. Williams
 8 and probably Dr. Laing available at--but no
 9 press conference, you know, no meet us at a
 10 disclosed place, all journalists at once, it
 11 would be as requested interviews. That's the
 12 way we did things there, we didn't do media
 13 briefings or press conferences very often.
 14 COFFEY, Q.C.:
 15 Q. So you understood during the week of July
 16 14th, 15th, going into that weekend, that
 17 there would be a release -
 18 MS. PENNELL:
 19 A. Yes.
 20 COFFEY, Q.C.:
 21 Q. Mid to late next week.
 22 MS. PENNELL:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. And that a media release would be going out.

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1 MS. PENNELL:
 2 A. Yes.
 3 COFFEY, Q.C.:
 4 Q. And that some spokesperson would be made
 5 available on an as request basis?
 6 MS. PENNELL:
 7 A. Yes, I believe we were, you know, making Dr.
 8 Williams and Dr. Laing available.
 9 COFFEY, Q.C.:
 10 Q. And where did you get that understanding?
 11 MS. PENNELL:
 12 A. I suppose, I don't know if I was actually
 13 directed or if that was just the way we did
 14 things and that's what we discussed at the
 15 meeting, or if that was what I was proposing,
 16 it was just, you know, it was just what was
 17 going to happen.
 18 COFFEY, Q.C.:
 19 Q. Now the sense--your sense of wanting to get
 20 this out earlier, as urgently as possible, as
 21 quickly as possible. From your perspective
 22 when you learned that this had been going on
 23 within Eastern Health, certainly since May of
 24 2005, did you realize that some patients had
 25 already been informed of the changed results?

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1 MS. PENNELL:
 2 A. I don't think I knew that. I just want to add
 3 a point to what you were mentioning about a
 4 press conference verses a press release or
 5 something like that.
 6 COFFEY, Q.C.:
 7 Q. Yes.
 8 MS. PENNELL:
 9 A. At this time, on July 14th, 15th, I think I
 10 only thought there were like five patients
 11 affected or, so while, you know, five to
 12 twenty-five, not talking a massive amount of
 13 people here, so I would never have suggested
 14 that we have a press conference for something
 15 which, you know, while very, very important,
 16 still was a small number of people. You know,
 17 as time went on and the numbers got up in the
 18 three hundreds or wherever they went, I mean I
 19 understand them having a, you know, a large
 20 press conference type thing. I think I was of
 21 the thinking at this point that this was a
 22 small cluster, you know, in those very early
 23 days and that it would be explained quickly
 24 and never dreamed it would -
 25 COFFEY, Q.C.:

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1 Q. Now you understood it would be explained,
 2 initially explained how?
 3 MS. PENNELL:
 4 A. I really think I believed that it was going to
 5 be a technological issue because it kept going
 6 back to that, you know, first it was the DAKO
 7 and then it was the Ventana and then was it
 8 the DAKO, and until we started getting a
 9 significant amount of results back from Mount
 10 Sinai, I don't think it really came to my head
 11 that, you know, it would be anything but
 12 technological error.
 13 COFFEY, Q.C.:
 14 Q. Who did you get that understanding from? In
 15 the sense that, like, you can put this down,
 16 chalk this up to technology, who were you
 17 getting that sense from?
 18 MS. PENNELL:
 19 A. Well I only attended the meetings in the first
 20 couple of weeks and then I was sort of, I
 21 wasn't really in the loop a whole lot after
 22 that because there was a lot of other things
 23 that needed to be taken care of in the
 24 department. So I think in those early days,
 25 that's really what the belief was around the

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1 table, you know, or it wasn't disproven at
 2 first anyway that it wasn't, just, you know, a
 3 problem with the technology or the
 4 sensitivity, not necessarily a problem but a
 5 different sensitivity. So that's the idea
 6 that was floated out there and that's what I
 7 believed in those first days.
 8 COFFEY, Q.C.:
 9 Q. Well ma'am looking at the media releases that
 10 you have, we have an exhibit P-0071, are you
 11 able to tell the order in which they were
 12 prepared?
 13 MS. PENNELL:
 14 A. I can move this, right? I honestly believe
 15 that I did the one that references technology
 16 first.
 17 COFFEY, Q.C.:
 18 Q. That's the one at page 9, "Retesting due to
 19 improved technology"?
 20 MS. PENNELL:
 21 A. And I did that for the simple reason that that
 22 was the most straightforward and easiest thing
 23 for me to understand. I mean, at that time, I
 24 couldn't get my head around that if all the
 25 controls were in place, then how could it not

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1 be anything but, you know, an issue because of
 2 the improved technology.
 3 COFFEY, Q.C.:
 4 Q. So the next one then, in order?
 5 MS. PENNELL:
 6 A. So page 11?
 7 COFFEY, Q.C.:
 8 Q. No, that is the next one here, but I'm just
 9 saying the next one that you think you may
 10 have drafted?
 11 MS. PENNELL:
 12 A. I don't know. And I can't even say for
 13 certain that I did the technology one first,
 14 but just knowing myself and my understanding
 15 of the issue at the time, it's most likely
 16 that I sat down and plugged out that, you
 17 know, the one about the technology first. And
 18 it seemed like the most plausible explanation
 19 at the time.
 20 COFFEY, Q.C.:
 21 Q. And if we look at page 13, please, Registrar?
 22 This is the one entitled "Laboratory testing
 23 review to be completed by outside consultant."
 24 MS. PENNELL:
 25 A. I think that one may have come later, like not

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1 as in weeks later, but a day or two later. I
 2 could be mistaken, but it seems to me that,
 3 you know, that first meeting, I'm not sure
 4 that an outside consultant was talked about.
 5 COFFEY, Q.C.:
 6 Q. Well ma'am, here it says, this paragraph, the
 7 second last one, "In 2003 significant changes
 8 were made to improve the accuracy of
 9 immunotesting. In 2004, the purchase of a
 10 Ventana system further improved processes;
 11 however, in 2005, some test results from prior
 12 to 2004 were reviewed, prompting a more
 13 extensive review of procedures, leading to the
 14 external review being conducted this month."
 15 Now, ma'am, the significant changes, where did
 16 you get that notion or that idea? What did
 17 you understand had occurred in 2003?
 18 MS. PENNELL:
 19 A. At that time? I don't know what I thought it
 20 was. Now, I'm pretty certain that it was
 21 information I received regarding Dr. Ejeckam's
 22 recommendations.
 23 COFFEY, Q.C.:
 24 Q. And that would have come from whom,
 25 information about Dr. Ejeckam?

1 MS. PENNELL:
 2 A. Would have come from Dr. Cook. I had several
 3 telephone conversations with Dr. Cook through
 4 this--these few days.
 5 COFFEY, Q.C.:
 6 Q. Can you tell us what you recall about those?
 7 MS. PENNELL:
 8 A. You know, I recall very little on them. Most
 9 of my dealings with Dr. Williams were face to
 10 face, but all of my dealings with Dr. Cook--
 11 because I have still never actually been
 12 introduced to the man, were on the phone and
 13 they were of a very technical nature and I
 14 remember thinking, oh, this is a big thing to
 15 get my head around and I'm not entirely--I'm
 16 not really certain that I can remember those
 17 conversations.
 18 COFFEY, Q.C.:
 19 Q. But you are satisfied that any information
 20 about significant changes made to improve the
 21 accuracy of immunotesting in 2003, you would
 22 have obtained that from Dr. Cook?
 23 MS. PENNELL:
 24 A. Well any information I obtained came from Dr.
 25 Cook, Dr. Williams, Terry Gulliver or Heather

1 COFFEY, Q.C.:
 2 Q. Now the reference to, in the second paragraph
 3 "has hired an outside consultant", do you see
 4 that?
 5 MS. PENNELL:
 6 A. Uh-hm.
 7 COFFEY, Q.C.:
 8 Q. At the time, did you have any understanding
 9 about whether or not, whatever the outside
 10 consultant found or discovered or concluded
 11 would be made public?
 12 MS. PENNELL:
 13 A. No, he or she was just hired at this point, so
 14 there was nothing found.
 15 COFFEY, Q.C.:
 16 Q. And the purpose of referring to this, what's
 17 the message here, this particular one, other
 18 than the heading, obviously.
 19 MS. PENNELL:
 20 A. Well it's obviously that you're bringing
 21 someone in to check out what we're doing.
 22 COFFEY, Q.C.:
 23 Q. And in the context then, I take it the message
 24 here is to reassure the public by referring to
 25 the usage of somebody from outside to in,

1 Predham. Those were my four people I spoke
 2 to.
 3 COFFEY, Q.C.:
 4 Q. Now here in the first sentence of this draft
 5 release, it begins by saying, "Changes in
 6 technology and a commitment to quality control
 7 has prompted Eastern Health to examine its
 8 pathology system at the General Hospital in
 9 St. John's."
 10 MS. PENNELL:
 11 A. Uh-hm.
 12 COFFEY, Q.C.:
 13 Q. Where did you get the understanding that
 14 changes in technology had prompted Eastern
 15 Health to examine its pathology system.
 16 MS. PENNELL:
 17 A. I believe that's what it was and that's the
 18 information that I received from the meetings
 19 was that the Ventana system was so much more
 20 sensitive that our results were changing and
 21 we needed to re-look at them. There was two
 22 issues, there was the DAKO and the Ventana, so
 23 it changed, you know, within a couple of days
 24 it was is one not sensitive enough and is one
 25 too sensitive?

1 effect, audit what you're doing.
 2 MS. PENNELL:
 3 A. Certainly.
 4 COFFEY, Q.C.:
 5 Q. When we look back at page 11, that media
 6 release "Eastern Health reviews ER/PR test
 7 results." The second paragraph here, it says,
 8 "The decision to retest these specimens comes
 9 after a review of specimens revealed that a
 10 high percentage of previously negative test
 11 had changed to positive using a new more
 12 sensitive type of testing technology. The
 13 retesting may provide new opportunities for
 14 patients with breast cancer." Now the
 15 assertion in the last sentence I just read to
 16 you, where did that information come from?
 17 MS. PENNELL:
 18 A. I guess that's the Tamoxifen piece which would
 19 have come from the oncologists. I can't
 20 stress to you enough that these were drafts
 21 and so, to see them here and not to talk about
 22 something that I, you know, really to me is
 23 like garbage, I mean, I might write ten drafts
 24 of something, especially in my time in
 25 government, a press release there may go

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1 through twenty different edits and I think
 2 anybody would hate to see their, you know,
 3 unedited versions in front of them. So some
 4 of the language here and some of the, you
 5 know, the wording, I mean it's, it certainly
 6 wasn't meant for public consumption.
 7 COFFEY, Q.C.:
 8 Q. Ma'am -
 9 MS. PENNELL:
 10 A. They're working drafts.
 11 COFFEY, Q.C.:
 12 Q. Would you agree, though, that the subject
 13 matters refers some of this--the subject
 14 content does certainly suggest that those
 15 particular matters were being considered at
 16 the time?
 17 MS. PENNELL:
 18 A. Oh, absolutely.
 19 COFFEY, Q.C.:
 20 Q. As an example, "Patients with questions about
 21 this process can contact the patient relations
 22 officer." Do you see that?
 23 MS. PENNELL:
 24 A. Oh yes, oh yes.
 25 COFFEY, Q.C.:

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1 Q. Because that's not referred to in the media
 2 release at, well I shouldn't say that, you can
 3 contact you -
 4 MS. PENNELL:
 5 A. Yeah.
 6 COFFEY, Q.C.:
 7 Q. But you're not the--in the one on page 13 -
 8 MS. PENNELL:
 9 A. I think in the end what would have happened
 10 had, you know, we gone forth, I think that
 11 these two or three releases that you see
 12 before you would have been one.
 13 COFFEY, Q.C.:
 14 Q. Here, ma'am, the one at page 11 of the
 15 exhibit, third last paragraph, "Patients who
 16 may be impacted have been contacted by letter
 17 and all patients will be contacted by their
 18 oncologist or physician if any treatment
 19 changes are required." So the assertion that
 20 patients who may be impacted have been
 21 contacted by letter -
 22 MS. PENNELL:
 23 A. Uh-hm.
 24 COFFEY, Q.C.:
 25 Q. Where did you get that idea, the fact that

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1 patients would be sent -
 2 MS. PENNELL:
 3 A. That was the idea that was talked about I
 4 believe in one of the very first meetings was,
 5 you know, how do we contact patients.
 6 COFFEY, Q.C.:
 7 Q. So the idea of sending the patients a letter,
 8 I take it, when did that first come up?
 9 MS. PENNELL:
 10 A. I don't know when it first came up, it wasn't
 11 my preference.
 12 COFFEY, Q.C.:
 13 Q. Do you recall when you first drafted the
 14 letter?
 15 MS. PENNELL:
 16 A. Yeah, it was around the same day, probably
 17 that Friday.
 18 COFFEY, Q.C.:
 19 Q. So by that point -
 20 MS. PENNELL:
 21 A. But that was a really rough draft.
 22 COFFEY, Q.C.:
 23 Q. Yes, and I appreciate that, but who would ask
 24 you to draft a letter?
 25 MS. PENNELL:

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1 A. That was part of the package of information
 2 that Susan asked me to draft, sort of get
 3 working on this, this and this.
 4 COFFEY, Q.C.:
 5 Q. And that was coming out of the July 14th, 2005
 6 meeting?
 7 MS. PENNELL:
 8 A. Yes.
 9 COFFEY, Q.C.:
 10 Q. So you understood that at least at that point
 11 on July 15th that consideration was being
 12 given to actually sending a letter to patients
 13 -
 14 MS. PENNELL:
 15 A. Certainly, yes.
 16 COFFEY, Q.C.:
 17 Q. - to let them know that they were being
 18 retested or their samples were being retested?
 19 MS. PENNELL:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. If I could, the media release at page 9,
 23 "Retesting due to improved technology". Did
 24 you ever--I'll just ask you about these news
 25 releases, did you ever give them to anybody at

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1 the time?
 2 MS. PENNELL:
 3 A. Give them to anyone?
 4 COFFEY, Q.C.:
 5 Q. At the time in July.
 6 MS. PENNELL:
 7 A. We had a shared directory in the department.
 8 So, anyone who worked in the communications
 9 department would have access to them. And I
 10 believe I e-mail them, a couple of them to
 11 Susan, at one point, I think she must have
 12 been working at home or something, but no, I
 13 don't think they went past the communications
 14 department.
 15 COFFEY, Q.C.:
 16 Q. Ma'am, there is, at page two of this exhibit -
 17 MS. PENNELL:
 18 A. Because I think as I mentioned before, the
 19 protocol would have had to go through Susan
 20 first. So, if there would have been any
 21 sending, she probably would have sent them or
 22 sent it back to me saying, send to Dr.
 23 Williams or whomever.
 24 COFFEY, Q.C.:

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1 Q. There is the briefing note, two versions of a
 2 draft briefing note, one at page two and one
 3 at page six. Do you recall which of those you
 4 drafted first?
 5 MS. PENNELL:
 6 A. Yeah, that one.
 7 COFFEY, Q.C.:
 8 Q. The one at page six.
 9 MS. PENNELL:
 10 A. Yes.
 11 COFFEY, Q.C.:
 12 Q. The one that begins with -
 13 MS. PENNELL:
 14 A. That's like a draft there. I think the other
 15 one is final. That's almost more of a
 16 transcription of my notes, I think, from some
 17 of those meetings. And then I slapped a
 18 briefing note, ER/PR Receptors title on it and
 19 started to work with it and made it into a
 20 briefing note. But I think it was for me, to
 21 sort of help me get, you know, some of my
 22 thoughts and some of the things that were said
 23 in the meetings on paper.
 24 COFFEY, Q.C.:
 25 Q. So, looking at page six of the exhibit under

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1 "current status", the second last paragraph
 2 refers to, "on June 13, 2005, Dr. Cook wrote
 3 to all laboratory directors". So, would you
 4 have had a copy of Dr. Cook's letter?
 5 MS. PENNELL:
 6 A. I don't think I had a copy.
 7 COFFEY, Q.C.:
 8 Q. So, the information then in here would have
 9 come, at page six of this draft, would have
 10 come from whom? Would this be, kind of, a
 11 standing snapshot of what you understood at
 12 the time?
 13 MS. PENNELL:
 14 A. Yes, I would say that's exactly what that
 15 would be.
 16 COFFEY, Q.C.:
 17 Q. Okay.
 18 MS. PENNELL:
 19 A. And bits and pieces I had picked up from all
 20 the experts that I was dealing with.
 21 COFFEY, Q.C.:
 22 Q. This briefing note was being prepared for
 23 whom?
 24 MS. PENNELL:
 25 A. I have no idea because I didn't write briefing

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1 notes. And it's actually strange for me to
 2 even see something with a briefing note
 3 headline for Eastern Health. We didn't write
 4 briefing notes. So, I may have thought--well,
 5 like I said to you, I think I was putting all
 6 this down just to get it down on paper so that
 7 I could work with it for the materials I was
 8 drafting. And then, my thinking is that as
 9 the days went on and we were talking about
 10 informing the minister and whatnot, that
 11 that's when it turned into a briefing note
 12 because that's a government term. It's not
 13 something that we used at Eastern Health.
 14 COFFEY, Q.C.:
 15 Q. So, as of July 15 you would have understood
 16 that the minister had not yet been informed.
 17 MS. PENNELL:
 18 A. I'm not sure if that would have even occurred
 19 to me.
 20 COFFEY, Q.C.:
 21 Q. Well, you did refer to the fact that George
 22 wants to inform the board Dr. Williams is
 23 trying to -
 24 MS. PENNELL:
 25 A. I'm just surmising that though, I'm not sure.

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1 COFFEY, Q.C.:

2 Q. Did you have any reason to believe that at

3 this point the government did know about it?

4 MS. PENNELL:

5 A. Wouldn't have been my role to even go there at

6 this point.

7 COFFEY, Q.C.:

8 Q. Okay, so, this would have been your first

9 draft at page six and would have been prepared

10 on July 15?

11 MS. PENNELL:

12 A. Likely, yes. I may have even started that the

13 night of the 14th because I remember going

14 home and actually getting some of this stuff

15 down.

16 COFFEY, Q.C.:

17 Q. The briefing note, the version of it at page

18 two, I take it is the more or less, final

19 version.

20 MS. PENNELL:

21 A. I would guess. My final version, yes.

22 COFFEY, Q.C.:

23 Q. Now, your final version would have gone to

24 whom?

25 MS. PENNELL:

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1 A. Susan.

2 COFFEY, Q.C.:

3 Q. Do you recall if Susan made any changes or

4 suggested any changes to the draft press

5 releases?

6 MS. PENNELL:

7 A. I don't think it went that far. She rarely

8 made changes to any releases that I wrote, but

9 if there were changes to be made, she would

10 probably just called me in her office and

11 said, Deb, can you just re-jig this or put

12 this and send it back to me, but she wasn't--

13 she usually just sort of looked at releases

14 for editing purposes, not for content changes.

15 COFFEY, Q.C.:

16 Q. Now, here at page 12 of the exhibit, there's a

17 document entitled, "key messages".

18 MS. PENNELL:

19 A. Again, another thing we didn't do a whole lot

20 of at Eastern Health.

21 COFFEY, Q.C.:

22 Q. Well, that may be so, but there are 11 key

23 messages here.

24 MS. PENNELL:

25 A. Yes, I know.

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1 COFFEY, Q.C.:

2 Q. How did this one come to be prepared? When

3 did you prepare it and how did it become to be

4 prepared? And for whom was it prepared?

5 MS. PENNELL:

6 A. I would say it was one of only a very few

7 times I probably would have ever written a key

8 message in Eastern Health. I honestly don't

9 know.

10 COFFEY, Q.C.:

11 Q. Well, if it's one of the few times, so you

12 recall who asked you to do it?

13 MS. PENNELL:

14 A. It would have been Susan.

15 COFFEY, Q.C.:

16 Q. Okay. Do you recall when?

17 MS. PENNELL:

18 A. Same time period.

19 COFFEY, Q.C.:

20 Q. Okay. For what purpose?

21 MS. PENNELL:

22 A. For Dr. Williams, for Dr. Laing, for the

23 spokespeople on this issue. I mean, key

24 message are generally to help people, you

25 know, keep their head in the game. That's how

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1 I, sort of, put it. And there's so many

2 details surrounding a complicated issue such

3 as this, and especially when you're dealing

4 with, you know, for three years I dealt with

5 this, with people who are very intelligent and

6 are experts in their field, sometimes you

7 could talk above a regular person. So, in me

8 writing, sort of, a key message, you know, it

9 might help somebody like Dr. Williams, who is

10 extremely intelligent and who, sometimes, I

11 couldn't understand what he was talking about

12 with these complicated issues. You know, it

13 might help him to keep things a little bit

14 simpler when communicating.

15 COFFEY, Q.C.:

16 Q. And in this context it would be to communicate

17 to the public at large and to the patients?

18 MS. PENNELL:

19 A. Yeah, you know, I'm pretty that this was

20 public and media. I think the patient piece--

21 obviously the patients would hear this

22 information.

23 COFFEY, Q.C.:

24 Q. Yes.

25 MS. PENNELL:

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1 A. But I believe it was always the intention that
 2 the patients would be contacted first.
 3 COFFEY, Q.C.:
 4 Q. You understood that was to be accomplished
 5 how?
 6 MS. PENNELL:
 7 A. Well, at first you know, it was phone and then
 8 it went to registered letter and then it back
 9 to phone. So -
 10 COFFEY, Q.C.:
 11 Q. So, when was it phone? At first it was phone.
 12 MS. PENNELL:
 13 A. It was floated, I mean, I don't know. I
 14 wasn't really involved in the patient piece.
 15 Susan brought me in to deal with the media
 16 piece and the public piece. But the patient
 17 piece was really more the focus of the risk
 18 people and the oncologists and Dr. Williams.
 19 I was, sort of, you know, shoved off to my
 20 side to get the media piece done. I mean, as
 21 that was my speciality.
 22 COFFEY, Q.C.:
 23 Q. Did you understand in dealing with the media
 24 piece, as you put it, that you would, in
 25 effect, be communicating with the patients and

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1 their families?
 2 MS. PENNELL:
 3 A. I guess I did understand that, but you have to
 4 keep in mind that at this time there were very
 5 few patients. I mean, there were a lot being
 6 retested, but anybody whose result had changed
 7 at this time which were the ones the
 8 oncologist were going to speak to directly
 9 were very few.
 10 COFFEY, Q.C.:
 11 Q. If we could, look at page six, please, of the
 12 exhibit? This is your first draft, as it
 13 were, of that briefing note, style of briefing
 14 note, and in under current status, you have
 15 "16 out of 25 retested, 16 have come back
 16 positive. Retesting is currently being done
 17 on 33 more. Approximately 12 have been
 18 informed by their oncologists." So you
 19 understood it was more than a couple by this
 20 point in time?
 21 MS. PENNELL:
 22 A. Yeah.
 23 COFFEY, Q.C.:
 24 Q. It had moved on from -
 25 MS. PENNELL:

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1 A. But you're still not dealing with, you know,
 2 huge numbers, and I don't--you know, I don't
 3 even know, I mean, this was probably two or
 4 three days in. I don't even know if I really
 5 understood the significance.
 6 COFFEY, Q.C.:
 7 Q. If we could go back to--I'm just going to go
 8 back to page 12 of your key messages and under
 9 the fifth last one, you say "we are retesting
 10 hundreds of tissue samples from the past
 11 several years to ensure accuracy." So you
 12 certainly understood at the time you were
 13 preparing these key messages.
 14 MS. PENNELL:
 15 A. I have to tell you, I don't remember writing
 16 this key message document. I'm not even 100
 17 percent sure it's mine.
 18 COFFEY, Q.C.:
 19 Q. Well, it's not -
 20 MS. PENNELL:
 21 A. It must be, like, but I think it might have
 22 been a group effort, if you will, because even
 23 just reading some of the language, it's not
 24 mine, and you know your own stuff.
 25 COFFEY, Q.C.:

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1 Q. Well, who else would have been involved?
 2 MS. PENNELL:
 3 A. Both myself and Susan may have sat down and
 4 sort of banged it out together. It wouldn't
 5 have been strange for us to sit in her office
 6 or mine and put something together, but I
 7 don't recognize some of the language in this,
 8 just the key message document. I know the
 9 briefing note and the releases, but this key
 10 message document is a tiny bit foreign to me.
 11 COFFEY, Q.C.:
 12 Q. See, ma'am, looking at the key message, when
 13 you -
 14 MS. PENNELL:
 15 A. But yes, I did know that, and to answer your
 16 question I did know we are retesting hundreds
 17 of tissue samples.
 18 COFFEY, Q.C.:
 19 Q. So in that context, when you combine looking
 20 at the key messages with any one or more of
 21 those media releases, there's no reference in
 22 the combined totals of those to the reference
 23 to the actual number of conversions set out in
 24 the briefing notes, is there?
 25 MS. PENNELL:

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1 A. No.
 2 COFFEY, Q.C.:
 3 Q. The briefing notes have actual numbers?
 4 MS. PENNELL:
 5 A. Yes.
 6 COFFEY, Q.C.:
 7 Q. They're not guesses and they're not
 8 approximations, they're actual numbers, 16 of
 9 25 and presumably whatever had came out of the
 10 33 and perhaps, well, more.
 11 MS. PENNELL:
 12 A. Yeah.
 13 COFFEY, Q.C.:
 14 Q. Arguably, and why would the numbers then not
 15 be included in either the key messages or the
 16 press release, the numbers.
 17 MS. PENNELL:
 18 A. Probably because they were fluid at the time.
 19 I mean, you know, one day it was this one
 20 coming back and that one coming back. They
 21 change so often.
 22 COFFEY, Q.C.:
 23 Q. I appreciate that and you've told the
 24 Commissioner that, of course, as information
 25 changes, you could issue more media releases.

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1 MS. PENNELL:
 2 A. Yep.
 3 COFFEY, Q.C.:
 4 Q. So, what I'm asking about is why were the
 5 numbers, actual numbers not included in either
 6 the draft media releases or even a place for
 7 the numbers -
 8 MS. PENNELL:
 9 A. Yeah.
 10 COFFEY, Q.C.:
 11 Q. - or in the key messages. Can you tell the
 12 Commissioner why there was no reference to -
 13 MS. PENNELL:
 14 A. It's a good question.
 15 COFFEY, Q.C.:
 16 Q. - no, I--apparently no idea to even putting
 17 out the numbers.
 18 MS. PENNELL:
 19 A. I would have to say I wasn't comfortable
 20 putting the numbers in because I wasn't
 21 comfortable with the numbers.
 22 COFFEY, Q.C.:
 23 Q. But you didn't even -
 24 MS. PENNELL:
 25 A. Because I know, you know, the media loves

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1 numbers and that would have been the first
 2 question they would ask, after putting out a
 3 release, what the numbers? But in a draft
 4 situation, I mean, this was a draft, I
 5 obviously wasn't comfortable with the numbers
 6 I had.
 7 COFFEY, Q.C.:
 8 Q. You didn't even have a place there for the
 9 numbers to be filled in though, did you?
 10 MS. PENNELL:
 11 A. That doesn't necessarily mean it wouldn't have
 12 changed the -
 13 COFFEY, Q.C.:
 14 Q. Oh, I appreciate it, you have "July XX".
 15 MS. PENNELL:
 16 A. Yes.
 17 COFFEY, Q.C.:
 18 Q. "XXX" for phone numbers.
 19 MS. PENNELL:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. Okay.
 23 MS. PENNELL:
 24 A. Yes.
 25 COFFEY, Q.C.:

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1 Q. Even--you have dates of birth or -
 2 MS. PENNELL:
 3 A. Oh no, I know, yeah.
 4 COFFEY, Q.C.:
 5 Q. The idea though of the sense that you might
 6 even release the numbers is not anywhere in
 7 the text, is it?
 8 MS. PENNELL:
 9 A. Nope. You're right.
 10 COFFEY, Q.C.:
 11 Q. Did the topic of -
 12 MS. PENNELL:
 13 A. I don't remember it ever being a part of the
 14 conversation.
 15 COFFEY, Q.C.:
 16 Q. Okay. So, it was never suggested by the group
 17 that perhaps we should include or anybody who
 18 saw or had access to this, that we should have
 19 some reference to numbers.
 20 MS. PENNELL:
 21 A. One way or the other I don't believe it was
 22 discussed.
 23 COFFEY, Q.C.:
 24 Q. If we could look at please, Exhibit--page 14,
 25 same exhibit. Ma'am, what is this?

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1 MS. PENNELL:
 2 A. This an attempt by me to use plain language to
 3 inform patients what we were doing and it was
 4 very rough draft. I remember banging this out
 5 in just a couple of minutes and, you know, I
 6 believe I asked Heather Predham for assistance
 7 because, you know, patient notification was
 8 not anything in my expertise.
 9 COFFEY, Q.C.:
 10 Q. And the decision in terms of patient
 11 notification would rest with other people.
 12 MS. PENNELL:
 13 A. It certainly would, yes.
 14 COFFEY, Q.C.:
 15 Q. Why would you be involved at all then in
 16 drafting it?
 17 MS. PENNELL:
 18 A. That's a good question. Because it's a
 19 written word and our department was seen as
 20 the ones who were, you know, good with words
 21 and we could talk, like I said before, in
 22 plain language in a way that they could
 23 understand, rather than using jargon and
 24 complicated terminology and that type of
 25 thing. That's what we were there for.

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1 COFFEY, Q.C.:
 2 Q. Exhibit P-0300, please. Ma'am, this is an e-
 3 mail from Heather Predham, Monday, July 18,
 4 2005 at 12:29 p.m., to Dr. Williams. It's
 5 copied to others. The attachment is an update
 6 on ER/PR.doc. And she writes, "Hi Dr.
 7 Williams, I heard back from Dr. Cook and Terry
 8 Gulliver re: the letter and the changes have
 9 been made, both agree it should come from you.
 10 I was speaking to Deborah Thomas today and the
 11 Department of Health has been notified and is
 12 not involved. They would like a letter sent
 13 to each woman outlining the problem and the
 14 steps are taking to address it. That draft
 15 letter will have to be seen by our lawyer
 16 first, of course. I guess we'll have to
 17 decide tomorrow or the next day re: advising
 18 the public". And there's obviously a word
 19 document that was attached.
 20 Ma'am, do you recall the conversation
 21 with Ms. Predham?
 22 MS. PENNELL:
 23 A. No.
 24 COFFEY, Q.C.:
 25 Q. Do you recall -

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1 MS. PENNELL:
 2 A. I spoke to her so many times, I don't
 3 specifically recall this conversation.
 4 COFFEY, Q.C.:
 5 Q. How about the contact, the assertion that you
 6 had convey to her that the Department of
 7 Health has been notified and is now involved.
 8 "They would like a letter sent to each woman
 9 outlining the problem".
 10 MS. PENNELL:
 11 A. No.
 12 COFFEY, Q.C.:
 13 Q. So, what, if any, contact did you have with
 14 the Department of Health?
 15 MS. PENNELL:
 16 A. I don't remember having any contact with them.
 17 I mean, I had worked with Carolyn Chaplin for
 18 four months prior to this. So, I knew her
 19 quite well and I remember later having
 20 conversations with her, her already having
 21 known and me already having known about ER/PR,
 22 but you know, in this real early, early day, I
 23 don't know if someone told me they were
 24 notified, but I certainly didn't do any
 25 notifying myself.

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1 COFFEY, Q.C.:
 2 Q. So, you did not contact the Department of
 3 Health yourself -
 4 MS. PENNELL:
 5 A. No.
 6 COFFEY, Q.C.:
 7 Q. - about this. Did anybody at the Department
 8 of Health contact you?
 9 MS. PENNELL:
 10 A. Not that I can remember.
 11 COFFEY, Q.C.:
 12 Q. How about Ms. Bonnell, do you recall whether
 13 or not she had contacted the Department of
 14 Health?
 15 MS. PENNELL:
 16 A. I had made an assumption that she would since
 17 that would be her role. She was, you know,
 18 the liaison. They were, sort of, more each
 19 other's counterparts, say you know, Ms.
 20 Bonnell and Ms. Chaplin would be each other's
 21 counterparts. Whereas myself and Stephanie
 22 Power, communications specialist at Health,
 23 would be my counterpart, type thing. Now,
 24 there was cross-over, of course, at time. We
 25 would certainly have conversations with each

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1 other, but it would have been, you know,
 2 Susan's role to have spoken to Ms. Chaplin and
 3 similarly to Dr. Williams and Mr. Abbott--that
 4 type of situation. It wouldn't be--I would
 5 never give John Abbott a call to tell him
 6 something like this.
 7 COFFEY, Q.C.:
 8 Q. But would it be possible that John Abbott
 9 would contact you?
 10 MS. PENNELL:
 11 A. Possible, but very unlikely.
 12 COFFEY, Q.C.:
 13 Q. Okay. The idea of "they" which is the
 14 department, I gather in the context here,
 15 "would like a letter sent to each woman
 16 outlining the problem and the steps we are
 17 taking to address it".
 18 MS. PENNELL:
 19 A. Um-hm.
 20 COFFEY, Q.C.:
 21 Q. What, if anything, do you recall about the
 22 letter or the idea that the department wanted
 23 a letter sent to each woman?
 24 MS. PENNELL:
 25 A. I don't remember know they wanted a letter

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1 sent to each woman.
 2 COFFEY, Q.C.:
 3 Q. So, are you saying that the best that you can
 4 recall, no such contact by you with the
 5 department or the department with you occurred
 6 and that it certainly did not involve the
 7 department wanting a letter sent to each
 8 woman?
 9 MS. PENNELL:
 10 A. I don't remember having a conversation about a
 11 letter or about this at all, you know, until
 12 later.
 13 COFFEY, Q.C.:
 14 Q. When is later?
 15 MS. PENNELL:
 16 A. Maybe, you know, into the week of the 21st or
 17 the following week. I mean, it was -
 18 COFFEY, Q.C.:
 19 Q. This is Monday which is the week of the 21st.
 20 MS. PENNELL:
 21 A. Yes, but I'm talking--I know that I spoke to
 22 Ms. Chaplin about this, but she already knew
 23 when I was talking to her. Because I believe
 24 I spoke to her about the briefing note.
 25 That's the first time I spoke to her, I

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1 believe, was when I was trying to facilitate
 2 getting the briefing note for the minister to
 3 her and she was already well in the loop by
 4 that time.
 5 COFFEY, Q.C.:
 6 Q. If we could look, please, at Exhibit P-1483
 7 and this is an e-mail from yourself to Susan
 8 Bonnell, July 18, 2005 at 1:36 p.m. The
 9 subject is a briefing note for George. And
 10 you write, "try this for now". So, I take it
 11 you were preparing a briefing note for George,
 12 at least, the initial draft.
 13 MS. PENNELL:
 14 A. Yes. That was part of the instruction that
 15 was given to me on the 14th or 15th, to get
 16 the materials ready.
 17 COFFEY, Q.C.:
 18 Q. And in terms of briefing notes, had you ever
 19 prepared a briefing note before?
 20 MS. PENNELL:
 21 A. Yes.
 22 COFFEY, Q.C.:
 23 Q. How often?
 24 MS. PENNELL:
 25 A. Rarely.

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1 COFFEY, Q.C.:
 2 Q. Okay. And you understood the purpose here of
 3 preparing this briefing note for Mr. Tilley
 4 was?
 5 MS. PENNELL:
 6 A. I'm pretty sure I believed it was to go to the
 7 minister or to the department.
 8 COFFEY, Q.C.:
 9 Q. Exhibit P-0073. Ma'am, this is an e-mail,
 10 well it's two e-mails, but the one of July 19,
 11 2005 at 8:22 a.m. from Heather Predham to a
 12 number of individuals including yourself, you
 13 see your name is there on the end.
 14 MS. PENNELL:
 15 A. Um-hm.
 16 COFFEY, Q.C.:
 17 Q. She refers to having "had a long conversation
 18 with representatives from HIROC yesterday
 19 evening" which would be Monday evening. What
 20 do you recall happened in relation to this?
 21 When you left work on Monday, you got draft
 22 media releases, briefing note sent over to
 23 Susan, probably a stab at the patient letter
 24 done. You understood it was going to go
 25 public that week.

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1 MS. PENNELL:
 2 A. Um-hm.
 3 COFFEY, Q.C.:
 4 Q. And Tuesday morning you went to work and saw
 5 this. What happened in relation to the HIROC
 6 matter?
 7 MS. PENNELL:
 8 A. All I can really relay to you is a feeling
 9 that I had once, you know, it felt to me, this
 10 was turning, starting to change. And I wasn't
 11 really sure why, I mean, I had never dealt
 12 with anything of this magnitude whatsoever.
 13 Health Care Corporation was my first
 14 communications job. So, I had certainly never
 15 dealt with an issue this large, nor did I
 16 understand, you know, or have any experience
 17 with legal issues and class action suits and
 18 all that type of thing. So, but it certainly
 19 did seem--things started to change after this
 20 e-mail.
 21 COFFEY, Q.C.:
 22 Q. This is the e-mail where they do refer to the
 23 class action lawsuit, I take it.
 24 MS. PENNELL:
 25 A. Um-hm.

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1 COFFEY, Q.C.:
 2 Q. And it changed in what way, what happened?
 3 MS. PENNELL:
 4 A. It seemed that there were so many more things
 5 to consider.
 6 COFFEY, Q.C.:
 7 Q. Such as?
 8 MS. PENNELL:
 9 A. Well prior to HIROC and Dan Boone and class
 10 action and words such as that, you know, I was
 11 focusing on, while a very serious issue, my
 12 job was still the same as it always was, go
 13 draft a media release, get it out there, do
 14 your job, but then things started to get a
 15 little more complicated. And I don't, you
 16 know, I was obviously the very junior person
 17 involved here. So, I wasn't really privy--I
 18 might have been cc'd on a lot of these e-
 19 mails, but I really wasn't privy to what
 20 exactly was going on. So, I knew things were
 21 changing when I wasn't really sure how it was
 22 going to affect what I was doing. I just knew
 23 that--I mean, I don't remember ever being told
 24 that we weren't going to really do a media
 25 release. It was always, like okay, Deborah,

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1 tomorrow, tomorrow, tomorrow, be ready, be
 2 ready, be ready. It was never -
 3 COFFEY, Q.C.:
 4 Q. Who was telling you that?
 5 MS. PENNELL:
 6 A. Susan. There was never--and I believe that's
 7 what she was being told because between the
 8 two of us, I think we always were, you know,
 9 were ready to go out with a media release or
 10 with public news release. And it seemed to me
 11 that there was just a lot more going on that I
 12 wasn't really privy to.
 13 COFFEY, Q.C.:
 14 Q. If we could, please, Exhibit P-0509. Again,
 15 this is a series of e-mails. I'll just refer
 16 you to the one at 8:59 a.m. from Susan Bonnell
 17 to a number of individuals, you're included at
 18 the end.
 19 MS. PENNELL:
 20 A. Yep.
 21 COFFEY, Q.C.:
 22 Q. And she refers here to having had a
 23 conversation with Carolyn Chaplin in the
 24 department. And Ms. Chaplin has informed her
 25 of certain things involving, what she

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1 characterizes as one of the main issues in
 2 Labrador. And when you look further down in
 3 the earlier e-mails, there's a reference here
 4 to a possible meeting.
 5 MS. PENNELL:
 6 A. Um-hm.
 7 COFFEY, Q.C.:
 8 Q. Do you recall whether there was a meeting and
 9 did you attend it on July 19?
 10 MS. PENNELL:
 11 A. Yes, I did attend that meeting.
 12 COFFEY, Q.C.:
 13 Q. What happened at that meeting? Where was it?
 14 When was it held? What happened?
 15 MS. PENNELL:
 16 A. I think it was later afternoon and I think it
 17 was in the same place. All the meetings that
 18 I remember attending were in the Health
 19 Sciences basement, executive room there.
 20 COFFEY, Q.C.:
 21 Q. You say later afternoon -
 22 MS. PENNELL:
 23 A. I think it was late afternoon, but I'm not
 24 sure. I can't be sure, I really can't.
 25 COFFEY, Q.C.:

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1 Q. Who was there?
 2 MS. PENNELL:
 3 A. Most of the time they were late afternoon
 4 because of the doctors. They usually couldn't
 5 make it during the day.
 6 COFFEY, Q.C.:
 7 Q. Do you recall who was there?
 8 MS. PENNELL:
 9 A. I think it was the same group, but Dan Boone
 10 was also there.
 11 COFFEY, Q.C.:
 12 Q. He was the addition?
 13 MS. PENNELL:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. Mr. Boone was. The same group as the July 14
 17 group?
 18 MS. PENNELL:
 19 A. Yes, give or take, you know, maybe an
 20 oncologist or two, but the same core group.
 21 Mr. Tilley may have been there, I'm not sure.
 22 He did attend, I think, one, but I'm not sure
 23 if it was this one or not.
 24 COFFEY, Q.C.:
 25 Q. Okay. And what happened at that meeting?

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1 This is your second large meeting involving
 2 this. What happened?
 3 MS. PENNELL:
 4 A. Again, I was sort of there just in listening
 5 mode and I believe so was Mr. Boone, but I
 6 think it was--every one of these meetings were
 7 for updates. They provided updates on what
 8 had happened in that half day or that day.
 9 And where were we going to go forward. I
 10 don't remember this meeting being any
 11 different than the others. I don't remember
 12 anything specific or, you know, that stands
 13 out other than Mr. Boone being there because I
 14 met him.
 15 COFFEY, Q.C.:
 16 Q. Mr. Boone was there, I take it, for the first
 17 time -
 18 MS. PENNELL:
 19 A. Yes.
 20 COFFEY, Q.C.:
 21 Q. - at these meetings, as best you could tell.
 22 MS. PENNELL:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. And the subject apparently of the e-mails is

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1 information from HIROC.
 2 MS. PENNELL:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. Was that what was discussed at that meeting?
 6 MS. PENNELL:
 7 A. I don't think so. I think he was just there,
 8 sort of, taking it all in. I don't
 9 necessarily remember the tone of the meeting
 10 changing. I could be wrong, but I don't
 11 remember that being--you know, it may have
 12 been reference in the meeting, but I don't
 13 think it was a consideration that dominated
 14 the meeting. Maybe you have notes that'll
 15 tell me different.
 16 COFFEY, Q.C.:
 17 Q. That's one meeting for which apparently there
 18 are no notes anywhere.
 19 MS. PENNELL:
 20 A. Oh, there you go.
 21 COFFEY, Q.C.:
 22 Q. Not even as to time.
 23 MS. PENNELL:
 24 A. Really?
 25 COFFEY, Q.C.:

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1 Q. So, with respect to that meeting the e-mail,
 2 last e-mail we have, I believe, referring to
 3 setting it up is the one that you -
 4 MR. SIMMONS:
 5 Q. Excuse me, the--that's notes from Dr.
 6 Williams, that meeting.
 7 COFFEY, Q.C.:
 8 Q. July 19, that meeting?
 9 MR. SIMMONS:
 10 Q. Same sheet as the July 20th meeting.
 11 COFFEY, Q.C.:
 12 Q. If they are, they're very sparse and they
 13 don't list who's -
 14 MR. SIMMONS:
 15 Q. They are very sparse.
 16 COFFEY, Q.C.:
 17 Q. - and does not list who's there.
 18 MR. SIMMONS:
 19 Q. It does (inaudible) because Mr Boone was there
 20 too.
 21 MS. PENNELL:
 22 A. It may jog my memory though.
 23 COFFEY, Q.C.:
 24 Q. Mr. Boone, okay.
 25 MS. PENNELL:

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1 A. May jog my memory if you want to show me, but
 2 -
 3 COFFEY, Q.C.:
 4 Q. Perhaps you can give us the exhibit number.
 5 MR. SIMMONS:
 6 Q. I think it might be 0521, I'm not certain.
 7 COFFEY, Q.C.:
 8 Q. It's a meeting of July 19, 2005. Ms. Predham
 9 is there, Mr. Gulliver, Mr. Boone, Dr. Cook,
 10 Dr. Williams, Susan Bonnell and yourself.
 11 MS. PENNELL:
 12 A. Um-hm.
 13 COFFEY, Q.C.:
 14 Q. And there's no time specified. And it's just
 15 background, Dr. Cook, Mr. Gulliver, 650
 16 patients, 1997 to 2004 ER/PR negative; total
 17 test about 380 per year; 32 of 2003, reviewed
 18 24 are positive; 2002 - results; 2003, three
 19 question marks; and 2001 - May.
 20 MS. PENNELL:
 21 A. So, as I said earlier, just sounds like status
 22 quo that was happening at these meetings, just
 23 sort of an update as to the information that
 24 we were getting as we were getting it.
 25 COFFEY, Q.C.:

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1 Q. Do you recall whether there was any
 2 conversation about HIROC?
 3 MS. PENNELL:
 4 A. No.
 5 COFFEY, Q.C.:
 6 Q. Because that's what the whole e-mail exchange
 7 we've seen earlier that morning.
 8 MS. PENNELL:
 9 A. No, I don't. Don't I have notes on that
 10 meeting? No? Thought I did.
 11 COFFEY, Q.C.:
 12 Q. If we could please, go out of the--I take it
 13 that other than reading what's there, you have
 14 no -
 15 MS. PENNELL:
 16 A. Nothing specific stands out.
 17 COFFEY, Q.C.:
 18 Q. What did you understand was happening at this
 19 point. You're about to go public. This is a
 20 Tuesday. Monday you left work going public.
 21 MS. PENNELL:
 22 A. Yep.
 23 COFFEY, Q.C.:
 24 Q. Tuesday morning the HIROC e-mails are there.
 25 What's going on then at this meeting on

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1 Tuesday in terms of what do you understand is
 2 about to happen?
 3 MS. PENNELL:
 4 A. I mean, all along I think in these couple of
 5 weeks, I think I was just always thinking,
 6 well, we're just gathering a little more
 7 information and a little more information and
 8 if we gather this piece of information, then
 9 we'll have a better understanding. So, if we
 10 go out tomorrow, then we'll understand better
 11 tomorrow instead of today. So, I think
 12 that's--and I accepted that.
 13 COFFEY, Q.C.:
 14 Q. What I'm asking you, ma'am, is did you have
 15 any understanding about whether or not the
 16 matter was planned to go public that week?
 17 MS. PENNELL:
 18 A. I think at this point, I really did believe we
 19 were on standby to go out at any minute.
 20 COFFEY, Q.C.:
 21 Q. Okay. If we could, please, Exhibit P-1484?
 22 MS. PENNELL:
 23 A. We had a very simple process for issuing a
 24 press release. We could get something out in
 25 ten minutes.

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1 COFFEY, Q.C.:
 2 Q. So in that context, I take it, you would be
 3 picking one of the four or five that are
 4 there, adding a date, filling in a phone
 5 number and sending -
 6 MS. PENNELL:
 7 A. Not necessarily, but -
 8 COFFEY, Q.C.:
 9 Q. Well, within -
 10 MS. PENNELL:
 11 A. Within reason, yeah.
 12 COFFEY, Q.C.:
 13 Q. - within ten minutes.
 14 MS. PENNELL:
 15 A. Certainly that's why we had, you know, drafts
 16 ready.
 17 COFFEY, Q.C.:
 18 Q. Now this is an e-mail from yourself at 10:16
 19 that morning, Tuesday morning, "updated
 20 briefing note. Delete the last one. I added a
 21 few more points, including the hotline." So I
 22 take it that you were redrafting this briefing
 23 note?
 24 MS. PENNELL:
 25 A. Yes.

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1 COFFEY, Q.C.:

2 Q. For Mr. Tilley?

3 MS. PENNELL:

4 A. Yes.

5 COFFEY, Q.C.:

6 Q. Ma'am, you knew Carolyn Chaplin?

7 MS. PENNELL:

8 A. Yes.

9 COFFEY, Q.C.:

10 Q. Were you speaking with Carolyn Chaplin about

11 this during that week?

12 MS. PENNELL:

13 A. I must have been.

14 COFFEY, Q.C.:

15 Q. Could you tell us, please, what you recall

16 about that?

17 MS. PENNELL:

18 A. I don't have any specific recollection of

19 anything, you know, coming up other than the

20 briefing note. I remember having a

21 conversation with her about how would I get

22 this briefing note to her, and I think it was

23 a really busy week for her. I think she had

24 something on the go, a wedding or something,

25 and--but that's really all, the only

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1 recollection I have of talking to Carolyn,

2 just how to facilitate getting that briefing

3 note to her and to the Minister before the

4 meeting.

5 COFFEY, Q.C.:

6 Q. Exhibit P-0134, please? Now this is--it's two

7 e-mails. The first is from Carolyn Chaplin to

8 yourself, the same day at 4:05 p.m.. You're

9 saying--it's can you--or you're told or asked

10 "can you forward this to Susan as well. I

11 can't seem to find her address in my system.

12 I have spoken with the Minister and everyone

13 else in here and all are fine with proceeding

14 with a briefing note on Thursday a.m. I'll be

15 coming in for that one and then assessing

16 where we are. As you can see, John has asked

17 for briefing materials in advance of the

18 meeting, but these will not go beyond the

19 Department for now." And then you forwarded

20 that at 8:16 a.m. the following morning to Ms.

21 Bonnell, I take it. Could you tell us,

22 please, what you recall about the idea or

23 discussion about briefing materials not going

24 "beyond the Department for now"? What was

25 that about?

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1 MS. PENNELL:

2 A. I'm not sure why she'd say that. I don't know

3 where it would go beyond the Department

4 really. As I said, we didn't--I personally

5 hadn't drafted a lot of briefing materials for

6 the Department at this point, so I didn't know

7 where they went when they got sent up there,

8 anything that I did draft.

9 COFFEY, Q.C.:

10 Q. So ma'am, what did you understand was going on

11 here? Now this is a Tuesday.

12 MS. PENNELL:

13 A. Wednesday.

14 COFFEY, Q.C.:

15 Q. Okay, Tuesday is the 19th.

16 MS. PENNELL:

17 A. Um-hm.

18 COFFEY, Q.C.:

19 Q. When you came in on the morning, yes, it was

20 early on the morning of the 20th, but

21 Wednesday, Tuesday and Wednesday, what did you

22 understand was going on here?

23 MS. PENNELL:

24 A. I probably thought that--I remember thinking

25 things were getting really complicated

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1 because, you know, a few hours earlier, HIROC

2 was now involved and now the Minister's

3 involved and you know, things were sort of

4 getting really complicated and I don't think I

5 was necessarily privy to a lot of the details,

6 because you know, I wasn't involved in any of

7 the meetings with the Minister and I didn't

8 have conversations about HIROC. So you know,

9 sort of in a bit of a black hole, I suppose,

10 but I knew that, you know, things--we were

11 being put off or this was--the public, my job

12 of informing the media and the public was

13 being put off.

14 COFFEY, Q.C.:

15 Q. Being put off by whom?

16 MS. PENNELL:

17 A. I take my direction directly from Ms. Bonnell,

18 so--but I don't certainly have a feeling that

19 she was making the decision on that.

20 COFFEY, Q.C.:

21 Q. You had a sense--your sense of it was -

22 MS. PENNELL:

23 A. She was waiting as well. She was waiting as

24 well.

25 COFFEY, Q.C.:

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1 Q. Your sense of it, who was driving the bus on
 2 this?
 3 MS. PENNELL:
 4 A. Dr. Williams.
 5 COFFEY, Q.C.:
 6 Q. That was your sense of it?
 7 MS. PENNELL:
 8 A. Definitely.
 9 COFFEY, Q.C.:
 10 Q. And what led you to believe that?
 11 MS. PENNELL:
 12 A. Because he drove the bus on this whole issue.
 13 I mean, he was the coordinating man. He was
 14 the one everyone was going to. I think he
 15 made--you know, he made the decisions. He
 16 made them by consensus definitely, but I think
 17 he was the overruling factor.
 18 COFFEY, Q.C.:
 19 Q. And that related as well, I take it, to
 20 whether or not it went public in the manner?
 21 MS. PENNELL:
 22 A. Definitely.
 23 COFFEY, Q.C.:
 24 Q. Exhibit P-0135, please? Now on Wednesday
 25 morning at 8:23, you sent an e-mail to John

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1 Abbott and to George Tilley, copied it to
 2 Carolyn Chaplin and Susan Bonnell, saying
 3 "good morning. We will not be fully briefed
 4 and updated on this situation until after five
 5 p.m. today. We have a four p.m. meeting today
 6 with lab officials, etcetera, to obtain the
 7 latest information, so any briefing materials
 8 which will be sent over today will not be up
 9 to date as we expect new information at this
 10 meeting. I will happy to update the briefing
 11 note after the meeting and send it on later
 12 tonight. Please advise if this is the way you
 13 would like me to proceed," and you signed it
 14 Deborah and you said "Susan is in interviews
 15 all day," and you had appended to that, John
 16 Abbott's request to George Tilley to have a
 17 briefing note prepared for the Minister's
 18 meeting on Thursday.
 19 So who's told you to send an e-mail to
 20 Mr. Abbott and Mr. Tilley?
 21 MS. PENNELL:
 22 A. I don't think anybody would have had to have
 23 told me to send an e-mail. It's just in
 24 Susan's absence, I was often the person who
 25 would respond to things if he wasn't able to

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1 and she was obviously indeposed here, so it
 2 would fall on me to respond, just to let them
 3 know that, you know, "I'll send you a briefing
 4 note if you want it, but it won't be up to
 5 date."
 6 COFFEY, Q.C.:
 7 Q. Okay. Did you get any response to your e-
 8 mail?
 9 MS. PENNELL:
 10 A. I don't know. I don't think so.
 11 COFFEY, Q.C.:
 12 Q. Okay, and was there a meeting at four p.m.?
 13 MS. PENNELL:
 14 A. All the meetings were at that time. I believe
 15 there was.
 16 COFFEY, Q.C.:
 17 Q. And did you attend it?
 18 MS. PENNELL:
 19 A. I believe I did.
 20 COFFEY, Q.C.:
 21 Q. What do you recall about it?
 22 MS. PENNELL:
 23 A. Nothing in particular.
 24 COFFEY, Q.C.:
 25 Q. That day, was the briefing note already

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1 prepared, do you know?
 2 MS. PENNELL:
 3 A. By the sounds of this, it was ready to go. It
 4 just needed to probably be updated after that
 5 meeting.
 6 COFFEY, Q.C.:
 7 Q. And who was it you anticipated would do the
 8 updating?
 9 MS. PENNELL:
 10 A. Me.
 11 COFFEY, Q.C.:
 12 Q. And would distribute it to whom then?
 13 MS. PENNELL:
 14 A. I would have probably sent it to Carolyn.
 15 COFFEY, Q.C.:
 16 Q. If we could look at Exhibit P-521, please?
 17 It's a copy of some notes of Dr. Williams from
 18 July 20th, 2005. The attendees at this
 19 meeting at Mr. T, presumably Mr. Tilley, Dr.
 20 Williams, Mr. Gulliver, Dr. Cook, Ms. Predham
 21 and yourself, and -
 22 MS. PENNELL:
 23 A. Yes, I do remember this meeting now that I see
 24 the notes.
 25 COFFEY, Q.C.:

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1 Q. Okay, with the notes as an aid, could you tell
 2 us what you recall about it?
 3 MS. PENNELL:
 4 A. I specifically recall the no national
 5 standards on ER and PR, because this was
 6 something that was starting to come up that
 7 maybe this was a national issue, and you know,
 8 there was something in my mind, I was
 9 thinking, how can there not be national
 10 standards. So I remember that being brought
 11 up at one meeting and so this was obviously
 12 the meeting, but all the meetings were very
 13 similar, you know, to a layman like myself.
 14 The meetings all sounded very similar to me.
 15 COFFEY, Q.C.:
 16 Q. And the purpose in you being at the meeting
 17 was what?
 18 MS. PENNELL:
 19 A. Well, Susan wasn't available that day, so I
 20 probably represented her.
 21 THE COMMISSIONER:
 22 Q. Mr. Coffey, wherever you can find a convenient
 23 place.
 24 COFFEY, Q.C.:
 25 Q. Thank you. And for what purpose, what were

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1 you--so you were there representing her.
 2 MS. PENNELL:
 3 A. Just to continue the flow of information. We
 4 were a part of that team on that issue.
 5 COFFEY, Q.C.:
 6 Q. Okay. If I could please, Exhibit P-1487?
 7 This is an e-mail from yourself to Ms. Bonnell
 8 at 4:55 that day, Wednesday, July 20th. You
 9 also send to Dr. Cook, Terry Gulliver,
 10 Carolyn, George, Dr. Williams, "change sample
 11 to specimen" and the subject is a briefing
 12 note. Do you see that?
 13 MS. PENNELL:
 14 A. Um-hm.
 15 COFFEY, Q.C.:
 16 Q. So I take it you prepared this, at least a
 17 version of the July 20th briefing note?
 18 MS. PENNELL:
 19 A. Um-hm.
 20 COFFEY, Q.C.:
 21 Q. Do you know if that was the final version,
 22 yours?
 23 MS. PENNELL:
 24 A. If it was sent to Susan, it probably wasn't
 25 the final version. If it was sent to all

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1 these people, then it would have been the
 2 final version, but the fact that I sent it to
 3 Susan first would likely mean that I wanted
 4 her to sign off on it. Whether she made
 5 changes or not, I don't know.
 6 COFFEY, Q.C.:
 7 Q. If we could bring up Exhibit 1527, please?
 8 Page six. Page six, thank you, I'm sorry.
 9 Now ma'am, this makes--these are your notes, I
 10 take it?
 11 MS. PENNELL:
 12 A. Um-hm.
 13 COFFEY, Q.C.:
 14 Q. And do these assist you in recalling any more
 15 about the meeting?
 16 MS. PENNELL:
 17 A. Once again, I obviously found it significant
 18 that there were no national standards. I've
 19 got stats there, but stats, standards,
 20 probably similar idea on it.
 21 COFFEY, Q.C.:
 22 Q. The review, Terry Gulliver, review of ER/PR
 23 stats. I take it he had some statistics for
 24 different years?
 25 MS. PENNELL:

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1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. Within Eastern?
 4 MS. PENNELL:
 5 A. That's what it seems to be.
 6 COFFEY, Q.C.:
 7 Q. Within Eastern Health.
 8 MS. PENNELL:
 9 A. Um-hm.
 10 COFFEY, Q.C.:
 11 Q. What was your understanding of the concern
 12 about the numbers? Why the focus on that?
 13 MS. PENNELL:
 14 A. I think we were really struggling to find what
 15 benchmark we were supposed to be at, and -
 16 COFFEY, Q.C.:
 17 Q. With what--why did that matter, from your
 18 perspective? What were you given to
 19 understand?
 20 MS. PENNELL:
 21 A. To see what our rates should have been.
 22 COFFEY, Q.C.:
 23 Q. Okay.
 24 MS. PENNELL:
 25 A. How can you compare if what you're doing is

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1 right or wrong if you don't have anything to
 2 compare it to?
 3 COFFEY, Q.C.:
 4 Q. There's a reference there on the right-hand
 5 side of the page, the fourth entry is "can
 6 legitimate the numbers." Do you recall what
 7 the referred to?
 8 MS. PENNELL:
 9 A. This may have been at the point where we were
 10 starting to think out numbers weren't bad.
 11 There were a couple of years--my recollection
 12 is sketchy, but there were a couple of years
 13 there where our numbers were close to, you
 14 know, what--I think we were using Mount Sinai
 15 as a bit of a gauge, so I think our numbers
 16 were around Mount Sinai's and so then we
 17 started to think "well, gee, is there even a
 18 problem here? Maybe we--did we have a glitch
 19 in one year?" There was just so much
 20 confusion.
 21 COFFEY, Q.C.:
 22 Q. And this is on--you have noted this as July
 23 20th 2005 at 2:30 p.m., this meeting?
 24 MS. PENNELL:
 25 A. Yeah. This is only three working days after I

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1 had found out about this and it had yet
 2 changed once again.
 3 COFFEY, Q.C.:
 4 Q. Break here, Commissioner. Thank you.
 5 THE COMMISSIONER:
 6 Q. All right. We'll take 15 minutes.
 7 (RECESS)
 8 THE COMMISSIONER:
 9 Q. Mr. Coffey.
 10 COFFEY, Q.C.:
 11 Q. Ms. Pennell, your notes that we looked at,
 12 your handwritten notes, July 20th '05, 2:30
 13 p.m., refer to Terry Gulliver and Cook, that
 14 would be Don Cook. The e-mail of Exhibit P-
 15 0135 refers to not being fully briefed and
 16 updated until after five p.m. that day. Do
 17 you recall when the July 20th meeting actually
 18 was?
 19 MS. PENNELL:
 20 A. Doesn't it say 2:30 in my notes?
 21 COFFEY, Q.C.:
 22 Q. Well, that's what the notes say. I'm asking
 23 you is that -
 24 MS. PENNELL:
 25 A. Well, maybe I anticipated that it would take

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1 that long, but I think I noticed the time when
 2 I sent it to Susan, it's 4:55, so if the
 3 meeting got moved up or whatever happened, I
 4 obviously finished it up and sent it on as
 5 quickly as possible, sent it to her anyway.
 6 COFFEY, Q.C.:
 7 Q. And you understood that this briefing note, at
 8 this point, was being prepared for whom?
 9 MS. PENNELL:
 10 A. For the Minister.
 11 COFFEY, Q.C.:
 12 Q. Had you ever prepared a briefing note for the
 13 Minister of Health before?
 14 MS. PENNELL:
 15 A. During my secondment, I may have, but not -
 16 COFFEY, Q.C.:
 17 Q. While you were with the Health Care
 18 Corporation or Eastern Health?
 19 MS. PENNELL:
 20 A. I swore on the Bible, so I don't want to say
 21 no for sure, but it's highly unlikely.
 22 COFFEY, Q.C.:
 23 Q. Okay. What then happened? What's your next
 24 recollection of your involvement in this?
 25 MS. PENNELL:

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1 A. We're up to the 20th, which is Wednesday. I
 2 think the next thing that I recall is thinking
 3 there may have been an issue with the Ventana
 4 being too sensitive. I think that was
 5 Thursday's issue, because every day seemed to
 6 have a different face on it, and I think come
 7 Thursday, we had concerns about the accuracy
 8 of the Ventana.
 9 COFFEY, Q.C.:
 10 Q. What led you to believe that?
 11 MS. PENNELL:
 12 A. I'm not sure who would have told me, whether
 13 it was through a meeting or just through the
 14 flow of information.
 15 COFFEY, Q.C.:
 16 Q. Ma'am -
 17 MS. PENNELL:
 18 A. But I remember, you know, being frustrated
 19 with the process that we couldn't seem to find
 20 out what in the world was going on.
 21 COFFEY, Q.C.:
 22 Q. Now ma'am, do you know who Bev Carter is?
 23 MS. PENNELL:
 24 A. I do now and I've never met her or -
 25 COFFEY, Q.C.:

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1 Q. Well, at the time, did you know who she was?
 2 MS. PENNELL:
 3 A. I knew who she was.
 4 COFFEY, Q.C.:
 5 Q. You understood her to be whom and involved how
 6 in this?
 7 MS. PENNELL:
 8 A. I didn't know her title. I knew she worked in
 9 a lab and I knew that she was--I believe she
 10 was responsible for the retesting. I believe
 11 she was sort of spearheading the whole, you
 12 know, retesting project type thing.
 13 COFFEY, Q.C.:
 14 Q. Where did you get that understanding from?
 15 MS. PENNELL:
 16 A. Most likely Terry Gulliver, because I think it
 17 was around this point in time when Mr.
 18 Gulliver took me on a little tour of the lab,
 19 because throughout these few days, which I'll
 20 stress is still only three or four days into
 21 me knowing about this whole situation, I
 22 wanted to find out as much information as I
 23 could about the process, how it worked, what--
 24 you know, I'd heard a lot and read a lot and
 25 been told a lot of things, but I didn't really

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1 know. So I had Mr. Gulliver take me through
 2 the lab and show me how these tests actually
 3 work.
 4 COFFEY, Q.C.:
 5 Q. Okay.
 6 MS. PENNELL:
 7 A. And I think it was during that little tour
 8 that I either saw Bev--I have never met her,
 9 but I think he may have said that's her over
 10 there, type situation.
 11 COFFEY, Q.C.:
 12 Q. So you spoke to people, read material, and
 13 arranged for a tour of the lab. Did you do
 14 anything else?
 15 MS. PENNELL:
 16 A. Did as much research as I possibly could in
 17 the amount of time that I had to work with.
 18 COFFEY, Q.C.:
 19 Q. And -
 20 MS. PENNELL:
 21 A. Gathered as much material as I could.
 22 COFFEY, Q.C.:
 23 Q. - all with a view to doing what?
 24 MS. PENNELL:
 25 A. Well, for--to put as much information as I

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1 could in the briefing materials and in the
 2 media releases, but also a lot of times the
 3 media will call after a story or after they're
 4 getting their story together, after an
 5 interview, and want to clarify something, and
 6 you know, the media relations person in an
 7 organization is often that person who will be
 8 there to fact check or clarify. So I wanted
 9 to know as much as I could about what this was
 10 and so I could give the most accurate
 11 information to them.
 12 COFFEY, Q.C.:
 13 Q. Ma'am, this is Wednesday, July 20th. What
 14 meetings, if any, do you recall you were next
 15 involved in?
 16 MS. PENNELL:
 17 A. I think there's one more meeting that I was
 18 involved in.
 19 COFFEY, Q.C.:
 20 Q. Do you recall what date that was?
 21 MS. PENNELL:
 22 A. Next day.
 23 COFFEY, Q.C.:
 24 Q. That would be the -
 25 MS. PENNELL:

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1 A. I only know that because of the exhibits.
 2 COFFEY, Q.C.:
 3 Q. That would be the 21st, July 21st?
 4 MS. PENNELL:
 5 A. I think so, I think there was one more. I
 6 think there was three or four in total and
 7 they were all clustered within a couple of
 8 days.
 9 COFFEY, Q.C.:
 10 Q. Okay, so what do you recall about the meeting
 11 of July 21st, who was there?
 12 MS. PENNELL:
 13 A. I don't recall anything specific about it, I'm
 14 just going on my notes.
 15 COFFEY, Q.C.:
 16 Q. And well do you recall, first of all, where
 17 the meeting was?
 18 MS. PENNELL:
 19 A. The only meetings I attended were in the
 20 basement of the Health Sciences. I don't
 21 remember attending a meeting with that group
 22 anywhere else.
 23 COFFEY, Q.C.:
 24 Q. Okay. And who was there and what -
 25 MS. PENNELL:

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1 A. I think I was involved in a conference call,
 2 actually, because you asked me what meetings,
 3 but I don't know when that conference call
 4 was. It was somewhere in this time, as well.
 5 COFFEY, Q.C.:
 6 Q. Do you recall who was there, what happened?
 7 MS. PENNELL:
 8 A. No, I don't, I'm sorry.
 9 COFFEY, Q.C.:
 10 Q. And do you recall ever attending any meetings
 11 where there were any exchanges between
 12 different types of doctors?
 13 MS. PENNELL:
 14 A. I don't think so. Because I believe Dr. Laing
 15 and Dr. McCarthy and Dr. Kwan did attend the
 16 first meeting I was at, but I don't remember
 17 them being at any other meetings. And at that
 18 first meeting I don't know that there was any
 19 interaction.
 20 COFFEY, Q.C.:
 21 Q. Do you know, did you attend a meeting on
 22 August 1st?
 23 MS. PENNELL:
 24 A. I don't think so. I think I was on vacation.
 25 COFFEY, Q.C.:

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1 Q. Okay.
 2 MS. PENNELL:
 3 A. I took two weeks vacation the first two weeks
 4 of August.
 5 COFFEY, Q.C.:
 6 Q. Do you recall if you attended a meeting on
 7 July 27th?
 8 MS. PENNELL:
 9 A. What day of the week would that have been?
 10 COFFEY, Q.C.:
 11 Q. Involves a--if the 20th was a Wednesday, the
 12 27th would be a Wednesday, as well.
 13 MS. PENNELL:
 14 A. I don't think so.
 15 COFFEY, Q.C.:
 16 Q. Well, okay, well perhaps if we could look at
 17 your notes, that might assist you. It's
 18 Exhibit 1527, page 9.
 19 MS. PENNELL:
 20 A. The meetings were all similar so they sort of
 21 all go together in my mind. Looks like I did.
 22 COFFEY, Q.C.:
 23 Q. Do the notes assist you in any way in
 24 recalling the meeting and what happened, and,
 25 if so, could you tell the Commissioner what

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1 you recall please?
 2 MS. PENNELL:
 3 A. Is there any way of making this a little tiny
 4 bit bigger?
 5 COMMISSIONER:
 6 Q. You should have a paper copy of it in your -
 7 MS. PENNELL:
 8 A. Oh, in here, okay.
 9 COMMISSIONER:
 10 Q. May be it easier to see.
 11 MS. PENNELL:
 12 A. Thanks.
 13 COMMISSIONER:
 14 Q. - in the last exhibit.
 15 MS. PENNELL:
 16 A. Yeah, that's a little bit--yeah, it looks like
 17 we've actually got progress here getting some,
 18 finally getting some information back. Looks
 19 like, you know, we've obviously been provided
 20 some numbers here that in 1999 our average was
 21 76 percent positivity rate. That's what I
 22 would assume that I meant by writing that
 23 down. Which wouldn't be out of the ordinary
 24 if 75 is the benchmark at Mount Sinai. Looks
 25 like we're getting some cooperation in

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1 Montreal to--I'm not sure if this means
 2 Montreal was going to re-stain 40 to 50 of
 3 their cases to see if there was issues or if
 4 they were going to re-stain 40 to 50 of our
 5 cases. I'm sorry, I just can't, can't
 6 remember it. There again, no standards across
 7 Canada, that just kept coming up.
 8 COFFEY, Q.C.:
 9 Q. Who kept raising that?
 10 MS. PENNELL:
 11 A. I think it was Mr. Gulliver.
 12 COMMISSIONER:
 13 Q. And what did you understand that meant?
 14 MS. PENNELL:
 15 A. There's really nothing to compare--there was
 16 no standard to meet, there was no benchmark to
 17 get to. It was every institution was on their
 18 own.
 19 COMMISSIONER:
 20 Q. So you're talking about the number of all -
 21 MS. PENNELL:
 22 A. The 75 percent, say, for instance, Mount Sinai
 23 used 75 percent, but there was no literature
 24 that suggested that that's--that was right or
 25 wrong, it just was what they used.

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1 COMMISSIONER:
 2 Q. So no standard across Canada referred, in your
 3 view, to positivity rates?
 4 MS. PENNELL:
 5 A. Yes.
 6 COMMISSIONER:
 7 Q. Thank you.
 8 COFFEY, Q.C.:
 9 Q. Do you recall anything else?
 10 MS. PENNELL:
 11 A. I see there's a reference that Dr. Kwan was at
 12 this meeting, but, you know, I don't have any
 13 specific recollection of him being there.
 14 COFFEY, Q.C.:
 15 Q. Did you ever attend any meetings where the
 16 minister was?
 17 MS. PENNELL:
 18 A. No, I didn't.
 19 COFFEY, Q.C.:
 20 Q. Okay. Did you ever attend any meetings where
 21 Dr. Carter was?
 22 MS. PENNELL:
 23 A. No, I didn't.
 24 COFFEY, Q.C.:
 25 Q. Okay. So, ma'am, we're well now into, this is

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1 the following week. As the person responsible
 2 for dealing with the media within Eastern
 3 Health, you had been, let's see, the 18th,
 4 19th and 20th are Monday, Tuesday and
 5 Wednesday. You had understood that the matter
 6 was going to go public that week?
 7 MS. PENNELL:
 8 A. Um-hm.
 9 COFFEY, Q.C.:
 10 Q. We understand that it did not. Can you tell
 11 us what you recall about why it didn't?
 12 MS. PENNELL:
 13 A. I probably accepted that because of all the
 14 complications because of the Ventana issue,
 15 because of, you know, the department getting
 16 involved, because of HIROC getting involved,
 17 that these were, you know, reasonable, in my
 18 mind, reasons why we would be delayed a few
 19 days. But I never, ever once thought that
 20 there wouldn't be a release.
 21 COFFEY, Q.C.:
 22 Q. And delayed why, what did you understand -
 23 MS. PENNELL:
 24 A. Because information kept unfolding and how can
 25 you go out and release something when every

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1 minute of the day it seemed like something was
 2 changing? What could you really release?
 3 COFFEY, Q.C.:
 4 Q. Well, ma'am -
 5 MS. PENNELL:
 6 A. Because you could release that we were
 7 retesting.
 8 COFFEY, Q.C.:
 9 Q. Yes.
 10 MS. PENNELL:
 11 A. But then when somebody comes--when a reporter
 12 has a question of, you know, any questions
 13 following that, then how can you answer it
 14 when the variables are changing, seemingly,
 15 every day?
 16 COFFEY, Q.C.:
 17 Q. And I take it when you were drafting the press
 18 releases for, on the--on July 15th, was that
 19 any different at that time?
 20 MS. PENNELL:
 21 A. I don't think it was as complicated. I don't
 22 think there was many variables involved and we
 23 didn't know about increased sensitivity of
 24 Ventana.
 25 COFFEY, Q.C.:

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1 Q. You didn't?
 2 MS. PENNELL:
 3 A. Not on the 15th.
 4 COFFEY, Q.C.:
 5 Q. Okay.
 6 MS. PENNELL:
 7 A. I didn't.
 8 COFFEY, Q.C.:
 9 Q. Go ahead.
 10 MS. PENNELL:
 11 A. I think that was probably the 18th or 19th
 12 before I found that out. For some reason, it
 13 was a Thursday sticks in my mind.
 14 COFFEY, Q.C.:
 15 Q. And a Thursday, well, it wouldn't be Thursday,
 16 July 14th?
 17 MS. PENNELL:
 18 A. No.
 19 COFFEY, Q.C.:
 20 Q. I presume?
 21 MS. PENNELL:
 22 A. No.
 23 COFFEY, Q.C.:
 24 Q. So it would be Thursday, July 21st?
 25 MS. PENNELL:

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1 A. Possibly.
 2 COFFEY, Q.C.:
 3 Q. Do you know what, if anything, happened on
 4 July 21st in relation to this matter?
 5 MS. PENNELL:
 6 A. Was that meeting with the minister?
 7 COFFEY, Q.C.:
 8 Q. We understand that so, yes. What happened
 9 that day?
 10 MS. PENNELL:
 11 A. I think it was Susan who told me about the
 12 Ventana, so that would be the significant
 13 event on that day for me.
 14 COFFEY, Q.C.:
 15 Q. And what did she tell you about the Ventana?
 16 MS. PENNELL:
 17 A. I remember she was frustrated and because I
 18 think she found that information out around
 19 the time of the meeting with the minister.
 20 And I wasn't there, I was no where near to be
 21 found for that meeting. But I remember her
 22 saying that, you know, we may have another
 23 issue, we may have an issue here with our new
 24 technology. We may be--we may have too many
 25 positives. And she, you know, she was

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1 frustrated because she didn't have any control
 2 over any of this any more than I did. We just
 3 had to go on what people were telling us and
 4 all we wanted to do was get the information
 5 out.
 6 COFFEY, Q.C.:
 7 Q. Now, did, Susan at this point, on July 21st or
 8 July 22nd ask you to review any material she
 9 had prepared?
 10 MS. PENNELL:
 11 A. No, I don't believe so.
 12 COFFEY, Q.C.:
 13 Q. Like a memo to Mr. Tilley?
 14 MS. PENNELL:
 15 A. Never saw that memo.
 16 COFFEY, Q.C.:
 17 Q. So, ma'am, July 22nd would, I gather, have
 18 been a Friday. By the time work concluded on
 19 that Friday, what did you understand the
 20 status was in relation to going public, as it
 21 were?
 22 MS. PENNELL:
 23 A. I was just waiting for word. I don't have any
 24 recollection, Ms. Coffey, of ever being told
 25 that we weren't doing it. It was just a

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1 matter of when.
 2 COFFEY, Q.C.:
 3 Q. Well, did you have any understanding of when?
 4 MS. PENNELL:
 5 A. As soon as possible.
 6 COFFEY, Q.C.:
 7 Q. And, well -
 8 MS. PENNELL:
 9 A. When I was told to, you know, that was--I
 10 didn't have any control over when, it was when
 11 the word was given to me.
 12 COFFEY, Q.C.:
 13 Q. Okay, ma'am, by the time July 22nd came and
 14 ended at work, had you done any further work
 15 in relation to those draft press releases?
 16 MS. PENNELL:
 17 A. I don't think so.
 18 COFFEY, Q.C.:
 19 Q. Okay. So whatever work was done in relation
 20 to them was done -
 21 MS. PENNELL:
 22 A. I may have tweaked -
 23 COFFEY, Q.C.:
 24 Q. - prior to the meeting with the minister?
 25 MS. PENNELL:

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1 A. Yeah. I may have tweaked, but we wouldn't
 2 have brought those drafts, I don't believe,
 3 anyway, out to a meeting with the minister.
 4 We would have brought a more finalized draft
 5 to the minister which would have been already
 6 through Susan or--and Dr. Williams, that way,
 7 whereas I don't believe that my releases that
 8 I had written went past Susan.
 9 COFFEY, Q.C.:
 10 Q. No. I'm asking you other than, because you've
 11 indicated you probably started to work on
 12 those on Friday, the 15th?
 13 MS. PENNELL:
 14 A. Um-hm.
 15 COFFEY, Q.C.:
 16 Q. Of July, and over that weekend, into Monday,
 17 18th and 19th. When did you stop working on
 18 the press releases?
 19 MS. PENNELL:
 20 A. I would say they were a work in progress right
 21 up until someone decided not to go out with
 22 it.
 23 COFFEY, Q.C.:
 24 Q. Well, that's what I'm getting at his this -
 25 MS. PENNELL:

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1 A. But I don't know when that was, that's the
 2 thing.
 3 COFFEY, Q.C.:
 4 Q. You see, you've prepared, you got to work
 5 immediately on the--late on the week of July
 6 15th, ending July 15th. You produced a number
 7 of draft press releases, we have them here.
 8 I'm just asking you if you can, what
 9 precipitated your not working further on them?
 10 Because as you've indicated, I mean, you
 11 prepared them?
 12 MS. PENNELL:
 13 A. Um-hm.
 14 COFFEY, Q.C.:
 15 Q. You prepared them, you've told the
 16 Commissioner, all with a view to as things
 17 changed. And you've told us that things
 18 changed even more the following week.
 19 MS. PENNELL:
 20 A. I believe I had sent -
 21 COFFEY, Q.C.:
 22 Q. So I'm just asking you what, if anything,
 23 caused, precipitated the end of your work on
 24 press releases, because there aren't any
 25 afterward?

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1 MS. PENNELL:
 2 A. Well, because I had sent the drafts to Susan.
 3 COFFEY, Q.C.:
 4 Q. Yes.
 5 MS. PENNELL:
 6 A. Which would mean I would be in holding mode
 7 waiting for her to tell me to change, modify,
 8 so I was likely in holding mode waiting for
 9 her input.
 10 COFFEY, Q.C.:
 11 Q. And you didn't hear back from her?
 12 MS. PENNELL:
 13 A. I don't think so.
 14 COFFEY, Q.C.:
 15 Q. So she didn't tell you to stop working on
 16 them, she just didn't reply, is that -
 17 MS. PENNELL:
 18 A. You know, I'm not--I'm trying to think.
 19 COFFEY, Q.C.:
 20 Q. See, ma'am -
 21 MS. PENNELL:
 22 A. I think I accepted that the situation was
 23 changing. I don't think I questioned that
 24 because of the variables were changing so
 25 often that I just, I knew when we were

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1 comfortable with the information we had,
 2 comfortable enough to go out to the media and
 3 the public at large, that we would. I don't
 4 think we got to that point where we were
 5 comfortable.
 6 COFFEY, Q.C.:
 7 Q. I take it, ma'am, that you understood that
 8 whenever there was actually any realistic
 9 thought being given to perhaps going public,
 10 that you'd be told about it and new press
 11 releases would be drafted?
 12 MS. PENNELL:
 13 A. Certainly.
 14 COFFEY, Q.C.:
 15 Q. So the fact that you were never afterward
 16 tasked to drafting another press release or
 17 media release, does that indicate that, in
 18 fact, from your perspective, it was a dead
 19 issue in around July 19th, 20th?
 20 MS. PENNELL:
 21 A. I don't think it was a dead issue then.
 22 COFFEY, Q.C.:
 23 Q. The 21st after the -
 24 MS. PENNELL:
 25 A. No.

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1 COFFEY, Q.C.:
 2 Q. But there -
 3 MS. PENNELL:
 4 A. I would say by the time I came back from
 5 vacation, by mid August.
 6 COFFEY, Q.C.:
 7 Q. Yes.
 8 MS. PENNELL:
 9 A. Something had changed.
 10 COFFEY, Q.C.:
 11 Q. Okay. But -
 12 MS. PENNELL:
 13 A. And I missed it.
 14 COFFEY, Q.C.:
 15 Q. But in the meantime, I take it, there was no
 16 other press release prepared?
 17 MS. PENNELL:
 18 A. Not that I know.
 19 COFFEY, Q.C.:
 20 Q. Do you recall when you were on vacation, what
 21 dates?
 22 MS. PENNELL:
 23 A. Would have been the 29th onward for two weeks,
 24 29th of July, so the 30th, I guess, because it
 25 would have started on a Saturday.

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1 COFFEY, Q.C.:

2 Q. Now, ma'am, I'm going to ask you to think

3 again. Do you recall--well, first of all,

4 have you had an opportunity to review the

5 transcript of the interview you did with

6 myself and Ms. Chaytor?

7 MS. PENNELL:

8 A. I reviewed it.

9 COFFEY, Q.C.:

10 Q. Okay. Do you recall when that was?

11 MS. PENNELL:

12 A. December 5th.

13 COFFEY, Q.C.:

14 Q. No, when you reviewed it.

15 MS. PENNELL:

16 A. Oh. Yeah, shortly after that. I didn't want

17 to memorize it. I wanted to go more on my

18 recollection than on -

19 COFFEY, Q.C.:

20 Q. Did you recall having any particular

21 misgivings about what you'd said?

22 MS. PENNELL:

23 A. It was 93 worth, so, no, not that I know of.

24 COFFEY, Q.C.:

25 Q. Okay. I'm going to ask you do you recall

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1 attending a meeting involving a number of

2 administrative and clinical personnel where

3 you witnessed some exchanges between people?

4 MS. PENNELL:

5 A. The only meeting I was the very first one.

6 COFFEY, Q.C.:

7 Q. Yes.

8 MS. PENNELL:

9 A. Which was a very tense meeting. That's the

10 one on the 14th, 14th, yeah.

11 COFFEY, Q.C.:

12 Q. Okay. Why did you--what caused you to believe

13 it was tense?

14 MS. PENNELL:

15 A. It was tense because I don't think there were

16 really any clear answer as to what really was

17 going on here and where the responsibility

18 lied in finding out what was going on. Was

19 it, you know, was it a pathology issue, was it

20 an oncology issue, was it laboratory issue? I

21 don't think there was any clear sense in that

22 room as to whose issue it was, so that made

23 for some tension.

24 COFFEY, Q.C.:

25 Q. Tension between the representatives of the

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1 different groups?

2 MS. PENNELL:

3 A. Certainly, that's fair.

4 COFFEY, Q.C.:

5 Q. And the groups being pathologists -

6 MS. PENNELL:

7 A. Oncologists.

8 COFFEY, Q.C.:

9 Q. Oncologists and technologists?

10 MS. PENNELL:

11 A. Yeah.

12 COFFEY, Q.C.:

13 Q. So was there any talk of who was responsible

14 for this, as between them? You see, I'm

15 trying to get -

16 MS. PENNELL:

17 A. I know what you're trying to get -

18 COFFEY, Q.C.:

19 Q. - for the Commissioner some sense because I

20 understand what you've told us, okay.

21 MS. PENNELL:

22 A. Yes, I know and there was certainly -

23 COFFEY, Q.C.:

24 Q. So you're retaining for the first time, I take

25 it, a big clinical meeting?

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1 MS. PENNELL:

2 A. It's hard for me now because when I spoke to

3 you in December, I remember things one way and

4 since, I mean the inquiry has been ongoing,

5 I've listened to some of it, I've read some of

6 the testimony, so I'm trying not to let that

7 filter into my mind, but, you know, I have

8 heard a lot of the testimony, so that clears

9 some things up and muddles others. So I mean,

10 that meeting, all I can say it's probably one

11 of the most intense meetings I ever attended

12 in my life and I was certainly out of my

13 league, looking around, going what in the

14 world is going on here? And there was a lot

15 of worry in that room by, you know, all of

16 these professional people, but no clear--no

17 really clear direction as to whose issue this

18 was and if it was, say it wasn't technology,

19 if it was a human error, well should it have

20 been caught by the oncologists or the

21 pathologists or is it just a clear lab issue.

22 So, you know, there was sort of -

23 COFFEY, Q.C.:

24 Q. These were exchanges you were hearing between

25 this professional group?

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1 MS. PENNELL:
 2 A. I don't know if they were exchanges as much as
 3 each person's testimony, as you will, to Dr.
 4 Williams. I'm not sure--there may have been
 5 an exchange between Dr. Cook and one of the
 6 oncologists because they were the most visibly
 7 upset, Dr. Laing and Dr. McCarthy, because
 8 they were the ones who were going to have to
 9 face patients whose results had changed.
 10 COFFEY, Q.C.:
 11 Q. Now when you say you understood that perhaps
 12 there was questions or concern, I suppose,
 13 about whether this should have been picked up
 14 before, and if so, by whom, was that the -
 15 MS. PENNELL:
 16 A. Well by the trends, this whole trend issue,
 17 was this a trend that should have been noticed
 18 by the pathologists or the oncologists?
 19 COFFEY, Q.C.:
 20 Q. And what, if anything, was the response?
 21 Like, one side verses--well I shouldn't say
 22 verses the other, because that's not fair, one
 23 side I take it--I take it from what you're
 24 saying to us, that look, Dr. Williams is
 25 chairing the meeting.

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1 MS. PENNELL:
 2 A. Uh-hm.
 3 COFFEY, Q.C.:
 4 Q. And the representatives of the different
 5 groups are really speaking -
 6 MS. PENNELL:
 7 A. To him.
 8 COFFEY, Q.C.:
 9 Q. To him, but about -
 10 MS. PENNELL:
 11 A. There may have been exchanges between, yeah.
 12 COFFEY, Q.C.:
 13 Q. - about comments made by others.
 14 MS. PENNELL:
 15 A. Right, really, yes.
 16 COFFEY, Q.C.:
 17 Q. That was what you were -
 18 MS. PENNELL:
 19 A. Yes, definitely.
 20 COFFEY, Q.C.:
 21 Q. As opposed to directly at each other.
 22 MS. PENNELL:
 23 A. And Susan and I were sort of, you know,
 24 onlookers really, we weren't really involved.
 25 COFFEY, Q.C.:

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1 Q. And you say this is one of the tenser, tensest
 2 meeting you ever -
 3 MS. PENNELL:
 4 A. Yeah, probably the tensest, if that's a word.
 5 COFFEY, Q.C.:
 6 Q. Now ma'am, did you ever, were you ever asked
 7 to prepare a communications plan?
 8 MS. PENNELL:
 9 A. No, I was not. We--and that didn't strike me
 10 strange at the time. Since, yes, it has
 11 because I've written quite a few since then
 12 during my time in government, but at that time
 13 that wasn't a tool that we used very often. I
 14 shouldn't say we never used it, but -
 15 COFFEY, Q.C.:
 16 Q. And so if you weren't asked to prepare one, I
 17 take it that--well I'll ask you though, were
 18 you ever--was it ever suggested to you that
 19 certain things should be included in one if
 20 one was prepared?
 21 MS. PENNELL:
 22 A. No. Coming from a media background, I wasn't
 23 even really familiar with communications plans
 24 at that time. I wasn't classically trained in
 25 communications, I was a journalist, so a

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1 communications plan wouldn't have been
 2 something I would have automatically have gone
 3 to. Now I see the usefulness in them, but at
 4 that time I didn't know.
 5 COFFEY, Q.C.:
 6 Q. We looked at your notes for July 27th, 2005,
 7 exhibit P-0513, which is Dr. Williams'
 8 handwritten notes of that meeting, does
 9 describe it as a conference call, okay, 5:00
 10 p.m., and would have referred to having
 11 recalled at least one conference call, from
 12 your perspective, the meeting, let me see,
 13 July 22nd comes and goes. I believe you have
 14 notes for July 24th, if we could exhibit P-
 15 1527, page 8 please? This is Sunday, July
 16 24th, 2005?
 17 MS. PENNELL:
 18 A. Yes.
 19 COFFEY, Q.C.:
 20 Q. And these are your handwritten notes. It
 21 says, "I gather sent out negative/positive to
 22 another lab, Montreal General to ensure
 23 positive, bringing in Ventana officials to
 24 convince us it's"--presumably "okay. August
 25 1, Kara back"--that would be Kara Laing?

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1 MS. PENNELL:
 2 A. Uh-hm.
 3 COFFEY, Q.C.:
 4 Q. He answers and then make a decision on Ventana
 5 and other centres, conversion rates, what
 6 their experiences, don't fall, new test verses
 7 old test." Could you tell the Commissioner,
 8 please, how common it was for you to go in for
 9 a meeting on a Sunday?
 10 MS. PENNELL:
 11 A. Rare. However becoming more common in July of
 12 2005.
 13 COFFEY, Q.C.:
 14 Q. You don't have a list of those in attendance,
 15 but if we could look, please, at exhibit P-
 16 0523, these are some notes of Mr. Tilley. He
 17 lists Dr. Williams, Mr. Tilley, Dr. Gardiner,
 18 Dr. Cook, Dr. Gulliver, yourself, Ms. Bonnell,
 19 Mr. Boone, Ms. Predham, Dr. Laing and Dr. Kwan
 20 as being present, does that sound about right,
 21 on a Sunday?
 22 MS. PENNELL:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. Now in terms of dealing with the media, by

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1 this point in time what was the situation?
 2 Was there any immediate plans to go public?
 3 MS. PENNELL:
 4 A. In my mind there was always plans to go
 5 public?
 6 COFFEY, Q.C.:
 7 Q. No, no, I said immediate plan, that's what I--
 8 on the 24th?
 9 MS. PENNELL:
 10 A. Yes.
 11 COFFEY, Q.C.:
 12 Q. Were you actually asked to do anything
 13 further?
 14 MS. PENNELL:
 15 A. No.
 16 COFFEY, Q.C.:
 17 Q. So you were gone from about July 29th -
 18 MS. PENNELL:
 19 A. Yeah, first two weeks of July or August,
 20 sorry.
 21 COFFEY, Q.C.:
 22 Q. August. And when you arrived back, what was
 23 the situation? Were you briefed on the
 24 situation when you came back?
 25 MS. PENNELL:

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1 A. I don't remember being briefed on the
 2 situation when I came back. I mean, I must
 3 have been told something, but it seemed to
 4 have quieted, certainly. There had obviously
 5 been a decision made at some point.
 6 COFFEY, Q.C.:
 7 Q. And a decision made to do what?
 8 MS. PENNELL:
 9 A. Not to go public.
 10 COFFEY, Q.C.:
 11 Q. Did you have any understanding, after your
 12 arrival back at work, mid August, as to
 13 whether or not the patients were going to be
 14 notified about the fact that they were being
 15 retested, or their samples were being
 16 retested?
 17 MS. PENNELL:
 18 A. To tell you the truth, Mr. Coffey, I don't
 19 remember having any more to do with this file,
 20 other than those cluster of a couple of weeks
 21 there in July.
 22 COFFEY, Q.C.:
 23 Q. Okay.
 24 MS. PENNELL:
 25 A. There was so much more going on in the

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1 department at the time that, and I was away
 2 for a couple of weeks, I was probably drowned
 3 in work when I got back.
 4 COFFEY, Q.C.:
 5 Q. So your next involvement was when, in this
 6 matter?
 7 MS. PENNELL:
 8 A. According to my notes, October.
 9 COFFEY, Q.C.:
 10 Q. And what happened in October?
 11 MS. PENNELL:
 12 A. Or The Independent, September 30th, I think.
 13 COFFEY, Q.C.:
 14 Q. Could you tell the Commissioner what you
 15 recall about that?
 16 MS. PENNELL:
 17 A. I recall our administrative assistant,
 18 Elizabeth, telling myself that there had been
 19 a media inquiry from The Independent, I must
 20 have been out of the office, I don't know
 21 where I was, but--and it was not bang on, the
 22 actual inquiry wasn't exactly asking about
 23 ER/PR, it was asking about results of a
 24 mammography, I believe and so I believe I had
 25 a conversation with Susan wondering out loud

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1 if they actually meant ER/PR. So I don't know
 2 if I called The Independent back or if Susan
 3 did, something tells me I was tied up with
 4 something that day because I know the actual
 5 inquiry itself was taken by Elizabeth and
 6 Susan actually handled the actual inquiry, so--
 7 although I was around the office because I do
 8 remembering it happening, but I don't have a
 9 great recollection of that media inquiry and I
 10 usually handled them, so there must have been
 11 something else going on in the office that
 12 day.
 13 COFFEY, Q.C.:
 14 Q. So ma'am, you'd been back at work after your
 15 holidays for about six weeks.
 16 MS. PENNELL:
 17 A. Uh-hm.
 18 COFFEY, Q.C.:
 19 Q. What had been going on with this issue in the
 20 meantime?
 21 MS. PENNELL:
 22 A. I hadn't been privy to anything.
 23 COFFEY, Q.C.:
 24 Q. So if there were people within Eastern Health
 25 who were concerned about the fact that it

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1 might inadvertently go public, they weren't
 2 keeping you -
 3 MS. PENNELL:
 4 A. They weren't coming to me.
 5 COFFEY, Q.C.:
 6 Q. Weren't coming to you about it, including
 7 Susan.
 8 MS. PENNELL:
 9 A. Yes.
 10 COFFEY, Q.C.:
 11 Q. She didn't raise it. You were informed about
 12 the phone inquiry.
 13 MS. PENNELL:
 14 A. Uh-hm.
 15 COFFEY, Q.C.:
 16 Q. It involves mammography, you did what? You
 17 passed it on to -
 18 MS. PENNELL:
 19 A. I think Susan and I must have had a
 20 conversation, I recall sitting in her office
 21 and talking about it, but I mean, that
 22 happened almost on a daily basis, so, but this
 23 one does seem to stand out a little and trying
 24 to, you know, it sort had been the consensus
 25 that this would come out, I mean, you know,

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1 that's the way I worked, nothing stays away
 2 from the media very long. It was amazing
 3 this, you know, no reporter had gotten on to
 4 this situation before this, so I wasn't
 5 surprised, and at that point, you just go into
 6 a mode of, okay, who was going to speak to it?
 7 Because we weren't in the habit of turning
 8 down media inquiries.
 9 COFFEY, Q.C.:
 10 Q. So what happened then?
 11 MS. PENNELL:
 12 A. I believe Susan called Kara Laing. And Kara--
 13 Dr. Laing called The Independent.
 14 COFFEY, Q.C.:
 15 Q. Did you have any involvement in this?
 16 MS. PENNELL:
 17 A. I don't think so.
 18 COFFEY, Q.C.:
 19 Q. Did you offer any advice?
 20 MS. PENNELL:
 21 A. I didn't see Dr. Laing that day, so I didn't
 22 go over and I wasn't present for her
 23 interview.
 24 COFFEY, Q.C.:
 25 Q. Well do you know if you spoke to her by phone?

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1 MS. PENNELL:
 2 A. I may have, but I don't remember ever talking
 3 to her on the phone.
 4 COFFEY, Q.C.:
 5 Q. We have reason to believe that Dr. Laing
 6 wasn't in the city at that time?
 7 MS. PENNELL:
 8 A. Yeah, that seems right, yes.
 9 COFFEY, Q.C.:
 10 Q. So -
 11 MS. PENNELL:
 12 A. I remember Susan talking to her on speaker
 13 phone, I think she was at a conference or
 14 something in Toronto, seems to -
 15 COFFEY, Q.C.:
 16 Q. Do you recall there being any conversation
 17 with Dr. Laing about what she should or
 18 shouldn't say or could or couldn't say?
 19 MS. PENNELL:
 20 A. No. And I know that because we weren't in the
 21 habit of telling any physician or expert what
 22 they should or shouldn't say.
 23 COFFEY, Q.C.:
 24 Q. And were you involved on September 30th in
 25 preparing any briefing notes?

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1 MS. PENNELL:
 2 A. No.
 3 COFFEY, Q.C.:
 4 Q. Do you know if on September 30th it was
 5 envisaged that Dr. Laing would provide any
 6 numbers to the media?
 7 MS. PENNELL:
 8 A. I guess Dr. Laing could provide whatever she
 9 saw fit at the time. We certainly didn't put
 10 any restrictions on her--or I didn't.
 11 COFFEY, Q.C.:
 12 Q. How about the idea of preparing key messages?
 13 MS. PENNELL:
 14 A. I didn't prepare any key messages for Dr.
 15 Laing?
 16 COFFEY, Q.C.:
 17 Q. How about for Dr. Williams, I gather you've
 18 prepared some at some time before in July?
 19 MS. PENNELL:
 20 A. Uh-hm.
 21 COFFEY, Q.C.:
 22 Q. Anything like that in late September?
 23 MS. PENNELL:
 24 A. No.
 25 COFFEY, Q.C.:

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1 Q. What then was your next involvement? So I
 2 take it you were more or less a bystander in
 3 the September 30th.
 4 MS. PENNELL:
 5 A. Yes, sort of odd, but yes, I think I was.
 6 COFFEY, Q.C.:
 7 Q. And what then happened?
 8 MS. PENNELL:
 9 A. NTV also called that day, I think I took that
 10 call.
 11 COFFEY, Q.C.:
 12 Q. Yes.
 13 MS. PENNELL:
 14 A. It was rather late in the day, for them and
 15 for us, so I think we -
 16 COFFEY, Q.C.:
 17 Q. That would be exhibit P-0600 please? Is this
 18 the -
 19 MS. PENNELL:
 20 A. That's the NTV inquiry, yes.
 21 COFFEY, Q.C.:
 22 Q. Okay, and -
 23 MS. PENNELL:
 24 A. That's Susan's writing which, again, sends me
 25 to--well Elizabeth took the initial, this here

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1 is Susan's "Friday, phone call defer to
 2 Monday" is Susan's note.
 3 COFFEY, Q.C.:
 4 Q. So that's her's. Whose handwriting is that?
 5 MS. PENNELL:
 6 A. Elizabeth Strange, our administrative
 7 assistant.
 8 COFFEY, Q.C.:
 9 Q. You at least were aware that -
 10 MS. PENNELL:
 11 A. Pardon?
 12 COFFEY, Q.C.:
 13 Q. You were aware that the phone call had come
 14 in?
 15 MS. PENNELL:
 16 A. Yes, which is why it's odd that it's not my
 17 writing on these forms that day because I
 18 normally handled all the media.
 19 COFFEY, Q.C.:
 20 Q. Okay. And during this period in late
 21 September of--throughout, actually, August and
 22 September, had you spoken to Carolyn Chaplin
 23 about this matter?
 24 MS. PENNELL:
 25 A. I'm sure I had, but it must have been just

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1 general conversation because nothing specific
 2 stands out. Her, I mean, her point of contact
 3 would have been Ms. Bonnell.
 4 COFFEY, Q.C.:
 5 Q. I appreciate that, but then again you knew her
 6 because you had worked for her?
 7 MS. PENNELL:
 8 A. Yeah, I did know her, yes.
 9 COFFEY, Q.C.:
 10 Q. So -
 11 MS. PENNELL:
 12 A. She was on the interview board that
 13 interviewed me for the job.
 14 COFFEY, Q.C.:
 15 Q. And you had worked for her for three or four
 16 months with the Department of Health -
 17 MS. PENNELL:
 18 A. Yes, I knew her quite well, yes.
 19 COFFEY, Q.C.:
 20 Q. I'm just asking if you knew her well.
 21 MS. PENNELL:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. Did you discuss the matter during July or
 25 August -

1 MS. PENNELL:
 2 A. It's likely that we did.
 3 COFFEY, Q.C.:
 4 Q. September?
 5 MS. PENNELL:
 6 A. It's likely that we may have, but nothing
 7 specific or no direction or -
 8 COFFEY, Q.C.:
 9 Q. Well when you say "nothing specific or no
 10 direction" do you recall if there was any
 11 discussion about the wisdom of the approach
 12 being taken or lack thereof?
 13 MS. PENNELL:
 14 A. No. I don't think that would have been
 15 appropriate, I don't think Ms. Chaplin would
 16 have found that appropriate to inflict her
 17 opinion on something like that on, you know,
 18 of myself or Ms. Bonnell in that manner.
 19 COFFEY, Q.C.:
 20 Q. So what then happened? I take it the
 21 interviews occur with Dr. Laing, what then
 22 happened?
 23 MS. PENNELL:
 24 A. I spent the next few days I think, you know,
 25 with Dr. Williams as he did interviews with

1 attend.
 2 COFFEY, Q.C.:
 3 Q. If I could please, look at exhibit P-0606?
 4 Now this is a series of e-mails of October
 5 3rd, 2005 between yourself, Ms. Bonnell and
 6 the first one is from Ms. Parsons to Ms.
 7 Bonnell and at 3:35 p.m., you wrote "Is this
 8 what you were thinking"? And then the
 9 attachment is "frequently asked questions,
 10 ER", do you see that?
 11 MS. PENNELL:
 12 A. I see it, yes. Do you actually have that
 13 document that I could see?
 14 COFFEY, Q.C.:
 15 Q. Well we do have a version of that, a version
 16 of frequently asked questions, if you bring up
 17 exhibit P-0343 please, page 2? This is a -
 18 MS. PENNELL:
 19 A. Okay.
 20 COFFEY, Q.C.:
 21 Q. And you will see down here at the bottom
 22 right-hand side, the print out date, October
 23 3rd, 2005, Health Care Corporation of St.
 24 John's logo, and it's entitled "Frequently
 25 asked questions about ER/PR".

1 other media outlets because once it was out
 2 there, of course, everybody wanted to talk
 3 about it, all the other media wanted to talk
 4 about it, so I--I was at his office with him a
 5 lot and we, whatever camera or reporter, we'd
 6 usually get them to come there and he'd do his
 7 interviews or if he was doing an interview on
 8 the phone, I would generally be there with
 9 him, which was normal practice anyway in any
 10 issue.
 11 COFFEY, Q.C.:
 12 Q. Well ma'am, after you return from vacation in
 13 mid August, did you continue or afterward
 14 attend any of these larger meetings, board
 15 meetings?
 16 MS. PENNELL:
 17 A. According to my notes I attended one meeting
 18 in early October and that's the only meeting
 19 after the end of July.
 20 COFFEY, Q.C.:
 21 Q. And how was it that you came to attend that?
 22 MS. PENNELL:
 23 A. I'm not sure. I guess maybe I provided, maybe
 24 because it had gone public and because it was
 25 in the media that Susan may have asked me to

1 MS. PENNELL:
 2 A. Yes, I remember this now that you've shown me.
 3 COFFEY, Q.C.:
 4 Q. Okay, well what can you tell us about this?
 5 How did this come about, who prepared it, for
 6 what purpose?
 7 MS. PENNELL:
 8 A. It came about because the issue had obviously
 9 gone public and we wanted to put as much
 10 information out there as we could, because
 11 media stories aren't necessarily always all
 12 encompassing, so these are the questions that
 13 we deemed were probably foremost in patients'
 14 minds. So we embarked on an information
 15 campaign. I believe we did some advertising
 16 as well.
 17 COFFEY, Q.C.:
 18 Q. So who asked you to prepare this?
 19 MS. PENNELL:
 20 A. That would have been Susan, she was my direct
 21 supervisor.
 22 COFFEY, Q.C.:
 23 Q. And when would you have prepared this?
 24 MS. PENNELL:
 25 A. Probably between when The Independent called

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1 and this day.
 2 COFFEY, Q.C.:
 3 Q. Okay, so the 3rd of October was a Tuesday, so
 4 the call was on -
 5 MS. PENNELL:
 6 A. Friday.
 7 COFFEY, Q.C.:
 8 Q. - was a Monday.
 9 MS. PENNELL:
 10 A. It was a Friday, wasn't it?
 11 COFFEY, Q.C.:
 12 Q. September 30th was the Friday.
 13 MS. PENNELL:
 14 A. The Independent called Friday, yes.
 15 COFFEY, Q.C.:
 16 Q. So this is Monday.
 17 MS. PENNELL:
 18 A. Yes.
 19 COFFEY, Q.C.:
 20 Q. So by Monday you had--by Monday afternoon
 21 certainly you had prepared the frequently
 22 asked questions.
 23 MS. PENNELL:
 24 A. Maybe I did it on the weekend or first thing
 25 Monday morning. I mean, most of this

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1 information was already there, it was just
 2 probably formatting it and putting it into the
 3 type of -
 4 COFFEY, Q.C.:
 5 Q. And the purpose would be to put this up on -
 6 MS. PENNELL:
 7 A. And I was the one who would do that.
 8 COFFEY, Q.C.:
 9 Q. On a website?
 10 MS. PENNELL:
 11 A. Yes. But it was confusing because here we
 12 were Eastern Health, but we didn't have a
 13 website because we had just merged and we were
 14 still using the Health Care Corp website which
 15 a lot of the time was outdated because we
 16 weren't Health Care Corp any more, so it was
 17 very confusing.
 18 COFFEY, Q.C.:
 19 Q. Now ma'am, when we look at this, the contents
 20 of this were prepared by yourself?
 21 MS. PENNELL:
 22 A. I believe so, yes.
 23 COFFEY, Q.C.:
 24 Q. And based upon information you had been
 25 provided?

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1 MS. PENNELL:
 2 A. Yes.
 3 COFFEY, Q.C.:
 4 Q. Was there any information that you were aware
 5 of, you were told not to put in it?
 6 MS. PENNELL:
 7 A. No.
 8 COFFEY, Q.C.:
 9 Q. Was there any understanding you had as to what
 10 should or should not go into such a document?
 11 MS. PENNELL:
 12 A. No.
 13 COFFEY, Q.C.:
 14 Q. Okay.
 15 MS. PENNELL:
 16 A. But, of course, this would have been vetted
 17 through the same channel that I referenced
 18 earlier, probably through Susan and Dr.
 19 Williams and maybe someone in, you know, like
 20 Nancy Parsons or Heather Predham. This looks
 21 like the same information I've had in all the
 22 other materials, so I think I did put it
 23 together.
 24 COFFEY, Q.C.:
 25 Q. Ma'am, the bottom of the page, the first page

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1 of the frequently asked questions is "What is
 2 happening now, why are some test results
 3 different? Eastern Health has begun retesting
 4 a select group of breast cancer patients,
 5 those whose results indicated that they were
 6 negative for ER and PR in 2004. The lab the
 7 Health Sciences that does all of the ER and PR
 8 testing for the province introduced a new
 9 piece of technology and we discovered some
 10 inconsistent results from the old system.
 11 This has prompted Eastern Health to retest all
 12 the negative ER and PR receptors results since
 13 1997 to ensure that all patients have every
 14 treatment opportunity that may be available to
 15 them." Now, ma'am, in reading this, someone
 16 reading that would gather what about how the--
 17 or what motivated the retesting, the message
 18 here is what?
 19 MS. PENNELL:
 20 A. They would gather that the Ventana found the
 21 problem.
 22 COFFEY, Q.C.:
 23 Q. Now -
 24 MS. PENNELL:
 25 A. That's what I gather from it.

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1 COFFEY, Q.C.:

2 Q. So that's--and who had given you that

3 understanding?

4 MS. PENNELL:

5 A. I don't know. Just a general understanding.

6 COFFEY, Q.C.:

7 Q. Had you and Susan ever discussed this?

8 MS. PENNELL:

9 A. Oh, I'm sure we did.

10 COFFEY, Q.C.:

11 Q. Up until around this point in time? By this

12 point in time, when this goes public, the idea

13 that it's not the DAKO machine?

14 MS. PENNELL:

15 A. Um.

16 COFFEY, Q.C.:

17 Q. Did you and Susan discuss that?

18 MS. PENNELL:

19 A. We had a lot of discussions, yes, about that.

20 COFFEY, Q.C.:

21 Q. Because this suggests, does it not, that

22 really we've got new, better technology,

23 that's the reason for the changes?

24 MS. PENNELL:

25 A. That's not what we're saying here, though.

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1 COFFEY, Q.C.:

2 Q. Okay, then, what -

3 MS. PENNELL:

4 A. We're saying we discovered them.

5 COFFEY, Q.C.:

6 Q. Okay.

7 MS. PENNELL:

8 A. Due to the new technology. We're not saying -

9 COFFEY, Q.C.:

10 Q. And so, and I'm asking you, who lead you to

11 believe that?

12 MS. PENNELL:

13 A. Once again, I would say the team.

14 COFFEY, Q.C.:

15 Q. Well, when we look at your briefing notes that

16 you prepared, they don't refer to that, do

17 they? They refer to a patient.

18 MS. PENNELL:

19 A. Um. This is months -

20 COFFEY, Q.C.:

21 Q. Being retested, being -

22 MS. PENNELL:

23 A. This is months later.

24 COFFEY, Q.C.:

25 Q. Yes.

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1 MS. PENNELL:

2 A. So maybe more information had -

3 COFFEY, Q.C.:

4 Q. Well, the reason for the initial retesting,

5 like the initial retest, did that ever change?

6 MS. PENNELL:

7 A. No.

8 COFFEY, Q.C.:

9 Q. So it always remained because an oncologist in

10 the US had suggested that perhaps -

11 MS. PENNELL:

12 A. Right.

13 COFFEY, Q.C.:

14 Q. - they retest a sample?

15 MS. PENNELL:

16 A. Right.

17 COFFEY, Q.C.:

18 Q. You had understood that right from the

19 beginning?

20 MS. PENNELL:

21 A. And that's what I had in my press releases.

22 COFFEY, Q.C.:

23 Q. And that never changed. And yet, there's none

24 of that here, is there? So why not, why

25 wouldn't there be something like that to point

Page 168

1 out that it's--it was because of medical

2 advice?

3 MS. PENNELL:

4 A. I'm not sure that would be detail that

5 patients would need to know.

6 COFFEY, Q.C.:

7 Q. So what determines what they need to know, how

8 much they need to know?

9 MS. PENNELL:

10 A. What affects them most, if they need to do

11 anything, where they go for information. I

12 don't think it would have made a difference to

13 them about a, you know, physician in the

14 States retesting a result and finding a

15 different result. I'm not sure that -

16 COFFEY, Q.C.:

17 Q. Well, then, why include the reference to the

18 new technology at all?

19 MS. PENNELL:

20 A. Because it's a factor.

21 COFFEY, Q.C.:

22 Q. But so is the fact that an oncologist might

23 have given some advice in April or May of 2005

24 is also a fact, or--and a factor. So why

25 would you refer to new technology and not

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1 refer to potential non-technology error or
 2 problems?
 3 MS. PENNELL:
 4 A. I don't know that that doesn't.
 5 COFFEY, Q.C.:
 6 Q. Ma'am, did -
 7 MS. PENNELL:
 8 A. I don't really know where you're going with
 9 that.
 10 COFFEY, Q.C.:
 11 Q. Okay. Well, I'm asking you -
 12 MS. PENNELL:
 13 A. I don't follow.
 14 COFFEY, Q.C.:
 15 Q. You see, here, ma'am, when you read this,
 16 there's no reference to possible human -
 17 MS. PENNELL:
 18 A. Human error -
 19 COFFEY, Q.C.:
 20 Q. - human error -
 21 MS. PENNELL:
 22 A. - that's what you're saying, right.
 23 COFFEY, Q.C.:
 24 Q. There's not. In fact -
 25 MS. PENNELL:

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1 A. But it's not necessarily -
 2 COFFEY, Q.C.:
 3 Q. - it refers to technology -
 4 MS. PENNELL:
 5 A. - but it's not necessarily blaming technology,
 6 either. It's saying we are retesting.
 7 COFFEY, Q.C.:
 8 Q. Yes.
 9 MS. PENNELL:
 10 A. And this is for patients, right, this is what
 11 do they do, what should they do. It's not
 12 necessarily a piece for them to say--you know,
 13 it's not a history lesson for them. It's a
 14 place for them to go to find out what they
 15 need to do. It's not for the media. I mean,
 16 the media probably read it, but it's not, you
 17 know, a communications tool for a news
 18 release. It's meant to directly communicate
 19 with the patients, at least that's how I see
 20 it.
 21 COFFEY, Q.C.:
 22 Q. Ma'am, why would it be necessary to do this,
 23 why not just simply send the patients a
 24 letter? Was that discussed?
 25 MS. PENNELL:

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1 A. I wasn't part of that process, the letter
 2 process. I mean, right in the very beginning
 3 I drafted that very, very rough letter, but I
 4 had really minimal conversations about a
 5 patient letter or any patient notification
 6 whatsoever.
 7 COFFEY, Q.C.:
 8 Q. What, if any, did you have?
 9 MS. PENNELL:
 10 A. Like I said, that initial letter, you know,
 11 putting a few lines down for people to start
 12 working with. But I can't, you know, I can't
 13 remember really dealing with the patient
 14 disclosure piece because it just wasn't my
 15 expertise.
 16 COFFEY, Q.C.:
 17 Q. Now, ma'am, your understanding as to who the
 18 bulk of the patients were, like, what
 19 demographic group they would fall into, did
 20 you have any understanding of that?
 21 MS. PENNELL:
 22 A. I don't think I ever was told that.
 23 COFFEY, Q.C.:
 24 Q. Okay.
 25 MS. PENNELL:

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1 A. I don't know if it was ever discussed where I
 2 was.
 3 COFFEY, Q.C.:
 4 Q. So the idea of putting this up on the website,
 5 whose idea was that?
 6 MS. PENNELL:
 7 A. It's a communications tool, so I would suggest
 8 that it was likely mine or Ms. Bonnell's.
 9 COFFEY, Q.C.:
 10 Q. Now, by this point in time, by the time it
 11 went public, did you have any understanding
 12 about whether or not that external reviewers
 13 or consultants had been in to St. John's?
 14 MS. PENNELL:
 15 A. Something about the external review in the end
 16 of September that seems to jog my memory. I
 17 remember the end of September being a target
 18 date for having that finished. But I didn't,
 19 I didn't have much to do with the, if
 20 anything, to do with the external consultant
 21 except to know that there was someone coming.
 22 COFFEY, Q.C.:
 23 Q. So, ma'am, I'm just trying to get some sense
 24 again for the Commissioner. You're tasked
 25 with preparing what you understand is a

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1 communication directly to the patients, in
 2 effect, through the FAQs?
 3 MS. PENNELL:
 4 A. It's communications tool.
 5 COFFEY, Q.C.:
 6 Q. Tool. And you've just told us it was directed
 7 at the patients, from your perspective?
 8 MS. PENNELL:
 9 A. Um. But it's a public document. So I know
 10 what you're saying, I just told you I didn't
 11 have any direct patient disclosure -
 12 COFFEY, Q.C.:
 13 Q. No. So but in preparing it in terms of
 14 determining what should and should not go in
 15 it, the level of detail or otherwise, who, if
 16 anyone, influenced that?
 17 MS. PENNELL:
 18 A. My mind wants me to say that I had
 19 conversations with Nancy Parsons about this
 20 document.
 21 COFFEY, Q.C.:
 22 Q. Well, in fact, if you just go back -
 23 MS. PENNELL:
 24 A. Because it would have to corroborate with what
 25 Nancy was telling patients.

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1 COFFEY, Q.C.:
 2 Q. If we could look, please, at Exhibit P-0606?
 3 Before the e-mail that you sent to Susan with
 4 your draft of the FAQs earlier that afternoon
 5 you'd received a text from Ms. Parsons. And,
 6 in fact, when you look, you'll find that the
 7 text set out here is, in fact, reflected in
 8 the frequently asked questions.
 9 MS. PENNELL:
 10 A. Oh, okay.
 11 COFFEY, Q.C.:
 12 Q. So just read the first line of it there, "All
 13 patients who have had breast cancer have been
 14 tested for the presence or absence of estrogen
 15 and progesterone receptors."
 16 MS. PENNELL:
 17 A. Um-hm.
 18 COFFEY, Q.C.:
 19 Q. And if you look, please, Registrar, at Exhibit
 20 P-0343.
 21 MS. PENNELL:
 22 A. That's my press release.
 23 COFFEY, Q.C.:
 24 Q. If we look at 0343, the first line?
 25 MS. PENNELL:

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1 A. Isn't it?
 2 COFFEY, Q.C.:
 3 Q. "All patients who had breast cancer had been
 4 tested for the presence or absence of estrogen
 5 and progesterone receptors, ER and PR." And
 6 compare line--I won't say it's exactly word
 7 for word, but it's close.
 8 MS. PENNELL:
 9 A. Right, yeah.
 10 COFFEY, Q.C.:
 11 Q. So the information contained in the FAQs and
 12 the press release, well, I should say the FAQs
 13 came from Ms. Parsons, the text, is that what
 14 -
 15 MS. PENNELL:
 16 A. Looks that way from that e-mail.
 17 COFFEY, Q.C.:
 18 Q. Okay.
 19 COMMISSIONER:
 20 Q. Did you just say something about it being your
 21 press release?
 22 MS. PENNELL:
 23 A. It looks like the same as my press release,
 24 though.
 25 COMMISSIONER:

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1 Q. You mean the material you got from Ms. Parsons
 2 or -
 3 MS. PENNELL:
 4 A. Yeah.
 5 COMMISSIONER:
 6 Q. - the F -
 7 MS. PENNELL:
 8 A. Yeah, it looks very similar.
 9 COFFEY, Q.C.:
 10 Q. Now, the press release, where is the press
 11 release? Is there an actual press release?
 12 MS. PENNELL:
 13 A. I mean the original press release from July.
 14 COFFEY, Q.C.:
 15 Q. Oh, okay.
 16 MS. PENNELL:
 17 A. The drafts.
 18 COFFEY, Q.C.:
 19 Q. The draft back -
 20 MS. PENNELL:
 21 A. But I mean the wording -
 22 COFFEY, Q.C.:
 23 Q. That series of draft press releases we looked
 24 at?
 25 MS. PENNELL:

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1 A. Yeah, the wording is all very similar, anyway,
 2 so.
 3 COFFEY, Q.C.:
 4 Q. Ma'am, at this point in time, early October,
 5 was there any thought given to issuing a press
 6 release?
 7 MS. PENNELL:
 8 A. Not after the media is already involved,
 9 unless you have something to update.
 10 COFFEY, Q.C.:
 11 Q. Well, ma'am, in terms of that I take it really
 12 at this point in time, because we have reason
 13 to believe that Mount Sinai's first wave of
 14 results had just come back.
 15 MS. PENNELL:
 16 A. Okay.
 17 COFFEY, Q.C.:
 18 Q. So there would be things to update, if not
 19 daily, certainly from week to week, wouldn't
 20 there?
 21 MS. PENNELL:
 22 A. Well, Mr. Coffey, every day media were calling
 23 for updates on this story once this broke. We
 24 didn't need to put out a press release because
 25 they called us every single week.

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1 COFFEY, Q.C.:
 2 Q. Okay. If we could, Exhibit P-0142, please?
 3 Now, this is an e-mail from Ms. Mundon to a
 4 number of individuals in the Department of
 5 Health, October 3rd, 2005. It refers to "Dr.
 6 Williams has done a follow-up interview with
 7 Carolyn Stokes of NTV. In addition Eastern
 8 Health contacted Deana Stokes-Sullivan of the
 9 Telegram. She is going to do a follow-up
 10 piece in tomorrow's Telegram. No interest
 11 from any other media." I take it were you
 12 involved in these media contacts?
 13 MS. PENNELL:
 14 A. I remember the Deana Stokes Sullivan contact.
 15 I believe I was the one who contacted Deana.
 16 COFFEY, Q.C.:
 17 Q. And why did you do that?
 18 MS. PENNELL:
 19 A. Because Deana has always been a very fair
 20 reporter who understood technological issues
 21 very well and print medium also sort of gives
 22 you a little more time to explain complex
 23 issues, so I believe that was the thinking in
 24 asking Deana if she would like, you know, a
 25 more in depth type story.

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1 COFFEY, Q.C.:
 2 Q. The second paragraph says "John, I discussed
 3 with Susan the merits of doing a news release.
 4 She advised that the strategy in July was that
 5 they would notify patients before they went
 6 public. So they decided against a news
 7 release. She indicated she had the support of
 8 the Department with this approach. They now
 9 feel that 'the horse has left the barn' and
 10 that the media that were interested in the
 11 story have already covered it. I requested
 12 for frequently asked questions to be posted to
 13 the website so people would have easy access
 14 to information," and Ms. Mundon goes on to say
 15 "I tend to agree with Susan this time with a
 16 news release."
 17 And she concludes by saying "if we do
 18 issue a news release at this point, it would
 19 be picked up by local newspaper and would
 20 probably draw attention to the issue
 21 unnecessarily."
 22 Now ma'am, I appreciate you were not
 23 either the originator or recipient of this,
 24 but did you discuss with Susan Bonnell the
 25 merits of doing a news release? Because

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1 you're the one who's actually the media hands-
 2 on person.
 3 MS. PENNELL:
 4 A. Yeah, I highly doubt it though, because
 5 neither Susan or I would ever suggest doing a
 6 news release after an issue has gone public in
 7 this manner. So it was probably a given. I
 8 don't remember a specific conversation and I
 9 don't think we would have had to have a
 10 conversation about it.
 11 COFFEY, Q.C.:
 12 Q. So ma'am, just so I'm clear on this, after it
 13 goes public, you would not issue a news
 14 release?
 15 MS. PENNELL:
 16 A. You could.
 17 COFFEY, Q.C.:
 18 Q. Yes, well that's what I'm trying -
 19 MS. PENNELL:
 20 A. You could.
 21 COFFEY, Q.C.:
 22 Q. - I'm trying to understand here because it's
 23 gone public. You're getting media inquiries.
 24 MS. PENNELL:
 25 A. It's--but, it, yeah.

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1 COFFEY, Q.C.:

2 Q. Okay, if I could, just -

3 MS. PENNELL:

4 A. Yeah.

5 COFFEY, Q.C.:

6 Q. - just so I understand this. You're getting

7 media inquiries and you respond to those by

8 providing a person to be interviewed, correct?

9 MS. PENNELL:

10 A. Um-hm.

11 COFFEY, Q.C.:

12 Q. In this context, Dr. -

13 MS. PENNELL:

14 A. Or whatever the media wants.

15 COFFEY, Q.C.:

16 Q. - Dr. Laing initially and then Dr. Williams.

17 Was there any thought given to using anyone

18 other than Dr. Williams?

19 MS. PENNELL:

20 A. It depends on who the specific reporter wants,

21 you know. Generally Dr. Williams was

22 identified as a spokesperson and Dr. Laing as

23 well, but you know, most of the time, my

24 experience is that most of the media just call

25 and they just want a body.

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1 COFFEY, Q.C.:

2 Q. That's my point. So who within the

3 organization -

4 MS. PENNELL:

5 A. They don't necessarily -

6 COFFEY, Q.C.:

7 Q. - identified a body?

8 MS. PENNELL:

9 A. I guess Dr. Williams probably would have

10 identified himself.

11 COFFEY, Q.C.:

12 Q. Okay. Then having done that, you took it upon

13 yourself early on, perhaps at that Monday, to

14 contact Ms. Stokes-Sullivan to get the story

15 or to get an interview done by her, if she

16 wished, with Dr. Williams?

17 MS. PENNELL:

18 A. Right.

19 COFFEY, Q.C.:

20 Q. And you pointed out the advantage, from your

21 perspective, with the print media in that

22 regard. You understood though, in the week of

23 October 3rd, that there were a number of

24 things going to change quickly over time?

25 Results would be back, you anticipated?

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1 MS. PENNELL:

2 A. Um-hm.

3 COFFEY, Q.C.:

4 Q. The numbers of conversions, as it were, would

5 be figured out from time to time. You

6 understood that?

7 MS. PENNELL:

8 A. That's fair, yeah.

9 COFFEY, Q.C.:

10 Q. How was it then that you anticipated that this

11 new information would be communicated with the

12 public, with the patients? How was that

13 anticipated it would be done?

14 MS. PENNELL:

15 A. We didn't discuss doing media releases, no,

16 but -

17 COFFEY, Q.C.:

18 Q. Well, I'm asking you what--after the -

19 MS. PENNELL:

20 A. But -

21 COFFEY, Q.C.:

22 Q. - during that first week, I appreciate you -

23 MS. PENNELL:

24 A. But we would use the media, yes.

25 COFFEY, Q.C.:

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1 Q. Well, how are you going to use the media then

2 after the first week?

3 MS. PENNELL:

4 A. Because they continually call, and we could

5 call them. They continually call for updates.

6 THE COMMISSIONER:

7 Q. So while you were not anticipating doing a

8 press release, were you anticipating conveying

9 this information when the media called you?

10 MS. PENNELL:

11 A. Certainly. I don't know if we--Commissioner,

12 I honestly don't know if we had time to even

13 think of doing a press release after it broke.

14 I mean, we were just--we were trying to manage

15 the media and provide interviews where we

16 could and it was--I liken it to a circus after

17 that.

18 COFFEY, Q.C.:

19 Q. See, initially, according to this e-mail here,

20 Dr. Williams had already done the interview

21 with Carolyn Stokes. You, on behalf of

22 Eastern Health, had arranged for Dr. Williams

23 to be interviewed by Ms. Stokes-Sullivan.

24 MS. PENNELL:

25 A. Um-hm.

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1 COFFEY, Q.C.:

2 Q. And there's no further media interest referred

3 to, at least at this point.

4 MS. PENNELL:

5 A. Yeah, I'm sure they probably came by the end

6 of the day or the next day.

7 COFFEY, Q.C.:

8 Q. Okay.

9 MS. PENNELL:

10 A. Especially once, you know, The Telegram story

11 would have been published the next day.

12 COFFEY, Q.C.:

13 Q. Just so again, so I can understand this. What

14 is the reluctance to--or why the reluctance to

15 simply put something on paper and put it out

16 there, issue it to the media? Because it has

17 the advantage, like in print, the print media,

18 it's there. It can be read and gone back to.

19 Why the reluctance to issue a news release or

20 an updated media release or even a media

21 release right at that point?

22 MS. PENNELL:

23 A. No, an updated media release, maybe not.

24 That, in hindsight, may have been a decent

25 idea, once we got some numbers back and that

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1 kind of thing. I mean, that probably would

2 have been useful, but to issue a media release

3 after a story has already gone public really

4 serves no purpose in the media.

5 COFFEY, Q.C.:

6 Q. What purpose does providing a person to be

7 interviewed serve?

8 MS. PENNELL:

9 A. Well, because that's the point--you know, the

10 point of a news release would be to really

11 make a reporter aware of a story and then

12 they'd call for interviews. I mean, most of--

13 there's some media that do take news release

14 and record them or write them verbatim, but

15 most don't.

16 COFFEY, Q.C.:

17 Q. Okay.

18 MS. PENNELL:

19 A. Most of the time, a news release will just--

20 you know, it's almost like just the tease and

21 then reporters will come and ask for an

22 interview and flush out what's actually in the

23 news release.

24 COFFEY, Q.C.:

25 Q. So your job then, as that week unfolded, was

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1 what?

2 MS. PENNELL:

3 A. To manage media and media inquiries and I'm

4 sort of by Dr. Williams' side that week.

5 COFFEY, Q.C.:

6 Q. And how about keeping others within the

7 organization informed about what was going on

8 in the media?

9 MS. PENNELL:

10 A. I monitored media, yes, and a part of my role

11 was to forward media stories, so I did the

12 same thing with the ER/PR as I would with

13 anything.

14 COFFEY, Q.C.:

15 Q. And with a view to doing what? What's the -

16 MS. PENNELL:

17 A. It just keeps the executive and sometimes the

18 Board, depending, you know, up to snuff on

19 what's being talked about in the media

20 regarding the organization.

21 COFFEY, Q.C.:

22 Q. Ma'am, you refer to it as being a circus once

23 it broke.

24 MS. PENNELL:

25 A. Um-hm.

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1 COFFEY, Q.C.:

2 Q. To use your words, your word. Why had there

3 been no preparation done before?

4 MS. PENNELL:

5 A. It wasn't--Dr. Williams was prepared. I mean,

6 he knew the issue inside and out. There

7 wasn't--it wasn't an issue of me having to sit

8 down and brief him or something like that. I

9 mean, the man knew more about that situation

10 than anyone, but it was just really busy and I

11 mean, this was one issue that we were dealing

12 with, but there were a million others. There

13 was always a hundred other things on each one

14 of our plates on any given day. ER/PR was

15 just another one of those things, and with the

16 increased media attention, it just made it an

17 extremely busy time. I mean, Dr. Williams has

18 a thousand things on his plate at any given

19 day. Having to try and arrange media

20 interviews around that, it's not fun

21 sometimes.

22 COFFEY, Q.C.:

23 Q. Ma'am, if we could please look at Exhibit

24 0346? This is a series of--a couple of e-

25 mails. The first of them is from October 6th,

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1 2005, 1:58 p.m. It's a Thursday that you send
 2 it to Ms. Strange Hollett, Ms. Bonnell, Mr.
 3 Tilley, Ms. Predham, Diane Hart, "CBC ER/PR
 4 story. Just letting you know the incorrect
 5 story regarding ER/PR has been removed from
 6 the CBC National website as requested." Do
 7 you recall what that was about?
 8 MS. PENNELL:
 9 A. Yeah, my recollection is that somebody rewrote
 10 The Telegram story or took the information in
 11 The Telegram story, didn't quite understand
 12 it, didn't call us for clarification, didn't
 13 ask us for an interview, just took some
 14 information that was in The Telegram story,
 15 I'm assuming that's where they got it anyway,
 16 and tried to write it. It appeared on the
 17 website and it was completely inaccurate.
 18 COFFEY, Q.C.:
 19 Q. What happened -
 20 MS. PENNELL:
 21 A. I think it was--I think it stated something
 22 like we were--Eastern Health was telling
 23 people they had cancer when they didn't. I
 24 think it was like very blatantly inaccurate.
 25 COFFEY, Q.C.:

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1 Q. So what happened? How did it come to your
 2 attention and what happened?
 3 MS. PENNELL:
 4 A. I think I came across it on the website,
 5 because that was part of my daily--well, you
 6 know, we sort of, all of us in the
 7 communications department did our share of
 8 monitoring news sites anyway, out of interest
 9 and out of job necessity. But I think I was
 10 the one who saw it on the national website.
 11 COFFEY, Q.C.:
 12 Q. So what happened?
 13 MS. PENNELL:
 14 A. I believe I called the desk editor at CBC here
 15 and I mean, you're not met with a lot of
 16 smiling faces when you're asking somebody to
 17 take something down or change something,
 18 because journalists don't really like to have
 19 to make a correction, but this one, you know,
 20 it was blatantly wrong. I wasn't asking
 21 somebody to put something into context or out
 22 of context, or you know, change a few words.
 23 This was -
 24 COFFEY, Q.C.:
 25 Q. So what happened then? You're calling. You

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1 anticipate she's not--she or he is not going
 2 to be happy.
 3 MS. PENNELL:
 4 A. Yeah.
 5 COFFEY, Q.C.:
 6 Q. What happened?
 7 MS. PENNELL:
 8 A. They changed it.
 9 COFFEY, Q.C.:
 10 Q. Now The Telegram story had been written by
 11 Deana Stokes-Sullivan?
 12 MS. PENNELL:
 13 A. Um-hm.
 14 COFFEY, Q.C.:
 15 Q. Do you know if you contacted her about it?
 16 MS. PENNELL:
 17 A. No, her story was correct. It was the
 18 interpretation of her story that was
 19 incorrect.
 20 COFFEY, Q.C.:
 21 Q. I appreciate that. That's why I'm asking you,
 22 her story was correct, do you know did you
 23 have any conversation with her about this?
 24 MS. PENNELL:
 25 A. No.

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1 COFFEY, Q.C.:
 2 Q. About the fact that CBC had in fact taken her
 3 story and changed it?
 4 MS. PENNELL:
 5 A. No, I don't think so.
 6 COFFEY, Q.C.:
 7 Q. You have no memory of that?
 8 MS. PENNELL:
 9 A. No, I don't think so.
 10 COFFEY, Q.C.:
 11 Q. Okay. Do you know if Ms. Bonnell--have any
 12 reason to believe Ms. Bonnell would have
 13 contacted -
 14 MS. PENNELL:
 15 A. Deana? I don't know. I don't think so.
 16 COFFEY, Q.C.:
 17 Q. Did you know--well, you know Deana Stokes-
 18 Sullivan? You knew her?
 19 MS. PENNELL:
 20 A. Yeah, I knew her just through working, yeah.
 21 Just a working relationship.
 22 COFFEY, Q.C.:
 23 Q. So your recollection is you contacted the
 24 desk, editor's desk at CBC and they changed
 25 the story?

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1 MS. PENNELL:
 2 A. Yes.
 3 COFFEY, Q.C.:
 4 Q. You have no recollection of having contacted
 5 Ms. Stokes-Sullivan yourself to get her to do
 6 that?
 7 MS. PENNELL:
 8 A. No, she wouldn't do that.
 9 COFFEY, Q.C.:
 10 Q. Okay.
 11 MS. PENNELL:
 12 A. That wouldn't be appropriate, asking her to
 13 call another media organization.
 14 COFFEY, Q.C.:
 15 Q. Now ma'am, if we could please look at Exhibit
 16 P-0642? It's an e-mail from yourself, Friday,
 17 October 14th 2005 at 10 a.m. to Denise Dunn
 18 and Dr. Williams. The subject is "here's the
 19 exact NTV story from the website" and you've
 20 written "the reporter should have said the
 21 technology is more 'sensitive' (instead of
 22 accurate) but we can't put every word in their
 23 mouths unfortunately," and then you've got the
 24 story from--apparently filed by Carolyn
 25 Stokes. The idea of putting words in their

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1 mouths and perhaps it's unfortunate you can't
 2 put everyone in their mouths, what was that
 3 directed at?
 4 MS. PENNELL:
 5 A. I'm just reading the story actually. Well,
 6 it's a complex issue, so you know, to try to
 7 explain things as best you can, as a
 8 representative or a liaison to the media, as
 9 well as, you know, provide someone who can
 10 explain things clearly. But still, mistakes
 11 are made and not necessarily mistakes, but I
 12 guess what I was saying here is that you just
 13 can't control how reporters write their
 14 stories. I mean, there are wording issues
 15 that we used in Health Care that we would
 16 prefer to be used consistently, but--because,
 17 you know, in this situation sensitive and
 18 accurate, they're two completely different
 19 words, and they portray different meanings.
 20 COFFEY, Q.C.:
 21 Q. Now who was it that was providing the
 22 information here?
 23 MS. PENNELL:
 24 A. It would have been, let's see, who did she
 25 interview? Oh, right, yeah, okay, I remember

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1 this one. Yeah, we took her around the lab.
 2 We took her around the lab and Terry Gulliver-
 3 -this was a bit strange because my
 4 recollection of this was that she didn't
 5 necessarily ask for an interview at this time.
 6 She just sort of wanted to look around the lab
 7 and get what they call B-roll, you know, to
 8 use with voice overs and that kind of thing,
 9 but--because Mr. Gulliver wasn't identified as
 10 a spokesperson necessarily on this issue.
 11 COFFEY, Q.C.:
 12 Q. Identified by whom?
 13 MS. PENNELL:
 14 A. By myself, Susan or Dr. Williams, by the team.
 15 COFFEY, Q.C.:
 16 Q. To the media, I take it?
 17 MS. PENNELL:
 18 A. Yeah, to the media exactly.
 19 COFFEY, Q.C.:
 20 Q. So -
 21 MS. PENNELL:
 22 A. Although, you know, we certainly never had any
 23 issue with bringing any reporter in around the
 24 lab. We did that quite a few times through
 25 this process. But you know, I think in

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1 chatting with Terry Gulliver, you know, I
 2 think there may have been maybe a
 3 misconception here.
 4 COFFEY, Q.C.:
 5 Q. Ma'am, a misconception, I'm sorry, about?
 6 MS. PENNELL:
 7 A. The sensitive versus accurate.
 8 COFFEY, Q.C.:
 9 Q. Okay.
 10 MS. PENNELL:
 11 A. I mean, just maybe not a -
 12 COFFEY, Q.C.:
 13 Q. With respect to this, did you ever hear back
 14 from Dr. Williams about this?
 15 MS. PENNELL:
 16 A. I don't know. It doesn't stand out that I
 17 did.
 18 COFFEY, Q.C.:
 19 Q. Okay. Here, when you actually read the story,
 20 you take--you do point out the difference
 21 between--or possible difference between the
 22 word sensitive and accurate.
 23 MS. PENNELL:
 24 A. Um-hm.
 25 COFFEY, Q.C.:

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1 Q. And the word accurate appears in the first
 2 line. The sentences read "there was no
 3 mistake. New sophisticated technology became
 4 available and produced more accurate results."
 5 So I gather here you're saying it should have
 6 read "more sensitive results"?

7 MS. PENNELL:

8 A. That's the word we were using was sensitive,
 9 sensitivity.

10 COFFEY, Q.C.:

11 Q. And it goes on to say "that's basically
 12 Eastern Health's explanation for why they are
 13 retesting eight years worth of breast cancer
 14 samples taken from patients in this province,"
 15 and was that the explanation that the media
 16 were being given by Eastern Health?

17 MS. PENNELL:

18 A. That was part of the explanation, definitely.

19 COFFEY, Q.C.:

20 Q. Do you know of any other part?

21 MS. PENNELL:

22 A. I think we were waiting to find out the scope,
 23 but I think that at this point, we did believe
 24 the technology played a part. Mr. Coffey, I'm
 25 not sure that I even know now.

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1 COFFEY, Q.C.:

2 Q. So then you were relying upon whom in that
 3 regard?

4 MS. PENNELL:

5 A. Dr. Williams.

6 COFFEY, Q.C.:

7 Q. So throughout your whole involvement--you left
 8 there when? I'm sorry, when was it you -

9 MS. PENNELL:

10 A. January 26th, 2006.

11 COFFEY, Q.C.:

12 Q. Okay. During that time, up until the time you
 13 left, you understood or the change or reasons
 14 for the change were being attributed to what?
 15 What had gone wrong or what had been the
 16 problem?

17 MS. PENNELL:

18 A. I left there still believing that it was
 19 technology.

20 COFFEY, Q.C.:

21 Q. And did you -

22 MS. PENNELL:

23 A. Whether it was partially human error connected
 24 to that technology, as well as more sensitive
 25 technology, maybe a hundred different things

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1 all wrapped up in the technology, I still
 2 believed that it was around these machines.

3 COFFEY, Q.C.:

4 Q. Now were there any things--this is, we're into
 5 mid October here. Were there any things that
 6 you understood could not be talked about?

7 MS. PENNELL:

8 A. Patients.

9 COFFEY, Q.C.:

10 Q. Okay, individual patients.

11 MS. PENNELL:

12 A. Yes, but that would be it. I was never told
 13 not to talk about anything.

14 COFFEY, Q.C.:

15 Q. Did you ever ask what the problem was? Ever
 16 actually say to Dr. Williams, "look, the
 17 experts have been in here. I know they were
 18 in here last month. What happened?" Did you
 19 ever ask Dr. Williams that?

20 MS. PENNELL:

21 A. I don't know.

22 COFFEY, Q.C.:

23 Q. Why not?

24 MS. PENNELL:

25 A. I'm a very inquisitive person. I was -

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1 COFFEY, Q.C.:

2 Q. I gather, so that's why I'm asking. Why not?
 3 Why wouldn't you ask?

4 MS. PENNELL:

5 A. I think I was asking all the time, but I don't
 6 know that I asked him directly to his face,
 7 but I mean, I was always asking for
 8 information. I was always--what is the latest
 9 on this situation? I was always looking for
 10 updates. I mean, I was the point of contact
 11 for the media, but no, I don't remember
 12 specifically looking him in the eye and
 13 saying, what happened?

14 COFFEY, Q.C.:

15 Q. And did you ask anyone else that question?

16 MS. PENNELL:

17 A. I honestly believe no on knew.

18 COFFEY, Q.C.:

19 Q. Did you ask anyone though? Did anyone ever
 20 tell you, look, I don't know what happened.
 21 In September and early October, was Dr.
 22 Williams telling you, look, I don't have a
 23 clue as to what happened?

24 MS. PENNELL:

25 A. No.

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1 COFFEY, Q.C.:

2 Q. I don't know what happened. Anybody -

3 MS. PENNELL:

4 A. No.

5 COFFEY, Q.C.:

6 Q. Nothing like that?

7 MS. PENNELL:

8 A. No.

9 COFFEY, Q.C.:

10 Q. So, -

11 MS. PENNELL:

12 A. I don't know if I thought it was my place to

13 ask that.

14 COFFEY, Q.C.:

15 Q. Okay. And you are the one though who's

16 dealing with the media and arranging the

17 interviews.

18 MS. PENNELL:

19 A. Yes, facilitating -

20 COFFEY, Q.C.:

21 Q. Facilitating, drafting frequently asked

22 questions -

23 MS. PENNELL:

24 A. Yes.

25 COFFEY, Q.C.:

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1 Q. - web posting -

2 MS. PENNELL:

3 A. But vetting all of that through -

4 COFFEY, Q.C.:

5 Q. Sure, okay.

6 MS. PENNELL:

7 A. - people who know a lot more than I do.

8 COFFEY, Q.C.:

9 Q. And did you ever hear Susan talk about what

10 she thought had gone wrong or had been the

11 problem, the nature of the problem?

12 MS. PENNELL:

13 A. I think we were just so reliant on what we

14 were being told. I think we all made

15 assumptions as things changed. I think, you

16 know, maybe we thought, Ooh, somebody might

17 have screwed up over there in the lab and then

18 might have thought, oh, maybe there's

19 something wrong with that Ventana. I don't

20 know, I think that we all -

21 COFFEY, Q.C.:

22 Q. Did you ever ask Susan, "Susan, do you know

23 what happened here"?

24 MS. PENNELL:

25 A. I'm sure I asked her.

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1 COFFEY, Q.C.:

2 Q. Do you recall her response, particularly in -

3 MS. PENNELL:

4 A. Any information that I -

5 COFFEY, Q.C.:

6 Q. - September, late September or early October.

7 Do you recall her response?

8 MS. PENNELL:

9 A. I was always under the impression that she

10 didn't know any more than I did.

11 THE COMMISSIONER:

12 Q. Mr. Coffey, wherever you can find to break.

13 COFFEY, Q.C.:

14 Q. Thank you. Now, she has told the Commissioner

15 here that she, certainly by September, early

16 October, was not thinking machinery.

17 MS. PENNELL:

18 A. No.

19 COFFEY, Q.C.:

20 Q. You understand--do you recall being told that

21 back then in the fall of '05?

22 MS. PENNELL:

23 A. No, not conclusively.

24 COFFEY, Q.C.:

25 Q. So, if she had that thought, she wasn't

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1 sharing it with you?

2 MS. PENNELL:

3 A. I do not recall being told that conclusively.

4 And you're saying machinery, I'm saying

5 technology and what I mean technology, I'm

6 saying technology could mean human error in

7 the technology.

8 COFFEY, Q.C.:

9 Q. Okay.

10 MS. PENNELL:

11 A. Do you know what I'm saying?

12 COFFEY, Q.C.:

13 Q. So, what does -

14 MS. PENNELL:

15 A. I don't know--I'm not telling you that I

16 thought all along that there was something

17 wrong with the DAKO. When it was always the

18 DAKO, I thought in my mind, from everything

19 that I heard and took it and my little

20 layman's point of view that the issues with

21 the DAKO to me would have to be human error

22 because there were so many processes, but when

23 it--and the blotting and there was so much

24 hands on, but when we turned to the Ventana

25 and it was all automated, then the information

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1 that I was receiving from our experts was that
 2 this is all automated now, so it can't be
 3 human error. So, there was -
 4 COFFEY, Q.C.:
 5 Q. But then, you have told the Commissioner that
 6 you heard that while the Ventana may be too
 7 sensitive -
 8 MS. PENNELL:
 9 A. Right.
 10 COFFEY, Q.C.:
 11 Q. - and so that much have changed at some point.
 12 MS. PENNELL:
 13 A. Yeah, I think we've ruled that out at some
 14 point.
 15 COFFEY, Q.C.:
 16 Q. So, by the time it went public and this is
 17 what I'm concentrating on, by early October
 18 2005 -
 19 MS. PENNELL:
 20 A. Yeah.
 21 COFFEY, Q.C.:
 22 Q. and going through October 2005, what did you
 23 understand the nature of the problem was?
 24 MS. PENNELL:
 25 A. I didn't know.

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1 COFFEY, Q.C.:
 2 Q. And you didn't ask directly, the people who
 3 might know, actually know the answer like Dr.
 4 Williams, Mr. Gulliver and Donald Cook.
 5 MS. PENNELL:
 6 A. I'm uncomfortable saying yes or no to that
 7 because I do believe I inquired, but no, I
 8 didn't directly ask. To answer your question
 9 fairly, I don't think I directly asked, but I
 10 don't believe it was my place either.
 11 COFFEY, Q.C.:
 12 Q. And in making an inquiry and not getting an
 13 answer, okay, did that cause you any
 14 discomfort?
 15 MS. PENNELL:
 16 A. I was extremely uncomfortable with this
 17 situation from July 14 on because I wasn't in
 18 a position where what I thought should be
 19 done, was being done.
 20 COFFEY, Q.C.:
 21 Q. And you thought what in that regard?
 22 MS. PENNELL:
 23 A. We should have went out with a media release
 24 with what we had, when we had it in the very
 25 beginning.

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1 COFFEY, Q.C.:
 2 Q. And then I take it, update it as you went?
 3 MS. PENNELL:
 4 A. Right.
 5 COFFEY, Q.C.:
 6 Q. After lunch, Commissioner?
 7 THE COMMISSIONER:
 8 Q. All right. 2:15 p.m.. Thank you.
 9 (LUNCH BREAK)
 10 THE COMMISSIONER:
 11 Q. Mr. Coffey.
 12 COFFEY, Q.C.:
 13 Q. Thank you, Commissioner. Exhibit P-0642,
 14 please. Now, this is this e-mail of yourself
 15 to Denise Dunn and Dr. Williams of October 14,
 16 2005 at 10:00 ma'am. You would have been
 17 present when Ms. Carolyn Stokes went through
 18 the lab?
 19 MS. PENNELL:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. And you'll note here in this about the fifth
 23 line from the bottom says, "Terry Gulliver,
 24 Director of the Laboratory Medicine Program of
 25 the Health Sciences Centres says that 90 to 95

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1 percent of patient won't be affected, but for
 2 those who are, it means they've likely
 3 received the wrong cancer treatments. All
 4 testing should be complete in a month and only
 5 those affected will be contacted. More
 6 information is available at"--and there's a
 7 website and a phone number. Ma'am, was it
 8 your understanding as of mid October that it
 9 was Eastern Health's position that only five
 10 to ten percent of patients would be affected
 11 by the retest?
 12 MS. PENNELL:
 13 A. I don't know, that ten percent figure kind of
 14 floated itself around here and there.
 15 COFFEY, Q.C.:
 16 Q. Well -
 17 MS. PENNELL:
 18 A. But I don't know, at that point, Mr. Coffey,
 19 honestly, I don't know if that--that seems
 20 wrong to me right now, but at that time, I'm
 21 not sure.
 22 COFFEY, Q.C.:
 23 Q. Well, if we could, please, you would have as
 24 well, attended, I take it, Dr. Williams'
 25 interviews?

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1 MS. PENNELL:
 2 A. Yes.
 3 COFFEY, Q.C.:
 4 Q. Okay. Exhibit P-0623, please, page three. I
 5 apologize for the quality of this. There's a
 6 better quality one there, but -
 7 MS. PENNELL:
 8 A. That's fine.
 9 COFFEY, Q.C.:
 10 Q. In particular, this is the October 5, 2005
 11 "The Telegram" story and right here, the
 12 second column from the right, Dr. Williams is
 13 quote as saying, "we had about 73 percent of
 14 tests that were positive. So, we're only
 15 retesting the 27 percent or so that were we
 16 negative. And from the earlier results, Dr.
 17 Williams said it appears only about ten
 18 percent of the overall tests performed over
 19 the past seven years showed different
 20 results". So, as the chief liaison person
 21 with the media in October of 2005 for Eastern
 22 Health, you had what, if any, understanding as
 23 to numbers, percentages?
 24 MS. PENNELL:
 25 A. Numbers are difficult to deal with anytime,

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1 but I mean, I wouldn't have had any reason to
 2 doubt Dr. Williams, but I wouldn't have been
 3 quoting numbers myself because I don't think I
 4 had a broad enough understanding of all the
 5 different ways you can use numbers and all the
 6 different percentages.
 7 COFFEY, Q.C.:
 8 Q. I gather though that you would certainly have
 9 read "The Telegram" story.
 10 MS. PENNELL:
 11 A. Sure.
 12 COFFEY, Q.C.:
 13 Q. And in doing so, you would note that Dr.
 14 Williams was quoted as saying that it would be
 15 ten percent of the total.
 16 MS. PENNELL:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. Number of patients.
 20 MR. SIMMONS:
 21 Q. Not that it would be -
 22 COFFEY, Q.C.:
 23 Q. Was it--actually, it does say, to be literally
 24 correct, that based upon first results or
 25 early results, early returns, it appears--Mr.

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1 Gulliver does apparently--you would have seen
 2 the Carolyn Stokes story? Mr. Gulliver -
 3 MS. PENNELL:
 4 A. Yes.
 5 COFFEY, Q.C.:
 6 Q. And my arithmetic says that's five to ten
 7 percent, 90 to 95, the converse is five to
 8 ten.
 9 MS. PENNELL:
 10 A. Um-hm.
 11 COFFEY, Q.C.:
 12 Q. So, as of mid October, I take it, a ten
 13 percent figure was still being, five to ten
 14 percent figure was being used.
 15 MS. PENNELL:
 16 A. Yes.
 17 COFFEY, Q.C.:
 18 Q. To your knowledge.
 19 MS. PENNELL:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. Did you ever receive or hear any protest about
 23 that, any concern about the usage of that
 24 figure?
 25 MS. PENNELL:

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1 A. Not directly to me, no, I didn't.
 2 COFFEY, Q.C.:
 3 Q. How about indirectly?
 4 MS. PENNELL:
 5 A. No, I don't believe so, no.
 6 COFFEY, Q.C.:
 7 Q. And this particular story in Exhibit P-0642,
 8 that was forwarded by yourself to Dr.
 9 Williams, wasn't it?
 10 MS. PENNELL:
 11 A. Um-hm.
 12 COFFEY, Q.C.:
 13 Q. And you didn't hear anything back from him to
 14 the contrary?
 15 MS. PENNELL:
 16 A. No.
 17 COFFEY, Q.C.:
 18 Q. Or saying Mr. Gulliver has got it wrong or -
 19 MS. PENNELL:
 20 A. No.
 21 COFFEY, Q.C.:
 22 Q. - nothing like that.
 23 MS. PENNELL:
 24 A. No.
 25 COFFEY, Q.C.:

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1 Q. If we could look please at Exhibit P-0643?
 2 This again is an e-mail from yourself, Friday,
 3 October 14, 2005 10:01 a.m., just a minute
 4 later, again to Denise Dunn and Dr. Williams.
 5 "The transcript of Mark Quinn's piece this
 6 a.m." and I take it that you had been e-mailed
 7 the transcript from the media at
 8 marqueinc.com?
 9 MS. PENNELL:
 10 A. Yes.
 11 COFFEY, Q.C.:
 12 Q. So, what was the arrangement at that point
 13 concerning media coverage being provided to
 14 yourself.
 15 MS. PENNELL:
 16 A. We didn't normally get transcripts unless we
 17 requested them. So, I must have requested
 18 this one. We would have normally just got
 19 little synopses of media stories and then we
 20 would cut and paste that back to marque media,
 21 whoever they were and ask for the full
 22 transcript. So, one of us asked for this
 23 because I see that the transcript was sent to
 24 every member of the department at that time.
 25 COFFEY, Q.C.:

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1 Q. Do you recall who made that arrangement?
 2 MS. PENNELL:
 3 A. To ask for the transcript?
 4 COFFEY, Q.C.:
 5 Q. Yes.
 6 MS. PENNELL:
 7 A. I don't recall, no, but it was likely me.
 8 COFFEY, Q.C.:
 9 Q. And that's October 14 at 10:01 a.m.. If we
 10 could bring up please, Exhibit 0646 please?
 11 This is you on Monday, October 17, 2005 at
 12 10:19 a.m. e-mailing Ms. Dunn and Dr. Williams
 13 and again, you're forwarding them, I take it,
 14 transcript number 1014182.
 15 MS. PENNELL:
 16 A. Yes.
 17 COFFEY, Q.C.:
 18 Q. Again, you would have had to request that
 19 specifically?
 20 MS. PENNELL:
 21 A. Yes.
 22 COFFEY, Q.C.:
 23 Q. So, what was the approach then of Eastern
 24 Health beginning in Early October, 2005
 25 concerning keeping track of the media

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1 coverage?
 2 MS. PENNELL:
 3 A. We kept track of all media coverage. This was
 4 no different. So, if we saw something -
 5 COFFEY, Q.C.:
 6 Q. Here you're actually getting transcripts.
 7 MS. PENNELL:
 8 A. Oh, we used to get transcripts of all kinds of
 9 stories.
 10 COFFEY, Q.C.:
 11 Q. Okay.
 12 MS. PENNELL:
 13 A. It's always been the practice, certainly.
 14 COFFEY, Q.C.:
 15 Q. And with a view to doing what? What's the
 16 purpose of you distributing this to Dr.
 17 Williams?
 18 MS. PENNELL:
 19 A. To ensure accuracy; to let him know how he was
 20 portrayed in a particular story. Sometimes--I
 21 don't know, I've never been on the other side
 22 of this, but I would say that if I were
 23 interviewed by the media, it would be nice to
 24 read down through your own transcript to see
 25 where you could improve or whatever, so.

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1 COFFEY, Q.C.:
 2 Q. Did you ever get any feedback from Dr.
 3 Williams about it?
 4 MS. PENNELL:
 5 A. No.
 6 COFFEY, Q.C.:
 7 Q. Pardon me?
 8 MS. PENNELL:
 9 A. No, I don't believe so. Dr. Williams didn't
 10 e-mail, so I wouldn't have certainly gotten
 11 anything electronically and I don't recall
 12 having a conversation with him about any
 13 transcript, so.
 14 COFFEY, Q.C.:
 15 Q. Okay. If we could just look at--we're looking
 16 at 0646, this particular transcript. It's of
 17 the--it's the story by the NTV Evening News,
 18 11:00 p.m. on October 14, 2005, the announcer
 19 is Fred Hutton and then there's Peter Dawe,
 20 Carolyn Stokes, Mr. Dawe, Ms. Stokes, Mr.
 21 Dawe, Ms. Stokes. So this, in fact, does not
 22 involve Dr. Williams himself?
 23 MS. PENNELL:
 24 A. No.
 25 COFFEY, Q.C.:

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1 Q. So, was there an approach by Eastern Health at
 2 the time to keep track of this, I won't say
 3 minute to minute, but certainly day to day in
 4 detail, as to how this was playing out in the
 5 media?
 6 MS. PENNELL:
 7 A. This and other issues, yes.
 8 COFFEY, Q.C.:
 9 Q. Okay. Was the media coverage, the nature of
 10 the media coverage discussed within Eastern
 11 Health to your knowledge?
 12 MS. PENNELL:
 13 A. I think Ms. Bonnell and I had some
 14 conversations, casual conversations about it
 15 and I think overall we found the coverage was
 16 fair.
 17 COFFEY, Q.C.:
 18 Q. Were there ever any concerns expressed about
 19 coverage that was perceived to be not fair and
 20 what made -
 21 MS. PENNELL:
 22 A. Other than the story that we referenced
 23 earlier where I asked for the correction -
 24 COFFEY, Q.C.:
 25 Q. Okay.

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1 MS. PENNELL:
 2 A. - that was certainly not fair and was -
 3 COFFEY, Q.C.:
 4 Q. Well, it's inaccurate.
 5 MS. PENNELL:
 6 A. Yes, exactly.
 7 COFFEY, Q.C.:
 8 Q. But what does fairness got to do with--
 9 accuracy and inaccuracy are off, but why do
 10 you say fair?
 11 MS. PENNELL:
 12 A. Sensational.
 13 COFFEY, Q.C.:
 14 Q. Sensational, I take it, would be unfair.
 15 MS. PENNELL:
 16 A. Yes.
 17 COFFEY, Q.C.:
 18 Q. If we could look please at Exhibit P-0648. I
 19 gather, this -
 20 MS. PENNELL:
 21 A. That's my chicken scratch.
 22 COFFEY, Q.C.:
 23 Q. So, this is your handwriting?
 24 MS. PENNELL:
 25 A. Yes, it is.

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1 COFFEY, Q.C.:
 2 Q. It's a media request of October 18, 2005 by
 3 Mark Quinn of CBC Radio. And the reference to
 4 activity log, Susan B., Dr. Williams, Mark
 5 Quinn, what does that say? What does that -
 6 MS. PENNELL:
 7 A. I was fairly diligent most times, when I could
 8 be. Anyway whenever a media inquiry would
 9 come in, I would always write down who I
 10 contacted and in what order, just--you know,
 11 obviously later in Eastern Health we developed
 12 a data base and all of this would logged
 13 electronically and it was useful, but I
 14 remember starting doing it and first when I
 15 worked for Health Care Corporation, because
 16 there was so many different people responding
 17 to different things and I could never keep it
 18 straight. So, if i wrote it down the first
 19 time, I could go back and see who I called for
 20 an issue.
 21 COFFEY, Q.C.:
 22 Q. And this is your handwriting up here?
 23 MS. PENNELL:
 24 A. Yes.
 25 COFFEY, Q.C.:

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1 Q. It says, "would we respond how it's handled
 2 criticizing"? Do you recall what this was
 3 about?
 4 MS. PENNELL:
 5 A. This patient was doing an interview with CBC
 6 and she was criticizing Eastern Health on how
 7 it was handled, on, how I would assume, the
 8 disclosure piece was handled and would we
 9 respond.
 10 COFFEY, Q.C.:
 11 Q. And so, I take it by that point in time,
 12 Eastern Health was aware that there was at
 13 least a certain amount of negative coverage in
 14 the media or could be perceived -
 15 MS. PENNELL:
 16 A. I think we expected it, yes.
 17 COFFEY, Q.C.:
 18 Q. Okay. You expected it, why?
 19 MS. PENNELL:
 20 A. Well, it wasn't a positive issue; it wasn't a
 21 happy issue. You're not going to get--I mean,
 22 the best you can expect from such a horrible
 23 issue is fair media coverage; you're never
 24 going to expect positive media coverage.
 25 COFFEY, Q.C.:

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1 Q. And in terms of the notification of patients
 2 and the decision not to notify them back in
 3 the summer, was there any criticism about
 4 that?
 5 MS. PENNELL:
 6 A. I believe there was, but I can't think of
 7 anything specific.
 8 COFFEY, Q.C.:
 9 Q. So ma'am, if by--the story broke on October 2,
 10 this is now October 18, which is 16 days
 11 later.
 12 MS. PENNELL:
 13 A. Um-hm.
 14 COFFEY, Q.C.:
 15 Q. I gather it's still in the media. Was there
 16 any discussion within Eastern Health as to
 17 where's all this going in terms of media
 18 coverage? It's more than two weeks into the
 19 story.
 20 MS. PENNELL:
 21 A. I know from, all I can speak to is my personal
 22 experience, but you know, I was getting
 23 obviously very tired and very frustrated. It
 24 seemed to be the lack of a plan, the lack of
 25 direction on where we were going here. I was

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1 just keeping my head above water responding to
 2 the inquiries and trying to do my daily job as
 3 we went along, but it seems like every time I
 4 turned around, there was some reason why
 5 things were taking as long as they were. We
 6 weren't getting test results back fast enough
 7 or we're waiting for a report or we're
 8 waiting--it just always seemed to be a logical
 9 explanation as to why everything was taking so
 10 long. And it wasn't my job to judge; it was
 11 just my job to do my job.
 12 COFFEY, Q.C.:
 13 Q. And you perceived your job to be what?
 14 MS. PENNELL:
 15 A. Well, whatever Ms. Bonnell told me to do on
 16 the daily basis.
 17 COFFEY, Q.C.:
 18 Q. I appreciate that and -
 19 MS. PENNELL:
 20 A. But, you know, overall my job was dealing with
 21 the media, handling media inquiries,
 22 facilitating media interviews, providing
 23 information for the media.
 24 COFFEY, Q.C.:
 25 Q. With a view to doing what, to accomplishing

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1 what?
 2 MS. PENNELL:
 3 A. To always making the organization as
 4 accessible as possible and to give the media
 5 timely access to that. I mean, if you don't
 6 have a dedicated resource to something, so an
 7 organization that has five, six, seven, eight
 8 hundred media inquiries a year, then they're
 9 going to be waiting.
 10 COFFEY, Q.C.:
 11 Q. I appreciate promptness is a virtue perhaps
 12 in--promptness is a virtue in that world, but
 13 I'm--with a view overall from the
 14 organization's perspective other than
 15 answering the phone, responding to a phone
 16 call, with a view to accomplishing what?
 17 MS. PENNELL:
 18 A. In this situation?
 19 COFFEY, Q.C.:
 20 Q. Yes, in this situation.
 21 MS. PENNELL:
 22 A. Fair media coverage.
 23 COFFEY, Q.C.:
 24 Q. And it would be fair if what happened, was to
 25 happen?

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1 MS. PENNELL:
 2 A. If we didn't create panic; if we didn't create
 3 more concern than what was already out there;
 4 if we managed to communicate the things that
 5 we were trying to do to make this better, to
 6 try to explain what it was and what it wasn't,
 7 such as, you know, we didn't--we, as in
 8 Eastern Health, didn't diagnose or misdiagnose
 9 people with breast cancer. That was a
 10 misconception. The truth was we had test
 11 results that changed, maybe facilitating some
 12 treatment change, you know. Like sort of to
 13 communicate certain messages.
 14 COFFEY, Q.C.:
 15 Q. And those being? Really, that's what I'm
 16 asking you, those being what?
 17 MS. PENNELL:
 18 A. Well, you've got a page full of them.
 19 COFFEY, Q.C.:
 20 Q. Okay, the key messages you had drafted back in
 21 the summer?
 22 MS. PENNELL:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. Had they ever really changed?

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1 MS. PENNELL:
 2 A. Probably not.
 3 COFFEY, Q.C.:
 4 Q. And would one of the messages have been, in
 5 effect, that "we know what we're doing"?
 6 MS. PENNELL:
 7 A. We know what we're doing?
 8 COFFEY, Q.C.:
 9 Q. Yes.
 10 MS. PENNELL:
 11 A. I don't know if I would have wrote that as a
 12 key message.
 13 COFFEY, Q.C.:
 14 Q. Well, whether you would have wrote it or not,
 15 would you have perceived it to be one of the
 16 messages you were trying to convey?
 17 MS. PENNELL:
 18 A. We know what we're trying to do maybe.
 19 THE COMMISSIONER:
 20 Q. Did I hear you to say that, from your
 21 perspective, the key messages you had earlier
 22 drafted had not changed by this time?
 23 MS. PENNELL:
 24 A. I don't -
 25 THE COMMISSIONER:

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1 Q. I wasn't sure what you said.
 2 MS. PENNELL:
 3 A. I don't remember drafting those key messages
 4 in the very first place, so.
 5 THE COMMISSIONER:
 6 Q. Oh, all right.
 7 MS. PENNELL:
 8 A. The rest of the documents I remember, but I
 9 don't--that key message document is almost
 10 foreign.
 11 THE COMMISSIONER:
 12 Q. Did you disagree with those key messages?
 13 MS. PENNELL:
 14 A. I didn't disagree with them, no. I just don't
 15 think I drafted them.
 16 THE COMMISSIONER:
 17 Q. Okay.
 18 COFFEY, Q.C.:
 19 Q. I take it though that you would have been
 20 aware of them?
 21 MS. PENNELL:
 22 A. I would have been aware of them, yes.
 23 COFFEY, Q.C.:
 24 Q. And you would have understood that as they had
 25 not changed or you had not been advised that

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1 they had changed, that that was the approach
 2 to be taken?
 3 MS. PENNELL:
 4 A. Yes.
 5 COFFEY, Q.C.:
 6 Q. In October?
 7 MS. PENNELL:
 8 A. Sure.
 9 COFFEY, Q.C.:
 10 Q. And is one of those, one of the factors or one
 11 of the overriding goals of Eastern Health at
 12 this point to try to have itself portrayed in
 13 the best light possible?
 14 MS. PENNELL:
 15 A. Yes and no.
 16 COFFEY, Q.C.:
 17 Q. Okay. Well, yes and no, perhaps you could
 18 expand upon that.
 19 MS. PENNELL:
 20 A. I mean, Eastern Health I don't think ever had
 21 an agenda. It's not a private company. It
 22 doesn't--you know, it doesn't need customers
 23 or that kind of thing. I mean, people have to
 24 come to Eastern Health for their services
 25 regardless, but so it's not like they--you

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1 know, in a different situation where it's a
 2 private company or someone who needs revenue
 3 or something, then you know, you're worried
 4 about a loss of that. Whereas this is a
 5 different situation where they wanted to make
 6 sure they didn't have people using more faith
 7 in the system than they had already lost.
 8 They wanted to try and restore some faith in,
 9 you know, if you come for treatment that your
 10 treatment will be the best care possible. I
 11 mean, as I believe has been said here, I mean,
 12 that ER/PR test was one of 10 million tests
 13 that was done in that lab.
 14 COFFEY, Q.C.:
 15 Q. Well, I don't know if it's entirely literally
 16 accurate as one of 10 million.
 17 MS. PENNELL:
 18 A. Yeah, I don't know, but there's a lot of
 19 freakin' tests that go through that lab.
 20 COFFEY, Q.C.:
 21 Q. But there are certainly a number of different
 22 types of tests.
 23 MS. PENNELL:
 24 A. Yes, and doesn't mean the whole entire health
 25 care system was in disarray is what I think we

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1 were trying to say.
 2 COFFEY, Q.C.:
 3 Q. Now ma'am, was any thought, to your knowledge
 4 -
 5 THE COMMISSIONER:
 6 Q. (Inaudible) system in Eastern Health? It's an
 7 interesting thing. It's come up several
 8 times.
 9 MS. PENNELL:
 10 A. I'm sorry?
 11 THE COMMISSIONER:
 12 Q. The equation seems to be if somebody has a
 13 problem in Eastern Health, the whole health
 14 care system is somehow -
 15 MS. PENNELL:
 16 A. Well, the entire province -
 17 THE COMMISSIONER:
 18 Q. - in disarray.
 19 MS. PENNELL:
 20 A. Well, the entire province does depend on
 21 Eastern Health for the tertiary care and the
 22 large numbers of people in the province do get
 23 their health care from Eastern Health, so
 24 while they're not the only health authority, I
 25 think there's a large population there that

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1 certainly rely on Eastern Health.
 2 COFFEY, Q.C.:
 3 Q. Was any thought, to your knowledge, given,
 4 while you were there with Eastern Health, just
 5 simply on an ongoing basis providing numbers
 6 to the media as and when they became
 7 available?
 8 MS. PENNELL:
 9 A. See, I don't remember ever having a problem
 10 with numbers.
 11 COFFEY, Q.C.:
 12 Q. I'm not suggesting you did. I'm just -
 13 MS. PENNELL:
 14 A. Yeah, and -
 15 COFFEY, Q.C.:
 16 Q. But do you recall any numbers being given out,
 17 other than the -
 18 MS. PENNELL:
 19 A. That ten percent was floated around a lot and
 20 I remember that, but I don't remember
 21 necessarily having a problem with it or
 22 doubting it. I mean, if Dr. Williams said it
 23 was true, I believed it to be true and would
 24 have provided that number had I been asked.
 25 COFFEY, Q.C.:

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1 Q. And you understood though that wave--like
 2 waves of results were coming back from Mount
 3 Sinai depending upon -
 4 MS. PENNELL:
 5 A. Bits and pieces, yes.
 6 COFFEY, Q.C.:
 7 Q. Bits and pieces, depending upon how you view a
 8 wave, I suppose, but they were coming back--
 9 they weren't coming back one at a time
 10 generally. They were coming back in the
 11 groups.
 12 MS. PENNELL:
 13 A. 20, 30, 40, yeah, that type of thing.
 14 COFFEY, Q.C.:
 15 Q. Generally.
 16 MS. PENNELL:
 17 A. Yeah.
 18 COFFEY, Q.C.:
 19 Q. The idea of routinely updating the media on
 20 those, and we got 150 back, 40 of them have
 21 changed, any thought ever given to that?
 22 MS. PENNELL:
 23 A. No.
 24 COFFEY, Q.C.:
 25 Q. The idea of a patient letter throughout the

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1 first half of October 2005, did that
 2 resurface?
 3 MS. PENNELL:
 4 A. I don't know.
 5 COFFEY, Q.C.:
 6 Q. Okay. If we could look, please, at Exhibit P-
 7 0357? This is a series of e-mails, October
 8 18th, 2005. The first of them is from
 9 yourself at 2:03 p.m. to George Tilley, Dr.
 10 Williams, Denise Dunn, Heather Predham. The
 11 subject is ad scenarios and you write "here
 12 are three scenarios that I've pulled together
 13 for advertising in regards to getting the
 14 message out about ER/PR to the public. I'm
 15 thinking scenario two may be best, but in a
 16 financial pinch, scenario three could work as
 17 NTV has a huge viewership and they promised me
 18 air play during the supper news, during the
 19 evening CTV news and during Canada AM in the
 20 mornings. If we want province wide coverage
 21 and money is no object, we should go with
 22 scenario one. Please let us know ASAP how you
 23 want us to proceed. If we're going with the
 24 papers, we need to have the ad designed and we
 25 only have about a day to do that as deadlines

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1 are Wednesday day end. Susan will be
 2 forwarding potential copy for you to proof
 3 soon in the event we go with print ads as
 4 quoted in scenario one and two." Signed
 5 Deborah.
 6 So who had asked you to check into this?
 7 MS. PENNELL:
 8 A. Susan.
 9 COFFEY, Q.C.:
 10 Q. Do you recall when?
 11 MS. PENNELL:
 12 A. Probably that day. I remember it was quite a-
 13 -you know, it was quite quick. I was making
 14 phone calls pretty feverishly to try and get
 15 some idea of the cost. I didn't have a lot of
 16 time.
 17 COFFEY, Q.C.:
 18 Q. Mr. Tilley responds to you, your e-mail, by
 19 saying "Deborah, I favour scenario two as
 20 well. Have we kept the Department in the loop
 21 on the plan?" Signed George, and then you, at
 22 3:49 p.m., wrote to Ms. Bonnell "you can
 23 respond to him re: department." Now what was
 24 this about?
 25 MS. PENNELL:

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1 A. Well, as I think I mentioned to you that while
 2 I do pop up from time to time in this
 3 situation, I was really not in the loop a
 4 whole lot and I certainly didn't have dealings
 5 with the Department in the way of keeping them
 6 up to date on ER/PR or anything like that. So
 7 either I didn't know what to say to the
 8 Department or to George or I thought Susan
 9 should be the one to respond to him, but you
 10 know, I had--I wasn't in on any meetings with
 11 the Minister. I don't even know if I had any
 12 conversations with Ms. Chaplin, if so, just
 13 very casually. It wasn't my role to keep them
 14 in the loop.
 15 COFFEY, Q.C.:
 16 Q. So if we wanted to know something about that,
 17 we'd have to ask Ms. Bonnell?
 18 MS. PENNELL:
 19 A. I would think, yes.
 20 COFFEY, Q.C.:
 21 Q. And dealings then with the Department, from
 22 your perspective, were her responsibility?
 23 MS. PENNELL:
 24 A. No, I think I had an understanding that Dr.
 25 Williams was in touch frequently with Mr.

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1 Abbott. I think that there was a fairly open
 2 line of communication there, from what I
 3 understood.
 4 COFFEY, Q.C.:
 5 Q. The purpose of running the ad would be to do
 6 what?
 7 MS. PENNELL:
 8 A. Reach out to the patients, I suppose. Reach
 9 out to the general public.
 10 COFFEY, Q.C.:
 11 Q. We'll deal first of all with reaching out to
 12 the patients, with a view to doing what?
 13 MS. PENNELL:
 14 A. Trying to assure them.
 15 COFFEY, Q.C.:
 16 Q. As to what?
 17 MS. PENNELL:
 18 A. Or trying to inform them, I should say, as to
 19 where they could--I think it was the point to
 20 get the hotline number out and where they
 21 could call to ask questions, very brief
 22 information about what we were actually doing.
 23 I believe at this point maybe it was just the
 24 patients whose treatment had changed that we
 25 were contacting. I can't quite keep it

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1 straight to tell you the truth.
 2 COFFEY, Q.C.:
 3 Q. And the patients, so if it was--if you do have
 4 that straight in the first part of October, it
 5 was just the patients whose results were
 6 changing that were being contacted?
 7 MS. PENNELL:
 8 A. I'm not sure. I mean, maybe if I saw what the
 9 ad copy said, then I'd know who we were trying
 10 to reach out to, but I don't see the ad copy
 11 there.
 12 COFFEY, Q.C.:
 13 Q. And then I take it though at some point that
 14 changed to include what, all patients who were
 15 being retested, or do you know?
 16 MS. PENNELL:
 17 A. I suppose so. To tell you the truth, sir, I
 18 didn't even remember this until Mr. Simmons
 19 had shown it to me.
 20 COFFEY, Q.C.:
 21 Q. Now, and at this point in time, in terms of
 22 the public, what was the goal? Not the
 23 patients, but the public, what was the goal in
 24 running the ads?
 25 MS. PENNELL:

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1 A. To try and give them assurance that Eastern
 2 Health was--that we knew what we were doing,
 3 that we were working on this situation. I
 4 suppose that we had it under control to a
 5 point.
 6 COFFEY, Q.C.:
 7 Q. If we look please at Exhibit P-0658? Now this
 8 is an e-mail from a Sheena Goodyear, Friday,
 9 October 21st, 2005, to Dr. Williams. Subject
 10 is The Muse, breast cancer, and she writes
 11 "Hi, I'm from MUN's student newspaper. I am
 12 wondering if we could talk about the problems
 13 with the breast cancer hormone receptor
 14 tests." Okay. Do you recognize the
 15 handwriting here?
 16 MS. PENNELL:
 17 A. Well, is that Susan's? I don't think it is.
 18 COFFEY, Q.C.:
 19 Q. It says--whoever it is has written "Deborah
 20 said she wants to do an interview with you,
 21 inclined to say no. Kind of nervous letting
 22 student do something. Not professional
 23 journalist. Her deadline is Tuesday. Deborah
 24 said she'll talk to you Monday." Have any
 25 recollection of that?

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1 And perhaps if we could look at Exhibit
 2 P-0660? This is two e-mails of October 24th
 3 2005. One is from Mandy LeRiche at 11:52 a.m.
 4 It's to Dr. Williams. The subject is "Muse
 5 story on breast cancer tests for Tuesday."
 6 She writes "Dr. Williams, the following are
 7 some of the questions we have about the faulty
 8 breast cancer tests. Your input would be
 9 greatly appreciated." She lists six
 10 questions, at least six. She numbers six.
 11 There are more than six questions there. She
 12 concludes "the story will be submitted on
 13 Tuesday evening and would run in the Thursday
 14 paper. Thanks for your help," and then at the
 15 top of the page of this exhibit we have an e-
 16 mail from Denise Dunn on behalf of Dr.
 17 Williams, same day 12:19 p.m., sent to
 18 yourself, and she writes "Deborah, Dr.
 19 Williams asked me to fax this to you." Signed
 20 Denise. Now does that assist you in -
 21 MS. PENNELL:
 22 A. Yes. I believe we responded in writing.
 23 THE COMMISSIONER:
 24 Q. I beg your pardon? When you say you
 25 responded?

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1 MS. PENNELL:
 2 A. I think we just really actually answered the
 3 questions in the e-mail and sent it back to
 4 her.
 5 COFFEY, Q.C.:
 6 Q. Okay.
 7 MS. PENNELL:
 8 A. And that's why I remember it, because that's a
 9 strange practice. I don't normally do that.
 10 COFFEY, Q.C.:
 11 Q. And why was that practice adopted here?
 12 MS. PENNELL:
 13 A. Likely because of my concerns on the earlier
 14 exhibit that it was a complex issue, hard to
 15 explain, and you know, even some of the most
 16 seasoned journalists that I knew were having a
 17 hard time getting their heads around ER/PR and
 18 they were fine with that type of response, so
 19 they were happy, we were happy.
 20 COFFEY, Q.C.:
 21 Q. I take it no such written explanation or
 22 response was given to the, I'll refer to them
 23 as the mainstream media?
 24 MS. PENNELL:
 25 A. They probably didn't ask. Most journalists

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1 don't conduct themselves in that way.
 2 COFFEY, Q.C.:
 3 Q. If we could look, please, at Exhibit P-0665?
 4 This is an e-mail of October 25th, 2005, 3:34
 5 p.m. from Diane Smith to Mandy LeRiche. It's
 6 copied to yourself. The subject is "response
 7 to questions re: Muse story on breast cancer."
 8 Who is Diane Smith?
 9 MS. PENNELL:
 10 A. Diane Smith? I don't remember. It's been a
 11 couple of years since I worked there. Is she
 12 in risk?
 13 COFFEY, Q.C.:
 14 Q. Do you recall, if we look at the second page,
 15 who drafted the responses? Because the
 16 questions are reproduced here, ER/PR testing
 17 response to the Muse, the questions that Ms.
 18 LeRiche had posed.
 19 MS. PENNELL:
 20 A. I likely did.
 21 COFFEY, Q.C.:
 22 Q. Now she posits a question. The first question
 23 in number one is six words long, "what went
 24 wrong with the tests?" and she says "do you
 25 feel the error was primarily human?" Do you

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1 actually answer the--there's an answer there,
 2 but do you actually answer the question?
 3 MS. PENNELL:
 4 A. No.
 5 COFFEY, Q.C.:
 6 Q. No, okay. Why not?
 7 MS. PENNELL:
 8 A. Because it's still currently under
 9 investigation.
 10 COFFEY, Q.C.:
 11 Q. Had anyone like Dr. Williams or Dr. Cook or
 12 Mr. Gulliver informed you that by then they
 13 had debriefed the reviewers?
 14 MS. PENNELL:
 15 A. Well, this would have went through someone
 16 after me. I wouldn't have just written this
 17 and sent it on to Mandy LeRiche.
 18 COFFEY, Q.C.:
 19 Q. So your understanding is who would have
 20 reviewed this?
 21 MS. PENNELL:
 22 A. Dr. Williams, because it was going with his
 23 undersigned.
 24 COFFEY, Q.C.:
 25 Q. So you would have understood certainly then by

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1 the--let me see, well, get this right. The
 2 questions are first posed in writing October
 3 24th, 2005, Exhibit P-0660. Question number
 4 one, "what went wrong with the tests? Do you
 5 feel the error was primarily human?" By
 6 October 24th, yourself and Dr. Williams would
 7 certainly have been aware that at least the
 8 University student newspaper was asking those
 9 two questions.
 10 MS. PENNELL:
 11 A. Yes.
 12 COFFEY, Q.C.:
 13 Q. While you were there, do you know if they were
 14 ever, those questions were ever answered
 15 either to the MUSE or to any other media
 16 organization?
 17 MS. PENNELL:
 18 A. Not that I know of.
 19 COFFEY, Q.C.:
 20 Q. Can you tell the Commissioner why not?
 21 MS. PENNELL:
 22 A. I didn't know what the answer was.
 23 COFFEY, Q.C.:
 24 Q. And if you had had at the time potentially to
 25 identify someone who might know, who would you

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1 have pointed to?
 2 MS. PENNELL:
 3 A. Dr. Williams.
 4 COFFEY, Q.C.:
 5 Q. So as of October 26th--I'm sorry, October
 6 25th, 2005 when you were copied on this e-
 7 mail, that's Exhibit P-0665, thank you, you
 8 understood that at least at that point Eastern
 9 Health was not going to answer that question
 10 to the public?
 11 MS. PENNELL:
 12 A. Maybe that they couldn't answer it.
 13 COFFEY, Q.C.:
 14 Q. No -
 15 MS. PENNELL:
 16 A. More so than they wouldn't answer it.
 17 COFFEY, Q.C.:
 18 Q. - whether they could or couldn't, that they
 19 were not going to or did not?
 20 MS. PENNELL:
 21 A. That's obvious there, yes.
 22 COFFEY, Q.C.:
 23 Q. Yeah. If we could, please, Exhibit P-1532?
 24 Ma'am, this is an e-mail of October 25th,
 25 2005, which is the--actually, it's the same

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1 day. In fact, it's, let me see, it's 14
 2 minutes after the e-mail from Diane Smith.
 3 This is an e-mail from yourself to Susan
 4 Bonnell to say, "Hi Susan, Just want to talk
 5 to you and Liz said you're out. Carolyn
 6 Chaplin just e-mailed me and she was listening
 7 to the radio and apparently someone was on
 8 Backtalk with Bill Rowe going on and on about
 9 ER/PR and Bill Rowe was adding fuel to the
 10 fire." and four dots. And they you say "I
 11 know this stems from the fact that Dr.
 12 Williams did yet another interview, this one
 13 with Doug Learning even after I and you
 14 suggested he not do it. I don't know if you
 15 have any clout to put a stop to this, but if
 16 we don't stop doing these interviews, this
 17 issue will never die in the media. We are on
 18 week five in the media now. I don't know if
 19 you can talk to George or whatever, but it's
 20 really hard to manage this like this. I know
 21 you agree. Anyway," and there are three dots,
 22 "maybe something to talk about at exec.
 23 Cheers, Deb." Now, ma'am, then as of October
 24 25th, 2005 can you tell us, please, well,
 25 first of all, what the e-mail--I'm sorry, what

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1 the interview with Dr. Williams and Doug
 2 Learning was about?
 3 MS. PENNELL:
 4 A. It was just yet another update, call for an
 5 update, for an update, for an update on ER/PR,
 6 I got them daily. And you know, this e-mail
 7 is just indicative of the frustration of
 8 working from within an issue that was
 9 unmanageable from a media perspective.
 10 COFFEY, Q.C.:
 11 Q. What was the problem with Dr. Williams doing
 12 another interview?
 13 MS. PENNELL:
 14 A. Because there was nothing new to add at this
 15 point and it seemed like every time he added
 16 any more, you know, every time, especially on
 17 VOCM, every time another interview or another
 18 clip was used, then that would get, you know,
 19 your Backtalk callers calling and a lot of
 20 times people didn't understand the issue and
 21 there were misconceptions. And it was just,
 22 you know, it was just constantly, it was just
 23 frustrating me on top of, you know, the rest
 24 of what I had to do in the run of a day.
 25 Managing this was just it was just exhausting

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1 me, I have to say.
 2 COFFEY, Q.C.:
 3 Q. What difference did it make to Eastern Health,
 4 from your perspective, as to whether or not
 5 the subject was being pursued on Backtalk?
 6 MS. PENNELL:
 7 A. Because that's, we took this very seriously
 8 and there were--if you listen to some of these
 9 call-in programs, there are a lot of people on
 10 there who don't, a lot of them don't have--
 11 don't know what they're talking about when it
 12 comes to an issue such as this. They don't
 13 understand it, they don't perceive it
 14 correctly, they don't necessarily listen to
 15 all of the information that's out there, if
 16 they do, they may not understand it, and
 17 that's how misconceptions get going.
 18 COFFEY, Q.C.:
 19 Q. So what was it you wanted Susan to do vis-a-
 20 vis Dr. Williams?
 21 MS. PENNELL:
 22 A. You know, I honestly don't think that I wanted
 23 no more interviews on it, I think I was just
 24 frustrated. At that moment I probably did
 25 never want to talk to another member of the

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1 media again, but I was just frustrated.
 2 COFFEY, Q.C.:
 3 Q. Why were you frustrated?
 4 MS. PENNELL:
 5 A. Probably for a bunch of reasons. I was
 6 frustrated, I was frustrated for a lot of--you
 7 know, for a long time that we never issued a
 8 press release in July. And then I was
 9 frustrated that because we didn't do that,
 10 that this issue started to get away from us.
 11 And I didn't have the power to change that or
 12 stop that.
 13 COFFEY, Q.C.:
 14 Q. Change or stop, change -
 15 MS. PENNELL:
 16 A. And my own credibility was at stake, I mean,
 17 with my colleagues in the media, my peers in
 18 the media that I dealt with every single day.
 19 COFFEY, Q.C.:
 20 Q. How was your credibility -
 21 MS. PENNELL:
 22 A. Because, you know -
 23 COFFEY, Q.C.:
 24 Q. - affected?
 25 MS. PENNELL:

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1 A. - this issue from a communications perspective
 2 was looking like it was mismanaged.
 3 COFFEY, Q.C.:
 4 Q. Okay. Mismanaged, I take it, by not having
 5 done the media release in the beginning?
 6 MS. PENNELL:
 7 A. Well, yeah, certainly one of the things,
 8 definitely.
 9 COFFEY, Q.C.:
 10 Q. Anything else?
 11 MS. PENNELL:
 12 A. By the disclosure issue, by looking like we
 13 were not going to disclose when from the
 14 minute I found out about it, that's what I
 15 wanted to do. And then -
 16 COFFEY, Q.C.:
 17 Q. I appreciate this may be -
 18 MS. PENNELL:
 19 A. - you know, here we are six months or seven,
 20 whatever, five months later and, you know, the
 21 media and the public have to find out in a
 22 news story. It frustrated me because it
 23 didn't have to be that way.
 24 COFFEY, Q.C.:
 25 Q. Did you let anyone know at the time, in July

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1 and August, how you felt?

2 MS. PENNELL:

3 A. Oh, I think you would ask anybody around that

4 table and they would tell you that I wanted to

5 do a media release to disclose this all along,

6 and I don't -

7 COFFEY, Q.C.:

8 Q. Do you recall anyone else at the table who

9 expressed the same view?

10 MS. PENNELL:

11 A. I thought Susan had the same view as me.

12 COFFEY, Q.C.:

13 Q. Anyone else?

14 MS. PENNELL:

15 A. And I thought Dr. Williams had the same view

16 as me, and Mr. Tilley.

17 COFFEY, Q.C.:

18 Q. I'm sorry, and?

19 MS. PENNELL:

20 A. Mr. Tilley.

21 COFFEY, Q.C.:

22 Q. Okay, well, that's -

23 MS. PENNELL:

24 A. That's what I thought. I may have been wrong,

25 but that's what I thought.

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1 COFFEY, Q.C.:

2 Q. I take it that's your interpretation of what

3 you heard, anyway?

4 MS. PENNELL:

5 A. Yes.

6 COFFEY, Q.C.:

7 Q. Was those--was that?

8 MS. PENNELL:

9 A. Certainly.

10 COFFEY, Q.C.:

11 Q. Well, who else was around the table?

12 MS. PENNELL:

13 A. Dr. Cook, Dr. Laing, Dr. McCarthy -

14 COFFEY, Q.C.:

15 Q. And I take it -

16 MS. PENNELL:

17 A. - Heather Predham. I guess those would be the

18 key people.

19 COFFEY, Q.C.:

20 Q. Well, in whose camp was Ms. Predham?

21 MS. PENNELL:

22 A. I don't know.

23 COFFEY, Q.C.:

24 Q. Okay.

25 MS. PENNELL:

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1 A. I think she was six to one, half dozen of the

2 other. I think she could see merits of both

3 sides. She was more concerned about the

4 patient disclosure.

5 COFFEY, Q.C.:

6 Q. And where were the physicians then, on this?

7 MS. PENNELL:

8 A. Very patient focused, not all that concerned

9 about the media focus. That was my

10 perception.

11 COFFEY, Q.C.:

12 Q. Well, did they say anything about the media?

13 If yourself and Dr. Williams and Susan Bonnell

14 and George Tilley are all on the side of a

15 press release, who's on the other side?

16 Because there was no press release, so I'm

17 just asking you do you recall who was on the

18 other side?

19 MS. PENNELL:

20 A. There was a lot of reluctance, certainly, from

21 the oncologists for a press release.

22 COFFEY, Q.C.:

23 Q. And did they explain why they were reluctant?

24 MS. PENNELL:

25 A. I'm pretty sure it was the whole patient

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1 disclosure versus what comes first, the

2 patients or the media or the public, and they

3 believed the patients should be told first.

4 COFFEY, Q.C.:

5 Q. Okay. And was any attempt made to tell the

6 patients first?

7 MS. PENNELL:

8 A. I thought that was ongoing.

9 COFFEY, Q.C.:

10 Q. In what manner, what manner, what methodology

11 was being used to do that?

12 MS. PENNELL:

13 A. Well, you'd have to ask quality, but I was all

14 of the impression that patients were being

15 notified. While test results were coming

16 back, patients were being notified of their

17 results.

18 COFFEY, Q.C.:

19 Q. Do you recall when the first test results did

20 come back?

21 MS. PENNELL:

22 A. We had some back in those early days in July.

23 They were coming back, trickling in, 20, 25 at

24 a time.

25 COFFEY, Q.C.:

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1 Q. In July?
 2 MS. PENNELL:
 3 A. Right, because those meetings they said we had
 4 25 and, or 33 back and 25 converted or--so,
 5 you know, I don't know the numbers exactly,
 6 but 25 and 16 were positive. So there were
 7 obviously results coming in then.
 8 COFFEY, Q.C.:
 9 Q. And you understood what was being done with
 10 those results?
 11 MS. PENNELL:
 12 A. That the oncologists were contacting the
 13 patients whose treatments were changing, that
 14 was the priority.
 15 COFFEY, Q.C.:
 16 Q. And then as August wore into September, what
 17 was happening in that period?
 18 MS. PENNELL:
 19 A. I don't know, sir.
 20 COFFEY, Q.C.:
 21 Q. Okay. Now, here on this exhibit, 1532, it
 22 says "Carolyn Chaplin just e-mailed me." Do
 23 we have a copy of that e-mail?
 24 MR. SIMMONS:
 25 Q. Not that I know of.

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1 COFFEY, Q.C.:
 2 Q. I don't believe we do. Your e-mails would Ms.
 3 Chaplin e-mail you at your -
 4 MS. PENNELL:
 5 A. Yes, I -
 6 COFFEY, Q.C.:
 7 Q. - office?
 8 MS. PENNELL:
 9 A. Yes.
 10 COFFEY, Q.C.:
 11 Q. Work e-mail. Is there any particular manner
 12 in which you handled your e-mails? Because we
 13 have quite a number of your e-mails, but we
 14 don't have that one.
 15 MS. PENNELL:
 16 A. No. They should--you know, I don't know what
 17 happened to my e-mails when I left Eastern
 18 Health. That's two and a half years ago, so.
 19 I did archive some things, other things I
 20 didn't.
 21 COFFEY, Q.C.:
 22 Q. Did you ever hear from Ms. Bonnell or Mr.
 23 Tilley or Dr. Williams after you sent this e-
 24 mail concerning the subject matter?
 25 MS. PENNELL:

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1 A. I don't think so. Susan may have just chalked
 2 it up as me having a bad day.
 3 COFFEY, Q.C.:
 4 Q. And do you know, though, whether or not Dr.
 5 Williams did continue to give such interviews?
 6 MS. PENNELL:
 7 A. I think we were all frustrated at this point.
 8 I think we were coming to a point where we
 9 were going to start to say that unless we've
 10 got something new to add, I don't see any
 11 point in doing any more media interviews, but
 12 if we have something new, if something new
 13 comes in, more results, whatever, that we
 14 would do media. But I think we were getting
 15 to that point.
 16 COFFEY, Q.C.:
 17 Q. If we could, please, Exhibit P-0385? Now,
 18 this is an e-mail of October 26th, 2005 3:23
 19 p.m. It's from yourself to a number of
 20 people, including Ms. Bonnell and Mr. Tilley.
 21 "Out of the Fog" interview. And you write,
 22 "Hi all, Dr. Williams is tentatively scheduled
 23 to do a one-on-one interview with Out of the
 24 Fog at Dr. Williams' office at 12:15 p.mish
 25 tomorrow. They will bring the camera to him

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1 and he will do a similar interview that he has
 2 already done with NTV and CBC, etcetera. Dr.
 3 Williams will NOT" and NOT is in caps, "be
 4 going to the studio and sitting down with" and
 5 there's a patient's name redacted, "and Peter
 6 Dawe. The producer is going to confirm the
 7 time with me later tonight or in the a.m. but
 8 that is 99 percent certain as of now."
 9 Signed, "Deborah." Do you recall why it was
 10 that Dr. Williams would not be going to the
 11 studio and sitting down with -
 12 MS. PENNELL:
 13 A. I think it was something to do with the class
 14 action lawsuit and dealing with a patient.
 15 But, you know, we tried to work around that
 16 and accommodate Out of the Fog with an
 17 interview.
 18 COFFEY, Q.C.:
 19 Q. And do you recall who it was that advised you
 20 of the concerns of Dr. Williams participating?
 21 MS. PENNELL:
 22 A. No, I don't.
 23 COFFEY, Q.C.:
 24 Q. If we could, please, Exhibit P-0808? Ma'am,
 25 this is an e-mail from Tansy Mundon, October

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1 31st, 2005, 11:04 a.m. to yourself and Ms.
 2 Bonnell, it's copied to Darrell Hynes, John
 3 Abbott, Moira Hennessey and Tara Furlong. The
 4 subject is "Forwarding Open Line Breast Cancer
 5 Screening". The attachment is "Open Line
 6 Breast Cancer Screening". And then she has
 7 written, Ms. Mundon has written,
 8 "Susan/Deborah, Please see attached e-mail
 9 regarding a caller on Open Line regarding
 10 ER/PR testing. The host is asking other women
 11 to call in so we should keep an eye on this.
 12 Thanks, Tansy." Do you recall receiving this?
 13 MS. PENNELL:
 14 A. Yes, I believe I do.
 15 COFFEY, Q.C.:
 16 Q. And you understood what was being asked of you
 17 in this regard?
 18 MS. PENNELL:
 19 A. Turn on the radio and listen to Open Line and
 20 if someone says anything that's wrong or to
 21 have someone ready to respond to it, that's
 22 what it means.
 23 COFFEY, Q.C.:
 24 Q. If we could look, please, at Exhibit P-0671?
 25 Had you had any such instructions from Ms.

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1 Mundon before?
 2 MS. PENNELL:
 3 A. I don't know about particularly for ER/PR, but
 4 you know, it's not out of the realm of
 5 possibilities for the communications director
 6 in the Department of Health to send us, as in
 7 Eastern Health, an e-mail saying there's
 8 something on the radio you should be listening
 9 to and be ready to respond to. But we didn't
 10 monitor Open Line shows in the office. I
 11 mean, every now and then we would listen to
 12 something, but we didn't have that on in our
 13 offices.
 14 COFFEY, Q.C.:
 15 Q. I take it, though, if you received an e-mail
 16 from Ms. Mundon suggesting you do so, that you
 17 would then do so?
 18 MS. PENNELL:
 19 A. I would.
 20 COFFEY, Q.C.:
 21 Q. During that period, during the fall of 2005
 22 how much interaction on the ER/PR issue do you
 23 recall having with the Department of Health?
 24 MS. PENNELL:
 25 A. Little to none. Maybe, you know, a couple of

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1 interactions but it quieted.
 2 COFFEY, Q.C.:
 3 Q. Do you recall when it was that the decision
 4 was made within Eastern Health that we're not
 5 going to respond to media requests?
 6 MS. PENNELL:
 7 A. No, you know, I -
 8 COFFEY, Q.C.:
 9 Q. In relation to this?
 10 MS. PENNELL:
 11 A. I don't remember a specific day that we all
 12 sat down and said that's you know, I think it
 13 was sort of a situation that we had just come
 14 to that just some of the coverage was just, it
 15 was just becoming unmanageable and -
 16 COMMISSIONER:
 17 Q. What does that mean (inaudible)?
 18 MS. PENNELL:
 19 A. "Unmanageable" means that every single day it
 20 seemed like the same story was being
 21 regurgitated over and over and over. And the
 22 more--and it just seemed that we were afraid
 23 that all facets of health care that Eastern
 24 Health provided was going to suffer. Every
 25 time you'd bring up the name Eastern Health,

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1 people say, "Oh, Eastern Health, I wouldn't go
 2 there for anything." You know, I think there
 3 was becoming almost a fear mongering out there
 4 about Eastern Health.
 5 COFFEY, Q.C.:
 6 Q. Who is we?
 7 COMMISSIONER:
 8 Q. Sorry, I'm not understanding this. It's been
 9 said by others, but I'm having real trouble
 10 understanding. Unless you're saying it was
 11 inaccurate coverage over and over and over
 12 again?
 13 MS. PENNELL:
 14 A. No, it's not inaccurate -
 15 COMMISSIONER:
 16 Q. Was it inaccurate?
 17 MS. PENNELL:
 18 A. - and it's not--but it is negative.
 19 COMMISSIONER:
 20 Q. Okay. So -
 21 MS. PENNELL:
 22 A. Yeah. It's not inaccurate.
 23 COMMISSIONER:
 24 Q. Okay. So -
 25 MS. PENNELL:

1 A. There's a difference.
 2 COMMISSIONER:
 3 Q. - the problem was that the story was fairly
 4 being played, but--being presented, but
 5 because it was being repeated?
 6 MS. PENNELL:
 7 A. It was -
 8 COMMISSIONER:
 9 Q. Is that it?
 10 MS. PENNELL:
 11 A. I think, I mean, it wasn't inaccuracies,
 12 because if they were, I would have asked for
 13 them to be corrected.
 14 COMMISSIONER:
 15 Q. Um-hm.
 16 MS. PENNELL:
 17 A. And we'd have record of that. It's just that,
 18 you know, if you're constantly telling
 19 somebody, you know, your eyes are blue, your
 20 eyes are blue, your eyes are blue and your
 21 eyes are actually blue-green, you're going to
 22 start to believe your eyes are blue if you
 23 hear it over and over and over and over and
 24 over. And I felt that, we felt that even if
 25 what they were saying was fair, there was no

1 THE COMMISSIONER:
 2 Q. Now what was the advantage to Eastern Health
 3 to getting it out first?
 4 MS. PENNELL:
 5 A. Well we could inform people what we were
 6 doing, we could inform the public what we were
 7 doing to take action of this mistake or
 8 whatever it was that was happening at the
 9 time. This is what we found and this is what
 10 we're doing to deal with it.
 11 THE COMMISSIONER:
 12 Q. Okay.
 13 MS. PENNELL:
 14 A. So we were being proactive, that was my
 15 preference.
 16 THE COMMISSIONER:
 17 Q. Now that didn't happen.
 18 MS. PENNELL:
 19 A. Right.
 20 THE COMMISSIONER:
 21 Q. And as we all know, it broke with Eastern
 22 Health having really no control over the fact
 23 that it was going to break. And what was the
 24 disadvantage from your perspective of it
 25 happening in that way?

1 service in telling the reporter or the
 2 reporters the same thing over and over and
 3 over when there was nothing new, when all it
 4 was doing was creating more and more
 5 negativity. It's not like we had more
 6 information to give that was going to help the
 7 situation or to inform, further inform
 8 someone.
 9 THE COMMISSIONER:
 10 Q. Okay.
 11 MS. PENNELL:
 12 A. It was the same information that was already
 13 out there.
 14 THE COMMISSIONER:
 15 Q. Now from the beginning you wanted to get the
 16 story out and that wasn't happening, if we go
 17 back to the real beginning -
 18 MS. PENNELL:
 19 A. Yes.
 20 THE COMMISSIONER:
 21 Q. First when you learned it, you wanted to get
 22 the story out and you wanted to get it out
 23 first.
 24 MS. PENNELL:
 25 A. Yes.

1 MS. PENNELL:
 2 A. Well then we're backtracking, we are now in
 3 response mode to whatever a journalist writes.
 4 THE COMMISSIONER:
 5 Q. Okay.
 6 MS. PENNELL:
 7 A. We don't get to say this is what we're doing,
 8 have faith, hang on, we're going to take care
 9 of you, we're going to take care of this. Now
 10 it looks like we were trying to hide
 11 something, when we weren't. It looks like we
 12 were incompetent which I hope we weren't, and
 13 we had no control of -
 14 THE COMMISSIONER:
 15 Q. So the problem with the press breaking it
 16 before you did was that it gives the
 17 appearance that Eastern Health was trying to
 18 hide something.
 19 MS. PENNELL:
 20 A. Sure.
 21 THE COMMISSIONER:
 22 Q. Okay, that's--it's a perception problem.
 23 MS. PENNELL:
 24 A. It certainly is, and so people automatically
 25 think there's something wrong.

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1 THE COMMISSIONER:
 2 Q. All right, so then you, to compensate for
 3 that, take various measures to get the story
 4 of what you were doing out.
 5 MS. PENNELL:
 6 A. Right.
 7 THE COMMISSIONER:
 8 Q. Now in your view did that happen? Did you get
 9 the story of what you were doing out?
 10 MS. PENNELL:
 11 A. We were getting there, you know, we did our
 12 advertising, we contacted the Telegram, we did
 13 all the interviews we could do to bring the
 14 media and the public up to where we were at
 15 this point. When we got to the point where we
 16 had no more information to give, then it -
 17 THE COMMISSIONER:
 18 Q. All of which took about a month, so far a
 19 story broke in the latter part of September
 20 and we're now at the end of October and by
 21 this time, you wanted the story to stop.
 22 MS. PENNELL:
 23 A. Well we had a duty to, you know, we have a
 24 duty to the media to respond to them when they
 25 ask, so we did that and we did that and we did

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1 that. And we did that at times when we didn't
 2 have anything to say, but we still did it
 3 because we had a duty to do it. But it just
 4 became a point when I think we felt that we
 5 were hurting the faith, we were hurting
 6 Eastern Health by doing any more interviews.
 7 THE COMMISSIONER:
 8 Q. Well why--that's the part I don't understand,
 9 why is that hurting Eastern Health if what was
 10 out there was a fair version of what had
 11 occurred and your message about the activities
 12 that you were taking was getting out, why was
 13 Eastern Health being -
 14 MS. PENNELL:
 15 A. Because think the more it was on the radio and
 16 the more it was on TV, that the more, if you
 17 or I were going in for a test, whether it be
 18 an ER/PR test or not, we were afraid that we
 19 were getting an inaccurate result.
 20 THE COMMISSIONER:
 21 Q. Would that not have happened if you had let it
 22 out in the first place?
 23 MS. PENNELL:
 24 A. It would have happened, but it wouldn't have--
 25 I think, Madam Commissioner, I think that even

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1 if we were the ones to do the release in the
 2 beginning, I think we probably still would
 3 have got to this point where we would have put
 4 a stop to it.
 5 THE COMMISSIONER:
 6 Q. Okay.
 7 MS. PENNELL:
 8 A. I think that regardless of us first or them
 9 first, we would have still reached this point
 10 where we would have had to cut it off because
 11 I think the open line shows, I think--there's
 12 a thing too where you get some journalists,
 13 you know, maybe they're having a slow day,
 14 well let's call Eastern Health and get an
 15 update on ER/PR, when there was really no need
 16 some days to keep that story going every day
 17 in the news because we had a duty to provide
 18 information, certainly; we had a duty to, when
 19 asked, provide new information but we had no
 20 new information to provide, it came to a point
 21 where we really didn't feel like we were
 22 serving the public by doing any more media
 23 Interviews. Have I helped?
 24 COFFEY, Q.C.:
 25 Q. Okay, you say no more information to provide,

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1 no new information to provide, okay, and we're
 2 toward the end of October now. Now that was
 3 maybe information that you personally had.
 4 MS. PENNELL:
 5 A. Me, yes.
 6 COFFEY, Q.C.:
 7 Q. Yes, did you ask anyone, like other than Ms.
 8 Bonnell, your immediate superior, anyone, Dr.
 9 Williams, do you have anything new to add?
 10 MS. PENNELL:
 11 A. Well he was part of the decision not to do any
 12 more media interviews and he knew what the
 13 reason was for, so -
 14 COFFEY, Q.C.:
 15 Q. So when was that? Whenever it was, I take it
 16 it was after October?
 17 MS. PENNELL:
 18 A. Yeah, it was after this little burst of -
 19 COFFEY, Q.C.:
 20 Q. And your recollection is Dr. Williams did
 21 participate in that decision?
 22 MS. PENNELL:
 23 A. Yes, yes.
 24 COFFEY, Q.C.:
 25 Q. And he consciously chose or agreed no more

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1 interviews?
 2 MS. PENNELL:
 3 A. Yes, he would have to be part of that decision
 4 because there were some members of the media
 5 who called his office directly.
 6 COFFEY, Q.C.:
 7 Q. And it was with the rationale being we have
 8 nothing new to add?
 9 MS. PENNELL:
 10 A. Yes.
 11 COFFEY, Q.C.:
 12 Q. If we could, please, exhibit P-0671? This is
 13 from yourself, October 31st, 2005, 12:26 p.m.
 14 It's the same day as you're getting the heads
 15 up from Ms. Chaplin and you're telling Ms.
 16 Bonnell, Mr. Tilley, Dr. Williams and Heather
 17 Predham, open line today, and there's a
 18 summary there, 9:50, 9:50. Where would you
 19 have gotten this summary from?
 20 MS. PENNELL:
 21 A. So this isn't the attachment from the former
 22 e-mail from Tansy? Because that's not the
 23 same one she was asking us to monitor, was it
 24 or -
 25 COFFEY, Q.C.:

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1 Q. Well it says the e-mail from Tansy is to the
 2 effect--well it may be -
 3 MS. PENNELL:
 4 A. I may have got a heads up from her, is what
 5 I'm saying to you, I'm not sure, but we did
 6 get this stuff sent to us routinely.
 7 COFFEY, Q.C.:
 8 Q. And here it's noted, it says "Mercedes is a
 9 breast cancer survivor, she says that from
 10 1997 until now, the testers have shown to be a
 11 little inaccurate. They are unsure if this is
 12 machine error or human error. They are
 13 redoing all the tests again and she is one of
 14 the people still waiting. She wishes that
 15 they would hurry because she needs the results
 16 because time is something that she doesn't
 17 have. She is worried that her results were
 18 wrong and that she didn't get the proper
 19 treatment. She is surprised that women are
 20 not calling in, but she would like people to
 21 call in and tell their story." Okay.
 22 MS. PENNELL:
 23 A. That sounds like the same e-mail Tansy was
 24 referring to.
 25 COFFEY, Q.C.:

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1 Q. And now with respect to that, bearing in mind
 2 what she knew at the time, was there anything
 3 inaccurate in that?
 4 MS. PENNELL:
 5 A. No.
 6 COFFEY, Q.C.:
 7 Q. Did you understand if indeed that was a
 8 patient calling and this was her actual
 9 history that makes -
 10 MS. PENNELL:
 11 A. Yeah, that one is fine, yes.
 12 COFFEY, Q.C.:
 13 Q. It makes sense. They aren't sure if this is
 14 machine error or human error. So I take it
 15 that that was one of the topics that was being
 16 talked about at the end of October, 2005?
 17 MS. PENNELL:
 18 A. It may have been.
 19 COFFEY, Q.C.:
 20 Q. In the media. Was it discussed within Eastern
 21 Health then around that time as to whether or
 22 not we should respond to that, answer that
 23 particular question?
 24 MS. PENNELL:
 25 A. No.

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1 COFFEY, Q.C.:
 2 Q. Anyone ever say we can't answer it?
 3 MS. PENNELL:
 4 A. No.
 5 COFFEY, Q.C.:
 6 Q. If we could, please, exhibit P-0672? This is
 7 a Media Statistics Form signed by yourself, I
 8 believe that's your name, Deborah.
 9 MS. PENNELL:
 10 A. Uh-hm.
 11 COFFEY, Q.C.:
 12 Q. November 1st, 2005, the caller is Deana
 13 Stokes-Sullivan from the Telegram, the request
 14 is an update on ER/PR when Dr. Williams is
 15 ready and what's written here is what?
 16 MS. PENNELL:
 17 A. "Told her we would call her in a couple of
 18 weeks."
 19 COFFEY, Q.C.:
 20 Q. So was it around this time then that the
 21 decision was made we're not going to talk now?
 22 MS. PENNELL:
 23 A. I would likely think it was around this time,
 24 but I also see in her actual request says she
 25 would like an update on ER/PR when Dr.

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1 Williams is ready, which means she didn't
 2 specify a deadline, which means she didn't say
 3 she needed that today, so I said, okay, I
 4 probably said, well, I'll give you a call in
 5 a couple of weeks and Deana would have said,
 6 sure.
 7 COFFEY, Q.C.:
 8 Q. Did you know whether or not Dr. Williams
 9 actually had more information at that time?
 10 MS. PENNELL:
 11 A. If he did, I would have hoped that he would
 12 have brought it to myself or Susan.
 13 COFFEY, Q.C.:
 14 Q. Did he ever tell you that he didn't have any
 15 more information?
 16 MS. PENNELL:
 17 A. Did he ever tell me he didn't?
 18 COFFEY, Q.C.:
 19 Q. Yeah, he had no more information, come to you
 20 and say, look, I can't -
 21 MS. PENNELL:
 22 A. I don't know if he said those exact words to
 23 me.
 24 COFFEY, Q.C.:
 25 Q. Well conveyed that idea?

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1 MS. PENNELL:
 2 A. I think I felt generally comfortable that he
 3 was keeping us informed, as he got information
 4 he was telling us, so if I didn't hear from
 5 him, I assumed that he had nothing new to add.
 6 COFFEY, Q.C.:
 7 Q. Exhibit P-0391 please? This is a series of e-
 8 mails, the one at the bottom of the page,
 9 November 18th, 2005, 9:13 a.m., it's from
 10 Tansy Mundon to yourself and Ms. Bonnell,
 11 copied to Mr. Tilley, Mr. Hynes and Mr.
 12 Abbott. Subject is "ER/PR questions" and she
 13 writes "Susan/Deborah, further to a briefing
 14 yesterday with George and Dr. Williams, I
 15 attach the following questions that the
 16 Minister would like answered in advance of the
 17 House of Assembly opening on Monday, if at all
 18 possible. Many thanks, Tansy." And then you
 19 at 9:13 a.m., same time, forwarded that on to
 20 Heather Predham and then Ms. Predham, well she
 21 sends them on to Mary Haynes and Denise Dunn.
 22 "For your information, I'll be in touch when I
 23 have the answers done." Now do you recall
 24 what this was about?
 25 MS. PENNELL:

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1 A. I don't know if I recall as much as I know now
 2 from working in, as communications director in
 3 government that prior to the House of Assembly
 4 opening, a briefing book is compiled and all
 5 the issues on the Minister's plate are
 6 generally updated and put inside of a binder,
 7 so this is what this would have been, I'm
 8 assuming. But at the time, no, I probably
 9 didn't really understand the significance of
 10 it.
 11 COFFEY, Q.C.:
 12 Q. Were you involved in drafting the answers to
 13 those questions?
 14 MS. PENNELL:
 15 A. You know, I may have had an eye to them for a
 16 little bit of words missing or something, but
 17 it looks like I asked Heather to do the main
 18 piece of this.
 19 COFFEY, Q.C.:
 20 Q. If we could, please, exhibit P-0154? Now this
 21 is an e-mail from yourself, November 21, 2005
 22 at 9:21 a.m., to Tansy Mundon, copied to Susan
 23 Bonnell, subject is "ER/PR questions and the
 24 attachments are questions ER/PR one final."
 25 You write, "As requested, Tansy." And we go

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1 to the next page, we see the ER/PR questions
 2 that the Minister wanted answered and the
 3 answers are in bold print. Do you recall
 4 this?
 5 MS. PENNELL:
 6 A. It's familiar, yes.
 7 COFFEY, Q.C.:
 8 Q. Well ma'am, here, for example one of the
 9 questions, the third said, "How many patients
 10 are affected, how many have been notified to
 11 date?" And there's an answer "Province wide
 12 there are 835 individuals whose samples
 13 require retesting at present. Notification is
 14 still ongoing, but all individuals to be
 15 contacted and informed that their sample has
 16 been retested." Do you know, for example,
 17 that 835 number was out in the public?
 18 MS. PENNELL:
 19 A. I don't know, I don't remember seeing it
 20 before.
 21 COFFEY, Q.C.:
 22 Q. Do you recall whether or not at this point in
 23 time, which would be mid November of 2005,
 24 whether Eastern Health had any plan as to or
 25 was even keeping track of what information was

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<p>1 made publicly available?</p> <p>2 MS. PENNELL:</p> <p>3 A. No, but that would have certainly been</p> <p>4 something that would have helped, had there</p> <p>5 been some kind of document tracking or--I</p> <p>6 don't think there was good management of all</p> <p>7 the information that was floating around.</p> <p>8 COFFEY, Q.C.:</p> <p>9 Q. If we could look at the next page of the</p> <p>10 document, the question at the top of the page,</p> <p>11 the first question anyway on the page is, "Has</p> <p>12 a review occurred to determine how this could</p> <p>13 have happened? How could there be inaccurate</p> <p>14 tests for a period of five years without being</p> <p>15 detected? Will there be disciplinary action</p> <p>16 taken?" Well leave aside the disciplinary</p> <p>17 question, the question about "Has a review</p> <p>18 occurred to determine how this could have</p> <p>19 happened, how could there be inaccurate tests</p> <p>20 for a period of five years without being</p> <p>21 detected." Were you ever given an answer to</p> <p>22 that, yourself?</p> <p>23 MS. PENNELL:</p> <p>24 A. Well I still don't know today, so I don't</p> <p>25 think so.</p>	<p>1 COFFEY, Q.C.:</p> <p>2 Q. And if recommendations have been made and are</p> <p>3 being acted upon, and this is the latter part</p> <p>4 of November of 2005, was any thought to your</p> <p>5 knowledge given to, well why don't we just say</p> <p>6 publicly what they are?</p> <p>7 MS. PENNELL:</p> <p>8 A. Yeah, I didn't know what they were, so -</p> <p>9 COFFEY, Q.C.:</p> <p>10 Q. I appreciate you didn't know what they were,</p> <p>11 but someone knew because you're reading this</p> <p>12 and you're the person who is sending this over</p> <p>13 to the department or to Susan in Department of</p> <p>14 Health, actually, to Ms. Mundon for the</p> <p>15 Minister.</p> <p>16 MS. PENNELL:</p> <p>17 A. Right.</p> <p>18 COFFEY, Q.C.:</p> <p>19 Q. And you know there's three reviews have gone</p> <p>20 on, recommendations are in and are being acted</p> <p>21 upon. You know those recommendations are not</p> <p>22 publicly available, you know that the results</p> <p>23 of those three reviews are not publicly known.</p> <p>24 MS. PENNELL:</p> <p>25 A. Uh-hm.</p>
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<p>1 COFFEY, Q.C.:</p> <p>2 Q. The response does say, in the fourth line,</p> <p>3 "Three reviews have taken place of our current</p> <p>4 testing procedure, pathology services and our</p> <p>5 technical services. Recommendations have been</p> <p>6 made and are being acted upon which will</p> <p>7 immediately ensure the quality and</p> <p>8 reproducibility of results." Ma'am, you would</p> <p>9 have read this, I take it, at the time?</p> <p>10 MS. PENNELL:</p> <p>11 A. I would have read it, I didn't write it.</p> <p>12 COFFEY, Q.C.:</p> <p>13 Q. In reading it, did the thought cross your mind</p> <p>14 that perhaps the answer to what had happened</p> <p>15 or why it had happened and why it had gone on</p> <p>16 so long, undetected, might be in those</p> <p>17 reviews?</p> <p>18 MS. PENNELL:</p> <p>19 A. Recommendations.</p> <p>20 COFFEY, Q.C.:</p> <p>21 Q. And the recommendations might flow from what</p> <p>22 was found?</p> <p>23 MS. PENNELL:</p> <p>24 A. You know, I don't think it occurred to me at</p> <p>25 that time, no, but it's certainly obvious now.</p>	<p>1 COFFEY, Q.C.:</p> <p>2 Q. You know the media are looking for</p> <p>3 information. Was any thought given to, did</p> <p>4 you raise it with anybody or did you hear</p> <p>5 anybody talk about the idea of let's get this</p> <p>6 out there?</p> <p>7 MS. PENNELL:</p> <p>8 A. No.</p> <p>9 COFFEY, Q.C.:</p> <p>10 Q. Why not?</p> <p>11 MS. PENNELL:</p> <p>12 A. That's a great question. If we could please,</p> <p>13 exhibit P-0683? And I refer you to this, it's</p> <p>14 an e-mail of November 18th, 2005, 11:29 a.m.</p> <p>15 from yourself to a number of people involved</p> <p>16 in this, Dr. Williams, Mr. Tilley, Dr. Cook,</p> <p>17 Ms. Smith, Ms. Bonnell, Ms. Predham and Terry</p> <p>18 Gulliver. The subject is Tamoxifen may</p> <p>19 prevent breast cancer, and you write "This</p> <p>20 writer's story was published this week.</p> <p>21 Thought I'd share the latest finding with you</p> <p>22 all. Signed Deborah" and there's actually a</p> <p>23 story taken off a wire service.</p> <p>24 MS. PENNELL:</p> <p>25 A. Uh-hm.</p>

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1 COFFEY, Q.C.:

2 Q. On November 15th, 2005. Why were you doing

3 this?

4 MS. PENNELL:

5 A. I must have found some relevance.

6 COFFEY, Q.C.:

7 Q. I'm not suggesting it's not relevant at all.

8 MS. PENNELL:

9 A. No, no.

10 COFFEY, Q.C.:

11 Q. What I'm asking about is why would you be

12 looking at, on the internet or tracking wire

13 services or at least looking through wire

14 services for stories?

15 MS. PENNELL:

16 A. Oh I wouldn't have been, it likely came across

17 during my routine looks at CBC website or CTV

18 website or something like that. I had a, you

19 know, a group of different, local and national

20 media websites that I visit daily, so I

21 certainly came across this by accident and

22 thought it was relevant to our crowd and sent

23 it on to them.

24 THE COMMISSIONER:

25 Q. Mr. Coffey, wherever you can find a spot,

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1 we'll Break.

2 COFFEY, Q.C.:

3 Q. Yes, thank you, Commissioner. If I could,

4 please, exhibit P-0685? Now, ma'am, this is a

5 Media Statistics Form for November 28th, 2005,

6 involves Mark Quinn, CBC Radio news.

7 "Concerns about ER/PR hormone receptor tests

8 has"--blank, we're redacted a name--"and Peter

9 Dawe already." That, I take it, means that

10 Mr. Quinn has already spoken with Mr. Dawe and

11 the person whose name is redacted?

12 MS. PENNELL:

13 A. The patient, yes.

14 COFFEY, Q.C.:

15 Q. The patient. Under "Activity Log" you've got

16 "Dr. Williams out of office until Thursday"

17 and underneath it you've written "Dr.

18 Williams" and its total contacts, the one

19 rejected interview, zero. And story of CBC

20 radio. And if we could please, if we could

21 look please at exhibit P-0310? Now this is at

22 the bottom of the page here, there's an e-mail

23 from yourself, Thursday, December 1st, 2005,

24 1357 hours to Tansy Mundon, her Blackberry,

25 and the subject is "FYI" and you write "Hi

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1 Tansy, just FYI, Mark Quinn is doing a news

2 story on the fact that ER/PR testing is taking

3 longer than we thought. He's talked to Peter

4 Dawe and cancer survivor"--name is redacted--

5 "and Dr. Williams also did a quick telephone

6 interview, basically all he said is that we

7 are getting the results back as fast as we

8 can, that we have issued a plea to Mount Sinai

9 that they do what they can to hurry the

10 procedure along. And as soon as we get the

11 results back, we are letting people know.

12 There's not much more we can say. Just wanted

13 to keep you in the loop. I managed to hold

14 them off until today, that way the issue

15 should be dead again by the time the House

16 opens again next week." And there's a J

17 there.

18 MS. PENNELL:

19 A. Must be a typo.

20 COFFEY, Q.C.:

21 Q. Okay, signed Deborah. And then Ms. Mundon

22 apparently forwarded this to somebody with a

23 "heads up, please make sure the Minister

24 knows" and Mr. Hynes then got involved in

25 asking who Mr. Quinn was. But the idea of

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1 keeping Ms. Mundon in the loop about this, and

2 why would you be keeping Ms. Mundon in the

3 loop? This is December 1st, 2005.

4 MS. PENNELL:

5 A. I think we were in the habit of informing the

6 Department of Health, especially on the ER/PR

7 issues when media interviews were being done,

8 I think we had gotten into that habit.

9 COFFEY, Q.C.:

10 Q. And who would have informed you of -

11 MS. PENNELL:

12 A. Pardon?

13 COFFEY, Q.C.:

14 Q. Who would have informed you that that was to

15 be the habit?

16 MS. PENNELL:

17 A. I think it was just something that became

18 assumed, I don't know that there was ever a

19 direction, but -

20 COFFEY, Q.C.:

21 Q. Now you write, "I've managed to hold him"--

22 which would be Mr. Quinn--"off until today,

23 that way the issue should be dead again by the

24 time the House opens again next week." Now,

25 what difference did it make to you whether the

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1 issue was dead again by the time the House
 2 opens next week?
 3 MS. PENNELL:
 4 A. Absolutely none.
 5 COFFEY, Q.C.:
 6 Q. Then why would you say that ma'am?
 7 MS. PENNELL:
 8 A. I have been wracking my brain trying to figure
 9 that one out because I mean, at this point, I
 10 honestly didn't even know what the House
 11 really did. I mean, I had seen a little bit
 12 on the news here and there, but I had never,
 13 you know, I never worked up--well I had worked
 14 with government but the House wasn't open when
 15 I was there.
 16 COFFEY, Q.C.:
 17 Q. Ma'am you had worked in the media, I believe
 18 for five years?
 19 MS. PENNELL:
 20 A. I never covered the House of Assembly.
 21 COFFEY, Q.C.:
 22 Q. I appreciate you may not have covered the
 23 House of Assembly, but I take it you knew what
 24 the House of Assembly was and what they did
 25 there?

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1 MS. PENNELL:
 2 A. Oh I knew what the House of Assembly was, yes.
 3 COFFEY, Q.C.:
 4 Q. So and the idea of holding Mr. Quinn off until
 5 today, why today? This is a Thursday.
 6 MS. PENNELL:
 7 A. That's regretful language I must say, but I
 8 mean, if Mark Quinn wanted his story that day,
 9 then I would have gave it to him. He must
 10 have had a flexible deadline that I could work
 11 within. The only thing that I could think of,
 12 Mr. Coffey, is I'm wishing I had more
 13 information, you know, between myself and Ms.
 14 Mundon that maybe precipitated me to say such
 15 a thing. I have no idea why I would even care
 16 about the House being open or not.
 17 THE COMMISSIONER:
 18 Q. So I take it then that that had gone bad in
 19 November for a couple of weeks?
 20 MS. PENNELL:
 21 A. I think it was pretty quiet, yes.
 22 THE COMMISSIONER:
 23 Q. So you got your wish, for two weeks.
 24 MS. PENNELL:
 25 A. Maybe I did.

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1 COFFEY, Q.C.:
 2 Q. See, ma'am, when we look back at exhibit P-
 3 0685, here you've noted Mr. Quinn is looking
 4 for an interview, I take it, or comment from
 5 Dr. Williams.
 6 MS. PENNELL:
 7 A. Who was out of the office until Thursday
 8 anyway.
 9 COFFEY, Q.C.:
 10 Q. - 'til Thursday and that's November 28th,
 11 2005, okay.
 12 MS. PENNELL:
 13 A. Uh-hm.
 14 COFFEY, Q.C.:
 15 Q. And we want to figure out then what day
 16 Thursday is, and if we look then to exhibit P-
 17 0310 -
 18 MS. PENNELL:
 19 A. Yes, Thursday and he's back -
 20 COFFEY, Q.C.:
 21 Q. - which is that e-mail, December 1st is a
 22 Thursday and you've noted here in the second
 23 and third line, "Dr. Williams also did a quick
 24 telephone interview."
 25 MS. PENNELL:

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1 A. Yes, I provided him an interview.
 2 COFFEY, Q.C.:
 3 Q. So he came back, was available on the Thursday
 4 that your November 28th note referred to, and
 5 "managed to hold them off until today", that
 6 was managed to hold them off since when?
 7 Since November 28th?
 8 MS. PENNELL:
 9 A. I guess.
 10 COFFEY, Q.C.:
 11 Q. And, okay, "the issue should be dead again by
 12 the time the House opens again next week." So
 13 this is a Thursday, the House would be open on
 14 a Monday, I take it, the following Monday?
 15 MS. PENNELL:
 16 A. Yes, yes.
 17 COFFEY, Q.C.:
 18 Q. You would have had to have known that in order
 19 to even write this.
 20 MS. PENNELL:
 21 A. Yes.
 22 COFFEY, Q.C.:
 23 Q. Okay. So if you're giving him the information
 24 or having Dr. Williams give it to him on a
 25 Thursday, December 1st, I take it the idea

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1 would be that by the time Monday rolls around
 2 in the House -
 3 MS. PENNELL:
 4 A. The House is opened Thursday, so it doesn't
 5 make sense.
 6 COFFEY, Q.C.:
 7 Q. Except that here it's 3:00 in the afternoon,
 8 according to the e-mail.
 9 MS. PENNELL:
 10 A. Not the time he spoke to Dr. Williams.
 11 COFFEY, Q.C.:
 12 Q. Maybe not, but by the time the media publish
 13 it and it gets out there and is available for
 14 the House.
 15 MS. PENNELL:
 16 A. Yes, I suppose so.
 17 COFFEY, Q.C.:
 18 Q. Okay, so the Thursday afternoon session from a
 19 media perspective was pretty well over by the
 20 time this would have occurred and by the time
 21 Monday rolled around again, I gather the news
 22 cycle would have passed, that's the idea.
 23 MS. PENNELL:
 24 A. Possibly, yes.
 25 COFFEY, Q.C.:

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1 Q. Thank you, Commissioner.
 2 THE COMMISSIONER:
 3 Q. If we could take the afternoon break?
 4 (RECESS)
 5 THE COMMISSIONER:
 6 Q. Please be seated. Mr. Coffey.
 7 COFFEY, Q.C.:
 8 Q. Thank you, Commissioner. Exhibit P-0689
 9 please? I take it this is an e-mail ma'am,
 10 from yourself, December 5th, 2005, 11:18 a.m.
 11 to a number of individuals connected with
 12 Eastern Health, the subject is "Forward Cancer
 13 Society" it says "wait for results could have
 14 been shorter." And you've written here, "For
 15 your information on CBC Morning Show this
 16 a.m." So as of December 5, 2005, the
 17 coverage, I gather, had picked up again?
 18 MS. PENNELL:
 19 A. There were a few stories floating around, I
 20 wouldn't say it was anything new the flurry
 21 that it was back in late September, early
 22 October.
 23 COFFEY, Q.C.:
 24 Q. And this is an interview--the transcript is of
 25 an interview by Jeff Gilhooly of Peter Dawe,

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1 do you see that?
 2 MS. PENNELL:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. Okay. What was--at least while you were
 6 there, what was the attitude you perceived by
 7 Eastern Health toward Mr. Dawe?
 8 MS. PENNELL:
 9 A. I don't know if I had really any conversations
 10 about Mr. Dawe, I don't know if I had any
 11 preconceived notions or--I had never met the
 12 man myself.
 13 COFFEY, Q.C.:
 14 Q. Exhibit -
 15 MS. PENNELL:
 16 A. I don't know if I would be the right person to
 17 really respond to that, because I don't -
 18 COFFEY, Q.C.:
 19 Q. Well no, I'm just asking about your own
 20 perception, not, you know, in terms of what,
 21 if anything, you overheard others say about
 22 Mr. Dawe who represented the Canadian Cancer
 23 Society.
 24 MS. PENNELL:
 25 A. I don't think I heard anything one way or

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1 another.
 2 COFFEY, Q.C.:
 3 Q. Were you aware that Mr. Dawe was critical or
 4 at times was critical of Eastern Health's
 5 approach?
 6 MS. PENNELL:
 7 A. Yes.
 8 COFFEY, Q.C.:
 9 Q. And that, I take it, the fact that he was so
 10 critical was generally known within the group,
 11 as it were?
 12 MS. PENNELL:
 13 A. I don't think it was ever talked about in
 14 those meetings as in the group, as you refer
 15 to, I don't think he was ever talked about.
 16 COFFEY, Q.C.:
 17 Q. Exhibit P-0691, this is an e-mail from
 18 yourself, December 6th, 2005, 2:12 p.m. to
 19 effectively the same group of people, as well
 20 I believe in this one, it says here you've
 21 chosen to also send this particular one to Ms.
 22 Mundon, you'll see up there in the top right-
 23 hand side?
 24 MS. PENNELL:
 25 A. Oh, I see, yes.

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1 COFFEY, Q.C.:

2 Q. And the subject is "Patients still waiting for

3 test results", there's a transcript and it's

4 VOCM yesterday you've noted for your

5 information and this is an interview by Gerry

6 Phelan of Peter Dawe, do you see that?

7 MS. PENNELL:

8 A. Uh-hm.

9 COFFEY, Q.C.:

10 Q. And the lead in or at the bottom of the page

11 it says, "Patients still waiting for test

12 results. The Canadian Cancer Society is

13 critical of the amount of time it's taking to

14 review batched results for breast cancer

15 tests." It apparently aired at 1:43 p.m. on

16 December 6th. Now ma'am, your purpose at this

17 point, and this is early December 2005, in

18 distributing such transcripts to senior

19 individuals within Eastern Health involved in

20 this, and in fact to Ms. Mundon -

21 MS. PENNELL:

22 A. Yes, she would have probably had this anyway,

23 as probably -

24 COFFEY, Q.C.:

25 Q. What was your purpose in doing that at that

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1 point?

2 MS. PENNELL:

3 A. To keep the group updated as to the most

4 recent media coverage. I probably sent them

5 every little piece of coverage that was in the

6 news from day one; this wouldn't have been any

7 different.

8 COFFEY, Q.C.:

9 Q. Pardon me?

10 MS. PENNELL:

11 A. I said this wouldn't have been any different,

12 I mean, I think I--it was my habit to send

13 them whatever I had on the issue.

14 COFFEY, Q.C.:

15 Q. Was the media coverage then discussed?

16 MS. PENNELL:

17 A. No, we didn't discuss it in the meetings, the

18 meetings that I attended in July, I didn't

19 attend any after that.

20 COFFEY, Q.C.:

21 Q. So from your perspective, your the media

22 relations officer by this point.

23 MS. PENNELL:

24 A. Yes.

25 COFFEY, Q.C.:

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1 Q. What was the purpose here? I mean, it's all

2 very well and good for them to get the e-mail

3 and the transcript with the story attached,

4 but what was your point? Why were you sending

5 it to them? What did you expect, if anything,

6 to do with -

7 MS. PENNELL:

8 A. I always expected that a part of their role

9 when a media story affects their division or

10 any issue, it's their responsibility to read

11 the story and ensure that it's accurate.

12 COFFEY, Q.C.:

13 Q. And -

14 MS. PENNELL:

15 A. Because while I'm the one that facilitates the

16 interviews and whatnot, I might not

17 necessarily know every single detail and

18 whether or not it's correct in a story. I

19 may, but I may not.

20 COFFEY, Q.C.:

21 Q. Now ma'am, here Mr. Dawe, they quoted, the

22 transcript attributes to him, on the second

23 page of the exhibit is, he concludes by saying

24 "well, there's no doubt that if you look at

25 the entire group of women and if you look at

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1 the experience they've gone through and the

2 delays of getting on a drug like Tamoxifen,

3 Tamoxifen in the clinical trials have shown

4 one particular clinical trial at 33 percent

5 increase in survival rate over a two-year

6 period, and so there's no doubt that, you

7 know, taking a group of people, you can't pick

8 out which one, and it's almost impossible on

9 an individual basis, but you know, if you take

10 a group of people, almost 1,000 women and then

11 you have 100 of them should have been on

12 Tamoxifen, there's no doubt that lives were

13 and have been endangered and will be

14 endangered unless this process is hurried

15 along." Okay. You would have read that at

16 the time, I take it?

17 MS. PENNELL:

18 A. At the time, I would have.

19 COFFEY, Q.C.:

20 Q. What is attributed to Mr. Dawe there, did that

21 accord with what your understanding was at the

22 time?

23 MS. PENNELL:

24 A. This is early December?

25 COFFEY, Q.C.:

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1 Q. Yes.
 2 MS. PENNELL:
 3 A. What he's saying there doesn't resonate with
 4 me.
 5 COFFEY, Q.C.:
 6 Q. Did anybody ever bring to your attention, that
 7 you recall -
 8 MS. PENNELL:
 9 A. No.
 10 COFFEY, Q.C.:
 11 Q. - that he's got that wrong?
 12 MS. PENNELL:
 13 A. No.
 14 COFFEY, Q.C.:
 15 Q. No. So all these people, and there's Dr.
 16 Williams, Mr. Tilley, Ms. Predham, Ms.
 17 Bonnell, Ms. Mundon, Nancy Parsons, Dr. Cook,
 18 Terry Gulliver and Sharon Smith, you don't
 19 recall any of them ever coming back and saying
 20 "well, that's wrong"?
 21 MS. PENNELL:
 22 A. No, I don't.
 23 COFFEY, Q.C.:
 24 Q. In terms of the potential consequences for
 25 patients who fell into the category he's

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1 talking about, what was your understanding at
 2 the time? You're now six months into this or
 3 five--just about, certainly five months, five
 4 full months into it.
 5 MS. PENNELL:
 6 A. You're asking me my understanding of what?
 7 COFFEY, Q.C.:
 8 Q. Of what the situation was for these patients.
 9 MS. PENNELL:
 10 A. That they were still waiting.
 11 COFFEY, Q.C.:
 12 Q. I appreciate that, but no, what the potential
 13 consequences for them might or might not be?
 14 I'm trying to get some--give the Commissioner
 15 some sense of what you, as the media relations
 16 officer, had been led to believe, if anything,
 17 about the potential health consequences for
 18 women who should have been on Tamoxifen,
 19 arguably, and now had not received it.
 20 MS. PENNELL:
 21 A. I didn't know.
 22 COFFEY, Q.C.:
 23 Q. Did you ever ask?
 24 MS. PENNELL:
 25 A. I did some of my own research.

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1 COFFEY, Q.C.:
 2 Q. Okay, and I appreciate that, but did you ever
 3 ask any of these experts? You got oncologists
 4 in the room at times, pathologists, Dr.
 5 Williams. Did you ever ask any of them what
 6 the effect is here on these women?
 7 MS. PENNELL:
 8 A. I knew -
 9 COFFEY, Q.C.:
 10 Q. Some men, but perhaps mostly women.
 11 MS. PENNELL:
 12 A. I knew that Tamoxifen could extend life in
 13 certain situations.
 14 COFFEY, Q.C.:
 15 Q. Okay.
 16 MS. PENNELL:
 17 A. I believe I got that information from Dr.
 18 Laing, because I did have some conversations
 19 with Dr. Laing, but they were very early on.
 20 But I also understood that every single
 21 patient's result and those changes, if they
 22 did change, there was ten different scenarios
 23 that could go along with those results. Just
 24 because their result changed didn't
 25 necessarily make them a candidate for

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1 Tamoxifen. So I understood that there were a
 2 lot of different variables, and I let the
 3 oncologists deal with that.
 4 COFFEY, Q.C.:
 5 Q. And I appreciate that's what they're trained
 6 to do.
 7 MS. PENNELL:
 8 A. Yeah.
 9 COFFEY, Q.C.:
 10 Q. But I was asking you to get some sense from
 11 where you were as the person who was chiefly
 12 dealing with the media, and you've told the
 13 Commissioner after about a month of it, you
 14 were frustrated and tired of it because you
 15 had nothing new to say. I'm just wondering
 16 about your understanding as the media
 17 relations officer of the potential importance
 18 to the patients involved in this.
 19 MS. PENNELL:
 20 A. I'm not sure what me knowing would have
 21 mattered.
 22 COFFEY, Q.C.:
 23 Q. Okay.
 24 MS. PENNELL:
 25 A. I had a general knowledge.

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1 COFFEY, Q.C.:

2 Q. Now ma'am, when you were first advised about

3 this by Ms. Bonnell, did she give you any

4 understanding as to how widely distributed

5 this information should be?

6 MS. PENNELL:

7 A. She asked that we--sorry, she asked that we

8 keep it between us in the department for now.

9 COFFEY, Q.C.:

10 Q. So when she first spoke to you, she told you

11 "Deborah, keep it within ourselves for now"?

12 MS. PENNELL:

13 A. Yes.

14 COFFEY, Q.C.:

15 Q. Did she give you any understanding as to why

16 that was so?

17 MS. PENNELL:

18 A. No, she didn't elaborate, but that wouldn't

19 necessarily be strange. We worked on a lot of

20 confidential files and we shared some fairly

21 confidential conversations and this was

22 certainly one of them. But she did make a

23 point to say on this day that "let's keep this

24 between us for now."

25 COFFEY, Q.C.:

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1 Q. And when, if ever, did that change?

2 MS. PENNELL:

3 A. I don't think she ever came up to me and said

4 "you can tell everyone now." Just I think at

5 some point it just became a topic in our

6 department. There was only a couple other

7 people that worked with us anyway.

8 COFFEY, Q.C.:

9 Q. How about within Eastern Health in its wider

10 sense, when did that--do you have any

11 understanding of when it became generally

12 known or available throughout Eastern Health?

13 MS. PENNELL:

14 A. I think it was, you know, a process sort of

15 along the same lines as the rest of the world

16 became aware.

17 COFFEY, Q.C.:

18 Q. Was there talk in July or August or September

19 of 2005 in the communications department about

20 telling people in Eastern Health generally

21 about this?

22 MS. PENNELL:

23 A. There was nothing talked--no internal

24 communications referenced at all.

25 COFFEY, Q.C.:

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1 Q. What about telling the physicians of

2 Newfoundland and Labrador?

3 MS. PENNELL:

4 A. A letter was written to physicians, I believe.

5 COFFEY, Q.C.:

6 Q. That would be -

7 MS. PENNELL:

8 A. To inform them as to--I didn't write that

9 letter, but I know that there was a letter

10 sent to physicians.

11 COFFEY, Q.C.:

12 Q. That would be--I understand that's probably in

13 October of 2005.

14 MS. PENNELL:

15 A. Yeah, okay.

16 COFFEY, Q.C.:

17 Q. But before that though, the idea of going out

18 to the physicians, telling them?

19 MS. PENNELL:

20 A. There was some discussion around the

21 Newfoundland and Labrador Medical Association

22 possibly using their website, kind of rings a

23 bell. Maybe the Q and A that we wrote or

24 something like that maybe possibly being

25 posted on their website or the letter to

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1 physicians possibly being posted on their

2 website. It was something to do with the NLMA

3 and their website.

4 COFFEY, Q.C.:

5 Q. Now ma'am, in the course of drafting the Q and

6 A's, the advertisement in October of 2005 or

7 otherwise dealing with the media or the

8 public, were you ever told that you could--

9 there were some things you could or could not

10 say?

11 MS. PENNELL:

12 A. I don't think so. I don't remember ever--

13 that's not the way we dealt with each other in

14 that organization. I don't--you know, no one

15 would look at me and say "Deborah, make sure

16 you don't put that in a news release." That's

17 just not the way we worked.

18 COFFEY, Q.C.:

19 Q. Well, how about legal liability

20 considerations?

21 MS. PENNELL:

22 A. I think I generally just knew that, you know,

23 we didn't talk about patients, but that was

24 the only liability issue that I ever had any

25 concern with in those early days. I mean, I

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1 was never instructed not to use numbers or--I
 2 mean, I was a little uncomfortable with the
 3 numbers because they kept changing all the
 4 time and I didn't know which set of numbers to
 5 use and do we use percentages or numbers of
 6 people tested or how many have we gotten back?
 7 I mean, it was just--it was always a moving
 8 target, but it was never told or ever felt
 9 like I couldn't use numbers. I just didn't
 10 know which numbers to use.

11 COFFEY, Q.C.:

12 Q. If you wanted numbers though, you'd go to Ms.
 13 Predham or Dr. Williams, I take it?

14 MS. PENNELL:

15 A. I could have, certainly.

16 COFFEY, Q.C.:

17 Q. So there was nothing to prevent you from doing
 18 that?

19 MS. PENNELL:

20 A. I just don't think that I personally had faith
 21 in them.

22 COFFEY, Q.C.:

23 Q. Did you ever discuss your lack of faith or
 24 confidence with anybody?

25 MS. PENNELL:

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1 A. I would have discussed it with Ms. Bonnell
 2 definitely.

3 COFFEY, Q.C.:

4 Q. How about anyone other than Ms. Bonnell?

5 MS. PENNELL:

6 A. No, I mean, that wasn't my capacity. I didn't
 7 have any decision making capacity. I was just
 8 doing tasks as I was being told and the only
 9 person I probably would have felt comfortable
 10 in really expressing those views to would be
 11 Ms. Bonnell, and if she wanted to--if she felt
 12 necessary that those views be passed on to her
 13 superiors, then you know, she could take them.

14 COFFEY, Q.C.:

15 Q. Ma'am, at the time you left Eastern Health,
 16 which I gather is January 2006 -

17 MS. PENNELL:

18 A. Yes.

19 COFFEY, Q.C.:

20 Q. - what, if anything, did you understand at the
 21 time was the reason for the problem with the
 22 ER/PR?

23 MS. PENNELL:

24 A. I understood it to be a combination of things.

25 COFFEY, Q.C.:

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1 Q. Being?

2 MS. PENNELL:

3 A. Being technology change, human error, the fact
 4 that the high turnover in oncologists and
 5 pathologists in the organization never picked
 6 up on the changes in the results. I think it
 7 was--you know, I think Susan used the analogy
 8 of the volcano or whatever and that's what it
 9 was like. It's a whole bunch of different
 10 things.

11 COFFEY, Q.C.:

12 Q. If you understood that by January of 2006, you
 13 also understood that the media and people such
 14 as Mr. Dawe and, in fact, patients such as
 15 Mercedes, in fact, were asking questions
 16 throughout the fall of 2005, into Christmas
 17 2005, about what had happened, why it had gone
 18 undetected.

19 MS. PENNELL:

20 A. I just don't think I had -

21 COFFEY, Q.C.:

22 Q. Was there any sense that you had with
 23 communications that they were--that Eastern
 24 Health was ever actually going to get around
 25 to telling anybody?

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1 MS. PENNELL:

2 A. Everybody knew.

3 COFFEY, Q.C.:

4 Q. Everybody knew what?

5 MS. PENNELL:

6 A. Whatever we had to tell them, we went out and
 7 told them whenever they asked.

8 COFFEY, Q.C.:

9 Q. Do you recall anyone from Eastern Health
 10 explaining what the reasons for the test
 11 failure were?

12 MS. PENNELL:

13 A. I know Dr. Williams tried to do it to the best
 14 of his ability when he could.

15 COFFEY, Q.C.:

16 Q. And who told you he did that?

17 MS. PENNELL:

18 A. I heard him.

19 COFFEY, Q.C.:

20 Q. Okay, and how do you know what he did or did
 21 not actually know?

22 MS. PENNELL:

23 A. Well, I don't. I know what I thought he knew.

24 COFFEY, Q.C.:

25 Q. Okay. Did he ever tell you that he knew

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1 certain things but because of where he found
 2 them out that he couldn't speak about them?
 3 MS. PENNELL:
 4 A. No.
 5 COFFEY, Q.C.:
 6 Q. Such as in external reviews?
 7 MS. PENNELL:
 8 A. No.
 9 COFFEY, Q.C.:
 10 Q. Dr. Williams never told you that?
 11 MS. PENNELL:
 12 A. No.
 13 COFFEY, Q.C.:
 14 Q. Did anyone ever tell you that?
 15 MS. PENNELL:
 16 A. No.
 17 COFFEY, Q.C.:
 18 Q. Ma'am, did Dr. Williams ever refer to human
 19 error, ever recall Dr. Williams telling the
 20 media that this is due to human error, wholly
 21 or partially?
 22 MS. PENNELL:
 23 A. No.
 24 COFFEY, Q.C.:
 25 Q. But yet, you were aware, you thought, you've

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1 just told us that by the time you left, that
 2 perhaps human error might have played some
 3 role in it?
 4 MS. PENNELL:
 5 A. Yes.
 6 COFFEY, Q.C.:
 7 Q. So there was some things that Dr. Williams
 8 apparently, well, you didn't hear him say it,
 9 but you were thinking it yourself?
 10 MS. PENNELL:
 11 A. Yes.
 12 COFFEY, Q.C.:
 13 Q. The fact that he had not said it or you had
 14 not heard him say it, did that occur to you?
 15 MS. PENNELL:
 16 A. I don't recall having heard him say it, but I
 17 certainly got the information somewhere. I got
 18 the understanding that there was a combination
 19 of factors, or that's what I thought. It could
 20 have been, you know, from him, from Mr.
 21 Gulliver, from Ms. Predham, from Susan.
 22 COFFEY, Q.C.:
 23 Q. I appreciate it from all these different
 24 people, but I'm asking you, as the media
 25 relations officer for Eastern Health, knowing

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1 that the media is unhappy in the fall of 2005
 2 and apparently, leaving the media aside,
 3 apparently some patient are unhappy.
 4 MS. PENNELL:
 5 A. Um-hm.
 6 COFFEY, Q.C.:
 7 Q. And perhaps the public at large is unhappy.
 8 MS. PENNELL:
 9 A. Um-hm.
 10 COFFEY, Q.C.:
 11 Q. The idea of going out and telling the public
 12 what we know, the patients what we know, was
 13 that ever actually considered?
 14 MS. PENNELL:
 15 A. It's my understanding that that's what we were
 16 doing by advertising, by doing all the media
 17 interviews that we did, by putting, you know,
 18 by putting the information on our website.
 19 COFFEY, Q.C.:
 20 Q. Okay. And -
 21 MS. PENNELL:
 22 A. To my knowledge, we were giving all the
 23 information we had.
 24 COFFEY, Q.C.:
 25 Q. You knew that there were, we looked at it, you

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1 knew by the end of October there were three
 2 reviews done -
 3 MS. PENNELL:
 4 A. I don't think I knew there were three reviews
 5 done.
 6 COFFEY, Q.C.:
 7 Q. Well, we looked at something we just--we
 8 looked at earlier this afternoon you read.
 9 MS. PENNELL:
 10 A. Yeah. And I knew it was a general concept of
 11 reviews, but -
 12 COFFEY, Q.C.:
 13 Q. Well the answers to the minister, November
 14 21st, which you e-mailed and you would have
 15 read before you e-mailed refers to three
 16 reviews, refers to recommendations made?
 17 MS. PENNELL:
 18 A. Um-hm.
 19 COFFEY, Q.C.:
 20 Q. You knew you didn't know what the
 21 recommendations were?
 22 MS. PENNELL:
 23 A. No.
 24 COFFEY, Q.C.:
 25 Q. You knew the public didn't know what the

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1 recommendations were because you had not been
 2 involved in releasing them?
 3 MS. PENNELL:
 4 A. Um-hm.
 5 COFFEY, Q.C.:
 6 Q. Correct?
 7 MS. PENNELL:
 8 A. Yeah.
 9 COFFEY, Q.C.:
 10 Q. So there were a number of things that you knew
 11 existed, information that existed?
 12 MS. PENNELL:
 13 A. Um-hm.
 14 COFFEY, Q.C.:
 15 Q. That to your knowledge had not been conveyed
 16 to the public and at the time you left there
 17 was no plan to convey to the public? The
 18 results of those reviews?
 19 MS. PENNELL:
 20 A. Yeah.
 21 COFFEY, Q.C.:
 22 Q. And the recommendations, they were not, to
 23 your knowledge, were not about to be released?
 24 MS. PENNELL:
 25 A. No, they weren't.

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1 COFFEY, Q.C.:
 2 Q. Now, ma'am, with respect to those different
 3 drafts of your--of those draft media releases,
 4 in July of 2005, and I gather Mr. Simmons is
 5 going to refer you to a couple of e-mails July
 6 22nd, and I'll leave that to him, that Friday,
 7 but would you tell the Commissioner again,
 8 please, what your understanding was and your
 9 approach was in drafting the different media
 10 releases?
 11 MS. PENNELL:
 12 A. In general that's my approach, anyway, because
 13 I -
 14 COFFEY, Q.C.:
 15 Q. I understand that, it's your approach.
 16 MS. PENNELL:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. But what's the purpose in doing so?
 20 MS. PENNELL:
 21 A. For flow for myself, my personal style.
 22 COFFEY, Q.C.:
 23 Q. Is there anything else?
 24 MS. PENNELL:
 25 A. I did it to give our executive some options

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1 and to give Susan some options of what they
 2 would like to say.
 3 COFFEY, Q.C.:
 4 Q. And options in what way?
 5 MS. PENNELL:
 6 A. How they would like it phrased, what part to
 7 focus on, I mean -
 8 COFFEY, Q.C.:
 9 Q. To emphasize, I take it?
 10 MS. PENNELL:
 11 A. Certainly.
 12 COFFEY, Q.C.:
 13 Q. Focus on, emphasize, yes. Now, the idea of
 14 positioning key messaging, that's not foreign
 15 to you?
 16 MS. PENNELL:
 17 A. No, it's not foreign to me. It's not
 18 something that--I mean, the word "positioning"
 19 has a very negative connotation to me and
 20 that's not something that, a word I ever,
 21 ever, ever used in my career at Eastern
 22 Health. That's not the way -
 23 COMMISSIONER:
 24 Q. What does it mean to you?
 25 MS. PENNELL:

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1 A. To me it means spinning an issue to make
 2 something look better than it actually is.
 3 That's what positioning means to me, in this
 4 situation, anyway. It's not a word I use,
 5 it's not something I do.
 6 COFFEY, Q.C.:
 7 Q. So to make something look better than it is or
 8 perhaps not as bad as it is?
 9 MS. PENNELL:
 10 A. Possibly.
 11 COFFEY, Q.C.:
 12 Q. And in terms of that, when you emphasize,
 13 you're talking about one topic and you
 14 emphasize A as opposed to B as opposed to C?
 15 MS. PENNELL:
 16 A. Um-hm.
 17 COFFEY, Q.C.:
 18 Q. I take it that has the effect, at times, of
 19 having the topic considered by the reader or
 20 reviewer in a positive or negative light,
 21 doesn't it? The whole point, ma'am, of you
 22 putting these different press releases on the
 23 same story, effectively, that week, was to
 24 give the, your executive, as was your job, the
 25 ability to, I won't use the word "spin" but

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1 certainly to position this in some manner,
 2 some particular way that they thought
 3 appropriate?
 4 MS. PENNELL:
 5 A. I completely disagree with you.
 6 COFFEY, Q.C.:
 7 Q. You don't, okay, you disagree with that?
 8 MS. PENNELL:
 9 A. That's not ethical and I would lose my job
 10 rather than do that.
 11 COFFEY, Q.C.:
 12 Q. Okay. Yet, every one of those at the time you
 13 wrote them -
 14 MS. PENNELL:
 15 A. They were all accurate.
 16 COFFEY, Q.C.:
 17 Q. Yes. I'm not suggesting -
 18 MS. PENNELL:
 19 A. As to what I knew at the time.
 20 COFFEY, Q.C.:
 21 Q. And, in fact, if they are all consistent with
 22 each other, or at least not inconsistent -
 23 MS. PENNELL:
 24 A. They deal with different topics, as well.
 25 COFFEY, Q.C.:

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1 Q. Yes.
 2 MS. PENNELL:
 3 A. I mean, we were floating the idea of having
 4 more than one release, so -
 5 COFFEY, Q.C.:
 6 Q. Perhaps you could tell us about that?
 7 MS. PENNELL:
 8 A. What I have--what I've seen there in those
 9 draft releases doesn't for one second throw me
 10 for any kind of loop and the fact that there's
 11 so much attention paid to those releases is
 12 beyond me because that's just what they are is
 13 drafts -
 14 COMMISSIONER:
 15 Q. Well, yes, that's what--I understood from you
 16 earlier that these draft releases were, if you
 17 will, a progression?
 18 MS. PENNELL:
 19 A. They may have been, Commissioner, they may not
 20 have been. I assume they were.
 21 COMMISSIONER:
 22 Q. Okay.
 23 MS. PENNELL:
 24 A. I assume they were, I assume I went back and
 25 looked at them over the three or four months

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1 that I was engaged in that process.
 2 COMMISSIONER:
 3 Q. Wait now, I thought they were all done very
 4 early in the game.
 5 MS. PENNELL:
 6 A. They were, but what you're saying is they were
 7 progression, so -
 8 COMMISSIONER:
 9 Q. No, I -
 10 MS. PENNELL:
 11 A. - Mr. Coffey asked me did I go back and change
 12 anything.
 13 COMMISSIONER:
 14 Q. No, when you answered the question earlier
 15 this morning, I had understood you to be
 16 saying that there was a lot of information
 17 coming at you from various sources -
 18 MS. PENNELL:
 19 A. Yes.
 20 COMMISSIONER:
 21 Q. - with respect of one of those releases, you
 22 can identify that as a very early one?
 23 MS. PENNELL:
 24 A. Right.
 25 COMMISSIONER:

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1 Q. The others you could not say which came first?
 2 MS. PENNELL:
 3 A. Well I think what I said and what I actually--
 4 if I didn't say it clearly enough, what I
 5 meant was that the easiest way for me to
 6 understand the issue was from a technological
 7 error standpoint, so that was the easiest
 8 thing for me to understand, so that's the--
 9 what I wrote down first.
 10 COMMISSIONER:
 11 Q. Um-hm.
 12 MS. PENNELL:
 13 A. That was the easiest thing for me, for my
 14 brain to work through, so I wrote that.
 15 COMMISSIONER:
 16 Q. Yes.
 17 MS. PENNELL:
 18 A. But I don't think after one meeting on a topic
 19 that I knew absolutely nothing about was
 20 enough time for me to have any sense of what--
 21 where the executive wanted to go or what in
 22 the world really the issue was, was did we
 23 want to say that we were retesting the
 24 results, did we want to say that we put in new
 25 technology and this is the problem, I wasn't

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1 even sure myself. So rather than go
 2 completely off base with one press release,
 3 then I wrote two or three to say, okay, what
 4 are we going to say here. Because as I think
 5 I've said -
 6 COMMISSIONER:
 7 Q. Okay. So -
 8 MS. PENNELL:
 9 A. - the whole technology issue was a big
 10 question mark.
 11 COMMISSIONER:
 12 Q. Well, but that's my question. My question is
 13 when you were drafting these, were you saying,
 14 okay, this may be what the executive wants to
 15 say, this may be what the executive wants to
 16 say, this may be what the executive wants to
 17 say as opposed to your saying on the basis of
 18 my knowledge at point A this seems to be the
 19 situation, on the basis of my knowledge at
 20 point B, this seems to be the situation, on
 21 the basis of my knowledge at point C, this
 22 seems to be the situation? They're two
 23 different things to me.
 24 MS. PENNELL:
 25 A. See, they're not to me. They're intertwined.

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1 I mean, I had a lot of information taken in in
 2 one day.
 3 COMMISSIONER:
 4 Q. Um-hm.
 5 MS. PENNELL:
 6 A. A lot of it I didn't even understand myself.
 7 COMMISSIONER:
 8 Q. Okay.
 9 MS. PENNELL:
 10 A. So for me to get--and there was no
 11 communications plan written, which we've said
 12 here, and normally a communications plan would
 13 outline messaging and goals for communication.
 14 However, we didn't have anything like that.
 15 So I didn't have any sense of what our
 16 communications goals were, so I took the
 17 information that I had, put it down on a bunch
 18 of pieces of paper -
 19 COMMISSIONER:
 20 Q. That's the point. Were you, when you were
 21 writing those documents, saying, okay, no
 22 communication plan, if this is the plan,
 23 here's an appropriate way of doing this? If
 24 this is the plan, on the other hand, here's
 25 the appropriate way of doing it? Was that

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1 part of the process?
 2 MS. PENNELL:
 3 A. I suppose so. But at no -
 4 COMMISSIONER:
 5 Q. So you were saying that you did not know what
 6 the executive--how the executive wanted to
 7 approach it?
 8 MS. PENNELL:
 9 A. Right.
 10 COMMISSIONER:
 11 Q. Is what I'm taking -
 12 MS. PENNELL:
 13 A. I didn't know what the truth was. I didn't
 14 know what was accurate. I didn't know because
 15 there was no definitive answer at that meeting
 16 that I attended.
 17 COMMISSIONER:
 18 Q. Well, I gather from what -
 19 MS. PENNELL:
 20 A. You know -
 21 COMMISSIONER:
 22 Q. - you're saying there never was.
 23 MS. PENNELL:
 24 A. - that was technology or whatever. Right,
 25 there never was, but -

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1 COMMISSIONER:
 2 Q. At that rate there never would have been
 3 anything said, but, presumably assumptions
 4 have to be made.
 5 MS. PENNELL:
 6 A. But had we in the next couple of days, because
 7 this was going to be about a week until we
 8 released, had we definitely gotten evidence
 9 that it was technology, then we would have
 10 released the technology one. Had we not known
 11 what was going on, we would have said we're
 12 retesting because this and this. I mean, I
 13 wrote those drafts thinking that I would add
 14 more information to them as we got it and they
 15 would have released, but we never released, so
 16 I never had to add anything. And they were,
 17 you know, sitting on a disc in my own, in a
 18 box of stuff that I had left two years ago.
 19 COFFEY, Q.C.:
 20 Q. If we could just finally look at Exhibit P-
 21 1527, page 9, please? Now, there's some
 22 quotes here attributed to, if I could, to
 23 Terry Gulliver and Dr. Kwan. Could you read
 24 those out, please?
 25 MS. PENNELL:

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1 A. Terry Gulliver, that's a name of a hospital up
 2 there, St. Jerome, I think, in Quebec,
 3 Halifax, Moncton, Moncton General "Have no
 4 idea of positive versus negative rates but
 5 people who have switched," I assume that means
 6 switched from DAKO to Ventana, "have all said
 7 staining quality much better. All we getting
 8 back," "All" something "getting back better
 9 positive rates. Can change from different
 10 biopsy site but not from the same specimen."
 11 Don't know what that means. And Dr. Kwan
 12 saying, "Technological advancement. If you
 13 recur, we can now treat you with hormones such
 14 as herceptin. Was not available years ago but
 15 now it is." And I don't know what that last
 16 reference is, "clinical trial group in
 17 Pittsburgh."
 18 COFFEY, Q.C.:
 19 Q. Okay. Thank you. Commissioner, thank you,
 20 very much.
 21 COMMISSIONER:
 22 Q. Thank you. Mr. Pritchard seems to have left
 23 us. Did he leave you with -
 24 MR. SIMMONS:
 25 Q. No, he's just gone to make a quick call, he'll

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1 be right back.
 2 COMMISSIONER:
 3 Q. All right, then. Well, we'll move on on a
 4 temporary basis. Oh, wait now. Saved by the
 5 bell. Mr. Pritchard, do you have any
 6 questions of this witness?
 7 MR. PRITCHARD:
 8 Q. I don't. My apologies for the -
 9 COMMISSIONER:
 10 Q. No, not at all. You are right on time, as it
 11 turned out. Ms. Hennebury?
 12 MS. HENNEBURY:
 13 Q. I have no questions.
 14 COMMISSIONER:
 15 Q. Ms. O'Dea?
 16 MS. O'DEA:
 17 Q. No questions, Commissioner.
 18 COMMISSIONER:
 19 Q. Ms. Newbury?
 20 MS. DEBORAH PENNELL, EXAMINATION BY MS. JENNIFER NEWBURY
 21 MS. NEWBURY:
 22 Q. Good afternoon, Ms. Pennell. Jennifer Newbury
 23 for the Canadian Cancer Society, Newfoundland
 24 and Labrador Division. I just have a couple
 25 of questions for you this afternoon. First of

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1 all, this morning you mentioned when you were
 2 discussing your preparation of materials for
 3 the website, that you didn't include
 4 information about the initial case that was
 5 retested which originated from a consultation
 6 with an American doctor because you didn't
 7 think that the patients needed to know the
 8 history of what happened. And I'm wondering
 9 how you would know what a patient needs to
 10 know or whether that was just an assumption on
 11 your part?
 12 MS. PENNELL:
 13 A. Probably part assumption, probably part, I
 14 believe there was pretty extensive
 15 consultation with Ms. Parsons and Ms. Predham
 16 on that actual content. So, I would have
 17 relied on this expertise as well.
 18 MS. NEWBURY:
 19 Q. Okay. So, either Ms. Parsons or Ms. Predham
 20 or possibly -
 21 MS. PENNELL:
 22 A. Certainly they were the experts.
 23 MS. NEWBURY:
 24 Q. - both had provided that information to you.
 25 MS. PENNELL:

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1 A. Yes.
 2 MS. NEWBURY:
 3 Q. You don't have any personal knowledge or
 4 expertise or experience in patient disclosure?
 5 MS. PENNELL:
 6 A. No, I don't.
 7 MS. NEWBURY:
 8 Q. Have you ever, at any time in your career been
 9 involved in any patient communication before
 10 the ER/PR issue?
 11 MS. PENNELL:
 12 A. I don't believe so.
 13 MS. NEWBURY:
 14 Q. Okay. So, you would have no familiarity with
 15 the content of anything that has to be
 16 communicated to patients or the manner in
 17 which that should be relayed?
 18 MS. PENNELL:
 19 A. No.
 20 MS. NEWBURY:
 21 Q. And everything that you relied upon or any
 22 conclusions that you drew would have come from
 23 either Ms. Parsons or Ms. Predham?
 24 MS. PENNELL:
 25 A. Yes.

1 MS. NEWBURY:

2 Q. Okay. And do you have any reason to believe
3 that anyone at Eastern Health would have any
4 misconception as to what your expertise was in
5 dealing with patients or the fact that you had
6 no expertise in that area? So, no on
7 understood you to have any -

8 MS. PENNELL:

9 A. No.

10 MS. NEWBURY:

11 Q. Okay. And you'd mentioned as well that there
12 was ongoing media coverage and that caused
13 some frustration for you in the month of
14 October in particular. Did you ever think
15 about suggesting a different approach, given
16 that there was a repeat of the information and
17 you seem to have some frustrations. Was there
18 any thought by you or anyone else to having a
19 technical briefing or something to try to
20 resolve those issues?

21 MS. PENNELL:

22 A. You know, knowing what I know now, I can
23 certainly see how different approaches would
24 have worked, but at that point, you know, that
25 was my first communications job and I'd never

1 MS. PENNELL:

2 A. Well, after leaving Eastern Health, I went
3 into a communications director role where I
4 certainly saw the need and usages of
5 communications strategizing, communications
6 planning and obviously, especially in crisis
7 communications where that, you know, can be
8 certainly advantageous to have a plan, but it
9 wasn't something, a tool that I used prior to
10 going to government.

11 MS. NEWBURY:

12 Q. And what would you include in that plan now?
13 Aside from having a plan, do you have anything
14 specific that you would suggest, looking back
15 on it?

16 MS. PENNELL:

17 A. Well, when you sit down to write a
18 communications plan, you actually think
19 everything through in your head and I think
20 that--and then you take what's in your head
21 and put it on paper. And I think that gives
22 you, almost you know, like when you were young
23 and you're doing a book report, I mean, you
24 write down your outline first.

25 MS. NEWBURY:

1 dealt with a situation of that magnitude and
2 no, I didn't--I just sort of managed the
3 issues day to day and just got through each
4 day.

5 MS. NEWBURY:

6 Q. And you didn't have any experience from the
7 other end based on your involvement with the
8 media as to how you might be satisfied if you
9 were on the media end of it? How could I
10 satisfy myself and sort of, bring it all to a
11 head.

12 MS. PENNELL:

13 A. I mean, I think, you know providing as much
14 media access as we did -

15 MS. NEWBURY:

16 Q. Um-hm.

17 MS. PENNELL:

18 A. - I had hoped that we were doing, at least
19 part of our duty by doing that, but no,
20 nothing further than that.

21 MS. NEWBURY:

22 Q. So, do you have any thoughts, looking back on
23 it now as the other approaches that you might
24 use to try to satisfy the media and the
25 public?

1 Q. Right.

2 MS. PENNELL:

3 A. I think having that outline would have
4 assisted us greatly. It would have outlined,
5 it would have made us think about other
6 tactics.

7 MS. NEWBURY:

8 Q. Okay, but now I guess the point I'm trying to
9 get it, is can you say what those tactics
10 would have been because -

11 MS. PENNELL:

12 A. Yeah, I mean, I can certainly see a technical
13 briefing would have done wonders before it
14 broke in the media or after it broke in the
15 media. It might have been a way to break it
16 in the media, to go out with a news release.
17 But you know, when you've got--when you're
18 battling or this might not be a great word,
19 battling, but when you've got sort of a tousel
20 between patient disclosure and public
21 disclosure, once--it doesn't matter how many
22 communications tactics you have, if you can't
23 get sign off to go out with them, you're
24 planning goes out the window anyway. So then
25 you're in crisis mode and response mode once

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1 something breaks in the media and then you can
 2 maybe sit down and look at doing other things
 3 that maybe you would have done earlier. I
 4 think, had I had my way, we would have done a
 5 media release, we would have had a
 6 communications plan, we would have followed it
 7 and things may have been a little bit
 8 different on the communications side of
 9 things.
 10 MS. NEWBURY:
 11 Q. How about communicating more with various
 12 stakeholders including patients and advocacy
 13 groups? Is that something that you would do
 14 form a communications perspective?
 15 MS. PENNELL:
 16 A. Certainly, and if a communications strategy
 17 had been written, that would have been--a
 18 component of it would have been stakeholder
 19 groups.
 20 MS. NEWBURY:
 21 Q. Okay.
 22 MS. PENNELL:
 23 A. Affected stakeholder groups, which would have
 24 made us sit down and think about how each one
 25 of those groups were affected.

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1 MS. NEWBURY:
 2 Q. Okay. And would the communications staff
 3 themselves interact with the groups or would
 4 you facilitate it? How would you -
 5 MS. PENNELL:
 6 A. I think--communications may be involved, but I
 7 don't think they would be the one providing
 8 the information.
 9 MS. NEWBURY:
 10 Q. Would it be something like what you do with
 11 the media interviews, attend along the company
 12 -
 13 MS. PENNELL:
 14 A. Maybe something like that. It wouldn't have
 15 been my role, I highly doubt, would probably
 16 have been more the director role.
 17 MS. NEWBURY:
 18 Q. I take it that you weren't surprised by the
 19 reaction of the media and perhaps the public
 20 in October of 2005 when the media broke the
 21 ER/PR issue prior to Eastern Health going
 22 public with it?
 23 MS. PENNELL:
 24 A. I wasn't surprised.
 25 MS. NEWBURY:

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1 Q. Okay. So you saw that there was some erosion
 2 of public confidence by the mere fact that the
 3 media got there first to this issue?
 4 MS. PENNELL:
 5 A. Oh, certainly, and that was one of the things
 6 that I was worried about.
 7 MS. NEWBURY:
 8 Q. Okay. So that's something that even back in
 9 July of 2005, 14th of July when you first
 10 learned of this issue, that you could have
 11 anticipated at that time?
 12 MS. PENNELL:
 13 A. Oh absolutely, that was probably one of the
 14 first things myself or Ms. Bonnell would have
 15 said at those initial meetings, that this will
 16 get out.
 17 MS. NEWBURY:
 18 Q. Okay, and when you say this will get out, is
 19 that a matter of days or weeks or months?
 20 What time frame did you envision?
 21 MS. PENNELL:
 22 A. You can never tell, but I mean, I always go on
 23 the assumption that it's tomorrow.
 24 MS. NEWBURY:
 25 Q. Okay, and I think you'd indicated this morning

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1 that you were surprised that it took until
 2 September 30th before this -
 3 MS. PENNELL:
 4 A. Oh, absolutely.
 5 MS. NEWBURY:
 6 Q. So at most, you were thinking weeks and it
 7 could be as early as days.
 8 MS. PENNELL:
 9 A. Um-hm.
 10 MS. NEWBURY:
 11 Q. And was that--that was relayed to the team?
 12 MS. PENNELL:
 13 A. Yes.
 14 MS. NEWBURY:
 15 Q. You referred to the team.
 16 MS. PENNELL:
 17 A. Yes.
 18 MS. NEWBURY:
 19 Q. So everyone there at that meeting was aware
 20 that -
 21 MS. PENNELL:
 22 A. I believe Susan said that at the very first
 23 meeting on the 14th, well the first meeting I
 24 attended.
 25 MS. NEWBURY:

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1 Q. And would they have been as clear about the
 2 fact that this really is days not weeks or
 3 months?
 4 MS. PENNELL:
 5 A. Yes.
 6 MS. NEWBURY:
 7 Q. Okay. And was there any reaction to that?
 8 MS. PENNELL:
 9 A. It was just that the patient disclosure piece
 10 was more important.
 11 MS. NEWBURY:
 12 Q. And did you get any sense of urgency as to--or
 13 whether or not there was any urgency in terms
 14 of how quickly they were going to try to
 15 address that issue?
 16 MS. PENNELL:
 17 A. No, I honestly think that everyone thought
 18 things would happen a lot quicker than they
 19 did. I don't think anyone thought that we,
 20 you know, would have been going into December
 21 and still not having test results back. I
 22 think that--I think some of the initial e-
 23 mails that I went through said, you know,
 24 Terry Gulliver's retesting and should have all
 25 the results back in two weeks. So I think in

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1 the beginning that we thought this--you know,
 2 we'd get the information we needed quickly.
 3 MS. NEWBURY:
 4 Q. But even if it's as early as two weeks, that
 5 still could easily come after the media got a
 6 hold of it.
 7 MS. PENNELL:
 8 A. Yes.
 9 MS. NEWBURY:
 10 Q. You're talking about days.
 11 MS. PENNELL:
 12 A. Yes.
 13 MS. NEWBURY:
 14 Q. I mean, in some sense, there's no way that -
 15 MS. PENNELL:
 16 A. It's (unintelligible).
 17 MS. NEWBURY:
 18 Q. - that can be controlled. It might be better-
 19 -they might have thought it better that we'll
 20 retest first and then we'll tell them. But if
 21 the media is going to find out first anyway,
 22 was there any -
 23 MS. PENNELL:
 24 A. It's a hard call to me.
 25 MS. NEWBURY:

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1 Q. - any discussion about actually telling the
 2 patients that they're being retested so that
 3 they could embark upon that immediately?
 4 MS. PENNELL:
 5 A. Actually not telling the patients?
 6 MS. NEWBURY:
 7 Q. No, to tell the patients that they're going to
 8 be retested rather than wait for the test
 9 results to come back?
 10 MS. PENNELL:
 11 A. Yeah, I thought that was the point all along.
 12 MS. NEWBURY:
 13 Q. Okay. So they were going to contact the
 14 patients to say that they're being retested?
 15 MS. PENNELL:
 16 A. The ones that where treatments changed were
 17 the people that they were contacting first.
 18 But all patients who were being retested were
 19 going to be contacted. I'm just not sure in
 20 what--as soon as possible.
 21 MS. NEWBURY:
 22 Q. Oh so they were going -
 23 MS. PENNELL:
 24 A. Was my understanding.
 25 MS. NEWBURY:

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1 Q. Okay. So the first time any patients would be
 2 notified about anything, the very first time
 3 any patients are going to be notified, it's
 4 the patients who've had test results that have
 5 changed?
 6 MS. PENNELL:
 7 A. They were the priority of notification.
 8 MS. NEWBURY:
 9 Q. Okay.
 10 MS. PENNELL:
 11 A. Yeah, but I'm not sure if they were going to
 12 start notifying everybody at once. I'm kind
 13 of grey on all of that.
 14 MS. NEWBURY:
 15 Q. Okay. But your thought was that they would be
 16 telling patients that they were going to be
 17 retested?
 18 MS. PENNELL:
 19 A. Yes
 20 MS. NEWBURY:
 21 Q. And did you think that they would not tell
 22 those patients who were being retested until
 23 they had results back for certain patients
 24 whose results had changed? Or were they just
 25 saying "listen, we've got limited resources

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1 here. We're going to focus on the patients
 2 that are changed first, and then we'll
 3 immediately start telling all of the
 4 patients"?

5 MS. PENNELL:
 6 A. You know, I can't say for certain, but I know
 7 the priority was on the living people whose
 8 results changed.

9 MS. NEWBURY:
 10 Q. And they might know--there's a larger group of
 11 people that presumably they would know are
 12 going to be retested and they might know that
 13 two weeks in advance of when they know whether
 14 or not their results have changed. Was there
 15 any thought to using that two-week period of
 16 time while you were awaiting results to at
 17 least use that time to contact those patients
 18 who are being retested and then make a
 19 priority that, okay, if we didn't get all
 20 those done, we're going to make a priority of
 21 contacting those whose results had changed?
 22 Was there that level of discussion?

23 MS. PENNELL:
 24 A. No, I don't believe I was privy to that level
 25 of discussion with the patient disclosure

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1 piece.

2 MS. NEWBURY:
 3 Q. You've been shown a few exhibits where you
 4 forwarded media reports to various members of
 5 the team, I think you call them, one of which
 6 was the exhibit at 0691 that you sent on to
 7 Dr. Williams, Mr. Tilley, Ms. Predham, Ms.
 8 Bonnell, Ms. Mundon, Nancy Parsons, Dr. Cook,
 9 Terry Gulliver and Sharon Smith. You
 10 indicated that you didn't receive any reply
 11 back from them.

12 MS. PENNELL:
 13 A. I don't think so.

14 MS. NEWBURY:
 15 Q. Is that the expectation that if one of those
 16 recipients receives the article, reviews it
 17 and sees an inaccuracy that they would contact
 18 you or someone else in your department to
 19 handle that inaccuracy?

20 MS. PENNELL:
 21 A. My expectation in e-mailing that out is that
 22 they read it and therefore, if they read it
 23 and see an inaccuracy, you know, I would
 24 automatically assume they would let me know.

25 MS. NEWBURY:

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1 Q. And they wouldn't go ahead and contact the
 2 reporter themselves?

3 MS. PENNELL:
 4 A. No, no, certainly not.

5 MS. NEWBURY:
 6 Q. So if there is an inaccuracy -

7 MS. PENNELL:
 8 A. They would come to me.

9 MS. NEWBURY:
 10 Q. - they expect that you would hear about it or
 11 Ms. Bonnell would hear about it?

12 MS. PENNELL:
 13 A. Yes.

14 MS. NEWBURY:
 15 Q. Okay. Thank you. Those are all the questions
 16 I have.

17 THE COMMISSIONER:
 18 Q. Thank you.

19 MS. RUSSELL:
 20 Q. I just have got -

21 THE COMMISSIONER:
 22 Q. Sorry, Ms. Russell.

23 MS. DEBORAH PENNELL, EXAMINATION BY MS. DARLENE RUSSELL
 24 MS. RUSSELL:
 25 Q. I just have a few questions. Hi, Ms. Pennell.

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1 Darlene Russell. I believe you told Mr.
 2 Coffey that you didn't know how what your
 3 understanding of the consequences of ER/PR
 4 testing mattered. Is that correct?

5 MS. PENNELL:
 6 A. Say again.

7 MS. RUSSELL:
 8 Q. You said that you didn't know how what your
 9 understanding of the consequences of
 10 somebody's ER/PR testing results, how that
 11 would matter in your job.

12 MS. PENNELL:
 13 A. Yes, okay.

14 MS. RUSSELL:
 15 Q. Okay. You agree with that?

16 MS. PENNELL:
 17 A. Yes, I said that.

18 MS. RUSSELL:
 19 Q. Okay. But you knew that Tamoxifen could
 20 potentially extend somebody's life?

21 MS. PENNELL:
 22 A. Depending on many variables, I knew that.

23 MS. RUSSELL:
 24 Q. Okay, and you told, I believe, Mr. Coffey that
 25 you were tired and frustrated with media

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1 inquiries?
 2 MS. PENNELL:
 3 A. I was tired and frustrated that day, yes.
 4 MS. RUSSELL:
 5 Q. And you wanted the -
 6 MS. PENNELL:
 7 A. Not in general. I enjoyed dealing with the
 8 media actually.
 9 MS. RUSSELL:
 10 Q. Okay, but around that time period?
 11 MS. PENNELL:
 12 A. Certainly.
 13 MS. RUSSELL:
 14 Q. And you wanted them to die down?
 15 MS. PENNELL:
 16 A. That day.
 17 MS. RUSSELL:
 18 Q. Okay, and at one point, you recommended that
 19 Dr. Williams not give any more interviews?
 20 MS. PENNELL:
 21 A. One day I did.
 22 MS. RUSSELL:
 23 Q. Okay, and -
 24 MS. PENNELL:
 25 A. But that's one day out of many, many, many

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1 days that I went along with him happily to do
 2 media interviews, so I'd hope not to be judged
 3 on one day and one e-mail.
 4 MS. RUSSELL:
 5 Q. Okay, and you recommended that, you know,
 6 media inquiries that you stop responding to
 7 them for a while?
 8 MS. PENNELL:
 9 A. For the greater good actually, yes, I did.
 10 MS. RUSSELL:
 11 Q. Okay. What was the greater good?
 12 MS. PENNELL:
 13 A. That we stop feeding this issue in the media.
 14 MS. RUSSELL:
 15 Q. Okay, and what do you mean by feeding the
 16 issue in the media?
 17 MS. PENNELL:
 18 A. By constantly having it in the news.
 19 MS. RUSSELL:
 20 Q. Okay. Did you know that there were patients
 21 who fell through the cracks and that they
 22 didn't receive any personal contact and that
 23 there were patients who were not retested
 24 until they actually contacted Eastern Health
 25 themselves?

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1 MS. PENNELL:
 2 A. I know that now, but I didn't know that then.
 3 MS. RUSSELL:
 4 Q. Okay, and do you know that we've heard from
 5 patients that they first heard of this issue
 6 in the media and that hearing this issue in
 7 the media caused them to contact Eastern
 8 Health directly?
 9 MS. PENNELL:
 10 A. I didn't know that then.
 11 MS. RUSSELL:
 12 Q. Okay, but you know that now?
 13 MS. PENNELL:
 14 A. I would have heard that, yes.
 15 MS. RUSSELL:
 16 Q. Okay, and some later than others, hearing it
 17 in the media was later than others, okay. So
 18 would you agree that if any media coverage
 19 might reach even one more patient, that would
 20 be a good thing?
 21 MS. PENNELL:
 22 A. Depending on the kind of media coverage.
 23 MS. RUSSELL:
 24 Q. Well, if it would cause -
 25 MS. PENNELL:

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1 A. Because it could -
 2 MS. RUSSELL:
 3 Q. - if it would cause them to contact Eastern
 4 Health and make an inquiry.
 5 MS. PENNELL:
 6 A. If it would cause them to--yes, sure.
 7 MS. RUSSELL:
 8 Q. Okay, and wouldn't that outweigh your
 9 frustrations?
 10 MS. PENNELL:
 11 A. Oh, sure, but I did have a frustrating day.
 12 MS. RUSSELL:
 13 Q. Okay. That's all my questions. Thank you.
 14 THE COMMISSIONER:
 15 Q. Thank you, Ms. Russell. Mr. Pike?
 16 MR. PIKE:
 17 Q. No questions for this witness.
 18 THE COMMISSIONER:
 19 Q. Mr. Simmons?
 20 MS. DEBORAH PENNELL, EXAMINATION BY MR. DANIEL SIMMONS
 21 MR. SIMMONS:
 22 Q. Ms. Pennell, I'm just going to start with a
 23 point of clarification. You were asked some
 24 questions a moment ago by Ms. Newbury
 25 concerning notification of patients or the

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1 idea of notifying patients, I believe, in the
 2 summer of '05 and whether it was to be of the
 3 fact that patient samples would be retested or
 4 whether it was only going to be of their test
 5 results.
 6 MS. PENNELL:
 7 A. Um-hm.
 8 MR. SIMMONS:
 9 Q. And I'd like to have a quick look, please, at
 10 P-0071. I think it's page 14, the last page.
 11 This is a document you've been shown a number
 12 of times. This is the one with the draft
 13 press releases and briefing notes in it and
 14 you were also already shown this last page
 15 here, which you identified for us as being
 16 your first very rough draft of a letter to
 17 patients.
 18 MS. PENNELL:
 19 A. Um-hm.
 20 MR. SIMMONS:
 21 Q. And if you take a look at it, the very first
 22 line is "Eastern Health would like to advise
 23 you of a situation which has led to the
 24 retesting of your tissue sample." If you take
 25 a look down through it, based on the content

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1 of that letter, at that point, was this letter
 2 intended to inform people of the results of
 3 their retesting or of the fact that their
 4 sample was going to be retested?
 5 MS. PENNELL:
 6 A. Oh, just that it was going to be retested.
 7 MR. SIMMONS:
 8 Q. That it was going to be retested?
 9 MS. PENNELL:
 10 A. Yes.
 11 MR. SIMMONS:
 12 Q. So at the time that you prepared this, in July
 13 of 2005, you were preparing this in case this
 14 could be used to send out to patients to
 15 advise them of their retesting?
 16 MS. PENNELL:
 17 A. Certainly.
 18 MR. SIMMONS:
 19 Q. Okay. There are two additional exhibits that
 20 I'd like to have entered please. I believe
 21 they're 1529 and 1528.
 22 THE COMMISSIONER:
 23 Q. Entered.
 24 EXHIBITS ENTERED AND MARKED P-1528 AND P-1529
 25 MR. SIMMONS:

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1 Q. 1528, please. Ms. Thomas, this is an e-mail
 2 message from July 22nd 2005 from you to Ms.
 3 Bonnell and if you go down to the attached
 4 pages, you'll see there is a draft media
 5 release there dated July XX 2005, the one
 6 headed "Eastern Health reviews ER and PR test
 7 results" and there's a second draft media
 8 release also dated July but with no day,
 9 "laboratory testing review to be completed by
 10 outside consultant." So it appears that on
 11 that day, the 22nd, you forwarded those two
 12 draft releases to Ms. Bonnell. Now do you
 13 have any recollection of that?
 14 MS. PENNELL:
 15 A. The fact that I chose those two of the many
 16 drafts that have circulated say to me that
 17 those were the two that were more final in my
 18 mind.
 19 MR. SIMMONS:
 20 Q. Okay.
 21 MS. PENNELL:
 22 A. And it's my recollection that we were going to
 23 probably release more than one, because, you
 24 know, the two seemed important enough to have
 25 two rather than just one. So I would say I

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1 was fairly final on these in my mind and
 2 wanted her to take a look.
 3 MR. SIMMONS:
 4 Q. And when you'd been shown Exhibit P-0071
 5 earlier which had more versions of draft
 6 releases included there, one of the ones, one
 7 of those was one that had a heading something
 8 like "Retesting Due to Technological Change".
 9 That wasn't exactly it.
 10 MS. PENNELL:
 11 A. Right.
 12 MR. SIMMONS:
 13 Q. But you didn't include that one with this e-
 14 mail on July 22nd?
 15 MS. PENNELL:
 16 A. Right.
 17 MR. SIMMONS:
 18 Q. Do you have any recollection of what the
 19 reason would have been that you wouldn't have
 20 forwarded that one along?
 21 MS. PENNELL:
 22 A. We may have already started to have a little
 23 bit of worry that, you know, that--I don't
 24 think we had faith in the fact that it was
 25 just technological change, so maybe, you know,

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1 at this point we were already not comfortable
 2 with going out with that message exclusively.
 3 MR. SIMMONS:
 4 Q. Um-hm. Okay. And we've heard that the
 5 meeting, the first meeting with Minister John
 6 Ottenheimer had taken place on July 21st,
 7 which was the day before this e-mail. And you
 8 weren't present.
 9 MS. PENNELL:
 10 A. No.
 11 MR. SIMMONS:
 12 Q. You've told us that. So by this day, the
 13 22nd, had anything been told to you about the
 14 results of that meeting that would cause you
 15 to think that plans had changed about being
 16 prepared to issue press releases like the ones
 17 you were sending to Ms. Bonnell here this day?
 18 MS. PENNELL:
 19 A. Absolutely not.
 20 MR. SIMMONS:
 21 Q. Okay. When you prepared these different
 22 versions of the draft press releases, did you
 23 share them with anyone other than Ms. Bonnell?
 24 MS. PENNELL:
 25 A. No.

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1 MR. SIMMONS:
 2 Q. You had -
 3 MS. PENNELL:
 4 A. I don't even know that I shared them with her,
 5 all of them.
 6 MR. SIMMONS:
 7 Q. You told us the first meeting you attended
 8 with a group of people at Eastern Health about
 9 this issue was July 14th, 2005 and it was
 10 following that that you started preparing
 11 these drafts. At that first meeting were you
 12 given any direction by anybody as to what
 13 approach to take in preparing draft press
 14 releases or what information to include?
 15 MS. PENNELL:
 16 A. Absolutely not.
 17 MR. SIMMONS:
 18 Q. That was left to you -
 19 MS. PENNELL:
 20 A. Left to me.
 21 MR. SIMMONS:
 22 Q. Based on what you had heard at the meeting?
 23 MS. PENNELL:
 24 A. Yes.
 25 MR. SIMMONS:

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1 Q. Okay. Was there any point after that when you
 2 went back to any meetings where your drafts of
 3 the press releases or any of them were tabled
 4 or discussed or referred to by any of the
 5 group?
 6 MS. PENNELL:
 7 A. No.
 8 MR. SIMMONS:
 9 Q. Okay. And also Exhibit 1529, please? I'm
 10 going to show you this one because it's also
 11 dated, it's an e-mail from July 22nd, 2005.
 12 And although it's from Denise Dunn, who was
 13 Dr. Williams' assistant, to Ms. Bonnell, and
 14 it says, "Susan, please review attached draft
 15 for Dr. Williams." And it has attached to it
 16 a document stamped "draft" and headed
 17 "Estrogen, Progesterone Receptors." And it
 18 goes on for two pages here. And I think
 19 you've had a chance to have a quick look at
 20 this lunchtime?
 21 MS. PENNELL:
 22 A. Um-hm.
 23 MR. SIMMONS:
 24 Q. Was this document passed on to you or did you
 25 see it at the time, on July 22nd?

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1 MS. PENNELL:
 2 A. No.
 3 MR. SIMMONS:
 4 Q. Okay. From your quick look at it does it
 5 appear to be related in any way to the work
 6 that you had been doing in regarding your
 7 drafting press releases?
 8 MS. PENNELL:
 9 A. It looks like an attempt at a press release,
 10 actually.
 11 MR. SIMMONS:
 12 Q. Okay. And in this case coming from Dr.
 13 Williams' office to Ms. Bonnell?
 14 MS. PENNELL:
 15 A. Yes.
 16 MR. SIMMONS:
 17 Q. Okay. When you first started giving evidence
 18 this morning and you described moving into
 19 your position in Eastern Health from the
 20 Health Care Corporation, and you told us that
 21 within Eastern Health you were now
 22 concentrating on media relations and didn't
 23 have responsibility for some of the duties
 24 you'd had back in the Health Care Corporation?
 25 MS. PENNELL:

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1 A. Right.

2 MR. SIMMONS:

3 Q. The media relations position within Eastern

4 Health, had it been broadened or changed in

5 any way because of the change in type of

6 organization that Eastern Health was? Had the

7 scope changed?

8 MS. PENNELL:

9 A. Certainly. I mean, just the geographic change

10 made the position wider in scope

11 geographically and in all ways, actually. We

12 had to deal with not just acute care issues,

13 but issues right from community services

14 through to long-term care and then, of course,

15 hospitals down in Burin and two peninsulas, I

16 mean, it was just a massive, massive, massive

17 area.

18 MR. SIMMONS:

19 Q. So while the media relations you'd had to

20 handle for the Health Care Corporation of St.

21 John's -

22 MS. PENNELL:

23 A. Just St. John's -

24 MR. SIMMONS:

25 Q. - had been acute care hospitals -

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1 MS. PENNELL:

2 A. Just acute care.

3 MR. SIMMONS:

4 Q. - in St. John's -

5 MS. PENNELL:

6 A. Yeah.

7 MR. SIMMONS:

8 Q. - now you had to field calls related to long-

9 term care, the whole breadth of services and

10 the expanded geographic area, did you?

11 MS. PENNELL:

12 A. Yes.

13 MR. SIMMONS:

14 Q. Okay. And did that have any impact on your

15 workload?

16 MS. PENNELL:

17 A. Oh, absolutely. St. John's, the St. John's

18 acute care portion was always busy, but when

19 you added the long-term care issues and even,

20 you know, when you're--something as simple as

21 flu season, and you've got to close nursing

22 homes, I mean, that was added to me and then,

23 you know, notifications out to do that kind of

24 things. And, you know, you have community

25 newspapers down in Harbour Grace and down in

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1 Marystown who want to have an interview on

2 some community care program. It's just, you

3 know, it's small things that added, but every

4 little bit added more and more and more work

5 on. So that was why, I guess, there was a

6 dedicated media -

7 MR. SIMMONS:

8 Q. Now, you told us that you went on vacation at

9 the end of July in 2005 for two weeks?

10 MS. PENNELL:

11 A. Um-hm.

12 MR. SIMMONS:

13 Q. So you returned at some point -

14 MS. PENNELL:

15 A. Mid August.

16 MR. SIMMONS:

17 Q. - around mid August. And I believe you told

18 us that once you came back, you really didn't

19 have anything, any involvement in discussions

20 about ER/PR communications -

21 MS. PENNELL:

22 A. Not a whole lot.

23 MR. SIMMONS:

24 Q. - until September 30th when the Independent

25 reporter called? All right. And during that

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1 time were there other things happening within

2 Eastern Health that kept you occupied or kept

3 you busy?

4 MS. PENNELL:

5 A. I was flat out every single day.

6 MR. SIMMONS:

7 Q. Um-hm, okay. Now, when the story broke in

8 October 2nd, you were asked a fair number of

9 questions about why not issue a media release

10 or a press release and you told us why that

11 didn't happen and that instead Dr. Williams

12 was made available as a spokesperson to speak

13 to the media. Were there any inquiries or

14 requests from any of the media looking for a

15 press release?

16 MS. PENNELL:

17 A. No.

18 MR. SIMMONS:

19 Q. Once a story had come out, have you had any

20 experience with the media wanting a press

21 release issued so that they could use it

22 instead of having a spokesperson made

23 available?

24 MS. PENNELL:

25 A. No, they would frown on that.

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1 MR. SIMMONS:
 2 Q. Why would they do that?
 3 MS. PENNELL:
 4 A. It's just not a practice that you do in
 5 communications. Once the story is out there,
 6 you don't try and put it out there again. I
 7 mean, there's also sort of a general respect
 8 thing when it comes to journalists. I mean,
 9 the Independent had broken this story.
 10 MR. SIMMONS:
 11 Q. Um-hm.
 12 MS. PENNELL:
 13 A. So once one media outlet breaks a story, you
 14 don't issue a press release out of respect for
 15 that media outlet. You let the rest of the
 16 media feed off of that.
 17 MR. SIMMONS:
 18 Q. Right. Now, you've told us about how the
 19 interviews were done during the course of
 20 October. You sat in with Dr. Williams when he
 21 -
 22 MS. PENNELL:
 23 A. I did.
 24 MR. SIMMONS:
 25 Q. - conducted these interviews. During those

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1 interviews were there any occasions when Dr.
 2 Williams refused to answer questions that were
 3 put to him?
 4 MS. PENNELL:
 5 A. No.
 6 MR. SIMMONS:
 7 Q. Okay. At the latter part of November we saw
 8 the e-mail where you suggested that it was
 9 time for Dr. Williams to stop doing interviews
 10 and you've explained all that for us.
 11 MS. PENNELL:
 12 A. Um-hm.
 13 MR. SIMMONS:
 14 Q. And later we also saw an e-mail message from
 15 around the beginning of December where Dr.
 16 Williams did do an interview with Mark Quinn?
 17 MS. PENNELL:
 18 A. Um-hm.
 19 MR. SIMMONS:
 20 Q. And did you arrange that interview?
 21 MS. PENNELL:
 22 A. I did.
 23 MR. SIMMONS:
 24 Q. Did you encounter--if you--well, why did you
 25 do that if there had been discussion earlier

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1 about the time had come to stop speaking to
 2 the media, why go ahead and do that interview
 3 in early December?
 4 MS. PENNELL:
 5 A. Did I encounter that from Dr. Williams?
 6 MR. SIMMONS:
 7 Q. Or from yourself or for your own thinking?
 8 MS. PENNELL:
 9 A. No, I just chalked it up to probably having a
 10 bad day.
 11 MR. SIMMONS:
 12 Q. Okay. So while you've said that you felt the
 13 time had come that there was nothing new to
 14 tell the media, that it would be better not to
 15 be speaking until you had something new to
 16 say, was there any formal decision made to
 17 stop -
 18 MS. PENNELL:
 19 A. I don't believe it was a formal -
 20 MR. SIMMONS:
 21 Q. - to stop talking to the media?
 22 MS. PENNELL:
 23 A. - decision, no.
 24 MR. SIMMONS:
 25 Q. And was it still open to consider individual

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1 requests as -
 2 MS. PENNELL:
 3 A. Certainly.
 4 MR. SIMMONS:
 5 Q. - they came forward.
 6 MS. PENNELL:
 7 A. And I might add, Mr. Simmons, was that those
 8 couple of inquiries that I did get in that
 9 period where we weren't too keen on doing
 10 interviews, reporters never pushed me for an
 11 interview. They never--no one ever said,
 12 "Well, come on, Deb, now you got to get me
 13 interview on that." If--you know, a lot of
 14 times they were just calling because they had
 15 a hole to fill or there was never a pressing
 16 need for an interview, it was, you know, well,
 17 "We haven't heard about ER/PR for a week,
 18 let's call over at Eastern Health and see if
 19 there's anything we can put up." You know,
 20 and if I'd say, "Well, you know, there's
 21 nothing really new." "All right, then." So
 22 you know, if I was ever pressed and someone
 23 had something they needed us to respond to or
 24 something very pressing, I'm sure we would
 25 have done it.

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1 MR. SIMMONS:
 2 Q. Okay. In some of the questions you were
 3 referred to as the person at Eastern Health
 4 who chiefly, dealt chiefly with the media.
 5 And I just want to make sure I understand. As
 6 the media relations officer, was it your role
 7 to be a spokesperson to communicate
 8 information to the media, factual information
 9 about stories?
 10 MS. PENNELL:
 11 A. No, it wasn't my role, per se. I don't think
 12 it was written anywhere that that was my role,
 13 but that did happen from time to time. If
 14 someone was writing a story and, you know, Mr.
 15 Tilley or another spokesperson said something
 16 that the reporter didn't quite get or they
 17 might call me and say, "Deb, did you
 18 understand what he meant?" or "Is this what he
 19 was saying?" or "Did this mean 10 out of 10 or
 20 did it mean 11 out of 10?" you know. And I
 21 would say, "Well, I'll check that for you."
 22 MR. SIMMONS:
 23 Q. But in the first instance when you get an
 24 inquiry from a representative of the media
 25 looking for a comment on something that's

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1 happening, in the first instance would you
 2 gather the information and pass it on to them
 3 or would you facilitate finding the person in
 4 the organization that they should speak to to
 5 get the information?
 6 MS. PENNELL:
 7 A. Depends, something as simple as wanting a
 8 condition code for a traffic accident, well, I
 9 could provide that.
 10 MR. SIMMONS:
 11 Q. Yes.
 12 MS. PENNELL:
 13 A. But when it comes to needing an expert to talk
 14 about something, no, I would never assume that
 15 role.
 16 MR. SIMMONS:
 17 Q. So questions then concerning ER/PR testing or
 18 the retesting process, or what might have gone
 19 wrong, were those the sort of things where you
 20 would gather the information and pass it on
 21 yourself -
 22 MS. PENNELL:
 23 A. No.
 24 MR. SIMMONS:
 25 Q. - or is that something where you'd have to

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1 have a spokesperson speak to it?
 2 MS. PENNELL:
 3 A. I would certainly need a spokesperson for
 4 that.
 5 MR. SIMMONS:
 6 Q. Now, sorry for jumping around a bit, but I
 7 have to go back to the meetings you attended
 8 in July again now, and even the later one, I
 9 think you attended one more after you came
 10 back from your vacation?
 11 MS. PENNELL:
 12 A. In October, yes.
 13 MR. SIMMONS:
 14 Q. Because you were asked some questions about
 15 whether there were any restrictions on whether
 16 people would talk about the things they were
 17 learning during that or they knew during that
 18 time period.
 19 MS. PENNELL:
 20 A. Uh-hm.
 21 MR. SIMMONS:
 22 Q. And at those meetings you attended, were there
 23 any cautions given or statements made by
 24 anyone that we can't talk about this outside
 25 of this group?

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1 MS. PENNELL:
 2 A. No.
 3 MR. SIMMONS:
 4 Q. Thank you very much, I don't have any other
 5 questions for you.
 6 THE COMMISSIONER:
 7 Q. Anything arising, Mr. Coffey?
 8 COFFEY, Q.C.:
 9 Q. Yes, Madam Commissioner.
 10 MS. DEBORAH PENNELL, RE-DIRECT EXAMINATION BY BERNARD
 11 COFFEY, Q.C.
 12 COFFEY, Q.C.:
 13 Q. Perhaps now in responding to Mr. Simmons you
 14 had cleared up what was, for me, a bit of a
 15 puzzle. On September 30th, 2005, The
 16 Independent contacted Eastern Health.
 17 MS. PENNELL:
 18 A. Yes.
 19 COFFEY, Q.C.:
 20 Q. And they had a story that they were pursuing
 21 involving mammography?
 22 MS. PENNELL:
 23 A. Yes, test results.
 24 COFFEY, Q.C.:
 25 Q. Test results, mammography.

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1 MS. PENNELL:
 2 A. Yes.
 3 COFFEY, Q.C.:
 4 Q. And the decision apparently was made that
 5 there would be information given to The
 6 Independent.
 7 MS. PENNELL:
 8 A. Yes.
 9 COFFEY, Q.C.:
 10 Q. But it was the actual story, which is the
 11 ER/PR matter.
 12 MS. PENNELL:
 13 A. Yes, that was our decision to make.
 14 THE COMMISSIONER:
 15 Q. "Our decision" meaning the department?
 16 MS. PENNELL:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. That's the communications department.
 20 MS. PENNELL:
 21 A. Yes, because realistically they didn't--what
 22 they were asking wasn't correct, they didn't
 23 have--it wasn't anything about mammography
 24 equipment at all. We clarified that for them.
 25 COFFEY, Q.C.:

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1 Q. And with respect to that then, so a conscious
 2 decision then was made that we will give them
 3 actual story and in a course of doing so,
 4 clarify the misconception that they have about
 5 what's going on.
 6 MS. PENNELL:
 7 A. Yes.
 8 COFFEY, Q.C.:
 9 Q. You said -
 10 MS. PENNELL:
 11 A. We certainly didn't want them printing a story
 12 without our input that spoke about problems
 13 with mammography and there certainly wasn't
 14 any kind of problem with mammography
 15 whatsoever.
 16 COFFEY, Q.C.:
 17 Q. Now you did say to Mr. Simmons, you were
 18 saying when one media outlet has broken a
 19 story -
 20 MS. PENNELL:
 21 A. Uh-hm.
 22 COFFEY, Q.C.:
 23 Q. Out of respect for that outlet, media outlet,
 24 one does not then go out and then issue a
 25 press release.

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1 MS. PENNELL:
 2 A. Generally, yes.
 3 COFFEY, Q.C.:
 4 Q. So was that really what happened here? Isn't
 5 that what--what I'm getting at is this, you
 6 see on Friday morning -
 7 MS. PENNELL:
 8 A. But we didn't issue a press release -
 9 COFFEY, Q.C.:
 10 Q. - you got the story. I appreciate that and
 11 that's why I'm asking you, why didn't you?
 12 MS. PENNELL:
 13 A. Why didn't we?
 14 COFFEY, Q.C.:
 15 Q. Why didn't you issue -
 16 MS. PENNELL:
 17 A. Because the story was already out there.
 18 COFFEY, Q.C.:
 19 Q. But the story, in fact, wasn't and it
 20 certainly wasn't going to be published until
 21 Sunday.
 22 MS. PENNELL:
 23 A. Oh that's just not good practice.
 24 COFFEY, Q.C.:
 25 Q. Okay, that's what I'm asking you about, okay,

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1 in that regard because you pointed out to the
 2 Commissioner that from your perspective,
 3 certainly now looking back on it, the
 4 unfortunate consequences of you not taking
 5 charge of the story in the beginning, within
 6 the initial press release -
 7 MS. PENNELL:
 8 A. Of course, right. So what you're saying is
 9 when the Sunday Independent call came in, why
 10 didn't we then, before responding, issue a
 11 press release?
 12 COFFEY, Q.C.:
 13 Q. That's the question, bearing in mind, witness,
 14 the response you gave to Mr. Simmons.
 15 MS. PENNELL:
 16 A. It was certainly an age old relationship
 17 between journalists and communications people,
 18 that would certainly violate that that
 19 relationship, you know, once a media outlet
 20 gets a story and, you know, by working for it
 21 or by a source or however journalists get
 22 their stories, I just don't think it's--it's
 23 just an understanding maybe because I used to
 24 work in the media, I don't know, but it's
 25 certainly not nice to then turn around and

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1 give every other media outlet the story that
 2 another journalist has worked on or has worked
 3 for.
 4 THE COMMISSIONER:
 5 Q. So that's considered bad form, as it were?
 6 MS. PENNELL:
 7 A. You can ask anybody out there in that room, I
 8 would say that they would certainly never ever
 9 hold me in any regard again if I did that.
 10 COFFEY, Q.C.:
 11 Q. So that was something that always puzzled
 12 certainly me and early on Friday there was a
 13 phone call -
 14 MS. PENNELL:
 15 A. Yeah, you sort of have to work, I guess -
 16 COFFEY, Q.C.:
 17 Q. They don't have the right story, in fact, they
 18 have the right hospital -
 19 MS. PENNELL:
 20 A. They knew testing results and it was breast
 21 cancer, so I mean, they were on a pretty good
 22 page.
 23 COFFEY, Q.C.:
 24 Q. They were warm enough, as it were, to fall
 25 into the category of we will not do what we

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1 would otherwise do and plan to do, potentially
 2 back in July, which was utilize a press
 3 release approach -
 4 MS. PENNELL:
 5 A. Right.
 6 COFFEY, Q.C.:
 7 Q. In order to accomplish the goal of at least, I
 8 use the word "advisedly" control of the story?
 9 MS. PENNELL:
 10 A. Yes, I understand what you're saying. We
 11 never discussed that, though, Mr. Coffey,
 12 between myself and Ms. Bonnell, we didn't
 13 discuss--after that initial call came in, we
 14 didn't discuss issuing a press release. We
 15 discussed how to respond to The Independent's
 16 inquiry.
 17 COFFEY, Q.C.:
 18 Q. And just one thing on that, by providing Dr.
 19 Laing and by Ms. Bonnell providing
 20 information, because she's quoted in the
 21 story.
 22 MS. PENNELL:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. But by doing that, in effect you were

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1 accomplishing what a press release would do
 2 anyway, weren't you, which is controlling the
 3 message? Dr. Laing was -
 4 MS. PENNELL:
 5 A. At their request though, they requested -
 6 COFFEY, Q.C.:
 7 Q. Oh yes, I appreciate they requested it, but
 8 the message was certainly that delivered by
 9 Dr. Laing.
 10 MS. PENNELL:
 11 A. Uh-hm.
 12 COFFEY, Q.C.:
 13 Q. Combined with whatever it was that Ms. Bonnell
 14 told -
 15 MS. PENNELL:
 16 A. Which she wasn't happy with, I believe.
 17 COFFEY, Q.C.:
 18 Q. And I appreciate that, but then leaving
 19 whether she's happy or not aside, the message,
 20 the content of the message was under the
 21 control of Eastern Health on September 30th?
 22 MS. PENNELL:
 23 A. No, the quotes were under the control of
 24 Eastern Health, the context of the story was
 25 not.

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1 COFFEY, Q.C.:
 2 Q. Of the story, but the message, however the
 3 message got reported is different issue, but
 4 the actual -
 5 MS. PENNELL:
 6 A. The control of the message when you issue a
 7 press release, you don't have control of a
 8 message when you're responding to a media
 9 inquiry.
 10 COFFEY, Q.C.:
 11 Q. Why not?
 12 MS. PENNELL:
 13 A. You can try, you can hope that a journalist
 14 follows along from where you're trying to go
 15 with something, but you can never be assured
 16 of that, so control is not a word I would use.
 17 THE COMMISSIONER:
 18 Q. So is the thing that gives you control of the
 19 message the fact that those in the press core,
 20 it's new to them? Is that what gives you
 21 control if you issue the press release, they
 22 don't know it's coming, it's a whole new thing
 23 and you're the only source of the information
 24 at that point?
 25 MS. PENNELL:

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1 A. No, the only thing you're controlling is when
2 they find out.
3 THE COMMISSIONER:
4 Q. Okay.
5 MS. PENNELL:
6 A. You're never controlling the message.
7 THE COMMISSIONER:
8 Q. Well, that would be my next question.
9 MS. PENNELL:
10 A. Unless they take your press release and print
11 it verbatim which -
12 THE COMMISSIONER:
13 Q. Occasionally happens.
14 MS. PENNELL:
15 A. Yeah, occasionally, but not very often.
16 THE COMMISSIONER:
17 Q. So the control feature of a press release is
18 the timing of the information getting out?
19 MS. PENNELL:
20 A. In this situation -
21 THE COMMISSIONER:
22 Q. And that's as far as it is? That's as far as
23 it goes?
24 MS. PENNELL:
25 A. In this situation, yes. I mean, you can't

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1 manipulate the media any further than that.
2 COFFEY, Q.C.:
3 Q. Well you provide the people with a
4 spokesperson, correct?
5 MS. PENNELL:
6 A. Yes.
7 COFFEY, Q.C.:
8 Q. Which is what happened on September 30th?
9 MS. PENNELL:
10 A. Uh-hm.
11 COFFEY, Q.C.:
12 Q. And which was planned back in July, if it came
13 to that, after the press release went out over
14 the wire service or however it gets done, you
15 provide a spokesperson.
16 MS. PENNELL:
17 A. Uh-hm.
18 COFFEY, Q.C.:
19 Q. So the spokesperson being provided with the
20 equivalent is the same?
21 MS. PENNELL:
22 A. I'm not sure how Dr. Laing got the nod instead
23 of Dr. Williams.
24 COFFEY, Q.C.:
25 Q. Sure, but it was the same, a spokesperson of

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1 Eastern Health's choosing was provided.
2 MS. PENNELL:
3 A. Right.
4 COFFEY, Q.C.:
5 Q. The press releases that we looked at, the
6 draft ones are fairly innocuous in the sense
7 that they don't say a whole lot -
8 MS. PENNELL:
9 A. No.
10 COFFEY, Q.C.:
11 Q. - do they?
12 MS. PENNELL:
13 A. No.
14 COFFEY, Q.C.:
15 Q. So, the Commissioner as was saying, the timing
16 is what you control.
17 MS. PENNELL:
18 A. Yes.
19 COFFEY, Q.C.:
20 Q. And the choice of spokesperson.
21 MS. PENNELL:
22 A. Yes, those are the only two things we really
23 can control.
24 THE COMMISSIONER:
25 Q. Well, and the perception of whether you're

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1 trying to hid something.
2 MS. PENNELL:
3 A. Right.
4 COFFEY, Q.C.:
5 Q. And -
6 MS. PENNELL:
7 A. Which we never were.
8 COFFEY, Q.C.:
9 Q. - Mr. Simmons asked you, he suggested to you,
10 there was never any formal decision made in
11 late 2005 not to deal with the media. I
12 appreciate that you said, the response to that
13 was, no, there was never any formal decision.
14 Was there, in fact though, an informal
15 understanding?
16 MS. PENNELL:
17 A. I would prefer to say that it was more case-
18 by-case basis.
19 COFFEY, Q.C.:
20 Q. And if they wanted an interview based upon,
21 again, what your response to Mr. Simmons, they
22 would have had to, by that point in time,
23 pushed you for it.
24 MS. PENNELL:
25 A. Yeah, and -

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1 COFFEY, Q.C.:

2 Q. Or pushed you further than they did.

3 MS. PENNELL:

4 A. I'm pretty easy to push, probably would have

5 just--you know, rather than say, okay, good-

6 bye, they would have said, well, I'd really

7 like to talk to him. And I probably would

8 have provided Dr. Williams or someone else.

9 COFFEY, Q.C.:

10 Q. Exhibit P-1529 which I think we have here. I

11 thank Mr. Simmons for having that here because

12 as he pointed out to you, this is apparently a

13 draft -

14 MS. PENNELL:

15 A. Notification.

16 COFFEY, Q.C.:

17 Q. - public notification, ER/PR receptors from

18 Denise Dunn to Ms. Bonnell. Ms. Dunn worked

19 for Dr. Williams?

20 MS. PENNELL:

21 A. Yes.

22 COFFEY, Q.C.:

23 Q. So, would this then be interpreted as a press

24 release that Dr. Williams was contemplating

25 using?

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1 MS. PENNELL:

2 A. I have no idea.

3 COFFEY, Q.C.:

4 Q. Okay. Would it be unusual for Dr. Williams'

5 office to provide a press release?

6 MS. PENNELL:

7 A. Completely unusual.

8 COFFEY, Q.C.:

9 Q. Okay. Now, it doesn't say actually, to be

10 fair, it doesn't say "press release" -

11 MS. PENNELL:

12 A. No.

13 COFFEY, Q.C.:

14 Q. - it says -

15 MS. PENNELL:

16 A. It's written in sort of a press releasey type

17 way, but -

18 COFFEY, Q.C.:

19 Q. And just to--looking at P-1528, I'm just going

20 to clarify, you did, by e-mail, send these two

21 draft media releases to Ms. Bonnell?

22 MS. PENNELL:

23 A. Yes.

24 COFFEY, Q.C.:

25 Q. But you had told, I believe the Commissioner

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1 earlier that you understood those draft media

2 releases were on a shared drive.

3 MS. PENNELL:

4 A. I believe they were.

5 COFFEY, Q.C.:

6 Q. Okay. So, if Ms. Bonnell was anywhere where

7 she could get access to the shared drive -

8 MS. PENNELL:

9 A. Only in the office -

10 MS. PENNELL:

11 A. That's what I'm saying, in the office. If she

12 was out somewhere else and could only be

13 reached by Blackberry or whatever, that would

14 be the way you'd have to e-mail.

15 MS. PENNELL:

16 A. Yeah, which is likely the case here. Now, we

17 hadn't had a shared drive for very long. So,

18 I may have even e-mailed--she may have been in

19 the office. I may have e-mailed them to her

20 out of habit.

21 COFFEY, Q.C.:

22 Q. One final--now, ma'am, is there ever tension

23 between your role of reassuring the public

24 that the treatment they're receiving is

25 appropriate and the actual perhaps underlying

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1 facts which is that perhaps there was a

2 problem.

3 MS. PENNELL:

4 A. I'm sorry, I -

5 COFFEY, Q.C.:

6 Q. What I'm getting at is this because I really--

7 here's what I'm getting at, ma'am, is that

8 you've told the Commissioner that at times

9 there'd be messaging in the sense, not in a

10 bad way, but in the sense of, look, there's

11 different approaches you can take to the same

12 topic.

13 MS. PENNELL:

14 A. Right.

15 COFFEY, Q.C.:

16 Q. And you've told the Commissioner that one of

17 the things you were concerned to do was

18 reassure the public -

19 MS. PENNELL:

20 A. Yes.

21 COFFEY, Q.C.:

22 Q. - their treatment was appropriate.

23 MS. PENNELL:

24 A. Yes.

25 COFFEY, Q.C.:

1 Q. But does that ever create attention, if it
 2 turns out that some aspect of health care is
 3 not up to scratch, as it were?
 4 MS. PENNELL:
 5 A. I guess it would create -
 6 MR. SIMMONS:
 7 Q. Commissioner, I think this is (inaudible) form
 8 of direct. I'm not sure if it's anything that
 9 anyone asked in cross examination.
 10 COFFEY, Q.C.:
 11 Q. I'm not -
 12 MR. SIMMONS:
 13 Q. (Inaudible).
 14 COFFEY, Q.C.:
 15 Q. I appreciate that. Here's the point,
 16 Commissioner, is this, I understand because
 17 Mr. Simmons sat through an interview I did
 18 with this--as he sat thorough it as well--with
 19 this witness. And I know what she told myself
 20 and Mr. Simmons and Ms. Chaytor and I know
 21 what she's told us earlier today.
 22 THE COMMISSIONER:
 23 Q. But is there something--is this question
 24 arising out of the cross-examination?
 25 COFFEY, Q.C.:

1 CERTIFICATE
 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 9th day of June, A.D., 2008 before the
 6 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 9th day of June, A.D., 2008
 13 Judy Moss

1 Q. No, Commissioner. I will leave it at.
 2 THE COMMISSIONER:
 3 Q. Yes, okay.
 4 COFFEY, Q.C.:
 5 Q. Thank you.
 6 THE COMMISSIONER:
 7 Q. Good idea. Thank you, Mr. Coffey. Well, this
 8 concludes the day. It's been a rather long
 9 one. Thank you very much for your
 10 contribution to this effort. And I invite the
 11 rest of you to return at 9:30 morning when
 12 we'll continue with the next witness.
 13 Upon conclusion at 5:06 p.m.

Inquiry on Hormone Receptor Testing

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