

COMMISSION OF INQUIRY
ON HORMONE RECEPTOR TESTING

BEFORE THE HONOURABLE JUSTICE CAMERON - COMMISSIONER

MAY 5, 2008

Appearances:

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

- Rolf Pritchard Her Majesty in Right of NL

- Jane Hennebury Doctors Kara Laing et al

- Daniel Simmons Eastern Regional Integrated
. Health Authority

- Pamela Taylor 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

1 THE COMMISSIONER:
2 Q. Good morning. Please be seated. Mr. Coffey.
3 MR. JOHN ABBOTT, EXAMINATION-IN-CHIEF BY BERNARD COFFEY,
4 Q.C. (CONTINUED)
5 COFFEY, Q.C.:
6 Q. Thank you. Good morning, Commissioner, good
7 morning, Mr. Abbott.
8 MR. ABBOTT:
9 A. Good morning.
10 COFFEY, Q.C.:
11 Q. If we could, please, Registrar, Exhibit P-
12 0808? And this is really one of the last
13 exhibits we looked at on Friday, Mr. Abbott,
14 the e-mail from Tansy Mundon to Ms. Pennell
15 and Ms. Bonnell and it’s carboned to Mr.
16 Hynes, yourself, Ms. Hennessey and Ms.
17 Furlong. "The host is asking other women to
18 call in, so we should keep an eye on this."
19 And you pointed out that from your perspective
20 you would have understood at the time that
21 that would be Tansy, Ms. Mundon asking Ms.
22 Pennell and Ms. Bonnell to do that. What I
23 wanted to ask you is is that "we should keep
24 an eye on this" looking for what, what was
25 your understanding about what they would be

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1 looking for?
2 MR. ABBOTT:
3 A. Whether it was sort of the open line kind of
4 issue or other media would be how the matter
5 is being around ER/PR and breast cancer issues
6 being picked up in the media, what issues are
7 being raised and then using that information
8 to inform, I guess from our end would be the
9 minister to know what, in fact, is being said
10 in the public on this particular issue, at
11 this particular time.
12 COFFEY, Q.C.:
13 Q. And with a view to if there is being, say,
14 much or more and more being said, what would
15 you anticipate might happen then?
16 MR. ABBOTT:
17 A. Potentially more communication within the
18 communication officer level advising the
19 minister that, in fact, it’s an issue and
20 potential that he may have to respond. And
21 that would primarily be the general approach,
22 certainly from our end.
23 COFFEY, Q.C.:
24 Q. And from the--I take it then that at the,
25 certainly at the ministerial level if there is

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1 more attention is focused on it in a media
 2 public forum, the more apt or one would expect
 3 the minister to be, to pay attention to it in
 4 a personal way?
 5 MR. ABBOTT:
 6 A. From a ministerial -
 7 COFFEY, Q.C.:
 8 Q. To become engaged in it?
 9 MR. ABBOTT:
 10 A. - role, yes, absolutely. And that would be
 11 consistent for any other matter, you know, in
 12 the health portfolio if it was in the public
 13 domain.
 14 COFFEY, Q.C.:
 15 Q. Okay. If we could look, please, at Exhibit P-
 16 0807? Now, this is a, well, it's heading
 17 "Executive Committee Meeting, Friday, October
 18 28th, 2005, 9:30 a.m." And attendance are a
 19 number of people listed, including yourself,
 20 Ms. Hennessey and Ms. Mundon and Dr. Hunt and
 21 Mr. Hynes. There are a number of agenda
 22 items, of course, most of them are redacted
 23 because they're not relevant to the
 24 Commission's mandate. But No. 5 here is
 25 "ER/PR retesting", and it says, "Tansy Mundon

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1 noted Eastern Region is not keeping her in the
 2 loop on communications issues. She was
 3 unaware of the interview Dr. Williams did on
 4 Out of the Fog. Tansy Mundon to e-mail to
 5 John Abbott regarding this issue. John Abbott
 6 to follow-up with George Tilley." First of
 7 all, I take it, Mr. Abbott, this is, because
 8 I'd asked you before about and you had
 9 certainly explained that there were executive
 10 committee meetings generally every Friday?
 11 MR. ABBOTT:
 12 A. Yes.
 13 COFFEY, Q.C.:
 14 Q. And a number of times there would be an
 15 agenda?
 16 MR. ABBOTT:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. And this is obviously an agenda. In fact,
 20 this is not only so much the agenda item is
 21 listed suggesting that there was an agenda,
 22 but this one is the actual minutes. When we
 23 look back here it says these are the minutes,
 24 and under a heading, "Action" I've just read
 25 out to you what the action was. Do you recall

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1 what this was about?
 2 MR. ABBOTT:
 3 A. Other than what was there, in this case, I
 4 guess, Ms. Mundon felt that, you know, in
 5 terms of the issue that it was now sort of in
 6 the media that she should be kept more
 7 informed by Eastern Health to allow her to do
 8 her job in advising the minister on this
 9 issue. And that's how I understood it at the
 10 time.
 11 COFFEY, Q.C.:
 12 Q. And here apparently she had raised the fact
 13 that she had been unaware that Dr. Williams
 14 was doing an Out of the Fog interview. I take
 15 it her e-mailing you would be to remind you
 16 to, you know, to bring it to your attention,
 17 that would be the whole point?
 18 MR. ABBOTT:
 19 A. Yes.
 20 COFFEY, Q.C.:
 21 Q. And that you were to follow-up with George
 22 Tilley. What was that?
 23 MR. ABBOTT:
 24 A. Well, it was to, you know, I think we agreed
 25 at the meeting it was a sort of concern and

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1 leading up to this and previous to, you know,
 2 Ms. Mundon joining the department there was an
 3 expectation and communicated to the health
 4 authorities to keep, you know, our office and
 5 particular the director of communications
 6 office advised of issues, critical issues that
 7 may be in the media that the minister should
 8 be aware of in the event he or she, in this
 9 case he, might have to comment on and
 10 certainly should be aware of, in any event.
 11 That was largely from the communication side.
 12 There was generally a good working
 13 relationship and understanding on program or
 14 clinical, you know, any critical operation or
 15 issue, we might get a heads up through the
 16 regional board operation side of things. In
 17 this case Ms. Mundon had raised the--her
 18 concern and I guess she felt she wasn't making
 19 the in roads with, in this case, I guess, Ms.
 20 Bonnell at Eastern Health that she would like
 21 and would I raise that with Mr. Tilley and
 22 which obviously I had agreed to do.
 23 COFFEY, Q.C.:
 24 Q. And did you at the time?
 25 MR. ABBOTT:

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1 A. I would have done shortly thereafter in a
 2 telephone conversation with Mr. Tilley.
 3 Whether it was specifically focused on that,
 4 but it was certainly, it certainly got raised.
 5 COFFEY, Q.C.:
 6 Q. And what sort of--do you recall what you would
 7 have said to Mr. Tilley about this?
 8 MR. ABBOTT:
 9 A. Pretty well, you know, along the lines and
 10 say, "Look, there's a concern on our end about
 11 the level and type of communication. We'd
 12 just ask you, remind you on that." I don't
 13 think Mr. Tilley had any particular problem
 14 with that, may have assumed that, in fact, it
 15 was ongoing. And that was sort of the extent
 16 of that.
 17 COFFEY, Q.C.:
 18 Q. Exhibit P-0096, please, Registrar? Now, Mr.
 19 Abbott, this is, this exhibit is two e-mails.
 20 The first the bottom of the page is Thursday,
 21 November 3rd at 1407 hours. The subject is
 22 ER/PR. It's from Moira Hennessey to George
 23 Tilley. And she says, "Hi, George. Can you
 24 give me an update on the contacting of
 25 patients? Where are we and when will all

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1 patients be contacted? We need to insure that
 2 the minister can state all patients have been
 3 contacted when the House opens later this
 4 month. Also, have you received the report
 5 from the chief pathologist at the B.C. Cancer
 6 Institute and the chief technologist at Mount
 7 Sinai? If yes, can you give me a quick update
 8 to reflect in the minister's House of
 9 Assembly, HOA note? Thanks, Moira." And Mr.
 10 Tilley the same day, at 2:15 p.m., replied to
 11 Ms. Hennessey and copied the--copy, he also
 12 sent the same reply to Dr. Robert Williams.
 13 He said, "Moira, I am in Ottawa. I know a
 14 briefing meeting has been set with the
 15 minister on November 17th to brief him for the
 16 House. In the meantime, if there is some
 17 immediate need, you have in the interim, I ask
 18 that you touch base with Bob Williams."
 19 Signed, "George." Now, sir, where Ms.
 20 Hennessey refers to, in her e-mail, the issue
 21 of contacting the patients and "Where are we
 22 and when will all patients be contacted? We
 23 need to insure the minister can state all
 24 patients have been contacted when the House
 25 opens later this month." The reference to "We

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1 need to insure the minister can state."
 2 MR. ABBOTT:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. Why would that be?
 6 MR. ABBOTT:
 7 A. Now, I read this, again, I wasn't copied on it
 8 but just knowing how the communication most
 9 likely went, was the certainly from our end
 10 that the patients were and would be notified
 11 and we wanted to be sure that, in fact, they
 12 were. And there was, I guess, no more than
 13 that. It wasn't--and I wasn't reading this,
 14 or don't read this as, you know, the minister
 15 wants to state and you make sure he can state
 16 that it is. You know, we were working on the
 17 premise that they would be contacted and he,
 18 you know, can he, in fact, say that.
 19 COFFEY, Q.C.:
 20 Q. Yes. And I take it that as you just
 21 indicated, you wanted to insure because, you
 22 know, you used the word "we" which would be
 23 the department, I take it, in this context,
 24 wanted to insure that all patients had been
 25 contacted? I take it that was -

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1 MR. ABBOTT:
 2 A. Yeah. Well, the "we" being the--you know, it
 3 says, "Where are we", well the "we" is the
 4 department, Eastern Health is the
 5 collectively.
 6 COFFEY, Q.C.:
 7 Q. The collectively?
 8 MR. ABBOTT:
 9 A. Yes.
 10 COFFEY, Q.C.:
 11 Q. And this was, I take it, an admonition by Ms.
 12 Hennessey on behalf of the department to
 13 Eastern Health to insure that if they had not
 14 yet done so, that all patients be contacted?
 15 MR. ABBOTT:
 16 A. Well, as I said, I don't want to read in -
 17 COFFEY, Q.C.:
 18 Q. Well, I'm asking.
 19 MR. ABBOTT:
 20 A. Okay. What you just said. So I'm going to
 21 step back. Is I think she, like myself,
 22 working under the premise that all patients
 23 would be contacted. The question, you know,
 24 based on this, is that, in fact, the case, can
 25 the minister say that.

1 COFFEY, Q.C.:

2 Q. Well, do you know--and again, you would have

3 worked very closely with Ms. Hennessey and I

4 can, you know, of course, ask her. But I'm

5 trying to get some sense of as the deputy

6 minister at that time, early November of 2005,

7 need to insure, leaving aside whether the

8 minister can state it or not, need to insure,

9 because I presume in order for the minister to

10 be able to state it, it would actually defacto

11 have to be a fact?

12 MR. ABBOTT:

13 A. Yes, that's right.

14 COFFEY, Q.C.:

15 Q. You know, the underlying fact would have to be

16 true?

17 MR. ABBOTT:

18 A. Absolutely.

19 COFFEY, Q.C.:

20 Q. And so "we need to insure", in effect, that

21 all patients have been contacted. Meaning the

22 collective "we" the department and Eastern

23 Health together had to insure that -

24 MR. ABBOTT:

25 A. For the minister, you know. And this was

1 MR. ABBOTT:

2 A. No, I think what had, obviously had transpired

3 over the fall, you know, was that, in fact,

4 they would be notified once the test results

5 were back.

6 COFFEY, Q.C.:

7 Q. Okay. And -

8 THE COMMISSIONER:

9 Q. Mr. Abbott, I just want to make sure that it

10 seemed to me you were making--you were, in a

11 way, translating your view of what this

12 message meant and positing that there could be

13 two interpretations of the message. One was a

14 sort of polite inquiry as to the status of

15 events on assumption that everybody was

16 making, which was that all patients would be

17 contacted in due course and are we now in a

18 position where we can say that that has

19 occurred, and the other might be a message

20 directed to Eastern Health that to do

21 something if you have not done so?

22 MR. ABBOTT:

23 A. It would certainly be the former.

24 THE COMMISSIONER:

25 Q. So--yes. You're saying this is of the polite

1 getting ready for the House where he may have

2 to respond to questions so, in fact, what can

3 he say. And again, with me--sort of line this

4 up with the time line in terms of the

5 retesting and where, you know, where all those

6 tests were, we were, you know, based on the

7 information we would have had at the time,

8 working on the premise that these, the

9 specimens had been all sent out, even though

10 we knew they were going in blocks, so we are

11 now talking in November and working on the

12 premise that that should be close to having

13 all of that done, which -

14 COFFEY, Q.C.:

15 Q. In this context was all patient be contacted

16 to be notified about the retesting or

17 contacted with the retesting results?

18 MR. ABBOTT:

19 A. Well, as we know, did know, I guess, at that

20 time, the contacts were going to be made once

21 the test results were coming back.

22 COFFEY, Q.C.:

23 Q. And do you know if patients were being, before

24 this, just before this, were being contacted

25 to be told that they were being retested?

1 inquiry?

2 MR. ABBOTT:

3 A. Yes.

4 THE COMMISSIONER:

5 Q. As to how, where you were on a plan that

6 everybody knew was in operation?

7 MR. ABBOTT:

8 A. Yes.

9 THE COMMISSIONER:

10 Q. Okay.

11 COFFEY, Q.C.:

12 Q. Okay. The second part of Ms. Hennessey's e-

13 mail refers to the report, well, she asked

14 "Have you received the report from the chief

15 pathologist and the chief technologist? If

16 yes, can you give me a quick update to reflect

17 in the House of Assembly note?" What was that

18 about?

19 MR. ABBOTT:

20 A. Again, we had been notified that reviews were

21 under way. For purpose of a briefing note

22 would be just to tell us what, you know, what

23 was happening with those reviews and again,

24 with an inquiry to tell us what we can, in

25 fact, put in our briefing note for the

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1 minister.
 2 COFFEY, Q.C.:
 3 Q. Now, at that point in time you understood what
 4 was the purpose of these external reviews?
 5 MR. ABBOTT:
 6 A. To look at the lab, identifying what the
 7 issues are, obviously issues that might have
 8 contributed to the current issue around the
 9 need to retest and to identify, work on the
 10 premise that if there are changes or
 11 improvements need to be made, that these two
 12 individuals with their reports would identify,
 13 you know, those solutions for Eastern Health.
 14 COFFEY, Q.C.:
 15 Q. And if we could look, please, at Exhibit P-
 16 0097? Now, this is two e-mails, but the one
 17 at the bottom of the exhibit is from Moira
 18 Hennessey, Thursday, November 3rd, 2005 at
 19 2:56 p.m. sent to Dr. Robert Williams. The
 20 subject is ER/PR. It says, "Hi, Bob. Can you
 21 please give me an update on where you are with
 22 the contacting of patients? I understand the
 23 process is ongoing and there have been some
 24 problems. Also, have you received the report
 25 from the B.C. pathologist and a Mount Sinai

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1 technologist? If yes, what is the general
 2 finding(s)? While I know you are briefing the
 3 minister later this month, we have to complete
 4 the first draft of the House of Assembly
 5 briefing notes by tomorrow. I will then
 6 update it after the meeting with the minister.
 7 Thanks, Moira." There are two things here,
 8 one, here when she is e-mailing Dr. Williams
 9 and asking about the contacting of patients,
 10 she posits that she understands the process is
 11 ongoing and there have been some problems.
 12 Were you aware of the problems?
 13 MR. ABBOTT:
 14 A. Well, other than what we, again, what we had
 15 picked up through the media.
 16 COFFEY, Q.C.:
 17 Q. So that was where the -
 18 MR. ABBOTT:
 19 A. Yes.
 20 COFFEY, Q.C.:
 21 Q. Okay, the notion of problems was. In terms of
 22 the media, who in the media, do you recall in
 23 particular?
 24 MR. ABBOTT:
 25 A. Well, again, going back, I guess, to the

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1 Independent story and other, I can't recall
 2 any other--might have been a CBC story, what
 3 have you, for that period.
 4 COFFEY, Q.C.:
 5 Q. This would be problems in contacting of
 6 patients. Were there complaints or concerns
 7 expressed in the media at the time about
 8 patients not being contacted or how much they
 9 were contacted?
 10 MR. ABBOTT:
 11 A. Well, again, using some of the discussion we
 12 had last week, so there was, you know, there
 13 was, every now and then there was something
 14 popping up to say that there were, either in
 15 terms of finding out about test results
 16 through the media that, in fact, this was
 17 ongoing, those kind of--you know, just three
 18 or four of those that were there and we knew
 19 that that was happening. I think when we did,
 20 if there was any discussion with the Eastern
 21 Health board when they came up, there was
 22 usually an explanation provided that, you
 23 know, yes, we did in fact, then follow-up or
 24 why they were calling was different from what
 25 the issue was, those kinds of things. So we

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1 were being told, yeah, there were issues, but
 2 that they weren't significant issues from that
 3 point of view, while there were, I guess,
 4 problems.
 5 COFFEY, Q.C.:
 6 Q. Sir, do you know if the department itself,
 7 during the fall of 2005, was receiving, you
 8 know, complaints or contacts from patients
 9 expressing concerns?
 10 MR. ABBOTT:
 11 A. I'm pretty well sure that we didn't get a call
 12 or an e-mail, what have you, an inquiry for
 13 the whole period.
 14 COFFEY, Q.C.:
 15 Q. And would that--would you expect to have been
 16 notified if, in fact, there were such concerns
 17 or complaints at some point? I take it you
 18 might not take the phone call yourself, but -
 19 MR. ABBOTT:
 20 A. Well, you know -
 21 COFFEY, Q.C.:
 22 Q. Or you might.
 23 MR. ABBOTT:
 24 A. - it wouldn't surprise me to get a phone call.
 25 But, yeah, because in the course of any time

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1 the discussion within our management meetings
 2 or around this issue, certainly everybody, as
 3 evidenced by the people who contacted in e-
 4 mails in the group that would have been
 5 focused on this issue in terms around the
 6 minister's office myself, Ms. Hennessey, and
 7 what have you. So I don't--I would have
 8 expected and I said that we weren't getting
 9 anything from anybody, I don't think.

10 COFFEY, Q.C.:
 11 Q. If we could look, please, at Exhibit--just
 12 before we leave P-0097, the reference the
 13 report from, again, from the B.C. pathologist
 14 and Mount Sinai technologist, at that time
 15 would you have expected that you asked, if the
 16 reports were in and you had asked, would you
 17 get a copy of the report?

18 MR. ABBOTT:
 19 A. I would say, yes.

20 COFFEY, Q.C.:
 21 Q. Had you, in your capacity as deputy minister,
 22 ever been refused a copy of a report that you
 23 asked for?

24 MR. ABBOTT:
 25 A. No.

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1 COFFEY, Q.C.:
 2 Q. And up to the day you left your position as
 3 deputy minister, were you ever refused a copy
 4 of a report?

5 MR. ABBOTT:
 6 A. No.

7 COFFEY, Q.C.:
 8 Q. If we could, please, Exhibit P-0098? Sir,
 9 this is again--not again, I'm sorry. This is
 10 an e-mail from Heather Predham, Friday,
 11 November 4th 2005 at five p.m. It's to Ms.
 12 Hennessey and Dr. Williams, copied to Denise
 13 Dunn. Subject is ER/PR update, and she says
 14 "Hi, Moira. I understand you were speaking to
 15 Dr. Williams and required an update as to our
 16 communication efforts regarding the ER/PR
 17 situation. The following information
 18 represents 611 individuals. Some of these
 19 individuals have more"--should be than "one
 20 same sent. I have broken down these 611 in
 21 the following groups," and there's a fairly
 22 detailed listing here.

23 Just on this point, I take it Ms.
 24 Hennessey pointed out she needed this
 25 information generally for the House of

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1 Assembly briefing notes?

2 MR. ABBOTT:
 3 A. Yes.

4 COFFEY, Q.C.:
 5 Q. If we could bring up, please, Exhibit P-0124?
 6 Page eight, please. This is a question and
 7 answer briefing note. This particular one is
 8 the one of November 7th 2005, Mr. Abbott.

9 MR. ABBOTT:
 10 A. Yes.

11 COFFEY, Q.C.:
 12 Q. And you'll see here under background, there's
 13 a--look down through the number of bullets,
 14 there are a fair number of actual, very
 15 specific numbers.

16 MR. ABBOTT:
 17 A. Yes.

18 COFFEY, Q.C.:
 19 Q. The fourth bullet says "the retesting involved
 20 611 patients of whom 158 patients are
 21 deceased" and it has quite a number of very
 22 detailed numbers that probably reflect the
 23 numbers in P-0098. Why I raise that, refer
 24 you to this right now is this--if we could
 25 just bring up P-0098 again please? Would you

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1 receive--would you be exposed to these numbers
 2 through getting a copy of the e-mail or
 3 through the briefing note generally?

4 MR. ABBOTT:
 5 A. Unless I was, you know, copied or it had been
 6 forwarded on, it would have been in the
 7 briefing note.

8 COFFEY, Q.C.:
 9 Q. Okay. Ms. Hennessey's role in that would be
 10 what, in preparing that November 7th briefing
 11 note?

12 MR. ABBOTT:
 13 A. She, either herself or one of her staff, would
 14 have prepared it based on the data and
 15 information provided by Eastern Health.

16 COFFEY, Q.C.:
 17 Q. Okay. If we could, please, looking at P-0098,
 18 the bottom of the page, page one of the
 19 exhibit, Ms. Predham concludes by saying "I
 20 understand that Dr. Williams has attempted to
 21 reach you to discuss the quality review. He
 22 will be following up with you on Monday," and
 23 because the first part, of course, the e-mail
 24 deals with the numbers, in terms of contacting
 25 patients and the reference to quality review,

Page 25

1 did Ms. Hennessey ever talk to you about that?

2 MR. ABBOTT:

3 A. No, not--we didn't, I don't think,

4 distinguished that particular point, certainly

5 at that time.

6 COFFEY, Q.C.:

7 Q. The point being these external review reports

8 by the chief technologist, chief pathologist,

9 I gather that's what she means by quality

10 review?

11 MR. ABBOTT:

12 A. I certainly -

13 COFFEY, Q.C.:

14 Q. Well, Ms. Predham -

15 MR. ABBOTT:

16 A. - now when I look at it for sure, yes.

17 COFFEY, Q.C.:

18 Q. That's what Ms. Predham says to Ms. Hennessey,

19 but in terms of Ms. Hennessey, during that

20 fall of 2005, all the way up to the beginning

21 of 2006, she never spoke to you about the

22 idea, you know, "John, I can't get a copy of

23 those reports because they're quality

24 reviews?"

25 MR. ABBOTT:

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1 A. No.

2 COFFEY, Q.C.:

3 Q. No, okay, and she certainly here had asked for

4 the general findings.

5 MR. ABBOTT:

6 A. Yes.

7 COFFEY, Q.C.:

8 Q. If we could look, please, again at P-0124?

9 Now in particular, the November 7th briefing

10 note. Mr. Abbott, if I just could, page nine

11 of the exhibit. It's prepared by--said to be

12 prepared by Moira Hennessey. This is the sort

13 of briefing note that would end up in the

14 House of Assembly binder for the minister?

15 MR. ABBOTT:

16 A. Yes.

17 COFFEY, Q.C.:

18 Q. And under anticipated questions, the second

19 bullet says "how did this happen? What is

20 being done to correct this problem?" and I

21 take generally if there's an answer to that,

22 it would be found--at all in this briefing

23 note, it would be found under the key

24 messages, if there's one?

25 MR. ABBOTT:

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1 A. If there is one, yes, and as I said, the--and

2 we never necessarily--just because we sort of

3 did the anticipated question component, all

4 we, in terms of our key messages, the

5 information is what we thought--information we

6 had and what an answer or a message, if I can

7 put it that way, could be or should be from

8 the staff level, and we didn't always have the

9 answers, so called, to the anticipated

10 questions. So it was sort of a mock question

11 to get the minister focused.

12 COFFEY, Q.C.:

13 Q. And in terms of this--and the key messages

14 here, the second bullet, it says "the problem

15 was discovered in May and a quality review

16 began immediately. Determining what happened

17 with the testing of tissue samples is critical

18 and a priority for Eastern Health and this

19 government. The situation is disturbing for

20 all of us." I take it this is what the staff,

21 the civil service staff of the department were

22 providing for the minister in regard to

23 possibly responding to the question "how did

24 this happen?"

25 MR. ABBOTT:

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1 A. Yes.

2 COFFEY, Q.C.:

3 Q. "What is being done to correct this problem?"

4 Now in terms of that, looking at Exhibit P-

5 0097 please, page one of it, the second

6 paragraph in Ms. Hennessey's e-mail to Dr.

7 Williams at 2:56 p.m. where she asks "have you

8 received the report from the B.C. pathologist

9 and Mount Sinai technologist? If yes, what is

10 the general findings?" I take it if the

11 department was going to find out how did this

12 happen, as determining what happened with a

13 testing of tissue samples is critical and a

14 priority for the government, according to the

15 key message, the only way the department might

16 find out at this stage would be to ask what's

17 in those reports? If there's an answer the

18 report -

19 MR. ABBOTT:

20 A. Well, it would be to, I guess, ask of Eastern

21 Health.

22 COFFEY, Q.C.:

23 Q. Yes.

24 MR. ABBOTT:

25 A. And through the reports and any other

Page 29

1 information they would have at their disposal.
 2 COFFEY, Q.C.:
 3 Q. And do you know if, in November of 2005, the
 4 government ever--the government in the sense
 5 of the department ever found out what was in
 6 those reports or what the general findings
 7 were?
 8 MR. ABBOTT:
 9 A. Not whether it's at that particular date, but
 10 around this time, our understanding was and I
 11 guess comes in the briefing note is that the
 12 review, you know, the two reviews are done,
 13 there are process and issues within the lab.
 14 We are addressing those and the sense I had
 15 was that they weren't insurmountable, and that
 16 I think Eastern Health were feeling
 17 comfortable that they were now getting
 18 certainly a better handle on these issues
 19 within the lab.
 20 COFFEY, Q.C.:
 21 Q. If we could, please, in that regard, P-0124?
 22 You say in a briefing note, we'll look at the
 23 second page of it, under background, and let
 24 me see, the sixth bullet under the background
 25 says "a quality review started in May. It has

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1 included an internal review of testing
 2 processes and an external review by the chief
 3 pathology of the B.C. Cancer Institute and
 4 chief technologist at Mount Sinai Hospital."
 5 When we look through the rest of the
 6 background, at least in this particular one,
 7 there doesn't seem to be any information as to
 8 what's in those reports.
 9 MR. ABBOTT:
 10 A. No, and again, you know, it was a briefing
 11 note, so it was just giving some, you know,
 12 very high level information there and that was
 13 the intent of that.
 14 COFFEY, Q.C.:
 15 Q. See, if--under key messages, if it is the
 16 considered opinion of the civil service part
 17 of the Department of Health that determining
 18 what happened with the testing of tissue
 19 samples is critical and a priority for the
 20 government, wouldn't it have made sense at the
 21 time to ask Eastern Health "well, what's in
 22 the reports? And if you don't have them
 23 today, when you do get them, let us know as to
 24 what happened with the testing of tissue
 25 samples."

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1 MR. ABBOTT:
 2 A. No, and you know, I understand your question.
 3 I guess we were comforted by, you know, what
 4 they were telling us and we accepted that on
 5 face value.
 6 COFFEY, Q.C.:
 7 Q. And what were they telling you?
 8 MR. ABBOTT:
 9 A. As I said, I guess, previously, that the
 10 reviews were being done. We are--have
 11 identified some issues in the lab, in terms of
 12 how we're structured, some of our processes,
 13 and we are now working to improve on those.
 14 COFFEY, Q.C.:
 15 Q. I'm sorry -
 16 MR. ABBOTT:
 17 A. And it was at that, I'd say sort of at that
 18 general level at that time, and that's, I
 19 guess, a conversation I would have had with
 20 George Tilley and then subsequently when we
 21 were having some briefings, you know, leading
 22 up to the House of Assembly session, you know,
 23 that was the messaging that they were
 24 providing to us. We did not see the reports
 25 and as I said, it wasn't that they said we

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1 couldn't see them or those kinds of things.
 2 We accepted that that was their purview. They
 3 were satisfied that things now had turned a
 4 corner on this in terms of their understanding
 5 and improving on the system, and we didn't
 6 push down any further on that.
 7 COFFEY, Q.C.:
 8 Q. And I'm sorry, Mr. Abbott, I just--the
 9 messaging you were getting from, if not before
 10 November 7th, in the lead up to the House
 11 opening -
 12 MR. ABBOTT:
 13 A. Yes, around this time.
 14 COFFEY, Q.C.:
 15 Q. Around this time.
 16 MR. ABBOTT:
 17 A. Yes, same time.
 18 COFFEY, Q.C.:
 19 Q. So Mr. Tilley was telling you what, in terms
 20 of -
 21 MR. ABBOTT:
 22 A. My sense that, you know, "John, we've got the--
 23 we're looking at our internal processes.
 24 We've had the experts in. They're telling us
 25 that there are improvements to be made. We

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1 are going to make those--are or are making
 2 those improvements and we feel now that we've
 3 got a good handle on what's going on in the
 4 lab and we're working to continue to make
 5 those improvements."
 6 COFFEY, Q.C.:
 7 Q. Did Mr. Tilley ever tell you what had
 8 happened?
 9 MR. ABBOTT:
 10 A. No, not in--not specifically that, you know,
 11 what had happened, no.
 12 COFFEY, Q.C.:
 13 Q. And did you ever ask him what had happened?
 14 "I hear what you're saying, George, but I want
 15 to know what happened." Did you ever -
 16 MR. ABBOTT:
 17 A. No, I don't--no, I did not put that question
 18 to him.
 19 COFFEY, Q.C.:
 20 Q. And in that regard, follow-up question is why
 21 not?
 22 MR. ABBOTT:
 23 A. Well, I looked at it from the--and when I look
 24 back on it, that hasn't changed very much, is
 25 that they came to say they had a problem with

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1 test results. They were retesting and we've
 2 identified the issue, not the problem, as it
 3 were. This was, I guess, an indicator and we
 4 have gone to do the retesting. Secondly, we
 5 have brought in the experts to look at our
 6 processes. They have said you need to make
 7 changes and if you make those changes, then
 8 your "problem" should be addressed.
 9 COFFEY, Q.C.:
 10 Q. Yeah, and -
 11 MR. ABBOTT:
 12 A. But defining the problem, no.
 13 COFFEY, Q.C.:
 14 Q. And just in terms of that, Mr. Abbott, because
 15 certainly, you know, whoever actually drafted,
 16 whether it was Ms. Hennessey or one of her
 17 subordinates drafted that key message on the
 18 November 7th briefing note, did pause it and
 19 was suggesting that perhaps the minister could
 20 say publicly determining what happened with
 21 the testing of tissue samples is critical and
 22 a priority for--it's not only Eastern Health,
 23 but it also says "and this government."
 24 MR. ABBOTT:
 25 A. Yes.

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1 COFFEY, Q.C.:
 2 Q. And it goes on to say "the situation is
 3 disturbing for all of us." I'm going to
 4 suggest to you, at that time, prior to this
 5 and around that time, in the media at times,
 6 patients were being quoted as asking, you
 7 know, "what happened? Why did this happen?"
 8 MR. ABBOTT:
 9 A. Yes.
 10 COFFEY, Q.C.:
 11 Q. And so it was a matter of public interest and
 12 as posited here, interest for the government
 13 to know--determining what happened with the
 14 testing and it's one thing for Eastern Health
 15 to know, but here it says the government would
 16 like to know too.
 17 MR. ABBOTT:
 18 A. Um-hm.
 19 COFFEY, Q.C.:
 20 Q. And yet, the government never went that extra
 21 step.
 22 MR. ABBOTT:
 23 A. That is--you know, in terms of how--yes, in
 24 terms of your question, that is correct.
 25 COFFEY, Q.C.:

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1 Q. If the question--in terms of that, did Eastern
 2 Health like during that time period, October,
 3 November, December of 2005, Mr. Tilley in
 4 particular whom you would have been dealing
 5 with, did he ever intimate to you that the
 6 issue might involve not only so much
 7 technology as is perhaps personnel?
 8 MR. ABBOTT:
 9 A. Well, again, depending how you define
 10 personnel in this regard. That there were
 11 technology may be a factor, but we were
 12 talking about processes, in terms of how
 13 they're--organizationally, how the lab is
 14 structured and the reporting relationships and
 15 who should--you know, the role of the
 16 technologist and the pathologist, those kinds
 17 of things, but not, if I can put it,
 18 individual performance, that never--if that's
 19 what you're referencing, no.
 20 COFFEY, Q.C.:
 21 Q. Yes, like we now have seen--you've seen--have
 22 you seen the report since?
 23 MR. ABBOTT:
 24 A. No.
 25 COFFEY, Q.C.:

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1 Q. You haven't--first nor last, you've never -
 2 MR. ABBOTT:
 3 A. No.
 4 COFFEY, Q.C.:
 5 Q. If we could, please, let me see--on this
 6 point, looking at these briefing notes, I take
 7 it not only might these be used by the
 8 minister in responding to questions in the
 9 House of Assembly, but if the minister was
 10 asked by a member of the public or the media a
 11 question -
 12 MR. ABBOTT:
 13 A. Yes.
 14 COFFEY, Q.C.:
 15 Q. - he could utilize these?
 16 MR. ABBOTT:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. Now sir, at the time, you can see here, under
 20 background, at page nine of P-0124, would you
 21 agree that there are fairly detailed numbers
 22 here? Whether they're accurate or not, you
 23 know -
 24 MR. ABBOTT:
 25 A. In terms of breaking down, yes, from the macro

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1 down to the subsets within that, yes.
 2 COFFEY, Q.C.:
 3 Q. Now at this time, during this time frame which
 4 would be November 2005, you were aware, were
 5 you not, that there were people such as Mr.
 6 Dawe, Peter Dawe, and patients being quoted in
 7 the media about--in effect, complaining about
 8 a lack of information coming from Eastern
 9 Health?
 10 MR. ABBOTT:
 11 A. Yes.
 12 COFFEY, Q.C.:
 13 Q. Yet, as deputy minister, you knew that there
 14 was detailed information available. If we
 15 look under this background here, it is very
 16 detailed.
 17 MR. ABBOTT:
 18 A. Yes.
 19 COFFEY, Q.C.:
 20 Q. Was there ever any thought given to contacting
 21 Mr. Tilley and saying, you know, "George,
 22 we're hearing a lot of complaints in the
 23 media. We hear them. Why don't you respond
 24 to them, in the sense of provide very--you've
 25 given us detailed information. Why not put it

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1 out there?"
 2 MR. ABBOTT:
 3 A. I don't think we had that type of conversation
 4 and when we did talk about communications, was
 5 in terms of the approach they were on was that
 6 they were going to focus on, again, the
 7 individual patient and going to postpone or
 8 delay--may not be the right term here, any
 9 public reporting until, you know, this was
 10 sort of going to wrap up in terms of all the
 11 test results. So that was, that would have
 12 been the conversation then and I did not, at
 13 the same time, I don't think the minister nor
 14 I ever had a conversation either that
 15 suggested anything different, that we, you
 16 know, maybe we should get them to, you know,
 17 Eastern Health, that is, to do a public
 18 reporting and he, you know, the minister again
 19 was, understood the issue, was engaged in it,
 20 and from a communication's point of view, from
 21 at least there wasn't any strong suggestion at
 22 this point to do that.
 23 THE COMMISSIONER:
 24 Q. Mr. Abbott, do I take it from your
 25 conversation of last week that you would have

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1 felt that that was something you could not do
 2 unless the minister directed you to it?
 3 MR. ABBOTT:
 4 A. I had the, certainly the option of suggesting
 5 that to the minister and to George Tilley,
 6 yes. But in terms of saying, you know, it is
 7 now time to go and go, that would have to be
 8 to and through the minister from my end. And,
 9 if I may -
 10 THE COMMISSIONER:
 11 Q. So it you had thought, sorry, just let me
 12 complete this thought and then you can add to
 13 that, if you wouldn't mind. If you had
 14 thought that Eastern Health was not--if you
 15 had a different view of the way Eastern Health
 16 managed the matter of ER/PR in terms of its
 17 decisions as to who to contact and then how
 18 they dealt with it subsequently when the
 19 matter became public and they in fact had a
 20 fait accompli and had to deal with it at that
 21 level, do I take it that you would, as
 22 executive perhaps make a suggestion to Mr.
 23 Tilley who was running the operation or if you
 24 felt strongly enough about it, you might go to
 25 your minister and say, "Minister, do you want

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1 to think about this?"

2 MR. ABBOTT:

3 A. Yes.

4 THE COMMISSIONER:

5 Q. But in terms of taking action, that could only

6 be done if the minister agreed with you and

7 said make that happen.

8 MR. ABBOTT:

9 A. Yes. And in this case, where the minister was

10 apprised pretty well at the same, give the

11 same pretty well same information and

12 understanding of the issue as I did and he was

13 aware of how Eastern Health was dealing with

14 this issue. And not do it, much of

15 retrospective, but once they had taken this

16 course verses the course I would have

17 preferred, you know, when this first came to

18 our attention, we were on that track now and I

19 guess we were watching it being played out.

20 COFFEY, Q.C.:

21 Q. And here in this context, the track, I gather,

22 is that certainly in November of 2005, Eastern

23 Health has very detailed numbers as to, from

24 their perspective they were. They were

25 keeping the department and the minister

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1 apprised of those numbers.

2 MR. ABBOTT:

3 A. Yes.

4 COFFEY, Q.C.:

5 Q. Yet, they were refusing to comment publicly

6 about it.

7 MR. ABBOTT:

8 A. Yes, in terms of the detail.

9 COFFEY, Q.C.:

10 Q. The details. And they knew that there were

11 concerns expressed publicly by people who

12 were, not only by the media itself, perhaps,

13 but people through the media, interested

14 individuals and stakeholders, as they were,

15 about a lack of communication from Eastern

16 Health.

17 MR. ABBOTT:

18 A. Yes.

19 COFFEY, Q.C.:

20 Q. And so as you say, the department took the

21 position, okay, well if that's Eastern

22 Health's approach, we'll watch it, but we

23 won't interfere--intervene or interfere.

24 MR. ABBOTT:

25 A. Yes.

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1 COFFEY, Q.C.:

2 Q. And did Mr. Tilley or anybody from Eastern

3 Health ever explain to you the rationale for

4 taking that approach?

5 MR. ABBOTT:

6 A. Other than we were -

7 MR. SIMMONS:

8 Q. Excuse me, Madam Commissioner, we heard a

9 number of questions now that have had the

10 premise in it that during this time period,

11 which I believe we're talking about is between

12 the 2nd of October '05, when The Independent

13 story broke and this briefing note in early

14 November, that there had been no public

15 statements from Eastern Health. And we

16 haven't gone through the evidence, but there

17 are a number of news stories throughout the

18 month of October in which Dr. Williams gave

19 interviews and is quoted and referenced a

20 moment ago to "Out of the Fog" -

21 THE COMMISSIONER:

22 Q. (Inaudible - microphone not turned on) Dr.

23 Williams having been on "Out of the Fog", so I

24 don't know that the premise is that, though.

25 MR. SIMMONS:

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1 Q. Well, I understood from the questioning that

2 there hadn't been any information coming from

3 Eastern Health and maybe I've misunderstood

4 that, but if that had been the case, I wanted

5 to just make sure it was understood that there

6 had been those public statements made on

7 behalf of Eastern Health in that time period.

8 THE COMMISSIONER:

9 Q. All right, I did not understand the question

10 to be based on that premise, Mr. Simmons, but

11 I'm grateful for you for pointing it out and

12 I'm hoping the witness understood that there

13 had been some communications during that

14 period of time.

15 MR. ABBOTT:

16 A. Oh yes.

17 COFFEY, Q.C.:

18 Q. You had certainly been aware of that, I mean,

19 Dr. Williams and -

20 MR. ABBOTT:

21 A. Yeah and if I understand your question, the

22 detail, did they go with a public statement or

23 through an interview to lay that out, no, that

24 did not happen as I -

25 COFFEY, Q.C.:

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1 Q. They weren't giving out detailed information,
 2 detailed in the sense of that it's here on
 3 page 9. And, I'm sorry, I asked you if Mr.
 4 Tilley ever--do you recall if Mr. Tilley ever
 5 explained the rationale for the approach that
 6 they were taking?
 7 MR. ABBOTT:
 8 A. No, other than they were still, their focus
 9 was--on patient notification once results came
 10 in and that was going to be their focus and
 11 they would respond to media inquiries and that
 12 was how they felt they could do it or should
 13 do it and that was it. And it was going to be
 14 left to really deal at the clinical level here
 15 with the oncologists or other physicians to
 16 notify patients once the results came in.
 17 COFFEY, Q.C.:
 18 Q. Exhibit P-0128, please? Page 16, please when
 19 it comes up. Now, this is a news release,
 20 November 9, 2005, it's a Health and Community
 21 Services one. The title is "Improving Access
 22 to Treatment Therapies for Breast Cancer
 23 Patients" and this is the one dealing with
 24 Herceptin. And you look at the third
 25 paragraph, you'll see "Government will invest

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1 two million and thirty thousand dollars
 2 annually to add Herceptin to the provincial
 3 systemic therapy program." And the immediate
 4 contact is Ms. Mundon. If we could bring up,
 5 please, exhibit P-0164. Now this is a
 6 confidential memorandum to executive council,
 7 the title is "New Treatment Therapies for
 8 Cancer Patients" The issue is whether to
 9 introduce new treatment therapies to target
 10 cancer patients in Newfoundland and Labrador.
 11 And then there's a series of three
 12 recommendations, the first of which is to add
 13 the drug, Herceptin, to the provincial
 14 systemic therapy formulary to treat 40
 15 patients and so on, and the background is set
 16 out. The preparation of such a memorandum to
 17 executive council, as the deputy minister of
 18 Health, would you have been involved at all in
 19 that?
 20 MR. ABBOTT:
 21 A. Yes.
 22 COFFEY, Q.C.:
 23 Q. Your role then would have been what?
 24 MR. ABBOTT:
 25 A. Yeah, to first direct that, in this case, that

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1 the paper get prepared; secondly then it
 2 would--once it was in draft form, it would
 3 have been provided to me for any review,
 4 input, further commentary. Then once that was
 5 completed, I would then recommend its signing
 6 to the minister.
 7 COFFEY, Q.C.:
 8 Q. And so you did direct that this be prepared, I
 9 take it?
 10 MR. ABBOTT:
 11 A. Yes.
 12 COFFEY, Q.C.:
 13 Q. That's one of the job functions of a deputy
 14 minister.
 15 MR. ABBOTT:
 16 A. Yes.
 17 COFFEY, Q.C.:
 18 Q. Why did you do that? I mean, what motivated
 19 you to do that in this particular context?
 20 MR. ABBOTT:
 21 A. Well the history of this particular issue and
 22 it was juxtaposed to ER/PR, is that again, I
 23 got a call from Mr. Tilley and he indicated to
 24 me that he and Dr. Williams had some
 25 conversations with the oncologists at Eastern

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1 Health, that they were looking to have
 2 Herceptin included in the formulary report at
 3 the hospital to deal with cancer patients and
 4 that they were exerting a fair amount of
 5 pressure to do that. They felt that that drug
 6 needed to be provided so that they could
 7 provide the best care for their patients
 8 (unintelligible) and that the issue for them
 9 is that one, it's sort of, not so much a new
 10 drug, but a drug now for a new purpose or an
 11 additional purpose. They were not quite ready
 12 themselves, how they move forward with this.
 13 They certainly didn't have a budget to do
 14 this, as evidenced by the significant numbers,
 15 but he said he was getting a lot of pressure
 16 from the oncologists and if they weren't going
 17 to do something, i.e. Eastern Health, then
 18 there may be some--oncologists may decide that
 19 they might want to leave Eastern Health. So
 20 again, I sensed from it that this was a very
 21 urgent matter, so -
 22 COFFEY, Q.C.:
 23 Q. So when was this phone call, do you recall?
 24 MR. ABBOTT:
 25 A. It was either late summer, early fall of '05.

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1 And I said to George Tilley, what is it I an
 2 do for you at this point, we're not, even if
 3 we were to agree with everything you said, to
 4 get a decision of this magnitude is going to
 5 take some time. And as a result of that
 6 conversation, it was agreed that I would, in
 7 fact, go to a briefing at Eastern Health with
 8 the oncologists to present their case, which I
 9 did and they had, obviously, new evidence
 10 based on research in the United States and
 11 elsewhere suggesting that Herceptin in this
 12 case, Avastin in terms of colorectal cancer
 13 were now new therapies to be used for those
 14 who had those specific cancers for which the
 15 drugs could be treated, and to extend life and
 16 those things, that they felt it should be, it
 17 should be funded. The evidence was
 18 compelling. I said, well, the best I could
 19 do, both with everybody in the room, was to
 20 bring this forward to the minister to say
 21 look, this is a very straight forward request,
 22 it is a significant request and financially
 23 significant and it's something that he may
 24 wish to consider to bring forward to his
 25 colleagues. I briefed the minister on the

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1 conversation, he said yes, obviously it's
 2 going to require, obviously, Cabinet approval
 3 and particularly and really because of the new
 4 money to be considered here. That's the basis
 5 of it, for me. So I directed then with the
 6 minister that he was fine with going forward,
 7 that we get the paper drafted.
 8 COFFEY, Q.C.:
 9 Q. And so what, do you recall when it was that
 10 you had this briefing?
 11 MR. ABBOTT:
 12 A. Well, as I said, it was either late summer or
 13 early fall.
 14 COFFEY, Q.C.:
 15 Q. So it was shortly after George called you
 16 initially.
 17 MR. ABBOTT:
 18 A. Oh yes, it was within a couple of days.
 19 COFFEY, Q.C.:
 20 Q. So there was some urgency from your
 21 perspective communicated to you by Mr. Tilley.
 22 MR. ABBOTT:
 23 A. Yes, I think he was under extreme pressure to
 24 be seen to be doing something here.
 25 COFFEY, Q.C.:

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1 Q. And -
 2 THE COMMISSIONER:
 3 Q. And here there was a role for the department
 4 because of the budget implication?
 5 MR. ABBOTT:
 6 A. Yes, primarily, if in fact they had had the
 7 budget within their drug program, this would
 8 probably have never come to the department
 9 because they were adding and changing drugs on
 10 their formulary, subject to need and available
 11 resources, but the significant of this, both
 12 financially and that the drug itself was sort
 13 of on the leading edge, I think they felt that
 14 they were going to need the department to
 15 support them on that. This was a contentious
 16 issue across the country as well.
 17 THE COMMISSIONER:
 18 Q. And contentious in the -
 19 MR. ABBOTT:
 20 A. The efficacy of the -
 21 THE COMMISSIONER:
 22 Q. Of the use of Herceptin for particular
 23 purposes.
 24 MR. ABBOTT:
 25 A. Yes, so we were known, you know, in

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1 Newfoundland, certainly we were very seldom
 2 going to be the first out of the gate and
 3 financially it was one of the reasons and here
 4 we would be pretty well almost first out of
 5 the gate if we accepted this new evidence.
 6 And Health Canada had only approved this drug
 7 for this purpose, I believe in July of '05 or
 8 thereabouts.
 9 THE COMMISSIONER:
 10 Q. So were there really two purposes in coming to
 11 the department in a sense to add it to the
 12 budgetary impact of the use of this particular
 13 drug? Did Eastern Health feel they somehow,
 14 because Herceptin was now being used for a new
 15 purpose, need your approval?
 16 MR. ABBOTT:
 17 A. Well I think because of the magnitude of the
 18 cost of the drug and on a cost per patient
 19 basis, that they would have most likely in
 20 this case, brought it forward and would have
 21 had a discussion with us probably in any
 22 event.
 23 THE COMMISSIONER:
 24 Q. Uh-hm.
 25 MR. ABBOTT:

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1 A. Because there were other drugs that weren't
 2 being funded at a lesser cost per patient for
 3 other reasons, so I think in this case,
 4 certainly the two combined, but they would
 5 have had to come to the department to add it
 6 in having no funds to do it.
 7 THE COMMISSIONER:
 8 Q. So do I take it from your response that there
 9 are, how do I put this, that an institution,
 10 an authority cannot use particular drugs for
 11 particular purposes unless they're on a list
 12 that are approved?
 13 MR. ABBOTT:
 14 A. Yes.
 15 THE COMMISSIONER:
 16 Q. And this, I presume, would be the more
 17 expensive drugs or all drugs?
 18 MR. ABBOTT:
 19 A. No, it would be within the hospital, so we
 20 have a hospital base formulary and we have a
 21 provincial formulary for provincial drug
 22 programs. So there are two separate tracks
 23 here.
 24 THE COMMISSIONER:
 25 Q. Okay, all right.

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1 MR. ABBOTT:
 2 A. And these would be, Commissioner, these would
 3 be administered in the hospital setting.
 4 THE COMMISSIONER:
 5 Q. All right, so there is a list of drugs which
 6 the province creates, which are approved for
 7 use for certain kinds of things within a
 8 hospital setting.
 9 MR. ABBOTT:
 10 A. Yes.
 11 THE COMMISSIONER:
 12 Q. And if you want to expand that because a new
 13 drug comes out, then that has to get approval
 14 to go on the list?
 15 MR. ABBOTT:
 16 A. Well, if I may, in the hospital setting that's
 17 left primarily to the hospital to do, but they
 18 will seek our advice on, you know, whether
 19 it's of the leading edge and particularly
 20 leading edge with a significant cost or
 21 significant clinical implication.
 22 THE COMMISSIONER:
 23 Q. All right.
 24 MR. ABBOTT:
 25 A. And at the same time, we have a provincial

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1 drug program where, you know, for drugs that
 2 are dispensed through your local pharmacy,
 3 that's a provincial formulary as well. So
 4 there are two different -
 5 THE COMMISSIONER:
 6 Q. Yes, thank you.
 7 COFFEY, Q.C.:
 8 Q. So you did commission, as it were, the
 9 preparation of a memorandum to executive
 10 council.
 11 MR. ABBOTT:
 12 A. Yes.
 13 COFFEY, Q.C.:
 14 Q. And on this point, Mr. Abbott, your
 15 understanding was what, in terms of Herceptin,
 16 well first of all, what were the oncologists,
 17 what was the oncologists' position, vis-a-vis
 18 the usage of Herceptin? They wanted it used
 19 for what?
 20 MR. ABBOTT:
 21 A. Well they said for, you know, as said here,
 22 early stages of breast cancer to--and it would
 23 only be for specific cases and that the
 24 evidence is suggesting that with Herceptin and
 25 the other treatment, that survival rates were

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1 going to, were improving and significantly
 2 from their perspective.
 3 COFFEY, Q.C.:
 4 Q. Were they pushing for any other types--at this
 5 point in time, were they pushing for any other
 6 treatment therapies using other drugs?
 7 MR. ABBOTT:
 8 A. Well that was from, and we had--so that was
 9 from Dr. Laing and the breast cancer; Dr.
 10 Siddiqui was there as well and he was
 11 presenting with respect to colorectal cancer
 12 and Avastin and other drugs there, again, and
 13 we included that in our review.
 14 COFFEY, Q.C.:
 15 Q. So when you went to this presentation, it was
 16 Dr. Laing -
 17 MR. ABBOTT:
 18 A. Yes.
 19 COFFEY, Q.C.:
 20 Q. Was making a presentation on behalf of or
 21 urging the adoption of Herceptin.
 22 MR. ABBOTT:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. Funding of Herceptin. Dr. Siddiqui was urging

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1 the adoption of certain drugs for colorectal
 2 cancer.
 3 MR. ABBOTT:
 4 A. Yes.
 5 COFFEY, Q.C.:
 6 Q. Was there anyone else there?
 7 MR. ABBOTT:
 8 A. I believe George Tilley and Dr. Williams was
 9 there. I believe there was another person
 10 from Eastern Health and there was somebody
 11 with me from the department and I don't know
 12 if it was Ms. Hennessey or one of her staff.
 13 COFFEY, Q.C.:
 14 Q. No, I thinking about was there any other
 15 physician, I'm sorry, advocating a particular
 16 other drug.
 17 MR. ABBOTT:
 18 A. No.
 19 COFFEY, Q.C.:
 20 Q. Multiple myeloma and I'll help you in this
 21 regard.
 22 MR. ABBOTT:
 23 A. Yes, you might need to, yes.
 24 COFFEY, Q.C.:
 25 Q. If we could then, just looking at the

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1 recommendations are set out there,
 2 recommendation No. 1 was to add the drug
 3 Herceptin.
 4 MR. ABBOTT:
 5 A. Uh-hm.
 6 COFFEY, Q.C.:
 7 Q. If we just look then further, because you said
 8 this document would have been prepared,
 9 reviewed by you, vetted by you -
 10 MR. ABBOTT:
 11 A. Yes.
 12 COFFEY, Q.C.:
 13 Q. - and changes as required from your
 14 perspective, I take it, and then go forward to
 15 the minister for his review and signature.
 16 MR. ABBOTT:
 17 A. Um-hm.
 18 COFFEY, Q.C.:
 19 Q. Now, if we could, Commissioner, please, look
 20 at page 2 and this is under, if I could, under
 21 background, get some sense of this. In the--
 22 I'm sorry, I'll just go back to the page
 23 before--the last paragraph on page one, it
 24 says, "the availability of these drugs in
 25 other provinces and the documented benefits of

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1 the drugs from clinical trials are resulting
 2 in pressure from patients and providers to add
 3 new treatment therapies to the provincial
 4 systemic drug formulary. For example,
 5 Herceptin has been available in all
 6 jurisdictions including Newfoundland and
 7 Labrador for the treatment of patients with
 8 advanced breast cancer for a number of years".
 9 And it goes on to describe what the situation
 10 is elsewhere saying, "all provinces except New
 11 Brunswick have started providing coverage for
 12 Herceptin for patients in the early stages of
 13 breast cancer and requests to provide
 14 Herceptin for early stage breast cancer have
 15 already been received from patients and their
 16 families. And recently there has also been
 17 increased pressure from oncologists to provide
 18 Herceptin to these patients. The estimated
 19 annual cost is 2 million dollars." And it
 20 spells out why that is so. And then goes on,
 21 the next paragraph--so, I take it that was Dr.
 22 Laing's, she was the one who was advocating -
 23 MR. ABBOTT:
 24 A. Yes.
 25 COFFEY, Q.C.:

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1 Q. - for Herceptin for early stage breast cancer.
 2 It goes on to say, "there has also been new
 3 advances in treating persons with colorectal
 4 cancer and multiple myeloma. The new
 5 treatment therapies include FOLFOX-4 and--I'm
 6 not even going to try the name of the drug.
 7 It's C-A-P-E-C-I-T-A-B-I-N-E--"for patients in
 8 the early stages of colorectal cancer and a
 9 new agent"--it's spelled B-E-V-A-C-I-Z-U-M-A-
 10 B--"for patients with advanced colorectal
 11 cancer. And Newfoundland and Labrador has the
 12 highest incidents of immortality from
 13 colorectal cancer in Canada. According to the
 14 oncologists, the current treatment regime used
 15 in this province in considered obsolete in
 16 North America. And there is also some urgency
 17 to introduce the new treatment therapies for
 18 colorectal cancer". And it goes on to
 19 conclude here, "the estimated annual cost of
 20 these new therapies is \$7,340,000.00 to serve
 21 about 330 patients per year".
 22 Then, overall, in the last paragraph in
 23 this part of the submission, "in addition to
 24 \$9,370,000.00 annual funding for new
 25 therapies. An annual budget increase of 20

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1 percent on the previous year's expenditures
 2 will be required to manage the ongoing growth
 3 and incidents duration of treatments and
 4 inflationary costs of medications".
 5 And then Mr. Abbott--I'm going to ask you
 6 about this. "Alternatives, option one,
 7 maintain the status quo. Option two"--and
 8 there's an explanation for that--"option two,
 9 prove new treatment therapies for patients
 10 with breast cancer, colorectal cancer and
 11 multiply myeloma. Option three, approve new
 12 treatment therapies for patients in the early
 13 stages of breast cancer". Now, here under
 14 "Maintaining the Status Quo", I take it that
 15 the department, because it concludes with the
 16 comment, this part concludes with the comment,
 17 "this alternative is not supported by the
 18 department". Do you see that last sentence?
 19 MR. ABBOTT:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. What was the problem with maintaining the
 23 status quo from the department's perspective?
 24 MR. ABBOTT:
 25 A. Well, given the evidence, given the demand,

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1 given the requests, we felt that, you know,
 2 and we felt that the evidence was--to suggest
 3 that you now, you can intervene earlier than
 4 you should and we accepted that premise for
 5 these areas.
 6 COFFEY, Q.C.:
 7 Q. Here in the second paragraph, it says,
 8 "maintaining the status quo will avoid
 9 significant additional expenditures estimated
 10 at \$9,370,000.00 annually in the health
 11 system. However, public demands will likely
 12 escalate if the therapies are not approved and
 13 some oncologists may choose to pursue
 14 employment opportunities in other provinces
 15 where new cancer therapies are supported.
 16 There's a stable supply of oncologists here
 17 now, but there has been a lot of difficulty in
 18 recruiting and retaining oncologists in the
 19 past. Some oncologists leave the department,
 20 anticipates further recruitment difficulties
 21 resulting in patient treatment delays or
 22 transfer of patients to out of province
 23 facilities. This alternative is not supported
 24 by the department". So, I take it, you had
 25 just said to me, the conclusion by yourself

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1 and I suppose others from the department was,
 2 was that, at least in terms of some of these
 3 therapies, they were seen to be worthwhile -
 4 MR. ABBOTT:
 5 A. Yes.
 6 COFFEY, Q.C.:
 7 Q. - proven clinically. And there was concern
 8 though about if we don't fund, the oncologists
 9 may leave, some might leave.
 10 MR. ABBOTT:
 11 A. Well, again, and we were told that was a
 12 possibility. We felt--we had obviously put
 13 that there, that in itself, would not be a
 14 reason to do or not to do anything, shall we
 15 say, if the drug was not going to be seen as
 16 effective.
 17 COFFEY, Q.C.:
 18 Q. Option two is described as "approving new
 19 treatment therapies for patients with breast
 20 cancer, colorectal cancer and multiple
 21 myeloma, will establish a standard of care for
 22 these targeted patient populations similar to
 23 other jurisdictions in Canada. Providing the
 24 \$9,370,000.00 required will ensure optimum
 25 treatment for cancer patients of Newfoundland

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1 and Labrador. Patients and their families
 2 will be pleased the government is committed to
 3 providing access to the most advanced and
 4 beneficial cancer drug treatments available to
 5 provincial residents". And it goes on to say,
 6 "an investment of \$9,370,000.00 is significant
 7 and represents a 67 percent increase over the
 8 current systemic therapy budget of 6.3
 9 million. Investing this amount of money for
 10 cancer drugs will likely limit the dollars
 11 that would be available to support new drug
 12 therapies for other health problems, for
 13 example, Alzheimers, arthritis in both the
 14 community and institutional settings". And it
 15 says, "the department wishes to take some
 16 additional time to assess this request in the
 17 context of the 2006/'07 budget priorities.
 18 Funding these drugs will also required
 19 additional expenditures in laboratory testing
 20 and changes in infrastructure. Some of the
 21 drugs also require further review and research
 22 by Health Canada. Given these factors, this
 23 alternative is not supported by the department
 24 at this time".
 25 So, what was the problem with Dr.

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1 Siddiqui's request? Other than the fact that
 2 it cost seven million dollars.
 3 MR. ABBOTT:
 4 A. Well, it was the--taking the option as a whole
 5 was to take it from a full request as it were.
 6 And we're saying no, because of budget
 7 implications, no because all the evidence and
 8 data is not there. It's new, we need some
 9 time to review it and so that was put there
 10 and presented in that fashion. And it was at
 11 this time was the, to me, would be the
 12 critical phase.
 13 COFFEY, Q.C.:
 14 Q. Sir, so the herceptin--the approval of
 15 herceptin was going to cost just over two
 16 million a year. AT the time, the then
 17 systemic therapy budget annual was 6.3
 18 million?
 19 MR. ABBOTT:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. So, that the Herceptin was going to--the
 23 funding of herceptin was about almost one
 24 third of the budget again?
 25 MR. ABBOTT:

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1 A. Well, I think the number would be three
 2 million on an annual basis when it was fully
 3 up and running.
 4 COFFEY, Q.C.:
 5 Q. So, even two million even right here -
 6 MR. ABBOTT:
 7 A. Yes, that's right. So, you will be adding a
 8 third of the budget -
 9 COFFEY, Q.C.:
 10 Q. And when it really got up and running, perhaps
 11 even 50 percent of the budget would be on
 12 herceptin -
 13 MR. ABBOTT:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. - of the original budget?
 17 MR. ABBOTT:
 18 A. Yes. And that was a challenge, ethnicity
 19 issues aside, was that these were significant
 20 costs and the cost per patient and you really,
 21 you know, you really need to make sure that we
 22 do this right, make sure you have all the
 23 evidence because there are other drugs that
 24 weren't being refused, weren't be funded by
 25 government or for largely financial reasons,

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1 but some on the ethnicity issue side as well.
 2 COFFEY, Q.C.:
 3 Q. In terms of the ethnicity issue, who within
 4 the department made that determination?
 5 MR. ABBOTT:
 6 A. Well, the -
 7 COFFEY, Q.C.:
 8 Q. Who had the skill level within the department?
 9 MR. ABBOTT:
 10 A. Well, we would--in terms of a department in
 11 this case would be relying on the research and
 12 documented literature around this. And then
 13 there are processes in Canada to review
 14 certain drugs for purposes including putting
 15 them on provincial formularies. In our case,
 16 Dr. Ed Hunt would have assisted the department
 17 in getting access to that research.
 18 COFFEY, Q.C.:
 19 Q. Under option three--so, effectively then, Dr.
 20 Hunt would be the internal advisor?
 21 MR. ABBOTT:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. Option three, "prove new treatment therapies
 25 for patients in the early stages of breast

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1 cancer". And this begins, "there is pressure
 2 from breast cancer patients and the
 3 oncologists to introduce herceptin for
 4 patients in the early stages of their disease
 5 and recent clinical trials in the United
 6 States have shown a significant benefit in
 7 terms of disease free survival and overall
 8 survival with the addition of herceptin for
 9 one year in breast cancer patients who are
 10 HER2 overexpressors". And it points out, "the
 11 use of this drug for early stage breast cancer
 12 patients was approved by the FDA in the U.S.
 13 in July 2005 and a notice of compliance has
 14 been filed with Health Canada. The estimated
 15 cost is just two million thirty thousand
 16 annually for forty patients." It goes on to
 17 note "breast cancer patients and their
 18 families, as well as the oncologists, will be
 19 pleased if government approves funding to
 20 support herceptin for the treatment of early
 21 stages of breast cancer. This approval is
 22 consistent with other jurisdictions that
 23 provide the universal coverage or on a case-
 24 by-case basis. If approval of this therapy
 25 for early stage breast cancer patients is not

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1 forthcoming, it is likely that lobbying by
 2 patients' families and the oncologists will
 3 continue. This alternative is supported by
 4 the department."
 5 Was there, at that time, a considerable
 6 lobby, you know, other than by the
 7 oncologists, in terms of herceptin?
 8 MR. ABBOTT:
 9 A. Of us at that particular time, it would have
 10 been--it came through the oncology
 11 perspective, I think it's fair to say.
 12 COFFEY, Q.C.:
 13 Q. And I take it the -
 14 MR. ABBOTT:
 15 A. But again, you know, it would be, as I
 16 understood it and still do, it would be not
 17 only on their own professional, but in terms
 18 of the families of patients that they are
 19 dealing with.
 20 COFFEY, Q.C.:
 21 Q. You understood, I take it, or the
 22 communication here was meant to convey to the
 23 minister and the Cabinet, as it were, that if
 24 this is not funded, we can anticipate that
 25 certainly -

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1 MR. ABBOTT:
 2 A. Oh, absolutely.
 3 COFFEY, Q.C.:
 4 Q. - it would be pursued publicly?
 5 MR. ABBOTT:
 6 A. Yes.
 7 COFFEY, Q.C.:
 8 Q. If we could look at page six, please? This is
 9 Annex 2 in the communications plan, and it
 10 talks about the public environment. This part
 11 of the submission would have been prepared by
 12 whom?
 13 MR. ABBOTT:
 14 A. Usually by our director of communications.
 15 COFFEY, Q.C.:
 16 Q. And that would be?
 17 MR. ABBOTT:
 18 A. In this case, it would have been Tansy Mundon.
 19 COFFEY, Q.C.:
 20 Q. Tansy Mundon?
 21 MR. ABBOTT:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. And I take it that as you were reviewing the
 25 entire Cabinet submission or memorandum to

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1 Executive Council that if you disagreed with
 2 parts of it, you would have those parts taken
 3 out or changed?
 4 MR. ABBOTT:
 5 A. Yes.
 6 COFFEY, Q.C.:
 7 Q. Looking down under the "Public Environment" in
 8 the fourth paragraph right here, beginning
 9 with the word "locally". It says, "locally,
 10 there has been significant recent media
 11 attention around inaccurate results from
 12 hormone receptors tests for breast cancer
 13 patients. Eastern Health became aware of a
 14 problem with test results for hormone
 15 receptors when a breast cancer patient became
 16 ill in spite of testing negative. As a
 17 precautionary measure, tissue samples dating
 18 back to 1997 are being sent out of the
 19 province for retesting to the Mount Sinai
 20 Hospital in Toronto. Patients who test
 21 positive for hormone receptors may be offered
 22 Tamoxifen, a drug that infers with estrogen
 23 and progesterone. There's been significant
 24 reaction to the issue in breast cancer
 25 survivor Gerri Rogers in a recent "Globe and

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1 Mail" article, expressed concern over the
 2 timing of treatment. If the case were to be
 3 that in fact there was an error in the
 4 pathology, then the window of opportunity for
 5 the effectiveness of Tamoxifen, in my case, is
 6 kind of past". They attribute that quote to
 7 her. "Peter Dawe, director of Newfoundland
 8 and Labrador chapter of the Canadian Cancer
 9 Society was quoted as saying that this 'has a
 10 potential to be a big issue for the province's
 11 health care system and patients....it alters
 12 the treatment. You could be having an
 13 inadequate treatment based on a test result.
 14 There is a group that has the test result in
 15 question and our fear is that they should have
 16 received treatment and didn't". And the note
 17 goes on to "The story has also received
 18 national media attention". It refers to a
 19 recent CBC story of October 20, 2005. And it
 20 concludes by "given the negative coverage of
 21 this story and the resulting lack of
 22 confidence among breast cancer patients and
 23 their reliability of testing procedures in the
 24 province, it is important that the government
 25 respond with positive messages about the

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1 introduction of herceptin to the provincial
 2 systemic therapy chemotherapy program".
 3 So, Mr. Abbott, what was the purpose of
 4 this sort of an analysis in a cabinet
 5 submission?
 6 MR. ABBOTT:
 7 A. Well, in each cabinet submission there is a
 8 requirement to include a communications plan
 9 which basically asks cabinet, when they're
 10 deciding the issue that they also decide in
 11 terms of the context that is perceived, I
 12 guess, in terms of government and in terms of
 13 the public. And a decision by cabinet would
 14 take those factors into consideration. And it
 15 is our departmental judgment, view of the
 16 world at that time, with respect to the issue
 17 under consideration by cabinet.
 18 COFFEY, Q.C.:
 19 Q. On page 7 of the exhibit, under "Strategic
 20 Considerations", I take it that's why they're
 21 there, to let the cabinet know from the
 22 department's perspective.
 23 MR. ABBOTT:
 24 A. Yes.
 25 COFFEY, Q.C.:

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1 Q. How this plays out in a kind of wider context,
 2 potentially.
 3 MR. ABBOTT:
 4 A. Yes.
 5 COFFEY, Q.C.:
 6 Q. Now, the first bullet here, "given the timing
 7 of ongoing negotiations between physicians and
 8 government, the announcement will be welcomed
 9 by the NLMA and oncologists, in particular,
 10 and will hope to address one of physicians key
 11 issues of concern, recruitment and retention.
 12 Maintaining the status quo may result in
 13 oncologists choosing to pursue employment in
 14 other provinces where new cancer therapies are
 15 supported". So, I take it that was to let the
 16 cabinet know that further to the earlier
 17 comment about the problems of recruiting
 18 oncologists and -
 19 MR. ABBOTT:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. - keeping them here, this would avoid them
 23 perhaps going or thinking about going.
 24 MR. ABBOTT:
 25 A. And the alternative to that or in addition to

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1 that, is obviously in the recruitment of new
 2 and you are usually recruiting, you know,
 3 certainly whether it's from the province or
 4 outside, if you are seen as providing the
 5 latest technology, the latest drug therapies
 6 that is viewed beneficially in the recruitment
 7 process.
 8 COFFEY, Q.C.:
 9 Q. And the third bullet says, "given recent media
 10 reports about ER/PR testing and the public's
 11 resulting loss of confidence in the health
 12 system, it is important that government
 13 respond to the needs of breast cancer
 14 patients". Now, this seemingly ties or does
 15 tie the media reports about ER/PR testing to a
 16 loss of confidence in the health system by the
 17 public, at least according to the department.
 18 MR. ABBOTT:
 19 A. Yes.
 20 COFFEY, Q.C.:
 21 Q. Now, is that the way that it was perceived
 22 within the department at the time?
 23 MR. ABBOTT:
 24 A. Well, there was a confidence issue around this
 25 and any concern around patient care, large or

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1 small, has the potential to erode public
 2 confidence of one member of the public which
 3 is one too many or the public at large. So,
 4 obviously, I think we're very conscious of
 5 that and wanted to make sure that that was
 6 something that cabinet would also want to
 7 think about.
 8 COFFEY, Q.C.:
 9 Q. I take it approving funding for herceptin
 10 might be seen to in a public light some a
 11 placate or potentially placate people.
 12 MR. ABBOTT:
 13 A. Well, to be seen that the government is
 14 responsive to a need.
 15 COFFEY, Q.C.:
 16 Q. And at the same time this is being
 17 contemplated and eventually it's approved,
 18 there's a--it's early November we looked at
 19 that, November 9 press release. At that same
 20 time, late October, early November there are
 21 complaints in the public about ER/PR and lack
 22 of communication.
 23 MR. ABBOTT:
 24 A. Yes.
 25 COFFEY, Q.C.:

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1 Q. By Eastern Health?
 2 MR. ABBOTT:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. Exhibit P-389, please. And Mr. Abbott, this
 6 is just a notation as to a meeting, I take it
 7 on November 17, 2005, 3:30 p.m. involving
 8 George Tilley, Bob Williams, John Abbott,
 9 Tansy Mundon re: the ER/PR issue.
 10 MR. ABBOTT:
 11 A. Yes.
 12 COFFEY, Q.C.:
 13 Q. I gather there was such a briefing -
 14 MR. ABBOTT:
 15 A. Yes.
 16 COFFEY, Q.C.:
 17 Q. - on that day. If we could look please at
 18 Exhibit P-390. What was the purpose at the
 19 time -
 20 MR. ABBOTT:
 21 A. Well, again we were getting ready for opening
 22 of the fall session of the House. We wanted
 23 to have the minister briefed on the latest
 24 update and information around ER/PR so that he
 25 had that information when he went to the House

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1 in the event he was asked a question. And we
 2 expected that given the reports in the media
 3 and just the nature of the issue itself.
 4 COFFEY, Q.C.:
 5 Q. And, in fact, this was the first time the
 6 House of Assembly would be open since the
 7 ER/PR issue had gone public?
 8 MR. ABBOTT:
 9 A. Yes.
 10 COFFEY, Q.C.:
 11 Q. Okay. What happened? Do you recall how the
 12 briefing went?
 13 MR. ABBOTT:
 14 A. Well, we had the briefing and again, it was an
 15 update. There was some explanation of
 16 obviously where Eastern Health was now in
 17 terms of the test results, still didn't have
 18 them all. There was still some outstanding,
 19 there were delays, I think, at this time, from
 20 Mount Sinai and that they had no control over
 21 that. And this was prolonging the
 22 notification process to patients.
 23 COFFEY, Q.C.:
 24 Q. Yes. If the results were not back, you cannot
 25 tell them what the results are.

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1 MR. ABBOTT:
 2 A. Right. And we had not, obviously, done the
 3 earlier notification process, so we were in a
 4 wait and see period.
 5 COFFEY, Q.C.:
 6 Q. Okay. And the numbers, there is a--this is a
 7 briefing note to the minister of health. This
 8 would have been prepared by whom, do you
 9 recall? Would this be by Eastern Health?
 10 MR. ABBOTT:
 11 A. Yes. I believe that one was, yes.
 12 COFFEY, Q.C.:
 13 Q. Now, on this, we're up to now, there's an
 14 assertion there, it's affecting 835
 15 individuals, the investigation and retesting,
 16 total of 898 samples because some individual
 17 patients had more than 1 sample go. Now,
 18 there's a reference here to "these patients
 19 are being reviewed"--this is the results being
 20 reported by Mount Sinai--"are being reviewed
 21 by a panel consisting of two medical
 22 oncologists, two pathologists and two
 23 surgeons, the support from quality
 24 enhancement". Now, when was it you first
 25 became aware, do you recall, of that?

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1 MR. ABBOTT:
 2 A. I don't know if it was this particular
 3 briefing or around that time that part of that
 4 process was a review of results.
 5 COFFEY, Q.C.:
 6 Q. The -
 7 MR. ABBOTT:
 8 A. I couldn't say, I couldn't be any more
 9 specific in terms of the actual timing. My
 10 understanding was obviously the specimens are
 11 sent out, test results come back, they are
 12 reported to this board and they would look at,
 13 review the results and then from that,
 14 determine if there was going to be treatment
 15 changes.
 16 COFFEY, Q.C.:
 17 Q. And the rationale for this board was what, as
 18 explained to you?
 19 MR. ABBOTT:
 20 A. Just that was going to be their interim
 21 review, that it would be done consistently and
 22 centralized within Eastern Health.
 23 COFFEY, Q.C.:
 24 Q. And just in looking at this, it says, the
 25 first bold heading and underlined, "patients

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1 who results have ben reported by Mount Sinai,
 2 but require review", and then there's a number
 3 of different numbers and different categories.
 4 The total is 83.
 5 MR. ABBOTT:
 6 A. Yes.
 7 COFFEY, Q.C.:
 8 Q. And in the next category is "patients whose
 9 results have been reported by Mount Sinai and
 10 have been confirmed negative". And the total
 11 there is 89, do you see that?
 12 MR. ABBOTT:
 13 A. Yes.
 14 COFFEY, Q.C.:
 15 Q. Okay. So, in the second category, "whose
 16 results have been reported by Mount Sinai and
 17 have been confirmed negative", did that
 18 suggest to you that the 83, their results had
 19 not been confirmed negative, they had changed?
 20 The results had changed. Now whether the
 21 treatment is another issue, but what was your
 22 understanding in terms of--the ones that had
 23 come back up to that point in time, how many
 24 had converted, as it were, had different
 25 results?

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1 MR. ABBOTT:
 2 A. Other than what's, you know, in terms of what
 3 those number are telling us that that would
 4 have been it. I have to read that much closer
 5 now in terms of the actual intent of each
 6 category.
 7 COFFEY, Q.C.:
 8 Q. Okay. So, in terms of at the time when you
 9 received this and even when you went away from
 10 the meeting afterward, you know, with the
 11 document, you wouldn't have examined this to,
 12 kind of, figure out the fractions -
 13 MR. ABBOTT:
 14 A. No.
 15 COFFEY, Q.C.:
 16 Q. - percentages and things like that.
 17 MR. ABBOTT:
 18 A. No. We took the raw numbers. This was the
 19 data and that was sufficient for our purposes.
 20 COFFEY, Q.C.:
 21 Q. Okay.
 22 MR. ABBOTT:
 23 A. And again, this was based for that briefing
 24 with the minister.
 25 COFFEY, Q.C.:

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1 Q. And here under the second category, it says,
 2 "41 contacted by QE staff".
 3 MR. ABBOTT:
 4 A. Yes.
 5 COFFEY, Q.C.:
 6 Q. What was that about? Contacted--what was your
 7 understanding at the time as to how this
 8 contact by QE staff for the patients whose
 9 results had been reported and confirmed
 10 negative?
 11 MR. ABBOTT:
 12 A. No more than what that says, that the staff in
 13 their quality enhancement division or program
 14 area would have notified these patients.
 15 That's all I understood it to be and even as I
 16 read it now.
 17 COFFEY, Q.C.:
 18 Q. Okay. Now, at the time, Mr. Abbott, did you
 19 have any understanding--or what, if any
 20 understanding did you have at the time as to
 21 the effect of being told that the results on
 22 retest had not changed, the effect for the
 23 patient.
 24 MR. ABBOTT:
 25 A. I don't think there was any discussion around

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1 that. Again, as time moved on here is, you
 2 know, here is--initially was contacted by
 3 physician or, you know, the oncologist or the
 4 physician, but as you can see, it was by staff
 5 where -
 6 COFFEY, Q.C.:
 7 Q. Well, here, in fact, is 41 contacted by QE
 8 staff, there's 44 contacted by physician.
 9 MR. ABBOTT:
 10 A. Yes.
 11 COFFEY, Q.C.:
 12 Q. So, was there any discussion about well, why
 13 41 being contacted by staff and 44 by
 14 physician?
 15 MR. ABBOTT:
 16 A. I don't recall any particular discussion on
 17 that, you know, difference.
 18 COFFEY, Q.C.:
 19 Q. Like what, if any, the rationale would have
 20 been.
 21 MR. ABBOTT:
 22 A. Yeah. I think our focus was on contact.
 23 COFFEY, Q.C.:
 24 Q. Contact, okay.
 25 MR. ABBOTT:

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1 A. Were the patients notified? Now, exactly how
 2 and at this point it became sort of a
 3 secondary consideration at best.
 4 COFFEY, Q.C.:
 5 Q. I take it patients whose results have not been
 6 reported by Mount Sinai totally 484 at this
 7 point, I take it that was the number really of
 8 a more immediate concern?
 9 MR. ABBOTT:
 10 A. Yes.
 11 COFFEY, Q.C.:
 12 Q. Here, if we could just bring up, please,
 13 Exhibit P-0151. Now, this exhibit is just a
 14 reduced in size copy of the same briefing note
 15 we were just looking at. This one has a
 16 second page on it.
 17 THE COMMISSIONER:
 18 Q. Could we increase the size of -
 19 COFFEY, Q.C.:
 20 Q. Yes, please, thank you, Registrar. That's
 21 great.
 22 THE COMMISSIONER:
 23 Q. Thank you.
 24 COFFEY, Q.C.:
 25 Q. And this text says on the second page of the

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1 briefing note, "overall these phone calls have
 2 gone quite well with the individuals expecting
 3 to be contacted and understanding that the
 4 results may take a while. Several individuals
 5 wished that we hadn't called until we had
 6 results, but overall there were no strong
 7 emotional reactions either way. We are
 8 continuing to try to reach those 15, but it's
 9 difficult without being able to leave
 10 messages". And the 15, just to put it in
 11 context, would presumably the 15 no answer, on
 12 the page before. "And we have received over
 13 60 calls from individuals affected by this
 14 issue. The majority being follow up
 15 conversations for clarification after being
 16 contacted by our department". And there are a
 17 number of other categories listed here,
 18 patients from St. Pierre, long term care
 19 residents and finally patients who are
 20 deceased. Now, here you advise that
 21 arrangements will be made to notify family
 22 members once all results have been received.
 23 We have discovered that several have passed
 24 away upon making contact with family members
 25 and here the total is 158.

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1 So, Mr. Abbott, in November of 2005,
 2 during the briefing, when you're told or you
 3 read and/or told that Eastern Health had
 4 received about 60 calls from individuals, the
 5 majority being follow up conversations for
 6 clarification.
 7 MR. ABBOTT:
 8 A. Yes.
 9 COFFEY, Q.C.:
 10 Q. Did that cause you any concern about the fact
 11 that there had been no written communication
 12 with the patients? Because you've told the
 13 Commissioner last week as to how you felt
 14 about that.
 15 MR. ABBOTT:
 16 A. At that point it wouldn't have registered as
 17 an issue any longer.
 18 THE COMMISSIONER:
 19 Q. Mr. Coffey, when you can find a convenient
 20 spot, we'll take the morning break.
 21 COFFEY, Q.C.:
 22 Q. Now, in terms of this meeting, do you recall
 23 who was there, where it occurred, who was
 24 there any -
 25 MR. ABBOTT:

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1 A. Well, it occurred in the minister's office,
 2 Minister Ottenheimer, Darrell Hynes, Tansy
 3 Mundon. And for this briefing, I'm not sure
 4 if Mr. Tilley and Doctor Williams were in our
 5 office of if they were in their office and we
 6 did it by conference call. For whatever
 7 reason, that seems to be coming or one of them
 8 was--something tells me they may have been in
 9 their office and we did this by conference
 10 call. I'm not 100 percent sure on that, but I
 11 know we did have that briefing.
 12 COFFEY, Q.C.:
 13 Q. Was Ms. Hennessey there, do you know, at the
 14 time?
 15 MR. ABBOTT:
 16 A. I don't think so, but I'm not 100 percent sure
 17 on that.
 18 COFFEY, Q.C.:
 19 Q. And what then happened at the meeting?
 20 MR. ABBOTT:
 21 A. Again, it was--we had the briefing note. We
 22 go through it, the minister asks some
 23 questions, I ask some questions for
 24 clarification around the numbers. And that
 25 was pretty well--and Eastern Health gave an

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1 update of where they were with some of their
 2 frustrations, obviously, that they were
 3 experiencing on this in terms of the results
 4 and notification, those things. But I think
 5 the tenor was, you know, it's going reasonably
 6 well, but we have more, you know, there's more
 7 time to get this, bring this to a close. But
 8 there was no--and that was it, it was a
 9 straight forward briefing with Minister
 10 Ottenheimer. It was a normal briefing. I
 11 think he was comforted, at least, he had the
 12 information or sufficient information for his
 13 purposes, in the event that he--getting ready
 14 to go to the House. And that was generally
 15 the focus.

16 COFFEY, Q.C.:
 17 Q. Okay. Thank you.

18 THE COMMISSIONER:
 19 Q. We'll take 15 minutes.

20 (RECESS)

21 THE COMMISSIONER:
 22 Q. Please be seated. Mr. Coffey.

23 COFFEY, Q.C.:
 24 Q. Thank you, Commissioner. Registrar, exhibit
 25 P-0153, please. Mr. Abbott, this is an e-mail

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1 from Tansy Mundon, Friday, November 18th, 2005
 2 at 9:13 a.m. to Deborah Thomas Pennell and
 3 Susan Bonnell, but it's copied to George
 4 Tilley, Darrell Hynes and John Abbott. The
 5 subject is ER/PR questions and it says "Susan,
 6 Deborah. Further to a briefing yesterday with
 7 George and Dr. Williams, I attach the
 8 following questions that the minister would
 9 like answered in advance of the House of
 10 Assembly opening on Monday, if at all
 11 possible. Many thanks, Tansy." And then we
 12 look at the second page of the exhibit, there
 13 are a series of seven bullets, more than seven
 14 questions, and they're ER/PR questions. Now
 15 do you know who formulated those questions?

16 MR. ABBOTT:
 17 A. I believe that they would have been by Tansy
 18 Mundon, based on--I don't know if we had a
 19 debrief after the briefing itself. I think
 20 she would have drawn that from the type of
 21 discussion we had that from her perspective
 22 would be still sort of some outstanding
 23 questions that needed to be clarified and
 24 Eastern Health's understanding of those
 25 relayed to her and then to the minister.

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1 COFFEY, Q.C.:
 2 Q. And do you recall this debriefing, as it were?
 3 MR. ABBOTT:
 4 A. Again, when--and that's why I'm thinking this
 5 was the way it was done in terms of we're in
 6 the Minister's office and part of it was by
 7 conference call. I don't think two of them
 8 were there. Irrespective of that, we would
 9 have said "okay, how did that briefing go with
 10 the minister? Is there something outstanding
 11 that we need to get some additional
 12 information, further clarification, and do we
 13 need to update or revise whatever material we
 14 have?" So that would have been the gist of
 15 it. And this sort of came out of that, and I
 16 think more from where Tansy was to make sure
 17 that she--you know, in terms of her briefing
 18 with the minister, because she, at the end of
 19 the day, that was really her job. She was
 20 going to be pretty well the last person to
 21 speak to him before he goes in the House.

22 COFFEY, Q.C.:
 23 Q. And would you have reviewed the--well,
 24 obviously the e-mail she sent over to Ms.
 25 Pennell and Ms. Bonnell was copied to you.

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1 Would you have reviewed the questions before
 2 they went, do you think?

3 MR. ABBOTT:
 4 A. I don't recall. Again, and even looking at
 5 them, you know, in that e-mail, they were all,
 6 you know, reasonable questions to ask, some of
 7 which obviously we had some of the
 8 information, but it was just too reaffirm as
 9 well with Eastern Health.

10 COFFEY, Q.C.:
 11 Q. If we could look, please, at Exhibit P-0154?
 12 These are--this is an e-mail from Ms. Thomas
 13 Pennell, November 21, 2005, 9:21 a.m. to Tansy
 14 Mundon, copied to Ms. Bonnell. The subject is
 15 ER/PR questions and the attachments are
 16 questions ER/PR 1 final.doc, and she says "as
 17 requested, Tansy." and it's signed Deborah.
 18 And then when we look at the second, and then
 19 third page of this, the questions--the heading
 20 is ER/PR questions. The questions have a
 21 bullet next to them, and they're in non-
 22 italicized print, and then the answers are--
 23 not italicized, non-bolded print, and the
 24 answers are bolded. Would you have received a
 25 copy of this, do you think?

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1 MR. ABBOTT:
 2 A. It is possible. I can't tell you if I did or
 3 not.
 4 COFFEY, Q.C.:
 5 Q. Here, sir, on the second page, I'm sorry,
 6 well, it's page 3 of the exhibit, second page
 7 of the answers, there's a question, "Has a
 8 review occurred to determine how this could
 9 have happened, how could there be inaccurate
 10 tests for a period of five years without being
 11 detected?" And then another follow-up
 12 question is, "Will there be disciplinary
 13 action taken?" And then the response by
 14 Eastern Health is, "This is still an ongoing
 15 investigation into the situation, however,
 16 there is ample literature to suggest that
 17 these tests have limitations and are not
 18 guided by national standards. In the
 19 meantime, until all the results from retesting
 20 are obtained it's impossible to determine the
 21 exact details of the cause of the problem.
 22 Three reviews have taken place of our current
 23 testing procedure, our pathology services and
 24 our technical services. Recommendations have
 25 been made and are being acted upon which will

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1 immediately insure the quality and
 2 reproducibility of results." And it goes on
 3 to talk about disciplinary action, but saying
 4 there, "With respect to disciplinary action,
 5 to date there is no evidence of a deliberate
 6 breakdown of procedures on any person's part."
 7 What at the time would you have understood to
 8 be a "deliberate breakdown" of procedures on
 9 any person's part?
 10 MR. ABBOTT:
 11 A. Well, I would view that in terms of looking at
 12 somebody's technical or clinical performance
 13 and their ability to do the job and that would
 14 be my sort of general take on that.
 15 COFFEY, Q.C.:
 16 Q. Okay. And at this point in time, which would
 17 be, well, this is actually the e-mail, the
 18 cover e-mail sending these back, sending these
 19 to the Confederation Building, is November 21.
 20 Your understanding at this point in time was
 21 what in terms of the external reviews, were
 22 the reports in?
 23 MR. ABBOTT:
 24 A. I couldn't tell you right now in--whether
 25 reports were in. There was reporting, you

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1 know, some initial reporting, as I understood
 2 it, from the reviewers as to what they were
 3 finding in terms of the process and that the
 4 Eastern Health were taking those findings,
 5 those whatever recommendations and acting on
 6 them. And it was at that level that I
 7 understood the process at that time.
 8 COFFEY, Q.C.:
 9 Q. Okay. If you look down at the bottom of the
 10 same page, under the question, "Can the
 11 minister insure the public that this is not
 12 reflective of other unreliable methods of
 13 testing in the province? Is their health
 14 system safe?" The response provided by
 15 Eastern Health to Ms. Mundon for the minister
 16 of your department is, "Eastern Health
 17 responds successfully to the needs of
 18 thousands of patients in any one years.
 19 Furthermore, it has quality monitoring
 20 programs in place and had highly-qualified
 21 professional on staff." For somebody that
 22 should be "professionals on staff." "While
 23 regrettable, the fact that this situation was
 24 identified in the first place is reflective of
 25 the importance of quality in the organization.

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1 I am confident this is not reflective of the
 2 services provided." Now, was it your
 3 understanding, by this point in time, that
 4 this had been picked up in a quality
 5 monitoring program?
 6 MR. ABBOTT:
 7 A. Well, you know, I don't -
 8 COFFEY, Q.C.:
 9 Q. I know what -
 10 MR. ABBOTT:
 11 A. - read essay (phonetic) from there. No, as I
 12 recall it and read, you know, there was an
 13 individual case had come forward, obviously
 14 got the attention of the appropriate people,
 15 and then they did further testing, other
 16 samples, and realized, yes, we have an issue.
 17 COFFEY, Q.C.:
 18 Q. And so, Mr. Abbott, I take it then by
 19 November, and this is the latter part of
 20 November, 2005, were you of the understanding
 21 that this wasn't simply due to a change over
 22 from one machine to the other? You understood
 23 it was -
 24 MR. ABBOTT:
 25 A. I understood -

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1 COFFEY, Q.C.:

2 Q. - it was wider?

3 MR. ABBOTT:

4 A. - and expected that, you know, there will be

5 multiple factors here.

6 COFFEY, Q.C.:

7 Q. Yeah.

8 MR. ABBOTT:

9 A. What specifically they were, and to the degree

10 that they were relevant or important and

11 contributing to testing was the purpose of the

12 external, certainly the external review and

13 anything they were looking at internally.

14 COFFEY, Q.C.:

15 Q. Exhibit -

16 MR. ABBOTT:

17 A. If I may, just on that?

18 COFFEY, Q.C.:

19 Q. Oh, yes, go ahead, yeah.

20 MR. ABBOTT:

21 A. But initially, you know, I think that I looked

22 at it as a reference point, look, we switched

23 from one system to another, are we sure of

24 that in and of itself. And then, but then

25 more that there was explanations it would have

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1 seemed obvious to me there was, you know,

2 other issues going to be at play here. When

3 they talk about fixation, well, that had

4 nothing, necessarily, to do with which

5 equipment, shall we say, was going to be used.

6 COFFEY, Q.C.:

7 Q. Sure.

8 MR. ABBOTT:

9 A. It was what was happening right at the

10 beginning.

11 COFFEY, Q.C.:

12 Q. The assertion that "I am confident that this

13 is not reflective of the services provided."

14 Because that sentence follows, "While

15 regrettable, the fact that this situation was

16 identified in the first place is reflective of

17 the importance of quality in the

18 organization." Suggesting, I gather, that the

19 ER/PR matter being regrettable did not reflect

20 or was not reflective of the services

21 provided, the wider services provided?

22 MR. ABBOTT:

23 A. That's how I, again, would read that, whether

24 it's lab services or health services by

25 Eastern Health in general. Again, these are

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1 communications people talking in communication

2 speak. These aren't, you know, the technical

3 or clinical people speaking. And this is the

4 challenge, obviously, of condensing this down

5 into a form that the minister can use in

6 communicating. Obviously, the accuracy on

7 that is very important, but that's the

8 challenge that people were facing.

9 COFFEY, Q.C.:

10 Q. Had you ever gotten any assurance from Dr.

11 Williams or Mr. Tilley that somehow ER and PR

12 were anomalies, was an anomalous situation but

13 everything else was fine?

14 MR. ABBOTT:

15 A. No, you know, not -

16 COFFEY, Q.C.:

17 Q. You see what I'm -

18 MR. ABBOTT:

19 A. Yes. But at the same time, I wasn't asking

20 him, "Oh, by the way, what about your other

21 lab services?" what have you. So I wasn't--

22 but we were just focused on ER/PR for the

23 purpose of this briefing.

24 COFFEY, Q.C.:

25 Q. How about in a wider sense, the idea that, you

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1 know, that's ER/PR, you know, it's a

2 regrettable situation, but--and it is being

3 addressed, but what about the wider lab

4 services, not only during this briefing but at

5 any point, like, the quality of the wider

6 clinical laboratory service?

7 MR. ABBOTT:

8 A. No, they never came up and we made--and I can

9 speak for myself, had no reason to make any

10 inquiries.

11 COFFEY, Q.C.:

12 Q. If we could, please, Exhibit P-0310? Now,

13 this, the bottom e-mail here, Mr. Abbott, is

14 an e-mail, it's from Deborah Thomas-Pennell,

15 Thursday, December 1, 2005 at 1357 hours to

16 Tansy Mundon and the subject is "For Your

17 Information." She says, "Hi, Tansy. Just

18 FYI, Mark Quinn is doing a news story on the

19 fact that the ER/PR testing is taking longer

20 than we thought. He's talked to Peter Dawe

21 and cancer survivor," the name is redacted,

22 "and Dr. Williams also did a quick telephone

23 interview. Basically all he said is that we

24 are getting the results back as fast as we can

25 and we have issued a plea to Mount Sinai that

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1 they do what they can to hurry the procedure
 2 along and that as soon as we get the results
 3 back, we were letting people know. There's
 4 not much more we can say. Just wanted to keep
 5 you in the loop. I managed to hold him off
 6 until today, that way the issue should be dead
 7 again by the time the House opens again next
 8 week." And this is "J" there, I don't know
 9 what that is there for, maybe it's just a
 10 typo. Signed, "Deborah." And then there is
 11 a, in terms of this, there's a message the
 12 same day at 2:49 p.m. from Tansy Mundon
 13 saying, "Heads up. Please make sure the
 14 minister knows." Apparently she was sending
 15 this to Darrell Hynes because at 3:10 p.m.
 16 that day he responded to her saying, "He is
 17 with CBC Radio, right?" presumably referring
 18 to Mr. Quinn. Now, were you aware December
 19 1st, December 2nd, that--is this the sort of
 20 thing that was brought to your attention,
 21 because it's brought to Ms. Mundon's
 22 attention, Darrell Hynes' attention and
 23 apparently the minister's attention?
 24 MR. ABBOTT:
 25 A. Um-hm. It could very well be. This

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1 particular exchange, probably not, but the
 2 fact that there was an inquiry or, you know,
 3 CBC had called Eastern Health might have come
 4 up in passing. So that wouldn't be uncommon,
 5 it wouldn't be uncommon, you know, as the
 6 exchange of e-mails here would go from A to B
 7 to C without reference to me. But again,
 8 that's how that function was performed and it
 9 was again, it was just a heads up to the
 10 minister that there is this out there.
 11 COFFEY, Q.C.:
 12 Q. Now, the notion or the idea or the view that
 13 "I managed to hold him off until today, that
 14 way the issue should be dead again by the time
 15 the House opens again next week."
 16 MR. ABBOTT:
 17 A. Um-hm.
 18 COFFEY, Q.C.:
 19 Q. Presumably the House is the House of Assembly?
 20 MR. ABBOTT:
 21 A. Yes.
 22 COFFEY, Q.C.:
 23 Q. And this is Ms. Pennell, who works with
 24 Eastern Health, expressing that to your
 25 director, your department's director of

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1 communications?
 2 MR. ABBOTT:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. You know, there's no sign that Ms. Mundon
 6 responded to her except in any--responded to
 7 Ms. Pennell?
 8 MR. ABBOTT:
 9 A. No.
 10 COFFEY, Q.C.:
 11 Q. She simply sent it on, apparently, to Mr.
 12 Hynes. The notion or idea that you're trying
 13 to keep an issue dead, or you're trying to
 14 make sure an issue was dead by the time the
 15 House opened, does that sort of ethos exist
 16 within the department?
 17 MR. ABBOTT:
 18 A. I wouldn't say generally, but I, you know, I
 19 will--you know, that would be fair that there
 20 are times when, whether it's in health or any
 21 other sector or portfolio that, you know,
 22 ministers would know about an issue and would
 23 hope and that the issue would not come up.
 24 But I will say that in terms of our approach
 25 and our minister's approach in terms from the

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1 department in terms of responding to the media
 2 on their issues, inquiries, we had, you know,
 3 almost an automatic reply there. So if an
 4 inquiry came in in the morning, we would deal
 5 with it as quickly as possible so you're not
 6 trying to shirk away from it. But I can't
 7 speak to, you know, Ms. Pennell's comment
 8 there. It's not reflective, shall we say, of
 9 the minister's view.
 10 COFFEY, Q.C.:
 11 Q. Being apprised that or learning, like the
 12 director of communications for the Department
 13 of Health learning that, for example, a media
 14 organization such as CBC was interested in the
 15 ER/PR issue or a particular aspect or aspects
 16 of it and being told that, well, Eastern
 17 Health was trying to have it go away, as it
 18 were, because that's what this certainly
 19 suggests, would the department not take it
 20 upon itself then to intervene and say, "Well,
 21 wait now," you know, if the view is on the
 22 minister's part, "Look, if there's an inquiry,
 23 I'll respond."
 24 MR. ABBOTT:
 25 A. Yes.

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1 COFFEY, Q.C.:

2 Q. Or the department will respond, well, you

3 know, the royal "we" gets used at times in

4 Eastern Health and the department?

5 MR. ABBOTT:

6 A. Yeah.

7 COFFEY, Q.C.:

8 Q. We've seen that?

9 MR. ABBOTT:

10 A. You know, as I see in this one, I mean, this

11 was, you know, inquiry of Eastern Health in

12 trying to get some information, talk to

13 someone at Eastern Health, not for the

14 minister or trying to not refer to the

15 minister's office if need be. You know, Mr.

16 Quinn is well known, certainly, to use in the

17 department. And so we would, you know,

18 cooperate with him and any other reporter as

19 best we can.

20 COFFEY, Q.C.:

21 Q. Yeah, but here it apparently goes right to

22 Darrell Hynes'.

23 MR. ABBOTT:

24 A. Yeah.

25 COFFEY, Q.C.:

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1 Q. Mr. Ottenheimer's EA, you know, who queries as

2 to whether Mr. Quinn is with CBC.

3 MR. ABBOTT:

4 A. Yes.

5 COFFEY, Q.C.:

6 Q. Radio. And it would be a simple enough thing,

7 wouldn't it, for somebody in the department to

8 pick up the phone and call Mr. Quinn and say,

9 "Look, if you got a question, well" -

10 MR. ABBOTT:

11 A. Oh, yes. But that's generally not how it done

12 -

13 COFFEY, Q.C.:

14 Q. It's not the kind of thing -

15 MR. ABBOTT:

16 A. No. I mean, you know, again, unless you were

17 really looking to get your message out, I

18 mean, again, you would do that. But if you

19 were going to just wait for an inquiry, then

20 you would wait for the inquiry.

21 COFFEY, Q.C.:

22 Q. The Exhibit P-0100, please? This is a series

23 of e-mails, December, well, they begin

24 December 2nd, Friday, December 2nd, 2005 from

25 Tansy Mundon to Deborah Pennell. The subject

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1 is ER/PR. "Thanks for the heads up yesterday.

2 I heard the story this morning. Is it

3 accurate to say, though, that only a quarter

4 of the samples have been tested?" And then

5 the response from Mr. Pennell is, "I'll have

6 to check the latest numbers, but I think

7 that's low. I'll find out for you." And then

8 there's a message having been "it's low to the

9 numbers given to the minister". And that's a

10 message that Ms. Mundon had sent at 8:42 a.m.

11 to Ms. Pennell. And there's a response from

12 Ms. Pennell to Ms. Mundon at 9:55, "Just

13 talked to Dr. Williams. We have approximately

14 175 of the 675 tests back, so a quarter is a

15 tiny bit low, but not too bad. However, Mount

16 Sinai is using some new technology to speed

17 this along and assures us that this will be

18 completed by the end of January." And then

19 there's an e-mail from Tansy Mundon to Mr.

20 Hynes, yourself, Tara Furlong and Ms.

21 Hennessey at 5:24 p.m. "Re: ER/PR and

22 potential issue for Monday's session."

23 Monday's session would be a session of the

24 House of Assembly, I take it?

25 MR. ABBOTT:

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1 A. Yes.

2 COFFEY, Q.C.:

3 Q. Presumably the issue being that there's only a

4 quarter of the tests yet done?

5 MR. ABBOTT:

6 A. Um-hm.

7 COFFEY, Q.C.:

8 Q. Would that be correct?

9 MR. ABBOTT:

10 A. Yes.

11 COFFEY, Q.C.:

12 Q. And then there's an e-mail on December 4th,

13 2005 at--I'm sorry, that's in one of the

14 outside e-mails. This, on December 4th, 2005

15 at 10:36 p.m., which would be Sunday night,

16 Tansy Mundon writes to Moira Hennessey,

17 subject is ER/PR, saying "This is one, I

18 think, can definitely come in the House this

19 week." And then there's another message

20 December 5, 2005, Monday, at 9:47 a.m. from

21 Moira Hennessey to Tansy Mundon, copied to

22 John Rumboldt re: ER/PR, and she says, "Hi,

23 Tansy. I'm also surprised that only about 25

24 percent of the test results are back." And

25 talks about how it's been ongoing for quite a

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1 period of time and so on. Ms. Hennessey says,
 2 "From a patient's perspective, this is
 3 becoming less and less acceptable and it is
 4 likely the minister will be subject to some
 5 hard questioning on why things went wrong and
 6 why it is taking so long to get the results
 7 from Mount Sinai." And then she says, "John,
 8 can you please update the briefing note?"
 9 Now, the John here would be John Rumboldt?
 10 MR. ABBOTT:
 11 A. Yes.
 12 COFFEY, Q.C.:
 13 Q. Wouldn't be you. "And you may need to work
 14 with Tansy on new questions, key messages.
 15 Thanks, Moira." Now, sir, what was going on
 16 at this point in time? I mean, here it
 17 posits, certainly, that your ADM responsible
 18 for this matter posits that the minister, Mr.
 19 Ottenheimer, will be subject to some hard
 20 questioning on why things went wrong and why
 21 it's taken so long?
 22 MR. ABBOTT:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. Well, there was certainly an answer to why

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1 things were taking so long?
 2 MR. ABBOTT:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. Is there any answer to on why things went
 6 wrong?
 7 MR. ABBOTT:
 8 A. No more than what I've, you know, said
 9 earlier, so we're no further ahead on that
 10 point. But we can expect that the minister
 11 is, could be questioned on that.
 12 COFFEY, Q.C.:
 13 Q. Well, with that in mind and bearing in mind
 14 that the minister would anticipate it might be
 15 a question, why not just simply call George
 16 Tilley and ask why things went wrong?
 17 MR. ABBOTT:
 18 A. Well, again, as I said earlier, I didn't focus
 19 particularly on that aspect, as important,
 20 obviously, that it is. I took it from the
 21 premise--or the starting point being we had
 22 test results issues in the lab, we have now
 23 addressed those, retested those, and that's as
 24 far as I took it.
 25 COFFEY, Q.C.:

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1 Q. I appreciate -
 2 MR. ABBOTT:
 3 A. So I didn't, and did not say, "Now, go back
 4 for that period and tell me, tell the
 5 minister, quote, unquote, what contributed
 6 specifically to that."
 7 COFFEY, Q.C.:
 8 Q. Well, see, you'd had a briefing with the
 9 minister, you'd attended a briefing of the
 10 minister on November 17th?
 11 MR. ABBOTT:
 12 A. Yes. Um-hm.
 13 COFFEY, Q.C.:
 14 Q. Had the topic come up then?
 15 MR. ABBOTT:
 16 A. No.
 17 COFFEY, Q.C.:
 18 Q. And then the House -
 19 MR. ABBOTT:
 20 A. The point -
 21 COFFEY, Q.C.:
 22 Q. Yes.
 23 MR. ABBOTT:
 24 A. The point, if I may?
 25 COFFEY, Q.C.:

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1 Q. Sure, go ahead.
 2 MR. ABBOTT:
 3 A. Is for the department, minister, me, others,
 4 we wrote the word, we asked the question or
 5 said could be potential question, but we
 6 didn't ask the question itself of Eastern
 7 Health. And you're asking why.
 8 COFFEY, Q.C.:
 9 Q. Why.
 10 MR. ABBOTT:
 11 A. And, you know, I hear that. The thing is we
 12 did not, for whatever reason, didn't feel that
 13 that was something that we needed to do and
 14 that the information we were given with
 15 respect to that they've identified they have a
 16 problem and they have now solved it was
 17 sufficient.
 18 COFFEY, Q.C.:
 19 Q. Well, why would that be sufficient if there
 20 was positing a question, "he," John
 21 Ottenheimer, is going to be asked some hard
 22 questions why things went wrong? Again, I -
 23 MR. ABBOTT:
 24 A. Yeah. Because -
 25 COFFEY, Q.C.:

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1 Q. - appreciate -
 2 MR. ABBOTT:
 3 A. You know, and I understand why you're asking
 4 me that.
 5 COFFEY, Q.C.:
 6 Q. Yeah.
 7 MR. ABBOTT:
 8 A. I'm telling you that's what we thought at the
 9 time. And when I was thinking--when I think
 10 wrong in that respect, you know, again, I'm
 11 not involved in these e-mails, but you know,
 12 they were in other material, so fair enough,
 13 was that the wrong was we went back to issue
 14 identification and went forward, we did not,
 15 we did not go back, didn't think of asking,
 16 really, to go back and thinking that the
 17 information we had would be sufficient. And
 18 the answer to the question, that would have
 19 been our starting point. And people accepted
 20 that that would be fair enough, if they
 21 didn't, then we, you know, and the minister
 22 felt he wanted more information, then he would
 23 seek that.
 24 COFFEY, Q.C.:
 25 Q. Okay. Now, Mr. Abbott, we're into December,

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1 2005. Did the topic of restarting ER/PR
 2 testing in St. John's come up around this
 3 time, do you know?
 4 MR. ABBOTT:
 5 A. No.
 6 COFFEY, Q.C.:
 7 Q. Okay. Come up in your world, that's what I'm
 8 asking, obviously.
 9 MR. ABBOTT:
 10 A. No.
 11 COFFEY, Q.C.:
 12 Q. Were you ever given, at that time, you know,
 13 November, December of '05, October, November,
 14 December, '05, any sense from Mr. Tilley as to
 15 the general tenor of the two external reports?
 16 MR. ABBOTT:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. Yeah.
 20 MR. ABBOTT:
 21 A. As I alluded to, I guess, earlier, that you
 22 know, the results, findings were in, there
 23 were issues around process, how the -
 24 COFFEY, Q.C.:
 25 Q. No, if I could?

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1 MR. ABBOTT:
 2 A. Yes.
 3 COFFEY, Q.C.:
 4 Q. Just put it in context. And I appreciate that
 5 you have told, I thank you for, you know, your
 6 earlier explanation. In P-0101, which you
 7 would never have seen, okay.
 8 MR. ABBOTT:
 9 A. Yeah.
 10 COFFEY, Q.C.:
 11 Q. But this is not--it hasn't been opened yet.
 12 P-0101, please? Oh, thank you. I apologize.
 13 Now this is a letter of December 7th, 2005,
 14 it's from a Dr. Carter to a Dr. Williams, who
 15 at times was briefing you on the ER/PR matter.
 16 And at that time Dr. Carter, in relation to
 17 these reports of Dr. Banerjee and Trish
 18 Wegrynowski, described them as two fairly
 19 damning reports.
 20 MR. ABBOTT:
 21 A. Um-hm.
 22 COFFEY, Q.C.:
 23 Q. Were you -
 24 MR. ABBOTT:
 25 A. I read that, yes.

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1 COFFEY, Q.C.:
 2 Q. That kind of negative connotation being
 3 associated with them by Dr. Carter, her
 4 assessment of what she understood they were
 5 about or their conclusions. Did Mr. Tilley
 6 ever convey that sort of thing to you?
 7 MR. ABBOTT:
 8 A. No, no. If anything, I would almost say the
 9 reverse, at least that's what I would have
 10 taken away from any discussion, "Yeah, we had
 11 some issues, but we're working on them.
 12 They're, you know, within the sphere of our
 13 competence to address," that kind of thing.
 14 Didn't ask for any--didn't suggest anything
 15 more, didn't ask for anything, support or, you
 16 know, maybe we need to bring this forward to
 17 the minister, those kinds of things. So I--
 18 and that's why, in many respects, both at the
 19 time and when I look back on it, why, you
 20 know, I didn't specifically thought I needed
 21 to see any reports. Now, if I saw that kind
 22 of language, then that would be, I suspect,
 23 and I hate to speculate, but, you know, that
 24 would trigger something else, either give us
 25 further information or give us, in fact, give

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1 us the reports because we need to get behind
 2 it. It was certainly the opposite sort of
 3 message being conveyed to me.
 4 COFFEY, Q.C.:
 5 Q. If we could, please, Exhibit P-0124 please,
 6 page ten? This is a question and answers
 7 briefing note, Mr. Abbott. This is the one
 8 for December 5, 2005 prepared by Mr. Rumboldt
 9 and, if we could, please, just under
 10 background, in the second last bullet, there's
 11 a note there, "there have been a lot of
 12 stories in the media on this issue. Recent
 13 headlines include" and it lists them, and it
 14 lists certain headlines, but these go all the
 15 way back to October and I understand there
 16 were quite a few more stories. At the time, I
 17 mean as 2005 ended, on behalf of the
 18 Department of Health, at that point, how did
 19 you see this playing itself out? I mean, some
 20 of the test results, retests were ongoing.
 21 MR. ABBOTT:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. At that time, how did you think this might
 25 proceed?

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1 MR. ABBOTT:
 2 A. There's two aspects. One is that, as time
 3 went on, the issue obviously was being
 4 addressed only on a needs to basis by us, from
 5 a communications point of view.
 6 COFFEY, Q.C.:
 7 Q. Sure.
 8 MR. ABBOTT:
 9 A. And the other side of that is Eastern Health
 10 would be notifying patients as the test
 11 results came in and that process would just
 12 continue on, assumption being when that was
 13 all done, there would be some wrap up type of
 14 report. Whether or not then that was going to
 15 go--would go public or not, there had been--we
 16 had no discussion around that that I'm aware
 17 of.
 18 COFFEY, Q.C.:
 19 Q. What factors would influence that?
 20 MR. ABBOTT:
 21 A. For me, it would be that the minister of the
 22 day would have felt, yeah, okay, now that
 23 this--we've finished and we've completed, that
 24 we should now report from his end or Eastern
 25 Health would have felt that it was appropriate

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1 now to provide a full account, shall we say,
 2 to the public. But there had been no concrete
 3 discussions around that. We were still, shall
 4 we say, implementation now.
 5 COFFEY, Q.C.:
 6 Q. Far too early to get to that yet.
 7 MR. ABBOTT:
 8 A. Well, far too early, though it had gone on for
 9 an extended period of time.
 10 COFFEY, Q.C.:
 11 Q. And if we could please, open Exhibit P-0157?
 12 Now this is a letter on the Newfoundland and
 13 Labrador Medical Association letterhead. It's
 14 January 17th 2006. It's addressed to Mr.
 15 Ottenheimer in his capacity as Minister of
 16 Health and it's from Tom Costello, who's the
 17 president of the Medical Association, I gather
 18 at the time. And the subject is--well, he
 19 begins by saying "the Newfoundland and
 20 Labrador Medical Association is concerned
 21 about staffing levels of laboratory medicine
 22 specialists. At the present time, there are
 23 24 pathologists practising in our province
 24 with the imminent retirement or resignation of
 25 an additional four to six positions from this

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1 group. Historically, the province has had 32
 2 salaried pathology positions."
 3 So at that point in time, and I
 4 appreciate this was not addressed to you, and
 5 when we look, Dr. Costello has BCC'ed it to
 6 Dr. Nash Denic. Now Dr. Nash Denic, at this
 7 point, would have been the head of what, do
 8 you know?
 9 MR. ABBOTT:
 10 A. He replaced Dr. Cook, I believe, but I don't
 11 know -
 12 COFFEY, Q.C.:
 13 Q. That's a bit later, yeah.
 14 MR. ABBOTT:
 15 A. Yes, I wasn't sure of the time. So he would
 16 have been a pathologist within the lab. As I
 17 said, this issue, this is January 2006. I was
 18 first introduced to this issue, I think, in
 19 January 2005 through the NLMA and we had a
 20 number of presentations. Dr. Denic, Dr.
 21 Fontaine initially, I believe, provided a
 22 briefing. We had a process around dealing
 23 with these types of issues between the
 24 department, the health authorities and the
 25 medical association. So they reviewed their

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1 presentation. I think the conclusion, again,
 2 from that, was again, based on their data,
 3 their analysis, their findings, that we do
 4 need to move this forward. The NLMA thought
 5 it was appropriate then to formally request of
 6 the minister a solution, which is laid out
 7 there.
 8 COFFEY, Q.C.:
 9 Q. So -
 10 THE COMMISSIONER:
 11 Q. I'm sorry, I just want to make sure I
 12 understood that. You're saying the issue
 13 first came up a year earlier?
 14 MR. ABBOTT:
 15 A. Yes.
 16 THE COMMISSIONER:
 17 Q. And as a result of your discussions with NLMA
 18 presumably, you had decided that the time was
 19 right to put this to the minister and this is
 20 the result of -
 21 MR. ABBOTT:
 22 A. I do believe that's generally the gist of
 23 that.
 24 THE COMMISSIONER:
 25 Q. So you would see this particular communication

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1 as a continuation of that process -
 2 MR. ABBOTT:
 3 A. Yes.
 4 THE COMMISSIONER:
 5 Q. - started a year earlier and the basis upon
 6 which you had gone to the minister?
 7 MR. ABBOTT:
 8 A. Yes.
 9 THE COMMISSIONER:
 10 Q. Okay.
 11 COFFEY, Q.C.:
 12 Q. And I take it that in terms of--the goal here,
 13 I take it, is to--overall, is to have, as much
 14 as is possible, a full complement of
 15 pathologists across the province and one of
 16 the necessary means of doing that is
 17 increasing their remuneration?
 18 MR. ABBOTT:
 19 A. Yes.
 20 COFFEY, Q.C.:
 21 Q. The department was on side?
 22 MR. ABBOTT:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. The minister was on side, your own minister?

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1 MR. ABBOTT:
 2 A. Yes.
 3 COFFEY, Q.C.:
 4 Q. And not only was Mr. Ottenheimer, but I take
 5 it Mr. Osborne and Mr. Wiseman were always on
 6 side as well?
 7 MR. ABBOTT:
 8 A. Yes.
 9 COFFEY, Q.C.:
 10 Q. Who was resisting, as it were?
 11 MR. ABBOTT:
 12 A. Well, the nature of this issue would require a
 13 resolution of--I should say, would require
 14 that the Treasury Board itself would have to
 15 approve what is being proposed here, and then
 16 that would have been processed either through
 17 the Treasury Board secretariat at the time and
 18 then subsequently the Public Service
 19 secretariat, there's been some organization
 20 change, and we had--you know, there was an
 21 agreement in place between government and the
 22 Medical Association, in terms of compensation
 23 matters, among other things, with the Medical
 24 Association. The president of Treasury Board
 25 is, I believe, signatory to that, and he would

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1 have to sanction through--either directly or
 2 through the Treasury Board approval of our
 3 proposal, a proposal. We took that then and
 4 submitted that.
 5 COFFEY, Q.C.:
 6 Q. And in fact, at one point, I take it, you
 7 referred to I think last week, Treasury Board
 8 instituted or said that they wanted a further
 9 study?
 10 MR. ABBOTT:
 11 A. We had several meetings with the staff, in
 12 terms of laying out this issue and making sure
 13 everybody understood it and how critical it
 14 was and important it was. It wasn't a
 15 routine, somebody wants a raise kind of
 16 scenario. This was critical positions and we
 17 had a very specific solution to bring forward,
 18 and the minister was certainly, based on my
 19 briefing and discussions with him, was
 20 certainly understood that and that this needed
 21 to be resolved. Obviously Treasury Board
 22 looks at these issues in, again, in a broader
 23 context. It's not only obviously oncologists,
 24 but what about other specialists? What about
 25 other professions? And we have an agreement

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1 in place, why do we need to address this at
 2 this time? Those kinds of issues.
 3 COFFEY, Q.C.:
 4 Q. Looking at this letter, it does say that, as
 5 you just pointed out, this letter does
 6 articulate that the provision of timely and
 7 necessary medical treatment or surgical
 8 procedures is critically dependent on the
 9 smooth operation of "laboratory medicine"
 10 operations, especially with respect to cancers
 11 and recruitment efforts over the past year to
 12 fill vacant positions in St. John's have met
 13 with little, if any, success. There's a
 14 shortage of pathologists throughout the
 15 country and Canadian medical schools are not
 16 graduating sufficient numbers to fill these
 17 vacancies. The outlook for the next decade is
 18 grim and will precipitate increasingly
 19 aggressive competition among the provinces.
 20 Pathologists working in this province are
 21 among the lowest paid in the country. As a
 22 result, we have and continue to lose these
 23 highly trained specialists to other
 24 jurisdictions" and then it talks about the
 25 compensation gap.

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1 This next page, sir, Dr. Costello says
 2 "the NLMA is requesting that you," that would
 3 be Mr. Ottenheimer, "begin to address this
 4 issue, this problem immediately and a critical
 5 first step to any long-term solution will be
 6 to address the compensation deficiency. The
 7 NLMA is strongly recommending a pathologist
 8 receive the same bonuses now offered to
 9 oncologists and other salaried specialists
 10 providing significant services for cancer
 11 patients." Now this reference to the same
 12 bonuses, when had you first become aware of
 13 this?
 14 MR. ABBOTT:
 15 A. It may have been, you know, certainly within
 16 the previous period. Now, and I had been
 17 familiar over time with the arrangements with
 18 NLMA and different pay or compensation regimes
 19 within the agreement, depending on which
 20 specialty and specialists, because I would
 21 have been dealing with others as well through
 22 that period. But in terms of linking, shall
 23 we say, their bonus to the pathologists about
 24 that--again, leading up to this, we were--I
 25 was familiar what was leading into this

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1 letter, but it was late, you know, mid late
 2 2005 that it made sense for those looking at
 3 this that we could link the two, and obviously
 4 they work, you know, clinically they worked
 5 hand in hand. It only made sense to see that
 6 their compensation, all things being equal,
 7 should be--could be consistently structured.
 8 Now the oncologists are--you know, they
 9 have a different pay system or compensation
 10 system than some of the other salaried, but
 11 that's how they work together as a group and
 12 share practice and work, clinical workload,
 13 those kinds of things. So they were slightly
 14 different in terms of the regime, but the
 15 concept and the construct could be applied, we
 16 felt, to the pathologists.
 17 COFFEY, Q.C.:
 18 Q. Because when the idea of getting or increasing
 19 pathologists' remuneration, when you were
 20 first introduced to it in January of '05, the
 21 idea of this oncology--well, I hate to use the
 22 word bonus, but effectively a bonus for
 23 oncologists, that wasn't really prevalent at
 24 that point in time, in terms of linking that
 25 to the pathologists?

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1 MR. ABBOTT:
 2 A. Not in terms of just the pay construct, as it
 3 were, but in terms of the concept of who the
 4 pathologists support in terms of the data they
 5 provide and of course, they felt they had a
 6 public relations problem as well, in terms of,
 7 you know, what they do and are they perceived
 8 as--how are they perceived and what value are
 9 they perceived with those who are outside,
 10 well within the health sector, but certainly
 11 outside the health sector and they knew that
 12 was a bit of a challenge here.
 13 COFFEY, Q.C.:
 14 Q. And do you recall--because this says "the NLMA
 15 strongly recommends that these specialists,"
 16 which would be the pathologists, "receive the
 17 same bonuses now offered to oncologists and
 18 other salaried specialists providing
 19 significant services for cancer patients,"
 20 namely the oncologists getting this bonus, as
 21 were apparently other salaried specialists or
 22 certain other salaried specialists who
 23 provided significant services for cancer
 24 patients. Now the idea had come forth, as you
 25 say, in the middle or end of '05 to apply the

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1 same idea or same approach to pathologists?
 2 MR. ABBOTT:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. Whose idea was that, do you recall?
 6 MR. ABBOTT:
 7 A. It could have come from the NLMA. It could
 8 have come on their own. It could have come
 9 through discussion with the department and Dr.
 10 Cathy Bradbury would have been our lead person
 11 on this, but you know, how the oncologists are
 12 compensated is obviously widely known and
 13 would have been based in the agreement in any
 14 event, so it would have been just a matter of
 15 looking where is the solution and what
 16 rationale can we bring that could find the
 17 widest acceptance, and that's how that I think
 18 presented the way it was and it certainly made
 19 certainly a lot of sense to me.
 20 COFFEY, Q.C.:
 21 Q. And the rationale, this would be particularly
 22 a rationale to deal with Treasury Board?
 23 MR. ABBOTT:
 24 A. Yes, and there was such a gap between the two
 25 specialists. Really it was hard--I was

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1 surprised, you know, when it was really
 2 presented that there was still that gap for
 3 such an extended period of time.
 4 COFFEY, Q.C.:
 5 Q. Exhibit P-0165, please? Now this is--actually
 6 page two of this exhibit is a letter--just go
 7 up here a bit, sorry. Sorry, Commissioner--on
 8 Canadian Association of Pathologists
 9 letterhead dated February 1, 2006. It's a
 10 letter to Mr. Ottenheimer in his capacity as
 11 Minister of Health. It's re: laboratory
 12 medicine specialists (pathologists) in
 13 Newfoundland. It's received in the minister's
 14 office February 9th, 2006 and that date is
 15 stamped on the bottom right-hand side, and
 16 it's from Diponkar Banerjee, the president of
 17 the Canadian Association of Pathologists, and
 18 he's from the British Columbia Cancer Agency.
 19 Now did you see this when it came into the
 20 department? I gather this stamp here on the
 21 top right-hand side -
 22 MR. ABBOTT:
 23 A. I would not have seen it when it initially
 24 came in.
 25 COFFEY, Q.C.:

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1 Q. And cc'ed EH, what's the significance of that
 2 kind of stamp?
 3 MR. ABBOTT:
 4 A. What would happen is it's recorded as
 5 correspondence to the minister and then it's
 6 coded, that's executive 6413 in our system and
 7 then it is copied to Ed Hunt for--and then he
 8 would take that and draft a reply.
 9 COFFEY, Q.C.:
 10 Q. Well, who makes that decision to -
 11 MR. ABBOTT:
 12 A. The minister's secretary.
 13 COFFEY, Q.C.:
 14 Q. Okay. As to who is to respond?
 15 MR. ABBOTT:
 16 A. Yes.
 17 COFFEY, Q.C.:
 18 Q. Okay. Did you ever see the letter?
 19 MR. ABBOTT:
 20 A. Not in terms--I don't recall it, you know, in
 21 terms of when it first arrived. I would have
 22 seen it as attached to a draft reply.
 23 COFFEY, Q.C.:
 24 Q. Okay, and so the--now the reply or I gather
 25 the actual reply is page one of the exhibit,

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1 Exhibit P-0165. It's stamped April 18th 2006.
 2 What's the significance of this, because this
 3 appeared to be like a date stamp as opposed to
 4 -
 5 MR. ABBOTT:
 6 A. Yes.
 7 COFFEY, Q.C.:
 8 Q. - typed dates.
 9 MR. ABBOTT:
 10 A. That's right, and that is, once the minister
 11 signs, the day he signs it, it's stamped.
 12 COFFEY, Q.C.:
 13 Q. So that's to accompany his not signing it the
 14 day it's actually typed up?
 15 MR. ABBOTT:
 16 A. Yes.
 17 COFFEY, Q.C.:
 18 Q. And it's a response on obviously the Minister
 19 letterhead to Dr. Banerjee and this is from
 20 Tom Osborne. Of course, this is some period
 21 of time later. It's April 18th. What do you
 22 recall about this, this series of letters? Or
 23 not series, it's one letter in and one letter
 24 out, and you can look if you like. You have
 25 the control, if you like.

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1 MR. ABBOTT:
 2 A. Yes. No, when the--you know, when I saw it,
 3 in terms of the draft reply and then the
 4 letter, I figured well, this was some advocacy
 5 on behalf of the pathologists, obviously at
 6 least I viewed it as the Newfoundland
 7 pathologists represented thereof obviously had
 8 made contact with the national group and
 9 suggested that a letter be written to, you
 10 know, bring attention to this matter, and
 11 that's generally--and that's not uncommon and
 12 that's how I viewed that.
 13 COFFEY, Q.C.:
 14 Q. Now did you know who Dr. Banerjee was in this
 15 context, the larger scheme of things?
 16 MR. ABBOTT:
 17 A. No, and I think I know why you're asking it,
 18 but no, at the time, I just viewed him as
 19 their national president.
 20 COFFEY, Q.C.:
 21 Q. You didn't make the linkage at the time in
 22 early '06 between him, the name, and the
 23 external reviewer?
 24 MR. ABBOTT:
 25 A. No.

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1 COFFEY, Q.C.:
 2 Q. Now in this, you saw a draft reply, the actual
 3 reply that went out, was it different than the
 4 draft reply or -
 5 MR. ABBOTT:
 6 A. I believe when the initial draft, that there
 7 was a change made when I read it and asked
 8 something to be changed or added and just
 9 because I knew about the issue and then it was
 10 a re-draft and then forwarded on to the
 11 minister then. The minister's had changed,
 12 I'm not sure when we had come up earlier when
 13 Mr. Ottenheimer signed and then it was delayed
 14 for Minister Osborne, I can't speak to the
 15 actual timing of the reply, but the initial
 16 draft anyway.
 17 COFFEY, Q.C.:
 18 Q. The actual reply that went out is, as I said,
 19 dated April 18th, 2006, page one of the
 20 exhibit. Do you recall looking at that what
 21 it was that you wanted changed?
 22 MR. ABBOTT:
 23 A. The first sentence of the third paragraph, I
 24 wanted--I think I was maybe the author of that
 25 sentence over the sentiment -

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1 COFFEY, Q.C.:
 2 Q. This is the one that says, "I do take
 3 exception to your suggestion that the recent
 4 errors in breast cancer screening experienced
 5 in this province were as a result of not
 6 having invested in high quality pathologists."
 7 MR. ABBOTT:
 8 A. Yes.
 9 COFFEY, Q.C.:
 10 Q. So you were the author of -
 11 MR. ABBOTT:
 12 A. I think I put that in, I took--reading the
 13 previous letter or the initial letter, I was
 14 left with the impression that we were, for
 15 some reason, not, irrespective of pay, that we
 16 had poorly qualified, not qualified, under
 17 qualified, whatever, pathologists and I wanted
 18 to say no, that was--I don't accept that
 19 premise.
 20 COFFEY, Q.C.:
 21 Q. Now what was it about, I'm here looking at
 22 page 2 of Dr. Banerjee's--of the exhibit,
 23 which is Dr. Banerjee's letter of February 1.
 24 MR. ABBOTT:
 25 A. Uh-hm.

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1 COFFEY, Q.C.:
 2 Q. What was it in his letter that you took
 3 exception to?
 4 MR. ABBOTT:
 5 A. It would be in the middle of the second
 6 paragraph, the sentence beginning with, "Not
 7 addressing this is false economy as patient
 8 care will be adversely affected by the lack of
 9 high quality pathologists in the province."
 10 And "since you have already experienced a
 11 recent example of the effects of not investing
 12 high quality pathology when the errors of
 13 breast estrogen receptor status was
 14 discovered, affecting hundred of patients in
 15 your province." So I'm just saying, you know,
 16 that's the two sentences that stood out and
 17 caused me to draft that type of sentence in
 18 the reply.
 19 COFFEY, Q.C.:
 20 Q. Now at the time, did you know what, well in
 21 fact, as it turns out, it was Dr. Banerjee, I
 22 take it you didn't know what the external
 23 reviewers had said?
 24 MR. ABBOTT:
 25 A. No, not any sense at all, even to this day,

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1 that there was any reference to pathologists.
 2 COFFEY, Q.C.:
 3 Q. And in drafting such a response, did you think
 4 to make any inquiries of Mr. Tilley or anyone
 5 else as to whether or not it did involve
 6 pathologists?
 7 MR. ABBOTT:
 8 A. No.
 9 COFFEY, Q.C.:
 10 Q. You were making a fairly adamant assertion
 11 that it had nothing to do with the
 12 pathologists -
 13 MR. ABBOTT:
 14 A. Well, and fair enough, now I would say that he
 15 was doing the same, you know, obviously he had
 16 more information with respect to that than I
 17 did, so I viewed it from an advocacy point of
 18 view and sort of a push back, only from that I
 19 was quite familiar with the issue in dealing
 20 with it, so from pathology and what they were
 21 doing, what have you and why this sort of--
 22 this particular issue was creeping in here
 23 was, again, my perspective was just using that
 24 to advocate whether he had any intimate
 25 knowledge, I didn't assume that by any

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1 stretch.
 2 COFFEY, Q.C.:
 3 Q. With respect to that, when you read that
 4 middle paragraph in his letter, I take it it
 5 didn't cross your mind to ask, well how does
 6 he know this? How does he purport to be
 7 saying this?
 8 MR. ABBOTT:
 9 A. Well, if--and as I said at the outset, I just
 10 worked under the assumption, but not talking
 11 to anyone, that in fact it would be--one of
 12 the pathologists we were dealing with, whether
 13 it was Dr. Denic or whatever, who said to
 14 their national president, would you write a
 15 letter to the Newfoundland minister to help us
 16 out with our case. And whatever information
 17 he had in that letter, I would have said, well
 18 maybe Dr. Denic or somebody else might have
 19 provided it, which would be, you know, no
 20 great cause of concern to me in terms of that
 21 type of communication. And that's how I read
 22 it.
 23 COFFEY, Q.C.:
 24 Q. If it was Dr. Denic or Dr. Cook that was
 25 providing that sort of information to Dr.

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1 Banerjee, wouldn't that be of even more
 2 concern?
 3 MR. ABBOTT:
 4 A. Not within the profession, no.
 5 COFFEY, Q.C.:
 6 Q. If they were saying, either Drs. Cook or Denic
 7 were saying that patient care will be
 8 adversely affected by a lack of high quality
 9 pathologists in the province if you don't, if
 10 you're not prepared to pay them more.
 11 MR. ABBOTT:
 12 A. Again, we were seeing this on a number of
 13 fronts and so it was in that very same context
 14 to promote the discipline, support and the
 15 discipline and language sort of gets used that
 16 only somebody working within that could bring
 17 that forward, there was no proprietary
 18 information of that or no patient information,
 19 it was an observation that was, I guess
 20 generally shared and by me, generally
 21 understood.
 22 COFFEY, Q.C.:
 23 Q. So although you would have understood that Dr.
 24 Banerjee perhaps was, you know, in this
 25 context in an advocacy role, given to a

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1 certain amount of hyperbole -
 2 MR. ABBOTT:
 3 A. Oh yes.
 4 COFFEY, Q.C.:
 5 Q. Yet despite that, you did see fit to insert a
 6 particular assertion, as you've just
 7 identified, in the response for Mr. Osborne,
 8 specifically taking exception with it. So if
 9 it was hyperbole, why would you care and if
 10 this kind of negotiating practice -
 11 MR. ABBOTT:
 12 A. Well, I didn't know where that letter was
 13 going to go, so I just said, you know, I'll be
 14 sort of on the record.
 15 COFFEY, Q.C.:
 16 Q. Now, sir, now as you went from January into
 17 February of '06, was the ER/PR matter still in
 18 the news?
 19 MR. ABBOTT:
 20 A. I really couldn't tell you right now, it was,
 21 you know, ebbed and flowed on that, there
 22 would be some activity for a little while
 23 through the media and then things would, there
 24 would be no issues and then they would come,
 25 possibly come forward again, so there was an

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1 ebb and flow of that over time. And if you
 2 look, please, at exhibit P-0401. Now this is
 3 a, just look at, sorry, page two, this is a
 4 communication from Legislative and Regulatory
 5 Affairs, Department of Health, it's a memo
 6 dated February 23rd, 2006. It's to George
 7 Tilley, CEO at Eastern Health, it's from Reg
 8 Coates. Now who is Reg Coates?
 9 MR. ABBOTT:
 10 A. Reg Coates is a director of regulatory, or
 11 Legislative and Regulatory Affairs with our
 12 department and one of his responsibilities was
 13 to receive and process any requests under that
 14 legislation.
 15 COFFEY, Q.C.:
 16 Q. Now, he sends this, he entitled it or begins
 17 by saying "George" and he signs it "Regards,
 18 Reg." It's copied, cc'd to Tansy Mundon and
 19 Moira Hennessey?
 20 MR. ABBOTT:
 21 A. Yes.
 22 COFFEY, Q.C.:
 23 Q. Now, would you have been made aware that this
 24 sort of a request had come in, this is an
 25 Access to Information request, just to put it

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1 in context, there's a draft letter, February
 2 23rd, 2006, to Mark Quinn at CBC. The subject
 3 is re: your request for access to information
 4 under part II of the Access to Information and
 5 Protection of Privacy Act, and there's a file
 6 number given.
 7 MR. ABBOTT:
 8 A. Yes. To answer your question, yes, I mean,
 9 Mr. Coates would advise me of requests that
 10 had come in that he would be working on, just
 11 as a heads up.
 12 COFFEY, Q.C.:
 13 Q. Now here, would you actually see the request
 14 for -
 15 MR. ABBOTT:
 16 A. That initially came in? Generally not, again,
 17 it was sort of as we were finalizing a reply
 18 that I would then generally be advised of the
 19 initial request.
 20 COFFEY, Q.C.:
 21 Q. What about dealing with or here he's sending
 22 out a memo to Mr. Tilley -
 23 MR. ABBOTT:
 24 A. Yes.
 25 COFFEY, Q.C.:

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1 Q. Why would Mr. Tilley be getting a memo?
 2 MR. ABBOTT:
 3 A. Well as I read the request and understood it,
 4 it was e-mails, briefing notes of e-mails
 5 between members of Eastern Health and the
 6 department, so he would go then to the CEO.
 7 COFFEY, Q.C.:
 8 Q. And why is that?
 9 MR. ABBOTT:
 10 A. That was just a practice he had put in place.
 11 It didn't have a, at the same time, in this
 12 case, he did not have an automatic, shall we
 13 say equivalent in the health authority.
 14 THE COMMISSIONER:
 15 Q. He really didn't have?
 16 MR. ABBOTT:
 17 A. An automated equivalent, so there wouldn't be
 18 necessary a director of Legislative Regulator
 19 Affairs on Eastern Health's side.
 20 THE COMMISSIONER:
 21 Q. On, an equivalent position, you mean?
 22 MR. ABBOTT:
 23 A. Yes, I'm sorry.
 24 COFFEY, Q.C.:
 25 Q. And your understanding of the purpose of, if

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1 the request is to the department, why would
 2 you ask Eastern Health about what they
 3 thought?
 4 MR. ABBOTT:
 5 A. Well because it was e-mail traffic to and from
 6 and so we just, for greater certainty, to let
 7 them know the request is in and he could
 8 assist is in responding to the request.
 9 COFFEY, Q.C.:
 10 Q. You wouldn't be going to Eastern Health
 11 actually asking for their e-mails?
 12 MR. ABBOTT:
 13 A. No, unless we thought we needed, you know, to
 14 see something, but again it was really, not
 15 only a heads up, as to we may need or want
 16 your assistance in complying with this
 17 request.
 18 COFFEY, Q.C.:
 19 Q. What kind of assistance, you know, from your
 20 perspective as the deputy minister would an
 21 outfit like Eastern Health be providing to the
 22 department?
 23 MR. ABBOTT:
 24 A. Well, again, would be whether or not, you
 25 know, to know the request is here and that we

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1 would fully comply, outside of that whether or
 2 not we needed to pursue a particular e-mail or
 3 some correspondence and then George Tilley and
 4 his designate would be our contact to confirm,
 5 you know, what it is the--how it complies,
 6 those kinds of things.
 7 COFFEY, Q.C.:
 8 Q. Well would you be looking to George Tilley or
 9 somebody at Eastern Health for any input into
 10 how it was answered, like how much information
 11 was given out, what was redacted, what wasn't?
 12 MR. ABBOTT:
 13 A. Not--it would be our responsibility to
 14 determine what now, if the request was of the
 15 department, what then should be released based
 16 on the law.
 17 COFFEY, Q.C.:
 18 Q. And, well if we look then at, here this actual
 19 February 23rd memo, Mr. Coates writes, "Please
 20 find attached a draft response regarding our
 21 request for information concerning the issue
 22 of breast screening tests, ER/PR receptors.
 23 Much of the information related in this
 24 request would reside with your organization.
 25 In reviewing our records, we found several e-

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1 mail and a number of briefing notes. Based on
 2 our assessment, we have determined the e-mail
 3 traffic from Ross Reid is essentially personal
 4 information, even if we sever Mr. Reid's name,
 5 the potential exists that someone could
 6 recognize the individual patient based on
 7 circumstances described, therefore based on
 8 Section 30 of ATIPPA, we have decided to sever
 9 three e-mail in their entirety. With respect
 10 to the briefing notes, we reviewed them in the
 11 context of paragraph 21(a) of ATIPPA, but do
 12 not believe that any of the material is
 13 subject to that exception. The text and the
 14 briefing notes does not, in our opinion,
 15 amount to policy advice. We would like your
 16 opinion on our draft response as soon as
 17 possible." So what sort of input was Mr.
 18 Tilley being asked to offer?
 19 MR. ABBOTT:
 20 A. And fair enough question, and when I see the
 21 word "opinion" but it would be, like really is
 22 there anything in that that they thought
 23 would, from a legislative requirements, should
 24 also be, shall we say flagged.
 25 COFFEY, Q.C.:

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1 Q. And possibly redacted.
 2 MR. ABBOTT:
 3 A. Right, so it was just, you know, for greater
 4 certainty, that's how I view that.
 5 COFFEY, Q.C.:
 6 Q. If we could look, please, at page 7 of the
 7 exhibit. Now amongst the material that was
 8 going over is this July 20th, 2005 ER/PR
 9 briefing note?
 10 MR. ABBOTT:
 11 A. Yes.
 12 COFFEY, Q.C.:
 13 Q. That the department had received on July 21.
 14 And Mr. Coates is apparently going to send the
 15 entire briefing note unredacted.
 16 MR. ABBOTT:
 17 A. That's right.
 18 COFFEY, Q.C.:
 19 Q. Because the word on the third page, entitled
 20 "Actions", there's nothing flagged to come
 21 out.
 22 MR. ABBOTT:
 23 A. No.
 24 COFFEY, Q.C.:
 25 Q. If you look please at exhibit P-0394, now here

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1 look at the second page of this, this is on,
 2 well it's Office of the Deputy Minister
 3 letterhead, which would be your office. It's
 4 addressed to Mark Quinn, there's some kind of
 5 a note, a handwritten note appended to this,
 6 looks to be one of those, I refer to them as
 7 sticky pads, posted notes, I suppose. I
 8 gather this is March 8th, '06. "Spoke to Mark
 9 Quinn, apologized for the delay, stated
 10 something was okay, would not file appeal for
 11 or to IPC" and whose handwriting is that, do
 12 you know?
 13 MR. ABBOTT:
 14 A. I think that's Reg Coates.
 15 COFFEY, Q.C.:
 16 Q. And on this particular one because there's a
 17 stroke--in behind this, there's a stroke right
 18 through the entire letter in front of it.
 19 MR. ABBOTT:
 20 A. Uh-hm.
 21 COFFEY, Q.C.:
 22 Q. And then there's another stroke through the
 23 second page and the third page, there's no
 24 stroke through it, but it had been signed by
 25 yourself, John Abbott, as deputy minister and

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1 it's copied to George Tilley.
 2 MR. ABBOTT:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. And can you tell us please about what happened
 6 here, because I gather, if we look at exhibit,
 7 I'll just bring it up, exhibit P-0129, page--
 8 this is again on Office of the Deputy Minister
 9 letterhead, it's to Mark Quinn, March 9th,
 10 2006, it's responding to the same request as
 11 the earlier letter. Again, this is signed by
 12 yourself, John G. Abbott, Deputy Minister and
 13 it's copied to George Tilley. Could you tell
 14 us, please, what happened with this?
 15 MR. ABBOTT:
 16 A. Well, when I received the draft reply and went
 17 through the reply and the attachments -
 18 COFFEY, Q.C.:
 19 Q. Okay, so which one would that be, that would
 20 be exhibit--or would that even be here?
 21 MR. ABBOTT:
 22 A. I'm not sure.
 23 COFFEY, Q.C.:
 24 Q. Okay, you go ahead, sir, I'm sorry.
 25 MR. ABBOTT:

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1 A. Okay, so I would have received the draft
 2 reply. When I went through it, there was, in
 3 terms of detachments referenced to one of our
 4 briefing notes done by the--prepared by the
 5 department and there had been certain things
 6 that had been suggested that we sever from the
 7 briefing note.
 8 COFFEY, Q.C.:
 9 Q. Whose suggestion was that?
 10 MR. ABBOTT:
 11 A. That would have been by Reg Coates based on
 12 his interpretation of the legislation. And I
 13 read it and indicated to him that I felt that
 14 no, that was, didn't fall within the, shall we
 15 say protection of the legislation and that in
 16 fact the full note should be released. He
 17 then--I don't know if that required a redraft
 18 of the letter. I may have signed it and then
 19 he redrafted it with a different date, but
 20 that was my recollection. I understood the
 21 request, we were going to comply to the degree
 22 we could or should. There was some issue
 23 around the, and I recall around the Ross Reid
 24 e-mail and I had had one or two conversations
 25 with him on that. We weren't really sure how

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1 to interpret that, so we followed up
 2 internally and were advised that no, in fact
 3 we should not, but that had been sorted out
 4 well before the draft letter. So that's all I
 5 recall on that and literally until the, when
 6 this was provided as part of the exhibits here
 7 for this testimony, that in fact there was a
 8 second letter and that particular reference
 9 was a reference in the Eastern Health briefing
 10 note was deleted. That, I do not remember
 11 having any conversation on that and, but in
 12 terms of my dealings with Mr. Coates over the
 13 period on these requests, he was very
 14 meticulous, very careful to make sure that we
 15 were in full compliance and so, if it came out
 16 is, there was an assumption that it could come
 17 out, but whether it should or not is, I guess,
 18 a matter of discussion or debate.
 19 COFFEY, Q.C.:
 20 Q. Now in that regard, this particular exhibit P-
 21 0394, this note would have been written for
 22 your benefit, I take it?
 23 MR. ABBOTT:
 24 A. I don't necessarily--I read it more for
 25 himself, but--to himself, for the file. I

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1 really didn't necessarily, I don't necessarily
 2 see it for me.
 3 COFFEY, Q.C.:
 4 Q. Okay. If we could look at page four, please,
 5 of the exhibit? Now here sir, and again, this
 6 is -
 7 MR. ABBOTT:
 8 A. That was the one, I guess, I was referring to.
 9 COFFEY, Q.C.:
 10 Q. Yes, you made a note. When you got this,
 11 because either yourself or Mr. Ottenheimer had
 12 to sign this?
 13 MR. ABBOTT:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. Or the minister of the day.
 17 MR. ABBOTT:
 18 A. In our department, the practice was that I
 19 would sign these.
 20 COFFEY, Q.C.:
 21 Q. Okay, and this is, your notes, you've
 22 handwritten "Reg, for this Q and A, two page
 23 BN, briefing note, please include full" and
 24 you got it in quotes, "doc." I'm sorry,
 25 what's that? Some something those one?

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1 MR. ABBOTT:
 2 A. Not this one.
 3 COFFEY, Q.C.:
 4 Q. Not this one?
 5 MR. ABBOTT:
 6 A. Yeah.
 7 COFFEY, Q.C.:
 8 Q. Okay, in others words not this version of it,
 9 I take it?
 10 MR. ABBOTT:
 11 A. That's right, yes.
 12 COFFEY, Q.C.:
 13 Q. You wanted a full one to go?
 14 MR. ABBOTT:
 15 A. Yes.
 16 COFFEY, Q.C.:
 17 Q. And that particular one, Commissioner, is the
 18 November 7th 2005 one. I take it there was
 19 some dispute or difference of opinion within
 20 the government or government officials as to
 21 whether or not questions, anticipated
 22 questions should be included or not.
 23 MR. ABBOTT:
 24 A. Yes.
 25 COFFEY, Q.C.:

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1 Q. If we could look, please, at page 15 of the
 2 exhibit? Now this is the third page of that
 3 July 20th briefing note and the second last
 4 paragraph, March--I believe that's, depending
 5 on how you view it, it's either 6th or 8th/06.
 6 MR. ABBOTT:
 7 A. Um-hm.
 8 COFFEY, Q.C.:
 9 Q. And there's some highlighting. It doesn't
 10 show up here on this colour, but some
 11 highlighting here and it says "spoke to
 12 G.Tilley, QA remove, should be kept out." Now
 13 do you recognize whose handwriting that is?
 14 MR. ABBOTT:
 15 A. Again, I believe it's Mr. Coates.
 16 COFFEY, Q.C.:
 17 Q. And did you realize at the time you were
 18 reviewing this, because you were certainly
 19 telling Mr. Coates to put things back in?
 20 MR. ABBOTT:
 21 A. Um-hm.
 22 COFFEY, Q.C.:
 23 Q. Yes, certain things back in. Did you realize
 24 that that was being taken out?
 25 MR. ABBOTT:

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1 A. No, I have no memory of a discussion on that
 2 point.
 3 COFFEY, Q.C.:
 4 Q. And how about did you notice it at the time,
 5 because this would have been in the material
 6 presumably you received?
 7 MR. ABBOTT:
 8 A. No, and the -
 9 COFFEY, Q.C.:
 10 Q. When you get the material, how would it come
 11 to you? You get the suggested final version?
 12 MR. ABBOTT:
 13 A. Yes, with the--generally with the attachments.
 14 COFFEY, Q.C.:
 15 Q. Yes.
 16 MR. ABBOTT:
 17 A. And so that's why I picked up that briefing
 18 note. So I'm working on the premise now that I
 19 had all that, everything was fine. Whether or
 20 not then when I signed the final letter I
 21 actually went back through the other material,
 22 other than the one that I had asked to have
 23 changed, and if he told me he put it back, the
 24 full note, then that was fine. So I suspect
 25 that I did not go back through the rest of the

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1 material, particularly if we didn't have a
 2 discussion on it or at least the discussion
 3 that I remember. Now did I note that in the
 4 first instance versus not there in second
 5 instance, I wouldn't have paid any particular
 6 attention to it, unless it had been said, you
 7 know, we are taking--need to take it out, and
 8 there's a rationale for it, and I'm assuming
 9 that Mr. Coates, based on that conversation
 10 with Mr. Tilley, felt that it meant that test.
 11 COFFEY, Q.C.:
 12 Q. Mr. Tilley?
 13 MR. ABBOTT:
 14 A. Yeah, in terms of that conversation that--
 15 based on--it's only based on the note. So I
 16 will leave it to Mr. Coates, if you're--you
 17 know, obviously you'll be speaking with him.
 18 COFFEY, Q.C.:
 19 Q. Oh yes.
 20 MR. ABBOTT:
 21 A. To explain that. I'm sure he'll, hopefully,
 22 add that perspective.
 23 COFFEY, Q.C.:
 24 Q. Is there--just looking at it there, now

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1 looking at it and whatever else is--in fact,
 2 what else is on the page, is there anything
 3 particular there in that paragraph that would
 4 differentiate it from, for example, the fifth
 5 paragraph?
 6 MR. ABBOTT:
 7 A. No. Again, you know, even to say--you know,
 8 again, that in fact we're doing a review and
 9 what have you, well, there was a statement of
 10 fact, that's--there's no basis that I would
 11 see that it should have come out.
 12 COFFEY, Q.C.:
 13 Q. And I mean, looking back on it now, you're
 14 telling the Commissioner that if it was there,
 15 if I saw this, I didn't focus on it enough to
 16 question it, if I saw it at all?
 17 MR. ABBOTT:
 18 A. Well, as I said, I was familiar with the
 19 briefing note and it looked like it was the
 20 original briefing note. In the first--when it
 21 first came forward, and then when I got the
 22 second--because I think this happened around
 23 the same time I was reviewing the first draft.
 24 This, I think, came after the fact.
 25 COFFEY, Q.C.:

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1 Q. In fact, you had signed an original letter.
 2 You had signed a letter of -
 3 MR. ABBOTT:
 4 A. Yes, yeah, and that's what I said, so I don't-
 5 -I think I may have signed it and then when I
 6 reviewed the material, said "oops, we need to
 7 add the material that was in our departmental
 8 briefing note, put that back in." So he may
 9 have--again, it could have been that I had
 10 signed it, sent it back, asking to make the
 11 change and then send it on. Now I mean,
 12 that's sort of guessing here what may have
 13 happened, but -
 14 COFFEY, Q.C.:
 15 Q. You did sign twice, because -
 16 MR. ABBOTT:
 17 A. Yeah, but then knowing he, you know, would
 18 have brought it back and changed the date,
 19 what have you, to keep it current because the
 20 time limits were also, you know, always a
 21 factor. And the text, the letter, I guess,
 22 changed as well.
 23 COFFEY, Q.C.:
 24 Q. Yes.
 25 MR. ABBOTT:

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1 A. Yes, that's right.
 2 COFFEY, Q.C.:
 3 Q. And that's what I'm asking about. So the text
 4 of the letter, the reasons for redactions or
 5 holding back material, do in fact change as
 6 well?
 7 MR. ABBOTT:
 8 A. Yeah.
 9 COFFEY, Q.C.:
 10 Q. So certainly Mr. Coates would have brought
 11 that to your attention, the fact that what
 12 you--the rationale for excluding material. He
 13 would have said to you "Mr. Abbott, look,"--or
 14 John as he called you, whatever he called you
 15 -
 16 MR. ABBOTT:
 17 A. Yeah.
 18 COFFEY, Q.C.:
 19 Q. "Look, originally it was 21A, 23.1B and 30 and
 20 now -
 21 MR. ABBOTT:
 22 A. I guess the advice of the minister--again, I'd
 23 have to look at, you know, compare that, but I
 24 don't know how that--this particular piece
 25 here would relate to any one of those

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1 provisions.
 2 COFFEY, Q.C.:
 3 Q. In fact, the Q and A part of it doesn't refer
 4 to anything in the ATIPPA that you're aware
 5 of, does it? The response, the rationale
 6 given in the letter you signed--we'll bring up
 7 P-0129?
 8 MR. ABBOTT:
 9 A. Yeah, if you wouldn't mind, if you could that,
 10 that would be good.
 11 COFFEY, Q.C.:
 12 Q. Sure, P-0129, please, the actual one that went
 13 out. We look at the bottom of the page there,
 14 the rationale is "are being denied in
 15 accordance with access being denied. 23.1B,
 16 disclosure would reveal information provided
 17 in confidence from another province." Well,
 18 that's not applicable here to that reference
 19 to Dr. Ejeckam. And Section 30 of ATIPP,
 20 whereby personal information cannot be
 21 disclosed, well that certainly has nothing to
 22 do with this, does it?
 23 MR. ABBOTT:
 24 A. No. No, that was -
 25 COFFEY, Q.C.:

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1 Q. So there's no actual rationale, in terms of
 2 exclusions under -
 3 MR. ABBOTT:
 4 A. No, and I--yes, I agree with you. However
 5 it's presented, there's nothing there that I'm
 6 aware of that should exclude the reference to
 7 that particular.
 8 COFFEY, Q.C.:
 9 Q. Were you aware--I'm trying to get some sense
 10 then, Mr. Abbott, of when you finally sign
 11 that March 9th letter, had to leave your
 12 office to go, were you aware that the
 13 reference to Dr. Ejeckam 2003 was not going
 14 out to CBC?
 15 MR. ABBOTT:
 16 A. As I think I mentioned, I did not--I do not
 17 recall that happening or any discussion around
 18 it, and I think I've fairly--unless Reg Coates
 19 had given me some very compelling piece, and
 20 we were very--worked closely on these, because
 21 they were very sensitive, we were generally
 22 always on the same page.
 23 COFFEY, Q.C.:
 24 Q. If we could look at page six of this exhibit,
 25 please, P-0129? This is actually that third

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1 page of that July 20th briefing note and here,
 2 this is what would have left or gone to--a
 3 photocopy of what would have gone to Mr.
 4 Quinn, and it's just gone, that paragraph is
 5 gone.
 6 MR. ABBOTT:
 7 A. Yes.
 8 COFFEY, Q.C.:
 9 Q. So you didn't realize or notice -
 10 MR. ABBOTT:
 11 A. No.
 12 COFFEY, Q.C.:
 13 Q. - that it had been taken out. Up to that
 14 point in time, to your knowledge, was there
 15 anything publicly known about the 2003 matter?
 16 MR. ABBOTT:
 17 A. I don't ever remember it being an issue
 18 literally, one way or the other.
 19 COFFEY, Q.C.:
 20 Q. Do you have any reason to believe it was out
 21 in the public by then or is that more
 22 consistent with May of 2007?
 23 MR. ABBOTT:
 24 A. Well, out in the public in the--if, you know,
 25 you were closing a lab, one, and then the

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1 reasons for it. So within, shall we say, the
 2 medical community, the hospital community, it
 3 may have been known, but in terms of a public
 4 issue, no.
 5 COFFEY, Q.C.:
 6 Q. If we could, please, Exhibit P-0403? Now this
 7 is an e-mail from Heather Predham, March 15th
 8 2006, to a number of individuals within
 9 Eastern Health, number of senior staff and
 10 others, and then she says "hello everyone. I
 11 just received the ATIPP request from Mark
 12 Quinn at CBC for all reports, memos, letters,
 13 briefing notes and e-mails of the Eastern
 14 Regional Health Authority between May 1, 2005
 15 and the present regarding hormone receptor
 16 tests for people with breast cancer." And she
 17 goes on about that, but was the department
 18 then made aware that apparently Mr. Quinn,
 19 right after he got your response, filed one
 20 with Eastern Health, filed a request?
 21 MR. ABBOTT:
 22 A. I really don't know.
 23 THE COMMISSIONER:
 24 Q. Break wherever you can find a convenient
 25 place, Mr. Coffey.

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1 COFFEY, Q.C.:
 2 Q. Sure. What then, you know, in terms of the
 3 ER/PR matter, Mr. Abbott, how did this kind of
 4 unfold then as the winter of '06, the spring
 5 of '06 went on?
 6 MR. ABBOTT:
 7 A. From the department's perspective and my
 8 dealing with it, you know, it was very little
 9 activity. Again, we would have updated
 10 briefing notes for the House. We obviously
 11 had a change of minister in March month. We
 12 would have updated, you know, his briefing
 13 material and primarily as he was getting ready
 14 for the House because he came in just as that
 15 was happening, and unless an issue came up in
 16 the media, we were not--we didn't have any
 17 involvement with the minister's office around
 18 this issue.
 19 COFFEY, Q.C.:
 20 Q. Okay then, perhaps after lunch, I'll take you
 21 up with Mr. Osborne and what happened, if we
 22 could, please.
 23 THE COMMISSIONER:
 24 Q. All right. 2:05.
 25 (LUNCH BREAK)

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1 THE COMMISSIONER:
 2 Q. Please be seated. Mr. Coffey.
 3 COFFEY, Q.C.:
 4 Q. Thank you, Commissioner. Mr. Abbott,
 5 Registrar, if we could bring up, please,
 6 Exhibit P-0125? Now this is--this particular
 7 exhibit is the grouping of briefing notes for
 8 2006 or materials related--some materials, I'm
 9 sorry, related thereto. The first of these at
 10 page three is the one--there's one dated
 11 February 23rd, 2006, prepared by Debbie
 12 Morris, approved by Moira Hennessey. Who's
 13 Debbie Morris?
 14 MR. ABBOTT:
 15 A. Debbie Morris is one of the staff working in
 16 the division reporting to Moira Hennessey.
 17 COFFEY, Q.C.:
 18 Q. Now here, in the anticipated questions, in the
 19 past when we looked at the November 2005 and,
 20 November 7th 2005, December 5th 2005 briefing
 21 notes, there was a question "how did this
 22 happen?" Here, that question has dropped off.
 23 Would you have noticed that it had dropped
 24 off?
 25 MR. ABBOTT:

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1 A. Not specifically, and you know, in terms of
 2 looking at the questions, a sense of how we
 3 would expect questions to be posed, based on
 4 our sense of from the media, the opposition,
 5 what have you, as it's been raised in the
 6 public.
 7 COFFEY, Q.C.:
 8 Q. Here, the issue is posed as breast cancer
 9 patients are still looking for answers, and it
 10 goes on from there.
 11 MR. ABBOTT:
 12 A. Yes.
 13 COFFEY, Q.C.:
 14 Q. I take it at that point in time, this is
 15 February 2006, the entity hoping you would
 16 have expected to provide such answers would
 17 be, if any were forthcoming?
 18 MR. ABBOTT:
 19 A. Would be Eastern Health.
 20 COFFEY, Q.C.:
 21 Q. Was Eastern Health, at this point, this is
 22 February of 2006, being urged by the
 23 department to get out there and provide
 24 answers?
 25 MR. ABBOTT:

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1 A. No, no. We left that to them to determine
 2 what answers to give and when.
 3 COFFEY, Q.C.:
 4 Q. And in terms of the--if anyone was going to
 5 say anything to them in that regard, from the
 6 government's perspective, I take it that would
 7 be the minister or somebody senior to the
 8 minister?
 9 MR. ABBOTT:
 10 A. Yes, in terms of certainly any very specific
 11 take an action. Not to say that I wouldn't
 12 have continued, over the period, had
 13 conversation with George Tilley in terms of
 14 the communications and any issues or concerns
 15 we might have had.
 16 COFFEY, Q.C.:
 17 Q. And in terms of that, and this is late
 18 February of '06, what was the situation then?
 19 What were you telling Mr. Tilley?
 20 MR. ABBOTT:
 21 A. I think at this particular period, probably
 22 not very much. I think in the late, mid, sort
 23 of late fall, we were, you know, concerned
 24 about -
 25 COFFEY, Q.C.:

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1 Q. Fall of '06 that is, or mid to late fall of
 2 '05?
 3 MR. ABBOTT:
 4 A. '05.
 5 COFFEY, Q.C.:
 6 Q. '05, okay, when it first started. I'm sorry.
 7 MR. ABBOTT:
 8 A. Yes. Again, on how this was being addressed
 9 from a communications point of view by Eastern
 10 Health.
 11 COFFEY, Q.C.:
 12 Q. What did you tell Mr. Tilley in that regard?
 13 MR. ABBOTT:
 14 A. I just--there was a concern or observation
 15 that I had that obviously it wasn't going
 16 necessarily well. There are still questions
 17 out there, you know, and we need to be very--
 18 make sure that you have your communications
 19 well resourced to deal with this particular
 20 issue, and was he confident and comfortable
 21 with the advice that he was getting.
 22 COFFEY, Q.C.:
 23 Q. And his response to you in that regard was
 24 that?
 25 MR. ABBOTT:

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1 A. I think he said he understood my question, but
 2 he was fine with that, you know, the advice
 3 and support around him and around the
 4 organization.
 5 COFFEY, Q.C.:
 6 Q. Page eight, please. Thank you. This is again
 7 a question and answer briefing note, spring
 8 2006, Department of Health. This particular
 9 one is dated March 15th 2006, prepared by
 10 Debbie Morris, approved by Moira Hennessey.
 11 By this point in time, Mr. Osborne would have
 12 been the minister or thereabouts?
 13 MR. ABBOTT:
 14 A. Pretty well around that date, 15th-16th of
 15 March.
 16 COFFEY, Q.C.:
 17 Q. Now here, if we could, I'm just going to go
 18 back to page three of the exhibit, which is
 19 the February 23rd briefing note, and here
 20 under the key messages, there's a reference to
 21 "a quality review began immediately when the
 22 problem was discovered. Eastern Health has
 23 had the method of testing for ER/PR receptors
 24 reviewed by external consultants. Their
 25 recommendations have been implemented and the

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1 consultants are expected to return to Eastern
 2 Health in early April to review what has been
 3 done. It is expected that Eastern Health will
 4 begin testing of new patients at that time."
 5 Now is it your understanding, like in
 6 late February, that the external consultants'
 7 recommendations, this says "have been
 8 implemented."
 9 MR. ABBOTT:
 10 A. Yes.
 11 COFFEY, Q.C.:
 12 Q. Suggesting past tense and you say "their
 13 recommendations" to suggest perhaps all of
 14 them.
 15 MR. ABBOTT:
 16 A. Yes.
 17 COFFEY, Q.C.:
 18 Q. What was your understanding at the time, in
 19 late February?
 20 MR. ABBOTT:
 21 A. That would be close, I think, to my
 22 recollection, we weren't distinguishing
 23 between some being delayed. There might have
 24 been some ongoing, but the general sense was
 25 that, and particularly when we were thinking

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1 that the lab, again we were getting this
 2 through our request for them for updates for
 3 our briefing notes and what have you, that
 4 they were getting ready to retest and so that
 5 was where I understood it to be. I didn't
 6 inquire on any level of detail around that.
 7 COFFEY, Q.C.:
 8 Q. And it says--because it concludes here by
 9 saying "it is expected that Eastern Health
 10 will begin testing of new patients at that
 11 time," suggesting, you know, sometime perhaps
 12 after early April, because the consultants are
 13 going to be back in early April.
 14 MR. ABBOTT:
 15 A. Yes.
 16 COFFEY, Q.C.:
 17 Q. I briefly showed you the letter, that December
 18 7th letter that Dr. Carter had written to Dr.
 19 Williams and referring to two fairly damning
 20 reports, remember that?
 21 MR. ABBOTT:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. And that letter goes on at some length, Dr.
 25 Carter does, about concerns she has, very

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1 detailed concerns. What, if anything, were
 2 you being told or being advised, you know, in
 3 late '06, early '07, last month of '06, the
 4 first two months of '07, by Eastern Health
 5 about the implementation of recommendations
 6 and whether--I suppose what I'm trying to say
 7 to you is this, were you ever alerted to what
 8 arguably is Dr. Carter's kind of dissenting
 9 view?
 10 MR. ABBOTT:
 11 A. No.
 12 COFFEY, Q.C.:
 13 Q. You weren't. Knowing what you do now, I
 14 appreciate that it's a significant amount
 15 more, might it have been helpful to you to at
 16 least have been alerted to the fact that there
 17 was a significant difference of opinion?
 18 MR. ABBOTT:
 19 A. Well, again, I don't want to speculate, but in
 20 terms of process, you know, depending on how
 21 strong--obviously how strong she felt, she or
 22 others, again there's a couple of processes
 23 that they obviously could follow internally
 24 and through the medical association, which was
 25 not uncommon, if there was a particular

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1 concern. So it didn't come to us, that I
 2 recall, in any fashion. So, and then unless
 3 she basically had done that herself, I don't
 4 see how it would have gotten to my office.
 5 COFFEY, Q.C.:
 6 Q. Just on that point, okay, and as a matter of
 7 process, and on a protocol, if, for whatever
 8 reason, Dr. Williams and/or Mr. Tilley chose
 9 not to pass the fact that there was a
 10 differing view apparently within Eastern
 11 Health onto yourself and the department, from
 12 your perspective, as the deputy minister, the
 13 other way that--other than her actually
 14 picking up the phone and calling you or
 15 sending you a letter, the way that you would
 16 expect kind of a differing opinion to be
 17 brought forward to you would be what?
 18 MR. ABBOTT:
 19 A. Well -
 20 COFFEY, Q.C.:
 21 Q. Through the medical -
 22 MR. ABBOTT:
 23 A. - it would be--I'm sorry?
 24 COFFEY, Q.C.:
 25 Q. Through the medical advisory committee or the

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1 association?
 2 MR. ABBOTT:
 3 A. No, no, that would be all--either it would
 4 come, you know, if not from her directly, then
 5 it would be by George Tilley and/or the board
 6 chair, you know, or alternately through the
 7 medical association itself, through say Mr.
 8 Ritter, who has called from time to time,
 9 "there is a concern by physician X or Y about
 10 something that's happening and can we discuss
 11 it? Can you check into it?" what have you.
 12 So that did not happen.
 13 COFFEY, Q.C.:
 14 Q. That didn't happen. But from your perspective,
 15 bearing in mind other instances -
 16 MR. ABBOTT:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. - you know, that -
 20 MR. ABBOTT:
 21 A. Right, throughout this piece, there would have
 22 been--it was getting those, I won't say
 23 regularly, but there were no surprises when I
 24 got them and if it came to my attention, then
 25 I would, you know, pick up either the phone to

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1 talk to Mr. Ritter from that end or Mr. Tilley
 2 or Dr. Williams from the Eastern Health end.
 3 COFFEY, Q.C.:
 4 Q. Now, if we could, page eight, please? Thank
 5 you. This is the March 15th briefing note.
 6 Mr. Abbott, we look down here, again under key
 7 messages, the third one, in effect, this is
 8 the same message, except that now it's been
 9 modified to say "it is expected that Eastern
 10 Health will begin testing of new patients in
 11 St. John's once the final consultant's report
 12 has been received and reviewed, likely in late
 13 May."
 14 MR. ABBOTT:
 15 A. Yes.
 16 COFFEY, Q.C.:
 17 Q. And does that accurately reflect your sense,
 18 you know, the sense that you were getting from
 19 Mr. Tilley and company at that point in time,
 20 early March or mid March?
 21 MR. ABBOTT:
 22 A. I don't--again, not remembering any particular
 23 conversation at that time, but you know, the
 24 information in our briefing notes would have
 25 come directly from Eastern Health. We

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1 couldn't have--we had no other basis to
 2 develop those notes for the minister, until
 3 and unless they provided that information to
 4 us, and we would have taken it at, pretty
 5 well, face value and we had no reason to
 6 question, in terms of the accuracy of it.
 7 COFFEY, Q.C.:
 8 Q. Now this is a briefing note, and Mr. Osborne
 9 took over around this time as minister. Was
 10 Mr. Osborne's approach to his job as minister
 11 different than Mr. Ottenheimer's in any way?
 12 MR. ABBOTT:
 13 A. Well again, you have obviously a different
 14 minister, different personality, different
 15 political skill, in the sense that different
 16 focuses and how they approached their
 17 portfolio. In terms of Minister Osborne, at
 18 this particular point in time, he came in, you
 19 know, parachute in sort of literally
 20 overnight, expected within a day to be able to
 21 respond to questions in the House. So we had
 22 some very intense briefing with him. He was a
 23 very--he was, is, a very detailed, in terms of
 24 information he wanted, he wanted a lot of
 25 detail. Mr. Ottenheimer was not a detail

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1 person. So from that perspective, that would
 2 be--would certainly be the difference, and
 3 then in this particular case, the budget was
 4 being brought down and we had--I remember the
 5 estimates committee came on very, sort of
 6 right away. So he was immersed into trying to
 7 figure out what we had as a budget and all
 8 that. So there was a whole series of issues
 9 that he was dealing with. This particular
 10 one, at that point in time, was not shall we
 11 say, on the priority listing of issues that he
 12 would have been dealing with.

13 COFFEY, Q.C.:

14 Q. The ER/PR at this point in time?

15 MR. ABBOTT:

16 A. Yes.

17 COFFEY, Q.C.:

18 Q. Because again, looking at that, at page eight,
 19 it's--well, until the external reviewers come
 20 back and come in with a final report, it being
 21 received and reviewed, presumably there's not
 22 a whole lot more to be done in that regard?

23 MR. ABBOTT:

24 A. Yes.

25 COFFEY, Q.C.:

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1 Q. How about in terms of what the status was at
 2 that point in time in terms of notifying
 3 patients, like the tests being--retests being
 4 done?

5 MR. ABBOTT:

6 A. I don't remember now in terms of where we
 7 would have been at that point in time, and so
 8 really I can't answer any more than that,
 9 other than we would have been dependent on
 10 Eastern Health to continue that. We knew
 11 there were delays in the--you know, coming
 12 into 2006, but whether at that point they were
 13 now, everybody fully apprised, I don't know
 14 the answer.

15 COFFEY, Q.C.:

16 Q. In terms of this, under key messages here, the
 17 second one, this is at page eight of the
 18 exhibit, "testing of the tissue samples sent
 19 to Mount Sinai, for the most part has been
 20 completed and the vast majority of results are
 21 back and in various stages of review by the
 22 panel physicians who will interpret the
 23 results."

24 MR. ABBOTT:

25 A. Yes.

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1 COFFEY, Q.C.:

2 Q. Okay, so it's still ongoing at that point?

3 MR. ABBOTT:

4 A. Yes.

5 COFFEY, Q.C.:

6 Q. Now the Q and A briefing notes, spring 2006,
 7 at pages 10 and 11 of this exhibit is dated
 8 April 27th 2006, prepared by Debbie Morris,
 9 approved by Moira Hennessey. This particular
 10 one, in effect, here under key messages, the
 11 third key message, about the quality review
 12 and the external reviewer, external
 13 consultants--would be consultants they're
 14 called here.

15 MR. ABBOTT:

16 A. Yes.

17 COFFEY, Q.C.:

18 Q. External consultants in one place, and the
 19 consultants return to Eastern Health in early
 20 April to assess the progress. Final reports
 21 are expected in late May. The second key
 22 message, in effect, says that all the test
 23 results are back, except 16 of them, doesn't
 24 it? At least to that point, "the Authority,
 25 in discussions with Mount Sinai regarding

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1 receiving the remaining 16 test results."

2 MR. ABBOTT:

3 A. Yes.

4 COFFEY, Q.C.:

5 Q. So in terms of your dealings then with Mr.
 6 Osborne as the spring of 2006 went on, in
 7 terms of ER/PR, what do you recall, if
 8 anything, about that?

9 MR. ABBOTT:

10 A. Very little. We obviously were monitoring for
 11 any issues that might have come up through the
 12 media, updated the notes for the House, but
 13 there was very---there was really no
 14 discussion on this. We were--if there was
 15 anything Eastern Health needed from us or we
 16 needed to direct them to do, there was nothing
 17 happening at that point in time.

18 COFFEY, Q.C.:

19 Q. Page 12 of the exhibit, again it's a question
 20 and answer briefing note, spring 2006. This
 21 particular one is dated May 2nd 2006, prepared
 22 by Debbie Morris, approved by Moira Hennessey,
 23 and again under key messages, the third key
 24 message is the same one as the earlier one,
 25 and the text is the same, as is the second key

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1 message. So it was kind of more of the same.
 2 MR. ABBOTT:
 3 A. Yes, and we would have updated and reviewed
 4 those. The minister would have generally read
 5 through those in preparing for the House.
 6 COFFEY, Q.C.:
 7 Q. Now the question and answer briefing note,
 8 spring 2006, at pages 14 and 15 of this
 9 exhibit. This is one dated May 18th, 2006,
 10 again, prepared by Debbie Morris, approved by
 11 Moira Hennessey. And now this particular one,
 12 the first key message is the former third key
 13 message. And now you're being, the minister
 14 is being advised all the test results are back
 15 from Mount Sinai Hospital in Toronto and
 16 they're currently being reviewed. And "The
 17 government is unable to comment at this time
 18 in the Statement of Claim due to the legal
 19 proceedings." So I take it if you look up
 20 above, there's a statement of claim filed by
 21 the family of the late Michelle Hanlon?
 22 MR. ABBOTT:
 23 A. Yes. And that prompted, I believe, I in this
 24 case, that note to get developed.
 25 COFFEY, Q.C.:

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1 Q. Yes. And in the third-last bullet under
 2 "Background", in fact, there's a reference to
 3 Eastern Health having filed a statement of
 4 defence to that claim and CBC Radio, in the
 5 second-last bullet, having aired a story about
 6 it. Why would the filing the Statement of
 7 Claim occasion an update to a briefing note to
 8 the minister, because the department is not
 9 being sued?
 10 MR. ABBOTT:
 11 A. No. I think the impetus was the media reports
 12 about the Statement of Claim being filed and
 13 then we captured, I guess, whatever relevant
 14 information to put in the note at that time.
 15 So Eastern Health would have advised us that
 16 that, in fact, had happened.
 17 COFFEY, Q.C.:
 18 Q. Here in that second-last bullet under
 19 "Background" at page 15 of the exhibit there's
 20 a second sentence reads, "Peter Dawe, Canadian
 21 Cancer Society was quoted and stated that he
 22 hopes for good information from Eastern Health
 23 shortly." Then goes on to, he's quoted as
 24 saying "He questioned the accuracy of the test
 25 results in laboratories across the country and

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1 will raise the issue with his national and
 2 provincial counterparts. He also stressed the
 3 importance of Eastern Health restoring public
 4 confidence in their testing procedures." What
 5 was the situation at this point, this is mid
 6 May of '06, in terms of this issue in the
 7 public, do you recall?
 8 MR. ABBOTT:
 9 A. What I recall it was not a whole lot in terms
 10 of, again, our test for that was what was
 11 either being raised in the media, whatever
 12 form, or if the issue was raised in the House
 13 or if ourselves, in terms of the department,
 14 the minister getting any direct inquiries,
 15 correspondence, telephone calls, those kinds
 16 of things. And I said what was the pending
 17 legal case was the only thing sort of current
 18 at that, in that sort of early spring period.
 19 COFFEY, Q.C.:
 20 Q. Yeah. Now, in relation to that, though, Mr.
 21 Dawe is quoted, is quoted and stated--he's
 22 quoted here as, or summarized has having
 23 stated that "He hopes for good information
 24 from Eastern Health shortly."
 25 MR. ABBOTT:

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1 A. Um-hm.
 2 COFFEY, Q.C.:
 3 Q. Would that be about what had happened, what
 4 the numbers were and so on?
 5 MR. ABBOTT:
 6 A. Well, I really don't know. But I know he was
 7 and continues to be in constant contact with
 8 Eastern Health.
 9 COFFEY, Q.C.:
 10 Q. If we could, please, Exhibit P-0199? This is
 11 Department of Finance, secretary of Treasury
 12 Board letterhead, April 20th, 2006. It's
 13 addressed to yourself, I'm sorry, as deputy
 14 minister. And it advises you, "Your proposal
 15 dated March 14th, 2006 relating to approval in
 16 principle for an external review of the
 17 workload and compensation of salaried
 18 pathologists was considered at the 1486
 19 meeting of Treasury Board. The board agreed
 20 that a review of the recruitment and retention
 21 of pathologists in the province is as
 22 warranted." And it ends with,
 23 "Recommendations regarding the timing and
 24 amount of any salary adjustments are to be
 25 referred to Treasury Board for approval."

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1 That's who signs that?
 2 MR. ABBOTT:
 3 A. That would be Donna Brewer on behalf, that's
 4 her signature there on behalf of the secretary
 5 to Treasury Board. She would be the assistant
 6 secretary to the board.
 7 COFFEY, Q.C.:
 8 Q. Now, you had come, your proposal, it says
 9 "yours of March 14th, 2006", that would be
 10 yours, Mr. Abbott's?
 11 MR. ABBOTT:
 12 A. Yes.
 13 COFFEY, Q.C.:
 14 Q. How is it you came to make that?
 15 MR. ABBOTT:
 16 A. Well, you recall when we discussed this
 17 morning about the letter from the medical
 18 association, so we had come to the point where
 19 there was a formal request from the medical
 20 association. We developed the proposal, we
 21 had various meetings with the medical
 22 association and the Treasury Board staff
 23 around the issue trying to do what we could to
 24 get the Treasury Board officials to see it our
 25 way, as it were. Then we developed a

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1 proposal, and I did it on behalf of the
 2 department, and that's why it was addressed to
 3 me.
 4 COFFEY, Q.C.:
 5 Q. And here in the second paragraph it says,
 6 sorry, "The classification, organization and
 7 management division of the Public Service
 8 Secretariat is directed to work with the
 9 external consultant to be hired by the
 10 department."
 11 MR. ABBOTT:
 12 A. Um-hm.
 13 COFFEY, Q.C.:
 14 Q. "To conduct a review of compensation and
 15 workload issues." So you had asked that a
 16 review of the recruitment and retention, or
 17 suggested that it's warranted?
 18 MR. ABBOTT:
 19 A. Yes.
 20 COFFEY, Q.C.:
 21 Q. And here Treasury Board was agreeing?
 22 MR. ABBOTT:
 23 A. They were agreeing to, yes, basically, that,
 24 yeah, we agree, "At this point we review the
 25 compensation and the workload issues." There

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1 was no commitment, obviously, to a specific
 2 outcome.
 3 COFFEY, Q.C.:
 4 Q. Okay. You had recommended a specific outcome
 5 back in -
 6 MR. ABBOTT:
 7 A. Well, there was two things. One is, you know,
 8 when we received the medical association
 9 letter, we were focused at the department on
 10 the compensation, let's get that addressed.
 11 But we were getting, you know, considerable
 12 push back from our colleagues in Treasury
 13 Board, Public Service Secretariat, so my--you
 14 know, the compromise, well, then, you know,
 15 let's do something, which was the put in terms
 16 of recruitment and retention, do workload
 17 analysis and then as part of that we'll,
 18 hopefully we'd also look at the--and would
 19 look at the compensation.
 20 COFFEY, Q.C.:
 21 Q. Your view, your proposal with a view to moving
 22 it along somehow?
 23 MR. ABBOTT:
 24 A. Yes.
 25 COFFEY, Q.C.:

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1 Q. Page 2 of that Exhibit P-0199 is a letter on
 2 Newfoundland and Labrador Medical Association
 3 letterhead. It's dated May 16th, 2006
 4 addressed to both Tom Osborne, Minister of
 5 Health, and Loyola Sullivan, Minister of
 6 Finance and President of Treasury Board. It's
 7 "Re: Provision of Pathology Services in
 8 Newfoundland and Labrador." And this letter
 9 goes on, it's a five-page letter and it's
 10 signed by Dr. Nash Denic, President of the
 11 Newfoundland Association of Pathologists and
 12 Robert Ritter, Executive Director of the NLMA.
 13 And I take it at some point you would have
 14 received a copy of this?
 15 MR. ABBOTT:
 16 A. Yes.
 17 COFFEY, Q.C.:
 18 Q. No, sir, I don't propose to take you through
 19 this in--it would take quite awhile to read
 20 through it. In a summary fashion, what were
 21 Dr. Denic and Mr. Ritter saying?
 22 MR. ABBOTT:
 23 A. Basically though one might think a review is
 24 warranted, we have sufficient information at
 25 our disposal now to say that we have to

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1 address compensation and really this may be
 2 viewed, I guess, from their perspective, as a
 3 bit of a stalling tactic and we want to speak
 4 to you, you know, as quickly as possible to
 5 make that point. And it was no surprise as I
 6 was -
 7 COFFEY, Q.C.:
 8 Q. Yes.
 9 MR. ABBOTT:
 10 A. - to relay the message to Dr. Denic and Mr.
 11 Ritter of the initial response back in March.
 12 COFFEY, Q.C.:
 13 Q. Now, here on the fourth page of the letter,
 14 which is page 5 of the exhibit, they do
 15 conclude with, "It is our responsibility to
 16 now forewarn you that the path your government
 17 has recently decided to embark upon will have
 18 serious consequences and risks. It is our
 19 opinion that the stability and breakdown of
 20 medical care in the province rests in the
 21 balance. While we would have preferred a
 22 collaborative solution and believe such a
 23 solution is possible, the proposed course of
 24 action from your government will lead to
 25 delayed decisions and unfortunate consequences

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1 that could have been avoided. In the best
 2 interests of all concerned, we respectfully
 3 ask to meet with you." Now, did the meeting
 4 occur?
 5 MR. ABBOTT:
 6 A. Yes, it did.
 7 COFFEY, Q.C.:
 8 Q. And could you tell us, please, about that?
 9 MR. ABBOTT:
 10 A. The meeting was held in our boardroom. I was
 11 sort of instrumental in getting it lined up.
 12 Minister Osborne, Minister Sullivan were
 13 there, Dr. Denic, Rob Ritter, myself and I
 14 believe David Gale, from the Public Service
 15 Secretariat. And there was an opportunity
 16 then for the medical association to, you know,
 17 present, based on this letter and anything
 18 else that they wished to bring forward their
 19 views in having discussion with the ministers.
 20 COFFEY, Q.C.:
 21 Q. And what transpired?
 22 MR. ABBOTT:
 23 A. Well, it was, you know, it was a good, cordial
 24 meeting. The ministers clearly understood,
 25 and really, from the department's perspective

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1 and Mr. Osborne's perspective to make sure
 2 that Minister Sullivan clearly understood how
 3 important this is, why we needed to get a
 4 resolution along the lines that the medical
 5 association was recommending because he, as
 6 president of Treasure Board, would be pivotal
 7 in, to getting a decision that we would view
 8 favourable to us.
 9 COFFEY, Q.C.:
 10 Q. Okay. And what was the upshot of the meeting?
 11 MR. ABBOTT:
 12 A. Well, as I said, it was a very positive
 13 meeting. I believe the medical association
 14 went away thinking that they had won, you
 15 know, won Minister Sullivan over. But I've
 16 been in many of these meetings, so I did warn
 17 them after the meeting, I said, "Yes,
 18 everybody said all the right things, but until
 19 the minister and his colleagues at Treasury
 20 Board approve this, the decision, as we have
 21 it, stands. And it's not automatic that even
 22 if Minister Sullivan here today saying that he
 23 accepts and understands what you're doing, he
 24 certainly cannot, I don't think he necessary
 25 committed himself, but he certainly could not

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1 commit Treasury Board." So I had to sort of,
 2 you know, lower that expectation.
 3 COFFEY, Q.C.:
 4 Q. And what Treasury Board had been pushing, you
 5 know, you already stipulated, was a workload
 6 review, in effect?
 7 MR. ABBOTT:
 8 A. Yes.
 9 COFFEY, Q.C.:
 10 Q. That's what they had been?
 11 MR. ABBOTT:
 12 A. Yes.
 13 COFFEY, Q.C.:
 14 Q. So what--the meeting ended, you gave your
 15 caution. What happened then?
 16 MR. ABBOTT:
 17 A. Well, it was agreed then that I would, on
 18 behalf--we'd resubmit.
 19 COFFEY, Q.C.:
 20 Q. Yes.
 21 MR. ABBOTT:
 22 A. The original proposal back to Treasury Board
 23 and reference the meeting of the ministers and
 24 sort of, you know, hoping, if I can use that
 25 word, that--and with Minister Sullivan now

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1 being fully apprised of this issue in the
 2 detail, that we would get a favourable
 3 response.
 4 COFFEY, Q.C.:
 5 Q. And what did happen?
 6 MR. ABBOTT:
 7 A. We got an affirmation of the March response.
 8 COFFEY, Q.C.:
 9 Q. Okay. Now this--so that's one much later.
 10 Now here, this is page 9, Commissioner, of
 11 Exhibit P-0199. This is a letter from
 12 yourself, Mr. Abbott, Deputy Minister, dated
 13 July 12th, 2006 to David Norman, Public
 14 Service Secretariat. "Pathology services,
 15 Newfoundland and Labrador, additional
 16 information." And you say, "I am writing to
 17 request that Treasury Board reconsider its
 18 decision pursuant to TBM, 2006, 106." And you
 19 go on and at some length here to do talk about
 20 what had transpired since the Treasury Board
 21 decision. And the meeting, in fact, with
 22 Minister Sullivan and Osborne is July 6th,
 23 2006 is referred to, I take it, at the end of
 24 the second paragraph?
 25 MR. ABBOTT:

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1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. Was there only one such meeting?
 4 MR. ABBOTT:
 5 A. Yes.
 6 COFFEY, Q.C.:
 7 Q. Now, in the second sentence of the second
 8 paragraph you say--in the first sentence you
 9 say, "I've had several discussions with the
 10 NLMA pertaining to compensation and workload
 11 issues involving the pathologists. The NLMA
 12 and pathologists are adamant that the
 13 compensation and workload issues are not
 14 directly related. The compensation issue has
 15 to be resolved first because of current
 16 retention and recruitment challenges facing
 17 the regional health authorities." And when
 18 you say that they were not related, what were
 19 you being told in that regard?
 20 MR. ABBOTT:
 21 A. Well there was, I guess, two issues. One was
 22 obviously the very significant wage and salary
 23 or compensation differentials between the
 24 pathologists here in the province and
 25 elsewhere across the country. The issue

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1 around workload was there had been an
 2 observation or two that, you know, in terms of
 3 the argument, well we need to pay more to
 4 retain and attract, well how many in fact do
 5 we need and how the two relate. And there was
 6 some observation in a couple of meetings that,
 7 you know, workload in St. John's, might be at
 8 a much higher level, shall we say, than other
 9 areas of the province and possibly within the
 10 service here, and in fact, how many do we need
 11 before we go out and start paying more for
 12 someone we may or may not need. That was why
 13 the two issues were linked from, shall we say,
 14 those who didn't want to move it ahead, that
 15 was a way of slowing things down. For those
 16 who wanted to get it resolved, we had to split
 17 the two issues and the NLMA was certainly in
 18 that camp.
 19 COFFEY, Q.C.:
 20 Q. The latter camp.
 21 MR. ABBOTT:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. Page 10 of exhibit P-0199, this is a letter of
 25 July 21st, 2006. It's from Joan Morris, I

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1 believe, secretary--signed secretary for
 2 Treasury Board. It's addressed to yourself as
 3 deputy minister and responding to your
 4 proposal of July 12th asking that Treasury
 5 Board reconsider its position and the Treasury
 6 Board here, you are advised "confirm that a
 7 review of the recruitment and retention of
 8 pathologists in the province is warranted."
 9 And again, the particular group and a public
 10 service secretariat was directed to work with
 11 the external consultant to be hired by the
 12 department to conduct a review of compensation
 13 and workload issues. Recommendations
 14 regarding the timing and amount of any salary
 15 adjustments are to be referred to Treasury
 16 Board for approval. And the Board has also
 17 requested an analysis by the public service
 18 secretariat of the broader recruitment and
 19 retention issue." Now in terms of that last
 20 comment, was that ever done?
 21 MR. ABBOTT:
 22 A. Not with respect to pathologists, no. They
 23 would have, you know, and to be fair to them,
 24 they would have relied on whatever information
 25 we had or could gather from the health

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1 authorities.

2 COFFEY, Q.C.:

3 Q. I'm sorry, from the -

4 MR. ABBOTT:

5 A. From the health authorities.

6 COFFEY, Q.C.:

7 Q. And here, the Treasury Board has requested an

8 analysis by the public service secretariat of

9 the broader recruitment and retention issue,

10 that would be broader recruitment and

11 retention issue for pathologists? It just

12 never happened.

13 MR. ABBOTT:

14 A. No.

15 COFFEY, Q.C.:

16 Q. Now this review of compensation of workload

17 issues, though, did happen?

18 MR. ABBOTT:

19 A. Yes, we commissioned that immediately.

20 COFFEY, Q.C.:

21 Q. And that was by a gentleman named Dr. Raymond

22 -

23 MR. ABBOTT:

24 A. Maung.

25 COFFEY, Q.C.:

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1 Q. Maung, yes. Now, sir, on the same point, P-

2 0157 please? This is a letter to Mr. Osborne,

3 as minister, Department of Health, June 15th,

4 2006, "Pathology Manpower Crisis". This is

5 Dr. Pollett, professor and chair of discipline

6 of surgery at the university writing and he

7 is, I take it, writing to the minister in

8 respect of the current shortage of

9 pathologists in the province and encouraging

10 Mr. Osborne and his officials to recognize the

11 importance and to take whatever necessary

12 steps to ensure they have a sufficient supply.

13 And it's copied to Dr. Denic and Mr. Ritter.

14 So I take it then if Dr. Pollett is being

15 engaged in this regard, this has gone to a

16 full core press, as it were, to use a

17 basketball analogy.

18 MR. ABBOTT:

19 A. Well, and I know Dr. Pollett, I guess from our

20 end that was fine, but the minister was on

21 side, we were--this is a case that doesn't

22 happen very often, as you can appreciate, that

23 everybody, at least on the health side of

24 things were literally on the same line, on the

25 same page, but the immediate or in real--in

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1 the process was to make, to have the Treasury

2 Board ministers accept that and allow this to

3 take place, interesting perspective, even

4 though there would be additional dollars,

5 we're sort of, you know, within our, we could

6 find a budget from a financial management

7 perspective but it was a policy decision that

8 had to be made.

9 COFFEY, Q.C.:

10 Q. Yes, that's what I was going to ask you about

11 because, I mean, I appreciate the oncologist

12 stipend was what, 50 or 60,000 a year, per

13 doctor?

14 MR. ABBOTT:

15 A. Yes, you're talking about a million dollars or

16 so.

17 COFFEY, Q.C.:

18 Q. But in a billion dollar--in your budget, a 1.8

19 to 1.9 billion dollar budget, a million

20 dollars is not, percentage wise, a very

21 significant amount of money.

22 MR. ABBOTT:

23 A. That's right, no.

24 COFFEY, Q.C.:

25 Q. So it wasn't so much, and you could find it

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1 within your own budget.

2 MR. ABBOTT:

3 A. Yes.

4 COFFEY, Q.C.:

5 Q. So it wasn't so much that, I take it Treasury

6 Board wasn't--that wasn't the complaint.

7 MR. ABBOTT:

8 A. No.

9 COFFEY, Q.C.:

10 Q. The complaint was what?

11 MR. ABBOTT:

12 A. It was a policy decision that in fact would

13 you, in light of, you had an agreement in

14 place with the Medical Association governing,

15 that had approved what the compensation was

16 going to be for the physicians and including

17 pathologists and here we are now seeking a

18 change in that and they had to accept that it

19 was warranted for the factors that they would

20 consider.

21 COFFEY, Q.C.:

22 Q. Okay.

23 THE COMMISSIONER:

24 Q. This was sort of the, we've got a contract and

25 a contract is a contract response, is that it?

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1 MR. ABBOTT:
 2 A. More or less and, you know, will this trigger
 3 something else, whether in other specialists,
 4 other professions in the health care sector,
 5 other sectors and it's -
 6 THE COMMISSIONER:
 7 Q. The fear of what would happen if they opened
 8 up one party's -
 9 MR. ABBOTT:
 10 A. Yes, the -
 11 COFFEY, Q.C.:
 12 Q. The floodgates sort of.
 13 MR. ABBOTT:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. Exhibit P-0811 please? Now this is an e-mail
 17 from Gary Cake, July 31st, 2006, at 10:05 a.m.
 18 It's addressed, it's Monday morning, addressed
 19 to yourself, copied to Marilyn McCormack.
 20 Mrs. McCormack worked with whom?
 21 MR. ABBOTT:
 22 A. She was working with the cabinet secretariat
 23 with Gary Cake.
 24 COFFEY, Q.C.:
 25 Q. And he says, "John, would you please have a

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1 briefing note prepared on the issue in the
 2 front page story in The Independent yesterday,
 3 re lawsuit being launched by breast cancer
 4 patients. For your information, the only note
 5 in our system on this matter is dated October
 6 5, '05. Thanks, Gary." So Mr. Cake, I take
 7 it at the time was an assistant secretary to
 8 Cabinet.
 9 MR. ABBOTT:
 10 A. Yes.
 11 COFFEY, Q.C.:
 12 Q. And responsible at that point for what? And
 13 he switched over to social policy?
 14 MR. ABBOTT:
 15 A. I'm not sure at that particular, if he was
 16 doing social policy or in some other capacity,
 17 COFFEY, Q.C.:
 18 Q. Or just substituting, as it were, presumably.
 19 MR. ABBOTT:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. Exhibit P-0812 please? Now this is an e-mail
 23 from Tara Furlong to yourself, July 31st, 2006
 24 at 1:00 p.m. Subject is "Briefing note-
 25 ER/PR". And we look at page 2 of it, this

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1 exhibit, it's a question and answer briefing
 2 notes, spring, 2006 involving retesting of
 3 breast cancer patients, ER/PR. And this is
 4 the May 2nd, 2006 briefing note we looked at
 5 earlier. I gather Ms. Furlong just simply
 6 send you along one of the more current ones.
 7 MR. ABBOTT:
 8 A. Yes.
 9 COFFEY, Q.C.:
 10 Q. If we could, please, exhibit P-0813 please?
 11 This is an e-mail from yourself to Ms.
 12 Furlong, same date, 1:33 p.m. The subject is
 13 "Briefing Note ER/PR. Would you check with
 14 Eastern Health to see if they have a more
 15 current briefing note/update that we can use
 16 today, especially with respect to the status
 17 of legal claims. Thanks. P.S. This is an
 18 urgent request. Signed John Abbott" and the
 19 reference below, I take it, is where Tara
 20 Furlong had sent the May briefing note up to
 21 you.
 22 MR. ABBOTT:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. Why was this urgent?

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1 MR. ABBOTT:
 2 A. Urgent in the context that it was from the
 3 cabinet secretariat, wanted to be seen
 4 responding as quickly as possible to that, not
 5 they had used the word "urgent" but that was
 6 just to let her know that I would like this to
 7 be done ASAP.
 8 COFFEY, Q.C.:
 9 Q. Okay. If we could bring up exhibit P-0814
 10 please? Now this is a series of e-mails, the
 11 first of them in line here is the one at 10:05
 12 a.m. from Gary Cake to yourself, okay, which
 13 started the series of e-mails that day,
 14 looking for a briefing note on the issue.
 15 Apparently you had gotten back to him at 1:52
 16 p.m., or gotten back to somebody at 1:52 p.m.
 17 saying "we are checking with Eastern Health to
 18 see if we can get an update from them today."
 19 So I take it that would be a response to Mr.
 20 Cake.
 21 MR. ABBOTT:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. And then there's an e-mail from Tara Furlong
 25 to yourself, July 31 at 2:48 p.m. saying "I

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1 spoke with Heather Predham, assistant manager,
 2 quality and risk management of Eastern Health
 3 and I expect to receive an updated briefing
 4 note on ER/PR within an hour. I asked her to
 5 include the information regarding legal claims
 6 and any updates on the retesting process.
 7 Signed Tara." All of this was copied to,
 8 apparently Beverley Griffiths or at least one
 9 of these in here. Who is Beverley Griffiths?
 10 MR. ABBOTT:
 11 A. She works, staff member in the Board Services
 12 Division reporting to Moira Hennessey.
 13 COFFEY, Q.C.:
 14 Q. Okay, so a briefing note in relation to
 15 Eastern Health might very well involve -
 16 MR. ABBOTT:
 17 A. Yes, and I think her portfolio, as it were,
 18 included Eastern Health, as she was our point
 19 of contact with them.
 20 COFFEY, Q.C.:
 21 Q. If we could see exhibit P-0815 please? Now
 22 this is an e-mail from Tansy Mundon to Gary
 23 Cake, it's copied at the bottom to yourself,
 24 cc'd to yourself, July 31, 2006, 4:40 p.m.
 25 Subject is "Briefing Note ER/PR. Gary, as per

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1 John's request, please see attached briefing
 2 note prepared by Eastern Health regarding
 3 ER/PR. Thanks, Tansy." Now if we go then to,
 4 this is a three-page exhibit, it's a document
 5 on the second page prepared by Heather
 6 Predham, Assistant Director of Quality and
 7 Risk Management, dated July 31, 2006. It's
 8 Re: Estrogen and progesterone receptor
 9 testing update. It's a two-page document.
 10 The first heading in it is "Ductal Carcinoma
 11 in situ (DCIS)" and then there's another
 12 heading ""Retro" Convertors" and then there's
 13 a heading, "Deceased" and a heading "Legal
 14 Activity" and under that, "Hanlon claim and
 15 Doucette claim are listed." Sir, when that
 16 came in and got forwarded to Mr. Cake, as you
 17 said--as Tansy says here, "As per John's
 18 request", presumably you asked Ms. Mundon send
 19 it on to Mr. Cake, what happened then?
 20 MR. ABBOTT:
 21 A. Well, as I said, we went it on sort of as is,
 22 unedited, to Mr. Cake and the expectation or
 23 assumption that if we didn't hear anything,
 24 that that would have meant his information
 25 need for the day because he didn't indicate to

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1 us any particular reason why he wanted it
 2 other than the media report and the reference
 3 to legal claims. After that, exactly what day
 4 it was, I did hear from one of the staff and I
 5 believe it was Moira Hennessey indicating that
 6 she was working on this briefing note in light
 7 of their request and I think the conversation
 8 went something along the lines that she had
 9 received some calls about the information in
 10 the note from Marilyn McCormack, who was
 11 trying to get a better understanding of, you
 12 know, the issues and any of the detail because
 13 she was, you know, not that familiar with it
 14 and that over, I guess really over a period of
 15 probably two weeks, however, that it was back
 16 and forth on that, initially may have been
 17 directed to Heather Predham and realized that,
 18 I think Moira was getting more calls from
 19 Marilyn to try to get an understanding of the
 20 issues and then note got redeveloped and
 21 further developed into a later briefing note,
 22 which was, I think the one dated August 18th.
 23 COFFEY, Q.C.:
 24 Q. Now if we could look at, please, Exhibit P-
 25 0168. Now this is an e-mail from Tansy Mundon

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1 to Mr. Osborne, July 31st, 2006, 4:41 p.m.
 2 And she says, "Minister, John asked that I
 3 forward the following briefing note to Gary
 4 Cake and cabinet secretariat. The note was
 5 prepared by Eastern Health in response to an
 6 article in The Independent on ER/PR." Signed
 7 Tansy.
 8 MR. ABBOTT:
 9 A. Yes.
 10 COFFEY, Q.C.:
 11 Q. So here, I take it that she is just simply
 12 filling in or keeping Mr. Osborne in the loop,
 13 as it were.
 14 MR. ABBOTT:
 15 A. Yes.
 16 COFFEY, Q.C.:
 17 Q. And the fact that you had asked that the e-
 18 mail that had come over from Eastern Health be
 19 sent to Gary Cake.
 20 MR. ABBOTT:
 21 A. Yes.
 22 COFFEY, Q.C.:
 23 Q. In looking at this, this is up here, ductal
 24 carcinoma in situ, before you received this,
 25 had you ever heard of DCIS, that you can

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1 recall?
 2 MR. ABBOTT:
 3 A. I would say probably not in any meaningful
 4 way, no, so that was really the first time I
 5 ever would have read about it and what it
 6 means.
 7 COFFEY, Q.C.:
 8 Q. And how it had arisen in a context of ER/PR?
 9 MR. ABBOTT:
 10 A. Yeah.
 11 COFFEY, Q.C.:
 12 Q. The retro convertors, ever heard of retro
 13 convertors before?
 14 MR. ABBOTT:
 15 A. No, not up to this point, I know--I believe
 16 there was some material where we referenced
 17 it, but not in the retro convertor term
 18 itself.
 19 COFFEY, Q.C.:
 20 Q. And the reference to the deceased, 174
 21 patients are identified as being deceased.
 22 Here it says, "in June an ethics review is
 23 conducted regarding notification of these
 24 families. The recommendation was that upon
 25 conclusion of the ER/PR review a public

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1 statement would be made that if the next of
 2 kin of a deceased patient would like the
 3 results, that they contact Eastern Health".
 4 Had you ever been told, up to this point,
 5 about this ethics review?
 6 MR. ABBOTT:
 7 A. I really can't say when I first heard; whether
 8 it was before this, at this time or even
 9 later, in terms, really, was taking on some
 10 importance. But my sense was it was probably
 11 a bit earlier, but I really couldn't nail that
 12 down.
 13 COFFEY, Q.C.:
 14 Q. And in the context, do you recall what the
 15 purpose of this--you understood the purpose of
 16 it was -
 17 MR. ABBOTT:
 18 A. But when I heard about, you know, ethics
 19 review, and I was thinking of the whole
 20 review, of all the testing.
 21 COFFEY, Q.C.:
 22 Q. Yes, -
 23 MR. ABBOTT:
 24 A. So that, in terms of process, that it would
 25 have been managed or at least an opinion from

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1 ethics review would have been provided. Now,
 2 I'm saying -
 3 COFFEY, Q.C.:
 4 Q. For both the living and deceased?
 5 MR. ABBOTT:
 6 A. Yes, for the whole retesting. But I'm saying
 7 that in context and this is where--I was
 8 familiar with how ethics review and the role
 9 of the board back when I was board chair. I
 10 did not assume anything necessarily changed on
 11 that. So, I knew their process and their
 12 engagement and we had some very active members
 13 of the board at that time in that issue. So,
 14 I was thinking of it in that context when I
 15 heard ethics review. In terms of now this and
 16 a very specific subset, shall we say, of all
 17 the patients, I didn't really appreciate and
 18 only since then that, in fact, it was just
 19 focused upon the deceased and it was a
 20 notification issue more than anything else.
 21 And you've started, just referred to, when you
 22 had been chair of the board of the Health Care
 23 Corporation, what had been the practice then
 24 in terms of -
 25 MR. ABBOTT:

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1 A. Well, there was--as I said, a very active
 2 ethics review committee and they were engaged,
 3 both board members and staff on ethics,
 4 developing policy, what have you. In terms of
 5 individual cases, I can't speak to--I know you
 6 had a couple of discussions around some, not
 7 necessarily any specific patient case, but
 8 types of cases that they might be dealing
 9 with.
 10 COFFEY, Q.C.:
 11 Q. Okay.
 12 MR. ABBOTT:
 13 A. But whether they ever dealt with something on
 14 this magnitude, I really don't know.
 15 COFFEY, Q.C.:
 16 Q. But when you saw or first heard of, anyway,
 17 the reference to ethics review, you were
 18 thinking of it in a wider -
 19 MR. ABBOTT:
 20 A. Yes, and I was comforted by that because what
 21 I knew, the capacity that they had in terms of
 22 dealing with that, assuming they had in place.
 23 COFFEY, Q.C.:
 24 Q. And did you ever ask Mr. Tilley if they
 25 actually had a full blown ethics review done

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1 of their entire approach?

2 MR. ABBOTT:

3 A. No, I certainly did not ask him, but it had

4 come up, ethics was being considered, those

5 kinds of things.

6 COFFEY, Q.C.:

7 Q. In terms of the Doucette claim which is

8 referred to on the second page here, it's

9 described as, "it was recently with the

10 intention to proceed under the class action

11 legislation. The next in the process is for

12 the Plaintiff's lawyer to file with the court

13 the parameters in which he intends to

14 proceed". And it goes on to say, "it's part

15 of the process in his application to the court

16 to seek class of patients to be certified".

17 Now, had, in your experience--or what had been

18 your experience, up to this point, in terms of

19 class actions in Newfoundland in the medical

20 system?

21 MR. ABBOTT:

22 A. Really, I won't say none. I was familiar with

23 the situation to a certain degree in Labrador

24 West and that's all I would have known. That

25 it took--you know, that it had taken place.

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1 There was a resolution.

2 COFFEY, Q.C.:

3 Q. In respect of the Labrador matter, western

4 Labrador matter, within the Department of

5 Health, who, if anyone, was charged with

6 keeping track of that?

7 MR. ABBOTT:

8 A. Again, it would have been through our board

9 service division, if there were any issues

10 impacting them, service delivery, any

11 compensation from a budgeting point of view,

12 but nobody looking at it from a legal point of

13 view.

14 COFFEY, Q.C.:

15 Q. Now, within government, who would be

16 responsible, to -

17 MR. ABBOTT:

18 A. From a department, we would have requested

19 our, if need be, our justice, Department of

20 Justice solicitor assigned to our department.

21 COFFEY, Q.C.:

22 Q. And who was that?

23 MR. ABBOTT:

24 A. Well, it had varied over time. So, there

25 were, for my period, there were several; Rolf

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1 Pritchard being one of them.

2 COFFEY, Q.C.:

3 Q. Okay. Was Ms. Smith involved, Gerri Smith?

4 MR. ABBOTT:

5 A. Yes, she was, yes.

6 COFFEY, Q.C.:

7 Q. Okay, if we could please, exhibit P-0169.

8 Now, in terms of this whole briefing note

9 issue, Gary Cake had asked for a briefing

10 note. There'd been a page and a half come

11 over the same day and you forwarded it to Mr.

12 Cake. Was the department expected to provide

13 any, like, briefing note of its own?

14 MR. ABBOTT:

15 A. Well, again, the request was to give us an

16 update. We went--and I think it was just the

17 day in which it was asked and who was

18 available, one of those kinds of things and

19 how quickly he needed the information and for

20 what purpose--I really didn't know. So,

21 that's why we scrambled, we asked Eastern

22 Health to provide the update and send it one.

23 And then if there was more information

24 required or anything else, then obviously, we

25 would do that. In fact, that's generally

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1 what then happened because they did want more

2 clarification, more information.

3 COFFEY, Q.C.:

4 Q. I'm trying to get some sense of it because Mr.

5 Cake, that morning, July 31 had told you, look

6 John, the only one we've got, the last one--

7 the only note in our system, that would be

8 cabinet secretariat system -

9 MR. ABBOTT:

10 A. Yes.

11 COFFEY, Q.C.:

12 Q. - on this matter is October 5, '05.

13 MR. ABBOTT:

14 A. Yes.

15 COFFEY, Q.C.:

16 Q. Which is a matter of days after, three days or

17 so after the story first broke public,

18 certainly that effectively one page document

19 prepared by Ms. Predham, July 31, 2006 about

20 DCIS retro converters and the deceased and

21 legal activity, didn't really tell, wouldn't

22 really tell someone a whole lot about it,

23 would it, the background of this?

24 MR. ABBOTT:

25 A. Well, not--I agree in terms of now looking

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1 back on that.
 2 COFFEY, Q.C.:
 3 Q. And therefore, when you heard that Ms.
 4 Hennessey, as August went on, was involved in
 5 trying to get together information with
 6 Marilyn McCormack, you weren't surprised by
 7 that?
 8 MR. ABBOTT:
 9 A. No.
 10 COFFEY, Q.C.:
 11 Q. Now, you understood that that information,
 12 this briefing note would be going to whom or
 13 for whose benefit?
 14 MR. ABBOTT:
 15 A. Well, certainly it was for Gary Cake, it was
 16 request--now, I didn't make any assumption
 17 after that where it was going. But I think
 18 later in the piece, it was referenced to the
 19 premier's office, how that got communicated to
 20 us and it may have been--if it is going, kind
 21 of think, but we never necessarily knew when
 22 the note was over to the cabinet secretariat,
 23 if it was just for their use or the clerk's
 24 use or the premier's office use. There was
 25 no--unless very specifically stated.

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1 COFFEY, Q.C.:
 2 Q. Now, P-169, they're typed notes Darrell Hynes
 3 -
 4 MR. ABBOTT:
 5 A. Um-hm.
 6 COFFEY, Q.C.:
 7 Q. - they've been identified to us as. August 2,
 8 '06, meeting with Honourable Tom Osborne.
 9 Matters are redacted, they have nothing to do
 10 with what we're dealing with--but "there's no
 11 ER/PR briefing for minister. What was root
 12 cause? Now, do you remember this coming up"?
 13 MR. ABBOTT:
 14 A. No. I mean, I'm not surprised in the sense
 15 that it was a media issue. The minister and
 16 Mr. Hynes would have a discussion, but there
 17 was no communication from that to me. You
 18 know, in fact that they had a conversation and
 19 they were looking for a briefing or a note.
 20 COFFEY, Q.C.:
 21 Q. So the fact that the minister wanted to know
 22 the root cause was not communicated to you?
 23 MR. ABBOTT:
 24 A. No.
 25 COFFEY, Q.C.:

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1 Q. Okay. Exhibit P-0170, please? At the time,
 2 would you have been--if he had asked you,
 3 would you have been able to tell him the root
 4 cause?
 5 MR. ABBOTT:
 6 A. Well, we would have had discussion on that
 7 which I knew and if that helped or answered
 8 the question for him, but if not, then I would
 9 have gone further to see what information was
 10 available and if we came back, obviously we
 11 don't have an answer, then we'd go from there.
 12 COFFEY, Q.C.:
 13 Q. Now from your perspective, at the time, what
 14 you knew at the time, would you have
 15 identified or categorized what you knew at the
 16 time or understood at the time as being the
 17 root cause?
 18 MR. ABBOTT:
 19 A. No, you know, I could not answer that
 20 question.
 21 COFFEY, Q.C.:
 22 Q. Exhibit P-0170, it's an e-mail from Tansy
 23 Mundon to yourself, Ms. Hennessey and Mr.
 24 Osborne, August 4th '06, 3:37 p.m. It's a
 25 message for "The Current". "For your

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1 information, 'The Current' is running a story
 2 on ER/PR. Please see attached statement
 3 forwarded by Eastern Health. This story will
 4 air nationally on Monday." Signed Tansy. And
 5 we look--you were then being forwarded a
 6 message from--apparently from Mr. Tilley that
 7 he was providing--a written message that he
 8 was providing, on Eastern Health letterhead,
 9 to "The Current".
 10 Now here, in the fourth paragraph, Mr.
 11 Tilley has written "as part of the review, we
 12 have identified a small number of cases that
 13 require further follow up. We are in the
 14 process of reviewing and addressing each of
 15 these cases individually." And because the
 16 first paragraph, he had opened with "Eastern
 17 Health originally began a review of all ER/PR
 18 receptor tests conducted by our lab since 1997
 19 when we discovered inconsistencies in a small
 20 number of results."
 21 Well, first of all, did you read this at
 22 the time? Would you have read this?
 23 MR. ABBOTT:
 24 A. I may have. I don't have, you know, a good
 25 recollection on that one way or the other. I

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1 know I have seen it and I know I had read it.
 2 COFFEY, Q.C.:
 3 Q. Would you have read it in a critical fashion?
 4 MR. ABBOTT:
 5 A. Not really. Again, there's nothing--in terms
 6 of how George Tilley would have responded and
 7 that's where his comfort level was, I most
 8 likely would have accepted that for the
 9 purposes of this piece.
 10 COFFEY, Q.C.:
 11 Q. Now, the overall impression here--the third
 12 paragraph it ends by saying, "in the majority
 13 of cases, the patient's treatment was
 14 confirmed appropriate" and then we have this
 15 reference to "a small numbers of cases require
 16 further follow up". The sense you got when
 17 you read this was what? What was the overall
 18 message here?
 19 MR. ABBOTT:
 20 A. That this was not a huge problem.
 21 COFFEY, Q.C.:
 22 Q. Okay. Now, if we could please, P-0171 please.
 23 This is a series of e-mails, August 17, 2006,
 24 first of them is 11:26 a.m., it's from Marilyn
 25 McCormack to Moira and she concludes by

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1 saying, "in my opinion the note is clear now
 2 and with your approval, I will forward to
 3 Gary, please advise. Signed, Marilyn". And
 4 then there's an e-mail from Moira Hennessey to
 5 yourself, Thursday, August 17, 2006 at 12: 41
 6 p.m. It's briefing notes-ER/PR testing. She
 7 says, "John, for your information and review.
 8 This note will likely go to the PO"--which is
 9 the premier's office--"later today or
 10 tomorrow. Signed, Moira". And she copies
 11 that to Beverley Griffiths, Tansy Mundon and
 12 John Rumboldt. This exhibit is five pages
 13 long. Now, the briefing note is attached and
 14 it's got a lot of numbers in it and text.
 15 Although the e-mail is dated August 17, the
 16 note is purported to be dated August 18, 2005
 17 (sic.) prepared by/approved by Heather Predham
 18 at Eastern Health, Moira Hennessey, Health and
 19 Community Services and reviewed by Marilyn
 20 McCormack and Gary Cake, cabinet secretariat.
 21 Now sir, when you got this e-mail, did you
 22 review the note?
 23 MR. ABBOTT:
 24 A. I remember seeing the note or whether it was
 25 this draft or one close to it because the

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1 reference to, "should the premier require", I
 2 think that was put in there at my request
 3 because it--as I said, initially it came from
 4 Gary Cake. Now, it's been suggested it may be
 5 going direct to the premier's office. It was
 6 legal issues that were reporting--the media
 7 were prompting it, well then, you know, if the
 8 premier really needed or wanted more
 9 information around that, then we would have to
 10 figure out a way how to get that, whether it
 11 was through Eastern Health's legal counsel as
 12 suggested there or whatever he would wish to
 13 have. Again, not knowing if Gary was asked
 14 for the note from the premier's office or was
 15 just doing it on his own behalf. So, I did
 16 see the note and went, obviously, through it,
 17 reading it from that perspective.
 18 COFFEY, Q.C.:
 19 Q. The note itself--so, you might have seen more
 20 than one version of the note?
 21 MR. ABBOTT:
 22 A. Yes, yeah. And the other observation was,
 23 well at least, now the macro numbers are being
 24 broken down in terms of various categories and
 25 that was, I remember, that's good, at least

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1 we're getting some detail.
 2 COFFEY, Q.C.:
 3 Q. This is entitled, briefing note, "Title,
 4 Update on Pathology reports and legal action
 5 for women diagnosed with breast cancer". This
 6 is page two of the exhibit, Commissioner. The
 7 issue is current status of pathology testing
 8 and legal claims related to women with breast
 9 cancer. And it has a background, it has a
 10 current status including (pathology reports).
 11 And the test results include--and there's a
 12 spread sheet really, in one sense and a
 13 detailed text description of what the numbers
 14 relate to. And then there's a heading current
 15 status of (legal activity) and then there's a
 16 summary. And then there's impacts of
 17 treatment with Tamoxifen and then reasons for
 18 the erroneous results and steps taken to
 19 prevent reoccurrence and action required. So,
 20 under heading "action required", this bullet,
 21 "this notice provided for information purposes
 22 only should the premier require further
 23 detail, officials from Eastern Health as well
 24 as their legal counsel will be available for
 25 an in person briefing". Now suggesting that

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1 whoever drafted this, knew or suspected that
 2 the premier was going to read it, because it
 3 says, should the premier require further
 4 details -
 5 MR. ABBOTT:
 6 A. Well, that was an assumption and an assumption
 7 certainly on my part. As I said, the initial
 8 request from cabinet secretariat--we were
 9 never sure, I mean, they can obviously request
 10 it in their right or they, in fact, develop
 11 ongoing briefing material on this or any other
 12 file for the premier and his staff. But the
 13 note from Moira Hennessey talked about this
 14 may be going to the premier's office. So,
 15 that was why, you know, raised, in that
 16 context, "should he require", that means if
 17 he's read it and he wants information, but I
 18 never necessarily made the, reached the
 19 conclusion that it was automatic.
 20 COFFEY, Q.C.:
 21 Q. Now, with respect to this--so, this portion
 22 of the note under "action required" here, the
 23 text of this was put in at your behest.
 24 MR. ABBOTT:
 25 A. That sentence, yes.

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1 COFFEY, Q.C.:
 2 Q. Yes. "Should the premier require further
 3 detail, officials from Eastern Health as well
 4 as their legal counsel will be available for
 5 an in person briefing". Had you checked with
 6 anyone from Eastern Health or their legal
 7 counsel as to whether or not that was, in
 8 fact, true.
 9 MR. ABBOTT:
 10 A. Probably not, but I felt I could certainly
 11 bind them to that.
 12 COFFEY, Q.C.:
 13 Q. And now as well here, there is a reference to,
 14 or the heading, "reasons for the erroneous
 15 results and steps taken to prevent
 16 reoccurrence". It says, "Eastern Health has
 17 engaged external consultants to review the
 18 procedures of the laboratory. When all
 19 reports are received, they will be reviewed
 20 and the recommendations will be implemented.
 21 The goal is to have the laboratory accredited.
 22 Until these processes are completed, all
 23 samples will continue to be retested at Mount
 24 Sinai." Now sir, you would have read that,
 25 certainly if you read the answer, the -

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1 MR. ABBOTT:
 2 A. Yes.
 3 COFFEY, Q.C.:
 4 Q. - sentence and the paragraph below it.
 5 There's no doubt Eastern Health had engaged
 6 external consultants to review the procedures
 7 of the laboratory. "When all reports are
 8 received, they will be reviewed and the
 9 recommendations will be implemented."
 10 MR. ABBOTT:
 11 A. Um-hm.
 12 COFFEY, Q.C.:
 13 Q. Now sir, at this point, this is mid August,
 14 2006, the external review reports were long
 15 in, weren't they?
 16 MR. ABBOTT:
 17 A. Or versions of them. I'm not even sure if the
 18 final, so called final report were in, I
 19 wasn't sure. When I read this now and why
 20 it's worded that way, I really can't say
 21 because it could have and should have,
 22 obviously read a little bit more, shall we
 23 say, correct in terms of what the status of
 24 those reports and recommendations were. It's
 25 all written in the future when, in fact, we

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1 knew that they were, you know, received or in
 2 final form on all fronts. And I'm thinking in
 3 terms of the follow-up piece and those kinds
 4 of things. And then it was the goal to have
 5 the laboratory accredited and -
 6 COFFEY, Q.C.:
 7 Q. Well, that would be the future, yes.
 8 MR. ABBOTT:
 9 A. Yeah, so whether or not there was some
 10 connection there, but again, reading it on
 11 reflection, that it probably not worded
 12 correctly or appropriately.
 13 COFFEY, Q.C.:
 14 Q. Well in fact, bearing in mind that the reports
 15 apparently were received, more or less, at the
 16 end of, if not before, by the end of May,
 17 2006.
 18 MR. ABBOTT:
 19 A. Um-h, and then the word "all", so I didn't
 20 know--again, outstanding, but -
 21 COFFEY, Q.C.:
 22 Q. And the recommendations will be implemented
 23 and you had been told and we looked at some of
 24 those in, earlier in '06, had been
 25 implemented, have and had, meaning past tense.

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1 This is just misleading.
 2 MR. ABBOTT:
 3 A. Well -
 4 COFFEY, Q.C.:
 5 Q. Whether it's intentionally or not is another
 6 story, but it is misleading.
 7 MR. ABBOTT:
 8 A. Well, I think, you now, as I said, it's not
 9 worded correctly. It's misleading if you were
 10 to act on it, but how and why it got worded
 11 that way, I really can't say. And like
 12 anything, on reflection, you know, it could
 13 and should be changed.
 14 COFFEY, Q.C.:
 15 Q. Would it have been important, do you think,
 16 for the premier and the premier's office to
 17 have accurate information provided to them?
 18 MR. ABBOTT:
 19 A. Yes, but you know, I look at this in the
 20 context of that sentence in itself is, as I
 21 said, is not correct and needed to be changed;
 22 it was not, but it wasn't going to impact--at
 23 least, now, I'm looking at this here today,
 24 having any impact on a particular, at least
 25 from what I would gather, from any particular

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1 direction or decision that anybody would give
 2 based on the note.
 3 COFFEY, Q.C.:
 4 Q. Well, might--if somebody was in receipt of
 5 this, to be told that or have it suggested to
 6 them that when reports are received, they will
 7 be reviewed and recommendations will
 8 implemented. There'd hardly be any point in
 9 asking to see a report that it wasn't yet
 10 submitted, would there?
 11 MR. ABBOTT:
 12 A. No, and I accept that.
 13 COFFEY, Q.C.:
 14 Q. It would suggest here, in this context, if Mr.
 15 Williams, as premier at the time, had read
 16 this--I don't know if he read it carefully or
 17 not, but if he read it carefully, it might
 18 dissuade him from actually asking, well,
 19 what's in the reports because they're not in
 20 yet.
 21 MR. ABBOTT:
 22 A. Well, you know, I guess yes, in the sense that
 23 if he didn't know what they were about and it
 24 is unlike our previous notes in, at least,
 25 having more certainly around why the reports

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1 were done and what have you. That's what's
 2 there, I guess.
 3 COFFEY, Q.C.:
 4 Q. So, did you draft or ask that that sentence be
 5 put in, that sentence, "when all reports are
 6 received?"
 7 MR. ABBOTT:
 8 A. No.
 9 COFFEY, Q.C.:
 10 Q. Do you know who did?
 11 MR. ABBOTT:
 12 A. No. As I said, it was between various
 13 persons, in terms of pulling that note
 14 together. So, I don't know who provided and
 15 wrote that piece.
 16 COFFEY, Q.C.:
 17 Q. And do you know if this--or the final version
 18 of this briefing or any version of it, really,
 19 ever ended up in Mr. Osborne's possession?
 20 MR. ABBOTT:
 21 A. I don't think it did.
 22 COFFEY, Q.C.:
 23 Q. And was there any procedure at that time to
 24 ensure that any briefing note that went to the
 25 cabinet secretariat or the premier's office

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1 was also sent to the minister?
 2 MR. ABBOTT:
 3 A. Whether we had a formal--it was certainly, you
 4 know, a working premise that, in fact, that
 5 should happen. And in this case, and there
 6 have been a couple of others where it didn't
 7 and I know--and the reason I say it didn't
 8 because I didn't send it. Whether somebody
 9 else did or could have, I really don't know,
 10 but I know I didn't.
 11 COFFEY, Q.C.:
 12 Q. And is there any reason why you didn't send
 13 it?
 14 MR. ABBOTT:
 15 A. Well, when I reflect back on that, I know
 16 around that period, that day and 17-18 and
 17 depending when I finally got it, received it,
 18 I knew what was in play. The note is now
 19 done. I received it back in--as an e-mail or
 20 an attachment, but was travelling then
 21 literally that next day with Mr. Osborne and
 22 other officials to PEI and we had a whole
 23 other series of briefing material and issues
 24 that we were dealing with and literally, this
 25 just got left in my e-mail and not referred on

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1 to him, and as then the next week went on, I
 2 had literally completely forgotten about that
 3 and about doing that, and I didn't realize
 4 that that had not been done until literally
 5 May 2007.
 6 THE COMMISSIONER:
 7 Q. Good place to take the afternoon -
 8 COFFEY, Q.C.:
 9 Q. Sure, thank you, Commissioner.
 10 THE COMMISSIONER:
 11 Q. 15 minutes. Thank you.
 12 (BREAK)
 13 THE COMMISSIONER:
 14 Q. Please be seated. Mr. Coffey.
 15 COFFEY, Q.C.:
 16 Q. Thank you, Commissioner. Here, Mr. Abbott,
 17 looking at, at least we understand, and I
 18 guess may have been one of the versions of
 19 this note that, at least in terms of the
 20 exhibits we've received at P-0171, the note
 21 attached, the second page of this briefing
 22 note was the one sent to yourself on the 17th.
 23 Here, if we could--I'm sorry, at page one of
 24 the exhibit, Ms. McCormack here, or Marilyn,
 25 seems to--yeah, Marilyn McCormack seems to be

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1 saying to Moira Hennessey, "look, in my
 2 opinion, the note is clear now, and with your
 3 approval, I will forward to Gary" suggesting
 4 that Moira's approval was required. Now in
 5 the development of this note, was your
 6 approval required?
 7 MR. ABBOTT:
 8 A. Not specifically. It could have gone
 9 certainly without reference to me, but you
 10 know, I know Moira had advised me about the
 11 note and was seeking my, you know, sort of
 12 okay to bring it forward.
 13 COFFEY, Q.C.:
 14 Q. Which is the "for your information and
 15 review"?
 16 MR. ABBOTT:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. In other words, if you wanted to change it,
 20 she was certainly open to -
 21 MR. ABBOTT:
 22 A. Oh yes, yes.
 23 COFFEY, Q.C.:
 24 Q. And I'm going to suggest to you that, in fact,
 25 if you wanted to change this, and you told her

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1 to change it, it would be changed?
 2 MR. ABBOTT:
 3 A. Oh yes.
 4 COFFEY, Q.C.:
 5 Q. As you, I think, indicated -
 6 MR. ABBOTT:
 7 A. And right across, you know, and the same on
 8 the other side, if--I could have asked for any
 9 changes right up until the time it got to the
 10 final reader, shall we say.
 11 COFFEY, Q.C.:
 12 Q. And the reference to the action required, that
 13 sentence, "should the Premier require further
 14 detail, officials from Eastern Health as well
 15 as their legal counsel will be available for
 16 an in-person briefing." Now you hadn't
 17 checked with Eastern Health or their lawyers
 18 about this and you said to the Commissioner,
 19 just before the break, that you felt though
 20 you could bind them to it?
 21 MR. ABBOTT:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. And in what context or how would you be able
 25 to bind them to that?

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1 MR. ABBOTT:
 2 A. Well -
 3 COFFEY, Q.C.:
 4 Q. What led you to believe that?
 5 MR. ABBOTT:
 6 A. Well, I guess if the Premier requested that in
 7 itself would take care of that, but knowing my
 8 working relationship with Mr. Tilley and his
 9 staff, I can't necessarily speak for legal
 10 counsel to that same degree, but you know,
 11 again, if the Premier or the minister or
 12 anybody else over there that wanted that, then
 13 we would arrange that to happen.
 14 COFFEY, Q.C.:
 15 Q. Now would the legal counsel in this context be
 16 the legal counsel handling the legal claims
 17 against Eastern Health?
 18 MR. ABBOTT:
 19 A. Well, in that context, it would have been--I
 20 would have seen it as Mr. Boone.
 21 COFFEY, Q.C.:
 22 Q. Okay. Now here at page four, under current
 23 status, legal activity, it says "currently
 24 only two legal claims have been filed, as
 25 follows" and it's Michelle Hanlon's and Verna

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1 Doucette's claims, and then there's a
 2 reference to "recent media reports identified
 3 Myrtle Lewis has joined other women who have
 4 signed on to take part in a class action law
 5 suit," and then Verna Doucette, though, above
 6 had been described has--her suit as being
 7 related to a class action legislation. And
 8 here, in "the recent media reports" paragraph,
 9 it ends with "the statement of claim filed by
 10 Mr. Ches Crosbie was served to the defendant,
 11 Eastern Health, on July 7th 2006."
 12 Sir, when you were thinking about, and
 13 suggesting, in fact, that Mr. Boone and some
 14 of the people from Eastern Health might, if
 15 the Premier wished, be available to advise or
 16 brief him, was any thought ever given to
 17 having Mr. Crosbie made available to talk to
 18 the Premier, if he wished?
 19 MR. ABBOTT:
 20 A. No.
 21 COFFEY, Q.C.:
 22 Q. And why then would, from your perspective,
 23 would the department be--because this is
 24 litigation going on between patients or
 25 citizens of the province or residents of the

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1 province and Eastern Health, which you've
 2 indicated is somewhat at arm's length from the
 3 government, why would you be offering of
 4 Eastern Health and its lawyers and not the
 5 patients' lawyers?
 6 MR. ABBOTT:
 7 A. Well, to me, it was very simple in the context
 8 that, you know, Eastern Health is a public
 9 body who the government funds and is
 10 responsible and accountable in the House of
 11 Assembly, through the minister, and it would
 12 be simply that, that it is one of his or our,
 13 the government's agencies that has a
 14 significant legal issue that he may have an
 15 interest in knowing the detail, and no more
 16 than that. And as we were told, the note was
 17 to be developed based on this reference to
 18 legal claim. So we still, you know, didn't
 19 know if there was somebody had a particular
 20 interest in that component. But if so, and if
 21 it was the Premier, a lot of assumptions here,
 22 then here's what we know, but we can make,
 23 obviously the legal counsel available to do a
 24 more detailed or thorough briefing.
 25 COFFEY, Q.C.:

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1 Q. I take it then, it was your understanding that
 2 one of the purposes of the briefing note was
 3 to lay out for the reader, the ultimate reader
 4 of this, the potential legal exposure, in the
 5 sense of to tell -
 6 MR. ABBOTT:
 7 A. I wouldn't even go that far. It was that
 8 here's some detail on the claims, as we knew
 9 it.
 10 COFFEY, Q.C.:
 11 Q. As they exist.
 12 MR. ABBOTT:
 13 A. That was it. We were trying to be very
 14 careful we weren't over stating our knowledge
 15 here on this.
 16 COFFEY, Q.C.:
 17 Q. If we look at page four of the exhibit, the
 18 bottom of the page, it says "Eastern Health
 19 advises 22 women were impacted by the change
 20 in status of the ER/PR receptor tests." See
 21 that?
 22 MR. ABBOTT:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. Now there are other versions of that sentence

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1 associated with this briefing note. If we
 2 could bring up, please, Exhibit P-0172? This
 3 is an e-mail from Marilyn McCormack to Moira
 4 Hennessey, August 18th 2006, 10:59 a.m.
 5 Subject is briefing note for Premier on ER/PR
 6 receptor tests, and this is described by
 7 Marilyn McCormack as the final, in caps and
 8 bold print, copy of the above noted briefing
 9 note, if you approve the same. And if we
 10 could, please, here--let me see, right there.
 11 Here, under summary, there's a reference to
 12 "Eastern Health advises 22 women were greatly
 13 impacted by the change in the status of the
 14 ER/PR receptor tests." See that?
 15 MR. ABBOTT:
 16 A. Yes.
 17 COFFEY, Q.C.:
 18 Q. Now the reference to them being "greatly
 19 impacted" and the version that had been sent
 20 to you says that they were impacted, and the
 21 one that finally ends up in the registry in
 22 the Cabinet secretariat has the word "greatly"
 23 removed again--or removed again, it's removed.
 24 Do you know anything about how the word
 25 "greatly" got inserted there and then removed?

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1 MR. ABBOTT:
 2 A. I have no recollection on that, how that
 3 happened.
 4 COFFEY, Q.C.:
 5 Q. Now were you aware that it had happened, until
 6 after?
 7 MR. ABBOTT:
 8 A. No, I can't say I was.
 9 COFFEY, Q.C.:
 10 Q. Now you said you were travelling with the
 11 minister, Mr. Osborne, the next day and
 12 thereafter, on the 18th of August and there
 13 for a period of time?
 14 MR. ABBOTT:
 15 A. Yes.
 16 COFFEY, Q.C.:
 17 Q. And the subject that there had been a briefing
 18 note going up to the Premier's office on this
 19 issue never came up?
 20 MR. ABBOTT:
 21 A. No.
 22 COFFEY, Q.C.:
 23 Q. Sorry, Commissioner, I have -
 24 THE COMMISSIONER:
 25 Q. Would you like a couple of minutes?

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1 COFFEY, Q.C.:
 2 Q. If you would, please. I'm going to try and -
 3 THE COMMISSIONER:
 4 Q. Why don't you take a couple of minutes?
 5 COFFEY, Q.C.:
 6 Q. Thanks. Sorry about that.
 7 THE COMMISSIONER:
 8 Q. Not at all.
 9 (BREAK)
 10 THE COMMISSIONER:
 11 Q. Please be seated.
 12 COFFEY, Q.C.:
 13 Q. Thank you, Commissioner.
 14 THE COMMISSIONER:
 15 Q. Okay then.
 16 COFFEY, Q.C.:
 17 Q. Mr. Abbott, I was just about to--I was asking
 18 you in your travels then, the latter part of
 19 August with Mr. Osborne, the subject didn't
 20 come up?
 21 MR. ABBOTT:
 22 A. No.
 23 COFFEY, Q.C.:
 24 Q. Exhibit P-0173, please? Now this is an e-mail
 25 from Tansy Mundon to yourself, Moira

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1 Hennessey, Darrell Hynes and Tom Osborne,
 2 October 19th 2006, 4:04 p.m., and the subject
 3 is "41 join class action bid on faulty breast
 4 cancer tests" and it's a report from CBC news
 5 website, I take it.
 6 And if we look at, please, Exhibit P-
 7 0174? This is an e-mail from Mr. Osborne,
 8 first of all, on the 19th of October at 10:08
 9 p.m. saying "please give me a briefing note on
 10 this" and then Ms. Angela Bull on the morning
 11 of Friday, October 20th, at 8:57 a.m. asks or
 12 tells you "the minister needs a briefing note
 13 re: the attached. Thanks," and that's that
 14 "41 join class action bid on faulty breast
 15 cancer tests."
 16 So what then was going on in the fall,
 17 and October of 2006, concerning this class
 18 action issue?
 19 MR. ABBOTT:
 20 A. The only thing that we really were apprised of
 21 is that which we had picked up in the media.
 22 COFFEY, Q.C.:
 23 Q. And what was your understanding about what the
 24 minister, the nature of the minister's
 25 interest in it was?

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1 MR. ABBOTT:
 2 A. I guess what it is at that point in time and
 3 to provide him some information on the issue,
 4 since it's in the media.
 5 COFFEY, Q.C.:
 6 Q. Now looking at, please, P-0173? Now this,
 7 sir, there are a number of quotes in this.
 8 Mr. Crosbie apparently was interviewed for the
 9 story, and Mr. Crosbie, in about the fifth
 10 paragraph down, is quoted as saying "they
 11 haven't" being they, meaning the women,
 12 "'haven't been given any information since a
 13 year ago about the rate of reversal or error
 14 rate, if you want to call it that.' Crosbie
 15 told CBC news," and then below that, a couple
 16 of paragraphs beyond, "Eastern Health says it
 17 does not yet know for certain what the rate of
 18 error was in the tissue sampling" and at the
 19 very bottom, "and they quote Geri Rogers, CBC
 20 does, as saying 'I want to know what went
 21 wrong. I want to know whether it was human
 22 error or was it the test itself,' said Rogers,
 23 who is not part of the class action request,
 24 but who may join."
 25 So, sir, certainly in middle of October

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1 of '06, the department, of which you were
 2 deputy minister, was very aware that this was
 3 in the media again?
 4 MR. ABBOTT:
 5 A. Yes.
 6 COFFEY, Q.C.:
 7 Q. And the nature of the complaints which seemed
 8 to be that it's been more than a year or about
 9 a year and they haven't given out any
 10 information since, really, any substantive
 11 information, Eastern Health hadn't -
 12 MR. ABBOTT:
 13 A. Well, that's -
 14 COFFEY, Q.C.:
 15 Q. That's the complaint.
 16 MR. ABBOTT:
 17 A. - that's the complaint.
 18 COFFEY, Q.C.:
 19 Q. Yes, and at least Ms. Rogers was posited
 20 apparently that "I want to know what went
 21 wrong," at the bottom of the page there?
 22 MR. ABBOTT:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. Now sir, if we could, please, there is--the

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1 Commissioner has heard evidence that there
 2 was, during November of 2006, a briefing for
 3 the executive of Eastern Health and, in fact,
 4 for the executives of other health authorities
 5 and Eastern Health personnel concerning the
 6 ER/PR matter. Were you ever invited to such a
 7 briefing?
 8 MR. ABBOTT:
 9 A. No.
 10 COFFEY, Q.C.:
 11 Q. Okay. If I could, please, there's--Exhibit P-
 12 0125, please, page 35? Thank you. Now this
 13 is a briefing note of October 24th 2006.
 14 It's--the second page of it, it's prepared by
 15 Beverley Griffiths, approved by Moira
 16 Hennessey. The title is "Retesting of Breast
 17 Cancer Patients, ER/PR." I take it that this
 18 is likely as not to have been prepared because
 19 of the CBC -
 20 MR. ABBOTT:
 21 A. Yes.
 22 COFFEY, Q.C.:
 23 Q. - 44, 41 involved in the class action story.
 24 If we look at the second page of the briefing
 25 note, it says, "The claim alleges faulty ER

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1 and PR testing by Eastern Health resulting in
 2 the administration of inappropriate treatment
 3 to some cancer patients. The claim has not
 4 yet been certified as a class action. It is
 5 still in the early stages of litigation." And
 6 the final bullet, "Eastern Health has to file
 7 an affidavit in court by December 15th, 2006."
 8 And it goes on to describe the then expected
 9 time line. Sir, what interest was it of the
 10 Department of Justice as to what happened with
 11 those lawsuits?
 12 MR. ABBOTT:
 13 A. The Department of Justice?
 14 COFFEY, Q.C.:
 15 Q. I'm sorry, Department of Justice, I apologize,
 16 Department of Health. I was thinking lawsuit,
 17 justice. Go ahead.
 18 MR. ABBOTT:
 19 A. Other than monitoring for the minister in
 20 terms of he might have any questions, we had
 21 no active monitoring or looking for any
 22 additional information to substantiate or not
 23 what was happening here. We certainly worked
 24 on the premise and the belief that that issue
 25 was between Eastern Health and their lawyers.

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1 COFFEY, Q.C.:
 2 Q. Yet, you've told the Commissioner that in
 3 terms of the August briefing note for the
 4 Cabinet Secretariat there was sufficient
 5 nexus, you anticipated, maybe between the
 6 interest the premier's office might have in
 7 the lawsuit issue that you had opined that
 8 maybe they and their lawyers could be along?
 9 MR. ABBOTT:
 10 A. Yes.
 11 COFFEY, Q.C.:
 12 Q. To help?
 13 MR. ABBOTT:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. So there was a nexus you saw?
 17 MR. ABBOTT:
 18 A. Only and primarily because of the premier, who
 19 he was, and his, you know, previous
 20 professional occupation he may have, you know,
 21 he may have not only an interest, a
 22 perspective that he might want to bring to
 23 bear on that. But and that's, that was very
 24 uncommon. I don't think I've ever done that
 25 up to that point.

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1 COFFEY, Q.C.:

2 Q. Had you done it afterward?

3 MR. ABBOTT:

4 A. No.

5 COFFEY, Q.C.:

6 Q. Okay. And so you're saying it was because he

7 is a lawyer?

8 MR. ABBOTT:

9 A. Yes.

10 COFFEY, Q.C.:

11 Q. Okay. And what difference would that make,

12 potentially, from your perspective, again?

13 MR. ABBOTT:

14 A. Just that he would have, you know, he would--

15 again, I was reading a lot into those e-mails

16 of where the request came from, so I said if

17 it's coming from the premier's office and the

18 request was related to the legal actions, as

19 reported in the press, well, it is possible

20 that the premier may have a particular

21 interest in those and that was why we said,

22 obviously, if he does, then we can bring that

23 information to him. But there was no more

24 than that.

25 COFFEY, Q.C.:

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1 Q. Okay. Now I understand, of course, this is

2 the fall of '06, the House of Assembly is

3 going to open again and there would be

4 briefing notes prepared?

5 MR. ABBOTT:

6 A. Yes.

7 COFFEY, Q.C.:

8 Q. In relation to that. If we could, please,

9 Exhibit P-0125, I'm going to go to page 37,

10 Commissioner. This is a question and answer

11 briefing note, it's Department of Health and

12 Community Services. This particular one is

13 dated November 6th, 2006, drafted by Beverley

14 Griffiths, approved by Moira Hennessey. Do

15 you remember why this was prepared?

16 MR. ABBOTT:

17 A. Again, that was getting ready for the House of

18 Assembly.

19 COFFEY, Q.C.:

20 Q. Now what, if any, interest did Mr. Osborne

21 evince in this issue?

22 MR. ABBOTT:

23 A. No particular priority, you know, given to

24 that. We, you know, we'd keep him posted

25 through briefing materials and any media

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1 stories, and so he was, would have had access

2 to that. But there were no discussions with

3 me, as an example, as to, you know, is there

4 more we can do, should be doing, what's

5 Eastern Health doing, those kinds, there was

6 none of those discussions with me.

7 COFFEY, Q.C.:

8 Q. Now, here under the suggested responses it

9 says, bullet, "A quality review began

10 immediately when the problem was discovered in

11 May, 2005. Eastern Health has external

12 consultants review the method of testing for

13 ER/PR receptors being used. Consultants

14 recommendation have been implemented. They

15 returned to Eastern Health in early April this

16 year to assess the progress and were pleased

17 that measures were put in place to address the

18 concerns." See that?

19 MR. ABBOTT:

20 A. Yes.

21 COFFEY, Q.C.:

22 Q. Which is consistent, really, with the May,

23 2006 and April, 2006 statements in that regard

24 -

25 MR. ABBOTT:

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1 A. Um.

2 COFFEY, Q.C.:

3 Q. - but is inconsistent with the August 18th,

4 2006 briefing note?

5 MR. ABBOTT:

6 A. Yes.

7 COFFEY, Q.C.:

8 Q. Now, were you aware of the inconsistency?

9 MR. ABBOTT:

10 A. I certainly didn't pick it up, no.

11 COFFEY, Q.C.:

12 Q. Is there anyone in particular in your

13 department whom you would have been in this

14 context counting on to pick up any such

15 inconsistency?

16 MR. ABBOTT:

17 A. Well, you know, the person that was, you know,

18 consistent throughout this would be Moira

19 Hennessey in terms--and she was probably

20 closest to this and most of the briefing notes

21 that I dealt with came through her.

22 COFFEY, Q.C.:

23 Q. If we could, please, Exhibit P-0125, let's

24 see, page 42, Commissioner, which is "ER/PR

25 Case Analysis, Briefing for the Department of

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1 Health and Community Services", November 23rd,
 2 2006. This is the one-page kind of summary of
 3 numbers on Eastern Health letterhead?
 4 MR. ABBOTT:
 5 A. Yes.
 6 COFFEY, Q.C.:
 7 Q. Okay. Could you tell us, please, what you
 8 recall about how this came about, this
 9 briefing and what happened?
 10 MR. ABBOTT:
 11 A. Well, we were, again, the--getting ready for
 12 the House, and actually, the House was in
 13 session by this time. We were advised that
 14 Eastern Health were now sort of at the tail
 15 end and had a lot of the information compiled.
 16 And I believe we were told that they were
 17 getting ready to add a public reporting
 18 initiative. We felt that it was appropriate
 19 that a detailed briefing of the minister take
 20 place and we arranged that on pretty well
 21 short notice over in the House of Assembly, in
 22 the clerk's boardroom. So I remember that
 23 leading up to that.
 24 COFFEY, Q.C.:
 25 Q. And what happened, who was there and where did

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1 it take place?
 2 MR. ABBOTT:
 3 A. Well, it took place in a small, a very small
 4 boardroom in the--outside the House of
 5 Assembly but in their area in Confederation
 6 Building. Minister Osborne was there, his
 7 executive assistant, Darrell Hynes, Tansy
 8 Mundon and myself from the department, I
 9 believe George Tilley, Dr. Oscar Howell, Dr.
 10 Denic and Dr. Laing and I believe Susan
 11 Bonnell were there.
 12 COFFEY, Q.C.:
 13 Q. Was Ms. Hennessey there, do you know?
 14 MR. ABBOTT:
 15 A. I don't think she was.
 16 COFFEY, Q.C.:
 17 Q. Okay. Go ahead, and what happened, how did -
 18 MR. ABBOTT:
 19 A. I opened it up by just saying, "Minister, that
 20 we were here now for a briefing on ER/PR. Mr.
 21 Tilley and his team have some detailed
 22 information now that they wish to present."
 23 And then this briefing note was tabled and
 24 then the Dr. Howell, after some preliminary
 25 comments, I think, by Mr. Tilley, Dr. Howell

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1 then started to explain the numbers and where
 2 things were.
 3 COFFEY, Q.C.:
 4 Q. And what do you recall about it?
 5 MR. ABBOTT:
 6 A. Well, the briefing was, you know, was positive
 7 in that this new information, well, not so
 8 much new now, but at least it was starting to
 9 come a close and that we could now, we are in
 10 a position to report publicly on the issue.
 11 So then for the minister then was a
 12 clarification of each of the elements. There
 13 were some questions asked. But we did get
 14 into a more pointed discussion around the last
 15 element, which was dealing with the deceased.
 16 COFFEY, Q.C.:
 17 Q. What happened?
 18 MR. ABBOTT:
 19 A. Well, it was the question of what the process
 20 was in terms of notification, were they all,
 21 all the families notified and what was being
 22 done there. And the discussion, I think Dr.
 23 Laing in terms of a response there said,
 24 "Look, you know, our focus has been on, you
 25 know, the cases before us. We're dealing with

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1 that. And we have no particular plans or
 2 approach at this time to focus on the
 3 deceased." And you know, there was a pause
 4 there. You know, people had, you know, took
 5 that in, at least from, shall we say, the
 6 government side because this was, you know, a
 7 very difficult issue. Then it was a case of
 8 then how does one explain that in the public
 9 domain and that we needed to focus on that.
 10 COFFEY, Q.C.:
 11 Q. Who is "we"?
 12 MR. ABBOTT:
 13 A. Well, "we", the collective.
 14 COFFEY, Q.C.:
 15 Q. Was "we" okay, in this context. What was the-
 16 -I take it that part of the meeting had a
 17 different tone than the earlier part?
 18 MR. ABBOTT:
 19 A. Well, it was just, yeah, again, on that point
 20 and I think it was just how Dr. Laing
 21 responded was sort of just, it caught
 22 everybody's, you know, sort of attention.
 23 Because we -
 24 COFFEY, Q.C.:
 25 Q. How did she respond?

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1 MR. ABBOTT:
 2 A. No, she was very direct in that, you know, we
 3 are focused on the living and how we deal with
 4 that and right now there's nothing we can do
 5 for the deceased and we have to leave it there
 6 for now. And for minister--I think probably
 7 my sense is we all had the same reaction, now
 8 how does the minister, if he gets asked that
 9 question, how is he going to respond. It's
 10 one thing for Dr. Laing and she can elaborate
 11 a bit further, but for the minister to have to
 12 respond to that, you know, to explain that in
 13 the House, we knew was going to be
 14 problematic, you know, not to put too fine a
 15 point on it.
 16 COFFEY, Q.C.:
 17 Q. So what, if any, direction did the minister
 18 give her?
 19 MR. ABBOTT:
 20 A. Really not a whole lot other than, you know,
 21 then we clued up, say, well, what were the
 22 next steps of in terms of when was the
 23 briefing, those kinds of things. And whether
 24 it was immediately at that, as the meeting
 25 clued up or shortly thereafter, George Tilley

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1 and I had agreed that we would meet with his
 2 director of communications and ours to just
 3 get just, you know, sort talk through this a
 4 bit more. Because I sensed that this was
 5 going to be, you know, a problem if we
 6 couldn't get this presented correctly.
 7 COFFEY, Q.C.:
 8 Q. And what part of it?
 9 MR. ABBOTT:
 10 A. Primarily this point was on, really on the
 11 issue around the deceased, because that was
 12 the issue that caught everybody's sort of
 13 attention.
 14 COFFEY, Q.C.:
 15 Q. And so after the meeting there were
 16 arrangements made for yourself and Mr. Tilley
 17 and your two directors of communication to
 18 meet?
 19 MR. ABBOTT:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. Okay. Before the meeting or just afterward
 23 did you have any conversations with Mr. Tilley
 24 about Mr. Osborne in terms of Mr. Osborne's
 25 approach?

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1 MR. ABBOTT:
 2 A. Not in any particular way. You know, and it
 3 was really--I'll refer back to my point here
 4 is that he would want to be very sure of the
 5 facts and the language that he could use to
 6 communicate. And each--as I said earlier,
 7 each minister is different in that regard.
 8 And I knew, based on my working with him, this
 9 was going to be--if this type of question is
 10 asked, this was going to be very, very
 11 difficult for him to answer because he would
 12 want to be assured and to confirm and we were
 13 sort of in a, you know, he'd be in a situation
 14 as how am I ever going to explain this. And
 15 we, as his officials, had to figure out a way
 16 to help him to answer that question.
 17 COFFEY, Q.C.:
 18 Q. Did you figure out a way?
 19 MR. ABBOTT:
 20 A. Well, as I said, then we--so that was really
 21 what was driving, you know, me to have that
 22 meeting with George. And I guess the
 23 discussion went around how you do--not
 24 specifically, "George, how are you going to do
 25 it?" but, you know, "This is an issue and you

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1 have to be very mindful of this and you've got
 2 to, you know, what Dr. Laing had said in the
 3 briefing, you know, you're going to have to
 4 expand on that certainly more than she said on
 5 behalf of Eastern Health" when they were doing
 6 their technical briefing.
 7 COFFEY, Q.C.:
 8 Q. Okay. If we could, please, if we could bring
 9 up Exhibit P-0418? Sir, these are some
 10 handwritten notes of Mr. Tilley's, but look
 11 to--it can be difficult at times to tell
 12 exactly, some of them are undated, when
 13 something was written. But this has your
 14 name, John Abbott, reference to you and "(1)
 15 brief briefing on ER/PR" and then there's,
 16 that's numbered one. And then next page is
 17 redacted things. But there's No. 6, "Minister
 18 works differently than others. Must respect
 19 minister's approach. Makes up his own mind."
 20 And then the next page has apparently
 21 something else, but the next page is dated
 22 November 28th, '06.
 23 MR. ABBOTT:
 24 A. Um-hm.
 25 COFFEY, Q.C.:

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1 Q. Suggesting that the reference to you and a
 2 comment a minister makes works differently
 3 than others.
 4 MR. ABBOTT:
 5 A. Yes.
 6 COFFEY, Q.C.:
 7 Q. Do you recall that coming up in a conversation
 8 with Mr. Tilley?
 9 MR. ABBOTT:
 10 A. Yeah, that makes sense.
 11 COFFEY, Q.C.:
 12 Q. So you were giving Mr. Tilley sort of a heads
 13 up, as it were, in terms of your assessment?
 14 MR. ABBOTT:
 15 A. Yes. And again, we had, the last ministerial
 16 briefing on this was with Mr. Ottenheimer,
 17 right, and I don't know if Mr. Tilley had
 18 other briefings with Mr. Osborne in between,
 19 he probably did, but you know, whatever the
 20 process here, this was going to be different,
 21 he would ask different types of questions, he
 22 has a different expectation and to just to be
 23 mindful of that.
 24 COFFEY, Q.C.:
 25 Q. Okay. And if we could please, looking at

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1 exhibit P-0176 and this is an e-mail from
 2 Chris O'Neill-Yates, who I gather works for--
 3 well, according to that, her e-mail address is
 4 at CBC.ca, Wednesday, November 22nd, 2006,
 5 1:06 p.m., which would be the day before you
 6 briefed Mr. Osborne near the House of
 7 Assembly. It's to Tansy Mundon, breast cancer
 8 screening is indicated to be the subject. She
 9 says, "Hi Tans, I'm doing a story on the
 10 breast cancer screening test that went awry.
 11 I've been having for weeks trying to get an
 12 interview with Eastern Health. They say they
 13 have nothing to say until the end of the
 14 month, even though for weeks they have had the
 15 results of the retesting from Mount Sinai.
 16 Experts I have spoken with indicate that they
 17 should be able to tell us what the rate of
 18 error was based on that, but so far, no go. I
 19 have two people involved in this story and I'm
 20 filing on it tomorrow. The questions I've
 21 been asked by individuals affected are why
 22 aren't they hearing from the minister about
 23 what went wrong? Is this something the
 24 minister could address? I've spoken to many
 25 people and there is great consternation about

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1 how this matter has been handled. Thanks,
 2 Chris." Now, sir, was that the fact that CBC
 3 was so inquiring, was that brought to your
 4 attention?
 5 MR. ABBOTT:
 6 A. I would be surprised if it was, I don't--
 7 again, I don't know if I saw that e-mail or
 8 the specific reference or at least the inquiry
 9 by Ms. O'Neill-Yates.
 10 COFFEY, Q.C.:
 11 Q. And what, if anything, did the department do
 12 about it? I mean, this is a specific request
 13 and it points out, "I've been for weeks trying
 14 to get an interview with Eastern Health."
 15 MR. ABBOTT:
 16 A. Well that's, again, this is coming from
 17 Eastern Health to us just relaying some
 18 information that they had. There wasn't a
 19 request.
 20 COFFEY, Q.C.:
 21 Q. Well "Is this something the minister could
 22 address?" That's a very--it's in the second
 23 last line -
 24 MR. ABBOTT:
 25 A. Yes, but it was not asked of the minister or

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1 Ms. Mundon, it was asked of Leona Barrington
 2 at Eastern Health.
 3 COFFEY, Q.C.:
 4 Q. This particular one apparently was, she says,
 5 "Hi Tansy". Chris O'Neill-Yates is here, she
 6 says, "Hi Tansy." And before the paragraph
 7 ends, she says, "Is this something the
 8 minister could address, which is the questions
 9 I've been asked by individuals affected are
 10 right -
 11 THE COMMISSIONER:
 12 Q. This may be the result of the source of the
 13 information, the witness--some of our
 14 documents are sourced from different places.
 15 COFFEY, Q.C.:
 16 Q. Oh yes,
 17 THE COMMISSIONER:
 18 Q. You won't necessarily, for example on the top
 19 of that document, it says "Eastern Health
 20 source, Susan Bonnell."
 21 MR. ABBOTT:
 22 A. Oh yes, I follow now, I'm sorry.
 23 THE COMMISSIONER:
 24 Q. So it's not necessarily the -
 25 MR. ABBOTT:

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1 A. I was reading that wrong, sorry. So yes, from
 2 Ms. O'Neill-Yates to Tansy, yes, I apologize.
 3 COFFEY, Q.C.:
 4 Q. And I appreciate the kind of source of
 5 confusion up here -
 6 MR. ABBOTT:
 7 A. Yeah, I was reading that -
 8 COFFEY, Q.C.:
 9 Q. Apparently it passed through Ms. Bonnell's and
 10 Barrington's computers, but this is a specific
 11 request of Tansy Mundon.
 12 MR. ABBOTT:
 13 A. Yes.
 14 COFFEY, Q.C.:
 15 Q. Is this something the minister could address.
 16 MR. ABBOTT:
 17 A. Okay, I'll following now, okay.
 18 COFFEY, Q.C.:
 19 Q. So was consideration given to that? Was that
 20 brought to the minister's attention?
 21 MR. ABBOTT:
 22 A. I really don't know. I, you know, whether Ms.
 23 Mundon did which is possible and the minister,
 24 you know, was not shy, reticent about dealing
 25 with the media on any issue. My suspicion,

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1 though, would be that in light of the briefing
 2 that we had with him and that there is going
 3 to be a briefing by Eastern Health, that we
 4 may have just, you know, he may have just held
 5 off, but I don't know what that conversation
 6 would be. Ms. Mundon would have dealt with
 7 him directly on that type of inquiry. She
 8 would not need to come to me.
 9 COFFEY, Q.C.:
 10 Q. If you look, please, at exhibit P-0177. The
 11 first e-mail in this series of e-mails begins
 12 November 22nd, 2006 at 1:43 p.m. It's from
 13 Ms. Mundon to Leona Barrington and Susan
 14 Bonnell, copied to Mr. Tilley and yourself and
 15 it says, "In light of this request, can you
 16 please ask if a status report is sent to the
 17 minister this week. Thanks." Would that be
 18 the request from Ms. O'Neill-Yates?
 19 MR. ABBOTT:
 20 A. I'm assuming that.
 21 COFFEY, Q.C.:
 22 Q. Because when we go to the next e-mail in this
 23 series, Ms. Bonnell, same day, 2:54 p.m. sends
 24 an e-mail to Ms. Mundon saying, can you call
 25 me, I'm talking to Dr. Howell on the phone now

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1 and we'd like to know what the minister would
 2 want. Would a verbal briefing be helpful.
 3 Despite what Chris says, we're aren't in a
 4 position to give a detailed briefing this week
 5 (rate of error et cetera)." So this appears
 6 that, this suggests somehow that the briefing
 7 of the minister that occurred on the 23rd of
 8 November, arose out of or at least partially
 9 as a result of Ms. O'Neill-Yates' request.
 10 MR. ABBOTT:
 11 A. Again, not sure if it started in motion and
 12 then the request also came in around that
 13 time. I'm really not sure on that.
 14 COFFEY, Q.C.:
 15 Q. Well here, the first of the e-mail is it 1:43
 16 in light of this request, which would be Ms.
 17 O'Neill-Yates' request.
 18 MR. ABBOTT:
 19 A. Oh yeah, no, I follow, I said I didn't know if
 20 we had started the, to arrange a briefing with
 21 Eastern Health prior to that and these two
 22 events sort of coalesced.
 23 COFFEY, Q.C.:
 24 Q. And at least at 2:54 p.m., Ms. Bonnell is
 25 asking Ms. Mundon would a verbal briefing be

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1 helpful for the minister. And then above that
 2 later on, in the same day, 2:59 p.m., Ms.
 3 Bonnell tells Ms. Mundon "we've been trying to
 4 get herself on the phone, we left her a couple
 5 of messages. We're attempting to set up a
 6 media briefing for the first week of December,
 7 just trying to line up all the players. We
 8 need to do this." And then finally, Ms.
 9 Mundon on the same day, at 3:55 p.m., tells
 10 Ms. Barrington and Bonnell, "Susan, the
 11 minister doesn't need a briefing today, but we
 12 would like to set up a briefing for him ASAP.
 13 I will advise you once I discuss with John
 14 Abbott and we can find a time. Thanks,
 15 Tansy." So I gather you found time the next
 16 day in the sense that he was available.
 17 MR. ABBOTT:
 18 A. Yeah, I mean, minister, in terms of access to
 19 the minister, in terms of, you know, when I
 20 wish to see him and wanted to get a briefing,
 21 that could happen pretty quickly. The
 22 challenge we had then was obviously getting
 23 the right people in the right room.
 24 COFFEY, Q.C.:
 25 Q. If we look, please, at exhibit P-0179? Now

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1 this is an e-mail from Ms. Hennessey to Ms.
 2 Griffiths, November 23rd, 2006, 7:21 p.m.
 3 Subject is ER/PR Testing, and she says, "Hi
 4 Bev, the issue was on CBC T.V. tonight, you
 5 may already be aware. As well, George T. met
 6 with the minister today to provide an update.
 7 We need to obtain the briefing note tomorrow
 8 so it is ready for the House for Monday. Can
 9 you please check with Tansy on the key
 10 messages. Tansy was at the meeting with
 11 Eastern and may have some suggested changes.
 12 If you did not see the news, I can tell you
 13 what the headline is. Thanks, Moira" and it's
 14 carboned or copied to Tansy Mundon. So, Mr.
 15 Abbott, I'm trying to get some--can you give
 16 the Commissioner, please, some sense of how
 17 much at this point in time, this is late
 18 November, early December of '06, how closely
 19 were Eastern Health and your department
 20 working on this matter?
 21 MR. ABBOTT:
 22 A. Well, the extent of the working relationship
 23 on this issue was around responding to media
 24 inquiries, getting the minister apprised of
 25 the latest information, the latest

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1 developments. There was--and that was the,
 2 and for pretty well for the most part of this,
 3 that was the type of involvement. We were not
 4 involved in any of their internal processes,
 5 other than to get information from them for a
 6 briefing note for the minister.
 7 COFFEY, Q.C.:
 8 Q. If you look, please, at exhibit P-0180. This
 9 is an e-mail of November 27th, 2006, 10:30
 10 a.m. to yourself, Ms. Hennessey and Mr. Hynes
 11 and Mr. Osborne from Ms. Mundon. This is CBC
 12 story of news from "Here and Now", Thursday,
 13 November 23rd, 2006 and it's a transcript of a
 14 newscast. And Ms. O'Neill-Yates on the second
 15 entry for her concludes with a comment, "Those
 16 results are back, Eastern Health hasn't yet
 17 said what went wrong with Hoyles' test and
 18 possibly hundreds of others or how many women
 19 had false results." Two comments down, Peter
 20 Dawe is quoted as saying, "this is the type of
 21 information that should be made public.
 22 Obviously it's a concern that it's taking up
 23 to 18 months and we still don't have that
 24 information being made public." And then a
 25 further quote from him, Peter Dawe, "What

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1 happened? Why was this mistake made or these
 2 series of mistakes? That then leads into what
 3 have we done about it now? What has the
 4 system done about it to fix it?" So,
 5 certainly by the end of November of '06,
 6 leading into that press conference in
 7 December, yourself and the other senior people
 8 in your department were very aware that the
 9 public wanted to know two things in the media,
 10 why did it happen and how many changed results
 11 there were, that's -
 12 MR. ABBOTT:
 13 A. Well they wanted to know many things.
 14 COFFEY, Q.C.:
 15 Q. Yes, but that's certainly two of them noted
 16 here.
 17 MR. ABBOTT:
 18 A. Well, and others.
 19 COFFEY, Q.C.:
 20 Q. Yes. Well perhaps you can tell me what others
 21 were outstanding.
 22 MR. ABBOTT:
 23 A. Well in terms of it would be -
 24 COFFEY, Q.C.:
 25 Q. Other than the total numbers.

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1 MR. ABBOTT:
 2 A. Well, you know, in terms of again, from a
 3 patient perspective, did all, you know, the
 4 individual patients have all their results and
 5 so that, again, was certainly the focus for us
 6 as well in terms of trying to find that.
 7 COFFEY, Q.C.:
 8 Q. I'm asking in the media, the public -
 9 MR. ABBOTT:
 10 A. Yes.
 11 COFFEY, Q.C.:
 12 Q. There's no reference here in this story, I
 13 don't believe, to concern about individual
 14 patients not having their results at this
 15 point in time.
 16 MR. ABBOTT:
 17 A. Yeah, and again, I'm not arguing with what you
 18 said, I'm just saying there were other aspects
 19 as well and we were aware of those, yes.
 20 COFFEY, Q.C.:
 21 Q. And if we could, please, so you had the
 22 meeting with, well you arranged the briefing
 23 for Mr. Osborne for November 23rd, your sense,
 24 when you left that meeting, did you ever talk
 25 to anybody afterward about the upshot of the

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1 meeting, what you understood was about to
 2 happen?
 3 MR. ABBOTT:
 4 A. That we were going to see Eastern Health
 5 moving to then a full briefing of the media on
 6 the issue.
 7 COFFEY, Q.C.:
 8 Q. And having attended that meeting, did you have
 9 any sense that Eastern Health was going to
 10 hold anything back?
 11 MR. ABBOTT:
 12 A. No.
 13 COFFEY, Q.C.:
 14 Q. Like in terms of, we won't, "we" Eastern
 15 Health, will not say anything about what
 16 caused this, they didn't tell you that they
 17 were going to refuse to answer that question?
 18 MR. ABBOTT:
 19 A. No.
 20 COFFEY, Q.C.:
 21 Q. They didn't tell you they were going to refuse
 22 to answer the question about how many results
 23 changed?
 24 MR. ABBOTT:
 25 A. No.

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1 COFFEY, Q.C.:
 2 Q. And if we could, please, exhibit P-0195, this
 3 is a series of e-mails but the one at the
 4 bottom of the page from Tansy Mundon, November
 5 27th, 2007, 1:44 p.m. to Betty. "John asked
 6 that I talk to you to arrange a time for a
 7 meeting with George Tilley, Susan Bonnell,
 8 John and I. Can you please let me know a time
 9 that works, thanks." Okay?
 10 MR. ABBOTT:
 11 A. Yes.
 12 COFFEY, Q.C.:
 13 Q. Who was the driving force behind arranging
 14 this meeting?
 15 MR. ABBOTT:
 16 A. I believe it was me and I guess Tansy Mundon
 17 and I would have, you know, would prefer that
 18 it probably would be appropriate that we, you
 19 know, that we get together with Mr. Tilley and
 20 Ms. Bonnell in terms of their preparation for
 21 their briefing, so that we were apprised and
 22 got a good sense of where they were and if
 23 there was anything else the minister should be
 24 aware of.
 25 COFFEY, Q.C.:

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1 Q. If we could, exhibit P-181. Now, sir, this is
 2 a series of e-mails, but here at the bottom of
 3 the page, November 27th, 2006 at 1:43 p.m.,
 4 Ms. Mundon is inquiring of Leona Barrington
 5 and Susan Bonnell, "Hi, there, as a follow up
 6 to the briefing last week, just wondering if a
 7 date has been confirmed for a briefing with
 8 the media and Peter Dawe." And then there's a
 9 response, November 27th, '06 at 2:42 p.m. from
 10 Ms. Bonnell, she says, "Tansy, the media
 11 briefings are going to be set up for December
 12 11th. We will try to make time for Peter on
 13 that day, but I'm not sure if we will be able
 14 to fit him in. He won't be getting the
 15 advanced "good will" presentation I offered
 16 him last week. You throw someone an olive
 17 branch and they whip you to death with it.
 18 Fool me once" and signs it Susan Bonnell. And
 19 then Ms. Mundon comes back at 5:01 p.m. that
 20 day saying, "Thanks Susan, for your
 21 information, John Abbott is attempting to set
 22 up a meeting between him, George, you and I
 23 regarding ER/PR and communications. I think
 24 they are looking at Monday of next week."
 25 Signed Tansy. Now, sir, were you ever made

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1 aware of whatever the concern was of Ms.
 2 Bonnell apparently here about Peter Dawe?
 3 MR. ABBOTT:
 4 A. I can't speak to anything specific, I mean,
 5 we--I think it may have been us that suggested
 6 that in fact they do the briefing with Peter
 7 Dawe, given, you know, Canadian Cancer Society
 8 and their interest with that. What the
 9 relationship was between Peter and the Society
 10 and Eastern Health and the people in Eastern
 11 Health, I'm really not sure. I think, you
 12 know, there was some friction and it maybe
 13 just, you know, the way I look at it then and
 14 even now, it would be Peter doing his job in
 15 terms of advocacy in making comment that would
 16 not be necessarily favourable to Eastern
 17 Health, and that was possibly degrading on
 18 Eastern Health's staff, you know, no more than
 19 that.
 20 COFFEY, Q.C.:
 21 Q. Were you aware or made aware as the deputy
 22 minister, did Ms. Mundon make you aware of
 23 this sort of sentiment being expressed by
 24 Susan Bonnell? Because you are about to meet
 25 with Mr. Tilley and Ms. Bonnell about this

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1 issue.

2 MR. ABBOTT:

3 A. I don't remember that, that's not to say that

4 she might have said, you know, there might be

5 a bit of friction or something, but I don't

6 recall any specific conversation because in

7 fact to me, it was irrelevant. It had to

8 happen, you know, that they would do this and

9 whether Susan Bonnell had an issue with that,

10 that's, you know, unless George Tilley said it

11 wasn't going to happen, then it would be, I

12 guess, a different matter, but -

13 COFFEY, Q.C.:

14 Q. I mean, the public briefing, Ms. Bonnell, who

15 I anticipate there is going to be evidence

16 here, she was in fact pushing for the public

17 briefing, so I'm not asking about that.

18 MR. ABBOTT:

19 A. Uh-hm.

20 COFFEY, Q.C.:

21 Q. I'm asking about the arguably expressed

22 animosity towards Peter Dawe, were you made

23 aware of that?

24 MR. ABBOTT:

25 A. No, not at that time. I remember, whether it

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1 was in the fall or one or two occasions where

2 I remember, whether it was George Tilley or

3 somebody else saying, you know, Peter is

4 criticizing yet one more time and I said,

5 well, you know, are you talking to him, are

6 you calling him up? And said yes, and we

7 explain it and you know, we're still getting

8 criticism and I guess it was somewhat similar

9 to what we discussed the other day, in terms

10 of my conversation, when my conversation with

11 Peter Dawe in terms of his approach, but--so I

12 didn't read any--I wouldn't have read any more

13 into it than that.

14 COFFEY, Q.C.:

15 Q. What would the purpose be, because Ms. Mundon

16 apparently was inquiring of Ms. Bonnell to see

17 if there was going to be an advanced briefing

18 of Mr. Dawe.

19 MR. ABBOTT:

20 A. Yeah.

21 COFFEY, Q.C.:

22 Q. The purpose of such an advanced briefing, from

23 your perspective, would be what?

24 MR. ABBOTT:

25 A. Well, to make sure he had the information

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1 because he is out speaking and if he was

2 satisfied, well that would be good. If he had

3 questions and what have you that were still

4 sort of unanswered, well that would certainly

5 help them when they went to the media because

6 then you would know what to expect post media

7 briefing. Common practice to engage, you

8 know, in the stakeholder community and it's

9 certainly strongly encouraged.

10 COFFEY, Q.C.:

11 Q. Were you made aware that there was not going

12 to be any advanced briefing of Mr. Dawe?

13 MR. ABBOTT:

14 A. I don't think I was.

15 COFFEY, Q.C.:

16 Q. If we could please, exhibit P-0195, thank you.

17 Page 2 of this, at the bottom here is an e-

18 mail from November 28th, from Betty Donahue to

19 Tansy Mundon and it says, "Tansy, a meeting

20 with you, John, George Tilley and Susan

21 Bonnell to discuss ER/PR and communications is

22 confirmed for Monday, December 4th, 9:30 for

23 one hour in our executive board room." Now,

24 that meeting, I take it, did take place. What

25 happened at that meeting?

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1 MR. ABBOTT:

2 A. Well we started by me asking George Tilley to

3 give us an update in terms of their plans and

4 their process for the briefing. We then

5 talked to some of the points, one in

6 particular again was how you are going to

7 address the matter of the deceased patients.

8 COFFEY, Q.C.:

9 Q. Okay, so that's what you talked about. What

10 did he say and -

11 MR. ABBOTT:

12 A. Well, you know, he said that they would

13 address it in a straightforward fashion as

14 they can, but they, you know, they knew it was

15 still going to be problematic because the

16 facts were that in fact they weren't going to

17 be doing very much at that point in time or

18 could, and so we talked of some other points

19 around that and that was sort of how it was

20 left, you know, it was certainly left for him

21 and his staff to finalize the briefing and to

22 meet--and coming out of the briefing with the

23 minister, certainly knew, you know, where his

24 comfort level was in that he had now the

25 information and obviously would expect that

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1 that would get out there in a professional
 2 fashion.
 3 COFFEY, Q.C.:
 4 Q. Now during that meeting with Mr. Tilley and
 5 Ms. Bonnell, did you become aware at that
 6 point in time during that meeting or at any
 7 point before December 11th, 2006 that Eastern
 8 Health was going to refuse to give out certain
 9 information?
 10 MR. ABBOTT:
 11 A. Well, I know that question has been asked
 12 before, not through this particular hearing.
 13 And I'm really at a loss to say that I would
 14 have known anything. Now, there was this issue
 15 around error rate, terminology, conversion
 16 rates and those kinds of things. But my
 17 understanding going to that is that the table
 18 of information that had been provided to the--
 19 and discussed with him in the briefing on
 20 November 23rd was basically going to be the
 21 basis of the details in the presentation to
 22 the media. We had no reason to think
 23 otherwise. But in terms of using and
 24 referencing any error rate, because that term
 25 wasn't being, I guess, considered or

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1 acknowledged.
 2 COFFEY, Q.C.:
 3 Q. Um-hm.
 4 MR. ABBOTT:
 5 A. Conversion, yes. And would leave it at that.
 6 COFFEY, Q.C.:
 7 Q. So, I'm sorry, so the time the meeting with
 8 Mr. Tilley ends, December 4th, you understand
 9 still that they're going to give out all the
 10 numbers?
 11 MR. ABBOTT:
 12 A. That was my understanding, yes. And I didn't
 13 see any reason why they wouldn't.
 14 COFFEY, Q.C.:
 15 Q. Yes.
 16 MR. ABBOTT:
 17 A. Right.
 18 COFFEY, Q.C.:
 19 Q. And -
 20 MR. ABBOTT:
 21 A. Because, you know -
 22 COFFEY, Q.C.:
 23 Q. And in terms of the error rate, I take it
 24 that, what was the concern about talking about
 25 error rates?

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1 MR. ABBOTT:
 2 A. No, again -
 3 COFFEY, Q.C.:
 4 Q. Because that's what these notes -
 5 MR. ABBOTT:
 6 A. - that's more, really from my perspective, is
 7 I know they never started talking about the
 8 word or the phrase or concept error rate. It
 9 was conversions, that different results came
 10 back and this is what happened. But putting
 11 percentages on it, actually, up to this point
 12 in time I don't think any numbers had been
 13 used, and I know I hadn't sought any out.
 14 COFFEY, Q.C.:
 15 Q. And they hadn't offered any up, I take it?
 16 MR. ABBOTT:
 17 A. There was none, you know -
 18 COFFEY, Q.C.:
 19 Q. Yes.
 20 MR. ABBOTT:
 21 A. The table was what, it was what it was.
 22 COFFEY, Q.C.:
 23 Q. Now, looking at that table, that November--
 24 sorry. Exhibit P-0125, page 42. This is the
 25 table of November 23rd, '06, the briefing note

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1 from Eastern Health. I take it, sir, here
 2 because the 117 is the number that eventually
 3 gets used?
 4 MR. ABBOTT:
 5 A. Yes.
 6 COFFEY, Q.C.:
 7 Q. On December 11th. But the actual number 117
 8 nowhere appears on this, does it?
 9 MR. ABBOTT:
 10 A. No, not unless -
 11 COFFEY, Q.C.:
 12 Q. I'll take you to -
 13 MR. ABBOTT:
 14 A. - I think you got to do a bit of math to get
 15 you there.
 16 COFFEY, Q.C.:
 17 Q. Yeah. Do you recall how the 117 number came
 18 about?
 19 MR. ABBOTT:
 20 A. No, other than an extraction from, you know,
 21 from the table would be, I guess, not a guess,
 22 that's what I would have understood.
 23 COFFEY, Q.C.:
 24 Q. So your understanding would be in terms of
 25 "Change in results and requires treatment

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1 change, 104," is that one of the two numbers?
 2 MR. ABBOTT:
 3 A. No, I -
 4 COFFEY, Q.C.:
 5 Q. Perhaps I should just ask you. How would you
 6 do the calculation?
 7 MR. ABBOTT:
 8 A. I have done it. I'm just trying to, now that
 9 it's here in front of me. Now, it would be
 10 the 104 number, that fourth bullet, "change in
 11 results," and then the "No change in results,
 12 require change in treatment as definition of
 13 negative has changed." That's how, I think, I
 14 would come up with the 117.
 15 COFFEY, Q.C.:
 16 Q. Yes, so that would be the number right -
 17 MR. ABBOTT:
 18 A. The second -
 19 COFFEY, Q.C.:
 20 Q. Right there, is that the one, or no?
 21 MR. ABBOTT:
 22 A. I'm, right now I'm looking at the second
 23 bullet, "no change in results, you see the
 24 number 13 -
 25 COFFEY, Q.C.:

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1 Q. Oh, yes, "No change in results, requires
 2 change in treatment as definition of negative
 3 has changed."?
 4 MR. ABBOTT:
 5 A. Yes.
 6 COFFEY, Q.C.:
 7 Q. Thirteen?
 8 MR. ABBOTT:
 9 A. Yeah.
 10 COFFEY, Q.C.:
 11 Q. So that No. 13, plus that 104?
 12 MR. ABBOTT:
 13 A. Yeah, I think now. I've gone through that
 14 before but now in front of me I'm not 100
 15 percent sure.
 16 COFFEY, Q.C.:
 17 Q. Those who require a treatment change?
 18 MR. ABBOTT:
 19 A. Yeah.
 20 COFFEY, Q.C.:
 21 Q. In terms of the overall?
 22 MR. ABBOTT:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. Would be 104, plus that 13?

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1 MR. ABBOTT:
 2 A. Yeah, because that's what we're talking about,
 3 this change in treatment.
 4 COFFEY, Q.C.:
 5 Q. Yes.
 6 MR. ABBOTT:
 7 A. And -
 8 COFFEY, Q.C.:
 9 Q. Okay. And if we could, please, Exhibit P-
 10 0104? This exhibit begins with an e-mail from
 11 Susan Bonnell to Tansy Mundon, December 11th,
 12 2006, 8:52 a.m. and there are quite a number
 13 of attachments, very detailed attachments.
 14 And they apparently are the materials for the
 15 December 11th media briefing?
 16 MR. ABBOTT:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. And just bear with me. "ER/PR retesting
 20 chronology, December 11th, 2006." "News
 21 release." And "ER/PR retesting, key messages,
 22 confidential." And then there's an "Estrogen
 23 and progesterone testing, media technical
 24 briefing, December 11th, 2006" it's a slide
 25 show, really?

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1 MR. ABBOTT:
 2 A. Yes.
 3 COFFEY, Q.C.:
 4 Q. Follows from there. And if I could, please,
 5 if we could bring up, please, Exhibit P-0196,
 6 page 3? And this is an e-mail from Tansy
 7 Mundon to yourself, Ms. Hennessey, Mr. Hynes
 8 and Mr. Osborne, December 11th, '06, 10:36
 9 a.m., "Materials for ER/PR briefing as
 10 promised. Please see attached. Minister, I
 11 have printed off a copy for you. Tansy." So
 12 would this have been a copy of those ER/PR
 13 materials coming over from Eastern Health?
 14 MR. ABBOTT:
 15 A. That's how I would see it, yes.
 16 COFFEY, Q.C.:
 17 Q. Yes. Did you read those at the time or that
 18 day or in the days following?
 19 MR. ABBOTT:
 20 A. The power point deck, as it were, I'm not sure
 21 if I read that, you know, sort of shortly
 22 after it came over. I do recall, I believe,
 23 having a discussion, reading and having a
 24 discussion around the press release.
 25 COFFEY, Q.C.:

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1 Q. Who is that?
 2 MR. ABBOTT:
 3 A. That's the press release that was -
 4 COFFEY, Q.C.:
 5 Q. You and?
 6 MR. ABBOTT:
 7 A. I think maybe Tansy Mundon.
 8 COFFEY, Q.C.:
 9 Q. Okay.
 10 MR. ABBOTT:
 11 A. At that time. Just to make sure we understood
 12 what was in it and what was--feel more
 13 comfortable -
 14 COFFEY, Q.C.:
 15 Q. Exhibit -
 16 MR. ABBOTT:
 17 A. - from the minister's perspective.
 18 COFFEY, Q.C.:
 19 Q. Exhibit P-0104, please? It's already open.
 20 Page 28? Now, this is the ER/PR media
 21 technical briefing Q and As. There's a number
 22 of questions. And actually, 25 questions and
 23 25 answers. Would you have read these?
 24 MR. ABBOTT:
 25 A. I don't know if I read them, you know, shall

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1 we say, when they arrived. I did read them at
 2 some later stage. Now, whether it was that
 3 day or the next day -
 4 COFFEY, Q.C.:
 5 Q. Within a short -
 6 MR. ABBOTT:
 7 A. Yeah.
 8 COFFEY, Q.C.:
 9 Q. Short period of time after?
 10 MR. ABBOTT:
 11 A. Yeah.
 12 COFFEY, Q.C.:
 13 Q. I take it you're saying, "Commissioner, look,
 14 I can't say that I read them before the
 15 briefing actually took place that morning."
 16 MR. ABBOTT:
 17 A. No.
 18 COFFEY, Q.C.:
 19 Q. But within a day, within a couple of days you
 20 read them?
 21 MR. ABBOTT:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. Now, having read them--looking at page 30,
 25 which is question 9, "What is the rate of

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1 error? How many people converted?" And when
 2 we look down through that, of course, the
 3 suggested answer or answer here is that
 4 they're focusing on the 117 individuals who
 5 experienced treatment changes, and they say
 6 "now that legal proceedings have been
 7 initiated, we will have to allow the legal
 8 process to determine if, in fact, error has
 9 occurred. The numbers of individual
 10 conversions are not relevant and turn the
 11 process into a numbers game," and they then
 12 don't go on to give an actual number of total
 13 conversions, total number of conversions.
 14 MR. ABBOTT:
 15 A. Right.
 16 COFFEY, Q.C.:
 17 Q. So you would have understood that, having read
 18 through all this, you would have understood
 19 that they weren't giving out the conversion
 20 number?
 21 MR. ABBOTT:
 22 A. Well, no, you know, I did not reach that
 23 conclusion, and why I say that is when they
 24 were--in terms of the briefing itself, I
 25 assumed, that they were providing all the

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1 numbers that we had seen and then, even here,
 2 I didn't appreciate--and that's my point about
 3 the rate of error, conversions, or whatever,
 4 in terms of actually giving a number, you
 5 know, a percentage. I still, and really, up
 6 until I think last May, sort of thought that
 7 all the numbers were out.
 8 COFFEY, Q.C.:
 9 Q. When someone says "the number of individual
 10 conversions are not relevant and turn the
 11 process into a numbers game," that certainly
 12 implies that anybody saying that is not going
 13 to give you the total, the numbers.
 14 MR. ABBOTT:
 15 A. Well -
 16 COFFEY, Q.C.:
 17 Q. It implies it.
 18 MR. ABBOTT:
 19 A. Well, as I said, my challenge on this is that
 20 I had seen them. I assumed that they were--
 21 what the basis of the briefing was about and
 22 didn't really pay a lot of attention to this,
 23 in terms of if I was interpreting this on
 24 rates and they were keeping away from using
 25 that for their particular purposes, whatever

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1 that might be.
 2 THE COMMISSIONER:
 3 Q. Whenever it's a convenient place.
 4 COFFEY, Q.C.:
 5 Q. Yes, thank you, Commissioner. If I could,
 6 please, Exhibit P-0196? If we just look--I
 7 take it that, at page four of the exhibit, as
 8 of 11:11 on that morning, December 11th '06,
 9 Ms. Mundon was inquiring of Ms. Barrington and
 10 Ms. Bonnell "how's it going?" So your
 11 department wanted to know what the situation
 12 was, in terms of how the briefing was going -
 13 MR. ABBOTT:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. - so they could update the minister, and then
 17 beginning at 4:13 p.m., Ms. Barrington sent an
 18 e-mail, it's hard to tell to whom there, but
 19 then at 5:12 p.m., there's an e-mail from
 20 Tansy Mundon to yourself, Ms. Hennessey, Mr.
 21 Hynes and Mr. Osborne, sending the same story,
 22 "Eastern Health releases outcomes of
 23 laboratory review."
 24 MR. ABBOTT:
 25 A. Yes.

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1 COFFEY, Q.C.:
 2 Q. And then at 8:16 p.m., Ms. Mundon is
 3 distributing summaries of a number of stories
 4 on the ER/PR briefing to the same individuals.
 5 At 9:10 p.m., she's providing some kind of a
 6 short summary, as it were, again to all
 7 yourselves. At 9:11 p.m. is sending a media
 8 account from CBC news involving "117
 9 Newfoundland and Labrador cancer patients
 10 receive belated hormone treatment" and she
 11 says "note Peter Dawe's comments."
 12 Now sir, this had been a story recorded
 13 at 5:33 p.m., Newfoundland time, that day, and
 14 in particular, as your attention at the time
 15 is directed by Ms. Mundon to Mr. Dawe's
 16 comments, toward the bottom of the story,
 17 there's a note there "because of a potential
 18 law suit, provincial health officials refuse
 19 to explain if the discrepancy resulted from
 20 human error or from new methods of
 21 interpreting test results. Officials also
 22 would not say if any patients who were
 23 mistakenly denied hormone treatment had died
 24 or were needlessly given mastectomies when
 25 they could have been treated with drugs. 'Not

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1 receiving this treatment could very well mean
 2 a life and death issue for people going
 3 through the process,' said Peter Dawe,
 4 director of Newfoundland and Labrador chapter
 5 of the Canadian Cancer Society. 'The lack of
 6 disclosure raises questions,' said Dawe 'about
 7 what the problem is and how it can be fixed.'" and it goes on, "health officials in
 8 Newfoundland and Labrador hope to resume their
 9 own hormone testing in the near future, though
 10 they can't say when."
 11 Now sir, in relation to that, I take it
 12 you were certainly being kept apprised
 13 throughout that evening, afternoon and
 14 evening, as to the media coverage?
 15 MR. ABBOTT:
 16 A. Yes, and if I may, I think at first my
 17 question would have been shortly after the
 18 briefing and a question of what did we know,
 19 in terms of what was the response by the media
 20 to the briefing, and I think what I was told
 21 at that time is that the briefing went well,
 22 and we took from that that there would have
 23 been a reasonable degree of satisfaction with
 24 the information that was provided.
 25

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1 COFFEY, Q.C.:
 2 Q. Yes, but that's what Eastern Health's telling
 3 you.
 4 MR. ABBOTT:
 5 A. Oh yes.
 6 COFFEY, Q.C.:
 7 Q. How about the media? I mean, the media at
 8 times here is a different issue, isn't it?
 9 MR. ABBOTT:
 10 A. Well then, again, you know, how you interpret
 11 that and not necessarily taking anything for
 12 face value, but I didn't--I still don't read
 13 anything into that that says that some of the
 14 data that we knew and what they had talked
 15 about would, in fact, be--was not released.
 16 COFFEY, Q.C.:
 17 Q. Okay, and in terms of that, look at page 14 of
 18 the same exhibit, which is just a continuation
 19 of that same e-mail. It's an exchange of e-
 20 mails between Tansy Mundon and Darrell Hynes
 21 later on that evening, at 10:17 and 10:18.
 22 Mr. Hynes posits to Ms. Mundon "I hate to say
 23 it, but Peter has a point" and Ms. Mundon
 24 comes back to Mr. Hynes, "he does indeed."
 25 Two things that I just read to you, referred

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1 you to are the two quotes attributed to Mr.
 2 Dawe.
 3 MR. ABBOTT:
 4 A. Yes.
 5 COFFEY, Q.C.:
 6 Q. So was that, the fact that Mr. Dawe had a
 7 point and that point, was that ever discussed
 8 within the department?
 9 MR. ABBOTT:
 10 A. Not after that, I don't think, and again,
 11 reading those, I don't know if the data that
 12 was in the table would have answered his
 13 observation or comment, and we did know that
 14 in terms of those who had died, at this point,
 15 we didn't--at least my knowledge was that they
 16 did not have that information at that time, in
 17 any event. So again, it wasn't new. It's
 18 very pointed and but that was what we knew,
 19 based on the briefing.
 20 COFFEY, Q.C.:
 21 Q. Okay. And if we could, please, at 10:33 p.m.,
 22 or actually, on December 11 at 9:13 p.m. there
 23 was again a series of--an e-mail from Ms.
 24 Mundon to the same individuals, senior people
 25 in the department, the subject is Nightline

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1 caller, ER/PR, referring to Minnie as a breast
 2 cancer patient and it says that--attributes to
 3 her the remark, "she is not getting any
 4 answers from the doctors. Minnie does not
 5 know how her chemo helped her. The problem
 6 that she has with the health care system is
 7 that the doctors do not know why the problem
 8 occurred; how they correct something when they
 9 cannot pinpoint the problem, questions Minnie.
 10 And how can she be certain that things will be
 11 dealt with in a correct and adequate manner."
 12 And then Mr. Osborne apparently, at 10:33 that
 13 night, came back to Ms. Mundon and said, "we
 14 need to be ready for this as well." And
 15 Minnie's complaint apparently was, well, how
 16 can you be sure you corrected something if you
 17 don't know what it was, what caused it.
 18 MR. ABBOTT:
 19 A. Um-hm.
 20 COFFEY, Q.C.:
 21 Q. She had a point.
 22 MR. ABBOTT:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. Did you know, as the deputy minister at the

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1 time what the problem had been?
 2 MR. ABBOTT:
 3 A. No, again in terms of how I answered that
 4 previously, but again, six months later, no I
 5 was no further enlightened on that point.
 6 COFFEY, Q.C.:
 7 Q. And did you ask Eastern Health, please
 8 enlighten me.
 9 MR. ABBOTT:
 10 A. No, not in, again, not that--in terms of how
 11 you define the issue and again for me was one
 12 of, we discovered it, we retested, we have the
 13 results and for this patient and others, we
 14 would make sure that they had that
 15 information.
 16 COFFEY, Q.C.:
 17 Q. And you certainly knew Eastern Health had
 18 refused to provide the information? Mr. Dawe
 19 had said that, we just looked at that.
 20 MR. ABBOTT:
 21 A. Well no, and that's my point earlier, I did
 22 not know that they -
 23 COFFEY, Q.C.:
 24 Q. Not the numbers, but the cause.
 25 MR. ABBOTT:

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1 A. And I don't know if it was a refusal in that
 2 sense or just didn't have the information, in
 3 fact, to provide that. The point being is
 4 that I didn't have it and whether or not they
 5 had it and weren't telling us, that was
 6 something I never thought was the case.
 7 COFFEY, Q.C.:
 8 Q. One final point, if I could just extend it
 9 just one moment, Commissioner, Exhibit P-0197,
 10 page one. And this is an e-mail sir from
 11 Tansy Mundon to Elizabeth Matthews and Andrea
 12 Nolan, December 12, 2006 at 12:34 p.m.,
 13 Tuesday, the next day, "briefing note for
 14 premier on ER/PR. Elizabeth/Andrea, for the
 15 premier's information, this issue was in the
 16 media today. Thanks, Tansy." And this would
 17 be the--it's a question and answer briefing
 18 note from the Department of Health and it's
 19 dated December 12, '06, presumably is the one
 20 prepared by or drafted by Ms. Griffiths,
 21 approved by Ms. Hennessey to follow the media
 22 briefing. Were you aware that this was being
 23 provided to the premier's office?
 24 MR. ABBOTT:
 25 A. I will say, again, I assume that I did because

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1 that would have been, you know, sort of an
 2 extraordinary request, shall we say.
 3 COFFEY, Q.C.:
 4 Q. Thank you, Commissioner.
 5 THE COMMISSIONER:
 6 Q. For the benefit of both this witness and the
 7 one who's in the lineup are you in a position
 8 to let me know what time you might you need
 9 for Mr. Abbott in the morning?
 10 COFFEY, Q.C.:
 11 Q. I'll be finished with him by the break.
 12 THE COMMISSIONER:
 13 Q. Can we do the rounds of the room, our usual,
 14 not holding you to things, but just in terms
 15 of trying to give advance notice to the
 16 witness who is next on the list. Mr.
 17 Pritchard, you're the last up, but can you
 18 give me some indication as to -
 19 MR. PRITCHARD:
 20 Q. Yes, I expect I'd be an hour.
 21 THE COMMISSIONER:
 22 Q. All right. Mr. Simmons?
 23 MR. SIMMONS:
 24 Q. I would think about half an hour,
 25 Commissioner.

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1 MS. HENNEBURY:
 2 Q. I don't think I'll have any questions
 3 (inaudible).
 4 THE COMMISSIONER:
 5 Q. All right.
 6 MS. NEWBURY:
 7 Q. I'll be about half an hour.
 8 THE COMMISSIONER:
 9 Q. All right.
 10 MS. O'DEA:
 11 Q. I really won't have too many questions at all.
 12 THE COMMISSIONER:
 13 Q. Okay. Sorry, Ms. Russell, I couldn't see you
 14 behind the screen.
 15 MS. RUSSELL:
 16 Q. I probably won't have very many questions.
 17 MR. PIKE:
 18 Q. About 15 minutes, Commissioner.
 19 THE COMMISSIONER:
 20 Q. All right, thank you. We'll adjourn then
 21 until 9:30 in the morning. Thank you.

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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 5th day of May, 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 5th day of May, A.D., 2008
 13 Judy Moss

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