

COMMISSION OF INQUIRY
ON HORMONE RECEPTOR TESTING

BEFORE THE HONOURABLE JUSTICE CAMERON - COMMISSIONER

MARCH 31, 2008

Appearances:

- Bernard Coffey, Q.C. Commission Co-counsel
- Sandra Chaytor, Q.C. Commission Co-counsel
- Peter Browne/Jane Hennebury Drs. Kara Laing et al
- Rolf Pritchard Her Majesty in Right of NL
- Daniel Simmons Eastern Regional Integrated
. Health Authority
- Pamela Taylor. Members of the Breast Cancer
. Testing Class Action
- Jennifer Newbury Canadian Cancer Society (NL Division)
- Ms. Stacey O’Dea. Central, Western and Labrador-Grenfell
. Regional Integrated Health Authorities

EXHIBIT LIST

- EXHIBITS P-0123 THROUGH P-0158 Pg. 8
- EXHIBITS P-0159 AND P-0160 Pg. 97

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Certificate

1 THE COMMISSIONER:

2 Q. Good morning. Please be seated. Mr. Coffey,

3 before we begin, I have a small housekeeping

4 matter to address. A number of counsel for

5 the parties with standing have communicated

6 with us and expressed concern about the timing

7 of the delivery by the Commission of the

8 documents which we used in the examination and

9 cross-examination of parties, although, of

10 course, you are not limited to the particular

11 documents that we anticipate you might like to

12 use. But, as I understand it, these concerns

13 relate to whether or not there has been

14 sufficient time to properly prepare for the

15 cross-examination of witnesses, given the

16 timing of the receipt of this package.

17 We anticipate that this problem will

18 lessen as time goes on and there’ll be much

19 more repeat use of exhibits and everybody

20 becomes all too familiar with P-0008 or

21 whatever the, shall we say, popular exhibits

22 turn out to be. But, in an effort to deal

23 with this concern by counsel, at least in

24 respect of the next--over the next few weeks,

25 we have decided to make some scheduling

26 changes, and as I understand it, counsel for

27 the parties have been advised of this, but I

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1 wish to make sure that the public is also
 2 advised.
 3 So the changes will mean, in terms of the
 4 schedule over the next week, that Mr.
 5 Ottenheimer, who of course is here this
 6 morning, and Mr. Osbourne will be heard today
 7 and Tuesday. We will then have a break on
 8 Wednesday this week instead of on Friday and
 9 Mr. Wiseman will be heard on Thursday and on
 10 Friday, if necessary, to complete his
 11 testimony. Mr. Tilley will then commence on
 12 Monday of next week. The schedule which is on
 13 the website will be adjusted accordingly.
 14 For the benefit of those who are not
 15 familiar with the process, and I confess that
 16 I'm really one of those, because I'm not quite
 17 sure of the fine details of what goes on in
 18 the administrative offices here, but I do know
 19 it requires a lot of work from the time that
 20 documents arrive, whether they're in a paper
 21 form or in an electronic form, to put them in
 22 our database and proceed to deal with the
 23 documents, including such things as redaction
 24 of personal information, properly formatting
 25 them, a verb that I have learned along the

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1 way, OCRing them. All of those kinds of
 2 things really take a great deal of time and
 3 effort on behalf of our staff so that they can
 4 pop up almost instantaneously on the monitors
 5 in front of you when we need to refer to an
 6 exhibit, and frankly, I'd like to note that
 7 we're still receiving large numbers of
 8 documents and while we anticipated that we
 9 would continue to receive documents as the
 10 hearings progressed, I don't think we
 11 anticipated the numbers of documents that we
 12 are receiving would in fact arrive at this
 13 stage in the game.
 14 So partly the delay in counsel receiving
 15 those dreaded discs, that I know you by now
 16 hate, which seem to arrive either at the
 17 evening meal or at breakfast time, is because,
 18 as we are preparing to send them out the door,
 19 there's further information that has to be
 20 concluded coming in the door. We have to halt
 21 the process, incorporate that material and
 22 then send them out to you at odd hours of the
 23 day and night.
 24 So I'd like to send out a plea to parties
 25 with documents still outstanding to please get

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1 them to us as quickly as possible. I
 2 recognize that occasionally a document will
 3 pop up that you realize that wasn't contained
 4 in materials and should have been and that we
 5 anticipate that that will happen, but we are
 6 getting documents on such a large volume that
 7 I'm wondering if people are not sort of
 8 concentrating on exactly what has to be
 9 provided to us. So I urge you to do that, so
 10 that we, in turn, can properly turn it around
 11 and get it back to you and you won't have
 12 those concerns about delay and the needed
 13 preparation time. Thank you. Mr. Coffey.
 14 COFFEY, Q.C.:
 15 Q. Thank you, Commissioner. The next witness,
 16 and as you already identified him,
 17 Commissioner, as being in the room, is Mr.
 18 Ottenheimer, John Ottenheimer.
 19 MR. JOHN OTTENHEIMER, SWORN, EXAMINATION BY BERNARD
 20 COFFEY, Q.C.
 21 REGISTRAR:
 22 Q. Would you please state and spell your complete
 23 name for the Commission?
 24 MR. OTTENHEIMER:
 25 A. John Ottenheimer, O-T-T-E-N-H-E-I-M-E-R.

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1 REGISTRAR:
 2 Q. Thank you.
 3 MR. OTTENHEIMER:
 4 A. Thank you.
 5 COFFEY, Q.C.:
 6 Q. Commissioner, if I could please, Exhibits P-
 7 0123 through P-0158 inclusive, ask that they
 8 be entered, please.
 9 THE COMMISSIONER:
 10 Q. 0123 to 0158?
 11 COFFEY, Q.C.:
 12 Q. Yes, Commissioner, please.
 13 THE COMMISSIONER:
 14 Q. Okay.
 15 EXHIBITS ENTERED AND MARKED EXHIBITS P-0123 THROUGH P-
 16 0158
 17 COFFEY, Q.C.:
 18 Q. Good morning, Mr. Ottenheimer.
 19 MR. OTTENHEIMER:
 20 A. Good morning, Mr. Coffey.
 21 COFFEY, Q.C.:
 22 Q. Mr. Ottenheimer, could you tell us please just
 23 a bit about your background?
 24 MR. OTTENHEIMER:
 25 A. I was born here in St. John's and grew up here

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1 all my life. I worked as--well, first of all,
 2 I attended school and high school here in the
 3 City. I received a Bachelor of Arts and a
 4 Bachelor of Education degree from Memorial in
 5 1974, a Master of Education degree from
 6 Memorial in 1986, and a Bachelor of Laws
 7 degree from the University of Winsor in
 8 Ontario in 1982. I was a school teacher and
 9 principal in a number of communities, in St.
 10 John's, in Lamaline and in Stephenville. I
 11 practised law for 21 years in the City and up
 12 until 2003.

13 I entered politics in 1996. I was the
 14 Member of the House of Assembly for the
 15 District of St. John's East for approximately
 16 12 years, served eight years in opposition.
 17 When we formed government in 2003, I was
 18 invited into Cabinet, and I had three
 19 portfolios during my four years in Government.
 20 Education and Post-Secondary being the first,
 21 Health and Community Services being the
 22 second, and my last year and a half, the
 23 Department of Intergovernmental Affairs. I
 24 did not run in the last election. I retired
 25 from public life in October of 2007. I'm now-

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1 -I now have a very part-time position as the
 2 Chair of the Board of Directors for
 3 Newfoundland and Labrador Hydro, and that's
 4 essentially my schooling and professional
 5 background.

6 COFFEY, Q.C.:
 7 Q. Thank you, sir. Registrar, P-0131 please.
 8 Now, Mr. Ottenheimer, this is a listing of
 9 ministerial portfolios for the Department of
 10 Health from 1997 to the present.

11 MR. OTTENHEIMER:
 12 A. Yes.

13 COFFEY, Q.C.:
 14 Q. And the names, the portfolio is listed and the
 15 date of swearing in by the Lieutenant
 16 Governor. If we could go to page two, yes,
 17 you'll see there at the top of the second
 18 page, you're listed as having been sworn in on
 19 October 1, 2004.

20 MR. OTTENHEIMER:
 21 A. Yes.

22 COFFEY, Q.C.:
 23 Q. As the Minister of Health and Community
 24 Services. Then there's a note that Tom
 25 Marshall was made Acting Minister of Health,

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1 March 30th 2005. Loyola Sullivan replaced him
 2 on April 11th, 2005 in the acting position,
 3 and then you returned May 20th 2005 as
 4 Minister of Health and you remained in that
 5 position until you were replaced by Tom
 6 Osbourne on March 14th, 2006.

7 MR. OTTENHEIMER:
 8 A. Um-hm.

9 COFFEY, Q.C.:
 10 Q. Does that sound about right?

11 MR. OTTENHEIMER:
 12 A. That sounds about right, yes.

13 COFFEY, Q.C.:
 14 Q. Okay. I understand, and again, this, I think,
 15 is a matter of public report, that during that
 16 period from March 30th '05 until May 30th '05,
 17 you were on sick leave?

18 MR. OTTENHEIMER:
 19 A. Yes, I was. Do you want me to discuss that?

20 COFFEY, Q.C.:
 21 Q. If you would, please, just briefly, if you
 22 would.

23 MR. OTTENHEIMER:
 24 A. Sure, yeah, I don't -

25 COFFEY, Q.C.:

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1 Q. Put it in context.

2 MR. OTTENHEIMER:
 3 A. Yes, I certainly don't mind. It was very
 4 public. In fact, it's almost three years ago
 5 to the date. As Minister of Health, at that
 6 time, I was travelling to Grand Falls actually
 7 to attend a function with respect to a new
 8 cancer clinic in Grand Falls-Winsor, when I
 9 suffered a cardiac setback on a flight
 10 actually from St. John's to Gander. I stayed
 11 at the Emergency Room in Gander for some time.
 12 I was medivaced to St. John's later that
 13 evening and the next day, I received a
 14 pacemaker, a permanent pacemaker. Doctors
 15 tell me it's something obviously I'll have for
 16 the rest of my life. And both doctors and the
 17 Premier encouraged that I take some time off,
 18 which I did, for approximately two months,
 19 having returned, as you can see from the
 20 dates, some two months later.

21 COFFEY, Q.C.:
 22 Q. Okay, and now prior to March 30th, 2005, you
 23 had been Minister, in fact almost exactly, for
 24 six months.

25 MR. OTTENHEIMER:

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1 A. Um-hm.
 2 COFFEY, Q.C.:
 3 Q. From October 1, 2004 as Minister of Health.
 4 Can you tell us, please, about your general
 5 impressions when you first took over of the
 6 Department, in terms of its size and its
 7 manageability, from your perspective?
 8 MR. OTTENHEIMER:
 9 A. The Department of Health and Community
 10 Services is by far the largest department in
 11 Government. From a budgetary point of view it
 12 approaches almost one half of the entire
 13 Provincial budget. It's huge. There are
 14 thousands, literally thousands of employees
 15 throughout the Province who are engaged in,
 16 you know, the health sector, in one form or
 17 another, throughout the Province. But the
 18 Department is quite large. It comprises both,
 19 of course, the institutional acute care side,
 20 in addition to the community services side and
 21 the providing of many social services to the
 22 residents of the Province. So I would call
 23 the Department huge. It's obviously
 24 responsible for, you know, many sectors of our
 25 society, but it's a Department that I was--

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1 when asked by the Premier to assume the role,
 2 having been in Education for approximately a
 3 year, I accepted it energetically and I
 4 appreciated the opportunity to serve
 5 Newfoundlanders and Labradorians in that
 6 capacity.
 7 COFFEY, Q.C.:
 8 Q. How did you view your duties and
 9 responsibilities as the Minister of Health, in
 10 terms of what was expected of you, and what
 11 you expected of yourself?
 12 MR. OTTENHEIMER:
 13 A. Well, I guess the overseeing of the health
 14 interests and the community services
 15 interests, I guess, of my fellow
 16 Newfoundlanders and Labradorians. The
 17 Department being that large, I mean, one
 18 consequence of that is that there are many
 19 officials that are there with you that are
 20 there to guide you and to offer assistance. I
 21 believe in my day, for example, in addition to
 22 a Deputy Minister, there were some five or six
 23 Assistant Deputy Ministers representing
 24 different areas of the Department. So there
 25 was a fairly significant learning curve for

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1 me, I think it's fair to say that. I have no
 2 medical or health background, and it was a
 3 time, as well, when we were embarking upon
 4 very significant structural, organizational
 5 change in the Province and that was
 6 essentially, perhaps, upon arriving at the
 7 Department, that was something that I had to
 8 put my mind to almost immediately.
 9 COFFEY, Q.C.:
 10 Q. That was, in fact, my next question. In terms
 11 of that, the public, of course, we all know
 12 that there are now four regional health
 13 authorities -
 14 MR. OTTENHEIMER:
 15 A. Yes.
 16 COFFEY, Q.C.:
 17 Q. - as opposed to, I understand, the predecessor
 18 14 organizations.
 19 MR. OTTENHEIMER:
 20 A. Correct.
 21 COFFEY, Q.C.:
 22 Q. Could you tell us, please, about what you know
 23 about the impetus for that, the rationale for
 24 it?
 25 MR. OTTENHEIMER:

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1 A. When we formed Government in 2003, the
 2 Government felt that it was important to do
 3 some streamlining, from a structural point of
 4 view, from an organizational point of view. I
 5 had been in the Department of Education and at
 6 that time, upon us forming a government in
 7 2003, I believe there were some 11 school
 8 boards in the Province, and it was during my
 9 tenure as the Minister of Education, the
 10 number of education boards or school boards
 11 were reduced from 11 to five, that's including
 12 the francophone board, for a total of five.
 13 It had been announced, I believe, by my
 14 predecessor, Elizabeth Marshall, that a
 15 similar change would be undertaken within the
 16 health sector, and as you correctly point out,
 17 there were some 14 boards and Government had
 18 made a decision to reduce the number from 14
 19 to four. I was heavily involved, I guess, in
 20 that transition from 14 to four. What was 14,
 21 in terms of a combination of institutional
 22 boards and community services boards, were now
 23 amalgamated into four boards that would
 24 encompass both areas. We had Eastern Board,
 25 Central, Western and Labrador Grenville. The

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1 Eastern Board, for example, was formed from a
 2 total of seven boards originally, comprising
 3 both the institutional boards and the
 4 community boards. So seven of these boards
 5 collapsed into one large Eastern Health Board,
 6 which encompassed both areas.
 7 COFFEY, Q.C.:
 8 Q. Was there, do you know, any analysis or study
 9 undertaken at the time as to any possible
 10 problems that the amalgamation process might
 11 involve?
 12 MR. OTTENHEIMER:
 13 A. It was a process that was approached very
 14 carefully by Government. As, for example, Ms.
 15 Dawe indicated last week, and I have to
 16 support her notion fully, that when we talk
 17 about the establishing of boards, we are
 18 talking about volunteers. So we are talking
 19 about individuals who, of their own free time
 20 and energy, want to make a contribution to
 21 their community. So by enlarging the size of
 22 these boards, certainly geographically and
 23 even from an operational point of view,
 24 Government certainly took great care in that
 25 exercise and in that process before a final

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1 decision and before final implementation was
 2 put in place.
 3 COFFEY, Q.C.:
 4 Q. Was there any--do you know if there was any
 5 analysis or study in relation to actually
 6 identifying problems that one could expect to
 7 encounter?
 8 MR. OTTENHEIMER:
 9 A. I have not seen an actual document placed
 10 before me in response to that question.
 11 COFFEY, Q.C.:
 12 Q. Do you know if any such document exists?
 13 MR. OTTENHEIMER:
 14 A. I cannot say with absolute certainty.
 15 COFFEY, Q.C.:
 16 Q. Have you ever been told that one exists?
 17 MR. OTTENHEIMER:
 18 A. A document -
 19 COFFEY, Q.C.:
 20 Q. Like that?
 21 MR. OTTENHEIMER:
 22 A. A separate report?
 23 COFFEY, Q.C.:
 24 Q. Yes.
 25 MR. OTTENHEIMER:

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1 A. No, I haven't.
 2 COFFEY, Q.C.:
 3 Q. So in terms of like an identification and
 4 listing of, you know, operational problems
 5 that might be encountered in this amalgamation
 6 due to the increase in geographic size and
 7 just sheer increase in numbers of people that
 8 had to be managed and managers?
 9 MR. OTTENHEIMER:
 10 A. An actual report or analysis, I have not seen.
 11 COFFEY, Q.C.:
 12 Q. And if one was done, it wasn't brought to your
 13 attention?
 14 MR. OTTENHEIMER:
 15 A. That's correct.
 16 COFFEY, Q.C.:
 17 Q. Do you have any idea whom I might inquire of
 18 as to whether or not such a document exists?
 19 Who else?
 20 MR. OTTENHEIMER:
 21 A. Perhaps the Deputy Minister.
 22 COFFEY, Q.C.:
 23 Q. Deputy Minister, okay. Now when you took over
 24 as Minister of Health, who was the Deputy at
 25 the time?

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1 MR. OTTENHEIMER:
 2 A. Actually, when I took over as Minister of
 3 Health, there was no full-time deputy. The
 4 Premier had appointed an acting deputy, I
 5 believe, Mr. Ross Reid, and in fact, a full-
 6 time deputy did not arrive at the Department
 7 of Health and Community Services until some
 8 time in December of 2004, and that would have
 9 been Mr. John Abbott, and he remained my
 10 Deputy until I had left the Department in
 11 early 2006.
 12 COFFEY, Q.C.:
 13 Q. While I'm on the topic of potential problems
 14 related to amalgamation, while you were
 15 Minister of Health, were any such problems
 16 identified and brought to your attention?
 17 MR. OTTENHEIMER:
 18 A. In terms of amalgamation?
 19 COFFEY, Q.C.:
 20 Q. Yes.
 21 MR. OTTENHEIMER:
 22 A. Other than, I guess, from an organizational
 23 point of view, I mean, a transition of that
 24 size, I guess, does require some time before
 25 all issues are addressed and any problems that

Page 21

1 may exist are identified and resolved. The
 2 Boards, I felt, had done an exceptional job,
 3 considering the task that was at hand. I
 4 think it's fair to say the task perhaps is
 5 still incomplete, in the sense that there may
 6 be functions that need to be carried out or maybe
 7 certain areas, whether from an operational
 8 point of view or an organizational point of
 9 view, that still require some completion. But
 10 nothing other than time being required. We've
 11 had a committed group of hospital trustees, I
 12 felt, and we had strong people in place that
 13 could effect the changes that were required at
 14 that time.
 15 COFFEY, Q.C.:
 16 Q. So no problems that kind of stand out in your
 17 mind?
 18 MR. OTTENHEIMER:
 19 A. Nothing than the ordinary, the usual and
 20 expected growing pains that one might
 21 anticipate in a change of that nature.
 22 COFFEY, Q.C.:
 23 Q. Sir, how did you view or what--I should ask
 24 you, what was the nature of the relationship
 25 and interaction between yourself, as Minister,

Page 22

1 and your Deputy Minister, and the five to six
 2 ADMs?
 3 MR. OTTENHEIMER:
 4 A. Certainly I would have to say that I enjoyed a
 5 very positive and cooperative relationship
 6 with my Deputy, and I would have to say the
 7 same thing for my Assistant Deputy Ministers
 8 at that time. It was a good working
 9 relationship, one that was important to me,
 10 having been new to the health area, and
 11 certainly in many ways, having to rely on
 12 their good guidance and counsel.
 13 COFFEY, Q.C.:
 14 Q. Now so there would be yourself, as Minister?
 15 MR. OTTENHEIMER:
 16 A. Um-hm.
 17 COFFEY, Q.C.:
 18 Q. The Deputy Minister from December '04 onward,
 19 John Abbott?
 20 MR. OTTENHEIMER:
 21 A. Correct.
 22 COFFEY, Q.C.:
 23 Q. The five to six ADMs?
 24 MR. OTTENHEIMER:
 25 A. Correct.

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1 COFFEY, Q.C.:
 2 Q. In particular in this context, Moira
 3 Hennessey?
 4 MR. OTTENHEIMER:
 5 A. Um-hm.
 6 COFFEY, Q.C.:
 7 Q. You would have had an executive assistant?
 8 MR. OTTENHEIMER:
 9 A. Yes, I would.
 10 COFFEY, Q.C.:
 11 Q. Who was that?
 12 MR. OTTENHEIMER:
 13 A. My executive assistant was Darrell Hynes
 14 COFFEY, Q.C.:
 15 Q. Had you inherited Mr. Hynes or brought him
 16 with you?
 17 MR. OTTENHEIMER:
 18 A. Darrell, after we had formed Government in
 19 2003, Mr. Hynes was with me as the EA to me,
 20 as Minister of Education, and then went with
 21 me when I moved to Health.
 22 COFFEY, Q.C.:
 23 Q. Okay, that's what I was getting at. So he
 24 accompanied you to Health?
 25 MR. OTTENHEIMER:

Page 24

1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. The Director of Communications for the
 4 Department of Health when you arrived was
 5 whom?
 6 MR. OTTENHEIMER:
 7 A. Carolyn Chaplin.
 8 COFFEY, Q.C.:
 9 Q. The idea of a Parliamentary Assistant, is
 10 there such a thing for the Department of
 11 Health?
 12 MR. OTTENHEIMER:
 13 A. Yes.
 14 COFFEY, Q.C.:
 15 Q. And who was that?
 16 MR. OTTENHEIMER:
 17 A. Again, the Department being as large as it is,
 18 it's one of the view departments where a
 19 Parliamentary Assistant is assigned to the
 20 Minister. My Parliamentary Assistant was the
 21 present Minister actually, Mr. Ross Wiseman,
 22 and I believe he was the Parliamentary
 23 Assistant right from day one, when Government
 24 was formed in 2003.
 25 COFFEY, Q.C.:

Page 25

1 Q. So he, in fact, in terms of involvement in the
 2 Health portfolio, he'd predated you?
 3 MR. OTTENHEIMER:
 4 A. Yes, he did.
 5 COFFEY, Q.C.:
 6 Q. His own involvement.
 7 MR. OTTENHEIMER:
 8 A. Yes, he did.
 9 COFFEY, Q.C.:
 10 Q. And in fact, continued on afterward, after you
 11 had left the portfolio?
 12 MR. OTTENHEIMER:
 13 A. He did.
 14 COFFEY, Q.C.:
 15 Q. What, from your perspective as Minister, what
 16 was Mr. Wiseman's role as Parliamentary
 17 Assistant in contradistinction to yours as
 18 Minister?
 19 MR. OTTENHEIMER:
 20 A. He would often be of assistance in the House
 21 of Assembly. For example, if there are areas
 22 of importance or public issues that he thought
 23 might be raised in the House, he would discuss
 24 that with me. From time to time, he would
 25 attend meetings with me, but I don't recall

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1 that happening that frequently. On several
 2 occasions, if--because again, the Department
 3 is so large and there are so many requests for
 4 public presentations or public speaking
 5 requests, from time to time it was simply not
 6 possible for me to do as many as invitations
 7 that I have had, and I would have asked Mr.
 8 Wiseman to represent me, and he would do that.
 9 COFFEY, Q.C.:
 10 Q. With respect to the, what I'll refer to as the
 11 permanent employees of the Department, such as
 12 the DM and the ADM, or the ADMS, the Director
 13 of Communications, can you tell us, please,
 14 what your experience was in terms of how you
 15 would be briefed as a Minister of Health on
 16 any one matter? Just pick a topic and how
 17 would you be briefed.
 18 MR. OTTENHEIMER:
 19 A. It could very well change, depending on the
 20 topic. Often a briefing would take place in
 21 my office, usually accompanied by Mr. Hynes,
 22 my EA, Carolyn Chaplin, the Director of
 23 Communications, often, but not always, the
 24 Deputy Minister, and in all likelihood, the
 25 ADM representing the area that was being

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1 discussed at a particular time. Briefings in
 2 that department, on all topics, were very
 3 frequent and because they were just so many
 4 public issues and so many issues that I could
 5 be called upon from time to time to address.
 6 But as I say, there was no set pattern and the
 7 individuals in the room could vary, depending
 8 on the topic.
 9 COFFEY, Q.C.:
 10 Q. Now this sort of briefing in your office would
 11 be an oral briefing?
 12 MR. OTTENHEIMER:
 13 A. Yes.
 14 COFFEY, Q.C.:
 15 Q. What about briefing in writing, how would you
 16 be briefed in writing?
 17 MR. OTTENHEIMER:
 18 A. Well, often, it would be accompanied by a
 19 briefing note. That often would be followed,
 20 in terms of the sequence of events, sometimes
 21 not. Again, depending on the issue and
 22 depending, perhaps, on--for example, if a
 23 group were coming in to meet with me, some
 24 outside community interest group, I would
 25 often be interested in sitting down with my

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1 officials for a few minutes before that
 2 meeting to know a little bit more about them,
 3 you know, what can I expect to be discussed
 4 during the 30 minutes or an hour or whatever.
 5 That may not necessarily be in writing.
 6 On the other hand, if there were a public
 7 issue, if the media were making some inquiries
 8 on a particular point, it's possible there may
 9 be a briefing note in writing, but again, the
 10 more I think of it, it could be equally
 11 possible that it could be an oral briefing as
 12 well. I guess, it's fair to say, Mr. Coffey,
 13 there was no set pattern and it could be one
 14 or the other.
 15 COFFEY, Q.C.:
 16 Q. And the pattern or the particular approach in
 17 any one instance was whose choice? Yours or
 18 your subordinates?
 19 MR. OTTENHEIMER:
 20 A. Probably a combination of both.
 21 COFFEY, Q.C.:
 22 Q. I take it that the subordinates would initiate
 23 the approach and if you wanted more, you'd ask
 24 for more?
 25 MR. OTTENHEIMER:

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1 A. That's fair to say.
 2 COFFEY, Q.C.:
 3 Q. ie. if you had a written briefing and you
 4 wanted an oral briefing, you'd ask for that?
 5 MR. OTTENHEIMER:
 6 A. Um-hm.
 7 COFFEY, Q.C.:
 8 Q. Or conversely, if there was an oral briefing
 9 and then you wanted something in writing,
 10 you'd ask for something in writing?
 11 MR. OTTENHEIMER:
 12 A. That could certainly happen, yeah.
 13 COFFEY, Q.C.:
 14 Q. With respect to the written briefings, you
 15 refer to briefing notes, how many different
 16 formats of briefing notes did you encounter?
 17 MR. OTTENHEIMER:
 18 A. They were often similar. There may be some--
 19 in looking at, because I do have several here
 20 obviously dealing with this issue at hand,
 21 they're often very similar. There may be some
 22 nuances. There may be some changes in style,
 23 but that's not something that I would have
 24 recognized.
 25 COFFEY, Q.C.:

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1 Q. Generally the format would be -
 2 MR. OTTENHEIMER:
 3 A. Generally the format would be much the same,
 4 briefing note after briefing note.
 5 COFFEY, Q.C.:
 6 Q. Did you have any knowledge of how the format
 7 for briefing notes had been arrived at?
 8 MR. OTTENHEIMER:
 9 A. No, I did not.
 10 COFFEY, Q.C.:
 11 Q. And other than a briefing note, a written
 12 briefing note or an oral briefing, in your
 13 experience, was there any other way, as
 14 Minister of Health, that you would obtain
 15 information concerning a particular issue?
 16 MR. OTTENHEIMER:
 17 A. Well, I guess, that's a very broad question.
 18 I guess, you know, I'd have to answer it in
 19 the same way. It could be public information.
 20 COFFEY, Q.C.:
 21 Q. Okay.
 22 MR. OTTENHEIMER:
 23 A. Or discussion with an official or a
 24 constituent maybe, or I guess, a variety of
 25 ways.

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1 COFFEY, Q.C.:
 2 Q. In particular, in relation to estrogen
 3 receptors and progesterone receptors, ER/PR,
 4 that sort of a matter, if you were being--
 5 receiving information from your Department,
 6 your departmental officials -
 7 MR. OTTENHEIMER:
 8 A. Yes.
 9 COFFEY, Q.C.:
 10 Q. - it would come, I take it, if it was in
 11 writing, in the form of a briefing note?
 12 MR. OTTENHEIMER:
 13 A. That is correct.
 14 COFFEY, Q.C.:
 15 Q. Did you ever encounter any, from your
 16 perception, your perspective, any inadequacies
 17 in the format, in terms of the depth of
 18 information being given to you or the lack of
 19 depth?
 20 MR. OTTENHEIMER:
 21 A. I think it's fair to say that I would rely on
 22 the information that was being presented to
 23 me. It was information that would have been
 24 gathered, and in this case, on this topic, for
 25 example, presumably from officials at Eastern

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1 Health, and that information would have been
 2 transferred to Departmental officials and as a
 3 result, a briefing note would be prepared. I
 4 had no reason to question, I guess, omissions
 5 or changes. I accepted the document on face
 6 value.
 7 COFFEY, Q.C.:
 8 Q. Sir, what--just in terms of the people who
 9 might be in the room at any one time, in terms
 10 of a briefing of yourself -
 11 MR. OTTENHEIMER:
 12 A. Um-hm.
 13 COFFEY, Q.C.:
 14 Q. - as a Minister, what role did Darrell Hynes
 15 play?
 16 MR. OTTENHEIMER:
 17 A. He would, as my executive assistant, I guess
 18 an EA plays more of a political role, which is
 19 why often an EA may move from department to
 20 department. Someone to offer his or her
 21 opinion, offer presumably good sound political
 22 advice, perhaps anticipate what questions may
 23 arise publicly, anticipate, for example, what
 24 questions could be raised in the House of
 25 Assembly during Question Period, often would

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1 accompany me at functions as Minister, and in
 2 a general sense, they're in a supportive role
 3 to help me as a political advisor, depending
 4 on what department I was in at the time.
 5 COFFEY, Q.C.:
 6 Q. What role would the Director of
 7 Communications, such as Carolyn Chaplin, play?
 8 MR. OTTENHEIMER:
 9 A. Carolyn Chaplin or a Director of
 10 Communications, each department has a Director
 11 of Communications, it would be her role, in
 12 this case, to deal with the media, to field
 13 media requests. Often the media, for example,
 14 would contact, not the Minister's office, but
 15 would contact the Director of Communications
 16 to set up an interview or to set up a response
 17 on a particular topic. Often before question
 18 period, I found Carolyn a very strong
 19 Communications Director and often before
 20 question period, again, she would work with me
 21 in anticipating issues that may arise and work
 22 with me in anticipated responses that may be
 23 given. So, it's a departmental role, she
 24 would have a fairly routine relationship with
 25 the Central Communications Agency with

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1 government and would also, as I say, in many
 2 ways act in an advisory capacity to me as
 3 Minister.
 4 COFFEY, Q.C.:
 5 Q. As between the DM, John Abbott, and in this
 6 context, Moira Hennessey, the ADM who was
 7 involved in the ER/PR issues, most directly, I
 8 understand, as between Mr. Abbott and Ms.
 9 Hennessey in respect of ER/PR, who would you
 10 be assuming, on your part, had the more
 11 detailed knowledge? Who would you expect to
 12 have the more detailed knowledge of the
 13 subject?
 14 MR. OTTENHEIMER:
 15 A. It's difficult to pick one over the other, I
 16 would assume both, simply because Mr. Abbott
 17 was the Deputy Minister, but Ms. Morrissey,
 18 being the ADM for Board Services would have a
 19 particular expertise in that area as well and
 20 particular information.
 21 COFFEY, Q.C.:
 22 Q. And we will hear that certain other
 23 individuals, for example, physicians attended
 24 meetings with yourself involving the ER/PR
 25 issue, as well as George Tilley. What would

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1 their role be in any such meeting?
 2 MR. OTTENHEIMER:
 3 A. Their role?
 4 COFFEY, Q.C.:
 5 Q. Yes.
 6 MR. OTTENHEIMER:
 7 A. Full participants.
 8 COFFEY, Q.C.:
 9 Q. The purpose of having them there would be
 10 what?
 11 MR. OTTENHEIMER:
 12 A. To gain their medical and professional
 13 guidance and expertise and information.
 14 COFFEY, Q.C.:
 15 Q. Now, you have just referred to the
 16 government's Central Communications division
 17 or group. What is that? What's that called?
 18 MR. OTTENHEIMER:
 19 A. There's an agency within government that
 20 perhaps, in an expanded role, may play a very
 21 similar role to what a Director of
 22 Communications does in a department; advises
 23 Government generally, advises perhaps in
 24 conjunction with the Director of
 25 Communications of the Premier's office;

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1 advises in some respects the Premier's
 2 offices. And I guess just in a larger role,
 3 plays a similar role to what a Communications
 4 Director would do departmental.
 5 COFFEY, Q.C.:
 6 Q. So, you would not than, I take it as Minister
 7 of Health, you wouldn't be surprised if you
 8 were to learn if Carolyn Chaplin learned of a
 9 matter, for example ER/PR, that she saw as
 10 being of public interest, widespread public
 11 interest or importance, that she might contact
 12 this Central Communications group about that?
 13 MR. OTTENHEIMER:
 14 A. I would anticipate and expect that she would,
 15 yes.
 16 COFFEY, Q.C.:
 17 Q. She would do it.
 18 MR. OTTENHEIMER:
 19 A. Yes.
 20 COFFEY, Q.C.:
 21 Q. You would not only--wouldn't be surprised,
 22 you'd be surprised if she didn't.
 23 MR. OTTENHEIMER:
 24 A. Correct.
 25 COFFEY, Q.C.:

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1 Q. How did you see your role as Minister of
 2 Health vis-a-vie the Premier and your fellow
 3 cabinet ministers in terms of keeping them
 4 apprised of issues of concern?
 5 MR. OTTENHEIMER:
 6 A. Depending, I guess, on the issue, if a
 7 particular issue were being managed
 8 operationally, if the department felt that it
 9 had sufficient information and if, in fact, a
 10 situation were presumably understood
 11 adequately by the Minister and the officials,
 12 that perhaps where it would stay at that time.
 13 So, it would depend, I guess, on the -
 14 COFFEY, Q.C.:
 15 Q. What about if it didn't fall into that
 16 category?
 17 MR. OTTENHEIMER:
 18 A. If it didn't fall into that category? In the
 19 sense of--I don't know what you mean.
 20 COFFEY, Q.C.:
 21 Q. Well, in the sense--ER/PR is a good example of
 22 it, I understand, that the department in
 23 Eastern Health really didn't understand at one
 24 point, arguably, the full scope of it -
 25 MR. OTTENHEIMER:

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1 A. Um-hm.
 2 COFFEY, Q.C.:
 3 Q. And if you were to learn of such a problem,
 4 whether ER/PR or any other, would you tell the
 5 Premier's office?
 6 MR. OTTENHEIMER:
 7 A. Well, I am aware of the fact that my
 8 Communications Director on or about the same
 9 time when this issue was brought to my
 10 attention did, in fact, notify the Premier's
 11 office. I am aware of that.
 12 COFFEY, Q.C.:
 13 Q. So, it's in a general way then, I take it,
 14 that if your Communications Director, in
 15 relation to that kind of problem, well,
 16 potentially public import, if you became aware
 17 that your Communications Director had not
 18 communicated with the Premier's office, then
 19 would you, at any time, take it upon yourself
 20 to do so or would you tell her or him, for
 21 that matter, to do so?
 22 MR. OTTENHEIMER:
 23 A. Sure, sure, if it was brought to my attention
 24 for whatever reason that it were not done, it
 25 would be incumbent on me to make sure that it

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1 would be done.
 2 COFFEY, Q.C.:
 3 Q. If in any given situation you learn that it
 4 had been done, had been so communicated, would
 5 you take any further steps at that point to
 6 deal with the Premier's on it yourself?
 7 MR. OTTENHEIMER:
 8 A. I guess it depends on the context of a
 9 situation and the time of the situation and I
 10 guess, the sense of comfort that one may have
 11 had with respect to where a situation was at a
 12 particular time.
 13 COFFEY, Q.C.:
 14 Q. So--and we will be dealing with ER/PR--so,
 15 you're telling me, I take it, it varies, it
 16 might vary depending on the circumstance.
 17 MR. OTTENHEIMER:
 18 A. I would think it would vary, correct.
 19 COFFEY, Q.C.:
 20 Q. You didn't have a hard and fast rule?
 21 MR. OTTENHEIMER:
 22 A. No. Yeah, I don't think there are hard and
 23 fast rules in those situations, actually.
 24 COFFEY, Q.C.:
 25 Q. Now, the boards, these four health

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1 authorities, including Eastern Health, were
 2 set up effective April 1, 2005?
 3 MR. OTTENHEIMER:
 4 A. Um-hm.
 5 COFFEY, Q.C.:
 6 Q. How did you view the relationship between
 7 yourself and minister and the boards of
 8 trustees, these different boards, I mean, in
 9 terms of what was the nature of the
 10 relationship, what did you expect from them?
 11 MR. OTTENHEIMER:
 12 A. Sure, um-hm. Well, actually, in fact, it was
 13 Ms. Dawe again last week I think who
 14 referenced a letter that I had prepared for
 15 her in November of 2005. Actually, I guess
 16 the irony in terms of from the organizational
 17 side of it is that the work had been done
 18 prior to the sick leave, but the actual
 19 incorporation of the new boards happened while
 20 I was on sick leave.
 21 COFFEY, Q.C.:
 22 Q. Yes, I understanding.
 23 MR. OTTENHEIMER:
 24 A. During the months of April and May of 2005.
 25 However, in the fall of 2005 there was a piece

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1 of correspondence that was prepared which
 2 essentially gave some guidance, I guess, to
 3 our board chairs throughout the province as
 4 what the expectations were, including roles
 5 and responsibilities and preparing of a
 6 strategic plan and fiscal development, that
 7 type of thing.
 8 COFFEY, Q.C.:
 9 Q. And you're saying, I take it you're, in
 10 effect, telling me, look, Mr. Coffey, it was
 11 reduced to writing in November and that's
 12 really -
 13 MR. OTTENHEIMER:
 14 A. There was a--there was an actual document that
 15 was requested and prepared and forwarded at
 16 that time.
 17 COFFEY, Q.C.:
 18 Q. Was any such similar document prepared for any
 19 of the other three health authorities?
 20 MR. OTTENHEIMER:
 21 A. It's my recollection that a similar letter
 22 would have gone to all.
 23 COFFEY, Q.C.:
 24 Q. Now, in relation to the setting up of the
 25 health authorities, in particular, Eastern

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1 Health, I understand, we understand from Ms.
 2 Dawe that you approached her more than once to
 3 assume the role of chair?
 4 MR. OTTENHEIMER:
 5 A. I did.
 6 COFFEY, Q.C.:
 7 Q. And you finally prevailed upon her. We also
 8 understand, though, from here that the Board,
 9 the rest of the Board was not in place, Board
 10 of Eastern Health was not in place at the time
 11 Mr. Tilley was hired or appointed CEO?
 12 MR. OTTENHEIMER:
 13 A. You mean a full board, a full composition?
 14 COFFEY, Q.C.:
 15 Q. Yes.
 16 MR. OTTENHEIMER:
 17 A. That could be.
 18 COFFEY, Q.C.:
 19 Q. What do you know about the search for the CEO
 20 of Eastern Health, did you play any part in
 21 that?
 22 MR. OTTENHEIMER:
 23 A. I played no role in that. That was a public
 24 competition, as I understand it, and Mr.
 25 Tilley replied and responded.

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1 COFFEY, Q.C.:
 2 Q. How about the actual decision to hire Mr.
 3 Tilley, did you have any input into that?
 4 MR. OTTENHEIMER:
 5 A. That ultimately was a, I guess, Board, Cabinet
 6 decision in some sense. The actual contract
 7 of employment is between the Board and Mr.
 8 Tilley, however, my signature, being the
 9 Minister of the day, I think, was technically
 10 required.
 11 COFFEY, Q.C.:
 12 Q. So you did have to approve of Mr. Tilley's -
 13 MR. OTTENHEIMER:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. - being hired? Did you actually, at the time,
 17 turn your mind to, for example, whether or not
 18 your view he was the best candidate or did you
 19 accept him as being the best put forward?
 20 MR. OTTENHEIMER:
 21 A. I personally didn't know George Tilley. In
 22 fact, up until I became Minister of Health I
 23 don't even recall meeting Mr. Tilley. I felt
 24 that he had a very strong reputation in the
 25 community and had significant experience in

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1 health administrative roles in the past, so
 2 from that point of view generally I would have
 3 to say I regarded him as a strong candidate,
 4 yes.
 5 COFFEY, Q.C.:
 6 Q. But did you--what I'm asking you is, is that
 7 did you actually turn your mind to, you know,
 8 if the top three candidates are A, B, C, Mr.
 9 Tilley's name is amongst those.
 10 MR. OTTENHEIMER:
 11 A. Um-hm.
 12 COFFEY, Q.C.:
 13 Q. And analyze their attributes, their strengths
 14 and weaknesses and decide on Mr. Tilley or did
 15 you just, and I say just, I don't mean that in
 16 a negative way -
 17 MR. OTTENHEIMER:
 18 A. Right.
 19 COFFEY, Q.C.:
 20 Q. - just accept the recommendation of those who
 21 were so recommending him?
 22 MR. OTTENHEIMER:
 23 A. Right. No, I think -
 24 COFFEY, Q.C.:
 25 Q. Did you turn your mind to it or -

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1 MR. OTTENHEIMER:
 2 A. No, it's fair to say there was perhaps some
 3 process that I would turn my mind to it, but
 4 keeping in mind that I recognized the strength
 5 of and the experience of Mr. Tilley.
 6 COFFEY, Q.C.:
 7 Q. Okay. So you were happy with or content with
 8 his appointment?
 9 MR. OTTENHEIMER:
 10 A. I felt that he had the background and
 11 experience, yes.
 12 COFFEY, Q.C.:
 13 Q. Okay. Now, with respect to the boards of
 14 trustees of the four health authorities, we
 15 have heard from Ms. Dawe, who has told us that
 16 the Eastern Health Board, at least, has
 17 adopted a modified Policy Governance Model, to
 18 use her words.
 19 MR. OTTENHEIMER:
 20 A. Okay.
 21 COFFEY, Q.C.:
 22 Q. Okay. The type of governance model that any
 23 one health authority, any one of these four
 24 health authorities adopts, as Minister of
 25 Health did you have any input into what

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1 governance model any one board adopted?
 2 MR. OTTENHEIMER:
 3 A. Not that I recall.
 4 COFFEY, Q.C.:
 5 Q. So if, for example, they wanted to adopt a
 6 Policy Governance Model by *Simpliciter*, that
 7 was up to themselves, from your perspective?
 8 MR. OTTENHEIMER:
 9 A. I would think that's something that they would
 10 prepare and perhaps share with me maybe in
 11 terms of the reporting annually to the
 12 Department.
 13 COFFEY, Q.C.:
 14 Q. But in terms of you would not have told them,
 15 though, you are a Policy Governance Model
 16 Board and act accordingly?
 17 MR. OTTENHEIMER:
 18 A. In the letter that was forwarded in November,
 19 for example, there was some reference to a
 20 strategic plan, there was some reference to
 21 annual reporting.
 22 COFFEY, Q.C.:
 23 Q. Right, yes.
 24 MR. OTTENHEIMER:
 25 A. In a very general sense.

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1 COFFEY, Q.C.:
 2 Q. So that would be required of them, yes, and I
 3 appreciate that.
 4 MR. OTTENHEIMER:
 5 A. Yes.
 6 COFFEY, Q.C.:
 7 Q. But what I'm getting at is, is this, is that
 8 Ms. Dawe has told us that Eastern Health's
 9 Board, at least, adopted an approach with
 10 Eastern Health that they would not get
 11 involved in operational matters.
 12 MR. OTTENHEIMER:
 13 A. Um-hm.
 14 COFFEY, Q.C.:
 15 Q. Almost not, period.
 16 MR. OTTENHEIMER:
 17 A. Um-hm.
 18 COFFEY, Q.C.:
 19 Q. Okay. Something fairly extraordinary had to
 20 happen before they would intervene.
 21 MR. OTTENHEIMER:
 22 A. Sure.
 23 COFFEY, Q.C.:
 24 Q. There are, of course, you'd be aware with your
 25 background that other boards of trustees or

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1 directors in organizations routinely get
 2 involved in operational matters.
 3 MR. OTTENHEIMER:
 4 A. Um-hm.
 5 COFFEY, Q.C.:
 6 Q. As boards. Were you aware that that was the
 7 approach of Eastern Health, like they were
 8 I'll refer to it as a non-operational
 9 approach?
 10 MR. OTTENHEIMER:
 11 A. Um-hm.
 12 COFFEY, Q.C.:
 13 Q. A policy approach. Were you aware that that
 14 was going on?
 15 MR. OTTENHEIMER:
 16 A. I'm not surprised by that at all because
 17 that's in keeping with and consistent with the
 18 correspondence that was forwarded in November.
 19 I guess the Board of Trustees from Eastern
 20 Health's point of view was really a governance
 21 board and would offer expectations, I guess,
 22 to, you know, its operational side. But
 23 really, I could certainly understand the Board
 24 of Trustees being hands off from an
 25 operational point of view.

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1 COFFEY, Q.C.:

2 Q. But you can understand it, but did you direct

3 that they be so is what I'm asking or was it

4 their choice?

5 MR. OTTENHEIMER:

6 A. Certainly I don't recall that being my

7 direction, no. But it's certainly something

8 that I would expect and anticipate.

9 COFFEY, Q.C.:

10 Q. During the time that you were Minister of

11 Health and in relation to the ER/PR matter,

12 did you ever actually intervene as Minister of

13 Health, intervene in the sense of, you know,

14 give direction to Eastern Health?

15 MR. OTTENHEIMER:

16 A. From a -

17 COFFEY, Q.C.:

18 Q. An operational perspective?

19 MR. OTTENHEIMER:

20 A. From an operational perspective, I can

21 certainly speak to my views and opinions

22 during meetings, for example.

23 COFFEY, Q.C.:

24 Q. Oh, yes, and I'll be asking about that.

25 MR. OTTENHEIMER:

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1 A. Do you want me to get into that area?

2 COFFEY, Q.C.:

3 Q. Just we will in a moment.

4 MR. OTTENHEIMER:

5 A. Okay.

6 COFFEY, Q.C.:

7 Q. But in terms of I understand you expressed

8 your views and your opinions.

9 MR. OTTENHEIMER:

10 A. Right.

11 COFFEY, Q.C.:

12 Q. And I gather at times strongly.

13 MR. OTTENHEIMER:

14 A. Um-hm.

15 COFFEY, Q.C.:

16 Q. But in terms of having done so, going a step

17 further and saying, "No, I'm ordering you to

18 do" something or "I'm directing you to" do

19 something?

20 MR. OTTENHEIMER:

21 A. I don't recall having ordered Eastern Health

22 on this particular issue.

23 COFFEY, Q.C.:

24 Q. Now, as the Minister of Health at the time

25 under the Hospitals Act, which we understand

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1 will expire as of midnight tonight, the

2 Hospitals Act and the new act will come into

3 force. But under the Hospitals Act in force

4 during your tenure what was your understanding

5 about your authority as Minister of Health in

6 terms of your ability to give direction in an

7 operational sense to a health authority such

8 as Eastern Health?

9 MR. OTTENHEIMER:

10 A. As I recall, the Hospitals Act is silent on

11 that point.

12 COFFEY, Q.C.:

13 Q. Yeah.

14 MR. OTTENHEIMER:

15 A. And I saw my role as the Minister of Health

16 to, in areas of public concern, critical areas

17 of public concern, such as the ER/PR issue, I

18 saw my role as Minister of Health seeking and

19 receiving the best possible professional,

20 medical advice that I could receive. And

21 throughout my tenure as the Minister of Health

22 and Community Services and throughout the

23 eight-month period when I served as Minister

24 of Health from when I became aware of this

25 originally on the 19th of July, 2005 until the

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1 date that I had left the Department, which was

2 March the 13th, 2006, just less than an eight-

3 month period, during that time, particularly

4 the first several weeks, I would seek, ask for

5 and receive the best possible medical,

6 professional opinion and advice that was

7 available to me.

8 COFFEY, Q.C.:

9 Q. I understand that. What I'm asking you is,

10 sir, did you, at the time, believe that as the

11 Minister of Health you had the authority to

12 direct Eastern Health to do something, any one

13 thing? Doesn't make any difference what it

14 is, you can just pick it, pick a topic. Did

15 you have the authority, legal authority at the

16 time, do you think--at the time did you think

17 you had the legal authority to direct them to

18 do something?

19 MR. OTTENHEIMER:

20 A. As I say, the issue not referenced, as I

21 understand it, in the Hospitals Act. I would

22 feel that I would have to be satisfied in my

23 own mind that certain areas of public interest

24 and concern were being addressed. If I felt

25 that a particular area were not being

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1 addressed, I would certainly voice my concern,
 2 which I had in many instances on this
 3 particular issue, and again, seek the advice
 4 and opinion of those who from a medical point
 5 of view would be in the best position to do
 6 that.
 7 COFFEY, Q.C.:
 8 Q. I understand that. But do you think you had
 9 the authority to actually intervene, like
 10 legal, lawful authority to intervene or did
 11 you ever ask anyone, "Do I have the authority
 12 to actually order them to do something?"
 13 MR. OTTENHEIMER:
 14 A. The actual legal authority, I don't know the
 15 answer to that. I truly don't know. I would
 16 -
 17 COFFEY, Q.C.:
 18 Q. It never came to that, I take it?
 19 MR. OTTENHEIMER:
 20 A. I would have to--again, I can only go by the
 21 situation at that time and I simply don't have
 22 an answer for that in accordance with the
 23 legislation, because your question is clear in
 24 the sense did I have the legal authority.
 25 COFFEY, Q.C.:

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1 Q. Yes.
 2 MR. OTTENHEIMER:
 3 A. And I'm not in a position to answer that.
 4 COFFEY, Q.C.:
 5 Q. Okay.
 6 THE COMMISSIONER:
 7 Q. I'm sorry, Mr. Coffey.
 8 COFFEY, Q.C.:
 9 Q. No problem.
 10 THE COMMISSIONER:
 11 Q. But, I mean, there's an obvious question
 12 following onto that. Do I take it from that
 13 that you were never in a position where your
 14 expression of concern was not satisfactorily
 15 answered to your--was not answered to your
 16 satisfaction?
 17 MR. OTTENHEIMER:
 18 A. I guess, Madam Commissioner, when I asked
 19 questions, I accepted the advice of those
 20 around me and I--although I may have had my
 21 own private and personal concerns, I accepted
 22 the counsel and the advice of those that were
 23 with me in the room.
 24 THE COMMISSIONER:
 25 Q. Okay. It just seems to me that if a minister-

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1 -there are ways of doing thing always.
 2 MR. OTTENHEIMER:
 3 A. Um-hm.
 4 THE COMMISSIONER:
 5 Q. You know, and in the normal course of events I
 6 would suspect that if a minister says, "I
 7 would like to see X done," then normally a
 8 minister would expect that that would be done
 9 unless somebody gives them a very good reason
 10 for not doing it.
 11 MR. OTTENHEIMER:
 12 A. Correct.
 13 THE COMMISSIONER:
 14 Q. And if it is not done, then presumably a
 15 minister has a choice, the minister can say,
 16 "Do it."
 17 MR. OTTENHEIMER:
 18 A. Um-hm.
 19 THE COMMISSIONER:
 20 Q. If you feel you have the authority to do so.
 21 MR. OTTENHEIMER:
 22 A. Um-hm.
 23 THE COMMISSIONER:
 24 Q. Or you get into that kind of a struggle about
 25 what the minister's authority is or not.

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1 MR. OTTENHEIMER:
 2 A. Right.
 3 THE COMMISSIONER:
 4 Q. So can I read what you're saying, at least
 5 vis-a-vis this issue, as you're not having
 6 been in a position where you felt the need to
 7 question whether or not you had the authority
 8 to say, "Do it", legally?
 9 MR. OTTENHEIMER:
 10 A. Um-hm. I think that's a fair statement, Madam
 11 Commissioner. You know, it's not a
 12 dishonourable thing to seek counsel and good
 13 guidance, which is what in several areas
 14 concerning this very sensitive, difficult
 15 topic I had chosen to do and I relied on that.
 16 THE COMMISSIONER:
 17 Q. Um-hm.
 18 MR. OTTENHEIMER:
 19 A. I relied on that evidence and I relied on the
 20 opinions of those professional people. As an
 21 example, if, for example, on the 21st of July,
 22 which was my first formal briefing, I was in
 23 that room with pathologists, with surgeons,
 24 with oncologists, with senior administrative
 25 personnel who voices a particular point of

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1 view with respect to notification to the
 2 public. It differed from my opinion. I felt
 3 on the issue of notice to the public that we
 4 should go public immediately. However, when
 5 surrounded by people of significant experience
 6 and expertise, again, the oncologists, the
 7 surgeons, the senior administrative personnel,
 8 and if there is a point of view contrary to my
 9 thinking as a non-medical person, I accepted
 10 that, I accepted that point of view. Whether
 11 legally I could say, "Well, we're not going to
 12 accept that point of view and we're going to
 13 follow my personal and private thought on
 14 this," that is not, that is not something that
 15 I explored in my mind. I simply took the view
 16 that we have these medical professionals,
 17 people whom I respect, whose opinion that I
 18 respect, who on a day-to-day basis deal with
 19 patients, who have developed a
 20 physician/patient relationship, who have some
 21 idea in their own mind of exactly what
 22 immediate public disclosure would mean and
 23 when they share that view with me, despite a
 24 personal view and despite a private view, I
 25 respected their opinion. So again, to perhaps

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1 refer to Mr. Coffey's question and, Madam
 2 Commissioner, your comment, it is not
 3 something that I addressed my mind to as to
 4 whether or not I could legally intervene or
 5 interfere. I had a personal view, but I
 6 accepted the view of those professionals that
 7 were around me, again, the surgeons, the
 8 experts, the pathologists, the oncologists,
 9 the senior administrative personnel of Eastern
 10 Health and I accepted that view.
 11 COFFEY, Q.C.:
 12 Q. And so I take it then that during your tenure
 13 as Minister of Health, not only in relation to
 14 ER/PR, but any other matter, the situation
 15 never got as far as the point where you
 16 differed so significantly from somebody and
 17 you were prepared to overrule them and were
 18 looking--and questioned whether you had the
 19 lawful authority to overrule them?
 20 MR. OTTENHEIMER:
 21 A. Well -
 22 COFFEY, Q.C.:
 23 Q. It never -
 24 MR. OTTENHEIMER:
 25 A. No, because there were certain--as we moved on

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1 in this topic, as I say, I was introduced to
 2 the issue of ER/PR, I didn't know what ER/PR
 3 was. My first introduction to this was July
 4 19th.
 5 COFFEY, Q.C.:
 6 Q. If we could, because I'm going to go there.
 7 MR. OTTENHEIMER:
 8 A. Yes.
 9 COFFEY, Q.C.:
 10 Q. Right now, but just in terms just as a general
 11 matter.
 12 MR. OTTENHEIMER:
 13 A. Right.
 14 COFFEY, Q.C.:
 15 Q. During your tenure as Minister of Health you
 16 never did get into a position where you
 17 actually had to go and ask someone, "Well,
 18 what is my legal authority to overrule?"
 19 whether it's Eastern Health or any other
 20 board, any other health authority, for that
 21 matter, on a particular point?
 22 MR. OTTENHEIMER:
 23 A. No, because I would--decisions would be made
 24 in accordance with the expertise and the
 25 contributions of those that would surround me

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1 at any given time on a particular point.
 2 COFFEY, Q.C.:
 3 Q. Now we are ready to go to July 19th.
 4 MR. OTTENHEIMER:
 5 A. Okay.
 6 COFFEY, Q.C.:
 7 Q. Okay. So could you tell us, please, then, and
 8 refer to what you need to, tell us how this
 9 unfolded?
 10 MR. OTTENHEIMER:
 11 A. Well, as I say, my first introduction to ER/PR
 12 was a brief meeting that I had had with Mr.
 13 Tilley on the 19th of July. It says in one of
 14 the calendars that I have there a luncheon
 15 meeting, and I don't recall if that was a
 16 lunch in the boardroom in my office or whether
 17 it was in my office itself or outside the
 18 building, because the 21st of July was my
 19 first formal briefing when, as I say, I had a
 20 group of people that were around me. However,
 21 it is fair to say that there was some contact
 22 and discussion with Mr. Tilley on the 19th and
 23 that, as I say, was the first day and the
 24 first time that I had heard of this.
 25 COFFEY, Q.C.:

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1 Q. Now, Mr. Tilley made notes.
 2 MR. OTTENHEIMER:
 3 A. Um-hm.
 4 COFFEY, Q.C.:
 5 Q. One of those was July 19th.
 6 MR. OTTENHEIMER:
 7 A. Um-hm.
 8 COFFEY, Q.C.:
 9 Q. John Ottenheimer. He uses the word, he's
 10 written down the word "explosive".
 11 MR. OTTENHEIMER:
 12 A. Um-hm.
 13 COFFEY, Q.C.:
 14 Q. Go public or words to that effect, AS--as soon
 15 as possible.
 16 MR. OTTENHEIMER:
 17 A. Right.
 18 COFFEY, Q.C.:
 19 Q. The general tenor of it is is that I gather he
 20 was describing certain things. If I could,
 21 actually, please, Commissions, if I could ask
 22 if we could just bring that up, actually,
 23 while I'm at it?
 24 THE COMMISSIONER:
 25 Q. Is this the note from Mr. Tilley from last

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1 week?
 2 COFFEY, Q.C.:
 3 Q. Yes. Commissioner, just a moment, please?
 4 Just one moment, Commissioner. Just one
 5 moment, please, Commissioner. I apologize,
 6 Mr. Ottenheimer, I just want to locate that
 7 while we're at it.
 8 THE COMMISSIONER:
 9 Q. Madam Registrar, can you assist us?
 10 REGISTRAR:
 11 Q. They were the ones that Joan Dawe?
 12 COFFEY, Q.C.:
 13 Q. Oh, yes. Just a moment, please, I'll -
 14 REGISTRAR:
 15 Q. P-0068.
 16 COFFEY, Q.C.:
 17 Q. Yes. No, it's -
 18 THE COMMISSIONER:
 19 Q. The two notes refer to last week, 120, 122.
 20 MR. SIMMONS:
 21 Q. It's at P-0068.
 22 THE COMMISSIONER:
 23 Q. I'm sorry?
 24 MR. SIMMONS:
 25 Q. It's at P-0068, I believe.

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1 THE COMMISSIONER:
 2 Q. P-0068.
 3 COFFEY, Q.C.:
 4 Q. Telephone log is, that's correct, it is.
 5 THE COMMISSIONER:
 6 Q. The telephone log.
 7 COFFEY, Q.C.:
 8 Q. It's P-0068.
 9 THE COMMISSIONER:
 10 Q. All right.
 11 COFFEY, Q.C.:
 12 Q. Yeah, the first entry on them is July 7th.
 13 That's why they're filled out of -
 14 THE COMMISSIONER:
 15 Q. It should pop up in front of you, Mr.
 16 Ottenheimer.
 17 COFFEY, Q.C.:
 18 Q. - filed out of sequence. Thank you. If we
 19 could just scroll down here? And I pointed
 20 out--that's--there you are, you getting the
 21 hang of it, mouse. This is an excerpt from
 22 Mr. Tilley's telephone log, July 19th, '05,
 23 John Ottenheimer, lab briefing note.
 24 "Explosive, sooner the better, Kara Laing."
 25 MR. OTTENHEIMER:

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1 A. Um-hm.
 2 COFFEY, Q.C.:
 3 Q. So these, at least we understand that Mr.
 4 Tilley wrote these notes concerning his
 5 meeting of July 19th with you.
 6 MR. OTTENHEIMER:
 7 A. Um-hm.
 8 COFFEY, Q.C.:
 9 Q. Would you or might you have used the word
 10 yourself "explosive"?
 11 MR. OTTENHEIMER:
 12 A. I am under oath.
 13 COFFEY, Q.C.:
 14 Q. Yes.
 15 MR. OTTENHEIMER:
 16 A. I do not recall ever using the word
 17 "explosive" nor hearing it.
 18 COFFEY, Q.C.:
 19 Q. Okay. And I appreciate that. And we'll hear
 20 then from Mr. Tilley.
 21 MR. OTTENHEIMER:
 22 A. Sure.
 23 COFFEY, Q.C.:
 24 Q. As to what, what the meaning of that is.
 25 MR. OTTENHEIMER:

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1 A. Um-hm.
 2 COFFEY, Q.C.:
 3 Q. At the time you met with him on July 19th, did
 4 you get any sense that it was explosive?
 5 MR. OTTENHEIMER:
 6 A. It was an issue of, I would say, critical
 7 public concern, I would certainly put it in
 8 that category. You know, I don't know if
 9 Eastern Health fully understood what the
 10 situation even was at that time. And I think
 11 the numbers that it had referred to and had
 12 shared with me briefly were not overly large
 13 at that time, but still easily recognizable
 14 that this is a critical public health issue.
 15 And I think it's fair to say that that is why
 16 I requested an immediate briefing, full
 17 briefing on the 21st, some two days later,
 18 which in fact went ahead.
 19 COFFEY, Q.C.:
 20 Q. What's your memory of what you were told that
 21 first, at that first meeting on July 19th
 22 concerning what the nature of the problem was?
 23 MR. OTTENHEIMER:
 24 A. Right.
 25 COFFEY, Q.C.:

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1 Q. What the status was from George Tilley?
 2 MR. OTTENHEIMER:
 3 A. I have no notes on that whatsoever. In fact,
 4 as I say, I can't even be precise as to where
 5 the meeting took place. Essentially, we have
 6 a clinical issue, it involves certain numbers
 7 of patients, we're trying to find out more
 8 information. I believe at that time he
 9 attempted to explain the Ventana system and
 10 the fact that a new system had been put in
 11 place there before for the testing of results.
 12 I remember saying to him that it certainly
 13 appeared to me to be an issue that ought to be
 14 made known publicly as soon as possible. And
 15 it was, as I say, two days later that there
 16 was a briefing. Notes were kept by a couple
 17 of individuals and -
 18 COFFEY, Q.C.:
 19 Q. I appreciate that in the briefing of July 21.
 20 MR. OTTENHEIMER:
 21 A. Yes.
 22 COFFEY, Q.C.:
 23 Q. But at the meeting of July 19th it's just
 24 yourself and Mr. Tilley?
 25 MR. OTTENHEIMER:

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1 A. That's my recollection.
 2 COFFEY, Q.C.:
 3 Q. Right, yeah. So the reference to sooner the
 4 better, the would accord with what you just
 5 told us.
 6 MR. OTTENHEIMER:
 7 A. Certain -
 8 COFFEY, Q.C.:
 9 Q. That the public should know the sooner the
 10 better?
 11 MR. OTTENHEIMER:
 12 A. Um-hm.
 13 COFFEY, Q.C.:
 14 Q. The public in this context, I take it, would
 15 be the patients affected?
 16 MR. OTTENHEIMER:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. How about the wider public?
 20 MR. OTTENHEIMER:
 21 A. No, the wider public.
 22 COFFEY, Q.C.:
 23 Q. Wider public?
 24 MR. OTTENHEIMER:
 25 A. Um-hm.

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1 COFFEY, Q.C.:
 2 Q. And there's a reference there to Kara Laing.
 3 Do you remember her name coming up during the
 4 first meeting?
 5 MR. OTTENHEIMER:
 6 A. I don't. I know on a couple of occasions
 7 subsequent to this that Kara Laing, Dr. Laing
 8 was present, but I can't specifically recall
 9 the discussion involving Kara Laing at that
 10 time.
 11 COFFEY, Q.C.:
 12 Q. Now with respect to the notion of the soon the
 13 better, from your perspective, the pubic, as
 14 you point out, did you express that to Mr.
 15 Tilley at the time?
 16 MR. OTTENHEIMER:
 17 A. As I recall, um-hm.
 18 COFFEY, Q.C.:
 19 Q. Do you recall whether or not Mr. Tilley during
 20 that meeting apprised you of where Eastern
 21 Health was in relation to its own preparations
 22 to do that?
 23 MR. OTTENHEIMER:
 24 A. Not at all.
 25 COFFEY, Q.C.:

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1 Q. Okay. For example, the idea that there was a
 2 draft press release dated July 18th, 2005,
 3 when you had lunch with him that day -
 4 MR. OTTENHEIMER:
 5 A. I do not recall that at all. In fact, the
 6 first time I heard that was in evidence in
 7 testimony last week. I don't recall that
 8 discussion.
 9 COFFEY, Q.C.:
 10 Q. So the idea that they were at least
 11 potentially fairly far, they, Eastern Health,
 12 were potentially fairly far along in preparing
 13 to go public, as it were, Mr. Tilley didn't
 14 initially make you aware of that?
 15 MR. OTTENHEIMER:
 16 A. I don't recall that discussion.
 17 COFFEY, Q.C.:
 18 Q. Okay. At that time did Mr. Tilley make you
 19 aware of where they were in terms of their
 20 review of the situation? What was the status
 21 of that because we have a fair amount of
 22 documentation available about that?
 23 MR. OTTENHEIMER:
 24 A. Right.
 25 COFFEY, Q.C.:

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1 Q. About where actually they were.
 2 MR. OTTENHEIMER:
 3 A. Um-hm.
 4 COFFEY, Q.C.:
 5 Q. And I'm going to ask you what your memory is
 6 as to how explicit he was or detailed he was
 7 about that?
 8 MR. OTTENHEIMER:
 9 A. It's difficult to say, Mr. Coffey, because I
 10 have, say, no notes on that. In fact, when I
 11 left the Department of Health in the early
 12 part of 2006, I took nothing with me in terms
 13 of any notes or documentation that would have
 14 been, you know, belonging to me personally.
 15 And, of course, the difficulty is that, you
 16 know, there's a briefing on July 21st and
 17 there's a briefing note of July 20th and it
 18 gets confused as to actually what information
 19 I may have been apprised of in a less
 20 informative discussion on the 19th as opposed
 21 to a more formal briefing two days later. So
 22 it's really difficult for me to recall exactly
 23 the extent to which this situation was
 24 explained to me on the 19th. My sense is is
 25 that it was in much more detail in the full

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1 briefing on the 21st.
 2 COFFEY, Q.C.:
 3 Q. Now, having had lunch on the 19th and having
 4 asked Mr. Tilley to provide a briefing note,
 5 and a briefing?
 6 MR. OTTENHEIMER:
 7 A. Yes.
 8 COFFEY, Q.C.:
 9 Q. Within the next day or two. In fact, I'm
 10 going to suggest to you that you asked him for
 11 a briefing the next day?
 12 MR. OTTENHEIMER:
 13 A. Um-hm.
 14 COFFEY, Q.C.:
 15 Q. Potentially, and it turns out it ended up
 16 being two days later, but -
 17 MR. OTTENHEIMER:
 18 A. And that could be; I can't recall.
 19 COFFEY, Q.C.:
 20 Q. With respect to that, anyway, you wanted a
 21 briefing as soon as it could be arranged?
 22 MR. OTTENHEIMER:
 23 A. Um-hm.
 24 COFFEY, Q.C.:
 25 Q. A formal briefing?

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1 MR. OTTENHEIMER:
 2 A. Um-hm.
 3 COFFEY, Q.C.:
 4 Q. I take it it's because you understood right
 5 away that this was a matter of significance or
 6 potential significance?
 7 MR. OTTENHEIMER:
 8 A. Um-hm. I felt that it was a, you know, I
 9 would put it in the category of a critical
 10 public issue and a public health issue. And
 11 that I felt that I needed to know more in the
 12 presence of certain professional people and
 13 that's why I requested the briefing relatively
 14 quickly subsequent to that first introduction
 15 to this topic on the 19th.
 16 COFFEY, Q.C.:
 17 Q. Why did you feel it important that the public
 18 know as soon as possible?
 19 MR. OTTENHEIMER:
 20 A. Because it was a public health issue. I mean
 21 if, in fact, we had a problem over a series of
 22 what, seven or eight years, with our main lab
 23 in this province, I felt that was a public
 24 issue.
 25 COFFEY, Q.C.:

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1 Q. Okay. Having has lunch, as I started to say,
 2 who did you speak to next about this within
 3 the--for example, outside the Department or
 4 within the Department?
 5 MR. OTTENHEIMER:
 6 A. Um-hm. My guess is that perhaps my EA, Mr.
 7 Hynes, or my director of communications,
 8 Carolyn Chaplin. It's so difficult to recall
 9 exactly the sequence of events. And if I may,
 10 can I just speak to that for a second?
 11 COFFEY, Q.C.:
 12 Q. Sure.
 13 MR. OTTENHEIMER:
 14 A. The Department of Health and Community
 15 Services, as we said at the beginning, it's a
 16 huge, vast department with so many issues
 17 affecting institutional care or acute care or
 18 community services. On any given day there
 19 may be a half a dozen briefings, a half a
 20 dozen meetings on one topic or another. For
 21 example, and I have no idea if this is the
 22 case or not, but I'll just use it as an
 23 example, it's quite possible after this
 24 meeting with Mr. Tilley on the 19th I could
 25 have been in a briefing dealing with the

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1 OxyContin crisis a half an hour later, maybe
 2 some public group coming in to the office a
 3 half an hour after that, dealing with the
 4 needs of our Aboriginal children in Labrador a
 5 half an hour later, dealing with a doctor
 6 shortage on the Burin Peninsula the same
 7 afternoon. I mean, that is the nature of that
 8 department. It goes from one critical issue
 9 to another. Again, in response to your
 10 question, who I spoke with immediately after
 11 the meeting, Mr. Coffey, it's virtually
 12 impossible for me to say. I would assume that
 13 my communications director and my EA and
 14 possibly my deputy minister.
 15 COFFEY, Q.C.:
 16 Q. Did you -
 17 MR. OTTENHEIMER:
 18 A. But what was important to me was that we were
 19 having a full briefing as quickly as possible,
 20 which as we know happened two days later.
 21 COFFEY, Q.C.:
 22 Q. Would you on the 19th have checked to ensure
 23 that the Premier's office had been notified
 24 about this?
 25 MR. OTTENHEIMER:

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1 A. It is my understanding today, because
 2 obviously, you know, that was important to me
 3 to know exactly what happened in that regard,
 4 whether it was the 19th or the 20th I do not
 5 know the exact date. But it's--well, I know
 6 that my communications director contacted the
 7 Premier's office on either the 19th or 20th of
 8 July to advise of this situation.
 9 COFFEY, Q.C.:
 10 Q. And Ms. Chaplin would have notified--not
 11 notified, would have assured you of that at
 12 some point on the 19th or 20th that had been
 13 done?
 14 MR. OTTENHEIMER:
 15 A. That's correct. And I don't even know if I
 16 can take credit for that in one sense because
 17 I don't know if I had said to Ms. Chaplin,
 18 "Please make sure that the Premier's office is
 19 advised" or whether she, in fact, came to me
 20 and said, "I just notified the Premier's
 21 office," and my response was perhaps, "Well,
 22 I'm glad that you did because it was necessary
 23 to do that."
 24 COFFEY, Q.C.:
 25 Q. Yes.

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1 MR. OTTENHEIMER:
 2 A. So it may have been her volunteer act first as
 3 opposed to my prodding. However, it was
 4 certainly something that I felt was important
 5 and had to be done.
 6 COFFEY, Q.C.:
 7 Q. At that time did you speak to the Premier
 8 about this?
 9 MR. OTTENHEIMER:
 10 A. No, I did not.
 11 COFFEY, Q.C.:
 12 Q. Anybody from his office at that time?
 13 MR. OTTENHEIMER:
 14 A. No, because it was a situation whereby the
 15 Premier's office had been notified.
 16 COFFEY, Q.C.:
 17 Q. If I could see, please, Registrar, Exhibit P-
 18 0133? Now, this is an entry, I gather this is
 19 from your, or from a calendar for yourself?
 20 MR. OTTENHEIMER:
 21 A. Um-hm.
 22 COFFEY, Q.C.:
 23 Q. You're nodding yes. It indicates that on July
 24 19th, 2005, at least according to the entry,
 25 you had a lunch from 12:30 to 2 with Mr.

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1 Tilley?

2 MR. OTTENHEIMER:

3 A. Um-hm.

4 COFFEY, Q.C.:

5 Q. And I take it that's entirely possible?

6 MR. OTTENHEIMER:

7 A. That is possible. And of course, the times,

8 that may have just been the time that was set

9 aside for that. But it was, I certainly

10 accept, you know, that that represents a

11 meeting with George Tilley of some form or

12 another at that time of day.

13 COFFEY, Q.C.:

14 Q. Now, you've indicated that before Mr. Tilley

15 was appointed CEO of Eastern Health you,

16 yourself, hadn't known him?

17 MR. OTTENHEIMER:

18 A. I had not known him, that's correct.

19 COFFEY, Q.C.:

20 Q. When did you, in fact, first then really meet

21 him?

22 MR. OTTENHEIMER:

23 A. It's difficult to say. I'm sure I would have

24 met Mr. Tilley in some form or another around

25 the time of he assuming the role as CEO of

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1 Eastern Health, and I would think I would have

2 met him perhaps at the invitation of the

3 Board, for example, to speak at a function

4 perhaps even prior to his appointment, maybe

5 at another time. But it's difficult to answer

6 that question. It's just that I certain knew

7 him more by reputation as opposed to knowing

8 him personally.

9 COFFEY, Q.C.:

10 Q. Now, the purpose of the meeting of July--

11 luncheon, if it was a lunch.

12 MR. OTTENHEIMER:

13 A. Right.

14 COFFEY, Q.C.:

15 Q. Meeting on July 19th, 2005, it's scheduled for

16 an hour and a half.

17 MR. OTTENHEIMER:

18 A. Um-hm.

19 COFFEY, Q.C.:

20 Q. What would the purpose of such a meeting be or

21 have been?

22 MR. OTTENHEIMER:

23 A. I had a meeting with, a lunch meeting with Mr.

24 Tilley, as I say, I don't recall if on the

25 19th that was a meeting that we had had in my

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1 boardroom or in my office. On one occasion,

2 on one occasion only, and as I say, it may

3 have been that time or it may have been

4 several weeks later I had lunch with Mr.

5 Tilley outside the office. And I recollect at

6 that lunch, whether it was this date or a date

7 at a later time, speaking to him and wanting

8 to share with him my view, as part of our

9 discussion, that from an organizational point

10 of view, from a structural point of view, it

11 appeared to me that things were going very

12 well and I wanted to at least feel that he had

13 done a good job in that area. And as I say, I

14 cannot be clear whether I mentioned that to

15 him at that time or at a later date.

16 COFFEY, Q.C.:

17 Q. So the idea of having lunch with the CEO from

18 Eastern Health in the middle of 2005, there

19 would be a particular purpose for having the

20 lunch or would it be a lunch set up kind of on

21 a regular or routine basis just to be, to

22 touch base with each other?

23 MR. OTTENHEIMER:

24 A. You mean on the 19th?

25 COFFEY, Q.C.:

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1 Q. Well, the 19th and throughout the middle of

2 '05. As you said, there's a later meeting you

3 understand too, as noted here.

4 MR. OTTENHEIMER:

5 A. Right, right, um-hm.

6 COFFEY, Q.C.:

7 Q. I'm trying to get some sense of, for the

8 Commissioner, of was this kind of a routine -

9 MR. OTTENHEIMER:

10 A. Certainly not routine.

11 COFFEY, Q.C.:

12 Q. - every two or three months quarterly sort of

13 -

14 MR. OTTENHEIMER:

15 A. Happened only once.

16 COFFEY, Q.C.:

17 Q. Happened once.

18 MR. OTTENHEIMER:

19 A. Happened only once. And the more I think of

20 it, I think it's perhaps the later date where

21 there's reference to lunch where we were

22 outside the--we were outside the office. And

23 that this particular July 19th, '05

24 appointment may have been no more than a

25 sandwich at a desk in the Department of

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1 Health, but again, I can't be sure.
 2 COFFEY, Q.C.:
 3 Q. The purpose of the July 19th meeting, like,
 4 who set it up, who arranged it and why you
 5 were meeting at the time, do you recall?
 6 MR. OTTENHEIMER:
 7 A. I don't recall that specifically. It may have
 8 been, in part, in response to this issue that
 9 we are talking about today, and my guess is
 10 that is the likelihood, that is the
 11 likelihood, because that's in keeping with the
 12 timing of when I first became aware and the
 13 briefing just two days later. Again, but I
 14 cannot be absolutely certain.
 15 COFFEY, Q.C.:
 16 Q. Well, when you went to--if you had lunch that
 17 day.
 18 MR. OTTENHEIMER:
 19 A. Yes.
 20 COFFEY, Q.C.:
 21 Q. And if so, wherever you had it on July 19th
 22 with Mr. Tilley, do you recall whether you
 23 knew about the ER/PR issue before you met Mr.
 24 Tilley that day or did you go into the lunch
 25 or the meeting knowing about it?

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1 MR. OTTENHEIMER:
 2 A. Um-hm, um-hm.
 3 COFFEY, Q.C.:
 4 Q. And he's going to tell you some details about
 5 it or did it kind of, he spring it, as it
 6 were, in the course of something else?
 7 MR. OTTENHEIMER:
 8 A. It's quite possible that maybe one of my
 9 officials may have said "There is a lab issue
 10 or a public health issue that Mr. Tilley wants
 11 to discuss with you.", that is quite possible,
 12 before I actually walked in through the door,
 13 and that may have happened that morning, I
 14 simply don't know. But the first time I knew
 15 anything about the issue and was introduced to
 16 ER/PR would have been July 19th.
 17 COFFEY, Q.C.:
 18 Q. If we could, please, Exhibit P-0134? Mr.
 19 Ottenheimer, this is an e-mail. It's not sent
 20 to yourself, it's from Deborah Thomas to Susan
 21 Bonnell July 20th, 2005 at 8:16 a.m. There's
 22 a briefing of Minister attachment. But below
 23 that you'll see a reference to July 19th,
 24 because that was July 20th, 2005, July 19th,
 25 2005, 4:05 p.m., it's a Tuesday, it's from

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1 Carolyn Chaplin to Deborah Thomas and she's
 2 advising Ms. Thomas that, or asking it be
 3 forwarded to Susan. "I have spoken with the
 4 Minister and everyone else in here and all are
 5 fine with proceeding with the briefing note
 6 Thursday a.m. I'll be coming in for that one
 7 and then assessing where we are. As you can
 8 see, John has asked for briefing materials in
 9 advance of the meeting, but these will not go
 10 beyond the Department for now." See that?
 11 MR. OTTENHEIMER:
 12 A. Yes.
 13 COFFEY, Q.C.:
 14 Q. Now this would be--that was Tuesday, July 19th
 15 at 4:05 p.m. in the afternoon, and you would
 16 have already had your midday meeting with Mr.
 17 Tilley?
 18 MR. OTTENHEIMER:
 19 A. Um-hm.
 20 COFFEY, Q.C.:
 21 Q. On the day. And you're going to be briefed
 22 Thursday morning?
 23 MR. OTTENHEIMER:
 24 A. Um-hm.
 25 COFFEY, Q.C.:

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1 Q. Two days hence. Now, do you know if the John
 2 there is John Ottenheimer or is it John Abbott
 3 or do you know?
 4 MR. OTTENHEIMER:
 5 A. My guess is it would be my Deputy, John
 6 Abbott.
 7 COFFEY, Q.C.:
 8 Q. And there's a reference there to "but these
 9 will not go beyond the Department for now."
 10 Do you know anything about that?
 11 MR. OTTENHEIMER:
 12 A. No, I don't.
 13 COFFEY, Q.C.:
 14 Q. Did that topic ever come up?
 15 MR. OTTENHEIMER:
 16 A. No. I'm surprised to see that, no.
 17 COFFEY, Q.C.:
 18 Q. I'll take that up with Mr. Chaplin and Mr.
 19 Abbott.
 20 MR. OTTENHEIMER:
 21 A. Right.
 22 COFFEY, Q.C.:
 23 Q. If we could, please, Exhibit P-0133? Page 2.
 24 And this, Mr. Ottenheimer, is the entry for
 25 the July 21st meeting. It's scheduled for 9

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1 to 10 a.m.
 2 MR. OTTENHEIMER:
 3 A. Um-hm.
 4 COFFEY, Q.C.:
 5 Q. The attendees are listed as John Abbott, or
 6 participants are John Abbott and George
 7 Tilley. Of course, it would be yourself?
 8 MR. OTTENHEIMER:
 9 A. Um-hm.
 10 COFFEY, Q.C.:
 11 Q. Do you know if there were others involved in
 12 this?
 13 MR. OTTENHEIMER:
 14 A. I do, I know because I have notes of that.
 15 COFFEY, Q.C.:
 16 Q. Yes. Now, you do have notes. They will be
 17 subsequently entered, and you have these notes
 18 here from -
 19 MR. OTTENHEIMER:
 20 A. What I have here is a copy of simply the notes
 21 that were taken from the meeting of July 1st
 22 by Carolyn Chaplin and she lists on the side
 23 of her notes those who were in attendance at
 24 that meeting.
 25 COFFEY, Q.C.:

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1 Q. Yes. And, in fact -
 2 THE COMMISSIONER:
 3 Q. Is this material that we had not had up--part
 4 of this -
 5 COFFEY, Q.C.:
 6 Q. No, we've had this, Commissioner. But we also
 7 have, as well, we have, and this is an
 8 exhibit--I should say, first of all, Mr. Rolf
 9 Pritchard has asked that these be entered, and
 10 they will be, these Carolyn Chaplin's, as
 11 well.
 12 THE COMMISSIONER:
 13 Q. Okay.
 14 COFFEY, Q.C.:
 15 Q. Because they will assist Mr. Ottenheimer,
 16 presumably, in his recollection. But as well
 17 we have some Darrell Hynes' notes, I
 18 understand, P-0136. This is, and if you go to
 19 page 2, please, you will see why there's a
 20 typed version on the page before. But these,
 21 do you recognize the handwriting in page 2
 22 there, sir?
 23 MR. OTTENHEIMER:
 24 A. That looks like Mr. Hynes, yes.
 25 COFFEY, Q.C.:

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1 Q. Okay. And if we could go back to page 1,
 2 please? So you have, as well, Carolyn
 3 Chaplin's notes?
 4 MR. OTTENHEIMER:
 5 A. Um-hm.
 6 COFFEY, Q.C.:
 7 Q. Who has she got listed as -
 8 MR. OTTENHEIMER:
 9 A. She has listed as attending that meeting on
 10 July 21st, George Tilley, Dr. Williams, Dr.
 11 Cook, Susan Bonnell, Dr. McCarthy, Dr. Laing
 12 and presumably she herself, Mr. Hynes and
 13 myself, I guess.
 14 COFFEY, Q.C.:
 15 Q. Okay.
 16 MR. OTTENHEIMER:
 17 A. And it's possible there could be others, I
 18 don't know.
 19 COFFEY, Q.C.:
 20 Q. If you look at Exhibit P-0136, page 1, it's
 21 the typed version of it, and if you think it
 22 necessary, you can scroll to page 2 and look
 23 at the handwriting, these are, we understand,
 24 are notes from Darrell Hynes.
 25 MR. OTTENHEIMER:

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1 A. Um-hm.
 2 COFFEY, Q.C.:
 3 Q. He says 9 a.m. Minister Ottenheimer, Carolyn
 4 Chaplin, Dr. Bob Williams, George Tilley,
 5 Susan Bonnell, Don Cash and I would suggest
 6 that actually should be Don Cook.
 7 MR. OTTENHEIMER:
 8 A. Um-hm.
 9 COFFEY, Q.C.:
 10 Q. Whoever transcribed these, because the person
 11 is described as "(Chief of Laboratory
 12 Medicine)".
 13 MR. OTTENHEIMER:
 14 A. Um-hm.
 15 COFFEY, Q.C.:
 16 Q. Dr. Don Cook was then the Chief.
 17 MR. OTTENHEIMER:
 18 A. Um-hm.
 19 COFFEY, Q.C.:
 20 Q. Now, you've referred to Ms. Chaplin's notes
 21 indicating that Doctors McCarthy and Laing
 22 were there?
 23 MR. OTTENHEIMER:
 24 A. Um-hm. According to these notes.
 25 COFFEY, Q.C.:

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1 Q. According to the notes?
 2 MR. OTTENHEIMER:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. Do you recall whether or not, do you actually
 6 have a recollection that both those doctors
 7 were there at that time?
 8 MR. OTTENHEIMER:
 9 A. I can't say for sure. I do know they were at
 10 other meetings.
 11 COFFEY, Q.C.:
 12 Q. Yes.
 13 MR. OTTENHEIMER:
 14 A. But I can't, I can't say for sure. I'm only
 15 going by the note that's here. I don't know.
 16 COFFEY, Q.C.:
 17 Q. Now, if we could, please, and using whatever
 18 documentation or aids you need, can you tell
 19 us, please, what you recall about the meeting?
 20 MR. OTTENHEIMER:
 21 A. Well, it's again, I guess it enlarged upon
 22 some of the discussion that had taken place
 23 two days earlier with Mr. Tilley, a problem
 24 detected in the past, an individual who was
 25 tested in 2002 having been retested, which, of

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1 course, began or initiated the inquiry and the
 2 concern. The fact that retesting was taking
 3 place. The issue of patient notification, I
 4 do remember that, with, you know, some degree
 5 of certainty, I guess, because it was an
 6 issue, as I say, was close to me and was
 7 important to me. A discussion of, and again,
 8 I'm referring to the notes that are here, you
 9 know, changing variables. I got the sense
 10 that again, and I'll repeat what I said
 11 earlier, that I don't know if they knew what
 12 the situation was, that this was early on,
 13 they needed to assess and in some cases
 14 retest. I do remember asking the question,
 15 "Is this a resource issue? Is this a money
 16 problem? Is there something from a
 17 departmental point of view, from a resource
 18 point of view that we can do to help
 19 alleviate, you know, what you've been able to
 20 find out here?" And I remember hearing the
 21 answer as being, "No, it's not a resource
 22 issue. It's a lab issue. It's a technology
 23 issue." as it was as I understood it at that
 24 time. And I notice here that there's some
 25 reference to external consultants coming in in

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1 the fall of this year and there's reference,
 2 as well, to, in her note to a disruption in
 3 testing a couple of years earlier. And
 4 further meeting with oncologists, as again, I
 5 think that's reflective of the fact that they
 6 themselves weren't really sure on the extent
 7 to which that this was a serious issue. And I
 8 would have said, in all likelihood, that it's
 9 important that I be briefed again on this
 10 relatively quickly and it was that type of
 11 discussion that took place at that time. And
 12 again, I can only say that, I suppose, even to
 13 that detail, and I realize it's not overly
 14 detailed, but even to the extent that I just
 15 described, that is with the help of the
 16 briefing or the meeting note from Carolyn
 17 Chaplin and the note from Mr. Hynes, you know,
 18 gets into certain numbers and years and dates,
 19 as well.
 20 COFFEY, Q.C.:
 21 Q. Yeah, and Mr. Hynes' note--did you take any
 22 notes during the meeting?
 23 MR. OTTENHEIMER:
 24 A. Not that I recall.
 25 COFFEY, Q.C.:

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1 Q. Or make any afterward?
 2 MR. OTTENHEIMER:
 3 A. Personal notes at the meeting, not that I
 4 recall.
 5 COFFEY, Q.C.:
 6 Q. How about make any notes afterward?
 7 MR. OTTENHEIMER:
 8 A. No, because that would have been in, as I say,
 9 the notes would have been taken by both my EA
 10 and my Director of Communications.
 11 COFFEY, Q.C.:
 12 Q. And what about what was your practice in terms
 13 of maintaining any kind of file on this?
 14 MR. OTTENHEIMER:
 15 A. The file would have been maintained, I would
 16 think Mr. Hynes would have had a file on this.
 17 There would have been a departmental file, in
 18 all likelihood in the possession of Mr.
 19 Abbott, my Deputy Minister. And I would think
 20 my Communications Director would have had a
 21 file, as well.
 22 COFFEY, Q.C.:
 23 Q. What I'm getting at is is in terms of keeping
 24 track of what you had been told.
 25 MR. OTTENHEIMER:

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1 A. Um-hm.
 2 COFFEY, Q.C.:
 3 Q. Orally.
 4 MR. OTTENHEIMER:
 5 A. Um-hm.
 6 COFFEY, Q.C.:
 7 Q. You know, whose job was it, if anyone's, to
 8 keep track of that?
 9 MR. OTTENHEIMER:
 10 A. I would say the Deputy Minister as the, you
 11 know, the sense as the manager, I guess, of
 12 that department and perhaps in conjunction
 13 with the ADM assigned to this particular issue
 14 in respect of Board Services, I would think
 15 they would have a file on this point and would
 16 continue to add to it as time went on.
 17 COFFEY, Q.C.:
 18 Q. Did you know whether or not, for example, Mr.
 19 Abbott or Ms. Hennessey, in fact, kept any
 20 notes as to what was said at the meeting?
 21 MR. OTTENHEIMER:
 22 A. I cannot say with absolute certainty.
 23 COFFEY, Q.C.:
 24 Q. Do you have any recollection of actually them
 25 keeping notes kind of period in the sense of,

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1 you know, being able to kind of pull them out
 2 later?
 3 MR. OTTENHEIMER:
 4 A. In terms of me, personally?
 5 COFFEY, Q.C.:
 6 Q. Yes.
 7 MR. OTTENHEIMER:
 8 A. No. As I say, I would have had a Deputy
 9 Minister, an EA, a Director of Communications
 10 who would be doing that.
 11 COFFEY, Q.C.:
 12 Q. So if afterward -
 13 THE COMMISSIONER:
 14 Q. I'm sorry, when you finish the thought, where
 15 convenient, we'll take the morning break.
 16 COFFEY, Q.C.:
 17 Q. Thank you. If after the meeting of July 21st
 18 you had wanted to know what was said at the
 19 meeting, you would have had to have gone
 20 where?
 21 MR. OTTENHEIMER:
 22 A. I would have spoken to either of those three,
 23 my Deputy, my EA or my Director of
 24 Communications.
 25 COFFEY, Q.C.:

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1 Q. To and if they--and asked them, "Do you have
 2 notes as to what was said?"
 3 MR. OTTENHEIMER:
 4 A. Or if there was a particular point that I
 5 needed clarification on or a particular
 6 question that I would have had, I would have,
 7 in all likelihood, gone to one of those three.
 8 COFFEY, Q.C.:
 9 Q. No, I appreciate that if you wanted to know
 10 more. I'm asking about if you wanted to know
 11 what I was told, say, in September, if you
 12 wanted to know what I was told July 21st.
 13 MR. OTTENHEIMER:
 14 A. Right.
 15 COFFEY, Q.C.:
 16 Q. Other than searching your own memory.
 17 MR. OTTENHEIMER:
 18 A. Um-hm.
 19 COFFEY, Q.C.:
 20 Q. What would you have to have done?
 21 MR. OTTENHEIMER:
 22 A. I would have, I would have spoken to one of
 23 those three individuals.
 24 COFFEY, Q.C.:
 25 Q. And searched their memory or their written

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1 notes?
 2 MR. OTTENHEIMER:
 3 A. That's correct.
 4 COFFEY, Q.C.:
 5 Q. Okay. Thank you, Commissioner.
 6 THE COMMISSIONER:
 7 Q. Take 15 minute break.
 8 (RECESS)
 9 THE COMMISSIONER:
 10 Q. Please be seated.
 11 COFFEY, Q.C.:
 12 Q. Thank you, Commissioner. While we're at it,
 13 Commissioner, and I want to thank Mr.
 14 Pritchard, Exhibits 0159 and 0160, if they be
 15 entered, please? They're notes of July 21 and
 16 August 15th by Carolyn Chaplin.
 17 THE COMMISSIONER:
 18 Q. Those are the notes you referred to earlier
 19 today?
 20 COFFEY, Q.C.:
 21 Q. One of them so far, yes. Mr. Ottenheimer has
 22 been referring to 0159 and I will be referring
 23 him to 0160, as well.
 24 THE COMMISSIONER:
 25 Q. All right then. So we'll enter exhibits P-

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1 0159 and P-0160. Thank you.
 2 EXHIBITS P-0159 AND P-0160 ENTERED INTO EVIDENCE.
 3 COFFEY, Q.C.:
 4 Q. Thank you, Commissioner. Looking at P-0159,
 5 please. The--just looking at the second page,
 6 if you could, please, page 2? And there's a
 7 wording "Massaging," "Public message,"
 8 "Individual message." And then there's the
 9 word "Positioning" "Option for retesting, new
 10 technology available, etcetera, instead of
 11 'errors in testing'". Now, was that subject
 12 matter discussed during the meeting of July
 13 21?
 14 MR. OTTENHEIMER:
 15 A. It may very well have been, but according to
 16 note I would suggest that it was, but I don't
 17 recall the detail to which that was discussed
 18 other than the note that was there.
 19 COFFEY, Q.C.:
 20 Q. So the idea of or the notion of positioning,
 21 you know, this is positioning by whom in
 22 relation to whom?
 23 MR. OTTENHEIMER:
 24 A. That I would not be able to say. I don't know
 25 the reference or the context in which that

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1 word is being used, I don't know.
 2 COFFEY, Q.C.:
 3 Q. Now, it's a note by Carolyn Chaplin.
 4 MR. OTTENHEIMER:
 5 A. Yes.
 6 COFFEY, Q.C.:
 7 Q. Who is the Director of Communication, so
 8 presumably or arguably maybe it has something
 9 to do with communications positioning.
 10 MR. OTTENHEIMER:
 11 A. Um-hm.
 12 COFFEY, Q.C.:
 13 Q. And the idea of utilizing the ideas of options
 14 for retesting new technology, etcetera,
 15 instead of "errors in testing", I take it that
 16 would be portray the situation or
 17 circumstances as an option for retesting, or
 18 new technology being available, etcetera,
 19 instead of having it portrayed as errors in
 20 testing?
 21 MR. OTTENHEIMER:
 22 A. Um-hm.
 23 COFFEY, Q.C.:
 24 Q. That's what that seems to refer -
 25 MR. OTTENHEIMER:

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1 A. It seems to suggest that, but I don't recall
 2 that discussion.
 3 COFFEY, Q.C.:
 4 Q. Now, there is a reference at the bottom of
 5 this to, that second page, time frame,
 6 "Meeting with oncologists Monday, Tuesday next
 7 week."
 8 MR. OTTENHEIMER:
 9 A. Um-hm.
 10 COFFEY, Q.C.:
 11 Q. See that?
 12 MR. OTTENHEIMER:
 13 A. Yes.
 14 COFFEY, Q.C.:
 15 Q. And in P-0136, please? This is the typed
 16 version of Mr. Hynes' notes. He notes at the
 17 bottom of that "Meet with two oncologists
 18 Monday."
 19 MR. OTTENHEIMER:
 20 A. Um-hm.
 21 COFFEY, Q.C.:
 22 Q. And when we look at, go back to, if we could,
 23 P-0159, the first page, please? Scroll down a
 24 bit? We see there on the left-hand side, "Dr.
 25 McCarthy and Dr. Laing." They are both

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1 oncologists, you understand?
 2 MR. OTTENHEIMER:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. That would be so. And their names are
 6 separated out from the names at the top in the
 7 column above?
 8 MR. OTTENHEIMER:
 9 A. Um-hm.
 10 COFFEY, Q.C.:
 11 Q. You see that? So is it entirely possible that
 12 the reference to McCarthy and Laing, Doctors
 13 McCarthy and Laing was simply a reference to
 14 meeting with oncologists the following week?
 15 MR. OTTENHEIMER:
 16 A. I certainly cannot rule that out. In view of
 17 the fact that there's such a gap there between
 18 those present and the other two names, can't
 19 rule that out. That would be my response.
 20 COFFEY, Q.C.:
 21 Q. Yes. Now, if I could, please, as well, if we
 22 could look at Exhibit P-0075, please? Now,
 23 this is, Commission itself has seen this last
 24 week. It's on Eastern Health letterhead and
 25 it's a briefing note, ER/PR receptors. It's

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1 somebody's handwritten "Meet with Minister
 2 July 21, 2005." It's three pages long. I
 3 take it you would have received this. And
 4 it's at the bottom of each of the pages on the
 5 right-hand side, it's prepared July 20th,
 6 2005?
 7 MR. OTTENHEIMER:
 8 A. That's correct.
 9 COFFEY, Q.C.:
 10 Q. I take it you would have received this at the
 11 briefing of July 21, 2005?
 12 MR. OTTENHEIMER:
 13 A. My guess is is that I would have received that
 14 immediately prior to the briefing or perhaps
 15 given to me at the briefing.
 16 COFFEY, Q.C.:
 17 Q. You either reviewed it at that time, that
 18 morning, or sometime that day?
 19 MR. OTTENHEIMER:
 20 A. Perhaps the first time I saw it would have
 21 been at the briefing.
 22 COFFEY, Q.C.:
 23 Q. Yes.
 24 MR. OTTENHEIMER:
 25 A. Um-hm.

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1 COFFEY, Q.C.:
 2 Q. Would you have read it that day?
 3 MR. OTTENHEIMER:
 4 A. At the briefing?
 5 COFFEY, Q.C.:
 6 Q. At the briefing or afterward, would you have
 7 read that document?
 8 MR. OTTENHEIMER:
 9 A. I would think that I would have gone through--
 10 as you can see, it's filled with so much
 11 information and new information and on a topic
 12 that is quite foreign to most people. But I
 13 would think that we would have gone through
 14 some of the points at the briefing and I would
 15 think, as well, that my officials obviously
 16 would have done, conducted a further review
 17 upon conclusion of the meeting. The extent to
 18 which I did that after the meeting, I cannot
 19 say. My guess is there was some follow-up
 20 discussion with my own officials following the
 21 actual briefing itself.
 22 COFFEY, Q.C.:
 23 Q. Do you recall whether or not, you know, on
 24 July 21st or the 22nd or in the week of July
 25 21, week following July 21st whether or not

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1 you actually read this from front to back?
 2 MR. OTTENHEIMER:
 3 A. After the briefing?
 4 COFFEY, Q.C.:
 5 Q. Yes, during or after the briefing?
 6 MR. OTTENHEIMER:
 7 A. I would say during the briefing I certainly
 8 reviewed it as an aid to the actual briefing
 9 itself. I cannot say with absolute certainty
 10 whether I picked it up and read it word for
 11 word afterwards, I cannot say that. But
 12 certainly it would have been used as an aid to
 13 the briefing itself. I would think my
 14 officials, particularly my Deputy, the
 15 Assistant Deputy Minister, again, who was
 16 assigned to deal with this issue, and quite
 17 possibly my EA and Communications Director may
 18 have. I can't be certain, obviously, about
 19 that.
 20 COFFEY, Q.C.:
 21 Q. Now, Moira Hennessey, at least according to
 22 the notes of Darrell Hynes and Carolyn
 23 Chaplin, Moira Hennessey did not attend this
 24 briefing?
 25 MR. OTTENHEIMER:

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1 A. Her name is not there, that is correct.
 2 COFFEY, Q.C.:
 3 Q. And she's the one, the ADM who would have been
 4 responsible for dealing with this, this sort
 5 of a matter?
 6 MR. OTTENHEIMER:
 7 A. She was the ADM responsible for Board Service,
 8 correct.
 9 COFFEY, Q.C.:
 10 Q. Looking at P-0075, it begins with referring
 11 to, on the background, May 11th, it refers to
 12 a retesting on May 11th, 2005, at least it was
 13 requested that day by Dr. Joy McCarthy?
 14 MR. OTTENHEIMER:
 15 A. Um-hm.
 16 COFFEY, Q.C.:
 17 Q. Of Dr. Donald Cook. That time, during the
 18 meeting of July 21, did anyone ever indicate
 19 to you that the initial retesting of a patient
 20 in 2005 occurred in April?
 21 MR. OTTENHEIMER:
 22 A. Not that I recall, because the date there
 23 clearly says May.
 24 COFFEY, Q.C.:
 25 Q. And your understanding was it was May?

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1 MR. OTTENHEIMER:
 2 A. Correct.
 3 COFFEY, Q.C.:
 4 Q. What was your understanding about how or what
 5 had motivated the initial retesting?
 6 MR. OTTENHEIMER:
 7 A. Only, I guess, the, you know, the explanation
 8 that is there, that there was a retest clearly
 9 differed from the original test which sparked,
 10 I guess, a concern and the curiosity of
 11 Eastern Health.
 12 COFFEY, Q.C.:
 13 Q. But in terms of why there was an initial
 14 retest, did that topic come up? I mean, it
 15 was 2002.
 16 MR. OTTENHEIMER:
 17 A. Right.
 18 COFFEY, Q.C.:
 19 Q. The original test and now this is 2005.
 20 MR. OTTENHEIMER:
 21 A. Um-hm.
 22 COFFEY, Q.C.:
 23 Q. It's approximately three years later. The
 24 subject didn't come up, I take it, at the
 25 time?

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1 MR. OTTENHEIMER:
 2 A. As to why there was a retest?
 3 COFFEY, Q.C.:
 4 Q. Yes.
 5 MR. OTTENHEIMER:
 6 A. No.
 7 COFFEY, Q.C.:
 8 Q. At the bottom of the page, first page, if I
 9 could just scroll down here, there's an entry
 10 from May 17th, 2005, and it refers to
 11 "Representatives from the laboratory program
 12 met with Doctors McCarthy and Kara Laing to
 13 discuss this new result and a decision was
 14 made to retest five more negative patients who
 15 all retested positive. These patients were
 16 selected by the oncologist. And it was
 17 decided to retest all negative results from
 18 2002 to determine if these were isolated cases
 19 or symptomatic of a bigger issue. Specimens
 20 collected from 25 women initially tested as
 21 negative in 2002 were retested. Sixteen of
 22 these came back positive. Testing on 33 more
 23 patients found 25 converted to positive, 12 of
 24 these patients have been informed by their
 25 oncologists." So I take it then by July 21st,

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1 2005 you understood that, well, at least 25
 2 plus 33 is 58, plus the initial one are 59 and
 3 maybe five others, depending upon how the
 4 calculation is done, but approximately 60
 5 patients had been retested?
 6 MR. OTTENHEIMER:
 7 A. According to that note, yes, which certainly,
 8 I think, is another reason why I felt strongly
 9 about this issue going public.
 10 COFFEY, Q.C.:
 11 Q. Because it ends with the first page, the
 12 assertion is "12 of these patients have been
 13 informed by their oncologists."
 14 MR. OTTENHEIMER:
 15 A. Yes.
 16 COFFEY, Q.C.:
 17 Q. Suggesting that, well, there are 12 people who
 18 are aware?
 19 MR. OTTENHEIMER:
 20 A. Um-hm.
 21 COFFEY, Q.C.:
 22 Q. That their results had changed. And I take it
 23 that as the Minister, you would have been
 24 assumed that well, people, it'd be in the
 25 public forum potentially fairly soon anyway?

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1 MR. OTTENHEIMER:
 2 A. Obviously, yes.
 3 THE COMMISSIONER:
 4 Q. We're not sure, Mr. Coffey, that we can figure
 5 out which 12 have been informed, whether that
 6 means 12 of the 25 who converted in the
 7 sentence before, or 12 of the, as you put it,
 8 approximately 60.
 9 COFFEY, Q.C.:
 10 Q. Yes, and there will be evidence subsequently
 11 on that point.
 12 THE COMMISSIONER:
 13 Q. On that point, okay.
 14 COFFEY, Q.C.:
 15 Q. The point, with Mr. Ottenheimer, I take it, I
 16 was trying to make, Mr. Ottenheimer, is that
 17 you understood by the end of the meeting of
 18 July 21, that there are 12 people in
 19 Newfoundland who have been told that their
 20 results had changed?
 21 MR. OTTENHEIMER:
 22 A. According to this note.
 23 COFFEY, Q.C.:
 24 Q. Yes.
 25 MR. OTTENHEIMER:

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1 A. Correct.

2 COFFEY, Q.C.:

3 Q. Mr. Ottenheimer, in terms of the accuracy of

4 what's contained in this, you'd be relying

5 upon whom?

6 MR. OTTENHEIMER:

7 A. I would certainly have relied upon accurate

8 information having been provided by Eastern

9 Health to my officials. As you can see, we

10 have a variety of briefing notes here. Some

11 are prepared by and originate with Eastern

12 Health. Others are prepared by and originate

13 with the Department of Health.

14 COFFEY, Q.C.:

15 Q. So in respect of Eastern Health, this

16 particular one is on Eastern Health

17 letterhead?

18 MR. OTTENHEIMER:

19 A. Yes.

20 COFFEY, Q.C.:

21 Q. So you would have expected that Eastern

22 Health, if they're providing the information

23 to you, this would be accurate?

24 MR. OTTENHEIMER:

25 A. I certainly would never think otherwise. That

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1 I would certainly conclude that any

2 information, and this was an information-

3 seeking exercise certainly from my point of

4 view, any information that I was being

5 provided with by Eastern Health was absolutely

6 reliable.

7 COFFEY, Q.C.:

8 Q. And what about the notion or the idea of

9 whether or not it was sufficient? One thing

10 to provide accurate information but not

11 provide, you know, arguably a sufficient

12 amount. Like if there's other--in terms of

13 the amount of information that you were given

14 to be briefed, who would you be relying upon

15 to make the decision in that regard, on that?

16 MR. OTTENHEIMER:

17 A. Yeah, the word "sufficient" suggests you're

18 not getting all the information.

19 COFFEY, Q.C.:

20 Q. Well, you know, whether you were or weren't -

21 MR. OTTENHEIMER:

22 A. Um-hm.

23 COFFEY, Q.C.:

24 Q. - who would you be relying upon to make that

25 decision as to how much information you should

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1 get?

2 MR. OTTENHEIMER:

3 A. At that time?

4 COFFEY, Q.C.:

5 Q. Yes.

6 MR. OTTENHEIMER:

7 A. Okay, and again, this has to be placed in the

8 context of, you know, almost approaching three

9 years ago, but certainly, at that time, I

10 would have placed my full reliance on the fact

11 that the information that I was receiving was

12 both complete and accurate.

13 COFFEY, Q.C.:

14 Q. If we turn to page two, there's a listing,

15 further listing of dates. June 13th 2005, Dr.

16 Cook wrote to all laboratory directors in the

17 province to return all negative ER and PR

18 specimens for the year 2002 for retesting on

19 the new more sensitive Ventana system.

20 July 14th 2005, the decision was made

21 that all patients who were ER and PR negative

22 from 1997 to 2004 would be retested beginning

23 with 2002 patients with testing to take place

24 over the next number of weeks.

25 July 15th 2005, Dr. Cook spoke to four of

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1 the six provincial laboratory directors

2 regarding sending specimens into St. John's

3 for retesting. They said they'd comply as

4 soon as possible.

5 July 18th 2005, laboratory managers in

6 St. John's began reviewing the statistical

7 data for 2000 to 2004 to look for certain

8 information, and upon July 20th 2005, upon

9 review of the statistical data, should read,

10 it has been concluded that the positivity

11 rates are, while on the low end of the scale,

12 within acceptable range, and it goes on from

13 there to list them. Now the--but the range

14 listed is 62 percent for 2000, all the way up

15 to 90 percent for 2004/2005, which is a

16 difference of 28 percent.

17 Sir, when you were at this meeting on

18 July 21st, did any question arise or issue

19 arise concerning "well, why am I only hearing

20 about this now?"

21 MR. OTTENHEIMER:

22 A. My first briefing is in July and we have dates

23 here that go back to at least May. So we're

24 talking at least a two-month period, and I'm

25 sure the thought had crossed my mind, why is

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1 it two months later that the Minister of
 2 Health and Community Services is hearing this
 3 for the first time.
 4 COFFEY, Q.C.:
 5 Q. Did it come up? It came--it would have
 6 crossed your mind. Did you voice it at the
 7 time?
 8 MR. OTTENHEIMER:
 9 A. Whether I did or somebody else did, I cannot
 10 be sure.
 11 COFFEY, Q.C.:
 12 Q. And what was said about that?
 13 MR. OTTENHEIMER:
 14 A. I don't recall.
 15 COFFEY, Q.C.:
 16 Q. The -
 17 MR. OTTENHEIMER:
 18 A. If I may, may I make a comment?
 19 COFFEY, Q.C.:
 20 Q. Sure, go ahead.
 21 MR. OTTENHEIMER:
 22 A. Thank you. Throughout, you know, this period
 23 of time, in my mind, what was critical and
 24 what was a priority was the issue of patient
 25 safety and the minimizing of risk to patient.

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1 There are five facts, I guess, that help me
 2 arrive, in my own mind, of a conclusion that
 3 patient safety issues were being addressed,
 4 and if I may, Madame Commissioner, I'd just
 5 like to express -
 6 COFFEY, Q.C.:
 7 Q. But had you arrived at that at this time?
 8 MR. OTTENHEIMER:
 9 A. Not in totality.
 10 COFFEY, Q.C.:
 11 Q. Okay, so -
 12 MR. OTTENHEIMER:
 13 A. Because there was more to come.
 14 COFFEY, Q.C.:
 15 Q. So at this point in time, if you could, you
 16 can certainly, as of July 21 -
 17 MR. OTTENHEIMER:
 18 A. Yes.
 19 COFFEY, Q.C.:
 20 Q. - when you leave the meeting that day and kind
 21 of go away and think about it -
 22 MR. OTTENHEIMER:
 23 A. Uh-huh.
 24 COFFEY, Q.C.:
 25 Q. - what was in your mind then in terms of

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1 patient safety issues?
 2 MR. OTTENHEIMER:
 3 A. In terms of patient -
 4 COFFEY, Q.C.:
 5 Q. If you could just tell us, at that point.
 6 MR. OTTENHEIMER:
 7 A. Okay, up until that date, in terms of patient
 8 safety, we have the advent of the new Ventana
 9 system, which presumably, from all the
 10 information that we were given and from
 11 information that I have read since then, seems
 12 to indicate that it had a degree of greater
 13 accuracy. It was brought to my attention that
 14 testing for certain years or retesting for
 15 certain years would be conducted. Then
 16 shortly thereafter, I became aware of the fact
 17 that the retesting of all years would be
 18 conducted. There was a progression here of
 19 different steps that were being taken that
 20 satisfied by main concern, as the Minister of
 21 Health and Community Services, that the issue
 22 of patient safety was being addressed and that
 23 risk to patient was being minimized.
 24 Also, just in a matter of a week or two
 25 later, a week or two later, two other things

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1 happened, which again, in my view -
 2 COFFEY, Q.C.:
 3 Q. If we could, before we get to the next week or
 4 two, because there's some things here, I -
 5 MR. OTTENHEIMER:
 6 A. No, no, I'm not -
 7 COFFEY, Q.C.:
 8 Q. - and I appreciate that -
 9 MR. OTTENHEIMER:
 10 A. - but if I may, Madame Commissioner -
 11 COFFEY, Q.C.:
 12 Q. Okay.
 13 MR. OTTENHEIMER:
 14 A. - can I just continue that point?
 15 THE COMMISSIONER:
 16 Q. If you want to make a thought complete, sure.
 17 MR. OTTENHEIMER:
 18 A. Thank you, and you know, we'll certainly go
 19 back to that, Mr. Coffey. The other is that
 20 all tests, all retesting was now, in a matter
 21 of a couple of weeks, I don't know the exact
 22 number of days, but approximately a couple of
 23 weeks, would be sent to Mount Sinai Hospital
 24 in Toronto, and at that time or approximately
 25 at that time, our lab was shut down. Our lab

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1 was shut down, and that, to me, was an
 2 indication that the patients' safety was being
 3 addressed, which was certainly my priority and
 4 my main concern, and secondly, the fact that
 5 risk to patient was being minimized. The
 6 moment, the moment that our lab shut down,
 7 there was no further risk to our patients in
 8 the Province of Newfoundland and Labrador.
 9 Now we had this very difficult situation
 10 of the retesting of so many individuals prior
 11 to that time, but our lab shut down. All of
 12 our tests were being forwarded to Mount Sinai
 13 Hospital in Toronto and that gave me, as the
 14 Minister of Health and Community Services, the
 15 comfort of knowing that the patient safety
 16 issue was being addressed and that risk was
 17 being minimized.
 18 COFFEY, Q.C.:
 19 Q. When you say the lab shut down -
 20 MR. OTTENHEIMER:
 21 A. Yes.
 22 COFFEY, Q.C.:
 23 Q. - and is that perhaps a bit of an
 24 overstatement? Because the lab certainly
 25 didn't shut down. The ER/PR was discontinued.

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1 MR. OTTENHEIMER:
 2 A. No, no, in the context of -
 3 COFFEY, Q.C.:
 4 Q. That's your meaning.
 5 MR. OTTENHEIMER:
 6 A. - in the context of ER/PR.
 7 COFFEY, Q.C.:
 8 Q. Okay.
 9 MR. OTTENHEIMER:
 10 A. As I say, I don't know the exact date, but
 11 this was a--this was progressing to that point
 12 that gave me that comfort, as Minister, that I
 13 could rely on.
 14 COFFEY, Q.C.:
 15 Q. If we could look at P-0075, here we are, page
 16 two, and return to the issue of why, as of
 17 July 21, more than two months have passed
 18 since May 11th -
 19 MR. OTTENHEIMER:
 20 A. Um-hm.
 21 COFFEY, Q.C.:
 22 Q. - why is the Minister of Health now first
 23 hearing about it? You say it crossed your
 24 mind. It was probably voiced and you don't
 25 recall what, if any, explanation you were

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1 given at the time?
 2 MR. OTTENHEIMER:
 3 A. It was possibly voiced at that time, but I
 4 don't recall specifically what the response
 5 was or by whom.
 6 COFFEY, Q.C.:
 7 Q. Do you know if there was any subsequent
 8 visiting of that issue or revisiting of that
 9 issue?
 10 MR. OTTENHEIMER:
 11 A. I cannot say with any certainty.
 12 COFFEY, Q.C.:
 13 Q. So you have no recollection that it was ever
 14 pursued afterward?
 15 MR. OTTENHEIMER:
 16 A. It may have been pursued by one of my
 17 officials, but again, I can't speak to that.
 18 COFFEY, Q.C.:
 19 Q. If so -
 20 MR. OTTENHEIMER:
 21 A. But obviously -
 22 COFFEY, Q.C.:
 23 Q. If so -
 24 MR. OTTENHEIMER:
 25 A. - obviously a concern.

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1 COFFEY, Q.C.:
 2 Q. If so, what officials would they be?
 3 MR. OTTENHEIMER:
 4 A. Presumably my Deputy Minister, I would think.
 5 COFFEY, Q.C.:
 6 Q. And if John Abbott did pursue it, you don't
 7 have any recollection of what, if anything, he
 8 told you about it?
 9 MR. OTTENHEIMER:
 10 A. Not that I recall. Again, that would be in
 11 keeping, Mr. Coffey, with my primary concern
 12 of patient safety, because what may have
 13 happened in the past, that will all come out
 14 and any mistakes that were made in the past or
 15 the situation as it may have existed in the
 16 lab, that will come out. The issue of primary
 17 importance to me, as Minister, was patient
 18 safety.
 19 COFFEY, Q.C.:
 20 Q. But wouldn't it also be of primary importance
 21 to you to know what was going on within your
 22 area of responsibility?
 23 MR. OTTENHEIMER:
 24 A. It would be important to me to know what was
 25 going on, but that issue would be certainly

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1 subsequent to the primary concern of patient
 2 safety and minimizing risk, whether it was two
 3 months later or, as it now appears to be,
 4 three years later or maybe beyond that. We
 5 will ultimately, and it's a part of Madame
 6 Commissioner's mandate to find out what went
 7 wrong. We will find that out, but in July and
 8 August of 2005, my concern was the issue of
 9 patient safety and minimizing risk, and that,
 10 I feel, gave me some comfort once those five
 11 points that I just discussed with you had been
 12 assessed.

13 COFFEY, Q.C.:

14 Q. Now with respect then to addressing the delay
 15 in you having been notified, you or your
 16 office having been notified, by Eastern Health
 17 about this issue, I take it then as far as you
 18 know, no remedial action was taken to ensure
 19 that such delays did not occur in the future,
 20 as far as you know?

21 MR. OTTENHEIMER:

22 A. As far as I know, but that's--you know, again,
 23 it's a sweeping, I guess, concept, but as far
 24 as I know, you're correct.

25 COFFEY, Q.C.:

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1 Q. When we look at the reference, on the third
 2 page, if we could, because there's a
 3 description there of actions, and there's an
 4 assertion in the second line that "this also
 5 reconfirms that our number are legitimate,
 6 regardless the laboratory is still going ahead
 7 with retesting the specimens." Did that--like
 8 those two assertions, did they strike you as
 9 potentially contradictory? I mean, if the
 10 numbers are legitimate, why are you getting
 11 involved in this massive retesting?

12 MR. OTTENHEIMER:

13 A. It appears, in reading that, that's perhaps
 14 just an added step or a safeguard, I would
 15 think.

16 COFFEY, Q.C.:

17 Q. The second paragraph notes, "extra resources
 18 have been identified within the lab to
 19 undertake identification and retesting. The
 20 list of patients will be double checked with
 21 the names on the Cancer registry to ensure
 22 none have been missed." When you read that or
 23 that was discussed in the meeting, that
 24 suggests, perhaps, that if you have to double
 25 check with the Cancer registry to ensure none

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1 are missed, that suggests that perhaps
 2 whatever database you're using to begin with
 3 may have holes in it. Else, why go to another
 4 registry to check? Did that come up at the
 5 meeting, in terms of our ability to identify
 6 all these patients or problems they might
 7 have?

8 MR. OTTENHEIMER:

9 A. I don't recall that specifically coming up,
 10 however, again, I see that reference as being
 11 just a further safeguard and presumably a
 12 confirmation that information is accurate. I
 13 mean, that would lead me to believe that any
 14 information that I'm being provided with, as a
 15 Minister, is reliable and accurate.

16 COFFEY, Q.C.:

17 Q. On July 21st, 2005, before that or subsequent
 18 to that, did Eastern Health or their officials
 19 or your own departmental officials ever
 20 express any reservations or concern to you
 21 about the completeness of their identification
 22 of patients that might be affected?

23 MR. OTTENHEIMER:

24 A. That would be consistent with my thinking.
 25 We're talking about this time frame, are we?

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1 COFFEY, Q.C.:

2 Q. Yes, and even afterward, in terms of the whole
 3 issue of being able to identify people.

4 MR. OTTENHEIMER:

5 A. No, fair point. That would certainly be
 6 consistent with my view of public disclosure.
 7 Let's get it out there, and if that were the
 8 case, that then or that kind of question or
 9 concern, you know, it is not raised because
 10 it's a public issue and by extension, patients
 11 are notified. So that would be consistent
 12 with my thinking.

13 COFFEY, Q.C.:

14 Q. What about--what I'm getting at is more the
 15 ability of Eastern Health to identify the 200
 16 or 500 or 1,000 patients whose cases might
 17 have to be considered as to whether or not
 18 they should be retested. Did it ever come to
 19 your attention, as Minister, from Eastern
 20 Health or the other three health authorities
 21 for that matter, that they were encountering
 22 problems with identifying such patients?

23 MR. OTTENHEIMER:

24 A. Not specifically, as I recall.

25 COFFEY, Q.C.:

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1 Q. How about non-specifically?
 2 MR. OTTENHEIMER:
 3 A. Well, I don't specifically remember that issue
 4 being addressed. If it were, I could
 5 certainly understand that in terms of the
 6 complexity and the numbers, but I don't recall
 7 that being expressed.
 8 COFFEY, Q.C.:
 9 Q. There is a reference, in the middle of the
 10 second page, to "a technology consultant from
 11 Mount Sinai will be reviewing our laboratory
 12 to assess the immunoperoxidase system. At
 13 that time, we will ask the consultant his or
 14 her opinion of the past several years' results
 15 under the DAKO methodology and for advice on
 16 the future direction of the immuno service."
 17 What was your understanding in relation to
 18 this outside consultant's role at that time?
 19 MR. OTTENHEIMER:
 20 A. That, I guess, some form of comparison may be
 21 done, a review of both systems, the DAKO
 22 system which was used prior, I guess, to what,
 23 2004 I believe, and maybe some analysis in
 24 terms of the newer system that was in place
 25 since that time. So it indicated to me that

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1 Eastern Health had taken upon itself to do its
 2 own internal assessment with a view to seeing
 3 what the status would be.
 4 COFFEY, Q.C.:
 5 Q. HIROC is mentioned in the next paragraph.
 6 MR. OTTENHEIMER:
 7 A. Yeah.
 8 COFFEY, Q.C.:
 9 Q. Who is HIROC, as you know it to be?
 10 MR. OTTENHEIMER:
 11 A. I know now, but I didn't know then.
 12 COFFEY, Q.C.:
 13 Q. Was it explained to you during the meeting as
 14 to who they were?
 15 MR. OTTENHEIMER:
 16 A. It was not explained to me specifically who
 17 HIROC was at that meeting.
 18 COFFEY, Q.C.:
 19 Q. Subsequently, you learned who HIROC was?
 20 MR. OTTENHEIMER:
 21 A. I know who HIROC is now. It was an issue that
 22 came up in the House of Assembly, 2007, long
 23 after I was Minister. But there was, as you
 24 know, with another minister, some significant
 25 discussion on the issue of HIROC.

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1 COFFEY, Q.C.:
 2 Q. So until it was raised in May of 2007, the
 3 issue of HIROC -
 4 MR. OTTENHEIMER:
 5 A. The actual--I had--I don't recall ever hearing
 6 the actual expression of the term HIROC in
 7 that sense.
 8 COFFEY, Q.C.:
 9 Q. Okay, and the fact that they might be Eastern
 10 Health's insurers.
 11 MR. OTTENHEIMER:
 12 A. Um-hm.
 13 COFFEY, Q.C.:
 14 Q. That Eastern Health's insurers, do you recall,
 15 in terms of this whole ER/PR issue ever play a
 16 role that you were aware of?
 17 MR. OTTENHEIMER:
 18 A. Up until that point?
 19 COFFEY, Q.C.:
 20 Q. Or even afterward, while you were Minister?
 21 MR. OTTENHEIMER:
 22 A. While I was Minister?
 23 COFFEY, Q.C.:
 24 Q. Yes.
 25 MR. OTTENHEIMER:

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1 A. As a lawyer, I would certainly be mindful of
 2 the fact that liability is an issue, and
 3 always will be an issue, but I would like to
 4 say something on this point, Mr. Coffey,
 5 because it's important that I say it. I've
 6 been a lawyer for 21 years. I've practised
 7 law in this province. I have always upheld
 8 the rights of individuals, whether that be an
 9 individual accused, whether it be the rights
 10 of an individual in a civil matter, the rights
 11 of a refugee claimant in an immigration
 12 matter. It's always been the individual that
 13 I have represented. I have never represented
 14 large corporations, nor insurance companies,
 15 and I would find it personally offensive if,
 16 in fact, it was shared with me that any, that
 17 any attempt to not disclose information was
 18 for a legal reason or on the advice of an
 19 insurance company or on the advice of an
 20 insurance company's lawyer. I would find that
 21 particularly offensive. There are other
 22 components as to why disclosure did not place-
 23 -take place at that time, that I respected,
 24 and that I sought advice on, but I can say
 25 with absolute certainty, I would find it

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1 personally offensive to suggest that any delay
 2 would be a result of legal liability issues
 3 and that lawyers or insurance companies were
 4 interfering. I would find that personally
 5 offensive.
 6 COFFEY, Q.C.:
 7 Q. How about them having input into whether or
 8 not any disclosure took the form of oral
 9 disclosure versus written disclosure?
 10 MR. OTTENHEIMER:
 11 A. In terms of the lawyers themselves?
 12 COFFEY, Q.C.:
 13 Q. Yes, the lawyers, insurance lawyers being
 14 involved in that. Taking the position, for
 15 example -
 16 MR. OTTENHEIMER:
 17 A. And that forming a basis upon which not to
 18 disclose?
 19 COFFEY, Q.C.:
 20 Q. Yes.
 21 MR. OTTENHEIMER:
 22 A. I would find that offensive.
 23 COFFEY, Q.C.:
 24 Q. So I take it from that then, you have no
 25 memory of any such notion or ideas coming to

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1 you?
 2 MR. OTTENHEIMER:
 3 A. It is--I cannot rule out the fact that the
 4 issue of insurers may have been mentioned.
 5 That is quite possible. But I know in my own
 6 thinking, that would not be a determinant or a
 7 factor that I would consider, as an individual
 8 who happens to be the Minister of Health at
 9 this time, as to why disclosure should not
 10 take place. That I can say with absolute
 11 certainty. There are other physician-patient
 12 factors and that is the kind of information
 13 that I would rely on and these were clearly
 14 expressed to me throughout several meetings
 15 between myself as Minister and officials from
 16 Eastern Health. The issue of threatening
 17 litigation or the fact that liability is an
 18 issue for delay, and I repeat it because it's
 19 important for me to say it, and it reflects my
 20 true belief on this, that I would find that
 21 personally offensive if that were a reason.
 22 COFFEY, Q.C.:
 23 Q. While we're on that topic, if we could, if we
 24 could look at Exhibit P-0073 please? Now I
 25 appreciate, Mr. Ottenheimer, you were not one

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1 of the recipients of these two emails. The
 2 Commission has seen those last week. They're
 3 emails of July 19th 2005 at 8:22 a.m. from
 4 Heather Predham to Dr. Robert Williams, Dr.
 5 Donald Cook and others, and the one above is
 6 by Heather Predham at 8:36 a.m. to other
 7 individuals. But in terms of this, Dr.
 8 Williams and Dr. Cook are noted to have
 9 attended the meeting of July 21st 2005, the
 10 briefing you had. You recall they were there?
 11 The notes of your assistants did indicate they
 12 were there. Now this document, the email of
 13 8:22 a.m., describes what Heather Predham
 14 recounts as her interaction with HIROC that
 15 would have been the evening of July 18th, and
 16 when you get toward the bottom of the email,
 17 there's a reference to her having had a quick
 18 voice mail from Dan, and in this context,
 19 that'll be Dan Boone, "after my chat with
 20 HIROC," and she then says "so I guess we will
 21 have to re-evaluate where we are before we
 22 plan to send those letters, etcetera."
 23 Now at the meeting of July 21st, did the
 24 notion or idea of sending letters to patients
 25 come up?

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1 MR. OTTENHEIMER:
 2 A. You mean immediately?
 3 COFFEY, Q.C.:
 4 Q. During the meeting.
 5 MR. OTTENHEIMER:
 6 A. No, but sending letters immediately?
 7 COFFEY, Q.C.:
 8 Q. Yes.
 9 MR. OTTENHEIMER:
 10 A. That quite possibly would have formed part of
 11 the discussion on the issue of disclosure.
 12 That's quite possible. I can't rule that out.
 13 COFFEY, Q.C.:
 14 Q. And were you told that HIROC--at that meeting,
 15 were you told that HIROC had some suggested
 16 input into that, as to the timing?
 17 MR. OTTENHEIMER:
 18 A. I do not recall this discussion having taken
 19 place and I--when you say "evidence last
 20 week," I know what you're referring to because
 21 it came up in Ms. Dawe's evidence. You know,
 22 what was taking place between Eastern Health
 23 and their lawyers or their insurance company
 24 or any differences of opinion or any bickering
 25 amongst those parties, I was certainly not

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1 familiar with that.
 2 COFFEY, Q.C.:
 3 Q. Okay. Now -
 4 THE COMMISSIONER:
 5 Q. Sorry, Mr. Coffey, once again, I'm afraid
 6 we're going to forget something. Are you
 7 saying, Mr. Ottenheimer, that when Eastern
 8 Health representatives, whoever they might be
 9 -
 10 MR. OTTENHEIMER:
 11 A. Um-hm.
 12 THE COMMISSIONER:
 13 Q. - discussed the ER/PR issue with you, and in
 14 particular in relation to disclosure -
 15 MR. OTTENHEIMER:
 16 A. Um-hm.
 17 THE COMMISSIONER:
 18 Q. - then those individuals were of a one mind,
 19 in terms of the advice they were giving you or
 20 were you getting at all differences of view
 21 among them?
 22 MR. OTTENHEIMER:
 23 A. No, I was getting a collective view. From
 24 Eastern Health, doctors and -
 25 THE COMMISSIONER:

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1 Q. From Eastern Health itself, yes. You would--
 2 we know that you've seen Dr. Williams, Mr.
 3 Tilley -
 4 MR. OTTENHEIMER:
 5 A. Right.
 6 THE COMMISSIONER:
 7 Q. - Dr. Cook, whether or not you saw Dr.
 8 McCarthy and Dr. Laing at that time or at a
 9 later meeting perhaps is questionable, but
 10 over the course of that period of time, you
 11 would have seen a number of representatives
 12 from Eastern Health.
 13 MR. OTTENHEIMER:
 14 A. Um-hm.
 15 THE COMMISSIONER:
 16 Q. And for the moment, what I'm just interested
 17 in is, rising out of your answer, is whether
 18 you saw any, if you will, crack in the armour
 19 of Eastern Health or were you getting the view
 20 that Eastern Health was saying "this is how we
 21 believe it should be handled, and here's our
 22 united front?"
 23 MR. OTTENHEIMER:
 24 A. I was receiving a collective view, a united
 25 front. Obviously amongst themselves, there

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1 may have been a varying opinion. I don't know
 2 that. But the presentation to me was a
 3 collective view and a unified view on behalf
 4 of Eastern Health.
 5 COFFEY, Q.C.:
 6 Q. If we could go back please to P-0075, thank
 7 you, and this is page three of the document.
 8 Let me see. Yes, there is a reference there
 9 to, in the second last paragraph, it says
 10 "Eastern Health Vice-President of Quality
 11 Diagnostic and Medical Services, Dr. Robert
 12 Williams, has also asked that an investigation
 13 be conducted into the five-week stoppage of
 14 immunoperoxidase staining for ER/PR receptors
 15 in 2003 by Dr. Ejeckam." Now do you recall
 16 noticing that in this memo or it being a topic
 17 of conversation?
 18 MR. OTTENHEIMER:
 19 A. I can't specifically recall seeing that in the
 20 memo, but there was reference, to some extent,
 21 at the meeting. It's referenced, in fact, in
 22 one of the briefing notes, in the July 21st
 23 briefing note, of a work stoppage.
 24 COFFEY, Q.C.:
 25 Q. Yes, that is the July 21st briefing note, I'm

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1 just -
 2 MR. OTTENHEIMER:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. - or July 20th briefing note actually.
 6 MR. OTTENHEIMER:
 7 A. Um-hm. Whether or not it's from this or from
 8 some reference to the meeting itself, I'm not
 9 sure.
 10 COFFEY, Q.C.:
 11 Q. And what did you understand at that time had
 12 occurred in relation to that?
 13 MR. OTTENHEIMER:
 14 A. As I recollect that there was some stoppage of
 15 work. I had no understanding of what that was
 16 or why that happened. I understand, again, I
 17 only learned from last week that there is a
 18 memo, I believe, that was relatively detailed
 19 or explicit as to exactly what took place.
 20 The only reference in this briefing note is
 21 the fact that there was a five-week stoppage
 22 and an investigation was being carried out.
 23 That is essentially, at that time, my
 24 understanding of it. As I say, there was some
 25 brief discussion and that I was, again, given

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1 some comfort, I guess, in knowing that it was
 2 going to be looked into and investigated by
 3 Dr. Williams.
 4 COFFEY, Q.C.:
 5 Q. And you just referred to Dr. Ejeckam, you
 6 understand that there was something about
 7 briefing notes or--I'm sorry, not briefing
 8 notes, memos, Dr. Ejeckam -
 9 MR. OTTENHEIMER:
 10 A. There was some reference in the media last
 11 week, but again -
 12 COFFEY, Q.C.:
 13 Q. Okay, if we could -
 14 MR. OTTENHEIMER:
 15 A. - I can't be certain.
 16 COFFEY, Q.C.:
 17 Q. So I take it that while you were Minister of
 18 Health, the existence of three memos that Dr.
 19 Ejeckam apparently wrote in 2003 concerning
 20 ER/PR and IHC staining, that wasn't brought to
 21 your attention as the Minister?
 22 MR. OTTENHEIMER:
 23 A. That was not brought to my attention. In
 24 fact, it was only--I believe it was the
 25 Premier in the House of Assembly, sometime in

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1 2007, raised the issue of work stoppage and
 2 the existence of a memo or any detailed
 3 explanation, that was not provided to me, not
 4 that I recall.
 5 COFFEY, Q.C.:
 6 Q. So at page 1 of P-0113, I take it from what
 7 you've just told us that you had never seen
 8 these?
 9 MR. OTTENHEIMER:
 10 A. I have never seen that. Is that the memo? Is
 11 that what we're talking about?
 12 COFFEY, Q.C.:
 13 Q. Yes, this is the first of them and it's P-
 14 0113, page 1 and it's--it does, April 4, 2003
 15 and it just reads: "Kindly note that
 16 immunohistochemical stains with the following
 17 antibodies, the last two are ER/PR have
 18 remained unreliable, erratic and therefore
 19 unhelpful for diagnostic purposes."
 20 MR. OTTENHEIMER:
 21 A. I have never seen that.
 22 COFFEY, Q.C.:
 23 Q. Were you ever told or given any message to
 24 that effect, that that had been so
 25 characterized?

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1 MR. OTTENHEIMER:
 2 A. I was not.
 3 COFFEY, Q.C.:
 4 Q. If in 2005 it was known to Eastern Health that
 5 Dr. Ejeckam had written such a memo in 2003,
 6 do you think it might have been of use to you,
 7 as a Minister, to have known this?
 8 MR. OTTENHEIMER:
 9 A. I certainly would have expected to have that
 10 brought to my attention, a memo of that
 11 nature.
 12 COFFEY, Q.C.:
 13 Q. With respect to the July 20th, 2005 briefing
 14 note that you received, which is P-0075, that
 15 paragraph involving Dr. Williams being asked
 16 to do an investigation into the 2003 matter,
 17 did you ever follow up afterward in relation
 18 to whatever happened with Dr. Williams'
 19 investigation?
 20 MR. OTTENHEIMER:
 21 A. I didn't and I'd like to say why. It was
 22 short again, after this, that Eastern Health
 23 took it upon itself to conduct an internal
 24 review by using--that's perhaps not the best
 25 way of explaining it, by having external

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1 consultants brought in to review internally
 2 what was taking place. It was certainly my
 3 belief and understanding that any external
 4 consultants brought in, in this case from both
 5 British Columbia and from Mount Sinai
 6 University would have at their disposal full
 7 and complete information in order to carry out
 8 an in-depth review of the lab as it relates to
 9 this issue. And that is a review, as we know
 10 that was carried out, it was ongoing over a
 11 series of months. By the time I had left the
 12 Department of Health and Community Services,
 13 it had not been completed, but I formed the
 14 opinion and conclusion that any investigative
 15 work done by--at Dr. Williams' request, would
 16 have been part and parcel of a review that was
 17 being conducted by external consultants.
 18 COFFEY, Q.C.:
 19 Q. So after that meeting of July 21st, 2005, the
 20 matter of the 2003 stoppage of testing
 21 disappeared, in the sense it wasn't addressed
 22 afterward by you. You assumed it was being
 23 subsumed in the larger investigation?
 24 MR. OTTENHEIMER:
 25 A. That is correct.

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1 COFFEY Q.C.:

2 Q. Now sir, when you met on July 21st, were you

3 advised that there is apparently already a

4 large scale internal investigation being

5 conducted by Dr. Bev Carter?

6 MR. OTTENHEIMER:

7 A. I do not specifically recall that.

8 COFFEY, Q.C.:

9 Q. At any point do you recall ever being told

10 that she had withdrawn from that endeavour?

11 MR. OTTENHEIMER:

12 A. No, I do not.

13 COFFEY, Q.C.:

14 Q. Did you have any understanding of--were you

15 given any understanding in the summer of '05

16 as to any retesting had occurred before?

17 MR. OTTENHEIMER:

18 A. Before this issue -

19 COFFEY, Q.C.:

20 Q. Before '05. This arises, you're there in July

21 of '05 being told, we've been at this now for

22 a couple of months, you're told that there is

23 something related to IHC testing occurred in

24 '03, a stoppage -

25 MR. OTTENHEIMER:

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1 A. Uh-hm.

2 COFFEY, Q.C.:

3 Q. Did the topic come up again, well did we do

4 any retesting in '03?

5 MR. OTTENHEIMER:

6 A. Not that I recall.

7 COFFEY, Q.C.:

8 Q. Now with respect to your position, I think

9 it's--if we could look at P-0074 please. Now

10 this is an e-mail, Commissioner, you saw last

11 week. It's one of July 20th, 2005 at 9:11

12 a.m. from George Tilley to Joan Dawe and she

13 responds at 10:43 that morning to him. In the

14 body of the first e-mail, the second paragraph

15 says, Mr. Tilley says to Ms. Dawe, "I've been

16 in touch with the Minister who is edging us to

17 go public ASAP. No doubt about the need to do

18 that, but not until I know the size and shape

19 of it." So that suggests that before your

20 meeting of July 21st, he had interpreted your

21 position, presumably the one you espoused on

22 the 19th as "edging us to go public ASAP".

23 MR. OTTENHEIMER:

24 A. Uh-hm.

25 COFFEY, Q.C.:

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1 Q. So that was--would you differ with him in that

2 regard?

3 MR. OTTENHEIMER:

4 A. That was my position from the very start.

5 COFFEY, Q.C.:

6 Q. So you meet on July 21, in terms of disclosure

7 to individual patients or public disclosure,

8 what was the position that was communicated to

9 you then, Eastern Health was taking and what

10 did you communicate to them?

11 MR. OTTENHEIMER:

12 A. I understood that Eastern Health would notify

13 patients upon the return of the retesting

14 results as opposed to notifying them prior to,

15 that was my understanding at that particular

16 point in time.

17 COFFEY, Q.C.:

18 Q. How about, that would be notify individual

19 patients?

20 MR. OTTENHEIMER:

21 A. Yes, uh-hm.

22 COFFEY, Q.C.:

23 Q. What about notifying the public?

24 MR. OTTENHEIMER:

25 A. There was a preferred manner of doing this

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1 according to Eastern Health's representatives

2 and this was supported by physicians, from

3 what I understood and it was not to go public.

4 As I say, I didn't share that opinion, but the

5 Eastern Health representatives took the view

6 that they had a plan in place, supported by

7 the oncologists, supported by the

8 pathologists, the surgeons, the experts, the

9 medical professionals, they had a view that

10 there was a way of notification that in fact

11 was preferred. I accepted their professional

12 judgment on this issue and despite the fact

13 that my own personal reservation was obviously

14 not in accordance with that.

15 COFFEY, Q.C.:

16 Q. And I appreciate that as time went on,

17 certainly you met with the oncologists or

18 certain oncologists -

19 MR. OTTENHEIMER:

20 A. Uh-hm.

21 COFFEY, Q.C.:

22 Q. But before that, I'm just thinking about the

23 day of July 21 itself, because Mr. Tilley and

24 as of the 20th apparently interpreted your

25 position of the 19th as "get out there in

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1 public ASAP".
 2 MR. OTTENHEIMER:
 3 A. Uh-hm.
 4 COFFEY, Q.C.:
 5 Q. You meet on July 21, there's no record, I
 6 don't believe, now in terms of this matter,
 7 there's no reference here to, either in the
 8 written briefing of July 20th, 2005, dated
 9 July 20th, 2005, nor I don't gather in P-0159,
 10 Ms. Chaplin's notes to the effect that we
 11 should delay going public. I'm trying to get
 12 some sense of what actually happened at that
 13 meeting, because you had gone into it and Mr.
 14 Tilley understood even going into the meeting
 15 with you, what your position was.
 16 MR. OTTENHEIMER:
 17 A. Uh-hm.
 18 COFFEY, Q.C.:
 19 Q. So what were you met with, in terms of -
 20 MR. OTTENHEIMER:
 21 A. I was met with a view that Eastern Health
 22 espoused to me, as Minister, that they
 23 collectively formed the opinion that their
 24 method of notification was the preferred one
 25 and in accordance with -

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1 COFFEY, Q.C.:
 2 Q. And what was that?
 3 MR. OTTENHEIMER:
 4 A. I'm sorry.
 5 COFFEY, Q.C.:
 6 Q. As of -
 7 MR. OTTENHEIMER:
 8 A. That, as I say, would be notifying patients
 9 upon receipt of the results after retesting
 10 had occurred.
 11 COFFEY, Q.C.:
 12 Q. Now on July 21, the retesting was envisaged to
 13 have occurred--to be about to occur in St.
 14 John's?
 15 MR. OTTENHEIMER:
 16 A. Yes.
 17 COFFEY, Q.C.:
 18 Q. That was initially it was Mount Sinai, the
 19 only involvement with Mount Sinai was some
 20 consultant, potentially.
 21 MR. OTTENHEIMER:
 22 A. Uh-hm.
 23 COFFEY, Q.C.:
 24 Q. It was initially all going to be done in St.
 25 John's.

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1 MR. OTTENHEIMER:
 2 A. But it was only a matter of a couple of weeks,
 3 I believe, and the information was being
 4 forwarded to Mount Sinai or the retesting
 5 would be completed at Mount Sinai.
 6 COFFEY, Q.C.:
 7 Q. And that's done afterward.
 8 MR. OTTENHEIMER:
 9 A. Right.
 10 COFFEY, Q.C.:
 11 Q. But as July 21, the retesting was envisaged
 12 that it would go on in St. John's, itself,
 13 that was your understanding at that meeting
 14 that day, is that correct.
 15 MR. OTTENHEIMER:
 16 A. That's my understanding, I guess. If the
 17 retesting started in Mount Sinai at a later
 18 date, that's right, the retesting was still at
 19 our own laboratory here in St. John's.
 20 COFFEY, Q.C.:
 21 Q. Yes. Because when we look at P-0075, page 3,
 22 please, top of the page, the second sentence
 23 reads, "Regardless, the laboratory is still
 24 going ahead with retesting the specimens and
 25 officials will meet with the oncologists to

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1 see how they would like to proceed with
 2 informing patients of their conversion and
 3 possible change in treatment." So the initial
 4 plan, as at least put forth in writing and
 5 delivered to you on July 21 was that the
 6 retesting was going to occur in St. John's.
 7 MR. OTTENHEIMER:
 8 A. Correct.
 9 COFFEY, Q.C.:
 10 Q. And that as the results became available,
 11 officials would meet with oncologists to see
 12 how the--presumably the oncologists would like
 13 to proceed with informing patients about their
 14 conversion.
 15 MR. OTTENHEIMER:
 16 A. Correct, after the results were in.
 17 COFFEY, Q.C.:
 18 Q. Yes, on the local retest.
 19 MR. OTTENHEIMER:
 20 A. Uh-hm.
 21 COFFEY, Q.C.:
 22 Q. And that, in fact, would just be following on
 23 with, if you look back at page 1 of P-0075, at
 24 the bottom of the page, way down here, May
 25 17th, 2005 entry refers to upwards of 60

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1 people having been retested, 41 or so had
 2 converted.
 3 MR. OTTENHEIMER:
 4 A. Uh-hm.
 5 COFFEY, Q.C.:
 6 Q. And 12 had already been notified by their
 7 oncologists?
 8 MR. OTTENHEIMER:
 9 A. Uh-hm.
 10 COFFEY, Q.C.:
 11 Q. Do you see that?
 12 MR. OTTENHEIMER:
 13 A. Yes.
 14 COFFEY, Q.C.:
 15 Q. So the idea of continuing the retesting in St.
 16 John's over the then next several weeks, two
 17 to three weeks -
 18 MR. OTTENHEIMER:
 19 A. Uh-hm.
 20 COFFEY, Q.C.:
 21 Q. And letting people know or their oncologists
 22 know as the conversions came in, would be
 23 consistent with what had happened up to then?
 24 MR. OTTENHEIMER:
 25 A. Up to that date, uh-hm.

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1 COFFEY, Q.C.:
 2 Q. Did the topic come up, because when we look at
 3 just the arithmetic here, 16 plus 25 is 41; 16
 4 of these came back positive and then it ways
 5 25 converted to positive, they add up to 41.
 6 12 of these patients had been notified--I'm
 7 sorry, had been informed by their oncologists.
 8 Did the topic come up about, well what about
 9 the difference between 12 and 41? What about
 10 the other 29 patients? Why haven't they been
 11 notified if--did that come up?
 12 MR. OTTENHEIMER:
 13 A. Specifically on that point, I can't recall
 14 that, I mean, this is approaching three years
 15 ago and I really don't know with any degree of
 16 certainty whether that issue was raised--
 17 perhaps was, but I can't specifically recall.
 18 And again, this was a briefing note that was
 19 presented to me at the beginning--in all
 20 likelihood at the beginning of a session with
 21 terminology and from a conceptional point of
 22 view, information that I had seen for the very
 23 first time.
 24 COFFEY, Q.C.:
 25 Q. If we could look at P-0159 please? At page 2,

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1 Ms. Chaplin recorded there that "meeting with
 2 oncologists Monday/Tuesday of next week.
 3 Continuing to retest and report to
 4 oncologists." That's consistent with the idea
 5 of continued locally with this.
 6 MR. OTTENHEIMER:
 7 A. Uh-hm.
 8 COFFEY, Q.C.:
 9 Q. And if we could look at, please, P-060? It
 10 ends with--I apologize, that's subsequently, I
 11 apologize. Your understanding then when you
 12 left the July 21 meeting is, is look, I want
 13 to be kept briefed on this, you let them know
 14 that?
 15 MR. OTTENHEIMER:
 16 A. Correct and I believe the next meeting,
 17 briefing on this took place in early August.
 18 COFFEY, Q.C.:
 19 Q. So we're clear then, going into the meeting of
 20 July 21, it was your view, your perspective,
 21 go public with it and you voiced that to Mr.
 22 Tilley at least two days before?
 23 MR. OTTENHEIMER:
 24 A. Correct.
 25 COFFEY, Q.C.:

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1 Q. By the time the meeting ends and you may have
 2 continued to have espoused that during the
 3 meeting itself, is that -
 4 MR. OTTENHEIMER:
 5 A. Uh-hm, that's a fair statement.
 6 COFFEY, Q.C.:
 7 Q. And Mr. Tilley's position and that of those
 8 with him was no, we are doing the retesting
 9 locally, it will be done in a couple of weeks
 10 -
 11 MR. OTTENHEIMER:
 12 A. Uh-hm.
 13 COFFEY, Q.C.:
 14 Q. And we will notify the oncologist of any
 15 change of results on the retests we're doing,
 16 and presumably the oncologists will do -
 17 MR. OTTENHEIMER:
 18 A. According to those notes, yes.
 19 COFFEY, Q.C.:
 20 Q. Is that your--do they accurately reflect at
 21 least what you can recall?
 22 MR. OTTENHEIMER:
 23 A. That's, I would say, certainly close to what
 24 my understanding was. And with a follow-up
 25 meeting in early August when, of course, we

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1 were approaching the time when other decisions
 2 are being made, which again gave me the
 3 comfort of knowing that our patients in this
 4 province were being protected, which was my
 5 number one concern.
 6 COFFEY, Q.C.:
 7 Q. So--and leaving the meeting on July 21st, the
 8 decision not to go public with this, in the
 9 sense of issue a press release or hold a press
 10 conference to alert the public to this--the
 11 decision was whose? Eastern Health's or the
 12 ministries?
 13 MR. OTTENHEIMER:
 14 A. Eastern Health, as I say, I had a point of
 15 view, Eastern Health had a point of view, but
 16 at that meeting, I exceeded to the point of
 17 view of Eastern Health based on the medical
 18 evidence that they were giving me.
 19 COFFEY, Q.C.:
 20 Q. I'm going to ask you about that. What were
 21 you told about the medical evidence at that
 22 point?
 23 MR. OTTENHEIMER:
 24 A. In terms of reasons why they would not go
 25 public?

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1 COFFEY, Q.C.:
 2 Q. Yes.
 3 MR. OTTENHEIMER:
 4 A. There were several reasons that I seem to
 5 recall.
 6 COFFEY, Q.C.:
 7 Q. And I appreciate, if I could, because I want
 8 to differentiate between what you were--I
 9 understand you might have been told later.
 10 MR. OTTENHEIMER:
 11 A. Uh-hm.
 12 COFFEY, Q.C.:
 13 Q. But at that first July 21 meeting.
 14 MR. OTTENHEIMER:
 15 A. Uh-hm. Well, you know, it may have been the
 16 few days later, it's difficult for me to be
 17 precise in terms of exactly what day a certain
 18 point was raised with me; however, I feel safe
 19 in saying that the information that was being
 20 provided to me on the 21st forms largely the
 21 reasons why they believed, Eastern Health
 22 believed that they ought not to go public.
 23 And I can share those with you.
 24 COFFEY, Q.C.:
 25 Q. Well if we could, at least what you were told,

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1 you see, you have to understand the lawyers in
 2 the room are privy to e-mails and other memos
 3 and things, so--that may or may not accord
 4 with your understanding, so that's why I'm
 5 asking you about this.
 6 MR. OTTENHEIMER:
 7 A. Sure, uh-hm.
 8 COFFEY, Q.C.:
 9 Q. Is that in terms of what the message conveyed
 10 to you by Eastern Health was concerning the
 11 oncologist position on notification was as of
 12 July 21 -
 13 MR. OTTENHEIMER:
 14 A. Uh-hm.
 15 COFFEY, Q.C.:
 16 Q. - it was what?
 17 MR. OTTENHEIMER:
 18 A. The oncologists' position as of July 21, as I
 19 recall, was that they were concerned about the
 20 stress and duress that was being experienced
 21 by their patients and that any notification to
 22 patients prior to retesting would only add to
 23 that stress and duress. Secondly, I recall
 24 and I can only assume that this is the exact
 25 date, but I guess one is never absolutely

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1 sure, but I recall a discussion at that time
 2 that the oncologists were concerned about the
 3 impact that such disclosure would have on
 4 their ability to maintain a practice, in terms
 5 of coping with the reaction that would be
 6 caused by immediate disclosure, as opposed to
 7 waiting until the results had come back. And
 8 these are people, Mr. Coffey, that, as I say,
 9 practice oncology on a day-to-day basis have
 10 developed a physician/patient relationship,
 11 know their patients perhaps better than
 12 anybody and when it is expressed to me,
 13 whether it is they, themselves directly, or by
 14 representatives from Eastern Health who are
 15 speaking on their behalf, I mean, these are
 16 factors that I had heard as Minister and
 17 placed some reliance and trust upon in terms
 18 of saying to myself, well they ought to know
 19 best. They're the ones on a day-to-day basis
 20 who are dealing with patients and they ought
 21 to know best. However, that differed entirely
 22 with my belief of going public at once, and
 23 let's get this out there. But the strong
 24 overwhelming medical professional opinion that
 25 I was getting was in accordance with those

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1 points that I just raised with you.
 2 COFFEY, Q.C.:
 3 Q. Now, if we could please, after the July 21st
 4 meeting, did you discuss it with any of your
 5 fellow cabinet ministers?
 6 MR. OTTENHEIMER:
 7 A. This issue?
 8 COFFEY, Q.C.:
 9 Q. Yes.
 10 MR. OTTENHEIMER:
 11 A. No, I did not. As I say, this was an issue
 12 that was an operational issue and based on the
 13 information that was being provided to me by
 14 Eastern Health, I felt that progress was being
 15 made in terms of the issue of patient safety
 16 and that conclusion is only further enhanced
 17 by the decision that they made in terms of
 18 shutting down the lab in the province
 19 completely, sending all retesting to Mount
 20 Sinai in Toronto, and that occurred relatively
 21 quickly thereafter.
 22 COFFEY, Q.C.:
 23 Q. P-0135 please? I apologize, it's the wrong
 24 citation, as kind of occasionally they occur.
 25 Just a moment please. P-0136. Mr. Hynes'

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1 notes of that meeting indicate, end with "meet
 2 with two oncologists Monday on public notice."
 3 MR. OTTENHEIMER:
 4 A. Uh-hm.
 5 COFFEY, Q.C.:
 6 Q. Now this is--the meeting of July 21 is on a
 7 Thursday. Monday would be July 25, so do you
 8 recall what that was about, the idea of
 9 meeting with two oncologists on Monday?
 10 MR. OTTENHEIMER:
 11 A. Not -
 12 COFFEY, Q.C.:
 13 Q. Public notice.
 14 MR. OTTENHEIMER:
 15 A. Not from that note there, no, I don't.
 16 COFFEY, Q.C.:
 17 Q. Okay. If we could look at, please, P-0137,
 18 this is an e-mail of July 25, 2005. It's from
 19 Mr. Abbott to Mr. Tilley at 3:38 p.m., asking,
 20 thanking him for the e-mail that had come in
 21 at 11:44 that morning from George Tilley to
 22 John Abbott. Now, before I get into the body
 23 of Mr. Tilley's message to Mr. Abbott, Mr.
 24 Abbott does say, "I e-mailed Bob Williams
 25 earlier today to let him know that Rob Ritter

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1 would be in contact with him for our
 2 briefing." Now Rob Ritter we understand
 3 worked with the Newfoundland and Labrador
 4 Medical Association. Do you know Mr. Ritter?
 5 MR. OTTENHEIMER:
 6 A. I had met with him on a couple of occasions
 7 during my tenure as Minister, yes.
 8 COFFEY, Q.C.:
 9 Q. Do you have any knowledge of or at least at
 10 the time did you have any knowledge of the
 11 idea that the department--Mr. Abbott was
 12 asking Dr. Williams or giving Dr. Williams a
 13 heads up to the effect that Rob Ritter would
 14 be in contact with him for a briefing,
 15 presumably -
 16 MR. OTTENHEIMER:
 17 A. I haven't seen this e-mail before.
 18 COFFEY, Q.C.:
 19 Q. I understand not the e-mail, but how about the
 20 idea, the notion -
 21 MR. OTTENHEIMER:
 22 A. Not that I recall, no.
 23 COFFEY, Q.C.:
 24 Q. If we could go to the actual substantive e-
 25 mail, this is from George Tilley to John

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1 Abbott and he says, it begins, "I had a
 2 meeting Sunday morning with those involved,
 3 including an oncologist and a surgeon. We are
 4 clearly not at a point yet where we can be
 5 confident that we have a problem and if so,
 6 the extent of it. The physicians are feeling
 7 a little more comfortable based on the recent
 8 information provided, but more is needed to
 9 get to the bottom of this." And he goes on
 10 the lab officials are currently--and he talks
 11 about what they are doing. Now were you
 12 apprised or informed about the contents of Mr.
 13 Tilley's e-mail to John Abbott?
 14 MR. OTTENHEIMER:
 15 A. I don't remember seeing this before, nor am I
 16 familiar with the contents.
 17 COFFEY, Q.C.:
 18 Q. Now if we turn to the next page, because--of
 19 the exhibit, that is, P-0137, and particularly
 20 e-mail 9:36 a.m. on July 25 from John Abbott
 21 to George Tilley. It's a particular subject
 22 dealing with two health care initiatives in
 23 Labrador at the time. And after talking about
 24 that, Mr. Abbott says "P.S. anything new on
 25 the ER/PR receptor issue? Minister is quite

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1 keen on this matter." And that e-mail that we
 2 just looked at, at 11:44 a.m. is apparently a
 3 response by George to the P.S. So, well it is
 4 apparent that Mr. Abbott was informed by Mr.
 5 Tilley, got a response to his P.S. query, but
 6 if you were told about what's in this, you
 7 don't have any recollection of it?
 8 MR. OTTENHEIMER:
 9 A. I had no specific recollection to that note.
 10 It's possible Mr. Abbott may have spoken
 11 briefly with me on it, but specifically that
 12 e-mail, I don't.
 13 COFFEY, Q.C.:
 14 Q. Now the next involvement you had was what,
 15 from your memory, what did you -
 16 MR. OTTENHEIMER:
 17 A. The next meeting, because I had requested an
 18 update following our July 21st meeting, the
 19 next note that I have of a meeting is August
 20 5th, '05
 21 THE COMMISSIONER:
 22 Q. The 5th?
 23 MR. OTTENHEIMER:
 24 A. August 5th, yes.
 25 COFFEY, Q.C.:

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1 Q. Where did that occur?
 2 MR. OTTENHEIMER:
 3 A. I can only assume, Mr. Coffey, that it
 4 occurred at the Department of Health, but I
 5 can't be certain, but according to--and the
 6 only notes I have are in fact the notes, I
 7 think that were taken by Mr. Tilley at that
 8 meeting, but I'm assuming it was at the
 9 department.
 10 COFFEY, Q.C.:
 11 Q. And what happened, at least -
 12 MR. OTTENHEIMER:
 13 A. It looks to me, in just looking at the notes
 14 more of an update, reference here talking to
 15 the research, reference as well to the Mount
 16 Sinai laboratory and a term that everyone has
 17 heard often in the last little while,
 18 reference to the fact that their lab is a gold
 19 standard lab and then, of course, on page two,
 20 there's reference to the external review that
 21 I talked about earlier, bringing in the two
 22 experts, one from British Columbia and the
 23 other from Mount Sinai in Toronto. And so to
 24 me, it looks like an update, but a further
 25 indication to me that the patient safety issue

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1 is being addressed and so it gave me some
 2 comfort, once again, that we are moving
 3 towards a greater comfort, I guess, or a
 4 greater understanding that patient risk was
 5 minimized and their safety concerns was being
 6 addressed.
 7 COFFEY, Q.C.:
 8 Q. What about communication with the patients?
 9 MR. OTTENHEIMER:
 10 A. There's a follow-up meeting on the 15th of
 11 August -
 12 COFFEY, Q.C.:
 13 Q. Before we get to that, the August 5th one.
 14 MR. OTTENHEIMER:
 15 A. Right, but I know on the August--and I just
 16 want to mention, though, I can say with
 17 certainty the August 15th meeting, the issue
 18 of communication was raised extensively
 19 because we have notification to that effect.
 20 Whether it was discussed at the August 5th
 21 meeting, I cannot recall.
 22 COFFEY, Q.C.:
 23 Q. Now, at the time--I mean, August 5th is just
 24 over two weeks past July 21st.
 25 MR. OTTENHEIMER:

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1 A. Uh-hm.
 2 COFFEY, Q.C.:
 3 Q. There are a number of patients who have been
 4 retested. On July 21 you are being told that
 5 12 of them have been told that they had
 6 converted.
 7 MR. OTTENHEIMER:
 8 A. Uh-hm.
 9 COFFEY, Q.C.:
 10 Q. There are certainly, as of July 21, you
 11 understood quite a number of others had also
 12 converted, that was your understanding.
 13 MR. OTTENHEIMER:
 14 A. Uh-hm.
 15 COFFEY, Q.C.:
 16 Q. From the written briefing note you got. I
 17 mean, as Minister of Health, what was your
 18 view in terms of well, what's going to happen
 19 if this goes public without Eastern Health
 20 being involved in making it so--or the
 21 department being involved? I mean, how did
 22 you envisage that was going to play itself
 23 out?
 24 MR. OTTENHEIMER:
 25 A. Well as time went on, I guess from Eastern

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1 Health's point of view, I mean I can't be
 2 certain about this because it's difficult to
 3 speak on their behalf, but I guess as time was
 4 going on, I mean more and more patients were
 5 being retested and more notification was being
 6 made to patients. On the issue of--the issue
 7 of going public, I was firm in my belief that
 8 it should be done right away and to put it
 9 simply, on October 2nd when it did go public,
 10 I was relieved. I felt a sense of relief,
 11 it's out there, it's now public information,
 12 the key being that individuals can do what
 13 they please once they are provided with the
 14 information with respect to their own personal
 15 health. So on October 2nd when this became a
 16 public issue, I was relieved.
 17 COFFEY, Q.C.:
 18 Q. Now in relation to that, because on July 21st
 19 you had understood that the retesting was
 20 going to occur locally.
 21 MR. OTTENHEIMER:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. The public did not know that this was going
 25 on.

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1 MR. OTTENHEIMER:
 2 A. Uh-hm.
 3 COFFEY, Q.C.:
 4 Q. Presumably then they were not in a position to
 5 make decisions in terms of their own
 6 individual health interests.
 7 MR. OTTENHEIMER:
 8 A. Correct.
 9 COFFEY, Q.C.:
 10 Q. How did that square with the relief you felt
 11 on October 2nd when they were in a position to
 12 know?
 13 MR. OTTENHEIMER:
 14 A. Well again, the reason why--the reasons that
 15 were given to me by the oncologists and by the
 16 surgeons and the specialists were with respect
 17 to what they understood to be important, in
 18 terms of the physician/patient relationship
 19 and that is the advice that I accepted and
 20 that is the professional advice that I
 21 accepted.
 22 COFFEY, Q.C.:
 23 Q. Did you ever take up with them, because we'll
 24 get to the August 15th one, but even on August
 25 5, going back to July 21 -

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1 MR. OTTENHEIMER:
 2 A. Uh-hm.
 3 COFFEY, Q.C.:
 4 Q. Now, doctor or doctors, what are you going to
 5 do when the story gets published without you
 6 being involved in it being published?
 7 MR. OTTENHEIMER:
 8 A. Uh-hm.
 9 COFFEY, Q.C.:
 10 Q. I mean, it is self-evident, don't you agree.
 11 MR. OTTENHEIMER:
 12 A. It's self-evident and I can only conclude that
 13 Eastern Health itself had given some thought
 14 to that and it was just a matter of time. I
 15 mean, it was only a matter of time before this
 16 was going public anyway. There is no denying
 17 that.
 18 COFFEY, Q.C.:
 19 Q. Yes. And if it goes public without or not at
 20 the instigation of Eastern Health or the
 21 government, then the message initially
 22 delivered is outside the control of the
 23 government or Eastern Health, isn't it?
 24 MR. OTTENHEIMER:
 25 A. That is correct.

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1 COFFEY, Q.C.:
 2 Q. And doesn't there exist then the potential for
 3 misinformation to occur?
 4 MR. OTTENHEIMER:
 5 A. Well again, Eastern Health is charged with the
 6 responsibility from an operational point of
 7 view of managing this very unfortunate set of
 8 circumstances. In managing the situation on a
 9 day-to-day basis, operationally they are
 10 charged with that responsibility and they, in
 11 fact responded. It's unfortunate that it
 12 became public that way. Everyone realizes
 13 that and Eastern Health had to respond
 14 presumably immediately upon the October 2nd
 15 story going public.
 16 COFFEY, Q.C.:
 17 Q. And wasn't it from your perspective, because
 18 you're a man of some experience, it was
 19 inevitable that it was going to go public if
 20 you were going to wait five, six, eight weeks?
 21 MR. OTTENHEIMER:
 22 A. No question. It was just a matter of time
 23 and, you know, the views of the oncologists
 24 and the surgeons and the specialists, I mean,
 25 it was just a matter of time before this issue

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1 became very public.
 2 COFFEY, Q.C.:
 3 Q. With respect to--if I could--now at the
 4 meeting of August 5, there was yourself, I
 5 take it, Mr. Tilley and Mr. Abbott? At least
 6 according to your P-0133, page 3, your own
 7 diary.
 8 MR. OTTENHEIMER:
 9 A. No, there were more there than that.
 10 COFFEY, Q.C.:
 11 Q. Yes, and who else was there then?
 12 MR. OTTENHEIMER:
 13 A. According to--and again, these are Mr.
 14 Tilley's notes, there is Mr. Abbott, the
 15 deputy; Ms. Hennessey, the assistant deputy
 16 minister; Stephanie Power, who was doing some
 17 work in communications at that time; Mr.
 18 Tilley; Dr. Williams and myself.
 19 COFFEY, Q.C.:
 20 Q. And you understood at that point that Eastern
 21 Health's plan was what, in terms of
 22 communicating with patients?
 23 MR. OTTENHEIMER:
 24 A. I guess was similar to what had been explained
 25 earlier.

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1 COFFEY, Q.C.:
 2 Q. As the results came back, individual
 3 oncologist or surgeons would contact the
 4 patients?
 5 MR. OTTENHEIMER:
 6 A. Correct.
 7 COFFEY, Q.C.:
 8 Q. And the fact that this involved, by then,
 9 hundreds and hundreds of patients from all
 10 across the province -
 11 MR. OTTENHEIMER:
 12 A. Uh-hm.
 13 COFFEY, Q.C.:
 14 Q. The potential impracticality of that occurring
 15 all at the one time was never discussed.
 16 MR. OTTENHEIMER:
 17 A. Again, it was clearly just a matter of time.
 18 COFFEY, Q.C.:
 19 Q. Now, on August 5th, what, if anything, did you
 20 learn about Eastern Health's position then on
 21 the retesting, in terms of whether it was
 22 going to continue to be done locally or was
 23 going off to Mount Sinai?
 24 MR. OTTENHEIMER:
 25 A. Again, there's reference in the note there of

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1 Mount Sinai, that they had contracted with
 2 Mount Sinai, that retesting would take place
 3 in--at that institution. Again, from a
 4 patient safety point of view, I mean it was
 5 important to me to, you know, be advised of
 6 that because, again, that means our own lab is
 7 being shut down and it means that all tests in
 8 terms of retesting are being forwarded outside
 9 the province. So again, getting back to my
 10 earlier point, the patient safety issue is
 11 being addressed.
 12 COFFEY, Q.C.:
 13 Q. So was that the first time that you learned
 14 that in fact they were going to send all of
 15 these tissue samples to Mount Sinai for
 16 retesting?
 17 MR. OTTENHEIMER:
 18 A. Not sure, there's reference to it here in the
 19 note.
 20 COFFEY, Q.C.:
 21 Q. In August 5, yes.
 22 MR. OTTENHEIMER:
 23 A. Yes. I can't say with absolute certainty, it
 24 may have been prior to that.
 25 COFFEY, Q.C.:

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1 Q. How about future testing, like testing,
 2 ongoing testing for current patients?
 3 MR. OTTENHEIMER:
 4 A. That was perhaps at this time.
 5 COFFEY, Q.C.:
 6 Q. At the shut down, okay. Did you raise any
 7 question with Eastern Health at the time or
 8 your officials about well what's the problem
 9 with the machinery you got there now or the
 10 process you got there now?
 11 MR. OTTENHEIMER:
 12 A. I'm sure that came up because we have
 13 reference here to the extended--over the
 14 external review that was taking place and
 15 which is why it was important, which gave me
 16 again more comfort in knowing that there was
 17 going to be an external review by consultants
 18 on exactly what has been taking place in our
 19 own lab. So I would only conclude that that
 20 discussion, to some degree, had taken place at
 21 that time.
 22 THE COMMISSIONER:
 23 Q. Mr. Coffey, when it is convenient, we can the
 24 luncheon break.
 25 COFFEY, Q.C.:

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1 Q. Sure. When you were advised, certainly I
 2 gather by August 5 you knew or understood that
 3 Mount Sinai was going to do the retesting and
 4 continue to do the current testing.
 5 MR. OTTENHEIMER:
 6 A. Uh-hm.
 7 COFFEY, Q.C.:
 8 Q. And if they were going to do the current
 9 testing, that might--it was because of
 10 potentially some concerns about the Ventana
 11 machine.
 12 MR. OTTENHEIMER:
 13 A. Uh-hm.
 14 COFFEY, Q.C.:
 15 Q. Did anybody ever advise you in this whole
 16 scenario that Mount Sinai was using the DAKO
 17 equipment?
 18 MR. OTTENHEIMER:
 19 A. Never heard of that in any way.
 20 COFFEY, Q.C.:
 21 Q. And in relation to that and up to and
 22 including August 5, what was your, I
 23 understand and I appreciate you're not a
 24 technologist or medical physician, but what
 25 was your understanding of the nature of the

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1 problem? What was Eastern Health conveying to
 2 you as to what, if anything, they were
 3 pointing at at that point?
 4 MR. OTTENHEIMER:
 5 A. In terms of the lab?
 6 COFFEY, Q.C.:
 7 Q. Yes.
 8 MR. OTTENHEIMER:
 9 A. I don't know if they knew. It's not clear in
 10 my mind exactly the extent of the problem at
 11 that time and it seemed to me that it was
 12 still in an evaluative stage, an investigative
 13 stage without any conclusions being reached.
 14 Certainly noting was conveyed to me.
 15 COFFEY, Q.C.:
 16 Q. Thank you, Commissioner. We'll go on to
 17 August 15th when we come back after lunch.
 18 MR. OTTENHEIMER:
 19 A. Thank you.
 20 THE COMMISSIONER:
 21 Q. 2:00.
 22 (ADJOURNED FOR LUNCH)
 23 THE COMMISSIONER:
 24 Q. Mr. Coffey please.
 25 COFFEY, Q.C.:

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1 Q. Thank you, Commissioner. Mr. Ottenheimer, you
 2 a couple of times referred to the lab shutting
 3 down and I appreciate, you know, you, of
 4 course, modified that by saying well actually
 5 the ER/PR testing was being concluded or it
 6 stopped in around the beginning of August of
 7 2005 in St. John's, that was your
 8 understanding?
 9 MR. OTTENHEIMER:
 10 A. In that area, yes.
 11 COFFEY, Q.C.:
 12 Q. And what was your understanding as to how
 13 ER/PR testing fit in with or related to other
 14 types of IHC standing, IHC being
 15 immunohistochemical standing?
 16 MR. OTTENHEIMER:
 17 A. I wouldn't have that technical expertise to
 18 comment on that.
 19 COFFEY, Q.C.:
 20 Q. Did anyone at the time, like beginning all
 21 the way back to July 19th and continuing through
 22 August 5th, 2005, anyone alert you to the fact
 23 that ER and PR stains were just two of more
 24 than a hundred IHC stains that St. John's was
 25 utilizing?

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1 MR. OTTENHEIMER:
 2 A. No, I was not.
 3 COFFEY, Q.C.:
 4 Q. Because you referred to the idea, like patient
 5 safety and you referred to it repeatedly this
 6 morning -
 7 MR. OTTENHEIMER:
 8 A. Uh-hm.
 9 COFFEY, Q.C.:
 10 Q. Did you realize at the time, like by August 5,
 11 for example, that yes, ER/PR testing was being
 12 shut down in St. John's -
 13 MR. OTTENHEIMER:
 14 A. Uh-hm.
 15 COFFEY, Q.C.:
 16 Q. But the Ventana machine was continued and
 17 planned to continue to be used for more than a
 18 hundred other stains?
 19 MR. OTTENHEIMER:
 20 A. I was not aware of that.
 21 COFFEY, Q.C.:
 22 Q. Was it your understanding that the Ventana
 23 machine usage itself was being stopped in
 24 August of '05?
 25 MR. OTTENHEIMER:

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1 A. The Ventana machine?
 2 COFFEY, Q.C.:
 3 Q. Yes.
 4 MR. OTTENHEIMER:
 5 A. For the purposes of these tests, yes.
 6 COFFEY, Q.C.:
 7 Q. These tests being the ER and PR tests?
 8 MR. OTTENHEIMER:
 9 A. Correct.
 10 COFFEY, Q.C.:
 11 Q. And whether it was used for any other tests -
 12 MR. OTTENHEIMER:
 13 A. I wasn't aware of that.
 14 COFFEY, Q.C.:
 15 Q. And I take it that if you were aware that it
 16 was being utilized for perhaps as much as a
 17 hundred or more than a hundred other IHC
 18 stains, the question would arise, wouldn't it,
 19 well what's peculiar about ER/PR?
 20 MR. OTTENHEIMER:
 21 A. True.
 22 COFFEY, Q.C.:
 23 Q. Did anyone ever alert you to or inform you as
 24 to what, if anything, was peculiar or unique
 25 to ER/PR stains?

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1 MR. OTTENHEIMER:
 2 A. In terms of the testing?
 3 COFFEY, Q.C.:
 4 Q. Yes.
 5 MR. OTTENHEIMER:
 6 A. No.
 7 COFFEY, Q.C.:
 8 Q. Now you did say this morning that on October
 9 2nd when the ER/PR issue was brought out in
 10 the public media, it was by the "Independent
 11 Newspaper", that you were relieved, to use
 12 your word, that patients were hearing about
 13 the--or the public now knew about this. Were
 14 you concerned at the time, despite your
 15 relief, were you concerned that in fact breast
 16 cancer patients were hearing about this for
 17 the first time in the media?
 18 MR. OTTENHEIMER:
 19 A. It's, I guess the fact that breast cancer
 20 patients were hearing it was important and
 21 it's not, you know, the preferred way to hear
 22 news such as this, but I mean, it was done and
 23 I say, I repeat my comment from earlier, I was
 24 relieved that it was out there, it gave the
 25 individual patient the opportunity then to

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1 proceed with whatever action she or he thought
 2 best.
 3 COFFEY, Q.C.:
 4 Q. And I appreciate, because you've reiterated
 5 that point more than once, did you ever raise
 6 that point back on July 19th or 21st or August
 7 15th, for that matter, with Eastern Health's
 8 representatives? The point that, you know, if
 9 the public doesn't know, particularly breast
 10 cancer patients in the public don't know about
 11 this, they can't make their own decisions?
 12 MR. OTTENHEIMER:
 13 A. I'm sure that would have come up in the
 14 discussion at some point, yes.
 15 COFFEY, Q.C.:
 16 Q. What, if anything, was their response?
 17 MR. OTTENHEIMER:
 18 A. I go back to the point I made earlier as well
 19 that it was the collective view of the medical
 20 team, the pathologists, the oncologists, and
 21 other experts that the idea of the stress and
 22 the duress that this would cause an individual
 23 patient was of a major concern to the
 24 physicians and the medical professionals who
 25 advised me at the time, and the fact there was

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1 concern about the physicians' and oncologists'
 2 own ability to deal with so many patients all
 3 at once. And these were the types of
 4 considerations that were presented to me and
 5 upon which I relied in my acceptance of their
 6 -
 7 COFFEY, Q.C.:
 8 Q. On that latter point, nothing was any
 9 different on October 2nd?
 10 MR. OTTENHEIMER:
 11 A. Pardon me?
 12 COFFEY, Q.C.:
 13 Q. Nothing was any different on October 2nd in
 14 respect to the last point you made, which is
 15 how can we, the oncologists, handle the influx
 16 of queries.
 17 MR. OTTENHEIMER:
 18 A. True. Other than the fact that more
 19 individual results in the interim could have
 20 returned and therefore, they then be notified.
 21 COFFEY, Q.C.:
 22 Q. But they hadn't, as it turns out.
 23 MR. OTTENHEIMER:
 24 A. No, but that--in August, for example, in early
 25 August we weren't aware of that.

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1 COFFEY, Q.C.:

2 Q. So did you ever make any inquiries as to how

3 they did handle this, what they anticipated

4 was going to be an influx of questions from

5 members of the public? Did you -

6 MR. OTTENHEIMER:

7 A. Well, as I recall of course when the, you

8 know, information did go public, they

9 immediately had a very, I guess, well they had

10 a public relations campaign to immediately

11 advise patients as to the situation and there

12 were newspaper ads -

13 COFFEY, Q.C.:

14 Q. Sure.

15 MR. OTTENHEIMER:

16 A. They had a hot line set up of some sort and

17 presumably the oncologists and other

18 physicians were working to ensure that their

19 patients were given the appropriate

20 notification at that time.

21 COFFEY, Q.C.:

22 Q. But there was nothing to prevent that from

23 having occurred back in July or August, was

24 there?

25 MR. OTTENHEIMER:

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1 A. I agree.

2 COFFEY, Q.C.:

3 Q. And I appreciate you weren't privy to it,

4 you're not saying that they're weren't, in

5 fact, preparations in July to actually go

6 public, internal Eastern Health?

7 MR. OTTENHEIMER:

8 A. I have no idea. I know there was discussion

9 last week to that effect, but I have no

10 knowledge of that. As I say, I relied on the

11 best possible medical professional advice that

12 I could get at that time.

13 COFFEY, Q.C.:

14 Q. Now, sir, did you ever ask whether or not any

15 of these people you were receiving the best

16 possible professional medical advice from,

17 were involved actually in the original

18 testing?

19 MR. OTTENHEIMER:

20 A. No, I did not.

21 COFFEY, Q.C.:

22 Q. Like the idea being or relating to the

23 possibility of a conflict of interest.

24 MR. OTTENHEIMER:

25 A. I'd like to make a comment on that, if I may.

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1 COFFEY, Q.C.:

2 Q. Sure.

3 MR. OTTENHEIMER:

4 A. I mean, you know, we have a number of renown

5 oncologists and pathologists and other medical

6 professionals and, you know, who do you seek

7 advice from, I guess is the question. Who do

8 you seek advice from? These are the top

9 individuals, those individuals highly regarded

10 and highly respected in the community and as a

11 minister, I can only accept the views of these

12 highly regarded and professional individuals.

13 And the issue of conflict is an issue that I

14 did not entertain at that time. I accepted

15 the best possible medical advice that was

16 provided to me by highly regarded

17 professionals in our jurisdiction who deal

18 with patients, cancer patients on a day-to-day

19 basis.

20 COFFEY, Q.C.:

21 Q. Like, for example, the idea that to the

22 possibility to some of the local oncologists,

23 information concerning the index patient or

24 the index patient's medical condition might

25 cause one to question the ER/PR status, like

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1 the US physician did?

2 MR. OTTENHEIMER:

3 A. I'm sorry, could you repeat that?

4 COFFEY, Q.C.:

5 Q. Okay, what I'm getting at is this: did anyone

6 come along in the summer of '05 and tell you,

7 listen, Minister, we only learned in the

8 spring of '05 that certain types of patients,

9 cancer patients, should be ER positive and we

10 hadn't realized it and that caused us to do

11 some retesting and it involved our own

12 patients.

13 MR. OTTENHEIMER:

14 A. Uh-hm, that was not explained to me.

15 COFFEY, Q.C.:

16 Q. Not that kind of--like the actual personal

17 involvement, potential involvement of certain

18 oncologists in the early retesting -

19 MR. OTTENHEIMER:

20 A. Uh-hm.

21 COFFEY, Q.C.:

22 Q. That wasn't explained to you?

23 MR. OTTENHEIMER:

24 A. That was not explained to me.

25 COFFEY, Q.C.:

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1 Q. The involvement of some pathologist in the
 2 original patient's testing over the years, was
 3 that explained to you?
 4 MR. OTTENHEIMER:
 5 A. No, it was not.
 6 COFFEY, Q.C.:
 7 Q. Now, if we could go on to August 15th, 2005,
 8 which I gather after August 5th is the next
 9 time that you had any involvement in this?
 10 MR. OTTENHEIMER:
 11 A. It was my next formal briefing, that is
 12 correct.
 13 COFFEY, Q.C.:
 14 Q. How about informal briefings in between?
 15 MR. OTTENHEIMER:
 16 A. I simply don't recollect that.
 17 COFFEY, Q.C.:
 18 Q. Sure. P-0133, page 4, thank you. It's there
 19 on the screen, Mr. Ottenheimer, I take it that
 20 that's your calendar entry for August 15th,
 21 Monday, from 10:00 to 11:30 a.m. you're going
 22 to meet with or plan to meet with Dr. Kara
 23 Laing, Dr. Bob Williams, George Tilley, Ed
 24 Hunt, Moira Hennessey, re: breast cancer
 25 issue, executive board room.

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1 MR OTTENHEIMER:
 2 A. Yes.
 3 COFFEY, Q.C.:
 4 Q. Now is this a planning tool or is it a
 5 recording of something that has happened tool,
 6 or both?
 7 MR. OTTENHEIMER:
 8 A. No, this is just for appointments only.
 9 COFFEY, Q.C.:
 10 Q. Appointments, to schedule appointments.
 11 MR. OTTENHEIMER:
 12 A. Right, and not--as you can appreciate as well
 13 the names are not necessarily a complete list
 14 of names.
 15 COFFEY, Q.C.:
 16 Q. That's what I was getting at, it's not a
 17 record of actually who attended?
 18 MR. OTTENHEIMER:
 19 A. No.
 20 COFFEY, Q.C.:
 21 Q. Okay. And we do have the benefit, I take it
 22 you kept no notes, yourself, of this meeting?
 23 MR. OTTENHEIMER:
 24 A. I did not.
 25 COFFEY, Q.C.:

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1 Q. P-0160 please? These are notes, you
 2 understand of Carolyn Chaplin?
 3 MR. OTTENHEIMER:
 4 A. Yes, that's correct.
 5 COFFEY, Q.C.:
 6 Q. Now she has listed there Dr. Laing, Dr.
 7 Williams, Dr. Fleming, G would be George
 8 Tilley, Dr. Cook and Moira Hennessey.
 9 MR. OTTENHEIMER:
 10 A. Uh-hm.
 11 COFFEY, Q.C.:
 12 Q. And presumably also yourself and her as being
 13 in attendance?
 14 MR. OTTENHEIMER:
 15 A. Right, that would be the same--I have the same
 16 list.
 17 COFFEY, Q.C.:
 18 Q. Yes. And the purpose of this meeting was
 19 what?
 20 MR. OTTENHEIMER:
 21 A. This is obviously an issue of public
 22 importance and I wanted to be briefed on this
 23 relatively frequently and I had asked for a
 24 further briefing and it happened on August
 25 15th.

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1 COFFEY, Q.C.:
 2 Q. So Dr. Williams you, of course, met before
 3 this.
 4 MR. OTTENHEIMER:
 5 A. Uh-hm.
 6 COFFEY, Q.C.:
 7 Q. Mr. Tilley, Dr. Cook you met before this.
 8 Moira Hennessey was a member of your staff,
 9 so--and Dr. Fleming is who?
 10 MR. OTTENHEIMER:
 11 A. Dr. Fleming works with the Department of
 12 Health and Community Services.
 13 COFFEY, Q.C.:
 14 Q. So I take it he's sort of a staff physician?
 15 MR. OTTENHEIMER:
 16 A. That's correct.
 17 COFFEY, Q.C.:
 18 Q. In an administrative capacity?
 19 MR. OTTENHEIMER:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. And your understanding of why he was there was
 23 what?
 24 MR. OTTENHEIMER:
 25 A. I guess departmental support.

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1 COFFEY, Q.C.:

2 Q. In what context?

3 MR. OTTENHEIMER:

4 A. To have a physician who actually works in the

5 Department present to, I guess, participate in

6 the briefing session.

7 COFFEY, Q.C.:

8 Q. I take it from the perspective of--but like to

9 do what? What was he going to--what would he

10 add into the mix, as it were? What was he

11 expected to add?

12 MR. OTTENHEIMER:

13 A. Well, you know, he is a physician and perhaps

14 would have, you know, some knowledge of the

15 issue at hand and may be in a position to make

16 some contribution, as a medical doctor.

17 COFFEY, Q.C.:

18 Q. And Dr. Laing?

19 MR. OTTENHEIMER:

20 A. Yes, Dr. Laing, she's an oncologist, as I

21 understand.

22 COFFEY, Q.C.:

23 Q. Had you ever met her before this?

24 MR. OTTENHEIMER:

25 A. I'm not sure. I believe I met Dr. Laing on a

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1 couple of occasions, this being one of them.

2 She may or may not have been present at that

3 earlier meeting that we talked about, or it

4 may have been a subsequent meeting. It seems

5 to me that I had met Dr. Laing on two

6 occasions, but I cannot be absolutely certain.

7 COFFEY, Q.C.:

8 Q. And the other meeting, I'm going to suggest to

9 you, did it relate to Herceptin, do you know?

10 MR. OTTENHEIMER:

11 A. I cannot rule that out.

12 COFFEY, Q.C.:

13 Q. Okay, it's possible?

14 MR. OTTENHEIMER:

15 A. Um-hm.

16 COFFEY, Q.C.:

17 Q. And her role in this meeting, you understood

18 was what, the one of August 15th?

19 MR. OTTENHEIMER:

20 A. As a practising oncologist, you know. I

21 remember paying particular attention to Dr.

22 Laing's point of view. She had an existing

23 ongoing practice of oncology with, you know,

24 dealing with patients on a day-to-day basis

25 and that does stand out in my mind that her

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1 presence, I felt, was important to me, and

2 what she had to say had some impact on me.

3 COFFEY, Q.C.:

4 Q. So what did she have to say that had an impact

5 upon you?

6 MR. OTTENHEIMER:

7 A. If I may, may I refer to another document?

8 COFFEY, Q.C.:

9 Q. Sure, which is?

10 MR. OTTENHEIMER:

11 A. This is actually handwritten notes by Dr.

12 Williams of that meeting.

13 COFFEY, Q.C.:

14 Q. Yes, and I believe they are located at P-0138

15 please. We have a typed version of them too.

16 MR. OTTENHEIMER:

17 A. Right.

18 COFFEY, Q.C.:

19 Q. And they're entitled note number 19 here,

20 August 15th 2005, ER/PR receptor issues,

21 attendees.

22 MR. OTTENHEIMER:

23 A. Um-hm.

24 COFFEY, Q.C.:

25 Q. The Minister, Dr. Fleming, Ms. Hennessey, Mr.

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1 Tilley, Dr. Cook, Dr. Laing and Dr. Williams.

2 MR. OTTENHEIMER:

3 A. Um-hm. What I have is--I don't think this is

4 the complete note, I believe. I believe I

5 only have a portion of it. May I read what I

6 have?

7 COFFEY, Q.C.:

8 Q. Sure, go ahead.

9 MR. OTTENHEIMER:

10 A. "August 15th 2005, a third briefing was

11 provided by Eastern Health officials for the

12 Minister. Handwritten notes of the meeting by

13 Dr. Williams shows that it was attended by the

14 Minister, Dr. Fleming, Ms. Hennessey, Mr.

15 Tilley, Dr. Laing, Dr. Cook and others.

16 Williams says, and (apparently attributing to

17 Dr. Laing, but unsure) that will notify

18 everyone who is retested. Doesn't feel now is

19 the time to write the letter. Better to wait

20 until we have more information. Dr. Laing

21 said that Doctors McCarthy and Ganguly agree

22 with waiting to send something out until we

23 have more information. Notes also say,

24 Minister" and this is in quotations, and this

25 is my quote, "if patients advised as

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1 possible, a patient can do what she or he
 2 wants to do to deal with the issues.' The
 3 Minister concludes by saying he will accept
 4 best advice for now and he wants to meet again
 5 within two weeks. Eastern Health will develop
 6 what should go in a letter in the meantime."
 7 COFFEY, Q.C.:
 8 Q. And you're looking at the handwritten--or this
 9 is something -
 10 MR. OTTENHEIMER:
 11 A. No, this is--it's retyped, presumably from the
 12 handwritten note.
 13 COFFEY, Q.C.:
 14 Q. Okay. Do you know if it's that or it's, in
 15 effect, a summary of what is otherwise in the
 16 longer version of the notes?
 17 MR. OTTENHEIMER:
 18 A. I would think it's a summation, yes.
 19 COFFEY, Q.C.:
 20 Q. Summation. Now, sir, P-0138, which is up
 21 there on the screen now, you're being told,
 22 according to the fourth bullet in this
 23 exhibit, that Mount Sinai needs six to eight
 24 weeks to test or to retest that would be, and
 25 it goes on to say here or note, "the consensus

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1 re: concerns with what to say at this time,"
 2 and then they quote Dr. Laing as giving an
 3 overview of ER/PR testing, how things were
 4 then working in 2005, and how it had changed
 5 over the years and so on. It quotes her as
 6 saying that "the first samples for retesting
 7 were biased and also retested on Ventana
 8 system. Therefore, our problem, while
 9 undefined at present, may not be as bad as
 10 thought. Can't really have a value discussion
 11 until information available. Will notify
 12 everyone who is retested. Doesn't feel now is
 13 the time to write the letter. Better to wait
 14 until we have more information."
 15 Now what exactly was your understanding,
 16 on August 15th, 2005, as to what Dr. Laing was
 17 proposing would happen?
 18 MR. OTTENHEIMER:
 19 A. I should say it's the first time I've seen
 20 this, you know--other than the note that I
 21 just read, it's the first time that I've seen
 22 this extended version. I simply would not be
 23 able to comment on that, because I'm only
 24 actually seeing this for the first time.
 25 COFFEY, Q.C.:

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1 Q. From your perspective, and you had an
 2 understanding, the meeting of August 15th
 3 occurred and it ended, and people went their
 4 separate ways.
 5 MR. OTTENHEIMER:
 6 A. Yes.
 7 COFFEY, Q.C.:
 8 Q. So in mid August, you had an understanding as
 9 to what Dr. Laing's plan was.
 10 MR. OTTENHEIMER:
 11 A. Um-hm.
 12 COFFEY, Q.C.:
 13 Q. What was your understanding, as Minister, of
 14 what the plan was?
 15 MR. OTTENHEIMER:
 16 A. I guess a continuation of essentially what had
 17 been ongoing prior to that, in terms of
 18 retesting, notification back, or results back
 19 and then notification to the patient.
 20 COFFEY, Q.C.:
 21 Q. And was there any discussion on August 15th
 22 with her or anyone else in the meeting about
 23 the fact that these results are going to come
 24 back not at one time?
 25 MR. OTTENHEIMER:

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1 A. Um-hm.
 2 COFFEY, Q.C.:
 3 Q. They're going to come back at different times.
 4 Were they going to wait until all the results
 5 were back and then tell all the patients?
 6 MR. OTTENHEIMER:
 7 A. It was always my understanding that
 8 notification would take place as individual
 9 results are returned.
 10 COFFEY, Q.C.:
 11 Q. As of August 15th, 2005, did you have any
 12 understanding as to the status of retesting of
 13 samples from outside St. John's?
 14 MR. OTTENHEIMER:
 15 A. From out--from, you mean, other parts of the
 16 province?
 17 COFFEY, Q.C.:
 18 Q. Yes.
 19 MR. OTTENHEIMER:
 20 A. Not that I recall, not in particular.
 21 COFFEY, Q.C.:
 22 Q. So you don't recall anybody bringing to your
 23 attention that "we have, we, in St. John's,
 24 have yet to receive samples, except from one
 25 place outside the City?"

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1 MR. OTTENHEIMER:
 2 A. In reading some of the briefing information
 3 over the past few days, I recall some
 4 reference to that, but it doesn't stand out in
 5 my mind from a meeting three years ago, and
 6 again, you know, as we all know, the
 7 difficulty with this is that the time lines
 8 here are approaching approximately three years
 9 ago, and exact detail of a particular point is
 10 sometimes simply impossible to recall. But I
 11 do recall the point that you make, only from
 12 the point of view of the information that has
 13 recently been--that I recently read.
 14 COFFEY, Q.C.:
 15 Q. So your memory, at least without having looked
 16 at it in the past couple of weeks -
 17 MR. OTTENHEIMER:
 18 A. I have no recollection of it.
 19 COFFEY, Q.C.:
 20 Q. - you have no recollection at the time that
 21 standing out that "Mr. Ottenheimer, we're
 22 doing what we can locally in St. John's, but
 23 Grand Falls, Gander, Corner Brook, St. Anthony
 24 have to send their material in."
 25 MR. OTTENHEIMER:

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1 A. I have no specific recollection of that.
 2 COFFEY, Q.C.:
 3 Q. There's a reference in the fourth last bullet
 4 to "Dr. Cook, there is a problem with the
 5 immunoperoxidase testing." Do you remember
 6 what that was about?
 7 MR. OTTENHEIMER:
 8 A. Nothing outside the context that we were
 9 talking about, in terms--I don't remember that
 10 specifically as being a new issue being
 11 introduced.
 12 COFFEY, Q.C.:
 13 Q. Now in relation to that, because that's--if
 14 you look back at P-0075, please, page three.
 15 In the middle of the page, the reference to "a
 16 technology consultant from Mount Sinai will be
 17 reviewing our lab to assess the
 18 immunoperoxidase system," and there's a
 19 reference to asking them to look at past years
 20 results under the DAKO methodology and advice
 21 on the future direction of the immuno service.
 22 So in that paragraph, at least twice, there's
 23 a reference to immuno service and
 24 immunoperoxidase system. Now at the time, in
 25 July, and for that matter, August of 2005, did

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1 you understand that that was wider than ER/PR?
 2 MR. OTTENHEIMER:
 3 A. No, I did not.
 4 COFFEY, Q.C.:
 5 Q. Going back to P-0138, please. Now there's--
 6 and I appreciate this is August 15th. You've
 7 gotten a briefing note of July 20th 2005. Is
 8 there any reason why you did not ask for a
 9 briefing note for the August 15th meeting?
 10 MR. OTTENHEIMER:
 11 A. It happens from time to time that a meeting
 12 may take place without an immediately updated
 13 briefing note. I mean, this, in and of
 14 itself, was a briefing.
 15 COFFEY, Q.C.:
 16 Q. Oh yes, I understand that, a briefing.
 17 MR. OTTENHEIMER:
 18 A. With those individuals present who, one would
 19 think, that any new information would be
 20 updated at that time.
 21 COFFEY, Q.C.:
 22 Q. And I appreciate that, but as we've seen, I
 23 gather the notes taking at these meetings
 24 apparently is not all that perfect.
 25 MR. OTTENHEIMER:

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1 A. Um-hm.
 2 COFFEY, Q.C.:
 3 Q. Or potentially not all that perfect, and
 4 they're not audio recorded?
 5 MR. OTTENHEIMER:
 6 A. Correct, yeah.
 7 COFFEY, Q.C.:
 8 Q. So in terms of there being some record of
 9 what--in any kind of a coherent, laid out in a
 10 coherent fashion that you could look back
 11 afterward at?
 12 MR. OTTENHEIMER:
 13 A. But there are, you know, usually -
 14 COFFEY, Q.C.:
 15 Q. So there wouldn't be? There wasn't in this
 16 case?
 17 MR. OTTENHEIMER:
 18 A. There usually would be a number of individuals
 19 who would keep notes of a particular meeting,
 20 in terms of what was discussed and presumably,
 21 as well, a new briefing note may be being
 22 created from information that was received. I
 23 mean, that's always a possibility.
 24 COFFEY, Q.C.:
 25 Q. Now as it turns out, there wasn't one, I take

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1 it, arising out of this? Not on August 16th,
 2 17th, 18th, nothing like that, that you're
 3 aware of?
 4 MR. OTTENHEIMER:
 5 A. The next note--I don't know when the--the next
 6 note was, I guess, in September sometime.
 7 COFFEY, Q.C.:
 8 Q. September 30th.
 9 MR. OTTENHEIMER:
 10 A. Okay.
 11 COFFEY, Q.C.:
 12 Q. We'll see. At least the actual one that
 13 probably made it to your Department. But, I
 14 take it then, looking back on it, you can't
 15 recall any particular reason why there was no
 16 briefing note for this meeting?
 17 MR. OTTENHEIMER:
 18 A. No.
 19 COFFEY, Q.C.:
 20 Q. There's a reference to doctor--the third last
 21 bullet on P-0138 says "Dr. Laing, advised that
 22 Dr. McCarthy, Dr. Ganguly agree with waiting
 23 to send out--send something out until we have
 24 more information." Now that was more
 25 information as to what?

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1 MR. OTTENHEIMER:
 2 A. In reading that, my conclusion would be that
 3 when information was returned, upon the
 4 retesting being completed, that's when the
 5 information would be forwarded to the cancer
 6 patient.
 7 COFFEY, Q.C.:
 8 Q. And I understood though that you had--you had
 9 understood that when the information came back
 10 for individual patients as to the retest
 11 results that their physician would notify
 12 individual patients?
 13 MR. OTTENHEIMER:
 14 A. That's correct, and both -
 15 COFFEY, Q.C.:
 16 Q. Now in this -
 17 MR. OTTENHEIMER:
 18 A. - and both Dr. McCarthy and Dr. Ganguly are
 19 oncologists.
 20 COFFEY, Q.C.:
 21 Q. Yes, but with respect to this, when you look
 22 at the bullet in the middle of the page, Dr.
 23 Laing is quoted here as having said "doesn't
 24 feel now is the time to send the letter," and
 25 the last bullet says "will develop what should

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1 go in a letter in the meantime." So as of
 2 August 15th, 2005, what was the--what was this
 3 letter about? Because the letter, I'm going
 4 to suggest to you, had nothing to do with
 5 individual notification by an oncologist of a
 6 patient's results. That letter, I mean, what
 7 was that letter about?
 8 MR. OTTENHEIMER:
 9 A. I don't know that. In reading that and in
 10 seeing that, my conclusion, upon that question
 11 being asked, was with respect to notification.
 12 COFFEY, Q.C.:
 13 Q. What about the letter? What was the letter
 14 about? Notification of what? As to the fact
 15 that there was a retesting going on?
 16 MR. OTTENHEIMER:
 17 A. The results of the retesting, upon being
 18 received, so notification would be made to the
 19 individual is my--that is one possible
 20 conclusion that can be reached.
 21 COFFEY, Q.C.:
 22 Q. What I'm asking you though, here is--on August
 23 15th, there was obviously a discussion about a
 24 letter.
 25 MR. OTTENHEIMER:

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1 A. Um-hm.
 2 COFFEY, Q.C.:
 3 Q. Now letter to whom, by whom, about what, or do
 4 you know?
 5 MR. OTTENHEIMER:
 6 A. I can't be specific about that. I don't know.
 7 Unless, I mean, one possibility is that a
 8 letter going out to the individual cancer
 9 patients -
 10 COFFEY, Q.C.:
 11 Q. Yes.
 12 MR. OTTENHEIMER:
 13 A. - prior to the retesting being done. I mean,
 14 that could be another possibility.
 15 COFFEY, Q.C.:
 16 Q. Did that come up? That's what I'm getting at.
 17 Did the notion or the idea of--in fact,
 18 there's a suggestion, in fact, that it was
 19 something that you were interested in.
 20 MR. OTTENHEIMER:
 21 A. Um-hm.
 22 COFFEY, Q.C.:
 23 Q. In terms of you were pushing, leaving aside
 24 the whole public pronouncement or PR, not PR,
 25 not in a bad way, but the public pronouncement

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1 press release that individual patients should
 2 get a letter notifying them that their tissues
 3 was being retested.
 4 MR. OTTENHEIMER:
 5 A. Prior to the results coming back?
 6 COFFEY, Q.C.:
 7 Q. Yes, prior to them coming back, did that come
 8 up?
 9 MR. OTTENHEIMER:
 10 A. That's quite possible, and that would be--if
 11 you say it was something that I was interested
 12 in, it seems to me that would be consistent
 13 with my overall interest in early
 14 notification.
 15 COFFEY, Q.C.:
 16 Q. So the meeting of August 15th occurred. How
 17 strongly did you express your view at that
 18 time as to the necessity, from your
 19 perspective, to go public, as it were, right
 20 then and there?
 21 MR. OTTENHEIMER:
 22 A. I believe it's reflected in the note where I
 23 clearly state that if the patient is advised
 24 as soon as possible, the patient can do what
 25 she or he wants to to deal with the issue.

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1 That's a direct quote. It's reproduced by
 2 somebody other than me. It's reproduced by Dr.
 3 Bob Williams of Eastern Health, and so that,
 4 to me, suggests that I was emphatic on that
 5 point.
 6 COFFEY, Q.C.:
 7 Q. And I don't know if anyone is going to take
 8 issue with whether or not you said that, but
 9 just assuming for the moment you did, it
 10 sounds like something--you believe it's
 11 something you might very well have said
 12 verbatim?
 13 MR. OTTENHEIMER:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. You said it. That advice was not taken, I take
 17 it.
 18 MR. OTTENHEIMER:
 19 A. Um-hm.
 20 COFFEY, Q.C.:
 21 Q. Would you agree that, as best you can tell
 22 now, they didn't accept it?
 23 MR. OTTENHEIMER:
 24 A. That's correct.
 25 COFFEY, Q.C.:

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1 Q. And from your perspective, as the Minister of
 2 Health at the time, you were prepared to leave
 3 it in the hands of the oncologists -
 4 MR. OTTENHEIMER:
 5 A. I was -
 6 COFFEY, Q.C.:
 7 Q. - and Eastern Health at large?
 8 MR. OTTENHEIMER:
 9 A. I was prepared to accept what I considered to
 10 be the best medical, professional advice that
 11 was offered.
 12 COFFEY, Q.C.:
 13 Q. What exactly did Dr. Laing advise you was her
 14 concern or the concern she was voicing on
 15 behalf of herself and Doctors McCarthy and
 16 Ganguly?
 17 MR. OTTENHEIMER:
 18 A. I go back to the point I made earlier, and
 19 with reference to the stress of duress issue
 20 upon a patient, a patient already going
 21 through a very difficult time, and from an
 22 oncologist's point of view, recognizing that
 23 that may only result in further difficulty
 24 upon that individual. That's one point that I
 25 recall, presumably from this meeting. And

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1 again, to restate an earlier point, the issue
 2 of the ability of the oncologists to deal,
 3 within an organized way, their ability to
 4 treat their patients, raising the whole issue
 5 of physician-patient relationship.
 6 COFFEY, Q.C.:
 7 Q. And you've mentioned that a number of times.
 8 Did they explain what they meant by that?
 9 MR. OTTENHEIMER:
 10 A. it was -
 11 COFFEY, Q.C.:
 12 Q. In a practical way, what does that mean or
 13 what did you understand it meant?
 14 MR. OTTENHEIMER:
 15 A. I guess what it meant, you know, the
 16 oncologist felt it was important that they,
 17 from a management point of view, that they
 18 were able to respond to the concerns of a
 19 particular patient, and my sense was that that
 20 could best be done, from their point of view,
 21 from their professional opinion, in a more
 22 orderly way and there may be some standards
 23 that may be recognized amongst physicians or
 24 amongst specialists or oncologists that may
 25 have prompted them to believe that this was

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1 the approach that was best, I don't know. But
 2 that was certainly the view, the overriding
 3 view, of the professional--of the physicians
 4 and the medical experts to whom I listened, or
 5 to whom I sought advice or from whom I sought
 6 advice.
 7 COFFEY, Q.C.:
 8 Q. Did you make any inquiry at the time, as of
 9 mid August 2005, of the oncologist, Dr. Laing,
 10 or Eastern Health's other representatives as
 11 to whether or not if this does become public,
 12 inadvertently, today or tomorrow, as it were -
 13 MR. OTTENHEIMER:
 14 A. Um-hm.
 15 COFFEY, Q.C.:
 16 Q. - what preparation have you done to handle it?
 17 MR. OTTENHEIMER:
 18 A. There may have been some general discussion
 19 along those lines. That may have happened.
 20 COFFEY, Q.C.:
 21 Q. What about, for example, asking them then, or
 22 in the weeks before that, "have you identified
 23 who these patients are? Do you have personal
 24 contact information for them?"
 25 MR. OTTENHEIMER:

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1 A. You know, that -
 2 COFFEY, Q.C.:
 3 Q. Did that come up?
 4 MR. OTTENHEIMER:
 5 A. That's quite possible that it did, but it's a-
 6 -I mean, keep in mind, I mean, these are
 7 really operational issues and, you know, it's
 8 Eastern Health and through their offices and
 9 through their medical staff and their
 10 professional staff who were dealing with this
 11 on a day-to-day basis. It was their
 12 physicians who were dealing with their
 13 patients on a day-to-day basis. This was an
 14 operational issue, and you know, I felt that,
 15 in terms of a day-to-day management issue and
 16 the relationship between the physician and the
 17 patient that was best left to those people who
 18 are charged with that responsibility, again,
 19 on a day-to-day basis.
 20 COFFEY, Q.C.:
 21 Q. See, Mr. Ottenheimer, in mid August, this
 22 meeting, you attend, you're there as Minister
 23 to be briefed. You're given advice that, I
 24 gather, from your perspective, at least,
 25 without being a physician, you were sceptical

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1 about?
 2 MR. OTTENHEIMER:
 3 A. Um-hm.
 4 COFFEY, Q.C.:
 5 Q. The wisdom of it.
 6 MR. OTTENHEIMER:
 7 A. Well, not--I was--the issue of notification
 8 was, for me personally, a troublesome issue.
 9 COFFEY, Q.C.:
 10 Q. Sure. Now with that in mind, and you had
 11 already, on July 19th and 21st, told Eastern
 12 Health, Mr. Tilley initially and then some
 13 other people, including him, on the 21st, of
 14 your view on notification?
 15 MR. OTTENHEIMER:
 16 A. Um-hm.
 17 COFFEY, Q.C.:
 18 Q. What was the point, if you weren't going to
 19 intervene, of being briefed at all?
 20 MR. OTTENHEIMER:
 21 A. To be simply brought up to date on any changes
 22 in the process that had been initiated by
 23 Eastern Health and to be made aware of--I
 24 guess, a status report. I mean, this was
 25 obviously a critical public health issue and

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1 it was important to me, as Minister, and
 2 presumably members of the staff of the
 3 Department of Health and Community Services
 4 that would be updated and brief as to where we
 5 were or where Eastern Health was as it relates
 6 to the day-to-day management of this
 7 situation.
 8 COFFEY, Q.C.:
 9 Q. I take it that the point of such a briefing is
 10 potentially then for you to intervene
 11 operationally. Otherwise, there's not much
 12 point in being briefed, is there?
 13 MR. OTTENHEIMER:
 14 A. Well, it was never my intention to intervene
 15 operationally. I mean, that is the full
 16 responsibility of Eastern Health. In fact, it
 17 was Eastern Health's responsibility to advise
 18 me, which when I requested information or I
 19 requested an update, I and my staff would rely
 20 on the information as being presented to me,
 21 as Minister, and to us as officials in the
 22 Department.
 23 COFFEY, Q.C.:
 24 Q. Okay. Did the staff, the DM and ADM,
 25 understand that you had no intention of

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1 intervening on an operational basis?
 2 MR. OTTENHEIMER:
 3 A. I would think that that was generally
 4 recognized at that time, but you best ask
 5 them.
 6 COFFEY, Q.C.:
 7 Q. Oh yes, and I will.
 8 MR. OTTENHEIMER:
 9 A. Sure.
 10 COFFEY, Q.C.:
 11 Q. But your understanding, certainly you wouldn't
 12 be surprised, if that was your own view, that
 13 if you didn't explicitly tell them, that they
 14 might have sensed it though, in the sense of -
 15 MR. OTTENHEIMER:
 16 A. I would think so, but again, I guess, it's
 17 better that they be asked directly of that
 18 because I can't form an opinion or an
 19 impression for them.
 20 COFFEY, Q.C.:
 21 Q. In that regard, from your perspective, how
 22 much latitude would Eastern Health have in an
 23 operational sense, before you would intervene
 24 or feel it necessary to intervene? How much
 25 latitude, from your perspective?

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1 MR. OTTENHEIMER:
 2 A. Well, they would have wide latitude. I mean,
 3 these are the people with the medical
 4 expertise and these are the frontline workers
 5 dealing with patients on a day-to-day basis
 6 and one, again, has to rely on representations
 7 that they make in the best interest of their
 8 patients.
 9 COFFEY, Q.C.:
 10 Q. If we could, please, Registrar, P-0139? Now
 11 this, I appreciate, Mr. Ottenheimer, is not
 12 actually addressed to yourself, none of these
 13 emails that follow here. But when we go to--
 14 of course, the first of them in time, on the
 15 second page of P-0139, Ms. Hennessey opens
 16 with, "good morning, George. The Minister is
 17 inquiring when you will be in a position to
 18 provide another update on this. Can you let
 19 me know," and this, go back to the page
 20 before, September 1, 2005 at 9:56 a.m., and
 21 the subject is the ER/PR issue. So I take it
 22 you were, at the beginning of September,
 23 making inquiries?
 24 MR. OTTENHEIMER:
 25 A. Yes. According to this, yes.

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1 COFFEY, Q.C.:
 2 Q. And then Mr. Tilley responds, same day,
 3 setting out the position in terms of how many
 4 blocks they've sent out, and he then notes "in
 5 the meantime, we are awaiting the visits of
 6 the external experts: physician, September
 7 15, and technologist, September 20th.
 8 Expecting their reports by mid October." And
 9 now you've already indicated, in some
 10 documentation we've looked at, that the idea
 11 of using a person from British Columbia and
 12 from Toronto as outside consultants, you were
 13 aware of that by this point?
 14 MR. OTTENHEIMER:
 15 A. I was aware of that, yes.
 16 COFFEY, Q.C.:
 17 Q. And your understanding, at the time that you
 18 became aware of that initially was what was
 19 the purpose of engaging these people?
 20 MR. OTTENHEIMER:
 21 A. I guess to review the lab, to review the
 22 practices and presumably to do some
 23 investigative work as in an attempt to
 24 identify what happened.
 25 COFFEY, Q.C.:

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1 Q. And if I could, now Ms. Hennessey apparently
 2 passed this on to Mr. Abbott on the 2nd of
 3 September, because she points or says "an
 4 update from George," and "please let me know
 5 whether you want to arrange for them to come
 6 in to update the Minister. I think we should
 7 arrange an update post September 10th, once
 8 they have some test results from Mount Sinai."
 9 Now in early September 2005, were you made
 10 aware of this, that this was the situation?
 11 MR. OTTENHEIMER:
 12 A. In whose release?
 13 COFFEY, Q.C.:
 14 Q. In this, in early September of 2005, were you
 15 made aware of this information that's
 16 contained in this exchange of emails,
 17 September 1st?
 18 MR. OTTENHEIMER:
 19 A. No, I'm seeing this for the first time.
 20 COFFEY, Q.C.:
 21 Q. Okay, and I appreciate this, but I'm asking
 22 about the informational content.
 23 MR. OTTENHEIMER:
 24 A. Not that I recall, no.
 25 COFFEY, Q.C.:

1 Q. Go to P-0140, please, and now this is a--it's
 2 also a series of emails. Just a moment,
 3 please, and it's the same actual--it begins
 4 with the same exchange of emails we just
 5 looked at in P-0139. As you'll see, at the
 6 bottom of the page, there is a reference to
 7 George telling Moira, "we have sent out in
 8 excess of 200 blocks," and that was in the
 9 email we just looked at. But come up the
 10 page, September 5, 2005, Ms. Hennessey advises
 11 Mr. Tilley, "George, thanks for this. I have
 12 updated John A.. Could we arrange another
 13 briefing for the Minister post September 10th?
 14 We also need to know when Eastern Health is
 15 going to notify patients as part of the
 16 briefing."
 17 Now and George comes back with a
 18 response, "will do, George." And then Moira
 19 responds again with "thanks, I'll be in touch
 20 early next week regarding the timing of a
 21 briefing, Moira." This suggests that in the
 22 area of September 5th and 6th, that your ADM,
 23 Ms. Hennessey and Mr. Tilley were talking
 24 about or exchanging information about her
 25 needing to know when Eastern Health is going

1 Q. And in terms of Eastern Health at this point,
 2 we're getting--we're now into September of
 3 2005, had Eastern Health ever asked the
 4 Department for any extra help or assistance?
 5 MR. OTTENHEIMER:
 6 A. I remember, as I mentioned earlier,
 7 specifically saying to Mr. Tilley "is this"--
 8 or asking, "is this a resource issue, and can
 9 we be of some assistance?" and he again
 10 indicated that it was not a money issue that
 11 would rectify some of the problems that had
 12 been identified. I feel that Eastern Health
 13 were fully aware that if further assistance,
 14 whether that being the case of personnel or
 15 resources, financial resources, if they were
 16 required, my sense is that Eastern Health
 17 realized that that would have been made
 18 available in view of the offer that was made
 19 by me personally, as Minister, on the very
 20 first day that this was raised with me.
 21 COFFEY, Q.C.:
 22 Q. Now you've indicated that you--on October 2nd,
 23 2005, The Independent published a story.
 24 MR. OTTENHEIMER:
 25 A. Yes.

1 to notify patients, because at this point,
 2 patients haven't been notified. So were you
 3 made aware that this kind of exchange was
 4 going on?
 5 MR. OTTENHEIMER:
 6 A. Not made aware of it, but not overly surprised
 7 by it, because it's, again, typical of the
 8 type of discussion that was taking place in
 9 other meetings.
 10 COFFEY, Q.C.:
 11 Q. If we could, please, Commissioner, Exhibit,
 12 let me see, C-0141 please.
 13 THE COMMISSIONER:
 14 Q. C?
 15 COFFEY, Q.C.:
 16 Q. C-0141. I'm sorry, I apologize. P, I
 17 apologize, Commissioner. Before I leave it, I
 18 forgot to ask you about Dr. Fleming's
 19 involvement. Did Dr. Fleming ever give you
 20 any advice in relation to ER/PR, that you can
 21 recall?
 22 MR. OTTENHEIMER:
 23 A. Other than participating in a meeting, not
 24 that I recall.
 25 COFFEY, Q.C.:

1 COFFEY, Q.C.:
 2 Q. In relation to this. Did you have any notice
 3 beforehand that they were about to do so?
 4 MR. OTTENHEIMER:
 5 A. I remember that issue coming up before. Not
 6 that I specifically recall. It is possible
 7 that maybe, you know, the previous evening or
 8 that morning I may have been told that there
 9 may be a media story. I cannot rule that out.
 10 But I don't specifically recall that, but, you
 11 know, I cannot rule that out as absolutely.
 12 COFFEY, Q.C.:
 13 Q. If we go, please, to Exhibit P-0141? This is
 14 an e-mail, sir, from Denise Dunn sent Friday,
 15 September 30th at 5:04, 2005 at 5:04 p.m. to
 16 George Tilley, Heather Predham, Moira
 17 Hennessey, or e-mail, and Susan Bonnell. The
 18 subject is briefing note ER/PR issue and the
 19 attachment is briefing note, September 30th,
 20 2005, dot doc. And we turn to pages 2 and 3
 21 here, page 2 first, and it's entitled
 22 "Briefing Note, ER/PR Testing Results,
 23 September 30th, 2005." And it goes on into
 24 the second page. Now, I appreciate September
 25 30th, 2005 is a Friday and it came in just

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1 after 5:00, but did you see this briefing note
 2 that day or during the following three or four
 3 days?
 4 MR. OTTENHEIMER:
 5 A. You say this note was prepared by Eastern
 6 Health?
 7 COFFEY, Q.C.:
 8 Q. No, Denise Dunn. When you look on the--we'll
 9 go back to the first page, page 1 of the
 10 exhibit, she's described here as Executive
 11 Assistant to Dr. Robert Williams, Vice
 12 President, Eastern Health. It's at the very--
 13 and she's sending it to George Tilley, Heather
 14 Predham, Moira Hennessey, your ADM, and Ms.
 15 Bonnell. So it came, presumably, from Eastern
 16 Health. And it's certainly not in the
 17 briefing note format that the Department uses.
 18 MR. OTTENHEIMER:
 19 A. Um-hm.
 20 COFFEY, Q.C.:
 21 Q. So did you see this at the time or in the week
 22 following this?
 23 MR. OTTENHEIMER:
 24 A. I can't say with certainty when I saw that for
 25 the first time.

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1 COFFEY, Q.C.:
 2 Q. And that's the -
 3 MR. OTTENHEIMER:
 4 A. It may have been forwarded to an official in
 5 the Department.
 6 COFFEY, Q.C.:
 7 Q. Well, it was sent to Moira Hennessey.
 8 MR. OTTENHEIMER:
 9 A. Yes, but I -
 10 COFFEY, Q.C.:
 11 Q. You can see it on -
 12 MR. OTTENHEIMER:
 13 A. That's what I'm saying, I don't know when
 14 actually I would have seen that.
 15 COFFEY, Q.C.:
 16 Q. Do you know if you ever saw it?
 17 MR. OTTENHEIMER:
 18 A. I have it here.
 19 COFFEY, Q.C.:
 20 Q. Oh, I appreciate that now, yes. But I mean in
 21 the context of 2005?
 22 MR. OTTENHEIMER:
 23 A. In the context of then, I can't say with
 24 absolute certainty because much of the
 25 information, just looking at it very briefly

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1 here, seems to reflect information that had
 2 been known at that time. I'm just--but as I
 3 say, there may be something new there, I'm not
 4 sure.
 5 COFFEY, Q.C.:
 6 Q. Now, you've already indicated that you were
 7 aware by mid August that Eastern Health had
 8 retained a pathologist, a doctor from B.C.?
 9 MR. OTTENHEIMER:
 10 A. Yes.
 11 COFFEY, Q.C.:
 12 Q. And a technologist from Toronto to come in and
 13 review their operation and perhaps do some
 14 kind of an historical analysis or look back at
 15 what might have caused it.
 16 MR. OTTENHEIMER:
 17 A. Um-hm.
 18 COFFEY, Q.C.:
 19 Q. The problem or problems?
 20 MR. OTTENHEIMER:
 21 A. Um-hm.
 22 COFFEY, Q.C.:
 23 Q. At that time, in mid August, did you expect
 24 that you would be advised of what the results
 25 of those investigations were?

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1 MR. OTTENHEIMER:
 2 A. I would have thought that the time frame for
 3 the results of this would have been a lot
 4 earlier. For example, it says there in the
 5 last paragraph just ahead of "Current
 6 activities" that "Debriefing was held after
 7 each review and a full report from each is
 8 expected within the next few weeks."
 9 COFFEY, Q.C.:
 10 Q. Yeah.
 11 MR. OTTENHEIMER:
 12 A. I certainly was of the view that this
 13 information would be or the process would be
 14 completed and information made available
 15 sooner than later. That's, hopefully that
 16 attempts to answer your question.
 17 COFFEY, Q.C.:
 18 Q. So when you first heard in August of '05 that
 19 they're bringing two people from central and
 20 western Canada to have a look at this, you
 21 anticipated or expected that as Minister of
 22 Health, assuming you were still Minister of
 23 Health, that you'd be told what was found?
 24 MR. OTTENHEIMER:
 25 A. That was my belief, that this again goes to

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1 the point that I've stated earlier in the day
 2 on the whole issue of patient safety. And I
 3 was given comfort in knowing that this
 4 external review was being done and it was
 5 certainly my anticipation that upon its
 6 completion, which I realize now had taken a
 7 number of--had required a number of steps to
 8 be taken, but that upon completion that that
 9 information would be brought to my attention.
 10 COFFEY, Q.C.:
 11 Q. Now, you've indicated that you were relieved,
 12 and that is your word. Why were you relieved?
 13 Relief suggests a burden, I'm going to suggest
 14 to you, to feel relief is removal of a burden,
 15 almost by definition, isn't it? So why were
 16 you relieved, what burden were you carrying?
 17 MR. OTTENHEIMER:
 18 A. Well, it goes back to the basic fundamental
 19 point of notification to patients, and upon
 20 this issue becoming public patients would then
 21 be in a position to deal with their own
 22 personal health issues.
 23 COFFEY, Q.C.:
 24 Q. Sir, with respect to that and on that point,
 25 what was your understanding, as Minister of

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1 Health, by October 2nd, 2005 as to who or what
 2 demographic group were primarily breast cancer
 3 patients?
 4 MR. OTTENHEIMER:
 5 A. I guess -
 6 COFFEY, Q.C.:
 7 Q. I appreciate there are exceptions, you know,
 8 there would be exceptions to, you know, that,
 9 but who was your understanding of who this
 10 group was?
 11 MR. OTTENHEIMER:
 12 A. I guess Newfoundlanders or Labradorians that
 13 had been part of the previous testing regime
 14 where some difficulties were found, I guess.
 15 COFFEY, Q.C.:
 16 Q. Did anyone give you any understanding as to
 17 the patient demographics of who primarily
 18 suffers from breast cancer?
 19 MR. OTTENHEIMER:
 20 A. That sort of information was not shared with
 21 me.
 22 COFFEY, Q.C.:
 23 Q. The fact that it might be middle aged or older
 24 or elderly women would be the ones who are
 25 most susceptible to suffer from the disease?

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1 MR. OTTENHEIMER:
 2 A. Um-hm.
 3 COFFEY, Q.C.:
 4 Q. It's one thing to be told, well, the public
 5 will know at large, but then the public is not
 6 a uniform body, is it, and some people are
 7 more sophisticated than others. So did you
 8 address, at the time on October 2nd and 3rd
 9 any concern, did you have any concern about,
 10 okay, it's gone public, but what does that
 11 really mean for the average patient who it
 12 affects?
 13 MR. OTTENHEIMER:
 14 A. I was certainly advised that Eastern Health
 15 had a mechanism in place to respond by way of
 16 interviews, I think some television programs,
 17 newspaper articles, I believe they had a call
 18 line where individuals could find out more
 19 information. So it was certainly suggested to
 20 me that steps were being take to respond
 21 public to any inquiries that were being made
 22 by the public at large. And I remember one
 23 particular case, I believe the newspaper
 24 article was going--or the notice provision was
 25 only going in the paper on one weekend, I

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1 remember saying to somebody, I don't know if
 2 it was Eastern Health or somebody in my own
 3 Department, you know, suggesting that this go
 4 way beyond the one week, at least a second or
 5 maybe a third week. So, I mean, this
 6 information was important, that it be shared
 7 publicly. And as I say, Eastern Health gave
 8 me some comfort that this was being done.
 9 COFFEY, Q.C.:
 10 Q. Exhibit P-0142, please? Now this is an e-mail
 11 from Tansy Mundon who had by then had replaced
 12 Carolyn Chaplin as your Director of
 13 Communications?
 14 MR. OTTENHEIMER:
 15 A. Um-hm.
 16 COFFEY, Q.C.:
 17 Q. You're nodding yes. It's to John Abbott,
 18 Moira Hennessey, Ed Hunt, Darrell Hynes and
 19 yourself dated October 3rd, 2005 at 2:51 p.m.,
 20 "Update on ER/PR." Now, while we're at it,
 21 who is Ed Hunt?
 22 MR. OTTENHEIMER:
 23 A. Ed Hunt was an ADM in the Department in the
 24 area of medical services.
 25 COFFEY, Q.C.:

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1 Q. So he was there to provide what type of
2 advice?
3 MR. OTTENHEIMER:
4 A. He's a physician and I guess in this context
5 to be familiar with what information was being
6 provided and certainly if called upon by
7 officials to at least offer some advice and an
8 opinion.
9 COFFEY, Q.C.:
10 Q. And what sort of advice are we talking about
11 here? He's not, I suspect he's not an
12 oncologist?
13 MR. OTTENHEIMER:
14 A. Um-hm.
15 COFFEY, Q.C.:
16 Q. So what kind of -
17 MR. OTTENHEIMER:
18 A. Well, any advice to the extent that a
19 physician can, whether it's a general medical
20 issue or just a common question that needed to
21 be answered.
22 THE COMMISSIONER:
23 Q. On that point, Mr. Ottenheimer, what does ADM
24 Medical Services do, what's the general range
25 of responsibilities of that ADM?

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1 MR. OTTENHEIMER:
2 A. Dealing with medical services throughout the--
3 in terms of the--not in terms of the Eastern
4 Health, essentially, itself, but from a
5 Provincial point of view acting in some
6 advisory capacity and offering departmental
7 assistance to physicians, to clinics and to
8 individuals as it relates to a particular
9 practice.
10 THE COMMISSIONER:
11 Q. So would -
12 MR. OTTENHEIMER:
13 A. In fact, Dr.--I'm sorry.
14 THE COMMISSIONER:
15 Q. - Dr. Hunt, for example, be involved in
16 recruitment?
17 MR. OTTENHEIMER:
18 A. Pardon me?
19 THE COMMISSIONER:
20 Q. Would Dr. Hunt be involved, for example, in
21 recruitment, is that part of his bailiwick?
22 MR. OTTENHEIMER:
23 A. Not necessarily. In fact, of all the ADMs it
24 was Dr. Hunt perhaps that I was least familiar
25 with because he was not actually in

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1 Confederation Building. He was outside, he
2 was in a different building completely. And
3 the extent to which that he would become
4 involved with recruitment, I can't really say.
5 It seems to me that would be more of a board
6 issue, Madam Commissioner, and it would be the
7 responsibility of the individual health boards
8 in terms of recruitment and retention of
9 physicians as opposed to his role.
10 THE COMMISSIONER:
11 Q. Okay, thank you.
12 COFFEY, Q.C.:
13 Q. While we're on that topic, pathologists and
14 shortages and money.
15 MR. OTTENHEIMER:
16 A. Um-hm.
17 COFFEY, Q.C.:
18 Q. I take it that by the fall of, early fall,
19 beginning of October of 2005 had that been
20 brought to your attention as a concern?
21 MR. OTTENHEIMER:
22 A. Pathologists?
23 COFFEY, Q.C.:
24 Q. Yes.
25 MR. OTTENHEIMER:

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1 A. It was, actually. And I have a letter here,
2 if I may?
3 COFFEY, Q.C.:
4 Q. Sure.
5 MR. OTTENHEIMER:
6 A. May I refer to it? It's a letter dated
7 January 17th, 2006, just approximately two
8 months before I had left the Department. It's
9 a letter to me by Dr. Tom Costello who at the
10 time was the President of the Newfoundland and
11 Labrador Medical Association and he raised the
12 issue of pathologists in the Province and had
13 requested a meeting.
14 COFFEY, Q.C.:
15 Q. Now, this, and I appreciate that. And this
16 occurs in early '06, and I'm going to get to
17 that.
18 MR. OTTENHEIMER:
19 A. Okay.
20 COFFEY, Q.C.:
21 Q. I'm talking about in the--just September,
22 early October, 2005.
23 MR. OTTENHEIMER:
24 A. Um-hm.
25 COFFEY, Q.C.:

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1 Q. At that point.
 2 MR. OTTENHEIMER:
 3 A. Um-hm.
 4 COFFEY, Q.C.:
 5 Q. Was that an issue that had been brought to
 6 your attention?
 7 MR. OTTENHEIMER:
 8 A. The issue of the shortage of -
 9 COFFEY, Q.C.:
 10 Q. Shortage of pathologists, their concern about
 11 being under paid?
 12 MR. OTTENHEIMER:
 13 A. It certainly may have been raised, and if it
 14 were, obviously, the follow up was this
 15 particular correspondence that I received
 16 shortly thereafter to which action was taken.
 17 COFFEY, Q.C.:
 18 Q. Okay. And we will return to that. But in
 19 terms of -
 20 THE COMMISSIONER:
 21 Q. Mr. Coffey, it's your line of questioning, but
 22 let's ask the obvious question, was pathology
 23 raised in respect of a concern for the cause
 24 of this particular problem?
 25 MR. OTTENHEIMER:

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1 A. Not in any discussion that I had, Madam
 2 Commissioner, with officials or with personnel
 3 from Eastern Health?
 4 THE COMMISSIONER:
 5 Q. Nobody said to you "We don't have enough
 6 pathologists, we can't possibly cover all the
 7 work we've got to do. That might be our
 8 answer to this problem.", that kind of thing?
 9 I'm not saying that necessarily that specific
 10 thing, but.
 11 MR. OTTENHEIMER:
 12 A. Sure, um-hm. That may, in due course, have
 13 been identified as an area of concern.
 14 However I don't recall specifically it being
 15 put in those terms. I did, however, as I just
 16 mentioned to Mr. Coffey, I did receive this
 17 letter in early '06 from the Medical
 18 Association on the point of shortage of
 19 pathologists in the Province.
 20 THE COMMISSIONER:
 21 Q. Yeah.
 22 COFFEY, Q.C.:
 23 Q. But it may have been discussed before you got
 24 the letter by one or more others -
 25 MR. OTTENHEIMER:

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1 A. In a general way that could be. And there may
 2 have been discussion, for example, with the
 3 Deputy Minister or with the Associate Deputy
 4 Minister with respect to Board Services,
 5 that's quite possible.
 6 COFFEY, Q.C.:
 7 Q. But not with you, anyway?
 8 MR. OTTENHEIMER:
 9 A. Not that I -
 10 COFFEY, Q.C.:
 11 Q. Not that you recall?
 12 MR. OTTENHEIMER:
 13 A. Not that I recall, no.
 14 COFFEY, Q.C.:
 15 Q. Okay. If we could, P-0142, it's an e-mail, as
 16 I've indicated, at 2:51 on the 3rd of October.
 17 It's advising yourself and others that Dr.
 18 Williams has done a follow-up interview with
 19 Carolyn Stokes. Eastern Health has contacted
 20 Deanne Stokes-Sullivan at the Telegram.
 21 Another piece, John. And she says, "I
 22 discussed with Susan the merits of doing a
 23 press release. She advised that the strategy
 24 in July was that they would notify patients
 25 before they went public so they decided

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1 against the news release. She indicated she
 2 had the support of the Department with this
 3 approach. They now feel that the 'horse has
 4 left the barn' and the media that were
 5 interested in this story have already covered
 6 it." Now, when you received this e-mail on
 7 October 3rd, now what were your thoughts on
 8 this?
 9 MR. OTTENHEIMER:
 10 A. The e-mail I find somewhat troublesome. I
 11 mean, we're dealing with a very sensitive
 12 personal issue and the tone is somewhat
 13 troublesome. The reference there of the
 14 support of the Department with the approach I
 15 have some difficulty with. And overall
 16 there's a tone issue to that e-mail that is,
 17 you know, I have some difficulty with.
 18 COFFEY, Q.C.:
 19 Q. And what is it about what the--what do you see
 20 problematic other than the tone?
 21 MR. OTTENHEIMER:
 22 A. Well, the issue there it states "the support
 23 of the Department" with this approach. I
 24 mean, it's -
 25 COFFEY, Q.C.:

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1 Q. That's Susan Bonnell apparently having told
 2 Tansy, that that's what it suggests here?
 3 MR. OTTENHEIMER:
 4 A. Yeah.
 5 COFFEY, Q.C.:
 6 Q. That Susan -
 7 MR. OTTENHEIMER:
 8 A. Just the language I find is a bit overdrawn
 9 and does not reflect the accurate sentiment
 10 certainly of the Minister of Health of that
 11 day.
 12 COFFEY, Q.C.:
 13 Q. So if Tansy is recounting accurately what she
 14 says that Susan told her, which is that Susan
 15 had the support of the Department of Health
 16 with this approach, the one just described in
 17 the two sentences before that, I take it then
 18 that you would beg to differ if she's talking
 19 about the Minister of Health because you
 20 didn't -
 21 MR. OTTENHEIMER:
 22 A. That's correct.
 23 COFFEY, Q.C.:
 24 Q. So if there was support of the Department, it
 25 wasn't by John Ottenheimer, it must have been

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1 by a DM or an ADM or someone else?
 2 MR. OTTENHEIMER:
 3 A. If it's used in that context.
 4 COFFEY, Q.C.:
 5 Q. Yes. Ms. Mundon goes on to say, "I requested
 6 for" quote--I'm sorry, quote, chaptalized,
 7 "'FREQUENTLY ASKED QUESTIONS' I requested for
 8 those to be posted to the web site so that
 9 people would have easy access to information.
 10 I tend to agree with Susan this time with the
 11 news release. It seems that the opportunity
 12 for a news release to be issued in a proactive
 13 manner has passed. I believe we should
 14 continue to monitor the coverage and the
 15 reaction. If we did issue a press release at
 16 this point it would be picked up by local
 17 newspapers and would probably draw attention
 18 to the issue unnecessarily." Now, you
 19 received this e-mail?
 20 MR. OTTENHEIMER:
 21 A. Um-hm.
 22 COFFEY, Q.C.:
 23 Q. What did you think about the comments in the
 24 last paragraph?
 25 MR. OTTENHEIMER:

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1 A. You know, as I say, the tone and that tone I
 2 have some difficulty with, there's no doubt
 3 about that. It does not reflect the view or
 4 the sentiment of the Department. I mean, this
 5 is a very sensitive personal issue, as I've
 6 just said, and the tone is somewhat troubling.
 7 COFFEY, Q.C.:
 8 Q. Did you take it up with Tansy Mundon or Moira
 9 Hennessey or John Abbott?
 10 MR. OTTENHEIMER:
 11 A. Not that I recall, not that I recall. I'm
 12 just looking at this here right now, but I
 13 don't recall taking them to task on this. But
 14 in reading it, it is troublesome.
 15 COFFEY, Q.C.:
 16 Q. Because it's the last couple of lines
 17 suggests, don't they, that it, would be the
 18 news release, if we did issue, which would be
 19 presumably the Department, at this point, it
 20 would be picked up by local newspapers and
 21 would probably draw attention to the issue
 22 unnecessarily. Now, you have told us this
 23 morning and you repeated it this afternoon
 24 that from your perspective attention, you
 25 wanted attention drawn to it?

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1 MR. OTTENHEIMER:
 2 A. This defeats the whole purpose, doesn't it?
 3 COFFEY, Q.C.:
 4 Q. So -
 5 MR. OTTENHEIMER:
 6 A. No, I agree, I agree, no, no, that the
 7 language is not well chosen, there's no
 8 question about that, in that particular e-
 9 mail.
 10 COFFEY, Q.C.:
 11 Q. But not only isn't the language well chosen,
 12 but if in fact that's the approach, ie -
 13 MR. OTTENHEIMER:
 14 A. I agree.
 15 COFFEY, Q.C.:
 16 Q. - hope it goes away, keep one's head down,
 17 which is what it suggests -
 18 MR. OTTENHEIMER:
 19 A. No, no, it's a troublesome e-mail. It sends
 20 the wrong message.
 21 THE COMMISSIONER:
 22 Q. Mr. Coffey, at your convenience we'll take the
 23 afternoon break.
 24 COFFEY, Q.C.:
 25 Q. Yes, thank you. Commissioner, if we could

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1 just turn to 0143, P-0143, that is, and I'm
 2 just going to--Mr. Ottenheimer, these are
 3 simply and just in passing, they're only
 4 included for the following point, that this
 5 happens to be October 5th, 2005 at 4:41 p.m.
 6 from Tansy to the same individuals as in the
 7 prior e-mail, including yourself, "CBC On Line
 8 Story." The second page--sorry, the second
 9 page, if we could? Just a second, please? Go
 10 back a bit. Now this is copies, while I'm at
 11 it, on this issue, to, cc'ed to Carolyn
 12 Chaplin and Josephine Cheeseman?
 13 MR. OTTENHEIMER:
 14 A. Um-hm.
 15 COFFEY, Q.C.:
 16 Q. And Carolyn Chaplin, we understand, of course,
 17 was no longer with the Department?
 18 MR. OTTENHEIMER:
 19 A. Right.
 20 COFFEY, Q.C.:
 21 Q. She was with whom at this point, do you know?
 22 MR. OTTENHEIMER:
 23 A. She moved to the private sector. I'm not sure
 24 exactly where at that time, but she -
 25 COFFEY, Q.C.:

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1 Q. Was Carolyn in the private sector or with the,
 2 somewhere with the Premier's office or -
 3 MR. OTTENHEIMER:
 4 A. Oh, I'm sorry, no, you're right, actually, she
 5 did actually go to Cabinet Secretariat -
 6 COFFEY, Q.C.:
 7 Q. Cabinet Secretariat, the Premier's office.
 8 MR. OTTENHEIMER:
 9 A. - before going to the private sector.
 10 COFFEY, Q.C.:
 11 Q. Yeah.
 12 MR. OTTENHEIMER:
 13 A. You're correct.
 14 COFFEY, Q.C.:
 15 Q. Yeah, it's Cabinet Secretariat, you're
 16 correct. And Josephine Cheeseman, who is she?
 17 MR. OTTENHEIMER:
 18 A. She also works in the communications branch of
 19 Cabinet Secretariat.
 20 COFFEY, Q.C.:
 21 Q. And so the fact that they are cc'ed, I take it
 22 that, as you were the recipient of this e-
 23 mail, that would have alerted you to the fact
 24 that the Cabinet Secretariat was being kept in
 25 the loop, as it were?

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1 MR. OTTENHEIMER:
 2 A. That's correct.
 3 COFFEY, Q.C.:
 4 Q. For the media coverage. If you go to page 3
 5 of the same exhibit, there it is. Sorry,
 6 apologize. I'll do this more slowly. This is
 7 an e-mail of October 6th, 2005 from Tansy
 8 Mundon, again to the same individuals, this
 9 time including, I think, Susan Bonnell in a
 10 different e-mail address, sending you a copy
 11 of Peter Gullage's story in the Globe and
 12 Mail. And again, we turn the page, page 4 of
 13 the exhibit indicates Carolyn Chaplin and
 14 Josephine Cheeseman got a copy.
 15 MR. OTTENHEIMER:
 16 A. Um-hm.
 17 COFFEY, Q.C.:
 18 Q. Page 5 of the exhibit, October 20th, 2005 from
 19 Tansy Mundon, again to the same individuals
 20 with the exception of Susan Bonnell,
 21 forwarding a story entitled, "Unreliable Tests
 22 Give Lessons To All Labs", October 20th, 2006
 23 from CBC News. And this one is--just a
 24 moment, please? It's page 5. This is copied
 25 to Tara Furlong. Do you know who Tara Furlong

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1 is?
 2 MR. OTTENHEIMER:
 3 A. Tara Furlong worked as an assistant in
 4 communications in the Department of Health and
 5 Community Services.
 6 COFFEY, Q.C.:
 7 Q. Okay.
 8 MR. OTTENHEIMER:
 9 A. And may still be there, I'm not sure.
 10 COFFEY, Q.C.:
 11 Q. Okay. And finally, just one of--page 6 of the
 12 exhibit, October 20th, 2005 8:08 a.m.--October
 13 20th, I'm sorry. This is "Unreliable Test
 14 give results"--in fact, that's the one I just
 15 looked at. I apologize. I want to just go
 16 back one page to page 5, Commissioner, I
 17 apologize, I skipped over it. October 12th,
 18 2005, 3:07 p.m., again to a number of
 19 individuals from Tansy Mundon. And she says,
 20 "In case we didn't realize that CBC was back,
 21 they are, and the number of media requests
 22 reflects it." And there are a number of
 23 references there to various topics. With
 24 respect to this entire matter of being kept in
 25 the loop, as it were, in terms of media

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1 coverage, was that routine?
 2 MR. OTTENHEIMER:
 3 A. In terms of forwarding copies of media
 4 releases?
 5 COFFEY, Q.C.:
 6 Q. Yes.
 7 MR. OTTENHEIMER:
 8 A. Yeah, it would be. Each morning as the
 9 Minister, I would, in a file folder, receive
 10 media clippings from local newspapers,
 11 national newspapers, provincial newspapers and
 12 this was quite normal on any topic on a
 13 regular basis.
 14 COFFEY, Q.C.:
 15 Q. Thank you, Commissioner.
 16 THE COMMISSIONER:
 17 Q. All right, then, we'll take 15 minutes. Thank
 18 you.
 19 (RECESS)
 20 THE COMMISSIONER:
 21 Q. Please be seated. Mr. Coffey.
 22 COFFEY, Q.C.:
 23 Q. Thank you, Commissioner. If we could look at
 24 P-0091, please? Mr. Ottenheimer, I only open
 25 this because, of course, it's not directed at

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1 yourself, it was from George Tilley to
 2 Patricia Pilgrim, caboned to Bob Williams, but
 3 it raises a topic as of October 6th, 2005.
 4 Mr. Tilley is referring to "I just had a
 5 conversation with Dave Diamond. Says that he
 6 and Susan Gillian would like the CEOs to come
 7 together to talk about the follow-up process
 8 on the ER/PR issue. He is not feeling
 9 comfortable that they are ready to respond if
 10 called." And he goes on to talk from there
 11 about what should be done about that. As
 12 Minister at the time, in early October of
 13 2005, up to that point and at that point had
 14 you had any dealings with Eastern Health about
 15 how, if at all, they were keeping the other
 16 health authorities informed about this?
 17 MR. OTTENHEIMER:
 18 A. Not specifically, no.
 19 COFFEY, Q.C.:
 20 Q. So your understanding was who was charged with
 21 the responsibility of insuring that there was
 22 some coordination?
 23 MR. OTTENHEIMER:
 24 A. I would think the CEOs of the four health
 25 authorities would have taken it upon

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1 themselves to, you know, share information and
 2 to keep one another apprised of any
 3 developments in this topic.
 4 COFFEY, Q.C.:
 5 Q. Okay. But from your--as the Minister you
 6 didn't intervene or -
 7 MR. OTTENHEIMER:
 8 A. I didn't. As you know, we had an ADM at Board
 9 Services. She may have taken it upon herself
 10 to act in a coordinating capacity and to help
 11 CEOs throughout the Province on this issue.
 12 My guess is that would have happened, but
 13 again, it's a role that either the CEOs
 14 themselves or with the assistance of the ADM
 15 departmentally that may have been carried out
 16 in that fashion.
 17 COFFEY, Q.C.:
 18 Q. Commissioner. If we could, please, Registrar,
 19 look at Exhibit P-0124? Page 4, please? Now
 20 this is a, it's on Department of Health and
 21 Community Services is the title, "Briefing
 22 Note, October 3rd, 2005." And if we go to
 23 page, the second page of it, it's indicated to
 24 be prepared by Moira Hennessey, approved by
 25 John Abbott. Now, I just while I'm at it, I

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1 see that that's typed, Prepared by" and
 2 "Approved by"?
 3 MR. OTTENHEIMER:
 4 A. Yes.
 5 COFFEY, Q.C.:
 6 Q. There is no signature or initials here on the
 7 sheet of paper?
 8 MR. OTTENHEIMER:
 9 A. That's correct.
 10 COFFEY, Q.C.:
 11 Q. What was the practice as of the beginning of
 12 October of 2005 within Government, to your
 13 knowledge, about whether or not anybody had to
 14 actually physically sign off on a briefing
 15 note?
 16 MR. OTTENHEIMER:
 17 A. It's my understanding that at this time that
 18 was not required. However, it's equally my
 19 understanding that within the past year or so
 20 there's now a policy adopted that I believe
 21 the Minister must initial a briefing note
 22 before it is circulated. As I say, I'm no
 23 longer in politics and I don't know what the
 24 practice is, but I seem to recall that within
 25 the recent past, prior to my leaving politics,

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1 that that was a new practice that had been
 2 adopted.
 3 COFFEY, Q.C.:
 4 Q. And do you have any recollection of whether or
 5 not new practice, in fact, arose out of the
 6 ER/PR matter or a briefing note relating to
 7 it?
 8 MR. OTTENHEIMER:
 9 A. I really can't recall that.
 10 COFFEY, Q.C.:
 11 Q. Can't recall.
 12 MR. OTTENHEIMER:
 13 A. I don't know.
 14 COFFEY, Q.C.:
 15 Q. Okay. When we look at this, at page 4 of the
 16 P-0124, the issue is "Testing of breast cancer
 17 patients at St. John's hospitals." And then
 18 there's a heading, "Background." And then
 19 there's a "Current Status" and then it's two
 20 names, Moira Hennessey and John Abbott. Now,
 21 this format, which is they use the words "The
 22 Issue" in bold print, "Background" and
 23 "Current Status", was that almost a
 24 standardized format for at least certain types
 25 of briefing notes, informational briefing

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1 notes?
 2 MR. OTTENHEIMER:
 3 A. It looks to me to be typical of a briefing
 4 note that I would receive. However, not all
 5 are the same. For example, in House of
 6 Assembly briefing notes there's a copy,
 7 "Anticipated questions" "Anticipated
 8 responses", that type of thing. However, the
 9 one dated October 3rd that you're referring to
 10 now, to me it looks to be similar to a typical
 11 briefing note.
 12 COFFEY, Q.C.:
 13 Q. You--this October 3rd, 2005 briefing note, I
 14 take it this was prepared in response to or in
 15 reaction to the October 2nd, 2005 Independent
 16 newspaper story?
 17 MR. OTTENHEIMER:
 18 A. I would think so because the last bullet talks
 19 about Dr. Williams doing an interview with NTV
 20 today, so I would think.
 21 COFFEY, Q.C.:
 22 Q. Yes. That's on the--actually, if we go to it,
 23 that's right there, the last bullet on page 2.
 24 When we look at this, just to go back, you
 25 would have gotten this on October 3rd. Did

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1 you read it?
 2 MR. OTTENHEIMER:
 3 A. Yeah, I would say, yes. It was perhaps put on
 4 my desk or in my in basket and I would have, I
 5 would have reviewed it, yes.
 6 COFFEY, Q.C.:
 7 Q. Now, here under "Background" begins by a
 8 reference to the in '97 DAKO was semi-
 9 automated/manual system. It being replaced in
 10 2004 by the automated Ventana. Reference to
 11 patient, the 2005 patient changes, back to '02
 12 having a change in result in '05, four other
 13 patients tested, retesting them being
 14 expanded. Sensitivity of Ventana system
 15 brought into question. Now, the second-last
 16 bullet under "Background" before I get to
 17 that, I take it the first three bullets
 18 related information that you had already
 19 understood to be the case? Information there
 20 -
 21 MR. OTTENHEIMER:
 22 A. Yes, (Unintelligible, 568, tape 4). Um-hm.
 23 COFFEY, Q.C.:
 24 Q. First three bullets you would have understood
 25 that they -

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1 MR. OTTENHEIMER:
 2 A. They seem to, you know, they appear to give an
 3 accounting of a series of events.
 4 COFFEY, Q.C.:
 5 Q. Yeah. And but you had already known this
 6 before October 3rd, the information contained
 7 in those?
 8 MR. OTTENHEIMER:
 9 A. This would have been information that the
 10 Department would have been aware of prior to
 11 that, yes.
 12 COFFEY, Q.C.:
 13 Q. Okay. The fourth bullet, the reference to "A
 14 representative of Ventana visited the
 15 laboratory in July to review use and practices
 16 of the Ventana system. In their written
 17 report they say that they found the system to
 18 be operating as expected and that the
 19 procedures used by technicians were
 20 appropriate and as trained." Now, was this
 21 news to you at this point?
 22 MR. OTTENHEIMER:
 23 A. That may have been brought to my attention
 24 previously, I don't know. It was there in the
 25 background information and I accepted that as

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1 reliable information. Again, I mean, this is
 2 a document that is prepared by, prepared by an
 3 ADM with experience in this area and approved
 4 by my Deputy Minister.
 5 COFFEY, Q.C.:
 6 Q. Now, when we look at this, there's no where in
 7 this document that the source of that
 8 information is spelled out, is there?
 9 MR. OTTENHEIMER:
 10 A. Not in the briefing note itself, correct.
 11 COFFEY, Q.C.:
 12 Q. When you saw that bullet, the one dealing with
 13 the Ventana and July, did that cause you to
 14 question, at the time, well, why are we
 15 retesting then the Ventana ER/PR results if
 16 apparently the machine is working fine and the
 17 technicians are using procedures that are
 18 appropriate?
 19 MR. OTTENHEIMER:
 20 A. I guess it's a precaution that was being taken
 21 at the time and I accepted the statement as a
 22 positive report in what was a very difficult
 23 issue. But again, it was moving forward in
 24 the sense of attempting to put at ease, I
 25 guess, a variety of concerns that had arisen

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1 and had been in existence for some time. So I
 2 viewed this as a positive report.
 3 COFFEY, Q.C.:
 4 Q. And I understand that -
 5 MR. OTTENHEIMER:
 6 A. And the other, you know, there's a point I
 7 think that I have to make here, as well, I
 8 mean, as a minister, you know, there are just
 9 so many documents and so many reports and so
 10 many updates on a variety of issues. And I'll
 11 give you an example, I mean, the briefing book
 12 for the House of Assembly can--it would not be
 13 unusual in the Department of Health and
 14 Community Services for a briefing book to
 15 contain briefing notes on 80 or 90 different
 16 topics. And you know, the minister of the
 17 day, regardless of who the minister may be,
 18 you know, when a briefing note comes in, I
 19 mean, it's not always given that, you know,
 20 that sort of analytical detail, that
 21 prosecutorial evaluation. I mean, we have to
 22 put some faith, presumably, on the expertise
 23 and the experience of those who departmentally
 24 are working on your behalf, and in this
 25 particular case on information that is being

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1 provided to the Department by Eastern Health.
 2 COFFEY, Q.C.:
 3 Q. And in respect of that, while we're on the
 4 topic, briefing notes, this is the first
 5 briefing note prepared on this topic by your
 6 department for you, this one?
 7 MR. OTTENHEIMER:
 8 A. Previous?
 9 COFFEY, Q.C.:
 10 Q. By your Department. Eastern Health had one
 11 from July 20th, but that's Eastern Health's,
 12 and September 30th os Eastern Health's, as
 13 well?
 14 MR. OTTENHEIMER:
 15 A. Right. But we had briefings, of course -
 16 COFFEY, Q.C.:
 17 Q. Oh, briefings. No, briefing note.
 18 MR. OTTENHEIMER:
 19 A. - by the Department and with--I'm sorry, by
 20 Eastern Health with officials from the
 21 Department present.
 22 COFFEY, Q.C.:
 23 Q. But this is the first briefing -
 24 MR. OTTENHEIMER:
 25 A. But in terms of an actual note -

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1 COFFEY, Q.C.:
 2 Q. This is it?
 3 MR. OTTENHEIMER:
 4 A. But a variety of meetings that had taken place
 5 -
 6 COFFEY, Q.C.:
 7 Q. Oh, yeah.
 8 MR. OTTENHEIMER:
 9 A. - since I was first advised in July of '05.
 10 COFFEY, Q.C.:
 11 Q. I understand that. But this is the first such
 12 briefing note by your own department for you
 13 as Minister?
 14 MR. OTTENHEIMER:
 15 A. The first actual briefing note subsequent to a
 16 variety of meetings and updates and briefings
 17 that had taken place. I guess another point,
 18 too, Mr. Coffey, is that we are now
 19 approaching the time when the House of
 20 Assembly is about to open for the fall
 21 session, so that's generally a time when
 22 briefing notes tend to become a little big
 23 more frequent and information being provided
 24 to ministers to update him or her on a
 25 particular topic.

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1 COFFEY, Q.C.:

2 Q. Now the--and you did refer--this is not a

3 House of Assembly briefing note, P-0124, page

4 4 is not -

5 MR. OTTENHEIMER:

6 A. Not specifically for the House.

7 COFFEY, Q.C.:

8 Q. No.

9 MR. OTTENHEIMER:

10 A. But certainly could be used for the House.

11 COFFEY, Q.C.:

12 Q. Now, there were, though, they're called

13 question and answers briefing note for the

14 House of Assembly in relation to this topic,

15 weren't there? And I guess -

16 MR. OTTENHEIMER:

17 A. There were, there were a couple of, from what

18 I can recall, yes.

19 COFFEY, Q.C.:

20 Q. And we'll get those in a moment. But with

21 respect to 80 or 90 such notes that might be

22 in the briefing note file for the Minister of

23 Health.

24 MR. OTTENHEIMER:

25 A. Um-hm.

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1 COFFEY, Q.C.:

2 Q. The ones relating to ER/PR while you were

3 Minister, I take it did they fall into the

4 kind of top 10 or 12 potential topics?

5 MR. OTTENHEIMER:

6 A. Certainly this issue was within the top 10, I

7 would say, yes.

8 COFFEY, Q.C.:

9 Q. And on that point I take it it never did come

10 up in the House of Assembly while you were

11 Minister?

12 MR. OTTENHEIMER:

13 A. I'd like to comment on that, okay.

14 COFFEY, Q.C.:

15 Q. Because I'm going to ask you -

16 MR. OTTENHEIMER:

17 A. Sure.

18 COFFEY, Q.C.:

19 Q. I'm asking you, it didn't come up, did it?

20 MR. OTTENHEIMER:

21 A. It did not come up and -

22 COFFEY, Q.C.:

23 Q. And were you surprised by that?

24 MR. OTTENHEIMER:

25 A. I was amazed by it. I mean, here we are, the

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1 House of Assembly opens each year generally

2 early mid November until generally maybe the

3 second, third week of December. An ordinary

4 session of the fall sitting of the

5 legislature, it is probably five, six week.

6 It's the shorter of the two sessions, the

7 spring session being much longer because it's

8 the budgetary session. The ER/PR issue became

9 public, as we all know, on October the 2nd.

10 The only session that I sat as the Minister of

11 Health and Community Services was the fall

12 session of '05 because by the time the spring

13 session of '06 arrived I was no longer in the

14 Department. I went to the House of Assembly

15 each day fully briefed, in a position to

16 respond to questions, participate ind debate,

17 if necessary, and on not one occasion, not one

18 occasion was I questioned by the opposition on

19 the very serious issue of ER/PR testing. As I

20 say, it was a four, five, six weeks session of

21 the House, and on no occasion was I asked a

22 question by my opposition or by the opposition

23 members. I wish to also make a point, and

24 it's--and I think I have to make the point,

25 it's political in nature, but it is

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1 troublesome to hear some of the comments that

2 are being made by my former political counter-

3 -former political colleagues, I guess, in a

4 general sense, as politicians, I remember last

5 week hearing Ms. Jones having some difficult

6 commentary with respect to my role as the

7 Minister at that time. She was my critic, Mr.

8 Coffey, she was the critic for the Department

9 of Health and Community Services and on no

10 occasion was there a question asked by her and

11 this was days after and weeks after in the

12 House of Assembly after this issue becoming

13 public. Ms. Michael, her party was

14 represented in the House of Assembly. At no

15 time was a question asked of me as the

16 Minister of Health and Community Services

17 during the fall session of the House. In

18 addition to that, I have never done a scrum

19 with the media, I have never responded to a

20 question by the media, I have never been

21 asked. And when I say responded to, I have

22 never been asked. I have never been asked to

23 make a public statement by the media on this

24 issue, never asked to participate in a scrum

25 by the media. I never made--I've never had

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1 any request to make any representation as
 2 Minister on this issue publicly. And this--
 3 and I was still the Minister for Health and
 4 Community Services for another approximately
 5 four months before I had left in March of
 6 2006. I think it's important that I say that
 7 because -
 8 COFFEY, Q.C.:
 9 Q. Well, Mr. Ottenheimer, if you hadn't said it,
 10 I was going to ask you about it, okay.
 11 MR. OTTENHEIMER:
 12 A. Okay, well, thank you for -
 13 COFFEY, Q.C.:
 14 Q. - in terms of -
 15 MR. OTTENHEIMER:
 16 A. - sharing with me the fact that you were going
 17 to ask me about that, but -
 18 COFFEY, Q.C.:
 19 Q. Yeah, I was going to ask you.
 20 MR. OTTENHEIMER:
 21 A. - it's important -
 22 COFFEY, Q.C.:
 23 Q. No, sure.
 24 MR. OTTENHEIMER:
 25 A. - that I say that because it perhaps puts in

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1 some context where we were on this issue in
 2 2005 as opposed to three years later, now
 3 realizing what has occurred since then. And
 4 it's important, I think, that we all
 5 understand the nature of what questions were
 6 not asked, what issues were not raised, and
 7 what points were not requested at that
 8 particular time.
 9 COFFEY, Q.C.:
 10 Q. And with respect to that can you offer any--at
 11 the time, because I take it at the time you
 12 full expected -
 13 MR. OTTENHEIMER:
 14 A. Um-hm.
 15 COFFEY, Q.C.:
 16 Q. - to be asked questions in the fall session in
 17 '05 and/or by the media in the fall of '05 or
 18 the winter of '06?
 19 MR. OTTENHEIMER:
 20 A. Um-hm.
 21 COFFEY, Q.C.:
 22 Q. That you fully expected that on the ER/PR
 23 issue? You're nodding yes?
 24 MR. OTTENHEIMER:
 25 A. I would have thought, yes.

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1 COFFEY, Q.C.:
 2 Q. Yeah.
 3 MR. OTTENHEIMER:
 4 A. Certainly by the opposition parties.
 5 COFFEY, Q.C.:
 6 Q. Now, with respect to did you have any thought
 7 at the time or can you offer any explanation
 8 as to why you weren't, did you have any
 9 thoughts at the time, well, why isn't anyone
 10 asking me about this?

1 MR. OTTENHEIMER:
 2 A. It was seen by everybody presumably as an
 3 operational issue. It was an issue that was
 4 being managed on a day-to-day basis by Eastern
 5 Health and their officials. I can understand
 6 the media thinking that way and the public
 7 thinking that way. I am confused as to why
 8 the Opposition would have thought that way, in
 9 the fall of '05. There were opportunities to
 10 question me in the House, as the sitting
 11 Minister of Health and Community Services,
 12 long after it became public. But they chose
 13 not to.
 14 COFFEY, Q.C.:
 15 Q. And sir, you certainly realized or understood

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1 the importance of it?

2 MR. OTTENHEIMER:

3 A. Um-hm.

4 COFFEY, Q.C.:

5 Q. And we're going to look at a number of House

6 of Assembly briefing notes, one in November

7 and one in December.

8 MR. OTTENHEIMER:

9 A. Yes.

10 COFFEY, Q.C.:

11 Q. Of '05.

12 MR. OTTENHEIMER:

13 A. Um-hm.

14 COFFEY, Q.C.:

15 Q. I'm going to suggest to you though that

16 although you didn't get a question, that

17 wouldn't have prevented you from actually

18 making some comment upon it, would it?

19 MR. OTTENHEIMER:

20 A. If I were asked to make a--if I were asked to

21 comment on this issue, I would have been,

22 number one, obligated and secondly, pleased to

23 do it, to update the House of Assembly as best

24 I could. But it is not the norm for a

25 Minister to stand when it is only indirectly

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1 relating to the Department, to simply stand

2 and make a statement. What is normal, and

3 what is usual, and what is the practice, is

4 for a Minister to respond to questions by an

5 informed Opposition who wants to seek out

6 answers to questions in the public interest.

7 That's what is normal and as a Minister of the

8 day, that's what I would have been prepared to

9 do to the best of my ability, with the

10 information that I had been provided with, if,

11 in fact, the questions were asked.

12 COFFEY, Q.C.:

13 Q. Now we're looking at P-0124, page five,

14 please? This is the second page of that

15 October 3rd briefing note, and it says, in the

16 second bullet there, "Eastern Health is also

17 sending letters to the surgeons and other

18 attending physicians on the 16 to 20

19 individuals whose treatment could be impacted

20 based on the Mount Sinai testing results. The

21 physicians will then determine the follow-up

22 action for these patients. The focus is on

23 notifying patients--physicians of the alive

24 patients regarding the findings. This process

25 will continue as test reports are received

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1 from Mount Sinai."

2 And a couple of different issues arise

3 potentially from that. There's a reference to

4 "alive patients." What was your understanding

5 in terms of the deceased at that point?

6 MR. OTTENHEIMER:

7 A. There was a comment made in one of the

8 briefing sessions that I--one of the sessions

9 that was held for me that in terms of the

10 retesting, that patients would be obviously

11 retested first, and then at the end of the

12 process, samples of deceased patients would

13 then be forwarded, and in terms of

14 notification, it was my understanding as well

15 at the time that, from a notification point of

16 view, families would be notified upon the

17 return of any results. And when I say

18 families, I mean families of those who were

19 deceased. That was my understanding at that

20 time.

21 COFFEY, Q.C.:

22 Q. Now here, as of October 3rd, when we look

23 through this briefing note, there's a

24 reference in the third large bullet on the

25 second page of the briefing note, page five of

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1 the exhibit, to "Eastern Health is setting up

2 a consumer telephone line where patients can

3 obtain additional information on the ER/PR

4 receptor issue." It concludes with a

5 reference to, as you pointed out, Dr. Williams

6 having done an interview with NTV today.

7 Nowhere in this is there a reference to

8 Eastern Health actually contacting, as of that

9 point, individual patients to tell them that

10 they are being retested. There's no reference

11 in this. So was it your understanding, as of

12 October 3rd, 2005, that as of that point, no

13 decision had been made to let individual

14 patients know that their tissue sample was

15 being retested? Was being. Not had been,

16 was.

17 MR. OTTENHEIMER:

18 A. On that date?

19 COFFEY, Q.C.:

20 Q. Yes.

21 MR. OTTENHEIMER:

22 A. I can't confirm that, on that specific date.

23 COFFEY, Q.C.:

24 Q. But there's no reference here to it.

25 MR. OTTENHEIMER:

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1 A. And it's quite possible that these briefing
 2 notes are far from perfect. Where there's
 3 information that may have been relevant that
 4 is omitted, that is quite, quite possible.
 5 COFFEY, Q.C.:
 6 Q. Is it also quite possible that as of October
 7 3rd, 2005, Eastern Health had not made a
 8 decision to contact individual patients to
 9 tell them that they were--their tissue was
 10 being retested? They had not yet made that
 11 decision.
 12 MR. OTTENHEIMER:
 13 A. That could be, and from an operational point
 14 of view, I wouldn't know that.
 15 COFFEY, Q.C.:
 16 Q. Now it's a bit more than operational, isn't
 17 it, because it involves letting the public
 18 know.
 19 MR. OTTENHEIMER:
 20 A. Notification, yeah. On that exact date, I
 21 wouldn't be familiar with that.
 22 COFFEY, Q.C.:
 23 Q. So as of that date, as of October 3rd, the day
 24 after the newspaper, first newspaper story,
 25 and the day of an NTV interview, as of that

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1 day, all that you knew, as Minister, is that
 2 it's gone public, and as the test results come
 3 back, individual patients will be notified.
 4 But other than that, there was nothing else?
 5 MR. OTTENHEIMER:
 6 A. On that particular day, that was perhaps the
 7 extent of my understanding.
 8 COFFEY, Q.C.:
 9 Q. There is, in the second last bullet on the
 10 second page of the October 3rd briefing note,
 11 page five of P-0124, reference to "an external
 12 peer review by the chief pathologist of
 13 British Columbia Cancer Institute and chief
 14 technologist from Mount Sinai Hospital was
 15 conducted September 15 to the 22nd, 2005, to
 16 review current practices and procedures within
 17 the laboratory service. Debriefing was held
 18 after each review and a full report from each
 19 is expected within the next few weeks."
 20 That's the same language as the September 30th
 21 briefing note, which you may or may not have
 22 seen.
 23 MR. OTTENHEIMER:
 24 A. Um-hm.
 25 COFFEY, Q.C.:

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1 Q. Now the reference to an external peer review,
 2 first four words of that, was that any kind of
 3 code to you that this is going to be kept
 4 secret?
 5 MR. OTTENHEIMER:
 6 A. No, it was not.
 7 COFFEY, Q.C.:
 8 Q. And I say code in the sense of because others,
 9 you know, I understand it, even Ms. Dawe told
 10 us that if it was peer review, she wouldn't
 11 expect to be told what was in the report.
 12 MR. OTTENHEIMER:
 13 A. Um-hm.
 14 COFFEY, Q.C.:
 15 Q. At the time, from your perspective -
 16 MR. OTTENHEIMER:
 17 A. No, it did not. I mean, I accepted that as
 18 general language usage and I did not see that
 19 as something that would not be kept from me.
 20 COFFEY, Q.C.:
 21 Q. Or that would be? You didn't see it as
 22 something that would be kept from you?
 23 MR. OTTENHEIMER:
 24 A. Yes.
 25 COFFEY, Q.C.:

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1 Q. You expected to see these reports?
 2 MR. OTTENHEIMER:
 3 A. Correct.
 4 COFFEY, Q.C.:
 5 Q. Or at least a summary of them?
 6 MR. OTTENHEIMER:
 7 A. That is correct.
 8 COFFEY, Q.C.:
 9 Q. There's a reference there to "a debriefing was
 10 held after each review."
 11 MR. OTTENHEIMER:
 12 A. Um-hm.
 13 COFFEY, Q.C.:
 14 Q. Did you ask anybody at this point what was
 15 said in the debriefing?
 16 MR. OTTENHEIMER:
 17 A. I accepted from the reference in this bullet
 18 of the briefing note that this was an exercise
 19 that was ongoing. I understood as well that
 20 after the debriefing, there was an
 21 implementation period, and I also understood
 22 that after the implementation period, there
 23 would be a final and conclusive report by both
 24 the chief pathologist and the chief
 25 technologist with respect to their works and

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1 their findings and their conclusions. I made
 2 the decision that this was work in progress,
 3 that it was a process that had not yet been
 4 completed. To receive information on just
 5 portion by portion or bit by bit was not
 6 something that I felt was the best way to
 7 receive information in this way. I was
 8 interested in receiving a completed package
 9 with final conclusions upon completion of
 10 implementation and for that reason, I decided
 11 to wait until the final results had been
 12 reached and shared with me, as the Minister.
 13 COFFEY, Q.C.:
 14 Q. Okay. Well, hold that thought, okay, because
 15 I'll come back to that. Exhibit P-0124,
 16 please, page six and seven. This is a
 17 briefing note. It's Department of Health and
 18 Community Services. The title is testing of
 19 breast cancer patients at St. John's
 20 hospitals. The top right-hand side, it's
 21 copied to Premier, R. Reid, which is
 22 presumably is Ross Reid, B. Crawley, Brian
 23 Crawley, E. Matthews, Elizabeth Matthews, B.
 24 Taylor be Brian Taylor, J. Paddock, R.
 25 Thompson, Robert Thompson, S. Barnes. I

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1 apologize for not being able to name the first
 2 names of some of those that are listed here.
 3 S. MacDonald, G. Cake and J. Mullaley. Now
 4 who are they? And it's dated October 5, 2005.
 5 Who are they, that group?
 6 MR. OTTENHEIMER:
 7 A. That would comprise individuals who worked
 8 within both the Premier's office and Cabinet
 9 Secretariat.
 10 COFFEY, Q.C.:
 11 Q. If we turn to page seven of this exhibit, the
 12 second page of the briefing note, it says
 13 "prepared by M. Hennessey, J. Abbott,
 14 Department of Health and Community Services.
 15 Reviewed by B. Cooper, S. MacDonald, Cabinet
 16 Secretariat, dated October 5, 2005, Executive
 17 Council October 5, 2005," Registry stamp at
 18 the bottom of the page there. See that?
 19 MR. OTTENHEIMER:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. So I take it then that this is what? This is
 23 a briefing note prepared by the Department for
 24 the Cabinet Secretariat and Executive Council?
 25 MR. OTTENHEIMER:

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1 A. According to this information, yes.
 2 COFFEY, Q.C.:
 3 Q. Well, were you involved in asking that this be
 4 prepared?
 5 MR. OTTENHEIMER:
 6 A. Not that I recall.
 7 COFFEY, Q.C.:
 8 Q. Did you know it was being prepared?
 9 MR. OTTENHEIMER:
 10 A. I don't remember that. In fact, just looking
 11 at it quickly, it looks to be very similar to
 12 the October 3rd one.
 13 COFFEY, Q.C.:
 14 Q. In fact, if you check it line for line, word
 15 for word, you'll find that the only difference
 16 is in the phrasing of the issue.
 17 MR. OTTENHEIMER:
 18 A. I see.
 19 COFFEY, Q.C.:
 20 Q. The issue on the page four, and I'll read it,
 21 without going back, the one you saw on October
 22 3rd is "testing of breast cancer patients at
 23 St. John's hospitals." At page six, the issue
 24 is "media coverage regarding potential breast
 25 cancer diagnostic errors with ERIHA," and the

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1 title is inserted at page six, "testing of
 2 breast cancer patients at St. John's
 3 hospitals." There was no title in the one you
 4 had.
 5 MR. OTTENHEIMER:
 6 A. So the content is the same.
 7 COFFEY, Q.C.:
 8 Q. So, and if my general conclusion in that
 9 regard is wrong, I'm sure one of the counsel
 10 here will correct it, but you, I take it,
 11 would not normally see a briefing note
 12 prepared for Executive Council?
 13 MR. OTTENHEIMER:
 14 A. I don't recall seeing or knowing. I don't
 15 recall knowing that this was being forwarded,
 16 and to answer your question, no, it is quite
 17 possible, I mean, I am the Minister of the
 18 Department, it's quite possible that I would
 19 see a briefing note being forwarded to
 20 Executive Council, but specifically this one,
 21 particularly where it seems to be identical to
 22 the one dated two days earlier, I perhaps did
 23 not see this.
 24 COFFEY, Q.C.:
 25 Q. If we could, please--just a moment please,

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1 Commissioner. Exhibit P-0145, please. Now
 2 this is an email. It's from Angela Bull--
 3 sorry, it's from Betty Donahue to Angela Bull.
 4 Betty Donahue is the secretary to the Deputy
 5 Minister. Who is Angela Bull?
 6 MR. OTTENHEIMER:
 7 A. She is the Ministerial secretary to the
 8 Minister of Health and Community Services.
 9 COFFEY, Q.C.:
 10 Q. So she was working for your office at the
 11 time?
 12 MR. OTTENHEIMER:
 13 A. She worked for the office of the Minister, the
 14 Minister of the day, whoever that minister may
 15 be.
 16 COFFEY, Q.C.:
 17 Q. Sure, and on October 28th, toward the bottom
 18 of this text, October 28th 2005, John Abbott
 19 had been apparently sent an email at 3:49
 20 saying "are you available to brief the
 21 Minister on November 14th in preparation of
 22 the re-opening of the House of Assembly, say
 23 late morning? We may also be holding a
 24 separate workshop on wait times that day for
 25 you and your colleagues, in light of the

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1 particular agreement on wait times."
 2 And then the email above, later the same
 3 day, and it is from Ms. Donahue saying that
 4 she has blocked this day for yourself, and so
 5 I take it that she would have arranged for
 6 this for you, between John Abbott and her, to
 7 get you briefed on the ER/PR.
 8 MR. OTTENHEIMER:
 9 A. In terms of setting up a time?
 10 COFFEY, Q.C.:
 11 Q. Yes.
 12 MR. OTTENHEIMER:
 13 A. Yes, oh that's certainly the way it appears,
 14 yes.
 15 COFFEY, Q.C.:
 16 Q. Go to, please, Exhibit P-0147, and this is
 17 again a series of emails around November 2nd
 18 and November 1st. I believe relating to--and
 19 following on the October 28th email we just
 20 looked at. They're trying to arrange for a
 21 briefing, and the last of them, Darrell Hynes,
 22 at the top of the page there, page one of P-
 23 0147, says November 2, 2005, to Angela Bull
 24 and John Abbott, "definitely, and please
 25 include Tansy." And he is saying yes to the

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1 email below, "would you ask the Minister if
 2 and when he would like a briefing from George
 3 Tilley and Bob Williams." And so I take it
 4 then that you wanted to be fully briefed in
 5 terms of ER/PR before the House opened that
 6 fall?
 7 MR. OTTENHEIMER:
 8 A. I was interested in, obviously, being brought
 9 up to date on this issue, fully expecting
 10 issues arising, now that the matter is public.
 11 COFFEY, Q.C.:
 12 Q. Okay. Now, sir, you did--there was a meeting
 13 on November 17th 2005, and we'll be dealing
 14 with that in a moment, but if I could, please,
 15 if you could bring up P-0092, please? Now
 16 this is an email the Commission has seen last
 17 week. It's from--the email of October 18th,
 18 2005. It's from Mr. Boone to Heather Predham
 19 and to two individuals at HIROC, and I just
 20 want to be clear on this, the text of it is
 21 there, I gather you've--I think you referred
 22 to it as having heard of it, having it brought
 23 up last week. This relates to Mr. Boone
 24 expressing his initial reaction, "I do not
 25 agree with sending this letter at this time,"

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1 and it goes on from there talking about it.
 2 So in October and November of 2005 and
 3 December of 2005, no one ever brought to your
 4 attention that HIROC's lawyer, Dan Boone, was
 5 involved in giving advice on the sending of a
 6 letter by Eastern Health?
 7 MR. OTTENHEIMER:
 8 A. I was not aware of that.
 9 COFFEY, Q.C.:
 10 Q. If we could please, Exhibit P-0149? If I
 11 could, before we go to that, and I apologize,
 12 Commissioner, P-0096, please. Now this is an
 13 email. I appreciate that it was not addressed
 14 to you, but certain of the topics in it, I
 15 just want to ask if they were brought to your
 16 attention at the time. This is an email, at
 17 the bottom of the page here, from Moira
 18 Hennessey to George Tilley, November 3rd, 2005
 19 at 14:07 hours. Subject is ER/PR. This is
 20 your ADM communicating with the CEO of Eastern
 21 Health as of November 3rd, and bear in mind
 22 that they're already talking about setting up
 23 a briefing for you.
 24 "Hi, George. Can you give me an update
 25 on the contacting of patients? Where are we

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1 and when will all patients be contacted? We
 2 need to ensure that the Minister can state all
 3 patients have been contacted when the House
 4 opens later this month. Also, have you
 5 received the report from the Chief Pathologist
 6 at the BC Cancer Institute and the chief
 7 technologist at Mount Sinai? If yes, can you
 8 give me a quick update to reflect in the
 9 Minister's House of Assembly note? Thanks,
 10 Moira."
 11 Now in respect of the first matter, in
 12 terms of the update on the contacting of
 13 patients, she asserts that "we need to ensure
 14 the Minister can state all patients have been
 15 contacted when the House opens later this
 16 month." Now contacted about what?
 17 MR. OTTENHEIMER:
 18 A. Contacted as to one of two things, I would
 19 think, the fact that tests are being retested.
 20 COFFEY, Q.C.:
 21 Q. Yes.
 22 MR. OTTENHEIMER:
 23 A. Or the results of tests, if in fact they have
 24 been received. I presume one or the other.
 25 COFFEY, Q.C.:

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1 Q. So those for whom the results have been
 2 received?
 3 MR. OTTENHEIMER:
 4 A. Um-hm.
 5 COFFEY, Q.C.:
 6 Q. I appreciate you had understood from the
 7 beginning that people would be told -
 8 MR. OTTENHEIMER:
 9 A. Yes.
 10 COFFEY, Q.C.:
 11 Q. - the results as they came back.
 12 MR. OTTENHEIMER:
 13 A. Um-hm.
 14 COFFEY, Q.C.:
 15 Q. Did you, by the beginning of November, did you
 16 have any understanding as to whether there was
 17 any panel involved in this, any review panel
 18 that would be looking at the results and
 19 sending out medical advice, as it were?
 20 MR. OTTENHEIMER:
 21 A. I recall reference to a board of specialists,
 22 oncologists, pathologists and surgeons, who
 23 would review the results as they returned,
 24 prior to notification. So I do have some
 25 recollection of that.

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1 COFFEY, Q.C.:
 2 Q. Did anyone explain to you the purpose of that?
 3 MR. OTTENHEIMER:
 4 A. I guess to assess the results and from a
 5 professional point of view, to, I guess, and
 6 advising the oncologists. I don't know if the
 7 treating oncologist was involved with that
 8 notification at that time, or I guess from the
 9 point of view of having some assessment which
 10 would be of assistance to the individual
 11 patient.
 12 COFFEY, Q.C.:
 13 Q. That was the way it was explained to you, or
 14 your understanding?
 15 MR. OTTENHEIMER:
 16 A. In that sense, yes.
 17 COFFEY, Q.C.:
 18 Q. With respect to the patients whose test
 19 results had not yet come back, but apparently
 20 you wanted to be able to state that they had
 21 all been contacted about the retesting -
 22 MR. OTTENHEIMER:
 23 A. Um-hm.
 24 COFFEY, Q.C.:
 25 Q. - when had that arisen? Because the last

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1 going off, October 3rd briefing note, there's
 2 no sign in that that the individual patients
 3 are about to be told that you are being
 4 retested.
 5 MR. OTTENHEIMER:
 6 A. Um-hm.
 7 COFFEY, Q.C.:
 8 Q. So when had that occurred in between then and
 9 now, November?
 10 MR. OTTENHEIMER:
 11 A. Well, I guess the question is being asked here
 12 by an ADM on my behalf, to give us an update
 13 on that particular point.
 14 COFFEY, Q.C.:
 15 Q. But like how--where had you learned or when
 16 did you first learn that Eastern Health was
 17 actually contacting individual patients to
 18 tell them that "you are being retested?"
 19 MR. OTTENHEIMER:
 20 A. Once--I mean, once this issue went public and
 21 the patients then would have some information
 22 with respect to what the status of this
 23 overall situation is, at some point, I mean,
 24 the conclusion is that patients would be
 25 notified on that point that you just raised.

1 COFFEY, Q.C.:

2 Q. But do you recall when it was that you first

3 learned that was going on?

4 MR. OTTENHEIMER:

5 A. I don't recall, Mr. Coffey, the exact date. I

6 truly don't.

7 COFFEY, Q.C.:

8 Q. Do you recall whether or not you were advised

9 about whether there was some debate about

10 whether that should occur, and if so, whether

11 it should occur by phone call or by a letter?

12 MR. OTTENHEIMER:

13 A. Not specifically. I know phone calls were

14 made.

15 COFFEY, Q.C.:

16 Q. Yes.

17 MR. OTTENHEIMER:

18 A. Because there's a subsequent briefing note to

19 that effect, but that debate, I'm not familiar

20 with.

21 COFFEY, Q.C.:

22 Q. There's also, the second paragraph of that

23 November 3rd, 1407 hours email from Moira

24 Hennessey to George Tilley, also refers to the

25 report from the chief pathologist and chief

1 Minister on November 17th to brief him for the

2 house. In the meantime, if there is some

3 immediate need you have in the interim, I ask

4 that you touch base with Bob Williams," signed

5 George. If we could go to P-0097, please.

6 Now, this is the e-mail, actually, it's two e-

7 mails again. The first in time, the bottom of

8 the page, from Moira Hennessey sent Thursday,

9 November 3, 2005 at 2:56 p.m. which is about

10 half an hour after she received the advice

11 from Mr. Tilley that he was out of town. She

12 sends this to Dr. Robert Williams. She says

13 "hi, Bob, can you please give me an update on

14 where you are with the contacting of patients.

15 I understand the process is ongoing and there

16 have been some problems. Also, have you

17 received the report from the BC pathologist

18 and the Mount Sinai technologist? If yes,

19 what is the general finding(s)," and she goes

20 on to say "we have to complete the first draft

21 of the House of Assembly briefing notes by

22 tomorrow."

23 This then, at the top of the page, is

24 sent by Denise Dunn to Heather Predham. Now

25 sir, with respect to this, it's the same

1 technologist, and she's looking for a quick

2 update to reflect in the Minister's House of

3 Assembly note.

4 MR. OTTENHEIMER:

5 A. Um-hm.

6 COFFEY, Q.C.:

7 Q. So I take it that at that point in time, as of

8 early November 2007, you wouldn't have bene

9 surprised if such a quick update had appeared

10 in a briefing note?

11 MR. OTTENHEIMER:

12 A. I would not have.

13 COFFEY, Q.C.:

14 Q. You would not have been surprised?

15 MR. OTTENHEIMER:

16 A. In response to that question, I would not have

17 been surprised, no, in response to that

18 question.

19 COFFEY, Q.C.:

20 Q. If we could look at the top of the page there,

21 which is Mr. Tilley's response, at 2:15 p.m.,

22 same day, to Moira, everybody else, sends the

23 response to Dr. Robert Williams. He says

24 "Moira, I am in Ottawa. I know a briefing

25 meeting is being held with--set up with the

1 questions really for Dr. Williams to whom

2 Moira had been--Moira Hennessey had been

3 redirected by Mr. Tilley. Now in the early

4 November of 2005, did Moira Hennessey or John

5 Abbott bring to your attention the fact that

6 Moira was inquiring as to what the general

7 findings were in relation to those two

8 reports, and did Mr. Abbott or Ms. Hennessey

9 tell you that they were looking for it?

10 MR. OTTENHEIMER:

11 A. That they were inquiring at that time?

12 COFFEY, Q.C.:

13 Q. Yes.

14 MR. OTTENHEIMER:

15 A. I cannot specifically say whether that was

16 brought to my attention when that was sent

17 out. I cannot.

18 COFFEY, Q.C.:

19 Q. P-0098, please. Now this is apparently a

20 response from Heather Predham to Moira

21 Hennessey and also sent to Dr. Robert

22 Williams, carboned to Denise Dunn, about the

23 ER/PR update, and she starts with "Hi, Moira.

24 I understand you were speaking to Dr. Williams

25 and require an update as to our communication

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1 efforts regarding the ER/PR situation" and
 2 there's long details about this, numbers of
 3 patients and so on been contacted, results
 4 received, whether they've been reported,
 5 require review, confirmed reported and being
 6 confirmed negative and so on, and she
 7 concludes with "I understand that Dr. Williams
 8 has attempted to reach you to discuss the
 9 quality review. He will be following up with
 10 you on Monday."
 11 Now with respect to that matter, that is
 12 the general findings of those two reports,
 13 more than a few weeks had--by the beginning of
 14 November, more than a few weeks had passed
 15 since October 3rd.
 16 MR. OTTENHEIMER:
 17 A. Um-hm.
 18 COFFEY, Q.C.:
 19 Q. The reports would have been in, or at least
 20 were expected in by the beginning of November.
 21 In November or December of 2005, did you ever
 22 make any effort to find out what was in those
 23 reports?
 24 MR. OTTENHEIMER:
 25 A. Well, the Assistant Deputy Minister, on two

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1 occasions, made a request on my behalf, and up
 2 to this date, on November 17th, according to
 3 this note, obviously that had not been done,
 4 because the reference is there that there
 5 still had to be a discussion before, I guess,
 6 a decision was made. But an attempt was made
 7 on my behalf in early November.
 8 COFFEY, Q.C.:
 9 Q. Okay. Did you actually ask her to do that? I
 10 appreciate she was your agent and all that,
 11 but I mean, it's one thing for somebody to do
 12 something in a routine way.
 13 MR. OTTENHEIMER:
 14 A. Right.
 15 COFFEY, Q.C.:
 16 Q. It's another thing entirely to be asked to do
 17 it.
 18 MR. OTTENHEIMER:
 19 A. My sense is that there would have been a
 20 discussion of some sort on that topic.
 21 COFFEY, Q.C.:
 22 Q. So you might have very well put her up to it,
 23 as it were?
 24 MR. OTTENHEIMER:
 25 A. That could have been, yes.

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1 COFFEY, Q.C.:
 2 Q. P-0150, please. Now this is an entry, it's
 3 from yourself, November 17th. It's, I take
 4 it, kind of a docket entry, as it were, for a
 5 meeting.
 6 MR. OTTENHEIMER:
 7 A. It looks that way, yes.
 8 COFFEY, Q.C.:
 9 Q. And subject: George Tilley, Bob Williams, John
 10 Abbott, Tansy Mundon re: ER/PR issue, and that
 11 is from 3:30 until 4:30 that day, and that
 12 apparently is the November 17th briefing
 13 meeting for ER/PR that was referred to earlier
 14 in the emails.
 15 Now, sir, if we could, turn please to P-
 16 0124, page eight and nine. This is a question
 17 and answers briefing note, Department of
 18 Health and Community Services. Turn to page
 19 nine of the Exhibit, which is the second page
 20 of the briefing note. It's prepared by Moira
 21 Hennessey, date November 7th, 2005, and this
 22 is two pages, single-spaced writing, and it's
 23 entitled, title re--I'm sorry, questions and
 24 answers briefing note, indicates the
 25 Department. Title, retesting of breast cancer

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1 patients. The issue is "breast cancer
 2 patients are struggling for answers these
 3 days. Some patients may have missed out on a
 4 drug therapy, Tamoxifen, that lowers the risk
 5 of the cancer recurring. Some patients say it
 6 is hard to find out whether their results are
 7 right or not."
 8 And then anticipated questions, the first
 9 bullet says "when did the HSC Minister find
 10 out about the inaccurate cancer test results?"
 11 The second bullet says "how did this happen?
 12 What is being done to correct the problem," or
 13 this problem, I'm sorry, and it goes on from
 14 there.
 15 Then there's a reference to a heading,
 16 key messages, certain bullets, and then "other
 17 suggested responses." Now, and then on the
 18 second page, I'm sorry, that's here, other
 19 suggested responses, second page then is a
 20 background in some length. Now the purpose of
 21 a question and answer briefing note is what,
 22 Mr. Ottenheimer?
 23 MR. OTTENHEIMER:
 24 A. A briefing note such as this is prepared in
 25 anticipation of a question like that or

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1 similar in many ways being asked in the House
 2 of Assembly. That's basically it. The date
 3 on this briefing note is November 7th, which
 4 was probably ten days or so before the House
 5 had opened, and again, it's done for that
 6 purpose, to inform the Minister as to what the
 7 status of a particular topic is. As I say,
 8 this would probably be one of maybe 80 or 90
 9 such briefing notes in the briefing binder for
 10 the House of Assembly.

11 COFFEY, Q.C.:

12 Q. But this, in your world at the time, as that
 13 fall went into the Christmas season, was one
 14 of the top ten or twelve?

15 MR. OTTENHEIMER:

16 A. I would certainly think so, yes.

17 COFFEY, Q.C.:

18 Q. Now sir, when we look at anticipated
 19 questions, the second question, "how did this
 20 happen? What is being done to correct this
 21 problem?"

22 MR. OTTENHEIMER:

23 A. Um-hm.

24 COFFEY, Q.C.:

25 Q. First of all, the first four words, "how did

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1 this happen?" When we look through the rest
 2 of the document, is there any actual answer to
 3 that?

4 MR. OTTENHEIMER:

5 A. In the rest of the document?

6 COFFEY, Q.C.:

7 Q. Yes.

8 MR. OTTENHEIMER:

9 A. No, there isn't, but I would have--if that
 10 question were asked, and again, it was not, as
 11 I mentioned earlier, I would give whatever
 12 information I could, to the best of my
 13 ability, with the information that I had been
 14 provided with. I wish to repeat the point
 15 that was made this morning. This issue, as to
 16 what happened does not, in any way, compromise
 17 patient safety. The issue of -

18 COFFEY, Q.C.:

19 Q. Sir, if I could, sir, on that point, without
 20 knowing what happened, how can you be assured
 21 that you've corrected the problem?

22 MR. OTTENHEIMER:

23 A. Because our lab was shut down. There was no
 24 further testing done for ER/PR tissue samples
 25 in our lab in the Province of Newfoundland and

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1 Labrador. The samples were being sent away
 2 and the concern that I had on that point, with
 3 respect to patient safety, had been addressed.

4 COFFEY, Q.C.:

5 Q. I appreciate that, but you did want to know
 6 how this had happened?

7 MR. OTTENHEIMER:

8 A. There's no doubt about that. I wanted to know
 9 how this happened and I was eagerly looking
 10 forward to the results of this external
 11 review. However, Mr. Coffey, as I mentioned
 12 earlier, there were a number of stages. There
 13 were a number of different phases before total
 14 completion was realized, and that included an
 15 implementation stage.

16 COFFEY, Q.C.:

17 Q. But, Mr. -

18 MR. OTTENHEIMER:

19 A. And that included as well, consultants coming
 20 back, in fact, in April of 2006, to give their
 21 final report to Eastern Health. As long as
 22 patient safety was not being compromised, my
 23 primary concern had been addressed and met.

24 COFFEY, Q.C.:

25 Q. And with respect to that, who told you--when

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1 were you first told that these consultants
 2 were coming back?

3 MR. OTTENHEIMER:

4 A. I don't know exactly when I was told that.

5 COFFEY, Q.C.:

6 Q. I'm going to suggest to you, you certainly
 7 weren't told it in the beginning of October.

8 MR. OTTENHEIMER:

9 A. No, no, it would have been much beyond that.

10 COFFEY, Q.C.:

11 Q. And see, Mr. Ottenheimer, Moira Hennessey, on
 12 November 3rd, a Thursday, had asked the CEO of
 13 Eastern Health, the VP of Eastern Health, "are
 14 the reports back? What are the findings?"

15 MR. OTTENHEIMER:

16 A. Um-hm.

17 COFFEY, Q.C.:

18 Q. There's nothing in the record that we've
 19 looked at here to indicate she ever got a
 20 response to that question. Do you know if she
 21 ever got a response to it?

22 MR. OTTENHEIMER:

23 A. If she received a response directly, I do not
 24 know that.

25 COFFEY, Q.C.:

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1 Q. She never did tell you one way or the other?

2 MR. OTTENHEIMER:

3 A. I don't recall her telling me if she received

4 a response to that question.

5 COFFEY, Q.C.:

6 Q. If it was on her mind in order to fill out a

7 briefing note, the one of November 7th,

8 because that's the next one that was prepared

9 -

10 MR. OTTENHEIMER:

11 A. Um-hm.

12 COFFEY, Q.C.:

13 Q. - she didn't have an answer. Can you point to

14 anything in the November 7th briefing note

15 that would be an answer?

16 MR. OTTENHEIMER:

17 A. In terms of that question being asked?

18 COFFEY, Q.C.:

19 Q. Yes.

20 MR. OTTENHEIMER:

21 A. My only response at that time would be to

22 bring the house up to date of any information

23 that I had been provided with, including, for

24 example, because there's another question

25 there, either on this note or the one that we

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1 were talking about earlier, when did I find

2 out -

3 COFFEY, Q.C.:

4 Q. Yes.

5 MR. OTTENHEIMER:

6 A. - as the Minister of Health and Community

7 Services. I would have provided whatever

8 information that I had available to me in

9 response to a question, you know, in the House

10 of Assembly, which obviously is my obligation.

11 COFFEY, Q.C.:

12 Q. With respect to that, if we could please,

13 Registrar, if we could look at, please, P-

14 0151. Now this is faint, but it's a briefing

15 note to Minister of Health, November 17th,

16 2005, "Update on Estrogen and Progesterone

17 Receptor Testing" and it goes on at some

18 length about detailed numbers. And you did

19 have, as we looked at in Exhibit P-0150, you

20 were going to meet with Mr. Tilley, Dr.

21 Williams, Mr. Abbott and Tansy Mundon on

22 November 17th, so did you do so and did you

23 receive this briefing note at P-0151 from

24 them?

25 MR. OTTENHEIMER:

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1 A. I believe the meeting went ahead. I can't

2 recall exactly who was at that meeting, but I

3 do believe the meeting went ahead and in all

4 likelihood would have received that note at

5 that time, but I cannot say with certainty,

6 but more than likely I would have.

7 COFFEY, Q.C.:

8 Q. Now, sir, did you ever actually ask to see the

9 results of those two reports in the fall of

10 '05? Or to be briefed as to what was in those

11 two?

12 THE COMMISSIONER:

13 Q. You're asking the witness to distinguish

14 between what might have been asked on his

15 behalf and what he did personally?

16 COFFEY, Q.C.:

17 Q. Yes, he, himself personally right now, I'm

18 asking because we understand Moira Hennessey

19 asked, how about you, yourself?

20 MR. OTTENHEIMER:

21 A. Sure. And I may have had discussions with Ms.

22 Hennessey with respect to ascertaining--it is

23 quite possible, I cannot rule that out, that

24 may or may not have happened at the briefing

25 of November 7th (sic.), I just simply don't

Page 299

1 recall.

2 COFFEY, Q.C.:

3 Q. November 17th.

4 MR. OTTENHEIMER:

5 A. November 17th.

6 COFFEY, Q.C.:

7 Q. Were you ever told that you could not have the

8 results?

9 MR. OTTENHEIMER:

10 A. I was never told that I could not have and I

11 would have found that unacceptable if I were

12 told I could not have those reports. It was

13 fully my belief and expectation that upon

14 completion of this process that the Minister

15 of Health would have in his or her possession

16 that report as prepared by those two medical

17 personnel.

18 COFFEY, Q.C.:

19 Q. So why would it require--why would you wait to

20 find out on what the final result might be in

21 six months or a year's time. Why wouldn't you

22 want to know right then and there?

23 MR. OTTENHEIMER:

24 A. For a couple of reasons, one, as I mentioned

25 earlier, patient safety is not being

Page 300

1 jeopardized.

2 COFFEY, Q.C.:

3 Q. But what's that got to do with whether or not

4 what caused this? I mean, -

5 MR. OTTENHEIMER:

6 A. Because the primary concern that I had was

7 minimizing risk to patient and not

8 jeopardizing a patient's safety and that was

9 not being jeopardized. The second point is

10 like acting on only partial information and as

11 a lawyer, Mr. Coffey, I guess you can

12 understand that. There was a process in place

13 whereby external consultants would be invited

14 to come in and do an assessment. From time to

15 time, briefings were given to personnel in

16 response to their findings. There was then an

17 implementation process, there was then a

18 follow-up visit by these two experts upon

19 completion of the implementation process, and

20 then a final report being given to Eastern

21 Health as to what their findings are.

22 COFFEY, Q.C.:

23 Q. And by then you were no longer there.

24 MR. OTTENHEIMER:

25 A. By then, I believe, according to the most

Page 301

1 recent information, the expected date I

2 believe was sometime in April.

3 COFFEY, Q.C.:

4 Q. And you were no longer there.

5 MR. OTTENHEIMER:

6 A. That's right, I was no longer in the

7 Department of Health, as you know from the

8 middle of March of '06.

9 COFFEY, Q.C.:

10 Q. So what I come back to is in the fall of '05,

11 I mean, having asked Moira Hennessey to make

12 the inquiry -

13 MR. OTTENHEIMER:

14 A. Uh-hm.

15 COFFEY, Q.C.:

16 Q. So, you know, that suggests that you wanted an

17 answer then and there.

18 MR. OTTENHEIMER:

19 A. That suggests that I was interested in knowing

20 if, in fact, this process was completed, so I

21 would have the information available to me,

22 that's correct.

23 COFFEY, Q.C.:

24 Q. And so at what point were you dissuaded from

25 asking further let me see what's in the

Page 302

1 reports or tell me what's in those two

2 reports?

3 MR. OTTENHEIMER:

4 A. When I became aware of the fact that the

5 exercise had not yet completed.

6 COFFEY, Q.C.:

7 Q. Did anyone ever tell you that you don't want

8 to know what's in those reports?

9 MR. OTTENHEIMER:

10 A. Nobody had ever said that and as I mentioned

11 earlier, that too would be unacceptable and

12 offensive. As the Minister of Health for this

13 province, I certainly felt that I was entitled

14 to be fully apprised of what these reports

15 consisted of.

16 COFFEY, Q.C.:

17 Q. So what did some, who said to you, whatever

18 they said, to convince you that you don't want

19 them now?

20 MR. OTTENHEIMER:

21 A. Nobody, as I recall, ever said that to me.

22 COFFEY, Q.C.:

23 Q. So then if they were telling you the two

24 reports--and this is in the fall of '05 and by

25 the time we get to December, the two reports

Page 303

1 have certainly arrived at Eastern Health.

2 MR. OTTENHEIMER:

3 A. Uh-hm.

4 COFFEY, Q.C.:

5 Q. If the reports are there, well you expected

6 what, that there'd be a copy sent over or at

7 least John Abbott would find out what was in

8 them, Moira Hennessey would find out?

9 MR. OTTENHEIMER:

10 A. I would have expected if the process were

11 complete and -

12 COFFEY, Q.C.:

13 Q. Well even if it wasn't complete, the reports

14 are in. I was curious about this because this

15 is a matter of interest, Moira Hennessey

16 you've asked to go find out something for you.

17 MR. OTTENHEIMER:

18 A. Uh-hm.

19 COFFEY, Q.C.:

20 Q. Did Moira Hennessey ever tell you, Mr.

21 Ottenheimer, you're never going to see what's

22 in those reports because they're quality

23 review, peer review quality assurance. Did

24 she ever tell that to you?

25 MR. OTTENHEIMER:

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1 A. Never did. I was never told that. It was
 2 always my expectation that as the Minister of
 3 Health for this province that I would receive,
 4 in their entirety, those reports as it
 5 pertains to this issue upon completion of the
 6 exercise. And that was my expectation.
 7 COFFEY, Q.C.:
 8 Q. Now with respect to the reports, they are now
 9 a matter of public record.
 10 MR. OTTENHEIMER:
 11 A. Yes, they are.
 12 COFFEY, Q.C.:
 13 Q. Have you actually looked at them?
 14 MR. OTTENHEIMER:
 15 A. No, I have--only the public accounts and the
 16 media reports is what I have--that is the
 17 extent of my knowledge of these reports, but I
 18 certainly read with interest the legal
 19 proceedings that took place several months ago
 20 and was interested in the public accounting.
 21 COFFEY, Q.C.:
 22 Q. Now at the time when this became--and
 23 certainly in 2008, there was a legal
 24 proceeding relating to those, well there was a
 25 total of four reports, but the two that you

Page 305

1 were Minister of at the time they came in.
 2 Were you surprised of the fact that there's,
 3 bearing in mind what you had--you told us you
 4 understood in the fall of '05, concerning your
 5 ability to see them and then in 2008 it's
 6 being reported that no, they are a secret, as
 7 it were?
 8 MR. OTTENHEIMER:
 9 A. That did surprise me, the fact that that
 10 exercise had to be undertaken was a surprise
 11 to me.
 12 COFFEY, Q.C.:
 13 Q. Commissioner if we could--or Registrar,
 14 please, if we could go to Exhibit P-0153.
 15 This, Mr. Ottenheimer, is there on the screen,
 16 it's from Tansy Mundon to Deborah Thomas-
 17 Pennell, Susan Bonnell, carboned to George
 18 Tilley, Darrell Hynes and John Abbott, ER/PR
 19 questions and says, "Further to our briefing
 20 yesterday with George and Dr. Williams, I
 21 attach the following questions that the
 22 Minister would like answered in advance of the
 23 House of Assembly opening on Monday, if at all
 24 possible. Many thanks, Tansy." If we turn to
 25 page 2 of this exhibit, apparently these are

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1 the questions, ER/PR questions that you wanted
 2 answered. The third last bullet says, "Has a
 3 review occurred to determine how this could
 4 have happened? How could there be an accurate
 5 test for a period of five year without being
 6 detected?" And it goes on to talk about will
 7 there be disciplinary action taken. And there
 8 are--these questions, I take it, you've seen
 9 some time ago?
 10 MR. OTTENHEIMER:
 11 A. Is this a -
 12 COFFEY, Q.C.
 13 Q. This is e-mail attached -
 14 MR. OTTENHEIMER:
 15 A. What is the date of the e-mail?
 16 COFFEY, Q.C.
 17 Q. It's November 18, 2005, the day after the
 18 briefing.
 19 MR. OTTENHEIMER:
 20 A. Yes, well that's two and a half years ago, but
 21 yes, I probably did see it at that time.
 22 COFFEY, Q.C.
 23 Q. Now, would these actually be questions that
 24 you would ask?
 25 MR. OTTENHEIMER:

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1 A. They, in all likelihood, would have been
 2 questions that would have been put forward by
 3 my officials.
 4 COFFEY, Q.C.
 5 Q. Okay. And while, we're at it, Exhibit P-0154,
 6 please. This is November 21, 2005 at 9:21
 7 a.m. from Deborah Thomas-Pennell to Tansy
 8 Mundon and carboned to Susan Bonnell and "as
 9 requested, Tansy" and we turn to page 2 of
 10 this, you'll see that--there we are--ER/PR
 11 questions and if we look down through this,
 12 these are the same questions, next to the
 13 bullets and the answers are in bold print,
 14 suggested answers. So, the purpose of asking
 15 these questions and getting these answers,
 16 from your perspective was what?
 17 MR. OTTENHEIMER:
 18 A. I guess the purpose of asking the question is
 19 to explore, you know, various angles of a very
 20 sensitive issue and exploring different
 21 possible questions and exploring possible
 22 answers, I guess. It's a--and that would be
 23 normal for any briefing note on any topic as
 24 it relates to any public policy issue and it
 25 expected to be raised in the House of Assembly

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1 on any topic.

2 COFFEY, Q.C.

3 Q. Now, on page 3 of this exhibit, the question,

4 "Has a review occurred to determine how this

5 could have happened? How could there be an

6 accurate test for a period of five year

7 without being detected"? The response is,

8 "this is still an ongoing investigation into

9 the situation. However, there is ample

10 literature to suggest that these tests of

11 limitations are not guided by a national

12 standards. Now, Mr. Ottenheimer, we can go on

13 and read through the rest of it, but--you had

14 a meeting of November 17, you got a response

15 November 21. You have the November 7 briefing

16 note. What was your understanding by the end

17 of November, 2007, by the time the House

18 opened, sorry, 2005, what was your

19 understanding as to what had caused the

20 problem?

21 MR. OTTENHEIMER:

22 A. In November of 2005 I was not aware of what

23 the root problems were and I accepted the

24 information here that the process was still

25 ongoing and that an investigation was

Page 309

1 continuing.

2 COFFEY, Q.C.

3 Q. And so you had no sense of its technology, its

4 human, some combination or -

5 MR. OTTENHEIMER:

6 A. The exercise had not been completed, the

7 implementation stage had not been carried out

8 and the exact causes of the problem were not

9 known to me at the time.

10 COFFEY, Q.C.

11 Q. If we could please, before we adjourn for the

12 day, Commissioner, Exhibit P-0046 please. Mr.

13 Ottenheimer, this is a--page 1 of this is a

14 letter on BC Cancer Agency stationary, October

15 17, 2005 to Dr. Donald Cook, Clinical Chief.

16 It says, "Re: External Quality Review of the

17 Immunohistochemistry Service". It's signed by

18 a Doctor D. Banerjee and this is--and he's the

19 external consultant from British Columbia. If

20 you could, the second page of the exhibit, it

21 says, "Confidential, External Quality Review

22 of the Health Care Corporation of St. John's,

23 Laboratory Medicine Programs,

24 Immunohistochemistry Service". This is of the

25 service, not just the ER/PR. Now, did you

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1 understand that that was the case?

2 MR. OTTENHEIMER:

3 A. I did not.

4 COFFEY, Q.C.

5 Q. Not at that time or even by the time you left

6 the Department?

7 MR. OTTENHEIMER:

8 A. I did not.

9 COFFEY, Q.C.

10 Q. It's dated October 17, 2005 and apparently it

11 had been received in St. John's shortly after

12 October 17. Now, sir, -

13 MR. OTTENHEIMER:

14 A. I have never -

15 COFFEY, Q.C.

16 Q. I appreciate -

17 MR. OTTENHEIMER:

18 A. I have never seen that document. It's the

19 first time I've seen any written documentation

20 with respect to this and it's the first time

21 it's been brought to my attention.

22 COFFEY, Q.C.

23 Q. Now, the actual document itself--I just want

24 to show you something and I appreciate you

25 haven't seen it before. I'll ask you, there's

Page 311

1 a cover page--that's the cover page right

2 there. Page 3 of the exhibit is the first

3 page with real text on it. Page 4 of the

4 exhibit is the second page of text. Page 5 is

5 a third page of text and there are

6 recommendations there at the bottom. And then

7 the next page is a list of recommendations

8 continues and then the footnotes starts. So,

9 that's really--that's the report, it ends

10 right there at page 7 of the--now, with

11 respect to this, on page 4 of the exhibit,

12 there's a title, "Conclusions about the

13 reasons for test failure". And is the DAKO

14 system faulty? The answer is, "this is

15 unlikely". Questions 2, "Is the Ventana

16 system too sensitive"? Answer, "There is no

17 evidence that the Ventana system creates false

18 positive results". Question 3, "Is there a

19 problem with tissue fixation? There appears

20 to be inadequate attention paid by the

21 grossing pathologists to the thickness of

22 tissue slices and it goes on from there. And

23 there's not standardized fixation protocol

24 everyone adheres to". Number 4, "Inadequate

25 or no attention is being paid by the reporting

1 pathologist to the status of internal controls
 2 with inappropriately the exclusive reliance on
 3 external positive controls." And it goes on
 4 from there on to continue to read it to you,
 5 it's there in a text, it's freely available
 6 online. Number 6, "Inappropriate choice of
 7 blocks with no representative normal ductal
 8 epithelium". And 7, "Better education
 9 required for technologist, pathologist and
 10 clinicians about the pitfalls of IHC, the
 11 importance of quality control and the
 12 interpretation of IHC results". And he goes
 13 on to note other system flaws observed.

14 Now, from your perspective, is there any
 15 reason why you couldn't have been told that in
 16 2005?

17 MR. OTTENHEIMER:

18 A. Absolutely not.

19 COFFEY, Q.C.

20 Q. Looking back on it now and knowing what you do
 21 now, do you think you should have been told it
 22 in 2005?

23 MR. OTTENHEIMER:

24 A. As the Minister of Health and Community
 25 Service, Community Services for this Province,

1 MR. OTTENHEIMER:
 2 A. But on first blush, there's a lot of
 3 information here that I feel, at the Minister
 4 for this Province at that time, I ought to
 5 have been made aware of.

6 COFFEY, Q.C.

7 Q. And I take it, if you think, looking back on
 8 it, if you had been made aware of it, you
 9 would have, at least inquired further?

10 MR. OTTENHEIMER:

11 A. There would have been further investigations
 12 and further questions asked, no question.

13 COFFEY, Q.C.

14 Q. Thank you, Commissioner. 9:30 tomorrow,
 15 Commissioner?

16 THE COMMISSIONER:

17 Q. Yes, we'll adjourn until 9:30 in the morning.
 18 However, before we do, a small administrative
 19 matter for those who are representing Parties
 20 with Standing, I hate to tell you this, but
 21 Ms. Connors is asking me to ask you to
 22 remember to pick up a package at her office, I
 23 suspect it's another dreaded disc.

24 COFFEY, Q.C.

25 Q. Thank you.

1 absolutely.

2 COFFEY, Q.C.

3 Q. Did you ever ask that you not be informed or
 4 not be told?

5 MR. OTTENHEIMER:

6 A. Clearly not.

7 COFFEY, Q.C.

8 Q. If we could come back, Commissioner, in the
 9 morning and I will continue on and then -

10 THE COMMISSIONER:

11 Q. Yes, it is -

12 COFFEY, Q.C.

13 Q. But before we do that--having ready that, Mr.
 14 Ottenheimer, having read that and we haven't
 15 even looked Trish Wegrynowski's report, which
 16 I'll come back and address in the morning,
 17 would that have--if you had heard that at the
 18 time, do you think you would've been concerned
 19 about patient safety issues?

20 MR. OTTENHEIMER:

21 A. My initial response obviously would be yes,
 22 but it's a complex, technical document. I've
 23 seen this for the first time

24 COFFEY, Q.C.

25 Q. I appreciate that.

1 THE COMMISSIONER:

2 Q. 9:30 in the morning, thank you.

3 Upon conclusion at 4:45 p.m.

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CERTIFICATE

I, Judy Moss, hereby certify that the foregoing is a true and correct transcript in the matter of the Commission of Inquiry on Hormone Receptor Testing, heard on the 31st day of March, A.D., 2008 before the Honourable Justice Margaret A. Cameron, Commissioner, at the Commission of Inquiry, St. John's, Newfoundland and Labrador and was transcribed by me to the best of my ability by means of a sound apparatus.

Dated at St. John's, Newfoundland and Labrador this 31st day of March, A.D., 2008

Judy Moss

Inquiry on Hormone Receptor Testing

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