

<p style="text-align: center;">COMMISSION OF INQUIRY ON HORMONE RECEPTOR TESTING</p> <p style="text-align: center;">BEFORE THE HONOURABLE JUSTICE CAMERON - COMMISSIONER</p> <p style="text-align: center;">MAY 6, 2008</p> <p>Appearances: Bernard Coffey, Q.C. . . . . Commission Co-counsel Sandra Chaytor, Q.C. . . . . Commission Co-counsel</p> <p>Rolf Pritchard/Megan Collins . . . . Her Majesty in Right of NL</p> <p>Peter Browne/Jane Hennebury . . . . . Doctors Kara Laing et al</p> <p>Daniel Simmons . . . . . Eastern Regional Integrated . . . . . Health Authority</p> <p>Darlene Russell . . . . . Members of the Breast Cancer . . . . . Testing Class Action</p> <p>Mark Pike . . . . . NL Medical Association</p> <p>Jennifer Newbury . . . . . Canadian Cancer Society (NL Division) Stacey O’Dea . . . . . Central, Western and Labrador-Grenfell Regional Integrated Health Authorities</p>	<p style="text-align: center;">LIST OF EXHIBITS</p> <p>EXHIBIT P-0799 . . . . . Pg. 111</p>
<p style="text-align: center;">TABLE OF CONTENTS</p> <p>MR. JOHN ABBOTT - RESUMES THE STAND</p> <p>Examination by Bernard Coffey, Q.C. . . . . Pgs. 4 - 235</p> <p>Examination by Daniel Simmons . . . . . Pgs. 235 - 324</p> <p>Examination by Jennifer Newbury . . . . . Pg. 324 - 379</p>	<p style="text-align: right;">Page 4</p> <p>1 THE COMMISSIONER: 2 Q. Please be seated. Mr. Coffey. 3 COFFEY, Q.C.: 4 Q. Thank you, Commissioner. Registrar, Exhibit 5 P-0104, please? Page 31, please. Now Mr. 6 Abbott, these are those ER/PR media technical 7 briefing Q and A’s, particular number question 8 13 and answer 13. Question 13 says "what did 9 the medical experts review reveal and what 10 recommendations came out of that review (visit 11 from the B.C. Cancer Institute and chief tech, 12 Mount Sinai)?" 13 And the answer 13 set out here is "we 14 were pleased to have external experts review 15 our laboratory as part of our quality review. 16 This is common practice. However, quality 17 review materials are kept confidential. The 18 reason for this is that the courts and the 19 legislature recognize that quality review in 20 the health care sector is vital. In order to 21 encourage staff and external reviewers to 22 express their opinions freely, there must be 23 protection from disclosure beyond the quality 24 review. This protection from disclosure is 25 recognized in the Evidence Act which provides</p>

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1 the quality assurance materials not to be  
 2 disclosed with any legal proceeding. It is  
 3 also recognized in the Access to Information  
 4 and Privacy Act, which provides that opinions  
 5 or recommendations made to an agency do not  
 6 have to be disclosed. However, it is  
 7 important to note that there is no protection  
 8 from disclosure for facts uncovered or  
 9 disclosed during quality review  
 10 investigations."  
 11 Now sir, this kind of large grouping of  
 12 material obviously came to the Department from  
 13 Eastern Health on December 11th, 2006. When  
 14 you did have a chance to look at the materials  
 15 that Eastern Health had prepared, did you  
 16 notice that, this part of the matter?  
 17 MR. ABBOTT:  
 18 A. I would say yes, in the context, I read  
 19 through it very quickly but I didn't make any  
 20 particular observation on either the question  
 21 or the answer.  
 22 COFFEY, Q.C.:  
 23 Q. Okay. In terms of--because this does seem to  
 24 suggest that Eastern Health would not release  
 25 those two external review reports?

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1 MR. ABBOTT:  
 2 A. Yes.  
 3 COFFEY, Q.C.:  
 4 Q. But that didn't, at the time when you read it,  
 5 didn't kind of come home to you?  
 6 MR. ABBOTT:  
 7 A. No.  
 8 COFFEY, Q.C.:  
 9 Q. And certainly in terms of didn't come to you  
 10 in terms of yourself, as the deputy minister?  
 11 MR. ABBOTT:  
 12 A. No, I guess that's part of the reason. We  
 13 would have assumed, and again, where it says  
 14 in terms of fact versus opinion, those kinds  
 15 of things, how that does and should be  
 16 revealed, wasn't an issue that we were engaged  
 17 in.  
 18 COFFEY, Q.C.:  
 19 Q. Okay, and when--as well yesterday when we  
 20 looked at this, if we could go back just one  
 21 page, one question on question nine, the  
 22 answer to question nine. Here it's posited by  
 23 Eastern Health that the number of individual  
 24 conversions are not relevant. That's what  
 25 they say there. Do you see that in this

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1 paragraph?  
 2 MR. ABBOTT:  
 3 A. Yes.  
 4 COFFEY, Q.C.:  
 5 Q. From your perspective, as the deputy minister,  
 6 did you agree that that was so, that it wasn't  
 7 relevant?  
 8 MR. ABBOTT:  
 9 A. No, I wouldn't agree with that term or type of  
 10 response. Again, I would look at it from, and  
 11 did look at it from the perspective of that  
 12 data was available and would be communicated,  
 13 but didn't focus on error rate, conversion  
 14 rates, those kinds of things.  
 15 COFFEY, Q.C.:  
 16 Q. Now sir, if we could, please, Registrar, let's  
 17 see. By the time then 2006 ended, Mr. Abbott,  
 18 from your perspective as the deputy minister  
 19 at the time, ER/PR, what was the overall  
 20 status of the matter?  
 21 MR. ABBOTT:  
 22 A. Well again, from the department, you know, and  
 23 I'll distinguish between the department, the  
 24 minister and his office -  
 25 COFFEY, Q.C.:

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1 Q. Yes.  
 2 MR. ABBOTT:  
 3 A. - and Eastern Health. From the department's  
 4 perspective, it was not an issue that we were  
 5 monitoring or following closely. Now in light  
 6 of the technical briefing, you know, the  
 7 information was now out, at least on behalf of  
 8 Eastern Health and the lab and the data that  
 9 they had, that we then would, from time to  
 10 time, monitor, on behalf of the minister's  
 11 office, any issues or questions that may  
 12 arise. But we were not taking any action at  
 13 all really with respect to ER/PR.  
 14 COFFEY, Q.C.:  
 15 Q. And in whose responsibility, you know, and I  
 16 appreciate you've told the Commissioner in the  
 17 past it was always Eastern Health's  
 18 responsibility -  
 19 MR. ABBOTT:  
 20 A. Yes.  
 21 COFFEY, Q.C.:  
 22 Q. But even more so on a go-forward basis from  
 23 that point on?  
 24 MR. ABBOTT:  
 25 A. Certainly still with Eastern Health. We'd

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1 still view it as an issue in the lab that was  
 2 being addressed and then if there was any  
 3 further notification of both patients,  
 4 families and/or public reporting, it would  
 5 still reside with Eastern Health.  
 6 COFFEY, Q.C.:  
 7 Q. Now in terms of the law suits that were then  
 8 going on -  
 9 MR. ABBOTT:  
 10 A. Yes.  
 11 COFFEY, Q.C.:  
 12 Q. - would you continue to monitor those?  
 13 MR. ABBOTT:  
 14 A. We were not monitoring the law suits per se.  
 15 COFFEY, Q.C.:  
 16 Q. And I appreciate. The media coverage actually  
 17 parts of the law suit.  
 18 MR. ABBOTT:  
 19 A. The media coverage, yes, and again, that was  
 20 with Eastern Health and their lawyers and I  
 21 would say as a matter of practice, but not  
 22 that we haven't had very--at least in terms  
 23 of, you know, from a class action perspective,  
 24 that was something that's relatively new, so  
 25 we really--but we normally wouldn't be

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1 following those. Would be dependent on the  
 2 health authority and their lawyers to address  
 3 those issues. We would not be involved, the  
 4 Department of Justice, unless obviously  
 5 government or the minister, what have you,  
 6 would have been named in any particular  
 7 statement of claim.  
 8 COFFEY, Q.C.:  
 9 Q. And as that year ended, were you aware, at  
 10 that point, as deputy minister, by the end of  
 11 2006, that Eastern Health had not revealed the  
 12 number of conversions?  
 13 MR. ABBOTT:  
 14 A. My recollection on that was no, in that I  
 15 assumed, and as I said, still did up until May  
 16 of 2007, that the data was out there. In  
 17 terms of rates, you know, that I had known  
 18 that the conversation rates or so-called error  
 19 rates, whatever, were not--had not been  
 20 discussed or the media briefed in terms of  
 21 those terms.  
 22 COFFEY, Q.C.:  
 23 Q. Well, in terms of error rate, you'd certainly  
 24 understood that because there was a difference  
 25 of opinion, and I think you understood the

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1 view of Eastern Health was that if there was  
 2 an error at all was something that some court  
 3 or some judge might decide at some point.  
 4 MR. ABBOTT:  
 5 A. Well, again, didn't have much discussion  
 6 around that point, as you just put it. I  
 7 think that's probably more so later -  
 8 COFFEY, Q.C.:  
 9 Q. Okay.  
 10 MR. ABBOTT:  
 11 A. - as this issue becomes more of a public  
 12 issue, obviously in May 2007. But the rate  
 13 and error and those kinds of things, rate of  
 14 error, were really not discussed. It was  
 15 presented as the conversions and what caused  
 16 those conversions to take place. In that  
 17 context, the word error might have come up,  
 18 was there an error somewhere in process. But  
 19 not in terms of error rate.  
 20 COFFEY, Q.C.:  
 21 Q. And what was your understanding as to the  
 22 reluctance by Eastern Health to speak of a  
 23 conversion rate?  
 24 MR. ABBOTT:  
 25 A. Well again, now, and this, the connection, I'm

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1 not sure, but--and this is where the fact that  
 2 legal advice, legal counsel advising not to  
 3 comes in, and this is really, I think, around  
 4 the first time that we hear that and we  
 5 accepted that, again, at face value.  
 6 COFFEY, Q.C.:  
 7 Q. And when was it that -  
 8 MR. ABBOTT:  
 9 A. Around this briefing period, either just  
 10 before or as the briefing was getting ready to  
 11 be done and certainly coming out of that,  
 12 there was reference to "we would not advise or  
 13 could not advise in the media briefing because  
 14 of legal advice."  
 15 COFFEY, Q.C.:  
 16 Q. Okay, and who did you hear that from?  
 17 MR. ABBOTT:  
 18 A. I would have heard that, I think, both read  
 19 that through some of the material and would  
 20 have heard that in possibly--or read it  
 21 through either an e-mail, but I don't think it  
 22 was ever communicated to me by, you know, say  
 23 George Tilley, as an example, to say "John,  
 24 the reason we're not doing any of this is  
 25 legal advice." He did say there were legal

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1 issues at play, and we knew that by what we  
 2 had read in the media, but again, there  
 3 weren't a lot of strong connections made tying  
 4 legal advice to a particular issue or  
 5 particular point, you know, it was a bit  
 6 generalized.  
 7 COFFEY, Q.C.:  
 8 Q. So either just before, in the lead up to the  
 9 December 11th media briefing or while, in the  
 10 week or two before it or during it or in the  
 11 immediate aftermath of it, you got the  
 12 understanding from Eastern Health that legal  
 13 advice had convinced or persuaded them not to?  
 14 MR. ABBOTT:  
 15 A. There was certain things that they could not  
 16 talk about.  
 17 COFFEY, Q.C.:  
 18 Q. Not to talk about, and conversion rates and  
 19 error rates were two of those.  
 20 MR. ABBOTT:  
 21 A. Was that.  
 22 COFFEY, Q.C.:  
 23 Q. On that point, if I could just look back at  
 24 that November 23rd briefing of the minister,  
 25 was there talk during that meeting about legal

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1 considerations or legal advice?  
 2 MR. ABBOTT:  
 3 A. Not in any substantive way. I think it might  
 4 have been a passing reference that, you know,  
 5 we have legal advice or we are dealing with  
 6 the lawyers on--because of, you know, the  
 7 actions, but not on what they could say, and  
 8 certainly in that briefing note where the  
 9 numbers were there, there was nothing--nobody  
 10 said there that we can't release any of those  
 11 numbers.  
 12 COFFEY, Q.C.:  
 13 Q. Sure. So it was between--it would have been  
 14 between November 23rd, the end of that  
 15 briefing, and December 11th?  
 16 MR. ABBOTT:  
 17 A. In terms of getting ready for the briefing and  
 18 what they could say at the briefing.  
 19 COFFEY, Q.C.:  
 20 Q. If we could, please, Exhibit P-0430? Now  
 21 this, Mr. Abbott, it's two e-mails really.  
 22 Apologize. The first of them, in point of  
 23 time, it's at page two of the exhibit, Mr.  
 24 Abbott. It's an e-mail from George Tilley to  
 25 Tom Osborne. It's copied to Oscar Howell and

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1 yourself, January 17th, this would be 2006, at  
 2 5:32 p.m. The subject is Dr. Ganguly, and Mr.  
 3 Tilley opens with "I was speaking to John  
 4 Abbott to learn that Dr. Ganguly has been in  
 5 touch with you," that would be Mr. Osborne,  
 6 "about his resignation from his administrative  
 7 duties in our cancer care program. During the  
 8 fall, representatives from the NLMA met with  
 9 Dr. Howell et al to say they were going to  
 10 take on the issue of compensation for the  
 11 administrative work that three of our  
 12 oncologists are providing to our cancer care  
 13 program: Laing, Clinical chief; Ganguly,  
 14 Division Chief of Radiation Oncology; and  
 15 Siddiqui, Division Chief of Medical Oncology.  
 16 Interestingly, shortly before that I had met  
 17 with Rob Ritter where he gave me an indication  
 18 they were going to use oncology as the medical  
 19 field to talk about in relation to the  
 20 upcoming negotiations, feeling the public  
 21 support would be there, and back in November,  
 22 with issues around ER/PR about to be dealt  
 23 with in the media, I asked Oscar Howell to  
 24 resolve the compensation issue for Dr. Laing,  
 25 as it was different from the others

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1 retroactivity and we needed her full support  
 2 when we moved forward on ER/PR discussions.  
 3 That left the division chiefs outstanding" and  
 4 it goes on from there then, of course, to  
 5 speak about the nitty gritty or intricacies of  
 6 their compensation.  
 7 Who was, from your perspective, as the  
 8 deputy minister, primarily responsible for  
 9 dealing with this financial issue?  
 10 MR. ABBOTT:  
 11 A. It would be primarily Dr. Bradbury. I had  
 12 been brought in at different points, as well  
 13 as had the minister.  
 14 COFFEY, Q.C.:  
 15 Q. Okay, and I take it that you had become aware  
 16 that Dr. Ganguly had directly contacted Mr.  
 17 Osborne?  
 18 MR. ABBOTT:  
 19 A. Oh yes, and as well as myself.  
 20 COFFEY, Q.C.:  
 21 Q. And this then, I take it, you spoke with Mr.  
 22 Tilley about it?  
 23 MR. ABBOTT:  
 24 A. Yes.  
 25 COFFEY, Q.C.:

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1 Q. And this e-mail followed. Did you know or  
 2 understand that Mr. Tilley was going to send  
 3 this e-mail?  
 4 MR. ABBOTT:  
 5 A. I really can't say I know the answer to that  
 6 one way or the other. Again, there had been a  
 7 lot of conversations around this particular  
 8 issue. Dr. Ganguly had, you know, been very--  
 9 coming forward on a number of fronts to have  
 10 this compensation issue addressed, but I don't  
 11 recall, you know, if it was George's own  
 12 initiative or some conversation I would have  
 13 had with him on that, but I'm thinking it's  
 14 certainly George's.  
 15 COFFEY, Q.C.:  
 16 Q. The idea here that--or the reference at the  
 17 end of the first paragraph of Mr. Tilley's e-  
 18 mail, "shortly before that, I had met with Rob  
 19 Ritter where he gave me an indication they  
 20 were going to use oncology as the medical  
 21 field to talk about in relation to the  
 22 upcoming negotiations -  
 23 MR. ABBOTT:  
 24 A. Yes.  
 25 COFFEY, Q.C.:

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1 Q. - feeling that public support would be there."  
 2 Now that suggests that Mr. Ritter--well, were  
 3 you aware that Mr. Ritter had taken or was  
 4 going to take that approach?  
 5 MR. ABBOTT:  
 6 A. No, and -  
 7 COFFEY, Q.C.:  
 8 Q. This was news to you at the time?  
 9 MR. ABBOTT:  
 10 A. Yeah, and I don't recall it ever really sort  
 11 of going that route.  
 12 COFFEY, Q.C.:  
 13 Q. Actually afterward, it didn't?  
 14 MR. ABBOTT:  
 15 A. No.  
 16 COFFEY, Q.C.:  
 17 Q. That sort of notion that the NLMA might take a  
 18 particular profession -  
 19 MR. ABBOTT:  
 20 A. Yes.  
 21 COFFEY, Q.C.:  
 22 Q. - or subset of its profession to use in  
 23 negotiations, was that foreign to you?  
 24 MR. ABBOTT:  
 25 A. No. Again, through the discussion, there

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1 would be examples given, look, because of the  
 2 compensation, and if you don't address it,  
 3 then this specialty will be under seige. This  
 4 specialty--you know, we talked about pathology  
 5 yesterday. So we viewed them all in the same  
 6 context.  
 7 COFFEY, Q.C.:  
 8 Q. And the second paragraph, referring to the  
 9 assertion by Mr. Tilley that he'd "asked Oscar  
 10 Howell to resolve the compensation issue for  
 11 Dr. Laing, as they needed her full support  
 12 when they moved forward on the ER/PR  
 13 discussions," had you heard that sort of idea  
 14 before, in relation to Dr. Laing?  
 15 MR. ABBOTT:  
 16 A. No, not until that. If I may, in terms of--  
 17 there are two aspects. One was, I'll call it,  
 18 the compensation for the oncologists that  
 19 would have been paid through the departmental  
 20 budget to Eastern Health, you know, for the  
 21 service, and that's for service provided and  
 22 there is an alternate payment plan approach  
 23 here for that particular specialty. At the  
 24 same time, within Eastern Health, they have  
 25 another level of compensation for their

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1 clinical chiefs for the administrative  
 2 responsibilities and they do--were paying for  
 3 clinical chiefs but not providing any stipend  
 4 for divisional chiefs. So that was an issue.  
 5 And then there were some issues on  
 6 retroactivity, in terms of when Kara Laing  
 7 became clinical chief and when the stipend  
 8 should have been addressed, at least from her  
 9 perspective, and so it was getting fairly  
 10 complicated and convoluted as to trying to  
 11 sort all of this out, and the issues were  
 12 getting crossed over at different points in  
 13 time. So between Eastern Health and ourselves  
 14 and the specialists, we were trying to seek a  
 15 resolution, and the minister was dragged into  
 16 this, in my view obviously unnecessarily so,  
 17 but you know, when the call came in, we needed  
 18 to see how we could address that.  
 19 COFFEY, Q.C.:  
 20 Q. And I appreciate that, and eventually, it did  
 21 get itself sorted out, I take it?  
 22 MR. ABBOTT:  
 23 A. On some fronts, yes. On others, and I would  
 24 suggest even to this day, there's probably not  
 25 full satisfaction.

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1 COFFEY, Q.C.:

2 Q. But Cathy Bradbury, in the first page of this

3 exhibit, she comes back with--her assertion

4 is, or her description of where the current

5 approach was -

6 MR. ABBOTT:

7 A. Yes.

8 COFFEY, Q.C.:

9 Q. But what I'm saying is, sorted out in the

10 sense of it gets addressed?

11 MR. ABBOTT:

12 A. Yes.

13 COFFEY, Q.C.:

14 Q. Whether satisfactorily or not is another

15 matter perhaps, but the reference to the idea

16 that in November there'd been--Oscar Howell

17 had been tasked with settling or resolving the

18 issue with Dr. Laing -

19 MR. ABBOTT:

20 A. Yes.

21 COFFEY, Q.C.:

22 Q. - and this seems to tie it, and I'm not

23 suggesting that in fact it was at all, but the

24 way Mr. Tilley puts it, he ties it to needing

25 her full support.

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1 MR. ABBOTT:

2 A. Yes.

3 COFFEY, Q.C.:

4 Q. Had you ever been made aware that there was

5 any such linkage?

6 MR. ABBOTT:

7 A. No, but the sense I had, and I think George

8 had relayed that to me, is that, you know,

9 within Eastern Health and with staff and

10 medical staff, in dealing with this issue,

11 there were a lot of pressures, a lot of stress

12 and to keep everybody on side to work on this

13 issue that, you know, whatever he could do or

14 should do to support them was what he wanted

15 to do, and making reference to, you know, that

16 Kara Laing was upset by this compensation

17 issue, that was going to obviously impact her

18 cooperation or assistance and support, you

19 know, that's how I read that.

20 COFFEY, Q.C.:

21 Q. Okay.

22 MR. ABBOTT:

23 A. Whether it was on this issue or others, and

24 she was--you know, there had been discussions

25 and meetings and they were, you know, very

Page 23

1 forceful on having this resolved.

2 COFFEY, Q.C.:

3 Q. That is the compensation, administrative

4 duties compensation issue?

5 MR. ABBOTT:

6 A. Yes, both the administrative one and the base

7 compensation itself, and how they had set up

8 their own payment plan.

9 THE COMMISSIONER:

10 Q. Mr. Abbott, just so that I'm clear on this,

11 because I'm not sure that I quite understood,

12 but the base compensation for oncologists

13 would be a matter for the department, would it

14 not?

15 MR. ABBOTT:

16 A. Yes. Yes, it would.

17 THE COMMISSIONER:

18 Q. So that's kind of--and is that part of the

19 general negotiations in respect of doctors

20 generally across the province?

21 MR. ABBOTT:

22 A. There's two aspects. It would be--there is

23 the general master agreement, but then there

24 are, within that, subsets and different

25 arrangements made. In this case, the

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1 oncologists and how that works is that, in

2 fact, they pool. They pool their resources

3 and they pool their compensation and then

4 there's a process to allocate that to each one

5 of them, based on workload.

6 THE COMMISSIONER:

7 Q. So what's the difference in that and figuring

8 out what it is per patient you see or per your

9 workload for paying you on that basis?

10 MR. ABBOTT:

11 A. Well, it would be different in that, in this

12 case, everything was pooled, because they were

13 sharing workload, case loads, those kinds of

14 things.

15 THE COMMISSIONER:

16 Q. Well, I have noticed that it seems that if

17 you're a patient of the Health Science in

18 respect of treatment for breast cancer, you

19 might see anyone of a number of people in the

20 course of your treatment.

21 MR. ABBOTT:

22 A. Yes, and that was part of how they delivered

23 the service.

24 THE COMMISSIONER:

25 Q. So rather than seeing patients as some

Page 25

1 person's patient, would they see it as being  
 2 our patients, in the sense of patient of the  
 3 group?  
 4 MR. ABBOTT:  
 5 A. Primarily, I think that's how that was done.  
 6 THE COMMISSIONER:  
 7 Q. So when you determined, in the negotiations,  
 8 payment for oncologists, at least as they  
 9 relate to this particular institution, it  
 10 would be seen as, as you will, a group  
 11 compensation based on--and then based on  
 12 workloads, that might be distributed out in  
 13 various ways?  
 14 MR. ABBOTT:  
 15 A. Yes.  
 16 THE COMMISSIONER:  
 17 Q. And over and above that, if you had certain  
 18 administrative duties, Eastern Health would be  
 19 expected to compensate those who had certain  
 20 administrative duties extra for performing  
 21 that role?  
 22 MR. ABBOTT:  
 23 A. Yes.  
 24 THE COMMISSIONER:  
 25 Q. And you mentioned that there was a difference

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1 between if you were a clinical chief and a  
 2 divisional chief?  
 3 MR. ABBOTT:  
 4 A. Yes, and Eastern Health, prior to--I don't  
 5 know how all the authorities dealt with this  
 6 or the hospital boards before the integration,  
 7 but I believe the practice in Health Care  
 8 Corporation of St. John's, which would have  
 9 been overseeing this, or the Cancer Treatment  
 10 may have been different again, but in terms of  
 11 their practice, the one that I know George  
 12 Tilley would have been, and Bob Williams, most  
 13 familiar with, was that the clinical chiefs  
 14 were provided administrative stipend, where  
 15 the divisional chiefs were not, and that was a  
 16 source of contention with -  
 17 THE COMMISSIONER:  
 18 Q. Do you know the--can you tell me the  
 19 difference between a clinical chief and a  
 20 divisional chief?  
 21 MR. ABBOTT:  
 22 A. Well, as a -  
 23 THE COMMISSIONER:  
 24 Q. Or should I ask that to someone of Eastern  
 25 Health?

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1 MR. ABBOTT:  
 2 A. The clinical chief who would have been over,  
 3 in terms of the cancer care program here, was  
 4 Dr. Laing, but within that, there are the  
 5 different sub-program activities, in this case  
 6 whether it's radiation oncology versus medical  
 7 oncology. So that's the breakdown there.  
 8 THE COMMISSIONER:  
 9 Q. Okay.  
 10 MR. ABBOTT:  
 11 A. For the sub-specialty, as it were.  
 12 THE COMMISSIONER:  
 13 Q. Thank you. Sorry, Mr. Coffey.  
 14 COFFEY, Q.C.:  
 15 Q. Oh no, Commissioner. Exhibit--if we could,  
 16 Exhibit P-0278? This is a pathology workload  
 17 review, Newfoundland and Labrador. It's dated  
 18 January 22nd 2007, by Raymond Maung. Do I  
 19 have the pronunciation correct?  
 20 MR. ABBOTT:  
 21 A. Yes, I believe so.  
 22 COFFEY, Q.C.:  
 23 Q. And it's commissioned by yourself as deputy  
 24 minister, review and report by Dr. Raymond  
 25 Maung, Department of Laboratory Medicine,

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1 Royal Inland Hospital in Kamloops, British  
 2 Columbia. This is the report or the study  
 3 that grew out of--and report that grew out of  
 4 the--or came out of the Treasury Board  
 5 stipulation?  
 6 MR. ABBOTT:  
 7 A. Yes.  
 8 COFFEY, Q.C.:  
 9 Q. And the report itself, I believe is--I'm just  
 10 going to go to the very end here. It's page  
 11 43, please. So it's 43 pages long, including  
 12 the references, and it's got a number of  
 13 appendices and charts and so on. You would  
 14 have received this report. Did you review it  
 15 at the time?  
 16 MR. ABBOTT:  
 17 A. When the report came in, it came to Cathy  
 18 Bradbury. My first reading of the report was  
 19 actually sort of an executive summary, an  
 20 overview that Cathy Bradbury herself had done  
 21 on the report, and then I had subsequently  
 22 read through the document.  
 23 COFFEY, Q.C.:  
 24 Q. And approximately what time frame would you  
 25 have actually finally took the time to read

Page 29

1 it?

2 MR. ABBOTT:

3 A. It would have been between sort of January and

4 March, early March.

5 COFFEY, Q.C.:

6 Q. And what was your impression, based upon your

7 review of the report?

8 MR. ABBOTT:

9 A. Well, for us, it confirmed what we thought we

10 already knew, in terms of workload and

11 requirement for additional pathologists and

12 the references to, you know, the comparative

13 compensation, our pathologists in Newfoundland

14 and Labrador versus other jurisdictions. So

15 it basically confirmed what we had posited the

16 previous year.

17 COFFEY, Q.C.:

18 Q. Posited all along really, from your

19 perspective?

20 MR. ABBOTT:

21 A. Yes, and based on the presentations we had

22 been given by the pathologists. They used

23 some similar data, but this was, you know,

24 more comprehensive and objective and

25 independent from that perspective.

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1 COFFEY, Q.C.:

2 Q. What then happened with the report, sir?

3 MR. ABBOTT:

4 A. Well, we turned that around very quickly then

5 and made a submission to Treasury Board to now

6 address the compensation issue.

7 COFFEY, Q.C.:

8 Q. And what happened with that?

9 MR. ABBOTT:

10 A. Well, there was a submission made. The

11 minister of the day was supportive of us

12 moving forward as quickly as possible.

13 COFFEY, Q.C.:

14 Q. By this time, this is Mr. Wiseman?

15 MR. ABBOTT:

16 A. Yes.

17 COFFEY, Q.C.:

18 Q. Yes.

19 MR. ABBOTT:

20 A. And we had briefed him on this issue, and we

21 put it forward and I believe that would have

22 been March month, if I have my dates correct

23 here, and then we finally got a reply in May.

24 COFFEY, Q.C.:

25 Q. And to your knowledge, has anyone taken any

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1 issue, anyone who's dealt with this report by

2 Dr. Maung, taken any issue with his

3 observations or conclusions?

4 MR. ABBOTT:

5 A. No.

6 COFFEY, Q.C.:

7 Q. I'm going to--Commissioner, I will return to

8 this, but not with this witness, but I will be

9 returning to this at some subsequent point in

10 time, just to let you know.

11 If we could, please, bring up Exhibit--

12 let me just see here--0201, P-0201? This is

13 following along the same stream of activity,

14 Mr. Abbott. This is a letter, two pages long.

15 It's on Eastern Health letterhead. It's from

16 Dr. Nash Denic, president of the Newfoundland

17 Association of Pathologists, and he is then

18 interim clinical chief of the laboratory

19 medicine program, March 8th 2007, to yourself,

20 and involves recruitment and retention of

21 pathologists.

22 I take it here, Dr. Denic is lobbying for

23 acceptance of the Maung report and moving on?

24 MR. ABBOTT:

25 A. Yes.

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1 COFFEY, Q.C.:

2 Q. And we look at the second page of this, the

3 people it's copied to, it's Dr. Ross Wiseman,

4 Premier Danny Williams, the Honourable Tom

5 Marshall, Minister of Finance, and Rob Ritter.

6 In this, at that point in time, in the second

7 paragraph, Dr. Denic writes "our current

8 staffing in St. John's hospital is below the

9 optimum to guarantee proper patient care. We

10 are currently short of four pathologists with

11 a fifth departing on March 30th, '07." And

12 "Dr. Fontaine had postponed his resignation

13 until June 22nd pending the outcome of

14 negotiations. This will result in a shortfall

15 of over 30 percent for St. John's hospitals.

16 The situation outside St. John's is even more

17 serious with only one pathologist left in

18 Clarenville and one in Gander and there's a

19 resignation in Corner Brook." He talks about

20 the efforts to fill vacant positions. Mr.

21 Abbott, during your time as chair of the

22 Health Care Corporation board and now your

23 time as deputy minister, which would cover a

24 span of about, how many years would that be?

25 MR. ABBOTT:



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1 A. Five and a half.  
 2 COFFEY, Q.C.:  
 3 Q. Five and a half, okay. I was going to say  
 4 almost six years. And I appreciate perhaps as  
 5 the chair of the board of trustees you  
 6 wouldn't have been, you may not have been  
 7 intimately involved in the efforts to deal  
 8 with the pathologist shortage. What was your  
 9 sense overall in terms of their ability to  
 10 staff pathology positions?  
 11 MR. ABBOTT:  
 12 A. Well, as chair of the Health Care Corporation,  
 13 that issue was never brought certainly on my  
 14 radar screen. There were others that had  
 15 been, but not that one. But come the first  
 16 month I'm as deputy minister is put to me  
 17 front and centre and it was, again, quite,  
 18 quite obvious that there was a challenge here.  
 19 Now, that being said, we were hearing that and  
 20 we knew that in terms of other specialties and  
 21 for GPs certainly in rural areas. So it is in  
 22 the health care sector yet one other  
 23 discipline that is going to be a challenge and  
 24 will continue to be a challenge for  
 25 recruitment and retention, so the more we can

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1 do, the sooner we can do it, the better we can  
 2 address the issue. And that was sort of my  
 3 approach there. On this particular one there  
 4 was consensus right throughout the piece and  
 5 anybody consulted that, in fact, we need to  
 6 move on that. But the challenge, as I said  
 7 yesterday, was that we had to have--we had to  
 8 convince Treasury Board of that. That was  
 9 really the challenge.  
 10 COFFEY, Q.C.:  
 11 Q. How was the shortage of pathologists person  
 12 power, I'll call it, being addressed, you  
 13 know, while you were deputy minister, what was  
 14 your understanding about what was being done?  
 15 MR. ABBOTT:  
 16 A. Well, again, it would be more left to the  
 17 health authorities in terms of their  
 18 recruitment and efforts.  
 19 COFFEY, Q.C.:  
 20 Q. How about, no, I mean in terms of just  
 21 actually getting the work done, like the  
 22 actual if you're down four or five -  
 23 MR. ABBOTT:  
 24 A. Oh, I'm sorry. Well, you know, obviously the  
 25 work in terms of response times and turn

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1 around times for pathology reports obviously  
 2 wouldn't be optimal. There were specimens  
 3 being sent outside the province, to Ontario,  
 4 in certain areas to help address that, and  
 5 that was those that were most critical that  
 6 could not be done in a timely basis at, say,  
 7 in Eastern Health, as an example, then it  
 8 would have been sent out of province.  
 9 COFFEY, Q.C.:  
 10 Q. Okay.  
 11 MR. ABBOTT:  
 12 A. And that was known, generally known, again, as  
 13 part of our briefings internally on this.  
 14 COFFEY, Q.C.:  
 15 Q. If we could look, please, at Exhibit P-126?  
 16 Page 4. This is a question and answer  
 17 briefing note, the Department of Health. This  
 18 particular one is dated March 9th, 2007. It's  
 19 prepared and drafted by Beverley Griffith,  
 20 it's approved by Moira Hennessey. Do you  
 21 recall when it was that Mr. Wiseman had taken  
 22 over from Mr. Osborne?  
 23 MR. ABBOTT:  
 24 A. It would have been mid January of 2007.  
 25 COFFEY, Q.C.:

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1 Q. Okay. And so that December 12th briefing,  
 2 2006 briefing note we looked at yesterday  
 3 would have been the then most recent?  
 4 MR. ABBOTT:  
 5 A. Yes.  
 6 COFFEY, Q.C.:  
 7 Q. On ER/PR. And now this is March 9th. Do you  
 8 know why this one was prepared?  
 9 MR. ABBOTT:  
 10 A. I'm assuming now that we are--just scroll to  
 11 the top -  
 12 COFFEY, Q.C.:  
 13 Q. Sure, you certainly can, sir.  
 14 MR. ABBOTT:  
 15 A. - I'll just--the nature of the -  
 16 COFFEY, Q.C.:  
 17 Q. There you go.  
 18 MR. ABBOTT:  
 19 A. Yeah, again, so that would have been for the  
 20 briefing book for the minister going into the  
 21 house, the spring session of the house.  
 22 COFFEY, Q.C.:  
 23 Q. And, Mr. Abbott, in terms of the briefing of  
 24 Mr. Wiseman when he came aboard as Minister of  
 25 Health and Community Services, were you

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1 involved in the briefing?  
 2 MR. ABBOTT:  
 3 A. Well, what happened there is, you know, there  
 4 was a quick change of ministers. A briefing  
 5 book for the minister was prepared on, you  
 6 know, the issues of the day.  
 7 COFFEY, Q.C.:  
 8 Q. That would have been back in January, I take  
 9 it?  
 10 MR. ABBOTT:  
 11 A. Yeah, in January.  
 12 COFFEY, Q.C.:  
 13 Q. Of '07, yes.  
 14 MR. ABBOTT:  
 15 A. Departmental issues, you know, the  
 16 organizational issues, obviously requests for  
 17 meetings, briefing of budgets because we had  
 18 just submitted--we were just going into our  
 19 budget meetings. There were some very  
 20 critical issues that we were dealing with.  
 21 Pharmacy issues certainly were the immediate  
 22 issue the day he arrived.  
 23 COFFEY, Q.C.:  
 24 Q. And was ER/PR one of those at that time?  
 25 MR. ABBOTT:

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1 A. I would say it was not in the priority listing  
 2 there.  
 3 COFFEY, Q.C.:  
 4 Q. And so any information that he may have  
 5 garnered or that he might have garnered, I'm  
 6 not saying he did, but he might have garnered  
 7 would have been on the basis, really, of if--  
 8 to look back at that December 12 briefing  
 9 note, if he did at all?  
 10 MR. ABBOTT:  
 11 A. Well, it would be, you know, the briefing  
 12 material that we would have had for him in his  
 13 briefing book, you know, on the day, you know,  
 14 on the day or two after he arrived, an  
 15 assumption, I guess, on my part that this  
 16 issue was generally known by everybody in  
 17 government around the health portfolio, even  
 18 though as parliamentary secretary he would not  
 19 have been involved in any of the briefings.  
 20 But, as I said, when he arrived, it was some  
 21 very immediate issues that we were pressing  
 22 and others were pressing him to get engaged  
 23 in.  
 24 COFFEY, Q.C.:  
 25 Q. Okay. If we could, please, just looking at

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1 this, the anticipated questions at this point  
 2 are posited as being, "Why has it taken more  
 3 than one year for Eastern Health to go public  
 4 and release the results of the ER/PR testing  
 5 review?" And the second bullet--well, I don't  
 6 know if any of them actually, in terms of key  
 7 messages, actually answers that. But by this  
 8 point in time, I take it, Eastern Health had  
 9 gone public and, in fact, had held the press  
 10 conference?  
 11 MR. ABBOTT:  
 12 A. Yes.  
 13 COFFEY, Q.C.:  
 14 Q. "When will breast cancer screen tests resume  
 15 at the laboratory in St. John's?" And we look  
 16 at the second-last bullet under key messages,  
 17 it refers to, "Eastern Health resumed ER/PR  
 18 testing in St. John's on February 1st, 2007."  
 19 "What has government done to insure the  
 20 reliability and accuracy of the ER/PR testing  
 21 at the St. John's hospitals?" And arguably,  
 22 perhaps, the second bullet deals with that.  
 23 "Arrangements having been made for an  
 24 independent lab to review the results." And  
 25 "Are pathologists or laboratory staff to blame

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1 for the incorrect ER/PR test results?" And  
 2 the last bullet under key messages refers to  
 3 there having been multiple factors involved in  
 4 ER/PR testing and there has been no blame  
 5 assigned with in Eastern Health. Do you  
 6 recall if, before the house opened in the  
 7 spring of 2007, whether you ever discussed  
 8 with Mr. Wiseman ER/PR?  
 9 MR. ABBOTT:  
 10 A. I don't think we did.  
 11 COFFEY, Q.C.:  
 12 Q. And in terms of, like, looking at this March  
 13 9th, 2007 briefing note and it is, it goes on  
 14 in some length because it's got other  
 15 suggested responses, it's got a background  
 16 that covers effectively a page, single spaced,  
 17 and it even has an annex with a chronology of  
 18 ER/PR retesting that covers most of the page.  
 19 Someone reading this at the time, what  
 20 impression do you think that they would have  
 21 gotten, someone new to this?  
 22 MR. ABBOTT:  
 23 A. That there had been an issue, it was a public  
 24 issue that Eastern Health were working on  
 25 solutions and now in the spring of 2007 the

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1 quote, unquote, crisis had passed, the lab is  
 2 now up and running and there were--we would,  
 3 as a department or as minister we just would  
 4 need to just monitor events, but there is no  
 5 action required on your part to do anything at  
 6 this point.  
 7 COFFEY, Q.C.:  
 8 Q. And I take it at that point, as the background  
 9 points out, I believe, on the second page of  
 10 the exhibit, toward the bottom, that the  
 11 matter or certain matters before the courts, I  
 12 take it, that would take on its own -  
 13 MR. ABBOTT:  
 14 A. Yes.  
 15 COFFEY, Q.C.:  
 16 Q. - life, as it were. If we could, please,  
 17 Exhibit P-0202? Now this is an exhibit, an e-  
 18 mail, I'm sorry, from Tansy Mundon to Ms.  
 19 Hennessey, to yourself and Mr. Wiseman, March  
 20 15, 2007, 10:35 p.m. And it advises, "For  
 21 your information, Susan Bonnell told me this  
 22 afternoon that Eastern Health received a  
 23 submission under Access to Information from  
 24 the media requesting patient," it say here  
 25 "conversation rates associated with ER/PR." I

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1 take it you would have read that as conversion  
 2 rates?  
 3 MR. ABBOTT:  
 4 A. Yes.  
 5 COFFEY, Q.C.:  
 6 Q. Yes. "Apparently Susan was only informed  
 7 about the request today, but the request has  
 8 to be completed by early next week. It  
 9 appears that the media will receive limited  
 10 information. Once Susan receives further  
 11 details expected tomorrow she will advise me  
 12 accordingly." And if we look at, please,  
 13 Exhibit P-0203? Mr. Wiseman, on the same day,  
 14 at 10:43 p.m. asked the question, "What is  
 15 conversation rate?" Suggesting that he had  
 16 not a whole of familiarity with this, perhaps.  
 17 Do you know if he was advised that it wasn't a  
 18 conversation rate, it was a conversion rate?  
 19 MR. ABBOTT:  
 20 A. I really don't know. I certainly did not have  
 21 that conversation with him.  
 22 COFFEY, Q.C.:  
 23 Q. You didn't, okay. Now, did this alert you,  
 24 you know, to the fact that the media, at  
 25 least, were going to continue to pursue this

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1 through the vehicle of the Access to  
 2 Information?  
 3 MR. ABBOTT:  
 4 A. Um-hm.  
 5 COFFEY, Q.C.:  
 6 Q. Legislation and pursue the conversion rate  
 7 issue?  
 8 MR. ABBOTT:  
 9 A. Yeah. It wasn't a particular concern to me.  
 10 If they felt that they didn't have the  
 11 information they needed from whether the  
 12 briefing or since then and that that was the  
 13 approach that they felt they needed to follow,  
 14 that was acceptable as we were getting those  
 15 types of requests and that's sort of standard  
 16 operating procedure in that in terms from  
 17 media if they weren't getting the information  
 18 at, on first request.  
 19 COFFEY, Q.C.:  
 20 Q. Now, having gotten that e-mail were you aware  
 21 that, you know, before this were you aware  
 22 that the conversion--you were aware the  
 23 conversion rate had not been talked about for  
 24 legal, based on legal advice?  
 25 MR. ABBOTT:

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1 A. Well, as I said, for--that was sort of the  
 2 reason it was couched, that they weren't  
 3 speaking on rates, conversion rates, error  
 4 rates, those kinds of things.  
 5 COFFEY, Q.C.:  
 6 Q. Okay. But if the numbers, and on this point,  
 7 I mean, if you have, you know, two numbers,  
 8 one that can used as a numerator and one as a  
 9 denominator, anybody can do fractions can  
 10 figure out a rate?  
 11 MR. ABBOTT:  
 12 A. Yes.  
 13 COFFEY, Q.C.:  
 14 Q. And you had understood that back in November  
 15 and December that they were giving out all the  
 16 numbers?  
 17 MR. ABBOTT:  
 18 A. That's right.  
 19 COFFEY, Q.C.:  
 20 Q. And did it ever cross your mind, well, if they  
 21 got all the numbers, why don't they just do  
 22 the arithmetic and there you've got the rate?  
 23 MR. ABBOTT:  
 24 A. Well, and I guess really that's where I was.  
 25 I said, I could not figure out why this was

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1 considered an issue and that that date is  
 2 there and let's see what's--what that story  
 3 tells. So I was, you know, and until May,  
 4 2007, a couple of months later it was only  
 5 then that it literally dawned on me what had  
 6 not transpired in December.  
 7 COFFEY, Q.C.:  
 8 Q. Okay.  
 9 MR. ABBOTT:  
 10 A. In the briefing. And why this was presented  
 11 through the media the way it was.  
 12 COFFEY, Q.C.:  
 13 Q. So I take it that the media's persistence over  
 14 looking for conversion rates, you know,  
 15 through the Access to Information legislation  
 16 which you became aware of in March of '07 and  
 17 it puzzled you, but you didn't give it a whole  
 18 lot of thought, any further thought?  
 19 MR. ABBOTT:  
 20 A. That's -  
 21 COFFEY, Q.C.:  
 22 Q. Would that be a fair -  
 23 MR. ABBOTT:  
 24 A. That would be very--a fair assessment.  
 25 COFFEY, Q.C.:

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1 Q. And when it really became a matter of public  
 2 comment in the middle of May, then it kind of  
 3 came flooding home to you?  
 4 MR. ABBOTT:  
 5 A. Well, once I, once I heard the media report in  
 6 May and exactly how it was positioned and I  
 7 said, you know, obviously there is a big  
 8 problem here in terms of communication on  
 9 these numbers.  
 10 COFFEY, Q.C.:  
 11 Q. Okay. Now, did the--perhaps then you could  
 12 tell us, Mr. Abbott, then, what--you know,  
 13 from looking back on it now kind of as best  
 14 you can, piecing it together, what happened  
 15 then? I take then in terms of ER/PR did  
 16 anything happen the rest of March or April  
 17 that you can recall?  
 18 MR. ABBOTT:  
 19 A. Nothing specific. You know, there may have  
 20 been--if there was some--if there was a media  
 21 story, we would have updated the note based on  
 22 that event so the minister of the day, in this  
 23 case, Minister Wiseman, would have that. But  
 24 there were no inquiries of me.  
 25 COFFEY, Q.C.:

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1 Q. If we could, please, Exhibit P-0126, page 8?  
 2 Now, this is--thank you, Registrar. This is a  
 3 question and answer briefing note, the  
 4 Department of Health. Just go back one here.  
 5 This one is dated April 19th, 2007, it's  
 6 drafted by Beverley Griffiths, prepared by  
 7 Moira Hennessey. On the third page of it is  
 8 an annex one, chronology of ER/PR retesting.  
 9 This one runs into, chronology runs into a  
 10 second page. And here under, in italics,  
 11 under the chronology there's the following  
 12 commentary, "The definition of 'negative' has  
 13 changed within the seven-year period.  
 14 Oncologists previously believed that tumors  
 15 with less than 30 percent positivity for ER/PR  
 16 should be considered negative. With advancing  
 17 understanding of cancer and treatment the  
 18 negative rate has dropped down to 10 percent  
 19 and now to one percent. Today oncologists  
 20 believe that any positive result is worthy of  
 21 hormonal therapy." And that is actually an  
 22 effective footnote with an asterisk signifying  
 23 it. And we look, the asterisk in question is  
 24 in the second bullet of the annex. "May, 2005  
 25 an oncologist noted that a patient diagnosed

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1 in 2002 with breast cancer who tested negative  
 2 on the DAKO system." And the asterisks is  
 3 after the word "negative". And this explains,  
 4 I take it, the implications of that word. Had  
 5 you understood this before you saw this?  
 6 MR. ABBOTT:  
 7 A. Yes.  
 8 COFFEY, Q.C.:  
 9 Q. You'd understood that -  
 10 MR. ABBOTT:  
 11 A. Yes. And that was actually presented in the  
 12 initial briefing on July 21st, 2005 as one of  
 13 the factors.  
 14 COFFEY, Q.C.:  
 15 Q. Do you recall the purpose for which this  
 16 particular briefing note was prepared? I'm  
 17 just run back to the beginning of it.  
 18 MR. ABBOTT:  
 19 A. I believe it was just an update of the  
 20 minister's House of Assembly briefing note.  
 21 The house had been on recess, I guess, the  
 22 Easter break, and it was just updating his  
 23 briefing material.  
 24 COFFEY, Q.C.:  
 25 Q. So in effect if--just look back at the annex

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1 I, chronology of ER/PR retesting that  
 2 accompanied the March 9th, 2007 briefing note,  
 3 this one ends December 11th, 2006. You see  
 4 that there?  
 5 MR. ABBOTT:  
 6 A. Yes.  
 7 COFFEY, Q.C.:  
 8 Q. And we go to the same annex for the April 19th  
 9 one. It continues past December, it goes into  
 10 February, 2007, referring to affidavits having  
 11 been filed in the Supreme Court matter  
 12 involving Ms. Doucette. Were you, as deputy  
 13 minister, given any heads up, as it were, that  
 14 these affidavits or affidavit or affidavits  
 15 that were being file in the class action by  
 16 Eastern Health's lawyers contained information  
 17 that was, had not yet been made public?  
 18 MR. ABBOTT:  
 19 A. No, I had no information on that one way or  
 20 the other.  
 21 COFFEY, Q.C.:  
 22 Q. If Eastern Health was or would thereby, in  
 23 filing such an affidavit, reveal information  
 24 that it knew, Eastern Health knew to be new to  
 25 the public or newly in the public domain,

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1 would you have expected that they might let  
 2 the department and the minister know?  
 3 MR. ABBOTT:  
 4 A. You know, possibly. Again, depending on why  
 5 they were releasing it at that time and what  
 6 direction from their legal counsel. But if it  
 7 was going to be, get into public domain, it  
 8 would have been, you know, convenient and if  
 9 not helpful for the minister and the  
 10 department to know that.  
 11 COFFEY, Q.C.:  
 12 Q. Sure. If Eastern Health and apparently they  
 13 did know in December, December 11th, 2006 that  
 14 they were not releasing certain information,  
 15 certain numbers and in filing the affidavit in  
 16 February of 2007 were going to release those  
 17 numbers, and I appreciate from your  
 18 perspective you had been--hadn't had it  
 19 brought home to you that all the numbers  
 20 weren't released in December of '06-  
 21 MR. ABBOTT:  
 22 A. Yes.  
 23 COFFEY, Q.C.:  
 24 Q. - at that point. But from Eastern Health's  
 25 perspective, I mean, knowing that we're not

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1 going to say certain things to the media, now  
 2 we are going to release them, would you have  
 3 expected them, you know, in light of the  
 4 relationship between the department and  
 5 Eastern Health in terms of the exchange of  
 6 information, to have let you know?  
 7 MR. ABBOTT:  
 8 A. Well -  
 9 COFFEY, Q.C.:  
 10 Q. Particularly your communications people?  
 11 MR. ABBOTT:  
 12 A. Well, certainly that the minister's office  
 13 would know in the light of that if it was  
 14 potentially then going to be in the public  
 15 domain and certainly if there was any new  
 16 information or different information that was  
 17 before, as we'd been doing through the piece,  
 18 that, you know, he would be advised and  
 19 consequently I would be advised at the same  
 20 time.  
 21 COFFEY, Q.C.:  
 22 Q. And, Mr. Abbott, what then happened in May of  
 23 2007?  
 24 MR. ABBOTT:  
 25 A. Well, there was the media report, I think Mr.

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1 Quinn's CBC Radio report, you know, morning  
 2 of, I believe, the 15th, that raise the issue  
 3 of error rate and reference that it was 40  
 4 percent error rate in the testing. And when  
 5 we--when I got into the office that morning,  
 6 it was, you know, there was a very heightened  
 7 sense that, you know, there's a story here, a  
 8 concern here, obviously, from the department.  
 9 The minister received a call from the  
 10 premier's office to say, "What is this? Do  
 11 you know about this?" He called me in to his  
 12 office. He asked did I know about this. I  
 13 said, "Well, yes," and this is what we, you  
 14 know, basically knew in terms of -  
 15 COFFEY, Q.C.:  
 16 Q. Well, what did you tell him yes, you knew?  
 17 MR. ABBOTT:  
 18 A. Well, sort of really going back to sort of the  
 19 December briefing and of his predecessor, Mr.  
 20 Osborne, and the numbers that were in that. I  
 21 said in terms of error rate, those kinds of  
 22 things, that wasn't language that was used,  
 23 but what would have lead to the story, yes, we  
 24 would have known that. So -  
 25 COFFEY, Q.C.:

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1 Q. I'm sorry, you would have known what that lead  
 2 to the story?  
 3 MR. ABBOTT:  
 4 A. Well, in terms of the, again, the details that  
 5 obviously somebody now had done, in this case  
 6 Mr. Quinn had obviously looked at this  
 7 information, whether it was the same  
 8 information of December or some additional  
 9 information, but would have given you, you  
 10 know, the 40 percent calculation -  
 11 COFFEY, Q.C.:  
 12 Q. Actually done the calculation, yes.  
 13 MR. ABBOTT:  
 14 A. So I said, yes, we would have known that, not  
 15 very specifically how, you know, Mr. Quinn  
 16 arrived at that, but, yes, we were aware of  
 17 the -  
 18 COFFEY, Q.C.:  
 19 Q. Of the raw numbers?  
 20 MR. ABBOTT:  
 21 A. Of the raw numbers and the overall issue,  
 22 ER/PR. So that was fine. Obviously they were  
 23 going into the house then that afternoon. We  
 24 scrambled then to get a briefing for the  
 25 minister so that he was more aware of the

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1 issue and the details. Mr. Tilley and some of  
 2 the staff came to brief him. Then he went in  
 3 to -  
 4 COFFEY, Q.C.:  
 5 Q. Did you sit in on the briefing?  
 6 MR. ABBOTT:  
 7 A. Yes, I did.  
 8 COFFEY, Q.C.:  
 9 Q. Okay. What was said during that?  
 10 MR. ABBOTT:  
 11 A. Again, it was an update on where they were on  
 12 ER/PR and the testing results and the  
 13 notification, those kinds of things. Then -  
 14 COFFEY, Q.C.:  
 15 Q. Do you recall what the minister was told at  
 16 that time about the notifications issue?  
 17 MR. ABBOTT:  
 18 A. Because I think this meeting was sort of a  
 19 small point, it would have been something  
 20 along the lines that, you know, we have--  
 21 that's taken care of, all the patients have  
 22 been notified, there are no issues. It was at  
 23 that meeting that the affidavit was, Eastern  
 24 Health's was presented to us. And again,  
 25 okay, it dawned on me right away that, well,

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1 this information was not the information that  
 2 had been released in December and it's  
 3 probably on that basis that Mr. Quinn could  
 4 have developed his story.  
 5 COFFEY, Q.C.:  
 6 Q. Who is telling you that this information had  
 7 not been released, certain information had not  
 8 been released in December?  
 9 MR. ABBOTT:  
 10 A. Well, when I, when I looked at it and then we  
 11 talked about, well, is this new or why is it  
 12 perceived new, well, yes, in the briefing we  
 13 did not talk about some of these numbers.  
 14 COFFEY, Q.C.:  
 15 Q. So which numbers in particular, do you recall?  
 16 MR. ABBOTT:  
 17 A. Again, it would be in terms of as I would have  
 18 seen in terms of conversion rates, those kinds  
 19 of things. And we were doing, you know, it  
 20 was a very quick high-level briefing here, but  
 21 the questions then were, okay, we have this  
 22 now -  
 23 COFFEY, Q.C.:  
 24 Q. So were you--in terms of during that briefing,  
 25 did anybody talk about what numbers Eastern

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1 Health had not released, what actual raw  
 2 numbers they had not released back in  
 3 December, did anybody tell Mr. Wiseman?  
 4 MR. ABBOTT:  
 5 A. I don't know if we got into any specific  
 6 number then.  
 7 COFFEY, Q.C.:  
 8 Q. Okay.  
 9 MR. ABBOTT:  
 10 A. I just, you know, again, seeing this and told,  
 11 "No, that we did not release all of this.  
 12 Some of this is new and that's why Mr. Quinn  
 13 developed his story." I said, "Fair enough.  
 14 Well, now, what is it we do have here? What  
 15 can we advise the minister? What can he say  
 16 and should say around the various issues?"  
 17 And that was the discussion. We got into  
 18 referencing the reports and what was there,  
 19 because the minister was--wanted to know about  
 20 the reports.  
 21 COFFEY, Q.C.:  
 22 Q. Is this the external reports?  
 23 MR. ABBOTT:  
 24 A. The external reports, there was a conversation  
 25 around those.

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1 COFFEY, Q.C.:

2 Q. What was--he wanted to know what was in them?

3 MR. ABBOTT:

4 A. Basically, yeah, you know.

5 COFFEY, Q.C.:

6 Q. Sure.

7 MR. ABBOTT:

8 A. So request then. We did talk about their

9 status, those kinds of things.

10 COFFEY, Q.C.:

11 Q. What was said about that, do you recall?

12 MR. ABBOTT:

13 A. Well, the question, I think, was raised about

14 them being considered peer review, you know,

15 quality assurance, that kind of thing, so they

16 had not been released. But I inquired of

17 George if, you know, we could have a copy so

18 that we could be better informed now for the

19 minister.

20 COFFEY, Q.C.:

21 Q. And what was his response at that point?

22 MR. ABBOTT:

23 A. That that was, he said, yes, that they can be

24 made available.

25 COFFEY, Q.C.:

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1 Q. And this would be May 15th?

2 MR. ABBOTT:

3 A. Yes.

4 COFFEY, Q.C.:

5 Q. Okay.

6 MR. ABBOTT:

7 A. So then we finished the briefing. The

8 minister then literally had to leave and go to

9 the house. For those who may recall, that

10 particular session, it was quite, quite

11 heated. The government ministers were

12 independently--the current and former

13 ministers were being asked questions.

14 Different ministers were answering questions.

15 The government was seen as in, you know, on

16 this issue, in disarray, and certainly gave

17 that appearance and one could argue that may

18 have been on this because we had--which was I

19 had not really ever seen this before, that we

20 had three ministers up asking questions on

21 health related and, in fact -

22 COFFEY, Q.C.:

23 Q. Or being asked questions?

24 MR. ABBOTT:

25 A. Yes. See, norm, the parliamentary norm, as I

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1 understood it and had experienced irrespective

2 of that is there is--it would be the one

3 minister or the premier getting up to respond.

4 COFFEY, Q.C.:

5 Q. Okay.

6 MR. ABBOTT:

7 A. But in this case there were different

8 ministers. And coming out of that I was

9 called to the House of Assembly by the

10 minister that had, I was told, a conversation

11 with the premier to say, "Look, really, what

12 is going on here? What is happening? We,"

13 that being cabinet, "needs a briefing."

14 COFFEY, Q.C.:

15 Q. So that was Mr. Williams and Mr. Wiseman?

16 MR. ABBOTT:

17 A. Yes, now that was either the 15th, 16th. I

18 know the briefing itself happened on the 17th,

19 so there was some concern maybe--that

20 discussion may, I should say, probably

21 happened more on the 16th than on the 15th, if

22 memory serves me correctly on that right now.

23 So we then developed that evening a PowerPoint

24 presentation for the Cabinet on the morning of

25 the 17th to lay out basically what we knew and

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1 what the issues were, what we knew and what

2 was being communicated, those kinds of things.

3 I was invited and it was only me invited to

4 the Cabinet, in the Cabinet room, even though

5 we did have other officials, including George

6 Tilley and others outside to provide

7 additional information as required, but it was

8 I who did the presentation and laid the issues

9 out before the premier and his Cabinet.

10 COFFEY, Q.C.:

11 Q. And, Mr. Tilley and his officials were not

12 called upon, I take it.

13 MR. ABBOTT:

14 A. No.

15 COFFEY, Q.C.:

16 Q. It wasn't apparently necessary or felt

17 necessary. Mr. Abbott, on the 15th when Mr.

18 Tilley came over to brief Mr. Wiseman and I

19 take it Mr. Wiseman then ended up going to the

20 House and, you know, what transpired there is

21 available in Hansard, you've described it.

22 After the House adjourned on the 15th, did you

23 have any further contact that day with Mr.

24 Tilley?

25 MR. ABBOTT:

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1 A. I think I did, now exactly the specifics of it  
 2 was, but what sort of a follow up and where  
 3 things were and that obviously the minister,  
 4 because the story now was taking on a much  
 5 larger life and the media and the opposition,  
 6 that we needed to stay close on the issue to  
 7 keep the minister fully advised on the  
 8 information and events and to get through this  
 9 particular period.  
 10 COFFEY, Q.C.:  
 11 Q. I take it that during that, like the 15th,  
 12 16th, 17th and 18th of May, did you ever ask  
 13 Mr. Tilley or anybody from Eastern Health  
 14 about whether they had had any heads up that  
 15 this was going to happen? I mean, the story,  
 16 the CBC story broke on the morning of the  
 17 15th.  
 18 MR. ABBOTT:  
 19 A. Yes.  
 20 COFFEY, Q.C.:  
 21 Q. But did you ever ask of Mr. Tilley, look, did  
 22 you have any inkling this was going to -  
 23 MR. ABBOTT:  
 24 A. No, I didn't ask him that, I mean I had my own  
 25 thought on it, but I, I did not ask him.

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1 COFFEY, Q.C.:  
 2 Q. Okay, what was your thought on it? Did you  
 3 suspect that, in fact, they had known about or  
 4 had some kind of an alerting to this?  
 5 MR. ABBOTT:  
 6 A. No, no, it wasn't on that side at all. Again,  
 7 we had seen, earlier there was a letter in the  
 8 media by Dr. Hutton.  
 9 COFFEY, Q.C.:  
 10 Q. Yes.  
 11 MR. ABBOTT:  
 12 A. We also knew that the class action process was  
 13 gearing up. My thought, and I do apologize to  
 14 Mr. Crosbie here, even though he's not here  
 15 today, was that, you know, was there some  
 16 collusion here in terms of, you know, Mr.  
 17 Crosbie saying to Mr. Quinn, as an example,  
 18 did you know about this and maybe it might be  
 19 of some benefit to you in terms of a media  
 20 story. Again, that was my only thoughts.  
 21 Things were happening very quickly, obviously  
 22 at that juncture.  
 23 COFFEY, Q.C.:  
 24 Q. In terms of that and if we could, please,  
 25 exhibit P-0126, Commissioner, page--as to what

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1 you would have understood at the time, the  
 2 information you had available to you. Now  
 3 this is the April 19th, 2007 briefing note,  
 4 the then most current one, and it refers in  
 5 the last bullet under the background to  
 6 "Eastern Health filed an affidavit in Court on  
 7 December 15th, 2006. The lawyers for the  
 8 Plaintiff and the Defendant have filed  
 9 documents for certification case law with the  
 10 Court on February 9th, 2007. A hearing of the  
 11 certification application is scheduled for May  
 12 23rd to the 25th, 2007."  
 13 MR. ABBOTT:  
 14 A. Yes.  
 15 COFFEY, Q.C.:  
 16 Q. So at that point, in the 15th of May, that was  
 17 about a week away.  
 18 MR. ABBOTT:  
 19 A. Yes.  
 20 COFFEY, Q.C.:  
 21 Q. Did Mr. Tilley ever, or anybody from Eastern  
 22 Health ever advise you or let you know up to  
 23 the point that you left your position, that  
 24 they had been contacted by the media about  
 25 this story a number of days before May 15th?

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1 Did they ever let you know that?  
 2 MR. ABBOTT:  
 3 A. I don't recall, again we had the earlier, you  
 4 know, inquiry by Mr. Quinn -  
 5 COFFEY, Q.C.:  
 6 Q. Back in March.  
 7 MR. ABBOTT:  
 8 A. Yes, now whether that was a contin--you know,  
 9 and I know these stories don't necessarily  
 10 happen over night, but that it may be now,  
 11 this is where this has finally landed.  
 12 COFFEY, Q.C.:  
 13 Q. You were never advised, you have no  
 14 recollection of ever being advised--I'm not  
 15 suggesting you were, I'm asking you.  
 16 MR. ABBOTT:  
 17 A. No, I don't remember.  
 18 COFFEY, Q.C.:  
 19 Q. What was your understanding on May 15th and  
 20 16th as to what Eastern Health's position was  
 21 going to be with respect to commenting in the  
 22 media about the media stories or the stories  
 23 in the media? They were over to brief Mr.  
 24 Wiseman and he has to face the House.  
 25 MR. ABBOTT:



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1 A. Yes.

2 COFFEY, Q.C.:

3 Q. What was Eastern, what was your understanding

4 of what Eastern Health's position was going to

5 be?

6 MR. ABBOTT:

7 A. Well, other than what information had been out

8 in the public domain, whether that included

9 the affidavit or not at that point, I really

10 can't say, but in terms of how far they were

11 going to be able to go in terms of whatever

12 legal advice and what have you, but we really

13 did not have, I did not have a discussion

14 around that point with him.

15 COFFEY, Q.C.:

16 Q. Whether they were going to comment publicly or

17 not.

18 MR. ABBOTT:

19 A. No.

20 COFFEY, Q.C.:

21 Q. Were they going to refuse comment or did you

22 have -

23 MR. ABBOTT:

24 A. We never had that discussion and I mean, two

25 options there, that would have been fine and

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1 acceptable or the minister would--had to

2 respond or direct that--direct or ask, you

3 know, that they in fact do provide more

4 information, but we never had that type of

5 discussion.

6 COFFEY, Q.C.:

7 Q. The primary focus on May 15th anyway, was

8 dealing with how the minister was going to

9 respond?

10 MR. ABBOTT:

11 A. Well, we had seen, it was quite evident and

12 obvious to me that whatever Eastern Health was

13 doing or not doing now, it had all switched

14 over to the government.

15 COFFEY, Q.C.:

16 Q. Okay. And on the May 15th, I take it that the

17 basis for the controversy in the media or

18 alleged controversy, was the difference

19 between or the usage of or assertion by CBC

20 that the conversion rate was about 40 percent.

21 MR. ABBOTT:

22 A. Yeah, and they were using error rate and error

23 rate, you know, when you hear that through the

24 media, through the radio, it has a very--

25 irrespective of the facts underlying that, but

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1 it would, you know, did send that, you know,

2 there is a very significant, if nothing else,

3 very significant communication's issue here

4 because either the CBC reporter didn't, shall

5 we say understand what was making this up, or

6 was using that as a bit of a lead, shall we

7 say, grab the attention of the public.

8 COFFEY, Q.C.:

9 Q. Of the public. Was there any comparison of

10 the roughly 40 percent to any 10 percent

11 figure or any earlier figure that had been

12 used by Eastern Health? Do you recall there

13 being any juxtapositioning in the media

14 between 40 and 10?

15 MR. ABBOTT:

16 A. I don't -

17 COFFEY, Q.C.:

18 Q. An assertion by certain media personnel that

19 Eastern Health had earlier announced or

20 commented or said that the error rate or

21 conversion rate would be about 10 percent.

22 MR. ABBOTT:

23 A. Uh-hm. I remember that, now whether it was

24 that story or thereabouts, but yes, I accept

25 what you're saying, yes.

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1 COFFEY, Q.C.:

2 Q. And what, if anything, had you understood in

3 that regard, like in terms of the 10 percent?

4 Had you ever heard of the 10 percent figure

5 before?

6 MR. ABBOTT:

7 A. No, but when I initially heard, it would have

8 been in relation to that, the briefing note

9 you referenced earlier where we had that

10 footnote where it might have been, sort of in

11 that context, but knowing really that it was a

12 larger--that was just a subset of all the

13 conversions.

14 COFFEY, Q.C.:

15 Q. Had you been aware that at least in the early

16 stages, you know, after this matter became

17 public in the fall of 2005, that Dr. Williams

18 was quoted by the media as referring to a 10

19 percent change rate or 10 percent -

20 MR. ABBOTT:

21 A. I remember, you know, I remember that, but at

22 this particular point whether or not that was

23 top of mind, I doubt it.

24 COFFEY, Q.C.:

25 Q. Now, if we could please, exhibit P-0282? Here

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1 this is an e-mail from Moira Hennessey to  
 2 Connie Fry, Tuesday, May 15th, 2007 at 2:34  
 3 p.m. It's a House of Assembly note on ER/PR  
 4 is the subject and Ms. Hennessey says,  
 5 "Connie, can you please e-mail the note to  
 6 Elizabeth Matthews, the premier's  
 7 communication's director. Janet made a few  
 8 edits at about 1:25." And I take it then that  
 9 certainly by the afternoon of May 15th, that  
 10 this matter, the matter of ER/PR was not only  
 11 within the department, had moved it, as you  
 12 put it, from Eastern Health, the focus from  
 13 Eastern Health to the department, but in fact  
 14 in terms of its management within the  
 15 government -  
 16 MR. ABBOTT:  
 17 A. Yes, in terms of communications on it.  
 18 COFFEY, Q.C.:  
 19 Q. Communications was being moved to the Cabinet  
 20 secretariat at the premier's office--or at  
 21 least they were being brought into it.  
 22 MR. ABBOTT:  
 23 A. They certainly were being brought in and they  
 24 were, you know, seeking obviously information  
 25 at this point.

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1 COFFEY, Q.C.:  
 2 Q. If we could, please, exhibit--well on that  
 3 point, I'll ask, well what would be the point  
 4 of that, what's the purpose of doing that?  
 5 MR. ABBOTT:  
 6 A. I'm not sure if I follow your question.  
 7 COFFEY, Q.C.:  
 8 Q. Well in terms of bringing the premier's  
 9 communication's people and -  
 10 MR. ABBOTT:  
 11 A. Well I think it was, you know, two things  
 12 here, primarily is that that would, primarily,  
 13 come at their request to be provided with a  
 14 briefing material.  
 15 COFFEY, Q.C.:  
 16 Q. And if we could, please, exhibit P-0824. This  
 17 is an e-mail from Josephine Cheeseman,  
 18 Tuesday, May 15th, 2007 at 5:00 p.m. to a  
 19 number of individuals, Carmel Turpin, Donna  
 20 Ivey, Elizabeth Matthews, Tansy Mundon, Tara  
 21 Furlong. It's forwarding, the subject is  
 22 "Litigation, more of a concern for government  
 23 than patient's health charges opposition."  
 24 And this is one where you look down through  
 25 this story, media story, the quotation

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1 attributed to Mr. Ball is "I find it very  
 2 unfortunate that the Minister of Health would  
 3 be more concerned about litigation than he  
 4 would be about the health concerns of  
 5 patients." And that follows a reference to a  
 6 media scrum "following question period, the  
 7 minister further revealed that the government  
 8 knew for months the high number of women  
 9 affected, but was advised not to reveal them  
 10 because of litigation risks. Of the close to  
 11 a thousand women who were retested, 317 were  
 12 given wrong results, with 117 of these  
 13 requiring alternate treatment." Now you had  
 14 sat through the briefing of Mr. Wiseman by Mr.  
 15 Tilley.  
 16 MR. ABBOTT:  
 17 A. Yes.  
 18 COFFEY, Q.C.:  
 19 Q. What had Mr. Tilley told Mr. Wiseman in that  
 20 regard?  
 21 MR. ABBOTT:  
 22 A. I don't think there was any detailed  
 23 discussion around this point and what he could  
 24 say or not say, but I--my sense from it was  
 25 that where the minister's comfort level was at

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1 that point, in terms of how he could respond,  
 2 knowing that there was litigation should he  
 3 really say very much, and again, it was in  
 4 that context that I think he responded the way  
 5 he did.  
 6 COFFEY, Q.C.:  
 7 Q. Now the minister during, when you had briefed  
 8 him and Mr. Tilley had briefed him that day -  
 9 MR. ABBOTT:  
 10 A. Yes.  
 11 COFFEY, Q.C.:  
 12 Q. He had certainly become aware through your  
 13 briefing that the government, at large, had  
 14 known for months the numbers of women  
 15 affected?  
 16 MR. ABBOTT:  
 17 A. Yes.  
 18 COFFEY, Q.C.:  
 19 Q. And the idea that Eastern Health had refused  
 20 to give out certain numbers in December of  
 21 '06, based upon legal advice, did that come up  
 22 during Mr. Tilley's briefing of Mr. Wiseman?  
 23 MR. ABBOTT:  
 24 A. Can you just repeat that?  
 25 COFFEY, Q.C.:

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1 Q. Based upon the idea or the notion that Eastern  
 2 Health had refused to give out certain numbers  
 3 to the media in December of '06, what's your  
 4 recollection of what Mr. Tilley said to Mr.  
 5 Wiseman about that, about the basis for it,  
 6 for the reason?  
 7 MR. ABBOTT:  
 8 A. Well it was this reference and I think the  
 9 critical, you know, the pivotal word here is  
 10 error or error rate and that could, you know,  
 11 imply error and, you know, the issues and  
 12 legal, and what the legal intent of that or  
 13 interpretation of that might be. And that's,  
 14 I think how it got framed and how the minister  
 15 may have felt he was sort of boxed in here on  
 16 what he could reply.  
 17 COFFEY, Q.C.:  
 18 Q. Okay.  
 19 MR. ABBOTT:  
 20 A. He wasn't asked can you tell me the numbers  
 21 and, you know, and we could have easily done,  
 22 I guess he could have easily done that, based  
 23 on what he had there, but it was this error  
 24 rate and that context that, I believe kept him  
 25 focussed on the answer that he gave and I

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1 understand repeated outside the House.  
 2 COFFEY, Q.C.:  
 3 Q. In terms of that, I'll ask you to, if you  
 4 could, if you can recall, what you recall Mr.  
 5 Tilley told Mr. Wiseman about the basis for  
 6 it? Were they doing it because there was  
 7 litigation ongoing or because their lawyers  
 8 told them to?  
 9 MR. ABBOTT:  
 10 A. I would see that as being almost one and the  
 11 same, in terms of if we discussed it or how we  
 12 discussed it, whether it was legal advice,  
 13 litigation, and I certainly wouldn't have  
 14 distinguished between the two terms.  
 15 COFFEY, Q.C.:  
 16 Q. So you can't recall between -  
 17 MR. ABBOTT:  
 18 A. No.  
 19 COFFEY, Q.C.:  
 20 Q. But certainly legal matters or the idea of  
 21 legal matters is raised during the meeting  
 22 between Mr. Tilley and Mr. Wiseman.  
 23 MR. ABBOTT:  
 24 A. And certainly in my briefing with the minister  
 25 that was an issue there, this is what Eastern

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1 Health had said, you know, those kinds of  
 2 things.  
 3 COFFEY, Q.C.:  
 4 Q. Because you had been aware that because of  
 5 legal advice that they had chosen not to speak  
 6 of certain things.  
 7 MR. ABBOTT:  
 8 A. Yes.  
 9 COFFEY, Q.C.:  
 10 Q. Which is the error rate is one of them. If we  
 11 could, please, exhibit P-0199. This is page  
 12 7, Commissioner. This is a letter of May  
 13 16th, 2007 on Executive Council Treasury Board  
 14 letterhead, Confidential Treasury Board  
 15 Minute, 2007-175, it's addressed to yourself  
 16 as deputy minister. And it advises you that  
 17 your proposal dated February 26th, 2007,  
 18 requesting the Treasury Board are approved, an  
 19 adjustment to the current salary physician  
 20 policy, the oncology stipend policy by  
 21 removing one of the qualifying conditions to  
 22 allow the financial recognition of the  
 23 specialty of pathology was considered. At the  
 24 1,526 meeting of Treasury Board, the Board  
 25 approved the department's request, effective

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1 26 February, 2007, the day the submission was  
 2 received. And the Board also directed the  
 3 department to identify a short meeting and  
 4 long-range plans to deal with the  
 5 pathologists' recruitment and retention issues  
 6 and to go back to the Board by September 30th,  
 7 2007." Signed by the secretary. Now, sir,  
 8 had you--well it was received in your office,  
 9 your stamp there, May 17th, 2007.  
 10 MR. ABBOTT:  
 11 A. Uh-hm.  
 12 COFFEY, Q.C.:  
 13 Q. When did you first learn that Treasury Board  
 14 had finally said yes.  
 15 MR. ABBOTT:  
 16 A. It would have been, I think coming out of  
 17 their meeting and what date that was, whether  
 18 it was, shall we say 15th, 16th or the  
 19 previous week, I really can't tell you. I  
 20 remember when it arrived, I was, you know,  
 21 certainly glad that the decision had been  
 22 made, but my other thought was it couldn't  
 23 have been worse timing in terms of how one  
 24 could perceive this in light of the stories of  
 25 the 15th and 16th in the media. And the other

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1 thought was if we had made the decision when I  
 2 was looking to get it made, it would have  
 3 avoided all of that, but, you know, so we,  
 4 like in government.  
 5 COFFEY, Q.C.:  
 6 Q. And received May 17th, 2007, that very day  
 7 that you're up briefing the Cabinet yourself,  
 8 personally -  
 9 MR. ABBOTT:  
 10 A. I'm going one way and that's coming the other,  
 11 literally.  
 12 COFFEY, Q.C.:  
 13 Q. That's coming into your office.  
 14 MR. ABBOTT:  
 15 A. In the hallway. As I said, I would have been  
 16 given a verbal heads up that in fact it had  
 17 been approved.  
 18 COFFEY, Q.C.:  
 19 Q. You would have?  
 20 MR. ABBOTT:  
 21 A. Yes.  
 22 COFFEY, Q.C.:  
 23 Q. And your memory, your recollection is that  
 24 that verbal heads up occurred the day it  
 25 happened or the day after, but you don't know

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1 whether it was that week or the week before?  
 2 MR. ABBOTT:  
 3 A. That's right.  
 4 COFFEY, Q.C.:  
 5 Q. And we can certainly just check to see which  
 6 week that particular meeting occurred to the  
 7 Board was. If we could, what was the--looking  
 8 at page 8 of this exhibit, "Is a briefing  
 9 note, Treasury Board decision affecting  
 10 pathologists and NLMA request for meeting."  
 11 This is prepared by yourself, May 23rd, 2006.  
 12 MR. ABBOTT:  
 13 A. Yes.  
 14 COFFEY, Q.C.:  
 15 Q. What was this about? What was the purpose of  
 16 this?  
 17 MR. ABBOTT:  
 18 A. I was bringing that to the attention of the  
 19 minister because we were getting, you know, I  
 20 think he was getting some calls at the time  
 21 and that the need for, you know, him to get  
 22 involved and get a meeting arranged so that we  
 23 could get the pathologists in and have that  
 24 discussion and hopefully convince Minister  
 25 Sullivan, basically, of the -

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1 COFFEY, Q.C.:  
 2 Q. So this had been the full year before, in the  
 3 sense that this was--this just happens to be  
 4 in the line of documents as to where we guide  
 5 it, so -  
 6 MR. ABBOTT:  
 7 A. Yes.  
 8 THE COMMISSIONER:  
 9 Q. Just for the purpose of giving the history of  
 10 the thing to the Minister.  
 11 COFFEY, Q.C.:  
 12 Q. Yes, and in fact, this is a full year before,  
 13 Commissioner, actually when -  
 14 THE COMMISSIONER:  
 15 Q. Yes, I understand that this is 2006 and we're  
 16 now in 2007.  
 17 MR. ABBOTT:  
 18 A. I don't know now if that was attached to  
 19 anything at that time, I couldn't say.  
 20 COFFEY, Q.C.:  
 21 Q. After it was prepared, May 23rd, 2006, it may  
 22 very well have accompanied other documents  
 23 related to this file?  
 24 MR. ABBOTT:  
 25 A. It's possible, and I, you know, very seldom

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1 did I do my own briefing note to the minister,  
 2 but I had to put that clearly in front of him  
 3 that day.  
 4 COFFEY, Q.C.:  
 5 Q. And it was, as you seldom did such things  
 6 personally, I take it that this was that  
 7 important a matter at the time.  
 8 MR. ABBOTT:  
 9 A. Yes.  
 10 COFFEY, Q.C.:  
 11 Q. In May of '06.  
 12 MR. ABBOTT:  
 13 A. Yes.  
 14 COFFEY, Q.C.:  
 15 Q. Sir, in preparing for your briefing of the  
 16 Cabinet on May 17th, what did you use--well  
 17 first of all, who prepared the slide deck and  
 18 what was used to prepare it?  
 19 MR. ABBOTT:  
 20 A. The slide deck was prepared by Moira Hennessey  
 21 and Tansy Mundon on the evening of May 16th.  
 22 COFFEY, Q.C.:  
 23 Q. This is exhibit P-0827, Commissioner.  
 24 MR. ABBOTT:  
 25 A. So they would have relied on whatever

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1 documentation that they had at their disposal  
 2 at that time. There may have been some  
 3 further, you know, conversations with somebody  
 4 at Eastern Health, but I couldn't speak to  
 5 that because it literally was drafted from, I  
 6 think like 4:00 p.m. to midnight that day and  
 7 I purposely stayed out of that preparation  
 8 process and they would have e-mailed that to  
 9 me late that night. I reviewed it and then we  
 10 went over that with them in the morning for  
 11 some minor changes, because we had to do the  
 12 briefing and had to be in at the Cabinet room  
 13 for 10:00 that morning.

14 COFFEY, Q.C.:  
 15 Q. Why did you purposely stay out of it?  
 16 MR. ABBOTT:  
 17 A. Well because I didn't want to influence that,  
 18 you know, really what we did know or didn't  
 19 know as the case may be, and to--and at the  
 20 same time, it was sort of, our process is that  
 21 the persons who are responsible for the file  
 22 would develop it and then submit it to me for  
 23 final review and edit. And for purposes of  
 24 this, I felt that that would be the best way  
 25 to do this and then review it once it was done

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1 and then finalize it, obviously, before I  
 2 present it. And that being said, I had  
 3 requested George Tilley and his officials to  
 4 be available to supplement the briefing. So  
 5 if there were things in here that were not  
 6 dead on, as it were, or presented in the  
 7 appropriate light, that he or his officials  
 8 would be available to advise Cabinet as well.

9 COFFEY, Q.C.:  
 10 Q. Now at this point, in preparing a briefing for  
 11 Cabinet, because in much of the material we  
 12 have looked at, you know, certain aspects of  
 13 this matter there are references to valued key  
 14 messages.

15 MR. ABBOTT:  
 16 A. Yes.

17 COFFEY, Q.C.:  
 18 Q. You'll notice the materials are replete with  
 19 such references. In preparing a briefing for  
 20 Cabinet, is there an approach, a key messages  
 21 approach?

22 MR. ABBOTT:  
 23 A. Not necessarily and again -

24 COFFEY, Q.C.:  
 25 Q. And I'm not suggesting there is, I'm asking -

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1 MR. ABBOTT:  
 2 A. No, but depending on the purpose, now this  
 3 here was, as I understood the direction was to  
 4 provide us with, you know, information  
 5 briefing on the issue. It wasn't a proposal  
 6 for which we needed then to talk about key  
 7 messages. We do talk here briefly and  
 8 certainly the discussion in Cabinet was around  
 9 communications now, as a result of  
 10 developments that week and as a result of this  
 11 briefing.

12 COFFEY, Q.C.:  
 13 Q. And we looked at the first page of the deck  
 14 there, entitled "Briefing for Cabinet, May  
 15 17th, 2007, Estrogen and Progesterone  
 16 Receptors ER/PR Testing." The outline is a  
 17 background, what the department knew and when,  
 18 public communication's issues, quality  
 19 assurance and then it lays out the background,  
 20 what is ER/PR testing, how was the problem  
 21 discovered, internal review completed,  
 22 decision made to retest all negative ER/PR  
 23 results from May '97 to August 2005. Now  
 24 you'll notice here there are questions, of  
 25 course, there are no answers here.

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1 MR. ABBOTT:  
 2 A. Yes.

3 COFFEY, Q.C.:  
 4 Q. So were the answers written down anywhere?  
 5 MR. ABBOTT:  
 6 A. I would have provided them based on my  
 7 knowledge. Now, again, you are having to  
 8 communicate to the Cabinet which then the  
 9 audience there was a whole spectrum of  
 10 knowledge-based and, you know, skill level and  
 11 what have you, so the best way I found to do  
 12 that, is to be very specific and very simple  
 13 in the language we use, so that you are  
 14 assured that all members of Cabinet can be  
 15 fully brought up to scratch on an issue. So  
 16 if you're speaking to the premier, as well as  
 17 the minister of health and others, and there  
 18 were three--there were two former ministers in  
 19 the room, so if there was something that I was  
 20 to skip over, then they could easily say, you  
 21 know, we can explore that, I can refer to  
 22 their knowledge as well, but it was really  
 23 trying to keep this as fairly simple and  
 24 straightforward as possible so that the  
 25 Cabinet, as a whole and individual ministers

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1 coming out of that meeting, would have a sense  
 2 of what this issue was about, what we, as a  
 3 department did, what the minister did, what  
 4 Eastern Health had done.  
 5 COFFEY, Q.C.:  
 6 Q. In terms of that, would you use a, because I  
 7 take it there's various types of PowerPoint  
 8 presentations, one is just the deck itself  
 9 that gets flashed onto the screen or wall -  
 10 MR. ABBOTT:  
 11 A. Yes.  
 12 COFFEY, Q.C.:  
 13 Q. Another one has speaking notes.  
 14 MR. ABBOTT:  
 15 A. Yes.  
 16 COFFEY, Q.C.:  
 17 Q. Did you use one of those do you know?  
 18 MR. ABBOTT:  
 19 A. There would have been some speaking notes  
 20 attached in terms of my script, if I can put  
 21 it that way, there would have been some notes  
 22 typed in on that.  
 23 COFFEY, Q.C.:  
 24 Q. Did you, in your approach that day, did you  
 25 actually just read those, like your speaking

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1 notes?  
 2 MR. ABBOTT:  
 3 A. Well, in my normal presentation style, I, you  
 4 know, if I needed to read a very specific  
 5 technical point, I would, but I would speak to  
 6 it as more or less how I'm speaking to you  
 7 now.  
 8 COFFEY, Q.C.:  
 9 Q. Okay. Would you be certain to cover in your  
 10 impromptu remarks, whatever though you had  
 11 listed on the speaking notes?  
 12 MR. ABBOTT:  
 13 A. I'd pretty well would have used those and -  
 14 COFFEY, Q.C.:  
 15 Q. To ensure you covered everything, I take it.  
 16 MR. ABBOTT:  
 17 A. Pardon?  
 18 COFFEY, Q.C.:  
 19 Q. To ensure that you covered everything you  
 20 wanted to cover.  
 21 MR. ABBOTT:  
 22 A. Yes, and then obviously responded to questions  
 23 of the minister's.  
 24 COFFEY, Q.C.:  
 25 Q. Do you recall whether there were many

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1 questions that day?  
 2 MR. ABBOTT:  
 3 A. No, the primary questioner, I guess, would  
 4 have been the premier.  
 5 COFFEY, Q.C.:  
 6 Q. And if we could, please, looking at page 11  
 7 please? Now here, I should go back, up to  
 8 page 6 of the exhibit in the deck, the heading  
 9 is "Background" it had become background and  
 10 then for several pages it is background, a  
 11 factual background, and then it's what the  
 12 department knew and when, beginning at page 7  
 13 and number of dates and descriptions of what  
 14 happened on those dates in the following  
 15 slides. Why was it relevant as to what the  
 16 department knew and when?  
 17 MR. ABBOTT:  
 18 A. Because that was one of the questions that the  
 19 premier wanted us to specifically address.  
 20 COFFEY, Q.C.:  
 21 Q. Oh, you understood that in coming out of this?  
 22 MR. ABBOTT:  
 23 A. Yes.  
 24 COFFEY, Q.C.:  
 25 Q. So your understanding of what the premier

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1 wanted of this briefing was what? He wanted  
 2 to know what?  
 3 MR. ABBOTT:  
 4 A. Get an understanding of why this issue was  
 5 what it was that particular week, you know,  
 6 what did the department know about this and  
 7 what is happening, you know, from a  
 8 communication's piece around that and in  
 9 essence, what did the public know or  
 10 understand or should know or understand, and  
 11 then to really use that as a basis to decide  
 12 what their next steps would be in terms of  
 13 responding to the questions in the House and  
 14 the media.  
 15 COFFEY, Q.C.:  
 16 Q. Now here, looking at page 11, there's an  
 17 August 18th, 2006 briefing note prepared by  
 18 Cabinet secretariat for information. During  
 19 the Cabinet briefing, did it become a--was  
 20 there any, other than the premier asking an  
 21 occasional question -  
 22 MR. ABBOTT:  
 23 A. Yes.  
 24 COFFEY, Q.C.:  
 25 Q. - or questions, was there any other

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1 commentary?  
 2 MR. ABBOTT:  
 3 A. Well there was around, you know, on this  
 4 particular note there was, I think when the  
 5 premier saw, because that may have been in his  
 6 briefing material at that time and he did ask  
 7 Minister Osborne at that time had he seen that  
 8 note.  
 9 COFFEY, Q.C.:  
 10 Q. Yes.  
 11 MR. ABBOTT:  
 12 A. And he answered no, he hadn't, and then they  
 13 both basically looked at me and I said, yes,  
 14 the minister is correct on that point.  
 15 COFFEY, Q.C.:  
 16 Q. How did you know at that point that Mr.  
 17 Osborne -  
 18 MR. ABBOTT:  
 19 A. Well when I was getting ready for this, I went  
 20 back and reviewed and I hadn't--when I pulled  
 21 out the note and then looked at my, retrieved  
 22 my e-mails for that period, I realized that,  
 23 because even though I had seen the note  
 24 before, I hadn't--I had never seen it or used  
 25 it again and I realized that it had been e-

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1 mailed to me and I had not e-mailed it to him,  
 2 and that would have been sort of standard for  
 3 that period.  
 4 COFFEY, Q.C.:  
 5 Q. Now in terms of that, did you check with  
 6 Moira--had you checked before you briefed the  
 7 Cabinet, had you checked with Ms. Hennessey as  
 8 to whether or not she had forwarded the note  
 9 to Mr. Osborne?  
 10 MR. ABBOTT:  
 11 A. Not when I said it at that point, but we, I  
 12 think we would have had a conversation on  
 13 that. Exactly what she said, I don't know if  
 14 she assumed I had sent it or, but we were, you  
 15 know, we were pretty well sure that that  
 16 hadn't gone to Minister Osborne and -  
 17 COFFEY, Q.C.:  
 18 Q. Did you ask her why she hadn't sent it? I  
 19 mean -  
 20 MR. ABBOTT:  
 21 A. Well other than she, you know, she sent it,  
 22 the request is to Cabinet secretariat and then  
 23 e-mailed to me and I signed off on it, now  
 24 whether she assumed I was going to send it to  
 25 the minister of not, but that would have been,

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1 you know, that would have been a reasonable  
 2 assumption that I could have easily sent it.  
 3 But I didn't have any further conversation on  
 4 that point with her.  
 5 COFFEY, Q.C.:  
 6 Q. How did you know that you had signed off on  
 7 the August 18th briefing note?  
 8 MR. ABBOTT:  
 9 A. Well I, in terms of the final file, if I can  
 10 put it that way, other than it had been  
 11 drafted, I had seen it and whether or not--and  
 12 I was told that it had gone, whether or not  
 13 there had been any change from the time I had  
 14 seen the draft they had sent to me and went  
 15 forward, I hadn't made that distinction and  
 16 had not been advised that there had been any  
 17 material change, if in fact there was.  
 18 COFFEY, Q.C.:  
 19 Q. So, because the last e-mail we have here is  
 20 the one, the August 17th one I referred you to  
 21 yesterday.  
 22 MR. ABBOTT:  
 23 A. Yes.  
 24 COFFEY, Q.C.:  
 25 Q. That Ms. Hennessey sent you. There's no

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1 indication, at least in the documents we have,  
 2 that you, in writing anyway, approved of it or  
 3 signified approval?  
 4 MR. ABBOTT:  
 5 A. No.  
 6 COFFEY, Q.C.:  
 7 Q. Are you aware of any such written -  
 8 MR. ABBOTT:  
 9 A. No, and she e-mailed me and asked for  
 10 approval, I may, by that time, had probably  
 11 left the office or moved on to something else  
 12 and she felt it was appropriate to send it on.  
 13 COFFEY, Q.C.:  
 14 Q. So in the absence of a negative response from  
 15 you -  
 16 MR. ABBOTT:  
 17 A. Yeah, and because of our close working  
 18 relationship that that would have been more  
 19 than acceptable.  
 20 COFFEY, Q.C.:  
 21 Q. Sent it on, and you're preparing for this in  
 22 2007, this briefing, what, if any, records did  
 23 you check before you went to the Cabinet  
 24 briefing room? Because you had indicated to  
 25 the Commissioner that you tried to stay out of

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1 this.

2 MR. ABBOTT:

3 A. Yes. Nothing very substantive, it was around-

4 -going through these various points to make

5 sure I understood, you know, what they were

6 and my familiarity with them, but doing any

7 detailed checking on any one briefing note or

8 whatever, other than the 18th one, because

9 that was--sort of stood out as a particular

10 note.

11 COFFEY, Q.C.:

12 Q. So the only note that, at least all group of

13 notes, the only note you checked on was the

14 18th one.

15 MR. ABBOTT:

16 A. Yes.

17 COFFEY, Q.C.:

18 Q. And you personally checked your own e-mail.

19 MR. ABBOTT:

20 A. Yes, because I remember asking at that point

21 or actually it was just shortly before this

22 period, I had been looking for a document and

23 it had been an e-mail and I thought I had lost

24 it forever, because I deleted it, and I was

25 told there was a function that I could go in

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1 and actually retrieve, and that's how I was

2 able to retrieve that particular note.

3 COFFEY, Q.C.:

4 Q. I mean, your version of the August 18th note.

5 MR. ABBOTT:

6 A. Yes, that's right, yes.

7 COFFEY, Q.C.:

8 Q. In terms of this, Ms. Hennessey and company

9 are out preparing on the evening of the 16th,

10 the deck, your part in, your own preparation

11 was you did look to see what had happened in

12 respect of the August 18th briefing note, what

13 had drawn your attention to that, as opposed

14 to any of the others, in terms of Mr.

15 Osborne's being aware -

16 MR. ABBOTT:

17 A. Well because it stood out for, it's a briefing

18 note prepared for Cabinet secretariat for

19 information and I was sort of questioning

20 myself, well what is that particular note, the

21 other briefing note for the minister I would

22 have seen or could have seen without any

23 reservation, but that one, it just stuck out

24 because as I had said to you, I had forgotten

25 about the note being prepared, so I was able

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1 to pull that one.

2 COFFEY, Q.C.:

3 Q. And you are telling the Commissioner at that

4 point, you addressed your mind to whether or

5 not you had forwarded it to Mr. Osborne?

6 MR. ABBOTT:

7 A. Well, no, not at that point, but when it came

8 up, as did I send it, I realized and I

9 recalled and I confirmed that when I went back

10 to my office, that in fact I did not.

11 COFFEY, Q.C.:

12 Q. Okay, so when it came up in the Cabinet room,

13 were you asked at that point by Mr. Osborne

14 and Mr. Williams to confirm whether or not Mr.

15 Osborne had gotten it?

16 MR. ABBOTT:

17 A. I had been asked by Minister Osborne,

18 discussions would have broken for a few

19 minutes, for whatever reason, and he asked me,

20 "John, I don't think I've seen this note" and

21 I said, "no, I think you are correct on that."

22 COFFEY, Q.C.:

23 Q. Well up to that point, what had lead you to

24 that conclusion? On what basis -

25 MR. ABBOTT:

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1 A. Well because, as I said, when I pulled it out

2 and looked at it, it was-it was almost, I

3 would say in looking at this, it was new to

4 me, even though I recall it and that I knew it

5 was done and the period it was done and who it

6 was done for, and I know I did not and I

7 recall that I hadn't sent it to him. And when

8 he asked and knowing again he had no reason to

9 suggest to me that he had seen it and now

10 couldn't remember it, he really was genuine in

11 saying "I don't think I have seen this note

12 before", and I said, "I think you are

13 correct." And I confirmed that when I went

14 back to my office after the briefing.

15 COFFEY, Q.C.:

16 Q. Did you tell Mr. Williams that before you went

17 back to your office?

18 MR. ABBOTT:

19 A. No, but I did tell him that that afternoon.

20 COFFEY, Q.C.:

21 Q. Okay, and in the Court before telling Mr.

22 Williams you will check with Ms. Hennessey as

23 well?

24 MR. ABBOTT:

25 A. Well we were, at that point, both Ms.



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1 Hennessey and I worked together with the  
 2 premier when we discussed that note.  
 3 COFFEY, Q.C.:  
 4 Q. Oh, subsequently, okay.  
 5 MR. ABBOTT:  
 6 A. Yes.  
 7 COFFEY, Q.C.:  
 8 Q. And she indicated to Mr. Williams that she had  
 9 not sent it to Mr. Osborne as well.  
 10 MR. ABBOTT:  
 11 A. No, and what she indicated is she said who she  
 12 sent it to and she had copied me.  
 13 COFFEY, Q.C.:  
 14 Q. And did Mr. Williams have any reaction to  
 15 that?  
 16 MR. ABBOTT:  
 17 A. Yes.  
 18 COFFEY, Q.C.:  
 19 Q. What was his reaction?  
 20 MR. ABBOTT:  
 21 A. He was not-well he was upset by it.  
 22 COFFEY, Q.C.:  
 23 Q. Upset with yourself and Ms. Hennessey?  
 24 MR. ABBOTT:  
 25 A. I would say, I, you know, since the

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1 conversation tended to be with me, I'd say he  
 2 was upset with me and was trying to understand  
 3 why I--and asked why I hadn't sent it, you  
 4 know, passed it on to Minister Osborne?  
 5 COFFEY, Q.C.:  
 6 Q. On this point, if I could Commissioner, just  
 7 before we break, I apologize as I am going to  
 8 go past the break, I'm painfully aware of it.  
 9 What was the, and I'll put it this way, what  
 10 was the kind of big deal about whether or not  
 11 Mr. Osborne had or hadn't seen that briefing  
 12 note at the time in August? I mean, what  
 13 difference by now did this make, by May 17th?  
 14 MR. ABBOTT:  
 15 A. Well I can answer two ways, in terms of the  
 16 scheme of things and how this issue played  
 17 out, very little, but from the premier's  
 18 perspective and from the minister's  
 19 perspective, obviously they needed to be kept  
 20 informed on information and developments  
 21 around a sensitive issue and in terms of that,  
 22 that we sent it to the Cabinet secretariat and  
 23 then the premier's office on this matter and  
 24 the minister didn't see it or wasn't aware of  
 25 it, was something that the premier did not

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1 want to see happen. And, you know, we knew  
 2 that, but--and this was one, and there had  
 3 been a couple of other times in my tenure  
 4 where this had happened. Now, knowing how the  
 5 central agencies work and their timeframe  
 6 they're under in trying to respond and make  
 7 sure everybody is kept informed, some days  
 8 that is an impossible task. But not to excuse  
 9 it in the final analysis.  
 10 COFFEY, Q.C.:  
 11 Q. If we could then, we could just break,  
 12 Commissioner, I won't be very -  
 13 THE COMMISSIONER:  
 14 Q. Before we do that, I just want to make sure I  
 15 understand the sequence of events because  
 16 you'll appreciate I've heard Mr. Osborne's  
 17 version of what had occurred and given what  
 18 you said this morning, as I understand it, you  
 19 were in a briefing, using your PowerPoint -  
 20 MR. ABBOTT:  
 21 A. Yes.  
 22 THE COMMISSIONER:  
 23 Q. Which included reference to this particular  
 24 briefing note -  
 25 MR. ABBOTT:

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1 A. Yes.  
 2 THE COMMISSIONER:  
 3 Q. During a break in those proceedings, Mr.  
 4 Osborne raised with you the fact that he could  
 5 not recall having seen the particular note.  
 6 MR. ABBOTT:  
 7 A. Yes.  
 8 THE COMMISSIONER:  
 9 Q. You, at that point, confirmed that you  
 10 believed his understanding was correct?  
 11 MR. ABBOTT:  
 12 A. I felt very certain that he had not seen it.  
 13 THE COMMISSIONER:  
 14 Q. Did the subject--what I wanted to make clear  
 15 about is whether the subject of whether Mr.  
 16 Osborne knew about it came up in the context  
 17 of the briefing or was that only subsequently  
 18 when you were having your meeting with the  
 19 premier that that aspect of the story became  
 20 known to the premier or became relevant in  
 21 terms of your discussions with him?  
 22 MR. ABBOTT:  
 23 A. I think when the premier, I think had just  
 24 asked the minister had he seen it, just as in  
 25 passing, then there was a break, I went to the

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1 minister because he asked me, "John, had I  
 2 seen this note" and I said, "I believe you,  
 3 I'm pretty well certain you did not and I will  
 4 confirm that for you," but it didn't get  
 5 picked up, when we resumed, we just, you know,  
 6 kept on the briefing.  
 7 THE COMMISSIONER:  
 8 Q. Okay, so while it was raised in that meeting,  
 9 it was later in the day when you and Ms.  
 10 Hennessey both happened to be in the presence  
 11 of the premier -  
 12 MR. ABBOTT:  
 13 A. Yes.  
 14 THE COMMISSIONER:  
 15 Q. That you confirmed for the premier that indeed  
 16 Mr. Osborne had not seen the note prior to it  
 17 being sent -  
 18 MR. ABBOTT:  
 19 A. That's right.  
 20 THE COMMISSIONER:  
 21 Q. All right, thank you very much, we'll take the  
 22 break.  
 23 (RECESS)  
 24 THE COMMISSIONER:  
 25 Q. Please be seated. Mr. Coffey.

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1 COFFEY, Q.C.:  
 2 Q. Thank you, Commissioner. Commissioner, there  
 3 is another exhibit I'd like to enter, please,  
 4 it's exhibit P-0799. Counsel have seen this  
 5 some period of time ago, it's been distributed  
 6 to the parties and was documented quite some  
 7 time ago.  
 8 THE COMMISSIONER:  
 9 Q. All right then.  
 10 EXHIBIT ENTERED AND MARKED P-0799  
 11 COFFEY, Q.C.:  
 12 Q. And if we could bring that up please? This  
 13 is, Mr. Abbott, is a copy of I'll say speaking  
 14 notes deck for the Cabinet briefing and if we  
 15 could look, please, at page 4. This is the--  
 16 it is entitled "Background" a particular  
 17 portion of it, September 2005 external reviews  
 18 conducted. Who typed the--not so much as who  
 19 typed it, who provided the content for the  
 20 speaking notes?  
 21 MR. ABBOTT:  
 22 A. They would have been, at the same time the  
 23 slide deck was prepared, so it would have been  
 24 Moira Hennessey and Tansy Mundon and I would  
 25 have, I think in the next morning might have

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1 added one or two notes as well.  
 2 COFFEY, Q.C.:  
 3 Q. Do you recall which notes you added?  
 4 MR. ABBOTT:  
 5 A. I couldn't say really at this point, I'd have  
 6 to really sort of hone in on that.  
 7 COFFEY, Q.C.:  
 8 Q. Here in particular on this page is a reference  
 9 to September 2005 external reviews conducted.  
 10 It says "External reviews conducted by chief  
 11 pathologist of the B.C. Cancer Institute and  
 12 the chief technologist of Mount Sinai  
 13 Hospital, Toronto (reviews protected from  
 14 release under the Evidence Act and not in  
 15 department's possession)".  
 16 MR. ABBOTT:  
 17 A. Yes.  
 18 COFFEY, Q.C.:  
 19 Q. So you would have told the Cabinet that?  
 20 MR. ABBOTT:  
 21 A. Now, to be fair, whether I specifically said  
 22 that on that, I really can't say. Again, it  
 23 was part of the overall presentation.  
 24 COFFEY, Q.C.:  
 25 Q. Would the Cabinet have understood that the

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1 only actual reviews or inquiries into what had  
 2 happened, what had gone, you know, if anything  
 3 had gone wrong, what had gone wrong, would the  
 4 Cabinet have understood on May 17th that the  
 5 only such reviews were these external ones?  
 6 MR. ABBOTT:  
 7 A. That would be fair, yes.  
 8 COFFEY, Q.C.:  
 9 Q. If there was an answer to be found to the  
 10 question as to what happened, if it existed,  
 11 it would be found in these reports?  
 12 MR. ABBOTT:  
 13 A. If the question was asked, it would have been  
 14 answered in terms of this is what we knew and  
 15 this is the processes that Eastern Health had  
 16 conducted.  
 17 COFFEY, Q.C.:  
 18 Q. Before the break, you had referred to the  
 19 briefing of May 15th of Mr. Wiseman by Mr.  
 20 Tilley.  
 21 MR. ABBOTT:  
 22 A. Yes.  
 23 COFFEY, Q.C.:  
 24 Q. You were there, Mr. Wiseman and Mr. Tilley,  
 25 who else was there?

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1 MR. ABBOTT:  
 2 A. Heather Predham from Eastern Health. I'm not  
 3 sure who else was there from the department,  
 4 it could very well have been, you know, like  
 5 Tansy Mundon, Darrell Hynes, but I'm -  
 6 COFFEY, Q.C.:  
 7 Q. Was Ms. Hennessey there, do you know?  
 8 MR. ABBOTT:  
 9 A. And she could have very well been there, yes.  
 10 COFFEY, Q.C.:  
 11 Q. And this briefing occurred where?  
 12 MR. ABBOTT:  
 13 A. It occurred in the minister's board room.  
 14 COFFEY, Q.C.:  
 15 Q. Board room. You indicated that Mr. Wiseman at  
 16 that time was inquiring about these external  
 17 reviews?  
 18 MR. ABBOTT:  
 19 A. As one of, you know, many questions that he  
 20 would have posed for the briefing.  
 21 COFFEY, Q.C.:  
 22 Q. He posed the question, I take it, as to, well,  
 23 what did they find or was it a question along  
 24 those lines?  
 25 MR. ABBOTT:

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1 A. I really can say exactly what his questions  
 2 were, you know, whether it was on that line  
 3 or--you know, what are those reviews about  
 4 would have been more what I recall as the type  
 5 of question. He didn't go down too deep into  
 6 that.  
 7 COFFEY, Q.C.:  
 8 Q. How did the topic of getting copies of those  
 9 reports from Mr. Tilley, how did that come up?  
 10 MR. ABBOTT:  
 11 A. I think it might have been a question the  
 12 minister would have asked of me, "Do we have a  
 13 copy of those reports?" And I would have  
 14 said, "No," and you know, said, "George, can  
 15 we, you know, is it possible, can you provide  
 16 those reports to us?" And I believe the  
 17 answer was, "Yes."  
 18 COFFEY, Q.C.:  
 19 Q. Oh, and Mr. Tilley said right then and there -  
 20 MR. ABBOTT:  
 21 A. Yes.  
 22 COFFEY, Q.C.:  
 23 Q. - he can give it to yourselves and the  
 24 minister. And so the minister would have been  
 25 aware that you were asking for the reports?

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1 MR. ABBOTT:  
 2 A. Yes.  
 3 COFFEY, Q.C.:  
 4 Q. Or he, in fact, perhaps was asking for the  
 5 reports?  
 6 MR. ABBOTT:  
 7 A. Yeah. I think it came through that type of  
 8 question.  
 9 COFFEY, Q.C.:  
 10 Q. And in any case, certainly he would have been  
 11 aware that Mr. Tilley had agreed to provide  
 12 the reports?  
 13 MR. ABBOTT:  
 14 A. Yes.  
 15 COFFEY, Q.C.:  
 16 Q. The notion or idea that Eastern Health might  
 17 refuse to give up the reports or to provide  
 18 the department with the reports, that didn't  
 19 come up on May 15th, I take it?  
 20 MR. ABBOTT:  
 21 A. No.  
 22 COFFEY, Q.C.:  
 23 Q. Did that ever come up while you were deputy  
 24 minister?  
 25 MR. ABBOTT:

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1 A. No.  
 2 COFFEY, Q.C.:  
 3 Q. Sir, in terms of the, when we're looking at  
 4 that brief, that briefing deck, as it were--  
 5 I'm just trying to--briefing notes. Just  
 6 here, the October 5th, 2005 briefing note for  
 7 the Cabinet Secretariat, we saw that a day or  
 8 two ago in these hearings.  
 9 MR. ABBOTT:  
 10 A. Yes.  
 11 COFFEY, Q.C.:  
 12 Q. That's not listed here. Is that just simply  
 13 an oversight?  
 14 MR. ABBOTT:  
 15 A. I'm sorry, the?  
 16 COFFEY, Q.C.:  
 17 Q. There's an October 5th, 2005 briefing note for  
 18 the Cabinet Secretariat. It's almost  
 19 identical in wording, except the heading, to  
 20 the October 3rd one.  
 21 MR. ABBOTT:  
 22 A. If it's not there, now I see what you're  
 23 getting at, it would have been, I suspect, an  
 24 oversight.  
 25 COFFEY, Q.C.:

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1 Q. Oversight, yes. And I appreciate, as you've  
 2 indicated to the Commissioner, this was done  
 3 under a fair time constraint, a fair amount of  
 4 time constraint?  
 5 MR. ABBOTT:  
 6 A. Um-hm.  
 7 COFFEY, Q.C.:  
 8 Q. The evening before. And I take it in  
 9 preparing this there is no centralized  
 10 registry or database available to the  
 11 department?  
 12 MR. ABBOTT:  
 13 A. It would have been, because most of these  
 14 notes were done out of one division, that they  
 15 would have been through there. It was  
 16 possible to do some searches, but primarily  
 17 that's where they were recorded and they had  
 18 their own system for doing that.  
 19 COFFEY, Q.C.:  
 20 Q. As an example, just while we're on the point,  
 21 there is at Exhibit P-0125, page 37, this is a  
 22 question and answer briefing note dated  
 23 November 6th, 2006. If we could just go back,  
 24 please, to Exhibit P-0799? You'll notes  
 25 (sic.) that that's missing, as well, isn't it?

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1 MR. ABBOTT:  
 2 A. Right. Yes.  
 3 COFFEY, Q.C.:  
 4 Q. So that it's missing from, at least the  
 5 listing of such briefing notes for the  
 6 department or for the minister?  
 7 MR. ABBOTT:  
 8 A. Yes.  
 9 COFFEY, Q.C.:  
 10 Q. Prepared for the cabinet. And the October 5th  
 11 one is not there, as well. I take it, then,  
 12 that if--whatever sort of centralized database  
 13 that was utilized either somebody, it was  
 14 incomplete in itself or somebody just simply  
 15 missed it?  
 16 MR. ABBOTT:  
 17 A. Yes. I suspect it would be the latter, just  
 18 missing it.  
 19 COFFEY, Q.C.:  
 20 Q. Just missing it. Mr. Abbott, you know, by the  
 21 time the May 17th briefing of the cabinet  
 22 concluded, I take it that you understood by  
 23 then, by the end of that, that you were  
 24 expected to perhaps check to see if Mr.  
 25 Osborne had received a copy of that August

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1 18th briefing note?  
 2 MR. ABBOTT:  
 3 A. I took that on -  
 4 COFFEY, Q.C.:  
 5 Q. On yourself?  
 6 MR. ABBOTT:  
 7 A. - you know, on my own initiative to confirm  
 8 that.  
 9 COFFEY, Q.C.:  
 10 Q. I take it that it had been apparent during the  
 11 cabinet briefing that Mr. Osborne was saying  
 12 that he hadn't and the premier was being  
 13 somewhat sceptical of that?  
 14 MR. ABBOTT:  
 15 A. I don't--I didn't sense that.  
 16 COFFEY, Q.C.:  
 17 Q. Okay.  
 18 MR. ABBOTT:  
 19 A. Certainly at that time.  
 20 COFFEY, Q.C.:  
 21 Q. Okay. But you then took it upon yourself to  
 22 go and check. And later that day you informed  
 23 Mr. Williams that -  
 24 MR. ABBOTT:  
 25 A. Yes.

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1 COFFEY, Q.C.:  
 2 Q. That Mr. Abbott--I'm sorry, Mr. Osborne's  
 3 recollection was correct?  
 4 MR. ABBOTT:  
 5 A. Yes.  
 6 COFFEY, Q.C.:  
 7 Q. Your sense of the state of affairs then at the  
 8 end of the cabinet briefing was what?  
 9 MR. ABBOTT:  
 10 A. Well, given what had transpired in the House  
 11 of Assembly the day before -  
 12 COFFEY, Q.C.:  
 13 Q. Which is May 16th?  
 14 MR. ABBOTT:  
 15 A. Yes.  
 16 COFFEY, Q.C.:  
 17 Q. Yes. And what do you recall, if anything,  
 18 about that?  
 19 MR. ABBOTT:  
 20 A. Well, again, it was the questioning of the  
 21 opposition, we had several ministers up  
 22 responding, there was confusion and obviously  
 23 the concern by the premier that that state of  
 24 affairs obviously can't continue. So in the  
 25 discussion in the cabinet it was after my

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1 presentation, it was around then, you know,  
 2 who is going to speak on this issue and that  
 3 it was agreed, obviously, that it would be the  
 4 Minister of Health and Community Services on  
 5 any questions related to ER/PR in the house,  
 6 so to get that line of communication  
 7 solidified. Then there would be briefings  
 8 done for the media and for MHAS.  
 9 COFFEY, Q.C.:  
 10 Q. And done by whom?  
 11 MR. ABBOTT:  
 12 A. By Eastern Health.  
 13 COFFEY, Q.C.:  
 14 Q. Now, so briefings by the media, I'm sorry,  
 15 briefings by Eastern Health for the media?  
 16 MR. ABBOTT:  
 17 A. Yes.  
 18 COFFEY, Q.C.:  
 19 Q. So why was that thought necessary? I take it  
 20 Eastern Health wasn't being -  
 21 MR. ABBOTT:  
 22 A. Well, again, to get out -  
 23 COFFEY, Q.C.:  
 24 Q. - very vocal in the media?  
 25 MR. ABBOTT:

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1 A. - obviously there was concerns that, around  
 2 the issue and how it was being communicated  
 3 and that Eastern Health needed to, I guess,  
 4 once again or yet again, to do a detailed  
 5 briefing.  
 6 COFFEY, Q.C.:  
 7 Q. On May 16th or 17th, 2007 were you aware that  
 8 Eastern Health was continuing to refuse to  
 9 comment publicly?  
 10 MR. ABBOTT:  
 11 A. Only in the context, again, this doesn't bring  
 12 that large a recall for me, but I know there  
 13 was commentary about the fact that the class  
 14 action hearing was coming forward and they  
 15 wouldn't be commenting.  
 16 COFFEY, Q.C.:  
 17 Q. IE, no comment while the matter is before the  
 18 courts, as it were, that kind of approach?  
 19 MR. ABBOTT:  
 20 A. That made, you know, that made sense.  
 21 COFFEY, Q.C.:  
 22 Q. But despite that position, if we could look,  
 23 please, at Exhibit P-0241? This is the, well,  
 24 it's entitled or styled, "Cabinet Directive"  
 25 of May 17th, 2007. And this is after the

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1 presentation on ER/PR testing, it was received  
 2 from the deputy minister, yourself.  
 3 "Direction was provided to the minister of  
 4 health to provide a technical briefing"--I'm  
 5 sorry, "to direct Eastern Health to provide a  
 6 technical briefing to the media and other  
 7 interested parties on this issue." In terms  
 8 of that, was--how was that communicated to  
 9 Eastern Health, do you recall?  
 10 MR. ABBOTT:  
 11 A. I believe I called Mr. Tilley to say that  
 12 this, in fact, was the result of the cabinet  
 13 briefing and discussion and to mount that  
 14 briefing as soon as possible.  
 15 COFFEY, Q.C.:  
 16 Q. And, I sorry, that this was a cabinet--did you  
 17 advise Mr. Tilley that this was a cabinet  
 18 directive?  
 19 MR. ABBOTT:  
 20 A. Well, coming out of the -  
 21 COFFEY, Q.C.:  
 22 Q. Cabinet briefing?  
 23 MR. ABBOTT:  
 24 A. - cabinet briefing. I didn't actually, would  
 25 not have seen this document, I don't know if I

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1 ever did see this document, actually, but that  
 2 was the general, you know, direction and  
 3 conclusion of the meeting. And the minister  
 4 of health was going to do this, I was then to  
 5 provide that message to Mr. Tilley.  
 6 COFFEY, Q.C.:  
 7 Q. Now, would such a briefing be perceived to be  
 8 a matter of policy or operations?  
 9 MR. ABBOTT:  
 10 A. Well, I guess in terms of that, looking at the  
 11 minister, he is now directing Eastern Health  
 12 to, because of this communication issue, to,  
 13 in fact, get out there and do more of it. But  
 14 I think that in terms of a straight line of,  
 15 you know, responsibility and accountability,  
 16 since the minister has to speak to the house,  
 17 then he wants to make sure that the Eastern  
 18 Health is also providing that information to  
 19 the media and others and that there's going to  
 20 be, obviously, consistency there in that.  
 21 COFFEY, Q.C.:  
 22 Q. But this would be, again, in terms of such a  
 23 briefing would be an operational matter?  
 24 MR. ABBOTT:  
 25 A. Well, it's on an operational issue, for sure,

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1 yes.  
 2 COFFEY, Q.C.:  
 3 Q. Traditionally perceived that way?  
 4 MR. ABBOTT:  
 5 A. Yeah.  
 6 COFFEY, Q.C.:  
 7 Q. And I take it the matter had advanced to or  
 8 deteriorated to, depending upon one's  
 9 perspective, the position where the minister  
 10 was going to give direction and was giving  
 11 direction?  
 12 MR. ABBOTT:  
 13 A. And it was, you know, and it was a significant  
 14 political issue and consequently he felt and  
 15 obviously him as well as his colleagues that  
 16 this now needed to take place.  
 17 COFFEY, Q.C.:  
 18 Q. And the purpose of the technical briefing for  
 19 the media was what at this stage?  
 20 MR. ABBOTT:  
 21 A. Well, in light of what the media was reporting  
 22 at that time is to go out and then speak to  
 23 the issues and be, provide, again, what  
 24 information and data they had available and  
 25 respond to the media's inquiries.

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1 COFFEY, Q.C.:  
 2 Q. I take it to provide--was there any  
 3 understanding given to Mr. Tilley by yourself  
 4 that they were to provide all such information  
 5 now?  
 6 MR. ABBOTT:  
 7 A. That would be -  
 8 COFFEY, Q.C.:  
 9 Q. In contradistinction to what may have happened  
 10 before?  
 11 MR. ABBOTT:  
 12 A. Whatever happened before, but it was  
 13 certainly, you know, provide whatever you have  
 14 to provide. There was no further discussion  
 15 along those lines. Again, they were left and  
 16 charged with developing that briefing material  
 17 and delivering on it.  
 18 COFFEY, Q.C.:  
 19 Q. If we could bring up, please, Exhibit P-0827?  
 20 Just looking at this reference to the briefing  
 21 note prepared by Cabinet Secretariat for  
 22 information. As the deputy minister, did you  
 23 have any understanding in relation to whether  
 24 or not briefing notes prepared for the cabinet  
 25 were protected from disclosure and legal

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1 proceedings in contradistinction to briefing  
 2 notes prepared for a minister?  
 3 MR. ABBOTT:  
 4 A. I mean, I'm familiar with the act and the  
 5 provisions of it, so I would say, yes. Again,  
 6 I guess, one then would have to distinguish  
 7 what was in that briefing note as to was it--  
 8 its protection, I guess.  
 9 COFFEY, Q.C.:  
 10 Q. But the general idea, you were aware of it?  
 11 MR. ABBOTT:  
 12 A. Yes.  
 13 COFFEY, Q.C.:  
 14 Q. The general notion. Did you ever have any  
 15 discussion with anybody from Eastern Health  
 16 about that idea?  
 17 MR. ABBOTT:  
 18 A. No.  
 19 COFFEY, Q.C.:  
 20 Q. If we could, please, page--just going to go  
 21 finally to page 15 of this document. The deck  
 22 for the cabinet briefing, it's the final  
 23 conclusion is, "Next steps, questions,  
 24 comments." Do you recall whether there were  
 25 any questions or comments, and if so, what

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1 they were?  
 2 MR. ABBOTT:  
 3 A. At the end -  
 4 COFFEY, Q.C.:  
 5 Q. At the end or during the whole matter.  
 6 MR. ABBOTT:  
 7 A. Well, during the matter was, there weren't  
 8 that many. Some were just clarification on a  
 9 specific point in the presentation. But there  
 10 was a question around then how do we, you  
 11 know, how best to communicate. Everybody,  
 12 different perspectives were provided. There  
 13 was the issue, and I know I commented on in  
 14 terms of there was, you know, the question  
 15 about what impact, how this thing is playing  
 16 out, the impact obviously on Eastern Health  
 17 and certainly on the clinical staff, the  
 18 pathologists, the oncologists, that this can  
 19 have some potential implication for them as  
 20 individuals or as a specialty. And the focus  
 21 really got around in terms of next steps is  
 22 who is going to speak on this and how we're  
 23 going to do this. And the directive coming  
 24 out was sort of the--to Eastern Health and  
 25 were they, you know, able and prepared to do

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1 that, and of course, the answer would be yes.  
 2 And then the minister would be speaking on  
 3 behalf of the government.  
 4 COFFEY, Q.C.:  
 5 Q. If I could, please, in terms of your own--  
 6 other than to speak to Mr. Tilley about the  
 7 media briefing, were you given any direction  
 8 yourself as to what you, as deputy minister,  
 9 should be doing?  
 10 MR. ABBOTT:  
 11 A. No.  
 12 COFFEY, Q.C.:  
 13 Q. Exhibit P-0441, please? Now, this is an e-  
 14 mail from yourself to George Tilley, May 17th,  
 15 2007 at 6:41 p.m. The subject is,  
 16 "Newfoundland Government review of faulty  
 17 breast cancer tests." And then there's "Are  
 18 you aware of Dr. Hutton's letter?" you write?  
 19 MR. ABBOTT:  
 20 A. Yes.  
 21 COFFEY, Q.C.:  
 22 Q. What was that about and what, if any, response  
 23 did you get?  
 24 MR. ABBOTT:  
 25 A. There was a letter that was referenced in the

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1 media at around that time, don't know if it  
 2 was that day or earlier, and again it was very  
 3 specific on this, on the lab and the ER/PR  
 4 issue. And just was an inquiry give that Dr.  
 5 Hutton would have been connected, obviously,  
 6 to Eastern Health but not--you know, depending  
 7 on which role he was playing here and why he  
 8 was bringing this forward at this time.  
 9 COFFEY, Q.C.:  
 10 Q. So what were you told?  
 11 MR. ABBOTT:  
 12 A. I'm really not sure what reply I got on that.  
 13 COFFEY, Q.C.:  
 14 Q. Okay.  
 15 MR. ABBOTT:  
 16 A. You know, I don't recall anything specific at  
 17 this point. Again, given what was going on at  
 18 this point, there was a lot of activity, in  
 19 fact, if George didn't respond until several  
 20 days later, that was understandable.  
 21 COFFEY, Q.C.:  
 22 Q. Yes. It wasn't the most pressing -  
 23 MR. ABBOTT:  
 24 A. No, no. It was just again, the letter was

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1 there, did he know about it.  
 2 COFFEY, Q.C.:  
 3 Q. If we could, please, Exhibit P-0821? This is  
 4 an e-mail from Carolyn Chaplin to yourself,  
 5 May 17th, 2007 at 9:24 p.m. "For Your  
 6 Information, Re: Eastern Health." She writes,  
 7 "John, I'm in Florida at the moment, back on  
 8 Tuesday. But I understand things have really  
 9 heated up on the ER/PR issue. Wanted to let  
 10 you know that Susan has engaged us on the  
 11 issue. Cathi is helping out for the initial  
 12 media briefing and I hope to continue working  
 13 with them upon my return next week." Now, and  
 14 Ms. Chaplin's e-mail address is by this point  
 15 is at bristolgroup.ca. First of all, had you  
 16 been aware that Eastern Health, by this point  
 17 in time, had engaged Bristol Group?  
 18 MR. ABBOTT:  
 19 A. I'm not sure. I remember having a  
 20 conversation with Carolyn Chaplin just, you  
 21 know, in a social setting that they were doing  
 22 work for Eastern Health. And it may have been  
 23 shortly before this, but I don't recall the  
 24 time frame.  
 25 COFFEY, Q.C.:

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1 Q. And now, this, it's referred to here, "Susan  
 2 has engaged us on the issue," the issue  
 3 presumably being the heated up one of the  
 4 ER/PR issue?  
 5 MR. ABBOTT:  
 6 A. Yes.  
 7 COFFEY, Q.C.:  
 8 Q. So did the department at any point, that you  
 9 can recall, advise Eastern Health to get  
 10 outside help on communications?  
 11 MR. ABBOTT:  
 12 A. No.  
 13 COFFEY, Q.C.:  
 14 Q. But here you were being advised that evening,  
 15 the evening of May 17th that, in fact,  
 16 apparently Eastern Health was doing so?  
 17 MR. ABBOTT:  
 18 A. Yeah. And -  
 19 COFFEY, Q.C.:  
 20 Q. That wouldn't surprise you?  
 21 MR. ABBOTT:  
 22 A. Surprise me, no, in terms of professional and  
 23 technical support for the briefing and for,  
 24 and maybe on an ongoing basis, but I wasn't  
 25 aware of that.

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1 COFFEY, Q.C.:

2 Q. Exhibit P-0831, please? This is a series of

3 e-mails on May 18th, 2007 between Tansy Mundon

4 and Susan Bonnell. Ms. Mundon begins by

5 asking at 7:09 a.m. "Susan, can you please e-

6 mail me materials for the media briefing

7 today?" And she says, Ms. Bonnell responds 20

8 minutes later saying, "We are still developing

9 them, Tansy. We're here until midnight." And

10 she goes on to conclude with, "I'd welcome

11 your presence as we develop and refine our

12 message this morning." And then Ms. Mundon

13 writes at 7:59 a.m., "I don't want to get in

14 your way. I know how frustrating that can be.

15 I'll give you a call around 9 a.m." So what

16 was your understanding on May 18th, which is

17 the day, I take it, the media briefing is

18 going to occur, what was your understanding

19 about who was preparing this, whose

20 responsibility it was and how much input the

21 department was having in it?

22 MR. ABBOTT:

23 A. It was clearly with Eastern Health under

24 George Tilley's direction and we expected that

25 he would be the key speaker in terms of the

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1 briefing. From the department's perspective,

2 we weren't playing any particular role in this

3 case, but we would want to know for the

4 minister what, in fact, you know, they would

5 be saying so that he was conscious of that,

6 and that was pretty well it.

7 COFFEY, Q.C.:

8 Q. Okay. And if we could, Exhibit P-0832,

9 please? Now, this is an e-mail May 18th,

10 2007, 9:06 a.m. from Ms. Mundon to Susan

11 Bonnell, subject is, "Briefing note." And the

12 next page of this exhibit is a question and

13 answer briefing note, apparently Ms. Mundon

14 forwarded to Ms. Bonnell that morning. And

15 this is a briefing note dated May 17th, 2007,

16 drafted by Beverley Griffiths and approved by

17 Moira Hennessey. Now, were you aware that by

18 the morning of May 18th your department was

19 sending copies of its briefing notes, current

20 briefing notes on this issue to Eastern

21 Health?

22 MR. ABBOTT:

23 A. Not directly, but it wouldn't, you know,

24 wouldn't concern me in that, so that they

25 would know, I guess, you know, what

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1 information we had so there was some

2 consistency in that if there were

3 contradictions, that they would be flagged. I

4 will say it is not common practice, but we

5 were sort of in a very heightened atmosphere

6 at that point.

7 COFFEY, Q.C.:

8 Q. And was there an effort being made at this

9 point to insure that there was consistency in

10 the information used to deal with the public

11 between the department and Eastern Health?

12 MR. ABBOTT:

13 A. Well, again, you know, what we strived to do

14 always was to have that, and we were reliant,

15 again, on Eastern Health. I'm not quite sure

16 what prompted, you know, this going over, but

17 we, again, would be reliant on Eastern Health

18 to provide us any and all their data. And

19 part of it for us is how to interpret that and

20 how we interpret that for the minister for his

21 purposes.

22 COFFEY, Q.C.:

23 Q. Now there is, and I'm not going to take you

24 through them, there are a series of e-mails

25 beginning, I believe, on May 18th, 2007, some

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1 of which are sent directly to you, some are

2 copied to you, you may have contributed to

3 some of them as a sender, dealing with the

4 issue of establishing an inquiry and what the

5 terms of reference might be?

6 MR. ABBOTT:

7 A. Yes.

8 COFFEY, Q.C.:

9 Q. Do you recall that?

10 MR. ABBOTT:

11 A. Yes.

12 COFFEY, Q.C.:

13 Q. What was your understanding as to your role in

14 that, what were you being asked?

15 MR. ABBOTT:

16 A. Well, coming out of the cabinet meeting though

17 there had--I don't--that I did the briefing,

18 there had been no discussion on that, at least

19 in my presence. But I did get a call from Mr.

20 Thompson to a meeting with him and Mr.

21 Burrage, who was with the Department of

22 Justice, to talk about what would some of the

23 options that, I guess, were under

24 consideration for a review of this particular

25 issue. And so I was asked for my input on



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1 behalf of the department as to the--developing  
 2 those options. And I understood from Mr.  
 3 Thompson that he had to report back to the  
 4 premier on those.  
 5 COFFEY, Q.C.:  
 6 Q. So the first that you heard of the notion or  
 7 idea of having a public inquiry -  
 8 MR. ABBOTT:  
 9 A. Well -  
 10 COFFEY, Q.C.:  
 11 Q. - or some inquiry of some sort was from whom?  
 12 MR. ABBOTT:  
 13 A. Well, it came out of that. But the public  
 14 inquiry option was, if I can say, was the one  
 15 that was the lower on the rating of priority  
 16 in terms of discussion and then I was -  
 17 COFFEY, Q.C.:  
 18 Q. The idea of having an inquiry at all, that's  
 19 what I'm--as opposed to -  
 20 MR. ABBOTT:  
 21 A. Yeah, it came up--I don't know who put it on  
 22 the table first, and it may have been very  
 23 well Mr. Thompson, as one of the options, and  
 24 then we looked at that, what that meant. The  
 25 other options were considered. I found out

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1 subsequently that there was going to be a  
 2 Cabinet meeting, I believe, if my dates are  
 3 right, in the next couple of days, maybe on  
 4 that Monday or Monday evening and -  
 5 COFFEY, Q.C.:  
 6 Q. That would be the 21st of May?  
 7 MR. ABBOTT:  
 8 A. Yes, and which would have probably been the  
 9 long weekend, and I did go then to--had a  
 10 meeting with the minister to prepare him on  
 11 some of the issues that were going to be  
 12 discussed and then the issue around whether to  
 13 be--what government's response was going to be  
 14 in terms of review and inquiry was considered.  
 15 I discussed that with Minister Wiseman. My  
 16 recommendation or advice to him, and it was  
 17 just from deputy to minister, without talking  
 18 to anybody else, was that the public inquiry  
 19 would be the preferable route, and then I  
 20 found out after the meeting, the Cabinet  
 21 meeting, that in fact that was going to be the  
 22 result.  
 23 COFFEY, Q.C.:  
 24 Q. If we could, please, Exhibit P-0830? This is  
 25 an e-mail from Robert Thompson to yourself,

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1 Sandra Barnes, and I take it she's the deputy  
 2 clerk, Ms. Barnes is?  
 3 MR. ABBOTT:  
 4 A. Yes.  
 5 COFFEY, Q.C.:  
 6 Q. Don Burrage, who is a senior official in the  
 7 Department of Justice?  
 8 MR. ABBOTT:  
 9 A. Yes.  
 10 COFFEY, Q.C.:  
 11 Q. And Ms. Hennessey, May 18th, 2007, at nine  
 12 minutes past midnight. And Mr. Thompson  
 13 writes, "please provide feedback ASAP on these  
 14 revised options and questions. The questions  
 15 are very hard hitting and need to be shaped  
 16 some--we need to get a clear, what we want a  
 17 review to tell us." Signed Robert, as clerk  
 18 of the Executive Council.  
 19 If we could look at page two of this,  
 20 please? Here under questions that could be  
 21 posed in a terms of reference for a review,  
 22 and Mr. Thompson writes "whatever form the  
 23 review may take, a core set of questions must  
 24 be defined for the terms of reference. 1.  
 25 what went wrong with the testing? 2. Why was

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1 the problem not detected until 2005?" and it  
 2 goes on from there. When you saw that  
 3 question as being posited as being one of the  
 4 ones under consideration, and you had--this is  
 5 May 18th, so you had asked for these external  
 6 review reports two days before. Did that  
 7 subject come up? Like after May 15th, when  
 8 you're dealing with Mr. Thompson or Mr.  
 9 Wiseman or the Premier or frankly, anybody  
 10 else, about "well, I've asked for the reports  
 11 and maybe they will enlighten us"?  
 12 MR. ABBOTT:  
 13 A. No, they didn't. It didn't come up.  
 14 COFFEY, Q.C.:  
 15 Q. Did it occur to you at the time?  
 16 MR. ABBOTT:  
 17 A. Not--no, I can't say consciously it did or  
 18 that, you know, we could--you know, let's get  
 19 the reports and to help inform, you know, the  
 20 questions or potential--what some of the  
 21 potential answers might be, but no, they were  
 22 not brought forward at all.  
 23 COFFEY, Q.C.:  
 24 Q. Exhibit P-0835, please? This is an e-mail  
 25 from Tansy Mundon to Tom Brophy. Who's Mr.

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1 Brophy?  
 2 MR. ABBOTT:  
 3 A. He was an executive assistant to Minister  
 4 Wiseman.  
 5 COFFEY, Q.C.:  
 6 Q. Okay, and it's May 18th, 2007, 12:27 p.m.,  
 7 briefing for MHAs, and Tansy writes "Tom, can  
 8 you please contact all MHAs, all parties, ASAP  
 9 to advise them that there will be a briefing  
 10 on ER/PR breast cancer testing on Tuesday at  
 11 11 a.m. at the Eastern Health Corporate  
 12 Office, Waterford Bridge Road." It's copied  
 13 to, amongst other people, yourself, Mr.  
 14 Wiseman. So what was this idea? Where did  
 15 this idea of briefing the MHAs come from?  
 16 MR. ABBOTT:  
 17 A. I'm assuming, and my recollection of that, it  
 18 would have come from the Premier's office, to  
 19 say "look, in light of this issue and the  
 20 interest by MHAs, the opposition, it would be  
 21 best that they all had the same information  
 22 and that government wasn't going to hold it to  
 23 itself."  
 24 COFFEY, Q.C.:  
 25 Q. And if we could look at, please, Exhibit P-

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1 0206? This is an e-mail from Ms. Mundon to  
 2 Mr. Brophy and Deputy Robbins on May 18th at  
 3 1:23 p.m. and she writes "the e-mail should  
 4 refer to MHA briefing at this time. We will  
 5 review the need for a separate public  
 6 briefing, if necessary, but this should not be  
 7 referenced in the e-mail and only if question  
 8 asked. We are open to the idea." What was  
 9 this about, the idea of a separate public  
 10 briefing on ER/PR?  
 11 MR. ABBOTT:  
 12 A. Well again, we were saying we were doing a  
 13 briefing meaning we were doing a briefing with  
 14 MHAs, certainly with the media, should the  
 15 public be present or not was sort of the  
 16 question, and there's two--shall we say, two  
 17 schools of thought of how to do that. The  
 18 decision made, and it was in the hands of  
 19 Eastern Health, in the final analysis, that it  
 20 would not be open to the "public" at that  
 21 time.  
 22 COFFEY, Q.C.:  
 23 Q. That decision was made by?  
 24 MR. ABBOTT:  
 25 A. In the final analysis, it would have been left

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1 to Eastern Health to determine that.  
 2 COFFEY, Q.C.:  
 3 Q. Why would that be?  
 4 MR. ABBOTT:  
 5 A. Well, it was, again, their briefing. Now I  
 6 don't recall any discussion that I had on the  
 7 point or the minister having a particular view  
 8 and expressing that either. So again, we left  
 9 that to Eastern Health.  
 10 COFFEY, Q.C.:  
 11 Q. I take it it never arose subsequently as a  
 12 public issue in the media?  
 13 MR. ABBOTT:  
 14 A. No.  
 15 COFFEY, Q.C.:  
 16 Q. I take it during this time frame, you, as  
 17 deputy minister, were routinely receiving e-  
 18 mails, you know, reflecting the media  
 19 coverage?  
 20 MR. ABBOTT:  
 21 A. Yes.  
 22 COFFEY, Q.C.:  
 23 Q. If we could, please, Exhibit P-0845? This is  
 24 an e-mail from Tansy Mundon to Susan Bonnell,  
 25 April 18th 2007 at 5:06 p.m.. She writes

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1 "Susan, I have arranged for 709 news to e-mail  
 2 both you and I all transcripts on this topic  
 3 from 12:30 on today, including Newsworld  
 4 coverage. We will receive transcripts  
 5 throughout the weekend. Will discontinue on  
 6 Tuesday a.m."  
 7 THE COMMISSIONER:  
 8 Q. That would be May 18th.  
 9 COFFEY, Q.C.:  
 10 Q. I apologize, it's May 18th. I apologize,  
 11 Commissioner. "thanks for all of your hard  
 12 work on this. Outstanding job with the  
 13 briefing today. Please pass on my thanks to  
 14 others. Tansy." Now in terms of this, were  
 15 you aware, as deputy minister, that Ms.--your  
 16 director of communications, Ms. Mundon, had  
 17 arranged for this? I take it this was a step  
 18 up in the media coverage, in the sense of the  
 19 intensity of it.  
 20 MR. ABBOTT:  
 21 A. Well, it would be, again, not uncommon to do  
 22 that, and certainly in her role that she would  
 23 be expected to do that, knowing the heightened  
 24 sensitivity on this issue.  
 25 COFFEY, Q.C.:

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1 Q. Now she refers to, in this e-mail to Ms.  
 2 Bonnell, "outstanding job with the briefing  
 3 today," which would have been Eastern Health's  
 4 briefing?  
 5 MR. ABBOTT:  
 6 A. Yes.  
 7 COFFEY, Q.C.:  
 8 Q. Of the media. How was that perceived, well,  
 9 at least from your perspective, first of all,  
 10 I'll ask you?  
 11 MR. ABBOTT:  
 12 A. Well again, you know, I could have sent the  
 13 same thing in terms of the--you know, George  
 14 Tilley and his team went out in front of the  
 15 media in a very public environment, national  
 16 coverage, and to deliver the information,  
 17 answer the questions in a very difficult  
 18 environment for them personally, and so it was  
 19 in that context, and I think from our end, and  
 20 we monitored the press conference. Now I  
 21 didn't get to see all of it. I got to see a  
 22 good part of it. We thought that he and  
 23 Eastern Health had done the job that they had  
 24 been asked to do by government.  
 25 COFFEY, Q.C.:

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1 Q. And that job was what?  
 2 MR. ABBOTT:  
 3 A. To brief the media, take the questions around  
 4 ER/PR.  
 5 COFFEY, Q.C.:  
 6 Q. And the questions related to what in  
 7 particular?  
 8 MR. ABBOTT:  
 9 A. Well, whatever the questions the media had. I  
 10 really can't speak to any particular category.  
 11 It was open. The media then were obviously  
 12 going to ask whatever questions they felt and  
 13 George and his team were to answer them to the  
 14 best of their ability.  
 15 COFFEY, Q.C.:  
 16 Q. If we could look at Exhibit P-0444, please?  
 17 This is an e-mail of May 18th 2007, 6:36 p.m.,  
 18 from Tansy Mundon to yourself, and she's now  
 19 including Mr. Tilley, as well as Josephine  
 20 Cheeseman, Elizabeth Matthews, Sharon Vokey,  
 21 Ross Wiseman, and other--Moir Hennessey and  
 22 others, or actually Susan Bonnell, I've named  
 23 them all now.  
 24 The subject is "Eastern Health apologizes  
 25 for withholding cancer details" and it cites

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1 or attaches, as the text, a CBC news story  
 2 posted at--or last updated at 3:16 p.m. that  
 3 day.  
 4 So what did you understand, reading this,  
 5 Mr. Tilley had done, and based upon your  
 6 observations of the news conference?  
 7 MR. ABBOTT:  
 8 A. Well, again, you know, he went into the  
 9 briefing and spoke to an apology and then -  
 10 COFFEY, Q.C.:  
 11 Q. He apologized for what?  
 12 MR. ABBOTT:  
 13 A. Well, again, what he says there, which was his  
 14 perspective, I guess, was that there was  
 15 confusion in terms of what people knew, how  
 16 they knew it and Eastern Health was the author  
 17 of that confusion, and that's what he was  
 18 apologizing for, and you know, when I heard  
 19 him and then read that subsequently, that's--I  
 20 understood the context.  
 21 COFFEY, Q.C.:  
 22 Q. Did you ever see, in any of the media coverage  
 23 or based upon your observations of the news  
 24 conference, Mr. Tilley or see any reference to  
 25 it or hear it, any reference to him, on May

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1 18th, having told the media that the decision  
 2 not to refer to certain things had been based  
 3 upon legal considerations?  
 4 MR. ABBOTT:  
 5 A. No, I really -  
 6 COFFEY, Q.C.:  
 7 Q. Or legal advice?  
 8 MR. ABBOTT:  
 9 A. I don't have memory of that, one way or the  
 10 other.  
 11 COFFEY, Q.C.:  
 12 Q. Yet you had understood, back in December of  
 13 '06, that that was so?  
 14 MR. ABBOTT:  
 15 A. Yeah, that was what we were--that was the text  
 16 of what they were saying, yes.  
 17 COFFEY, Q.C.:  
 18 Q. Did you notice that--I won't say it's an  
 19 oversight, but that omission during the--you  
 20 know, in relation to the May 18th 2007 -  
 21 MR. ABBOTT:  
 22 A. I really didn't--it didn't register with me.  
 23 COFFEY, Q.C.:  
 24 Q. And you had been aware that on May 15th, the  
 25 minister's reference to legal considerations

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1 having influenced what Eastern Health did or  
 2 didn't do back in December -  
 3 MR. ABBOTT:  
 4 A. Yes.  
 5 COFFEY, Q.C.:  
 6 Q. - had generated some controversy?  
 7 MR. ABBOTT:  
 8 A. Yes.  
 9 COFFEY, Q.C.:  
 10 Q. And yet three days later, and looking at the  
 11 media coverage on May 18th, you hadn't noticed  
 12 that Mr. Tilley had failed to refer to that?  
 13 MR. ABBOTT:  
 14 A. Well, things had changed and they had changed  
 15 quite considerably from May 15th, and this is--  
 16 you know, this was very dynamic and whatever  
 17 the approach was by Eastern Health, the  
 18 minister, the department, government, at any  
 19 point in time had changed and the--it was  
 20 clear that whatever information you had and  
 21 could release, they should release, and shall  
 22 we say, excuses or rationale that we were  
 23 using up to that point was no longer either--  
 24 was either irrelevant or not acceptable, and I  
 25 would have worked again on the premise that if

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1 Eastern Health's lawyers had said specifically  
 2 that they can't speak to a specific point,  
 3 then they would have taken--you know, they  
 4 would have addressed that with their legal  
 5 counsel, but it wasn't brought to our  
 6 attention.  
 7 COFFEY, Q.C.:  
 8 Q. What had changed? You say things had changed.  
 9 What had changed?  
 10 MR. ABBOTT:  
 11 A. The public, this now had become a significant  
 12 public issue and a significant political  
 13 issue.  
 14 COFFEY, Q.C.:  
 15 Q. What had changed between--I'm just trying to  
 16 get some--in between back in December and  
 17 before December and now, May.  
 18 MR. ABBOTT:  
 19 A. In terms of the facts, I would suggest not a  
 20 whole lot, but how the media had picked up and  
 21 were reporting on this and how the government  
 22 felt it needed to respond had changed and the  
 23 opposition had now taken it, you know, as an  
 24 issue and they were obviously demanding  
 25 answers from the government and the minister

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1 on this issue.  
 2 COFFEY, Q.C.:  
 3 Q. If we could, please, Exhibit P-0861? Now this  
 4 is an e-mail from Dr. Ed Hunt to yourself, Mr.  
 5 Abbott, Sunday, May 20th 2007, 10:27 a.m.  
 6 Subject is disclosure of Eastern Health. He  
 7 says "John, Cathi and I had a discussion  
 8 regarding the use of the MCP database to  
 9 identify patients" and it goes on from there,  
 10 and this would be in relation to, I gather,  
 11 Burin, as it says in the second line?  
 12 MR. ABBOTT:  
 13 A. Yes.  
 14 COFFEY, Q.C.:  
 15 Q. And he concludes with "given the current ER/PR  
 16 issue and the concerns here with possible  
 17 delayed disclosure and potential risks to  
 18 these patients, I believe we have sufficient  
 19 cause to allow this release of information,  
 20 and that in doing so, we are acting within the  
 21 spirit of the Act. We can discuss when we  
 22 meet on Tuesday morning." Signed Ed. So what  
 23 was going on kind of parallel then to the  
 24 ER/PR issue?  
 25 MR. ABBOTT:

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1 A. Well, in May, we were advised that there had  
 2 been an issue around reading of radiology  
 3 reports in the Burin Hospital, and that  
 4 Eastern Health was conducting their review and  
 5 analysis of the case. But it had gotten into  
 6 the public domain and a decision was made to  
 7 make sure that we could get these reports read  
 8 and reread in a very short period of time, and  
 9 it was juxtaposed against this. We don't  
 10 want, shall we say, to be perceived as making  
 11 the same mistake or approach as we did on  
 12 ER/PR, in terms of Eastern Health, and so we  
 13 were--Ed Hunt, in this case, was tasked with  
 14 working with Eastern Health on some possible  
 15 solutions or support that he could provide.  
 16 COFFEY, Q.C.:  
 17 Q. And there was a conscious decision, I take it,  
 18 made or an accepted consensus that the  
 19 department should be more actively involved in  
 20 the radiology matter than they had been in the  
 21 ER/PR?  
 22 MR. ABBOTT:  
 23 A. It wasn't one made by me, as deputy minister.  
 24 It had been made by the minister and that was  
 25 how that came about.

1 COFFEY, Q.C.:

2 Q. If we could, please, Exhibit P-0866? This is

3 an e-mail from yourself to Tansy Mundon,

4 Monday, May 21st 2007 at 10:18 a.m. This

5 would be the May 24th holiday. The subject is

6 "Media coverage, ER/PR" and it says "for

7 tomorrow's briefing of MHAs, what will be

8 Eastern's messaging on what government knew

9 and when? Please call my cell. Thanks."

10 That would be sent from yourself. This had

11 followed on an e-mail from Tansy Mundon to Mr.

12 Brian Crowley, Elizabeth Matthews, and a list

13 of senior people in the government and in the

14 department, of May 19th at 12:35 involving

15 media coverage, ER/PR and Ms. Mundon had

16 summarized the coverage up to that point.

17 Why were you asking Ms. Mundon as to what

18 Eastern's messaging would be on what

19 government knew and when?

20 MR. ABBOTT:

21 A. I think it was just to find out if, in fact,

22 they had the benefit of, you know, what we had

23 indicated to Cabinet was what we knew, and

24 because they would be asking--certainly the

25 opposition MHAs could and would, we expect, be

1 asking that type of question in the House. So

2 I wanted to make sure that they--that if

3 Eastern Health was speaking on that point,

4 that they can tell the media what, in fact,

5 they have told us, and we just wanted to know

6 what--and that they, in fact, also had that

7 same information.

8 COFFEY, Q.C.:

9 Q. I'm sorry, could you just run that past me

10 again?

11 MR. ABBOTT:

12 A. Well, that if Eastern Health was speaking on

13 that, hopefully they would be speaking on what

14 we knew and had recently advised the Cabinet

15 that we knew and vice versa, so to ensure,

16 from a consistency point of view, that she

17 could make sure that she reviewed their

18 information on that point. The critical point

19 being is that we expected that that would be

20 the type of question the opposition MHAs would

21 be raising in the House. So we wanted to be

22 as transparent as possible.

23 COFFEY, Q.C.:

24 Q. Well -

25 MR. ABBOTT:

1 A. Let me put it this way. I didn't want them to

2 say "gee, we didn't know what the government

3 knew" or "they only knew this." I said tell

4 them whatever--you know, whatever it is they

5 told us, make sure that they tell the media

6 and then if there's any doubt in that, you

7 know, please find out what that could be.

8 COFFEY, Q.C.:

9 Q. Well, this was a briefing for the MHAs.

10 MR. ABBOTT:

11 A. Yes.

12 COFFEY, Q.C.:

13 Q. So you're asking what Eastern Health would be

14 telling the MHAs -

15 MR. ABBOTT:

16 A. Yes, because there might -

17 COFFEY, Q.C.:

18 Q. - what government knew and -

19 MR. ABBOTT:

20 A. One concern I could see is that--and this is

21 sort of at that point, is that they might be

22 reluctant to talk to the MHAs about what they

23 said to government, because knowing that the

24 opposition MHAs, in particular, could use that

25 as "ammunition" in their questioning in the

1 House or in their interviews with the media.

2 What we want to ensure is that they--you know,

3 there was--I wanted to ensure that there was

4 full disclosure there, and that was just for

5 greater certainty.

6 COFFEY, Q.C.:

7 Q. Well, what were you told?

8 MR. ABBOTT:

9 A. I don't know what the--you know, the answer,

10 if in fact that got a response on that.

11 COFFEY, Q.C.:

12 Q. Because you asked for a call on your cell.

13 MR. ABBOTT:

14 A. Yes, but I don't recall, you know, any

15 particular conversation from that, but it

16 would have been, you know, along the lines,

17 whatever I had said to her and what prompted

18 that would be along that, to make sure that

19 they don't hold back.

20 COFFEY, Q.C.:

21 Q. Why not just simply send her a message saying

22 "tell Eastern to tell the MHAs everything"?

23 That would accomplish the same -

24 MR. ABBOTT:

25 A. That's just the way I did it that day. Now

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1 this is on a Monday, a long weekend, and I  
 2 know what else I was doing that day.  
 3 COFFEY, Q.C.:  
 4 Q. What is messaging? What does that--what does  
 5 the word messaging in this context mean?  
 6 MR. ABBOTT:  
 7 A. What they would communicate.  
 8 COFFEY, Q.C.:  
 9 Q. If we could look, please, at Exhibit P-0209?  
 10 Now this is--the first of the e-mails here at  
 11 the top of the page is Ms. Mundon's response  
 12 to you of May 21st, 2007 at 10:41 a.m.,  
 13 responding to that earlier e-mail I just  
 14 referred you to, and it says "John, this was  
 15 asked on Friday at the briefing, but I think  
 16 you should have that discussion with George  
 17 since he will be answering the question."  
 18 MR. ABBOTT:  
 19 A. Um-hm.  
 20 COFFEY, Q.C.:  
 21 Q. Do you know if you ever did have the  
 22 conversation with George Tilley?  
 23 MR. ABBOTT:  
 24 A. I really can't say one way or the other.  
 25 COFFEY, Q.C.:

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1 Q. Sir, there was an announcement on May 22nd,  
 2 2007 of the fact that an inquiry, public  
 3 inquiry was going to be held. Recall that?  
 4 MR. ABBOTT:  
 5 A. Yes.  
 6 COFFEY, Q.C.:  
 7 Q. As that long weekend went on and evolved and  
 8 there was a Cabinet meeting and there was a  
 9 decision, and then there was a public  
 10 announcement concerning same. Could you tell  
 11 the Commissioner, please, what, if any,  
 12 involvement you had in the fine tuning of the  
 13 announcement and the press releases  
 14 accompanying same?  
 15 MR. ABBOTT:  
 16 A. Well, we would have drafted the--once we had  
 17 the decision, we would have drafted the  
 18 materials, including the press release, Tansy  
 19 Mundon and her staff. Then I would have  
 20 reviewed it for any comments or input that I  
 21 would like to see, and then that would be  
 22 forwarded to the minister and others for their  
 23 okay.  
 24 COFFEY, Q.C.:  
 25 Q. Now sir, your understanding of who had input

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1 into this then, it was the Department of  
 2 Health. Did Eastern Health have any input?  
 3 MR. ABBOTT:  
 4 A. I'm not sure. They could have, again, because  
 5 it was certainly going to directly impact on  
 6 them. We would have shared, you know, what we  
 7 were doing with them. Also with the  
 8 communications branch in the Cabinet  
 9 secretariat, as well as the Premier's office.  
 10 COFFEY, Q.C.:  
 11 Q. There is--and is it your recollection that the  
 12 Cabinet secretariat, and this would be Mr.  
 13 Thompson primarily, that the Premier's office,  
 14 which would be Elizabeth Matthews and Brian  
 15 Crowley -  
 16 MR. ABBOTT:  
 17 A. Yes.  
 18 COFFEY, Q.C.:  
 19 Q. - had a certain amount of input into -  
 20 MR. ABBOTT:  
 21 A. Yes.  
 22 COFFEY, Q.C.:  
 23 Q. - well, the terms of reference, number one,  
 24 and number two, well more to the point, the  
 25 messaging -

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1 MR. ABBOTT:  
 2 A. Well, the terms of reference was certainly,  
 3 you know, with Mr. Thompson and the Premier.  
 4 COFFEY, Q.C.:  
 5 Q. Okay.  
 6 MR. ABBOTT:  
 7 A. Coming out of their discussion, but in terms  
 8 of the media releases and the press release,  
 9 there were a larger group involved.  
 10 COFFEY, Q.C.:  
 11 Q. And that would be -  
 12 MR. ABBOTT:  
 13 A. The people you identified.  
 14 COFFEY, Q.C.:  
 15 Q. - I just referred to -  
 16 MR. ABBOTT:  
 17 A. Yes.  
 18 COFFEY, Q.C.:  
 19 Q. - Ms. Matthews and Mr. Crowley, and Ms.  
 20 Mundon?  
 21 MR. ABBOTT:  
 22 A. Yes.  
 23 COFFEY, Q.C.:  
 24 Q. In terms of the final approval of the  
 25 material, who had final approval of it?

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1 MR. ABBOTT:  
 2 A. Well, before it went to the minister, it was  
 3 primarily me. In this case, there were many  
 4 cooks involved in this one, but the--at the  
 5 end, I would have signed off on it for the  
 6 minister.  
 7 COFFEY, Q.C.:  
 8 Q. Now sir, on that point, if we just could, if  
 9 we could bring up, please, Exhibit P-0128?  
 10 Exhibit--I'm sorry, page 43, please. Now this  
 11 is a news release, "Government to undertake  
 12 judicial commission of inquiry on estrogen and  
 13 progesterone receptor testing for breast  
 14 cancer patients." The next page, page 44, and  
 15 this is a backgrounder, "ER/PR testing for  
 16 breast cancer patients," and at the bottom of  
 17 the page on the last bullet, "Eastern Health  
 18 contacted each patient who was affected by the  
 19 ER/PR test review or their family physician to  
 20 make sure they received all the information  
 21 and support they required." Then it goes on,  
 22 "they were told either one of three things,"  
 23 and now there's--you're aware, are you not,  
 24 that there is--a certain amount of controversy  
 25 exists over whether or not all patients had

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1 been contacted?  
 2 MR. ABBOTT:  
 3 A. Yes.  
 4 COFFEY, Q.C.:  
 5 Q. Were you aware before this that there was some  
 6 controversy about it?  
 7 MR. ABBOTT:  
 8 A. No, we were--you know, certainly with my  
 9 dealing with this, certainly in May month,  
 10 that we were certainly under the strong  
 11 impression that all patients had been  
 12 contacted.  
 13 COFFEY, Q.C.:  
 14 Q. And you'd gotten that from whom?  
 15 MR. ABBOTT:  
 16 A. Both internally from the various discussions,  
 17 briefing notes, what have you.  
 18 COFFEY, Q.C.:  
 19 Q. That would be with Ms. Hennessey?  
 20 MR. ABBOTT:  
 21 A. Yes, and any discussion we would have had--I  
 22 would have had with George Tilley or anybody  
 23 else on this issue given in the spring of  
 24 2007, and you know, dare I say, you know,  
 25 given that time frame, one would have expected

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1 that would have been done in any event.  
 2 COFFEY, Q.C.:  
 3 Q. Quite some period of time before?  
 4 MR. ABBOTT:  
 5 A. Yes.  
 6 COFFEY, Q.C.:  
 7 Q. But you understood that that had occurred  
 8 before December 11th 2006?  
 9 MR. ABBOTT:  
 10 A. December 11th?  
 11 COFFEY, Q.C.:  
 12 Q. Yes, the press conference.  
 13 MR. ABBOTT:  
 14 A. We were certainly under--well, then there--in  
 15 terms of that there may have been some delayed  
 16 results, those things, but patients were or  
 17 would be contacted.  
 18 COFFEY, Q.C.:  
 19 Q. Okay. So Mr. Wiseman, from the time at least,  
 20 to your knowledge, he was first involved, he  
 21 was being told what in that regard?  
 22 MR. ABBOTT:  
 23 A. I think basically that, what the status was on  
 24 the testing and test results, but at the end  
 25 of this, certainly by this time, that patients

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1 were--all patients were notified.  
 2 COFFEY, Q.C.:  
 3 Q. Okay. Sir, if I could please, Commissioner,  
 4 just one moment. One moment, Commissioner,  
 5 I'm just trying to locate something. Do you  
 6 recall when it was that you were first  
 7 notified in writing by Eastern Health or--  
 8 well, first of all, do you know if you were  
 9 ever notified in writing by Eastern Health  
 10 that all patients had been contacted?  
 11 MR. ABBOTT:  
 12 A. In writing?  
 13 COFFEY, Q.C.:  
 14 Q. Yes.  
 15 MR. ABBOTT:  
 16 A. No.  
 17 COFFEY, Q.C.:  
 18 Q. Do you recall when you first saw something  
 19 written down asserting that all patients had  
 20 been contacted?  
 21 MR. ABBOTT:  
 22 A. You know, again, it would have showed up in  
 23 our briefing materials. That's where I would  
 24 have seen it. And where there were an  
 25 occasion where there was--you know, had been

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1 some reports in the media about an individual  
 2 case that we--there was generally somebody had  
 3 contacted Eastern Health from our department  
 4 to say "can you"--you know, sort of "why is  
 5 this? Can you explain it?" and there was an  
 6 explanation given, either not the right--you  
 7 know, they're in the wrong class. There's  
 8 this, that or other reasonable explanation for  
 9 that particular incident.

10 COFFEY, Q.C.:  
 11 Q. To explain that exception?

12 MR. ABBOTT:  
 13 A. Yes.

14 COFFEY, Q.C.:  
 15 Q. Okay. If we could, please, Commissioner,  
 16 Exhibit P-0126? Page 13, please. Actually,  
 17 perhaps the easiest way to do this is to look  
 18 at page 20, well, page 19, please? Page 19.  
 19 And here, this is a question and answer  
 20 briefing note. I'm sorry, I went past.  
 21 Prepared May 16th 2007 by Beverley Griffiths  
 22 and Moira Hennessey, and now this is the one  
 23 of May 16th--because there are two different  
 24 May 16th ones. This is one dated May 16th  
 25 that does not have the addendum attached, or

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1 I'm sorry, the annex attached, but in terms of  
 2 this particular one, the text of it is longer  
 3 than the other one of similar date, and Mr.  
 4 Abbott, I'm going to ask you about this.  
 5 Under key messages, going onto the second  
 6 page, the second last bullet under that  
 7 heading says "Eastern Health has notified all  
 8 affected individuals through communication  
 9 with their physician. Information was shared  
 10 once retesting was completed. It was felt  
 11 that informing patients of retesting prior to  
 12 individual results being received would create  
 13 anxiety without further information to be  
 14 shared." So would you have taken that as, at  
 15 least internally within your department, a  
 16 written assertion that Eastern Health had  
 17 notified all affected individuals?

18 MR. ABBOTT:  
 19 A. Yes.

20 COFFEY, Q.C.:  
 21 Q. Now if we look at the exhibit that begins at  
 22 page 13--I'm sorry, the exhibit, the briefing  
 23 note that begins at page 13, and this one,  
 24 when you look at page 16 of the exhibit, which  
 25 is page four of the briefing note, it's also

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1 dated May 16th 2007, drafted by Beverley  
 2 Griffiths and approved by Moira Hennessey.  
 3 In terms of this, sir, looking under key  
 4 messages, just going to--the reference is  
 5 here--well, a couple of them here, the second  
 6 last bullet, "Eastern Health resumed ER/PR  
 7 testing in St. John's on February 1, 2007" and  
 8 I'll come back to that, but do you see any--in  
 9 that listing of key messages there on that  
 10 first page, any reference to communication  
 11 with patients?

12 MR. ABBOTT:  
 13 A. No, I'm just reading down through it, and  
 14 trying to compare, and I don't see it.

15 COFFEY, Q.C.:  
 16 Q. So that May 16th one we just looked at a  
 17 moment ago, briefing note, is that likely not  
 18 the first time that there was actually a  
 19 written designation for you that everybody had  
 20 been contacted?

21 MR. ABBOTT:  
 22 A. I really can't -

23 COFFEY, Q.C.:  
 24 Q. You can't recall?

25 MR. ABBOTT:

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1 A. - say one way or the other on that.

2 COFFEY, Q.C.:  
 3 Q. Before this became a large issue, on May 15th,  
 4 had you had any sense before that that  
 5 everybody had been contacted?

6 MR. ABBOTT:  
 7 A. That was my premise throughout that whole  
 8 period, that the patients had been contacted  
 9 particularly, you know, again there was some  
 10 discussion obviously in the early part of this  
 11 as to when to do it, but as results came in,  
 12 you know, that they would be--there would be  
 13 direct contact.

14 COFFEY, Q.C.:  
 15 Q. And in terms of the briefing then or briefing  
 16 of Mr. Wiseman on the 15th, was it conveyed to  
 17 him that everybody had been contacted?

18 MR. ABBOTT:  
 19 A. I believe so, and it really wasn't an issue.

20 COFFEY, Q.C.:  
 21 Q. And when did that then really become an issue,  
 22 in the sense of there was some misgivings  
 23 about whether or not that was so?

24 MR. ABBOTT:  
 25 A. Not while I was there.



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1 COFFEY, Q.C.:

2 Q. So that when we look at P-0128, page 44, in

3 this backgrounder of May 22nd, the assertion

4 that "Eastern Health had contacted each

5 patient who was affected by the ER/PR test

6 review or their family physician to make sure

7 they received all the information and support

8 they required," at that time, while you were

9 still deputy minister, you were comfortable,

10 based upon what Eastern Health told you, that

11 that was so?

12 MR. ABBOTT:

13 A. Yes.

14 COFFEY, Q.C.:

15 Q. Mr. Abbott, on that point, as you pointed out

16 that at times there was kind of an exception,

17 somebody would--something in the public and -

18 MR. ABBOTT:

19 A. Yeah.

20 COFFEY, Q.C.:

21 Q. - Eastern Health would have an explanation.

22 Did it ever occur to you that--and like after-

23 -one exception is one thing, but maybe two or

24 three exceptions maybe that the question, kind

25 of the underlying assertion?

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1 MR. ABBOTT:

2 A. No, not really, and again, you're talking

3 large numbers and what people understood or

4 perceived and what they reported to the media,

5 what the media picked up, because it was sort

6 of that forum that we were hearing about it.

7 Given my own role in the department, in terms

8 of the programming and services we were

9 delivering, it would be not uncommon to say

10 "look, we have done"--you know, "we've

11 contacted all. We've done what we set out to

12 do" and then subsequently hear that, in fact,

13 we've missed somebody, and so I didn't--wasn't

14 concerned by that. But when brought to Eastern

15 Health's attention, they were able to explain

16 it.

17 COFFEY, Q.C.:

18 Q. Each individual case, yes.

19 MR. ABBOTT:

20 A. Yes.

21 COFFEY, Q.C.:

22 Q. If we could, please, Exhibit 0852? This is an

23 e-mail of May 22nd 2007 at 4:31 p.m. from Ms.

24 Mundon to a number of individuals and it's

25 copied to yourself and Mr. Wiseman and Moira

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1 Hennessey, and this is senior people in the

2 Cabinet secretariat, Premier's office,

3 advising that the MHAs briefing was to

4 continue the next day?

5 MR. ABBOTT:

6 A. Yes.

7 COFFEY, Q.C.:

8 Q. What was your understanding of the outcome of

9 the MHAs briefing? How did it go over?

10 MR. ABBOTT:

11 A. Interestingly enough, I didn't hear very much,

12 or very much feedback from that. So it had

13 been anticipated or expected that there would

14 be--Eastern Health would have had a more

15 difficult time in some of the questioning, but

16 we didn't get that sense when the report--when

17 Eastern Health reported back on that.

18 COFFEY, Q.C.:

19 Q. Okay, and this explanation or reassurance by

20 Eastern Health that was being offered over

21 time or from time to time about everyone being

22 contacted, who at Eastern Health was doing

23 that?

24 MR. ABBOTT:

25 A. In terms of communicating that message?

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1 COFFEY, Q.C.:

2 Q. Yes.

3 MR. ABBOTT:

4 A. Depending on who we talked to on that point,

5 whether it would have been through Moira

6 Hennessey's contacts and her staff, say, to

7 Heather Predham, whether it was with Bob

8 Williams, whether it was with George Tilley.

9 COFFEY, Q.C.:

10 Q. So it might vary from time to time?

11 MR. ABBOTT:

12 A. I would vary depending on who you were

13 speaking with.

14 COFFEY, Q.C.:

15 Q. Now sir, did the issue of whether or not the

16 ER/PR tests or all the ER/PR tests for

17 Newfoundland were being done in May of '07 in

18 St. John's come up?

19 MR. ABBOTT:

20 A. It came up, I guess that week of May 21st, and

21 that had been the first time that it had been

22 brought to my attention that, in fact, the

23 retests--or the lab had went ahead, reopened

24 as it were, and the testing was just doing

25 sort of the Eastern Health tests and not the

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1 rest of the province.  
 2 COFFEY, Q.C.:  
 3 Q. How did that come up, do you recall?  
 4 MR. ABBOTT:  
 5 A. It came out of the briefing, I think the week  
 6 before, in terms of what the status of things  
 7 were and we decided to have a briefing around  
 8 that issue, and I was asked or took it on  
 9 myself, not sure, to in fact have a conference  
 10 call with the various labs, and I had actually  
 11 asked--if I may step back, now that I think  
 12 about it, I think it may have been Oscar  
 13 Howell may have raised that with me in  
 14 conversation, because I had asked him then to  
 15 convene a conference call on this issue, to  
 16 bring in all the labs in the province,  
 17 including ourselves.  
 18 COFFEY, Q.C.:  
 19 Q. Exhibit P-0854. Now during this whole time  
 20 frame, like throughout 2007, was Dr. Williams  
 21 ever involved in any of this?  
 22 MR. ABBOTT:  
 23 A. Well, at this point, Dr. Williams had been  
 24 retired.  
 25 COFFEY, Q.C.:

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1 Q. He was gone, yes. So he wouldn't have been  
 2 involved?  
 3 MR. ABBOTT:  
 4 A. Not that I'm aware of.  
 5 COFFEY, Q.C.:  
 6 Q. The VP from Eastern Health from time to time  
 7 then would have been Oscar Howell?  
 8 MR. ABBOTT:  
 9 A. Yes.  
 10 COFFEY, Q.C.:  
 11 Q. Okay. Looking at this, this is an e-mail from  
 12 yourself to Oscar Howell, May 23rd 2007, 4:55  
 13 p.m., "please call on my cell" number is  
 14 there. "I also need you to arrange a  
 15 conference call tomorrow a.m. with other VPs  
 16 of medical services in province on the ER/PR  
 17 issue and current testing processes. Please  
 18 include Cathi Bradbury and Moira Hennessey in  
 19 call." Was this the conference call you were  
 20 talking about?  
 21 MR. ABBOTT:  
 22 A. Yes.  
 23 COFFEY, Q.C.:  
 24 Q. And what was the--the need for this was what?  
 25 MR. ABBOTT:

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1 A. Well again, the issue had come forward that  
 2 there was testing being done by Eastern  
 3 Health, but not for the province, and that was  
 4 new to me and the department, the minister.  
 5 COFFEY, Q.C.:  
 6 Q. But you had understood what?  
 7 MR. ABBOTT:  
 8 A. Well, again, when they said they had reopened  
 9 the lab, reading and understanding that, was  
 10 that that covered the entire province and  
 11 there had been no distinction made in any  
 12 conversation or material provided to the  
 13 department. So we took it -  
 14 COFFEY, Q.C.:  
 15 Q. When you checked then -  
 16 MR. ABBOTT:  
 17 A. Well, we took it on ourselves then to find  
 18 that out, then that's what we were told. And  
 19 in light of that, well, we better get briefed  
 20 on what, in fact, is going on because again,  
 21 it was, I think, becoming a public issue as  
 22 well. So, I asked Dr. Howell to be at the  
 23 meeting and we did it by conference call.  
 24 COFFEY, Q.C.:  
 25 Q. And what happened during--you participated in

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1 the conference call?  
 2 MR. ABBOTT:  
 3 A. I guess I sort of chaired it or opened it  
 4 initially, just to say why I had requested  
 5 this. Asked Dr. Howell then to lead the  
 6 discussion. Dr. Denic was called on then to  
 7 talk about what they were doing and the other  
 8 labs were talking about what they did, what  
 9 the discussion and--I mean, one of the  
 10 questions I did ask was, you know, when and  
 11 how will we repatriate (phonetic) that service  
 12 to the Eastern lab.  
 13 COFFEY, Q.C.:  
 14 Q. What were you told?  
 15 MR. ABBOTT:  
 16 A. There was--it got quite, sort of, very  
 17 technical in some discussion because you had  
 18 all the pathologists on the line there, but it  
 19 was issues around, as I understood it, was  
 20 around fixation, certainly one key element  
 21 that Eastern Health, in terms of their  
 22 standard, versus what the standard of the  
 23 other hospitals might be was, I believe, sort  
 24 of the critical or deciding factor on that.  
 25 COFFEY, Q.C.:

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1 Q. Standards of the other hospitals in relation  
 2 to what?  
 3 MR. ABBOTT:  
 4 A. On fixation.  
 5 COFFEY, Q.C.:  
 6 Q. Fixation.  
 7 MR. ABBOTT:  
 8 A. Yes.  
 9 COFFEY, Q.C.:  
 10 Q. Okay. So, there was a discussion amongst the  
 11 pathologists, at least, I take it.  
 12 MR. ABBOTT:  
 13 A. Yes.  
 14 COFFEY, Q.C.:  
 15 Q. About standards for fixation in various  
 16 locales.  
 17 MR. ABBOTT:  
 18 A. Yes.  
 19 COFFEY, Q.C.:  
 20 Q. Eastern Health's position was what in that  
 21 regard?  
 22 MR. ABBOTT:  
 23 A. Well, you know, on thing they've learned  
 24 through this is that, you know, this whole  
 25 ER/PR issue, is that that this is one of the

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1 factors to considered, has to be considered  
 2 and they had now developed an approach or a  
 3 standard and they would--if they're going to  
 4 do the testing in their labs, they wanted to  
 5 be assured that fixation by other hospitals  
 6 would be consistent. That's how I understood  
 7 it.  
 8 COFFEY, Q.C.:  
 9 Q. With their own protocol.  
 10 MR. ABBOTT:  
 11 A. Yes, that's how I understood it, yes.  
 12 COFFEY, Q.C.:  
 13 Q. Was there any question raised or concerns  
 14 expressed on the conference call by anyone  
 15 that, the other authorities outside Eastern  
 16 Health had not yet or were only now learning  
 17 about this fixation concern?  
 18 MR. ABBOTT:  
 19 A. I'm not really sure. At certain points--well,  
 20 let me step back, what I had assumed was that  
 21 there would have been and had been discussions  
 22 by Eastern labs, say Dr. Denic with his  
 23 colleagues around where things were and those  
 24 kinds off issues.  
 25 COFFEY, Q.C.:

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1 Q. You had assumed that had already occurred?  
 2 MR. ABBOTT:  
 3 A. Yes. So, when it was raised, it did catch me  
 4 off guard a bit that, oh, so that type of  
 5 communication had not taken place.  
 6 COFFEY, Q.C.:  
 7 Q. This is the first time it was -  
 8 MR. ABBOTT:  
 9 A. Well, yeah, the way you put it, I wasn't sure  
 10 of the first time or if there had been, again,  
 11 any individual conversations held, but it was  
 12 raised as a point, but not--it stood out only  
 13 for that reason we talked about, on a number  
 14 of other issues, but that did get raised.  
 15 COFFEY, Q.C.:  
 16 Q. And you were mildly surprised that it hadn't -  
 17 MR. ABBOTT:  
 18 A. Yes.  
 19 COFFEY, Q.C.:  
 20 Q. - occurred because you had assumed it would  
 21 have.  
 22 MR. ABBOTT:  
 23 A. Yes.  
 24 COFFEY, Q.C.:  
 25 Q. Did that cause you any concern about the lack

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1 of co-ordination between Eastern Health and  
 2 the other authorities?  
 3 MR. ABBOTT:  
 4 A. Well, yes and again--but we, you know, we  
 5 talked through that. We came up with an  
 6 approach and actual plan so that, in fact,  
 7 those conversations would take place and that  
 8 the labs would, and Eastern Health would work  
 9 together and to every degree possible or as  
 10 soon as possible that that work now would be  
 11 done at Eastern.  
 12 COFFEY, Q.C.:  
 13 Q. Was there any -  
 14 MR. ABBOTT:  
 15 A. When I left, though the conversation was late  
 16 in happening, it was a very constructive  
 17 discussion amongst that group.  
 18 COFFEY, Q.C.:  
 19 Q. Was there any explanation offered by Eastern  
 20 Health's representatives during the conference  
 21 call as to why such communication hadn't  
 22 occurred before?  
 23 MR. ABBOTT:  
 24 A. I can't remember what he would have said on  
 25 that point. I mean, I know he would have

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1 addressed it, but there was nothing--nothing  
 2 stands out in my mind right now.  
 3 COFFEY, Q.C.:  
 4 Q. Okay. If we could, Exhibit P-890. Now, this  
 5 is an e-mail on Eastern Health fax  
 6 transmission letterhead, "Highly Private and  
 7 Confidential". It's entitled to John Abbott  
 8 from Dr. Oscar Howell. The subject is "Lab  
 9 Letter". It's dated May 24, 2007. It's  
 10 comments are, "Mr. Abbott as discussed with  
 11 Dr. Howell", this is from Dr. Howell's office  
 12 apparently and it's stamped received May 25,  
 13 2007, deputy minister's office. And we look  
 14 at as to what's attached, it's noted to be  
 15 four pages. What's attached is the three page  
 16 June 19, 2003 memo from Dr. Ejeckam to Terry  
 17 Gulliver on immunohistochemical stains at  
 18 Health Sciences Centre. How'd this come about  
 19 in the sense of it being faxed to you?  
 20 MR. ABBOTT:  
 21 A. Dr. Howell and I had had a conversation  
 22 around, we were dealing with the radiology  
 23 issue at the time. And he indicated in that  
 24 conversation that day or the day before that  
 25 it had just come to his attention that there

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1 was a letter on file about the staining at  
 2 the--the issue around the lab, that you should  
 3 be aware of, from Dr. Ejeckam. And I said  
 4 fair enough, would you send that to me. And I  
 5 had not made any connection with Dr. Ejeckam's  
 6 name and some previous briefing material. And  
 7 the way Dr. Howell is presenting, at least to  
 8 him, it seemed that it was new information and  
 9 something that I should be aware of. And so,  
 10 I said, fax it to me, which he did.  
 11 COFFEY, Q.C.:  
 12 Q. The fax occurred what, pretty well the same  
 13 day?  
 14 MR. ABBOTT:  
 15 A. That's--whether it was the day before or that  
 16 same day, but it was in very short order.  
 17 COFFEY, Q.C.:  
 18 Q. And when you received that copy of Dr.  
 19 Ejeckam's memo, what did you do?  
 20 MR. ABBOTT:  
 21 A. Well, I read it and said okay, is this new and  
 22 what is it? Then just about that time, I  
 23 believe the minister arrived in my office for  
 24 whatever reason and I had indicated to him  
 25 that we had received this document. And it

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1 seemed that it might be new information or  
 2 what have you and it dated back to 2003 around  
 3 the ER/PR and this heightened sensitivity.  
 4 So, he asked for a copy which I provided to  
 5 him.  
 6 COFFEY, Q.C.:  
 7 Q. And what happened then in -  
 8 MR. ABBOTT:  
 9 A. Well, the next thing I knew, I guess it was  
 10 the next day and I happened to be in my office  
 11 and either, I don't know if I had my speaker  
 12 phone on from the House of Assembly or found  
 13 out in the news later that day that the  
 14 premier had identified and that the government  
 15 had received this letter, he was aware of it  
 16 and was letting the House know about it.  
 17 COFFEY, Q.C.:  
 18 Q. Now, when you read this memo, did--having read  
 19 the memo, did it come back to you that, wait  
 20 now, I've seen Ejeckam's name somewhere  
 21 before?  
 22 MR. ABBOTT:  
 23 A. No, it was at that point, it's fair to say, I  
 24 had not recalled that.  
 25 COFFEY, Q.C.:

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1 Q. And did you make any inquiries of Eastern  
 2 Health, Dr. Howell or anybody else at that  
 3 point in time as to is there just the one  
 4 memo?  
 5 MR. ABBOTT:  
 6 A. No, again things, you know, escalated and they  
 7 just moved, literally, with respect to this  
 8 letter and what happened in the public domain,  
 9 that never got to do anything about this  
 10 letter or ask any other questions.  
 11 COFFEY, Q.C.:  
 12 Q. Okay. So, as you indicated, having given Mr.  
 13 Wiseman a copy of it, the next you heard of it  
 14 was -  
 15 MR. ABBOTT:  
 16 A. Yes, because it was caught up in, you know,  
 17 about the ER/PR obviously, but also with the  
 18 radiology issue and that was top of mind for  
 19 everybody for that period.  
 20 COFFEY, Q.C.:  
 21 Q. If we could, please, Exhibit P-0457. Now,  
 22 this is an e-mail, there's a whole series of  
 23 e-mails involved in this letter to the "Globe  
 24 and Mail". I'm not going to take you through  
 25 them all, but this is one from George Tilley,

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1 Thursday, May 24, 2007 at 6:10 p.m. It's to  
 2 yourself and Tansy Mundon, copied to Ms.  
 3 Bonnell, the subject is Globe and Mail letter,  
 4 May 2007. And Mr. Tilley says, "Tansy, this  
 5 is the latest draft of our letter to the  
 6 "Globe", we will finalize in the a.m.  
 7 George". Now, what was--can you described for  
 8 the Commissioner what this was ll about?  
 9 MR. ABBOTT:  
 10 A. There was an article in the "Globe and Mail",  
 11 I believe it was by Andre Picard and it was  
 12 felt that we should respond to his story or  
 13 his editorial or both. And both, I think  
 14 George Tilley on behalf of Eastern Health and  
 15 whether they had thought about doing that  
 16 first or not, but there had been a  
 17 conversation about it, but also the minister  
 18 was also going to be doing a letter as well.  
 19 So, we worked in tandem on "draft" letters.  
 20 COFFEY, Q.C.:  
 21 Q. And the purpose, from your perspective or your  
 22 understanding, the purpose of responding or -  
 23 MR. ABBOTT:  
 24 A. Well, again, the article by Mr. Picard and the  
 25 criticism in it of what was happening in the

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1 province around ER/PR, we felt that needed to  
 2 be corrected, challenged, what have you and  
 3 felt that the letter from the CEO, what  
 4 happened there and as well from the government  
 5 perspective by the minister would be  
 6 appropriate. Now, whether the "Globe and  
 7 Mail" would ever pick it up and use it, well  
 8 who knows?  
 9 COFFEY, Q.C.:  
 10 Q. Yes. And if we could please, let's see, the--  
 11 on this point, if we could just look please--  
 12 because this is copy, draft of our letter,  
 13 that would be Eastern Health's letter,  
 14 wouldn't it?  
 15 MR. ABBOTT:  
 16 A. Ah -  
 17 COFFEY, Q.C.:  
 18 Q. This is from George Tilley to yourself, so  
 19 he's sending you the latest -  
 20 MR. ABBOTT:  
 21 A. Oh yes, yes.  
 22 COFFEY, Q.C.:  
 23 Q. Can you look through this please and tell me  
 24 if Mr. Tilley ever asserts that all patients  
 25 have been notified?

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1 MR. ABBOTT:  
 2 A. It's not certainly standing out there, no.  
 3 THE COMMISSIONER:  
 4 Q. I don't think the witness can see all of the  
 5 letter.  
 6 COFFEY, Q.C.:  
 7 Q. Oh, sorry, I apologize.  
 8 THE COMMISSIONER:  
 9 Q. There is a mouse in front of you, Mr. Abbott,  
 10 if you want to control this yourself.  
 11 COFFEY, Q.C.:  
 12 Q. And you can go on and flip to the next page  
 13 when--I'll do that, if you like, when you're  
 14 ready. There's a reference to practising full  
 15 patient disclosure, but -  
 16 THE COMMISSIONER:  
 17 Q. Mr. Coffey, it's about time for the lunch  
 18 break and that's a long letter, why don't we  
 19 arrange for Mr. Abbott to have a copy, so they  
 20 can look at it -  
 21 COFFEY, Q.C.:  
 22 Q. That and another one.  
 23 THE COMMISSIONER:  
 24 Q. - at their leisurely pace.  
 25 COFFEY, Q.C.:

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1 Q. Sure. And we'll come back and finish up.  
 2 Thank you.  
 3 THE COMMISSIONER:  
 4 Q. All right. So, we'll get you a copy of that,  
 5 probably easier to read if we provide him with  
 6 a copy that's in writing. 2:15 p.m. Thank  
 7 you.  
 8 (LUNCH BREAK)  
 9 THE COMMISSIONER:  
 10 Q. Please be seated. Mr. Coffey.  
 11 COFFEY, Q.C.:  
 12 Q. If I could retrieve my -  
 13 MR. ABBOTT:  
 14 A. Okay, now, I did note on those, so -  
 15 COFFEY, Q.C.:  
 16 Q. That's fine. They'll come up on the screen  
 17 (inaudible - not at microphone) and you do  
 18 have control.  
 19 THE COMMISSIONER:  
 20 Q. Does the witness need his note to answer your  
 21 question?  
 22 COFFEY, Q.C.:  
 23 Q. That's fine; it may help. 457, please, could  
 24 bring up on the screen and what's the page  
 25 number on that please, on the top -

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1 MR. ABBOTT:  
 2 A. 457, page 1.  
 3 COFFEY, Q.C.:  
 4 Q. Page 1, thank you. Okay, perhaps--I'm sorry,  
 5 you go ahead, sir. I was asking you if there  
 6 was anything in it that you had seen to  
 7 indicate in the draft, that draft of Mr.  
 8 Tilley's letter to the "Globe and Mail" about  
 9 Eastern Health having actually notified all  
 10 patients?  
 11 MR. ABBOTT:  
 12 A. Well, again reading through this the lunch  
 13 period, there are three references that I  
 14 would have interpreted as that.  
 15 COFFEY, Q.C.:  
 16 Q. And which are they?  
 17 MR. ABBOTT:  
 18 A. If you go to, on page two, well on the letter,  
 19 the third paragraph, first sentence, second  
 20 line it says, "with every single patient".  
 21 COFFEY, Q.C.:  
 22 Q. Okay.  
 23 MR. ABBOTT:  
 24 A. If you go down to the next or two sentences  
 25 later.

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1 COFFEY, Q.C.:  
 2 Q. Yes, I'm sorry, go ahead.  
 3 MR. ABBOTT:  
 4 A. "Furthermore as the test results were  
 5 returning to us, we made sure that every  
 6 individual had their person information".  
 7 COFFEY, Q.C.:  
 8 Q. Okay.  
 9 MR. ABBOTT:  
 10 A. And then if you go to page 3 on this -  
 11 COFFEY, Q.C.:  
 12 Q. Of the exhibit, yes, second page of the  
 13 letter.  
 14 MR. ABBOTT:  
 15 A. Again, would be "finally advised the patients  
 16 of what we were doing", again interpreting -  
 17 COFFEY, Q.C.:  
 18 Q. Your sense certainly was -  
 19 MR. ABBOTT:  
 20 A. Yes.  
 21 COFFEY, Q.C.:  
 22 Q. And looking at Exhibit 0458 which is the draft  
 23 letter for--thank you, Registrar, 0458. And  
 24 this is a draft of a letter to the editor is  
 25 embodied in the e-mail text.

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1 MR. ABBOTT:  
 2 A. Yes.  
 3 COFFEY, Q.C.:  
 4 Q. And Mr.--I take it the forth paragraph or the  
 5 fifth paragraph, there's a reference to there  
 6 was full disclosure with patients and their  
 7 families once test results became available",  
 8 see that there?  
 9 MR. ABBOTT:  
 10 A. Yes.  
 11 COFFEY, Q.C.:  
 12 Q. Okay.  
 13 MR. ABBOTT:  
 14 A. And then it says, "each patient affected by  
 15 test review were told directly" -  
 16 COFFEY, Q.C.:  
 17 Q. "or through their family physician, one of  
 18 three things".  
 19 MR. ABBOTT:  
 20 A. Yes.  
 21 COFFEY, Q.C.:  
 22 Q. Okay, thank you. And so it's suffice to say  
 23 then, by May 24, 2007 you, as the deputy  
 24 minister, when these letters went off to the -  
 25 MR. ABBOTT:

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1 A. Yes.  
 2 COFFEY, Q.C.:  
 3 Q. - "Globe and Mail", you were certainly  
 4 comfortable that based upon what you were  
 5 told, everybody had been -  
 6 MR. ABBOTT:  
 7 A. And these letters, the drafting of them had  
 8 been exchanged between George Tilley and  
 9 ourselves and vice versa just to make sure we  
 10 were up -  
 11 COFFEY, Q.C.:  
 12 Q. Yes.  
 13 MR. ABBOTT:  
 14 A. - consistent or not contradictory.  
 15 COFFEY, Q.C.:  
 16 Q. If we could please--just one moment please,  
 17 Commissioner. Yes, Exhibit P-0128, page 43,  
 18 please. And looking at this, this is a press  
 19 release that occurred May 22 and it sets out  
 20 the six key questions, you see there, to  
 21 review, will address six key questions?  
 22 MR. ABBOTT:  
 23 A. Yes.  
 24 COFFEY, Q.C.:  
 25 Q. And then we look at the backgrounder on the

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1 next page of the exhibit, "ER/Pr testing for  
 2 breast cancer patients", there are assertions  
 3 in this backgrounder that arguably relate to  
 4 or address the very terms of reference for the  
 5 Inquiry. Were you aware of that, that there's  
 6 some things that are said here that, in fact,  
 7 might arguably actually be a response to the  
 8 terms? Or were you aware of it at the time, I  
 9 suppose is what I'm asking in the drafting of  
 10 this?  
 11 MR. ABBOTT:  
 12 A. No, I don't think there was any attempt to  
 13 answer those questions. The backgrounder was,  
 14 here's what we know as a department, in this  
 15 case the minister, around this and derive some  
 16 context for the Inquiry, for the media,  
 17 anybody else reading that material.  
 18 COFFEY, Q.C.:  
 19 Q. So, from your perspective as the deputy  
 20 minister in terms of the input that was sought  
 21 from you, when you were approaching, from  
 22 your perspective, what should or should not go  
 23 in the backgrounder. Were you advertent to  
 24 avoiding, you know, commenting upon the  
 25 questions?

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1 MR. ABBOTT:  
 2 A. I was certainly conscious that we weren't  
 3 going to try to do that.  
 4 COFFEY, Q.C.:  
 5 Q. I appreciate that.  
 6 MR. ABBOTT:  
 7 A. But in terms of what's there, if you match up  
 8 backgrounder and some information with the  
 9 question could possibly, looking back, could  
 10 suggest that there certainly wasn't any  
 11 intent, deliberate or otherwise, as far as I'm  
 12 concerned.  
 13 COFFEY, Q.C.:  
 14 Q. Okay. Now sir, if we could look at Exhibit P-  
 15 0114. And I appreciate that this was probably  
 16 your last full day as--May 29, 2007 would have  
 17 been your last full day as deputy minister?  
 18 MR. ABBOTT:  
 19 A. Um-hm.  
 20 COFFEY, Q.C.:  
 21 Q. The subject matter of this is feedback from  
 22 immunohistochemistry technologists, May 29,  
 23 2007 and there's two headings in bold print,  
 24 "Express concerns related to co-ordination of  
 25 quality assurance activities for entire

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1 immunohistochemical service" and there are  
 2 bullets underneath that and then another bold  
 3 bullet, "Expressed concerns regarding  
 4 communication". Now, I've referred you to  
 5 this because I wanted to ask you, were you  
 6 aware, toward the end of May of '07, before  
 7 you left your position, that this sort of  
 8 inquiry was being made of the technologists  
 9 involved?  
 10 MR. ABBOTT:  
 11 A. Well, I haven't seen -  
 12 COFFEY, Q.C.:  
 13 Q. I appreciate you wouldn't have seen this -  
 14 MR. ABBOTT:  
 15 A. But in terms of when you say inquiry of them -  
 16 COFFEY, Q.C.:  
 17 Q. Yes, -  
 18 MR. ABBOTT:  
 19 A. By whom?  
 20 COFFEY, Q.C.:  
 21 Q. Well, by someone who, on behalf of Eastern  
 22 Health's management -  
 23 MR. ABBOTT:  
 24 A. No.  
 25 COFFEY, Q.C.:

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1 Q. - or somebody from the department -  
 2 MR. ABBOTT:  
 3 A. No, I mean, certainly not by me or that I can  
 4 think of at the department level.  
 5 COFFEY, Q.C.:  
 6 Q. And how about, were you advised that Eastern  
 7 Health was -  
 8 MR. ABBOTT:  
 9 A. No.  
 10 COFFEY, Q.C.:  
 11 Q. If we could look please at Exhibit P-0431. In  
 12 particular at page 31. Now, I appreciate that  
 13 these are not your handwritten notes, Mr.  
 14 Abbott, but I understand that they're Mr.  
 15 Tilley's telephone logs or excerpts from--well,  
 16 not excerpts, but they're portions of his  
 17 telephone logs. This particular page is a  
 18 copy of one from May 29, '07 and the reference  
 19 is to Fay someone, John Peddle, and then  
 20 yourself, John Abbott.  
 21 MR. ABBOTT:  
 22 A. Yes.  
 23 COFFEY, Q.C.:  
 24 Q. And there's an arrow, "peer review reports  
 25 later today" and there's an arrow, "letter"

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1 and then an arrow, "issues and" something,  
 2 might be association, it's hard to decipher.  
 3 But "peer review reports later today"--you  
 4 recall you've told the Commissioner that on  
 5 May 15 that subject had come up in the sense  
 6 of the external reviews.  
 7 MR. ABBOTT:  
 8 A. Yes.  
 9 COFFEY, Q.C.:  
 10 Q. What had happened after May 15, in that  
 11 regard?  
 12 MR. ABBOTT:  
 13 A. Well, I can't recall any particular activity  
 14 on my part there. But this, in terms of those  
 15 notes, whether I was speaking with George and  
 16 it came up in conversation, I asked him, he  
 17 told me that they're going to be available or  
 18 would be available. But there was nothing for  
 19 my part that inquired any further, knowing my  
 20 relationship with George Tilley, if he  
 21 committed to do something, then that would  
 22 happen.  
 23 COFFEY, Q.C.:  
 24 Q. Now, I take it up until May 29, '07, it hadn't  
 25 happened.

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1 MR. ABBOTT:  
 2 A. No, I'm given what had happened between, that  
 3 wouldn't be a big surprise for me.  
 4 COFFEY, Q.C.:  
 5 Q. Okay. And if we could bring up please Exhibit  
 6 P-0784. Now, this exhibit has been identified  
 7 as, I'll say this--the exhibit itself is a  
 8 copy of the original of, on Eastern Health  
 9 letterhead, a letter, it's on the office of  
 10 the President, Chief Executive Officer of  
 11 Eastern Health's letterhead, delivered vis  
 12 courier, is what it says, May 30, 2007 it's  
 13 addressed to yourself as deputy minister and  
 14 it says, "dear John, further to your request,  
 15 I'm attaching reports that were prepared in  
 16 relation to the ER/PR issue. Please note that  
 17 that the reports prepared by Trish Wegrynowski  
 18 and Dr. Banerjee were prepared as a peer  
 19 review request and to that extent we had  
 20 performed in under our quality umbrella to  
 21 ensure its protection from future release.  
 22 The report prepared by Dr. Allan Gown was  
 23 requested by HIROC and therefore, not ours to  
 24 release. If need be, we can arrange to have  
 25 the laboratory leaders present on these items"

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1 and would have been signed sincerely, George  
 2 Tilley, the enclosures were five reports.  
 3 It's noted there at the bottom. It's copied  
 4 to Dr. Oscar Howell, the VP letter only and  
 5 Heather Predham, quality letter only. And  
 6 someone has run a line through this and  
 7 written "never sent" in handwriting on it.  
 8 Now sir, I take it that this letter never  
 9 arrived or a version of it never arrived on  
 10 your desk?  
 11 MR. ABBOTT:  
 12 A. No, it did not.  
 13 COFFEY, Q.C.:  
 14 Q. In terms of that, I'm just going to look at  
 15 page three of the exhibit and this appears to  
 16 be a handwritten version of the letter, it's  
 17 confidential, your name, John Abbott is here.  
 18 Now, in terms of some of the handwriting, the  
 19 line or the portion of the sentence beginning  
 20 within the third line here in the second  
 21 paragraph, "and to that extent, we had  
 22 performed it under our quality umbrella, to  
 23 ensure its protection from" something  
 24 scratched out and then "further release". And  
 25 the word appears there to be further as

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1 opposed to future. What's typed on the letter  
 2 and it is never signed by Mr. Tilley. The  
 3 typed word is "From future release". Mr.  
 4 Abbott, in terms of the subject of what's at  
 5 least in the typed version of the letter of  
 6 this, did you have a conversation with Mr.  
 7 Tilley about what's in this letter?  
 8 MR. ABBOTT:  
 9 A. No.  
 10 COFFEY, Q.C.:  
 11 Q. In terms of Dr. Gown?  
 12 MR. ABBOTT:  
 13 A. No.  
 14 COFFEY, Q.C.:  
 15 Q. You weren't aware, he hadn't explained to you  
 16 that there was this expert Gown, hired by  
 17 HIROC and -  
 18 MR. ABBOTT:  
 19 A. No.  
 20 COFFEY, Q.C.:  
 21 Q. In your conversations, such as they were, with  
 22 Mr. Tilley, about these external reviews,  
 23 particularly on the 15th of May when you  
 24 requested them and any you had subsequently,  
 25 did he ever make any comment about concerns



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1 about further release of those reports in the  
 2 sense of them going wider than your office?  
 3 MR. ABBOTT:  
 4 A. No.  
 5 COFFEY, Q.C.:  
 6 Q. And the purpose in those--from your  
 7 perspective in acquiring those reports was  
 8 what?  
 9 MR. ABBOTT:  
 10 A. Well, in light of the issue becoming, you  
 11 know, sort of very heightened both in the  
 12 department with the minister and in the public  
 13 that we, and figuring that there may be some  
 14 questions asked of the minister about the  
 15 reports, that we should at least now obtain  
 16 them and get an understanding of what was  
 17 contained in them.  
 18 COFFEY, Q.C.:  
 19 Q. Did you ever advise Mr. Wiseman that those  
 20 reports would not be forthcoming?  
 21 MR. ABBOTT:  
 22 A. No.  
 23 COFFEY, Q.C.:  
 24 Q. Do you know, to your knowledge, did anyone  
 25 ever do so, to your knowledge?

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1 MR. ABBOTT:  
 2 A. No.  
 3 COFFEY, Q.C.:  
 4 Q. Now, were you ever asked to follow up on the  
 5 reports in the sense of from Mr. Wiseman,  
 6 like, "Where are they?"  
 7 MR. ABBOTT:  
 8 A. I don't think so. As I said, there was a lot  
 9 of activity, so just from the initial briefing  
 10 on the 15th right up until that week, so as I  
 11 said, it wouldn't be no surprise to me that it  
 12 was taking a week or two for us to, you know,  
 13 actually get the copies.  
 14 COFFEY, Q.C.:  
 15 Q. Okay. Now, I appreciate, Mr. Abbott, that  
 16 you, as you've told the Commissioner, you'd  
 17 never actually seen the reports. I take it is  
 18 that a conscious decision by yourself since,  
 19 like now, in terms of since the Inquiry was  
 20 called and -  
 21 MR. ABBOTT:  
 22 A. I'm not sure if I follow your question.  
 23 COFFEY, Q.C.:  
 24 Q. Well, in the sense, they are available on the  
 25 internet, these reports are.

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1 MR. ABBOTT:  
 2 A. Oh, okay.  
 3 COFFEY, Q.C.:  
 4 Q. I mean, they're up -  
 5 MR. ABBOTT:  
 6 A. Well, then, the simple answer, I have not gone  
 7 looking for them.  
 8 COFFEY, Q.C.:  
 9 Q. Yeah. Is there--and in terms of that, did you  
 10 consciously decide not to go looking for them?  
 11 MR. ABBOTT:  
 12 A. Only in the context that for me that was in my  
 13 previous work role and I didn't see the need  
 14 to review them or anything else related to  
 15 this particular issue, other than my own  
 16 testimony.  
 17 COFFEY, Q.C.:  
 18 Q. Yeah. And to prepare for actually coming here  
 19 -  
 20 MR. ABBOTT:  
 21 A. Yes.  
 22 COFFEY, Q.C.:  
 23 Q. - about what you had actually dealt with  
 24 yourself?  
 25 MR. ABBOTT:

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1 A. No, and again, not because of the reports, but  
 2 I didn't want, to the degree I could avoid it,  
 3 be filtered or have things filtered in that,  
 4 in fact, were events later that one could use  
 5 as answers for something that happened in a  
 6 previous time, so to that degree I have been  
 7 very, very conscious of not doing that.  
 8 COFFEY, Q.C.:  
 9 Q. Yeah, and because it can be difficult at  
 10 times, particularly as the time passes, to  
 11 filter out what you knew before.  
 12 MR. ABBOTT:  
 13 A. That's right.  
 14 COFFEY, Q.C.:  
 15 Q. Or subsequently. But on this point in terms  
 16 of what you understood at the--bearing in mind  
 17 what you did understand back then in your days  
 18 as deputy minister what had been conveyed to  
 19 you by Eastern Health and what you understood  
 20 from them, if we could look at, please, page  
 21 47 of this exhibit? And I just take this  
 22 because it's a summary in terms of in a  
 23 relatively--and I do caution you in terms of  
 24 Mr. Wegrynowski's report is much longer,  
 25 lengthwise, than this. This is a report of

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1 Dr. Banerjee of October 17th, 2005. But here  
 2 under the heading, "Conclusions about the  
 3 reasons for test failure."  
 4 MR. ABBOTT:  
 5 A. Yes.  
 6 COFFEY, Q.C.:  
 7 Q. There are one, two, three, four, and then he  
 8 skips five, there's no five there, six and  
 9 seven. And "There were other system flaws  
 10 observed" and he's listed seven there.  
 11 MR. ABBOTT:  
 12 A. Yes.  
 13 COFFEY, Q.C.:  
 14 Q. And then there are recommendations, and the  
 15 recommendations number ten. You can see that.  
 16 It's a total of five pages including the  
 17 covering page?  
 18 MR. ABBOTT:  
 19 A. Yes.  
 20 COFFEY, Q.C.:  
 21 Q. Cover page. Show you that so you have some  
 22 comfort level with it. That's the first page,  
 23 which is No. 1. Now, here, and this is,  
 24 bearing in mind this was written October 17th,  
 25 I believe, it was dated October 17th, 2005.

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1 No. 1, "Is the DAKO system faulty?" And Dr.  
 2 Banerjee had said back then, "This is  
 3 unlikely." and he goes on to explain why,  
 4 okay. And No. 2, "Is the Ventana system too  
 5 sensitive?" And he says, "There is no  
 6 evidence that the Ventana system too  
 7 sensitive?" And he says, "There is no  
 8 evidence that the Ventana system creates false  
 9 positive results." And he goes on to explain  
 10 why.  
 11 MR. ABBOTT:  
 12 A. Yes.  
 13 COFFEY, Q.C.:  
 14 Q. Okay. In terms of then the usage of the  
 15 machines or the systems, how did that, what's  
 16 written here compare with what you had  
 17 understood?  
 18 MR. ABBOTT:  
 19 A. Well, in the first briefing in July, 2005  
 20 there was reference to DAKO versus Ventana and  
 21 what the issues, there might be some issues  
 22 around that, but there was also then the  
 23 reporting from those systems and the  
 24 preparation of tissue samples and those kinds  
 25 of things, so there was a broad, broad

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1 discussion. And throughout the piece I  
 2 interpret what the issues were, you know, I  
 3 think the term was used "systems issues" but  
 4 that there would be a series of steps and  
 5 measures that would be executed in the lab,  
 6 pre lab, in the lab and post, including the  
 7 actual report writing, as it were, had to be  
 8 taken as a whole. So when I see this and skim  
 9 down through it, none of that would surprise  
 10 me in that in terms of my understanding that  
 11 we're talking about a process here and it had  
 12 multiple steps with multiple players involved,  
 13 technicians as well as physicians.  
 14 COFFEY, Q.C.:  
 15 Q. And in the third paragraph it says, "Is there  
 16 a problem with tissue fixation?" And he  
 17 writes, "There appears to be inadequate  
 18 attention paid by the grossing pathologist to  
 19 thickness of tissue slices." And he goes on  
 20 to talk about it. And you had indicated that  
 21 that had certainly arise during the conference  
 22 call of May 24th, I believe?  
 23 MR. ABBOTT:  
 24 A. Yes. And before that.  
 25 COFFEY, Q.C.:

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1 Q. And before.  
 2 MR. ABBOTT:  
 3 A. There was reference, you know, again, what are  
 4 some steps to help us understand that this is  
 5 a multi-layers process.  
 6 COFFEY, Q.C.:  
 7 Q. As the deputy minister earlier on in this  
 8 piece, in '05 and then '06, did you have any  
 9 understanding about whose responsibility  
 10 getting fixation right was, what group of  
 11 people?  
 12 MR. ABBOTT:  
 13 A. This is one of these things -  
 14 COFFEY, Q.C.:  
 15 Q. Sure.  
 16 MR. ABBOTT:  
 17 A. But I would have assumed that that would have  
 18 happened, you know, when the tissue was first  
 19 collected and I assume, you know, now,  
 20 exactly, wouldn't be in the lab, is that which  
 21 would come to the lab.  
 22 COFFEY, Q.C.:  
 23 Q. So would be medical personnel, I take it?  
 24 MR. ABBOTT:  
 25 A. Yes.

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1 COFFEY, Q.C.:

2 Q. In the sense of nurses or doctors?

3 MR. ABBOTT:

4 A. Yes.

5 COFFEY, Q.C.:

6 Q. Or couriers--I'm sorry, not couriers, porters?

7 MR. ABBOTT:

8 A. Yes. Well, not--that would have taken in the-

9 -as I assumed it to be, would have taken place

10 in or around the operating room.

11 COFFEY, Q.C.:

12 Q. The idea then of No. 4 refers to the status of

13 internal controls. And No. 6, well, he posits

14 "Inadequate or no attention is being paid by

15 the reporting pathologist to the status of

16 internal controls." And the No. 6 refers to,

17 "Inappropriate choice of blocks with no

18 representative normal ductal epithelium." And

19 then 7, "Better education is required for

20 technologists, pathologists and clinicians

21 about the pitfalls of IHC, the importance of

22 quality control and interpretation of IHC

23 results." Now, on this point, Mr. Abbott, did

24 you ever understand that the ER/PR, you know,

25 like on the quality concerns, if there were

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1 any, related to matters wider than the ER and

2 PR test? Because this refers to IHC.

3 MR. ABBOTT:

4 A. Yes.

5 COFFEY, Q.C.:

6 Q. Pitfalls of IHC.

7 MR. ABBOTT:

8 A. Right. Again, I didn't query on that. We, I

9 say, I looked at in terms of ER/PR and if

10 there was anything broader than that, then

11 that would have been flagged for us. But

12 really what I--while I'm saying that, it

13 wouldn't, again, surprise me if through this

14 process and review that there could be other

15 related testing that could also be affected,

16 you know, that would have been picked up by

17 review.

18 COFFEY, Q.C.:

19 Q. Now, and I take it from what you've told the

20 Commissioner that you had understood, really,

21 early on, that there were a number of matters-

22 -a number of things that had to be addressed

23 to insure things were perhaps better done than

24 they had been in the past, you'd understood

25 that?

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1 MR. ABBOTT:

2 A. In terms of?

3 COFFEY, Q.C.:

4 Q. Well, the clinical laboratory?

5 MR. ABBOTT:

6 A. Yes.

7 COFFEY, Q.C.:

8 Q. And this issue in terms of, you know, ER/PR,

9 fixation and -

10 MR. ABBOTT:

11 A. Yes.

12 COFFEY, Q.C.:

13 Q. - standard procedures and, you know, and so on

14 and so forth. On that point, did you ever ask

15 anybody with Eastern Health how that state of

16 affairs had come to exist, how the state of

17 affairs could come to exist such that external

18 reviewers, apparently, thought that a number

19 of corrective measures were required, did you

20 ever ask anybody, like, how could that come

21 about?

22 MR. ABBOTT:

23 A. No, I didn't ask that question. But the fact

24 that they--you know, there was an issue

25 identified spoke to, obviously, there were

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1 issues, issue or issues and that by bringing

2 somebody in to review that, they could be

3 expected and most likely it wouldn't surprise

4 me that they would find certain processes that

5 were deficient or needed to be improved. I

6 was doing that prior to the department in my

7 own work, not in--on a clinical level, but it

8 was no surprise that a client would say,

9 "Look, we have an issue. Will you come in and

10 review?" And through that process that review

11 tends to become a bit wider. So I look at it

12 from that context. So there was an issue,

13 they've identified it, they're trying to solve

14 it. As to how they got there, well, that, in

15 one sense it comes, for me wasn't as important

16 as the fact that they've identified that they

17 do have an issue.

18 COFFEY, Q.C.:

19 Q. Well, got there and were there for like six to

20 seven years, that's -

21 MR. ABBOTT:

22 A. Well -

23 COFFEY, Q.C.:

24 Q. I'm just raise--I just ask you -

25 MR. ABBOTT:

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1 A. And again, and that's, again, not uncommon in  
 2 terms of doing any review that what you think  
 3 the problem is and when it started and when,  
 4 in fact, it did start and would only be really  
 5 discovered, quite often, by that independent  
 6 party. And so that's, I thought, you know,  
 7 that's the value of bring them in. And that  
 8 was sort of my comfort level in the department  
 9 is that they were bringing someone external  
 10 and they would, assuming they--but we left it  
 11 to Eastern Health to determine who that, those  
 12 parties were. But we felt and I felt that  
 13 that, if the review was done appropriately,  
 14 then things will improve and we were advised  
 15 that, in fact, that was the case.

16 COFFEY, Q.C.:

17 Q. Did anyone ever suggest to you that the  
 18 existence of that state of affairs, which  
 19 apparently resulted in the problems, anybody  
 20 ever suggested to you that the existence of  
 21 that state of affairs was due to a lack of  
 22 money?

23 MR. ABBOTT:

24 A. No.

25 COFFEY, Q.C.:

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1 Q. And no one ever--and I'm not suggesting they  
 2 did at all, but just asking you.

3 MR. ABBOTT:

4 A. No.

5 COFFEY, Q.C.:

6 Q. No one ever said, "Well, if we'd had more  
 7 money, this wouldn't have happened."?

8 MR. ABBOTT:

9 A. No.

10 COFFEY, Q.C.:

11 Q. If we could, please, Commissioner, and  
 12 Registrar, Exhibit P-0467? I apologize,  
 13 because Mr. Abbott didn't receive the other--  
 14 you never did get the, Dr. Ejeckam's other two  
 15 memos, they came after you were -

16 MR. ABBOTT:

17 A. Yes.

18 COFFEY, Q.C.:

19 Q. You were gone, yes. I think you told me that  
 20 earlier. I apologize. Exhibit P-0890? This  
 21 is the one you looked at before the break, Mr.  
 22 Abbott. 0890, please? Thank you. And this  
 23 is the fax cover sheet. Look at page 2 of  
 24 this, which is the June 19th memo. When this  
 25 came over, as you said, not long after it got

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1 to your office you gave a copy of it to Mr.  
 2 Wiseman, and you had read this. Did the  
 3 question arise after you--when you read this  
 4 and afterward as to, well, if this, or if  
 5 these sorts of problems were identified as is  
 6 set out here, anyway, in 2003, by Dr. Ejeckam  
 7 and apparently distributed not only to Mr.  
 8 Tilley--I'm sorry, Mr. Gulliver, who was the  
 9 main recipient, but they're copied to Dr.  
 10 Desmond Robb, Discipline of Laboratory  
 11 Medicine, Dr. D. Cook, Clinical Chief and Site  
 12 Chief, Dr. S. Parai, Site Chief and Barry  
 13 Dyer, the Manager of Histopathology. Did you  
 14 ever ask yourself or anyone else or both,  
 15 well, why wasn't this investigated further in  
 16 2003 or was it investigated, and if so, what  
 17 happened?

18 MR. ABBOTT:

19 A. I think it's fair to say that, you know, by  
 20 the time that came to me, given events of that  
 21 week, that I never got to explore that line of  
 22 questioning.

23 COFFEY, Q.C.:

24 Q. I take it this is, the fax itself is two days  
 25 after the Commission of Inquiry is

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1 established?

2 MR. ABBOTT:

3 A. Yes.

4 COFFEY, Q.C.:

5 Q. Or announced, anyway.

6 MR. ABBOTT:

7 A. And there were other -

8 COFFEY, Q.C.:

9 Q. Matters.

10 MR. ABBOTT:

11 A. You know, other issues in that case at play,  
 12 certainly with respect to radiology.

13 COFFEY, Q.C.:

14 Q. Now, Mr. Abbott, you did, your last day on the  
 15 job, I believe, was May 29th -

16 MR. ABBOTT:

17 A. 30th.

18 COFFEY, Q.C.:

19 Q. May 30th, I'm sorry, 2007. I'll ask you this,  
 20 did your removal from, because you were no  
 21 longer going to be the deputy minister of  
 22 health, to your knowledge or understanding,  
 23 have anything to do with ER/PR?

24 MR. ABBOTT:

25 A. I suspect it did, in the context that when the

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1 clerk of the executive council at that time  
 2 spoke with me, Gary Norris, he said that the  
 3 premier was asking was, was wanting to move me  
 4 from my position as deputy minister of health  
 5 and community services to another portfolio,  
 6 given circumstances around ER/PR that  
 7 ministers had been directed to sort of step  
 8 down in terms of any discussion on this that  
 9 had come up in the house and he felt it was  
 10 appropriate in that same vein that I also not  
 11 be no longer associated with this issue in the  
 12 department. And that was basically how it was  
 13 presented to me.  
 14 COFFEY, Q.C.:  
 15 Q. So it wasn't, I take it, though, it wasn't  
 16 communicated to you that it was your  
 17 performance in relation to ER/PR?  
 18 MR. ABBOTT:  
 19 A. No, it wasn't.  
 20 COFFEY, Q.C.:  
 21 Q. No. And I appreciate that, okay.  
 22 Commissioner, they're the questions I have. I  
 23 want to thank--I gather there are more  
 24 questions, Mr. Abbott, by others, but--is  
 25 there any--they're the questions I have, but I

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1 will do this, thank you, Ms. Chaytor, because  
 2 I had intended to do it, raise this with you,  
 3 Mr. Abbott. Is there anything that I haven't  
 4 covered that you're aware of that you think  
 5 the Commissioner should know?  
 6 MR. ABBOTT:  
 7 A. No. I think you've, from your questioning,  
 8 exhausted what I do know.  
 9 COFFEY, Q.C.:  
 10 Q. Thank you.  
 11 THE COMMISSIONER:  
 12 Q. Mr. Simmons -  
 13 COFFEY, Q.C.:  
 14 Q. I do appreciate your patience, thank you. I'm  
 15 going to get out of the way now, Mr. Simmons.  
 16 Just one moment.  
 17 THE COMMISSIONER:  
 18 Q. At least you have the pleasure of looking at a  
 19 different face for the next few minutes.  
 20 MR. JOHN ABBOTT, EXAMINATION BY MR. DANIEL SIMMONS  
 21 MR. SIMMONS:  
 22 Q. If that's a pleasure. I'd be surprised if  
 23 there's anything new I can find to ask you  
 24 about, but I may have to retread a little bit  
 25 of some of the same ground, just to explore a

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1 couple of points, maybe from a little bit of a  
 2 different angle.  
 3 I want to bring you back to the Hay Group  
 4 report in 2002 again first.  
 5 MR. ABBOTT:  
 6 A. Yes.  
 7 MR. SIMMONS:  
 8 Q. And there's a response that was prepared by  
 9 the Health Care Corporation to that report  
 10 that we have in evidence. It's at P-0041,  
 11 please? And it was done on May 31st 2002 is  
 12 the date on it. Were you the chair of the  
 13 Health Care Corporation Board then?  
 14 MR. ABBOTT:  
 15 A. Yes.  
 16 MR. SIMMONS:  
 17 Q. Or did you become chair after that?  
 18 MR. ABBOTT:  
 19 A. No, I was chair of the Board of Trustees at  
 20 that time.  
 21 MR. SIMMONS:  
 22 Q. Okay. Do you actually recall any of the  
 23 circumstances surrounding the preparation of  
 24 this report, this response?  
 25 MR. ABBOTT:

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1 A. Yes, I am familiar with that.  
 2 MR. SIMMONS:  
 3 Q. So you would have had some involvement  
 4 yourself with that, would you?  
 5 MR. ABBOTT:  
 6 A. Yes, and it was reviewed by the Board at that  
 7 time.  
 8 MR. SIMMONS:  
 9 Q. Okay. Because it does give a little bit of a  
 10 summary of some of the background, and if we  
 11 could go to page 13, please? There's a very  
 12 general history here of how events led to this  
 13 report and it starts out by referring to April  
 14 1st 1995 when eight health facilities were  
 15 amalgamated to form the Health Care  
 16 Corporation of St. John's. Now in your  
 17 career, where had--where were you when that  
 18 happened?  
 19 MR. ABBOTT:  
 20 A. I was assistant secretary to Treasury Board at  
 21 that time.  
 22 MR. SIMMONS:  
 23 Q. Okay. So you didn't play any role in the  
 24 preparation for or decision making around the  
 25 creation of Health Care Corporation per se

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1 then, did you?  
 2 MR. ABBOTT:  
 3 A. No, we would have reviewed some financial and  
 4 organizational matters at the time, but the  
 5 decision, you know, in terms of the structure  
 6 and the amalgamations were with the Department  
 7 of Health and the Cabinet.  
 8 MR. SIMMONS:  
 9 Q. Yes. So would you have known anything about  
 10 what sort of preparations were undertaken or  
 11 time that was given for the Health Care  
 12 Corporation to come together, structure and  
 13 organize itself before becoming responsible  
 14 for the operations of the institutions it was  
 15 taking over?  
 16 MR. ABBOTT:  
 17 A. I would have been aware, based on my  
 18 conversations and discussions with the  
 19 Department of Health at that time, and they  
 20 kept our office involved and advised on  
 21 issues, particularly if they needed some  
 22 financial or other support from government.  
 23 MR. SIMMONS:  
 24 Q. My understanding is that there was a full  
 25 year, from April of '95 to April of '96, in

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1 which the Board of Health Care Corporation  
 2 came together, CEO, executive were put in  
 3 place.  
 4 MR. ABBOTT:  
 5 A. Yes.  
 6 MR. SIMMONS:  
 7 Q. And that it wasn't until a year after that  
 8 date, until April of '96, that that structure  
 9 actually took over the operation of the  
 10 institutions that were being pulled together.  
 11 MR. ABBOTT:  
 12 A. Yes.  
 13 MR. SIMMONS:  
 14 Q. That's correct, is it?  
 15 MR. ABBOTT:  
 16 A. Yes.  
 17 MR. SIMMONS:  
 18 Q. Okay, and I understand as well that the  
 19 institutions being amalgamated in that case  
 20 were primarily acute care hospitals in St.  
 21 John's.  
 22 MR. ABBOTT:  
 23 A. Yes.  
 24 MR. SIMMONS:  
 25 Q. So they were, aside from, I think Bell Island

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1 was brought into it as well, but aside from  
 2 Bell Island, geographically the institutions  
 3 were close together?  
 4 MR. ABBOTT:  
 5 A. Yes.  
 6 MR. SIMMONS:  
 7 Q. And operationally, they served similar types  
 8 of clientele, similar types of functions?  
 9 MR. ABBOTT:  
 10 A. Certain population base, yes.  
 11 MR. SIMMONS:  
 12 Q. Yes, okay. Now if we go to page 14, and I  
 13 think you've told us before that what led to  
 14 the appointment of the Hay Group to do this  
 15 report was that the Health Care Corporation  
 16 was running a deficit?  
 17 MR. ABBOTT:  
 18 A. Yes.  
 19 MR. SIMMONS:  
 20 Q. And government wanted that deficit brought  
 21 under control?  
 22 MR. ABBOTT:  
 23 A. Yes.  
 24 MR. SIMMONS:  
 25 Q. There are--starting here on the bottom of page

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1 14 of the document, it says "a steering  
 2 committee comprised of representatives of  
 3 Department of Health and Community Services  
 4 and Health Care Corporation of St. John's  
 5 developed four main objectives to form the  
 6 basis of the consultant's mandate." So you  
 7 would have been familiar with these, would  
 8 you?  
 9 MR. ABBOTT:  
 10 A. Yes.  
 11 MR. SIMMONS:  
 12 Q. The first one was to identify a recovery plan  
 13 to balance the current operating budget by  
 14 March 31st 2002. So that was an immediate  
 15 concern?  
 16 MR. ABBOTT:  
 17 A. Yes.  
 18 MR. SIMMONS:  
 19 Q. Second one was to identify actions that would  
 20 give rise to additional savings on an annual  
 21 basis, to try and prevent deficits in the  
 22 future?  
 23 MR. ABBOTT:  
 24 A. Yes.  
 25 MR. SIMMONS:

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1 Q. The third, to identify and prioritize actions  
 2 which would have the least detrimental impact  
 3 on patient care, education and research?  
 4 MR. ABBOTT:  
 5 A. Yes.  
 6 MR. SIMMONS:  
 7 Q. And the last one, on the top of page 15, was  
 8 to look at the longer term and identify cost  
 9 reduction, cost containment and reasonable  
 10 revenue opportunities, which would result in  
 11 more improvements to our financial position.  
 12 So the mandate given the Hay Group was all  
 13 about budgetary control and cost control?  
 14 MR. ABBOTT:  
 15 A. Well, that was certainly the focus in terms of  
 16 outcome, but very conscious in doing that that  
 17 to identify obviously any issues or impacts  
 18 on, you know, patient care.  
 19 MR. SIMMONS:  
 20 Q. Right.  
 21 MR. ABBOTT:  
 22 A. So it wasn't savings at any cost. It would be  
 23 savings that could be achieved, recognizing  
 24 that they were to have minimal, if any, impact  
 25 on any patient care.

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1 MR. SIMMONS:  
 2 Q. So is that what's captured in that third  
 3 objective there, identify and prioritize -  
 4 MR. ABBOTT:  
 5 A. Yes.  
 6 MR. SIMMONS:  
 7 Q. - actions which would have the least  
 8 detrimental impact on patient care?  
 9 MR. ABBOTT:  
 10 A. Yes.  
 11 MR. SIMMONS:  
 12 Q. So that suggests that it was contemplated that  
 13 these actions might have some detrimental  
 14 impact on patient care, but efforts should be  
 15 taken to minimize that?  
 16 MR. ABBOTT:  
 17 A. Well, those issues that would impact patient  
 18 care, as how you define those, obviously  
 19 would--whether or not they would, in fact, be  
 20 implemented would certainly be--they would be  
 21 in certainly a different category than  
 22 anything else.  
 23 MR. SIMMONS:  
 24 Q. So even if the Hay Group recommended  
 25 something, it didn't mean that it was going to

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1 be acted upon by the corporation?  
 2 MR. ABBOTT:  
 3 A. That's right.  
 4 MR. SIMMONS:  
 5 Q. Okay. Now on page 15 here, in the third  
 6 paragraph there, it begins in February of  
 7 2002. You see this?  
 8 MR. ABBOTT:  
 9 A. Yes.  
 10 MR. SIMMONS:  
 11 Q. "In February 2002, the Health Care Corporation  
 12 of St. John's realigned its management  
 13 structure and announced a number of short term  
 14 cost reduction measures, decreasing its  
 15 projected deficit below four million."  
 16 MR. ABBOTT:  
 17 A. Yes.  
 18 MR. SIMMONS:  
 19 Q. Now do I understand that those are measures  
 20 that were taken actually before the Hay Report  
 21 came along to be implemented?  
 22 MR. ABBOTT:  
 23 A. They primarily--I believe they primarily came  
 24 out of the initial analysis done by the Hay  
 25 Group.

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1 MR. SIMMONS:  
 2 Q. Okay. Do you know what's meant by "realigned  
 3 its management structure"?  
 4 MR. ABBOTT:  
 5 A. Well, I made reference to that there a couple  
 6 of days ago, looking at some of the--how the  
 7 programs were--in terms of organizationally,  
 8 were designed and managed, and there were some  
 9 integration or amalgamation of program  
 10 activities, and as a result, some management  
 11 positions would have been affected, you know,  
 12 would have been redundant and that's what that  
 13 was--that's what that means there.  
 14 MR. SIMMONS:  
 15 Q. Okay. So the creation of redundancies in  
 16 management means you had fewer managers to pay  
 17 on an ongoing basis?  
 18 MR. ABBOTT:  
 19 A. Yes.  
 20 MR. SIMMONS:  
 21 Q. And that's where the cost savings would be  
 22 achieved?  
 23 MR. ABBOTT:  
 24 A. Yes.  
 25 MR. SIMMONS:

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1 Q. And that that would have been done by  
 2 amalgamating programs at some level -  
 3 MR. ABBOTT:  
 4 A. Yes.  
 5 MR. SIMMONS:  
 6 Q. - which would mean that the existing number of  
 7 managers would be reduced?  
 8 MR. ABBOTT:  
 9 A. Yes.  
 10 MR. SIMMONS:  
 11 Q. But the same workload would still be there,  
 12 just spread differently among those people?  
 13 MR. ABBOTT:  
 14 A. Yes, and as the organizations have come  
 15 together and how they were structured, how  
 16 they were managed, where they were located, so  
 17 that was all factored in.  
 18 MR. SIMMONS:  
 19 Q. Right, okay, and would one of the consequences  
 20 of this approach, and I'm not going over this  
 21 to say anyone is somehow accountable or  
 22 responsible for these things having to happen.  
 23 We know it was symptom of the times and the  
 24 financial constraints that were there. But in  
 25 this time period, during--you know, leading up

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1 to this report and afterwards, this focus on  
 2 containment of costs and doing it partly  
 3 through control of management, would that also  
 4 mean that it would be difficult for the  
 5 organization to add new management positions  
 6 where they saw the need to do so?  
 7 MR. ABBOTT:  
 8 A. No, not necessarily. Again, it was looking at  
 9 each service or program in its own right to  
 10 see what made sense now in the year 2001/2002,  
 11 looking at the history, looking at the patient  
 12 load issues, the service levels issues, how  
 13 you can better streamline the more efficient.  
 14 So they were the tests. It wasn't a reduction  
 15 for the sake of reduction. It was did this  
 16 make sense to do at that point in time, and if  
 17 other positions, management or otherwise,  
 18 should be created, then that would be  
 19 acceptable as well.  
 20 MR. SIMMONS:  
 21 Q. As long as it didn't detract from the goals of  
 22 the efficiencies that were being sought?  
 23 MR. ABBOTT:  
 24 A. Well, that certainly would be the test if you  
 25 were adding--shall we say, adding back, then

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1 is that pushing further away from your  
 2 financial objective obviously.  
 3 MR. SIMMONS:  
 4 Q. Right.  
 5 MR. ABBOTT:  
 6 A. But again, you measured each one in its own  
 7 merits.  
 8 MR. SIMMONS:  
 9 Q. You'd have to assess the need against the  
 10 cost?  
 11 MR. ABBOTT:  
 12 A. Yes.  
 13 THE COMMISSIONER:  
 14 Q. Need against the cost on a financial level or  
 15 need in the sense of balancing patient  
 16 requirements?  
 17 MR. ABBOTT:  
 18 A. Well, in that sense, it probably would be  
 19 both. What does it need in terms of patient  
 20 care management and what is the need in terms  
 21 of ability to actually fund that particular  
 22 initiative.  
 23 MR. SIMMONS:  
 24 Q. You became Chair of Health Care Corporation at  
 25 a time when you told us the minister had

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1 tasked you with implementing this report -  
 2 MR. ABBOTT:  
 3 A. Yes.  
 4 MR. SIMMONS:  
 5 Q. - and I guess in a general way, achieving  
 6 these goals, and I was interested that you  
 7 told us that you were tasked by the minister  
 8 with doing that, but to do it without layouts  
 9 and with improvements in patient care.  
 10 MR. ABBOTT:  
 11 A. Yes.  
 12 MR. SIMMONS:  
 13 Q. And I was interested to hear a bit more about  
 14 how that was to be achieved, how the  
 15 improvement in patient care part was going to  
 16 be achieved at the same time as no lay-offs  
 17 and balance the budget without there being any  
 18 increase on the revenue side really, because  
 19 government wasn't going to put any substantial  
 20 money into the system, correct?  
 21 MR. ABBOTT:  
 22 A. That's right. Well, that's--yes, in terms of  
 23 looking at it at that point in time. I guess  
 24 that was the challenge of the exercise. There  
 25 was, based on some further work--previous work



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1 that had been done and that I had been party  
 2 to, there was a sense that that could be  
 3 achieved. But we wouldn't know that and she  
 4 wouldn't know that unless, in fact, it was  
 5 tested and so that was really the challenge to  
 6 us. Now in terms of the no lay-offs, again  
 7 because of just how lay-offs are perceived and  
 8 the sensitivity both in terms of the  
 9 organization and the individuals that could be  
 10 affected, that that was generally frowned on,  
 11 and governments, in particular, from a  
 12 political perspective, really didn't want to  
 13 have to face that and lay-offs in health care  
 14 sort of, you know, could cause a lot of  
 15 political grief. In terms of patient care,  
 16 well, the whole purpose of being, say,  
 17 Minister of Health and a health care  
 18 organization is to, in fact, achieve that.

19 MR. SIMMONS:  
 20 Q. Certainly.

21 MR. ABBOTT:  
 22 A. And so the objective was not unlaudible. We  
 23 felt it was also realistic, and so that was a  
 24 shared view with the minister of the day, Ms.  
 25 Bettney, and myself. So now the challenge to

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1 me and to the organization was, in fact, to  
 2 see in fact can we do that.

3 MR. SIMMONS:  
 4 Q. While you were in the position of chair, and  
 5 this may be a stretch to ask you to do this,  
 6 but can you give me any examples of what sort  
 7 of initiatives were taken arising out of this  
 8 mandate that were directed towards the  
 9 improvement of patient care, as opposed to  
 10 achieving the other objectives?

11 MR. ABBOTT:  
 12 A. Well, one area, you know, certainly on the  
 13 mental health side, we saw improvements in  
 14 short-term stay units and those kinds of  
 15 things, again with realigning the delivery of  
 16 the service. We improved the ambulatory care,  
 17 so that patients didn't have to get service or  
 18 a procedure would actually have to be  
 19 admitted, that they could be done without  
 20 having to go through that. We also looked at  
 21 lengths of stay and how that could be improved  
 22 and patients can actually get, you know, get  
 23 out of those beds and get home earlier, and we  
 24 channelled some money into home--I was going  
 25 to say home support, but home care services,

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1 so that patients could then also avail of  
 2 certain services they would need. So that was  
 3 all viewed as improvements in patient care and  
 4 in terms of those patients who needed surgery,  
 5 that we looked at and started to initiate  
 6 improvements so where they can do a visit with  
 7 their radiologist and others, I should say  
 8 anesthetist and others before their day of  
 9 surgery, so that in fact to avoid an overnight  
 10 stay, those kinds of things. We introduced  
 11 electronic systems for radiology, and so those  
 12 were the kinds of things that we worked on in  
 13 tandem.

14 MR. SIMMONS:  
 15 Q. Most of those sound like they were initiatives  
 16 where there was an opportunity to improve  
 17 patient care, but also this same action was  
 18 also achieving a greater efficiency -

19 MR. ABBOTT:  
 20 A. That's right.

21 MR. SIMMONS:  
 22 Q. - and achieving a cost saving at the same  
 23 time?

24 MR. ABBOTT:  
 25 A. Yes, and done in consultation with the

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1 clinical and program directors.

2 MR. SIMMONS:  
 3 Q. So that's where the opportunities were to  
 4 improve the patient care -

5 MR. ABBOTT:  
 6 A. Yes.

7 MR. SIMMONS:  
 8 Q. - is when you could do something that also  
 9 worked towards the cost saving.

10 MR. ABBOTT:  
 11 A. And when you look at where we were, as an  
 12 organization, and compare organizations across  
 13 the country, nobody was suggesting that the  
 14 care that they were delivering was, shall we  
 15 say, substandard. So we wanted to model  
 16 ourselves on the best in the country.

17 MR. SIMMONS:  
 18 Q. Okay. In 2005, government made the decision  
 19 to do the further amalgamation and bring  
 20 together the four regional health authorities.

21 MR. ABBOTT:  
 22 A. Yes.

23 MR. SIMMONS:  
 24 Q. Were you involved in any of the planning or  
 25 the lead up to that decision?

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1 MR. ABBOTT:  
 2 A. No, I was not.  
 3 MR. SIMMONS:  
 4 Q. Okay, and in late 2004, when the first steps  
 5 were taken towards starting the process of  
 6 bringing Eastern Health together, for example  
 7 -  
 8 MR. ABBOTT:  
 9 A. Yes.  
 10 MR. SIMMONS:  
 11 Q. - where were you then? Were you in your  
 12 deputy minister position?  
 13 MR. ABBOTT:  
 14 A. I was, in the fall of 2004, I was chair of the  
 15 Health Care Corporation, I did sit in on one  
 16 meeting. In that period there was a  
 17 consultant hired to work with boards and  
 18 senior management of the various organizations  
 19 on a regional basis to talk about issues and  
 20 get input as to the organizational structure  
 21 for each of the four health authorities that  
 22 had been announced in September. That was the  
 23 extent of my involvement at that point.  
 24 MR. SIMMONS:  
 25 Q. Right, okay. The creation of Eastern Health

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1 and the amalgamation then was a bit of a  
 2 different thing, I think, then the creation of  
 3 Health Care Corporation had been.  
 4 MR. ABBOTT:  
 5 A. Yes.  
 6 MR. SIMMONS:  
 7 Q. Two big differences being that Eastern Health  
 8 now was going to combine urban and rural  
 9 areas, geographically and the types of  
 10 services provided in each area.  
 11 MR. ABBOTT:  
 12 A. Yes.  
 13 MR. SIMMONS:  
 14 Q. And also it was going to combine services  
 15 across a continuum of care, not just hospital  
 16 base services, but community base services, et  
 17 cetera.  
 18 MR. ABBOTT:  
 19 A. And long-term care as well.  
 20 MR. SIMMONS:  
 21 Q. And long-term care and bring all that  
 22 together. So it was going to be a bigger  
 23 organization and it was going to have a  
 24 broader range of services and issues to be  
 25 dealt with over a larger area.

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1 MR. ABBOTT:  
 2 A. Yes.  
 3 MR. SIMMONS:  
 4 Q. Now what was contemplated about what the  
 5 administrative and management resources would  
 6 be at the higher levels in the new Eastern  
 7 Health as compared to what had existed among  
 8 the organizations that were being amalgamated?  
 9 MR. ABBOTT:  
 10 A. Well, as I said, the exercise that was  
 11 undertaken in the fall, the consultant hired  
 12 was Mr. Ambrose Hearn, who was living in  
 13 Ottawa but was a former deputy minister of  
 14 health in the provincial government here, so  
 15 he was tasked with sort of doing just that, to  
 16 go meet with, consult with and analyze the  
 17 organizational structure requirements, so what  
 18 your, below your CEO level, the VP level and  
 19 what would be required to get the organization  
 20 up and running.  
 21 MR. SIMMONS:  
 22 Q. Uh-hm.  
 23 MR. ABBOTT:  
 24 A. And so he was commissioned to do that and then  
 25 he submitted a report, I believe it was either

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1 late, either late fall of 2004 or early say  
 2 January 2005.  
 3 MR. SIMMONS:  
 4 Q. And what was envisioned coming out of that  
 5 report concerning the size of the  
 6 administrative structure?  
 7 MR. ABBOTT:  
 8 A. He didn't go down much further than, so that  
 9 the higher levels than in terms of--in terms  
 10 of the structure, he looked at the very, you  
 11 know, the tops of the trees, as it were and  
 12 after that, each authority would be  
 13 responsible for designing its own  
 14 administrative verses management, verses  
 15 senior management levels. So he was focussed  
 16 on the executive management levels in the  
 17 organizations.  
 18 MR. SIMMONS:  
 19 Q. Yes. Did he contemplate that Eastern Health  
 20 would have an executive management level any  
 21 larger than Health Care Corporation had had?  
 22 MR. ABBOTT:  
 23 A. Oh yes, it would be, it was not an amalgam per  
 24 se, but he looked at it and said, you know,  
 25 based on what they would be delivering, the

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1 population and the geography, this is what  
 2 would make--what would be effective in the  
 3 design and delivery of the services.  
 4 MR. SIMMONS:  
 5 Q. Right, but if you looked across the  
 6 organizations that were being amalgamated and  
 7 looked at the number of tops of the trees  
 8 positions that existed -  
 9 MR. ABBOTT:  
 10 A. Uh-hm.  
 11 MR. SIMMONS:  
 12 Q. It was contemplated once Eastern Health was  
 13 created, there would be fewer people working  
 14 at that level.  
 15 MR. ABBOTT:  
 16 A. Oh absolutely, absolutely.  
 17 MR. SIMMONS:  
 18 Q. And considerably fewer.  
 19 MR. ABBOTT:  
 20 A. Yes.  
 21 MR. SIMMONS:  
 22 Q. And it was also contemplated that there would  
 23 be administrative cost savings achieved?  
 24 MR. ABBOTT:  
 25 A. Yes.

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1 MR. SIMMONS:  
 2 Q. And there was a dollar figure identified?  
 3 MR. ABBOTT:  
 4 A. Yes.  
 5 MR. SIMMONS:  
 6 Q. And did that come out of Mr. Hearn's report?  
 7 MR. ABBOTT:  
 8 A. Not the--no, not a dollar figure, no.  
 9 MR. SIMMONS:  
 10 Q. Okay. Where did the dollar figure come from?  
 11 MR. ABBOTT:  
 12 A. The dollar figure came from Treasury Board.  
 13 MR. SIMMONS:  
 14 Q. Uh-hm, and there's something like 7.9 million  
 15 or something to be -  
 16 MR. ABBOTT:  
 17 A. I was going to say I think it was 8 million  
 18 for Eastern Health and 14 million dollars for  
 19 the province, as a whole.  
 20 MR. SIMMONS:  
 21 Q. Okay, and when Eastern Health was created, it  
 22 was given the mandate, I believe, of achieving  
 23 that cost saving within its first year of  
 24 operation?  
 25 MR. ABBOTT:

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1 A. It was given a very strong directive on, you  
 2 know, from a financial perspective, a  
 3 management perspective to achieve that and  
 4 that was clearly under--it was understood, how  
 5 it was accepted or and how they perceived it  
 6 to be achieved, was another matter.  
 7 MR. SIMMONS:  
 8 Q. Okay. Eastern Health was to come into  
 9 existence on April 1st, 2005.  
 10 MR. ABBOTT:  
 11 A. Yes.  
 12 MR. SIMMONS:  
 13 Q. And take over the operations of the  
 14 amalgamating organizations on that date, I  
 15 think it was actually two or three weeks after  
 16 that, that it actually happened.  
 17 MR. ABBOTT:  
 18 A. Yes.  
 19 MR. SIMMONS:  
 20 Q. You've told us or agreed with me that Health  
 21 Care Corporation had a year to work towards  
 22 that operational take over date, how much time  
 23 was there when Eastern Health was created to  
 24 allow the CEO to get the executive in place,  
 25 the board to be put in place to lead up to

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1 that operational, take over the -  
 2 MR. ABBOTT:  
 3 A. There wasn't, you know, in terms of specific  
 4 timeframe, I couldn't tell you. We were  
 5 working on, as I said, the board chair was  
 6 appointed, then the CEO was recruited and then  
 7 their task immediately, so we're saying maybe  
 8 January of 2005, to really gear up, to be up  
 9 and running on April, 2005, so there was a  
 10 very condensed timeframe.  
 11 MR. SIMMONS:  
 12 Q. Yes. Considerably less than for Health Care  
 13 Corporation and would you agree with me that  
 14 the task was actually much larger because of  
 15 the breadth of services?  
 16 MR. ABBOTT:  
 17 A. Yeah, I have no problem saying that.  
 18 THE COMMISSIONER:  
 19 Q. While we're on the subject, in fact you raised  
 20 it with me the other day and it is related,  
 21 Mr. Simmons, I think, you indicated that, as I  
 22 understood your remarks the other day, that  
 23 the current operation that is Eastern Health,  
 24 in terms of its organization is much more  
 25 complicated than it was when what existed was

1 St. John's Health Care?  
 2 MR. ABBOTT:  
 3 A. Yes.  
 4 THE COMMISSIONER:  
 5 Q. And when you said that, were you referring to  
 6 the kinds of things that Mr. Simmons had just  
 7 referred you to in the sense of the service  
 8 you provide is over a much wider area, the  
 9 nature of the service you provide is much  
 10 wider than it used to be, there are just so  
 11 many more of you, or has there been an  
 12 additional sort of restructuring of how things  
 13 are done which also makes it more complicated  
 14 or both?  
 15 MR. ABBOTT:  
 16 A. Well I think it's along the lines that Mr.  
 17 Simmons said, but also in terms of how within  
 18 the organization, how you structure and at the  
 19 same time at the department, we had devolved a  
 20 number of services that we were administering  
 21 directly to each of the health authorities and  
 22 again, Eastern Health being the largest, it  
 23 would be absorbing the bulk of that. So there  
 24 was a lot of things coming together to meet  
 25 the new mandate of being truly a regional

1 administered directly from the department.  
 2 THE COMMISSIONER:  
 3 Q. Okay, thank you. Sorry, Mr. Simmons.  
 4 MR. SIMMONS:  
 5 Q. That's very helpful, Commissioner. So, Mr.  
 6 Abbott, all these things you described were in  
 7 play then by the 1st of April, 2005.  
 8 MR. ABBOTT:  
 9 A. Yes.  
 10 MR. SIMMONS:  
 11 Q. And following the 1st of April, 2005, the  
 12 initial tasks for Eastern Health senior people  
 13 would have been just to pull the organization  
 14 together to begin to tackle those things?  
 15 MR. ABBOTT:  
 16 A. Yes, absolutely.  
 17 MR. SIMMONS:  
 18 Q. Do you have some sense of how long it was  
 19 expected that it would take Eastern Health  
 20 until it could create the regional  
 21 organization that was contemplated to work in  
 22 that environment?  
 23 MR. ABBOTT:  
 24 A. Well, no, any day after April 1st was a day,  
 25 you know, a day too long from our perspective

1 integrated health authority and at the same  
 2 time, there was issues around recruitment and  
 3 retention, all of that, and we were looking,  
 4 and services becoming more specialized, issues  
 5 around equipment, so all of this was happening  
 6 all at the one time and that government, in  
 7 terms of the minister was obviously, I say  
 8 raising the bar in terms of expectations and  
 9 meeting, you know, patient need and the public  
 10 need to make sure we improve in health care  
 11 and so that was all transpiring all at the one  
 12 time.  
 13 THE COMMISSIONER:  
 14 Q. Can you give me an example of the kind of  
 15 thing that may have been transferred from  
 16 traditionally Department of Health to a health  
 17 authority?  
 18 MR. ABBOTT:  
 19 A. Well, we had certain communities services  
 20 group homes and the like that we administer  
 21 directly, the ambulance, provincial ambulance  
 22 service which we now were transferring over,  
 23 so they were certainly two of the larger  
 24 program areas and there was a series of  
 25 smaller programs and services that we

1 and the government's perspective, so it was as  
 2 quickly as they could get the executive team  
 3 together and the next layer, and the next  
 4 layer and the next layer, as well as  
 5 organizing the services, if there were going  
 6 to be any changes, integrate where they  
 7 thought they needed to or should. So it was  
 8 all very immediate, the planning time was  
 9 condensed to, you know, limited -  
 10 MR. SIMMONS:  
 11 Q. So the desire was to have that done very  
 12 quickly.  
 13 MR. ABBOTT:  
 14 A. Yes.  
 15 MR. SIMMONS:  
 16 Q. Now what kind of assistance and resources did  
 17 the department have available to provide to  
 18 Eastern Health or the other three new regional  
 19 health authorities to help them tackle that  
 20 kind of problem?  
 21 MR. ABBOTT:  
 22 A. We didn't have any resources, shall we say, to  
 23 bring to bear and we left it to each authority  
 24 then to determine for itself what they should  
 25 do. We did provide some initial briefing, the

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1 minister met with the boards prior to April  
 2 1st just to lay out his view on how this could  
 3 and should be done from a board governance  
 4 perspective and the offer was there,  
 5 obviously, if there was any further follow up  
 6 or need, discussions, we were available, but  
 7 each board and the senior management were left  
 8 to their own devices to work this through.  
 9 They had the benefit of Mr. Hearn's report, to  
 10 use that to guide them and then I was involved  
 11 with the, basically every second week we would  
 12 discuss where we were collectively, but that's  
 13 basically how that unfolded.  
 14 MR. SIMMONS:  
 15 Q. So those people leading the four regional  
 16 health authorities would have been well aware  
 17 of what the department had available and what  
 18 they didn't.  
 19 MR. ABBOTT:  
 20 A. Yes.  
 21 MR. SIMMONS:  
 22 Q. So they would have know that there was no  
 23 point in coming and knocking on your door too  
 24 much, that they were really on their own to  
 25 pull this off, largely.

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1 MR. ABBOTT:  
 2 A. Yes.  
 3 MR. SIMMONS:  
 4 Q. Exhibit P-0701 please? Mr. Abbott, this is  
 5 the budget submission from Eastern Health.  
 6 The cover letter is dated December 16th, 2005  
 7 and it's for the budget year coming up in  
 8 '06/'07. By this time you are the deputy  
 9 minister, so this would have been addressed to  
 10 you?  
 11 MR. ABBOTT:  
 12 A. Yes.  
 13 MR. SIMMONS:  
 14 Q. This is the sort of document that would have  
 15 come to you and would have been an important  
 16 part of your job to deal with managing this  
 17 budget process, I expect.  
 18 MR. ABBOTT:  
 19 A. Yes.  
 20 MR. SIMMONS:  
 21 Q. There's only one thing I want to show you on  
 22 this and that's at page 6, please. It's not a  
 23 very clear copy, but this is part of, it looks  
 24 like it was meant to be a presentation and it  
 25 has a number of graphs here that were included

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1 with this budget submission. This particular  
 2 one is entitled "Financial Performance  
 3 Indicators" and it's fairly difficult to make  
 4 out, I wonder can we make that a little bit  
 5 larger, please, maybe 150 percent? Try a  
 6 little more. Okay, now you may be familiar  
 7 with this chart, because I understand this and  
 8 ones like it had been used a number of times  
 9 in presentations.  
 10 MR. ABBOTT:  
 11 A. Yes, I have seen this.  
 12 MR. SIMMONS:  
 13 Q. Okay, and what I understand it shows is that  
 14 there is a set of columns on the left which  
 15 show administrative expenses as a percentage,  
 16 I presume, of overall budgets of health care  
 17 authorities.  
 18 MR. ABBOTT:  
 19 A. Yes.  
 20 MR. SIMMONS:  
 21 Q. Is that what you understand it to be?  
 22 MR. ABBOTT:  
 23 A. More or less, yes.  
 24 MR. SIMMONS:  
 25 Q. And there are four columns there and the one

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1 on the far left, if you look at the key, is  
 2 Canadian average, which is something like 6  
 3 percent; and then the next one is  
 4 Newfoundland, which is something a bit less  
 5 than 4; and then the next one is Eastern  
 6 Health's current portion of administrative  
 7 expenses compared to its budget, which is 3. 7  
 8 percent.  
 9 MR. ABBOTT:  
 10 A. Yes.  
 11 MR. SIMMONS:  
 12 Q. And then there's Eastern Health proposed,  
 13 which is to go down to 2.5 percent.  
 14 MR. ABBOTT:  
 15 A. Yes.  
 16 MR. SIMMONS:  
 17 Q. Do you recall this type of presentation being  
 18 made to you when you were deputy minister?  
 19 MR. ABBOTT:  
 20 A. Yes.  
 21 MR. SIMMONS:  
 22 Q. Does this, as far as you're aware, reflect  
 23 accurately the portion of Eastern Health's  
 24 budget that was available for administrative  
 25 functions, compared to those in the rest of

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1 Canada, the rest of Newfoundland?  
 2 MR. ABBOTT:  
 3 A. Well, you know, it's fair to say we accepted  
 4 that as it was presented.  
 5 MR. SIMMONS:  
 6 Q. Had this been the situation with Health Care  
 7 Corporation prior to the creation of Eastern  
 8 Health as well, the years prior to that?  
 9 MR. ABBOTT:  
 10 A. I don't know the answer specifically on that,  
 11 it wouldn't surprise me in that regard.  
 12 MR. SIMMONS:  
 13 Q. And up to the time that you left your position  
 14 as deputy minister, did this situation  
 15 continue to exist where Eastern Health's  
 16 proportion of administrative expenses remain  
 17 substantially below the Canadian average?  
 18 MR. ABBOTT:  
 19 A. Well that was the, I think there had been a  
 20 subsequent presentation, maybe an update on  
 21 those numbers and yes, there was certainly a  
 22 gap between the two.  
 23 MR. SIMMONS:  
 24 Q. And while we have it there, the second group  
 25 of columns on the right is information system

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1 expenses.  
 2 MR. ABBOTT:  
 3 A. Yes.  
 4 MR. SIMMONS:  
 5 Q. And it seems to show as well that the  
 6 Newfoundland average and the Eastern Health  
 7 average were considerably lower than the  
 8 Canadian average for the amounts spent by  
 9 these organizations on information systems.  
 10 MR. ABBOTT:  
 11 A. Yes.  
 12 MR. SIMMONS:  
 13 Q. And that was known to and recognized by  
 14 government as well.  
 15 MR. ABBOTT:  
 16 A. Yes.  
 17 MR. SIMMONS:  
 18 Q. When you took up your position as deputy  
 19 minister, were you aware that there was no  
 20 provincial program in Newfoundland for the  
 21 accreditation of hospital laboratories or did  
 22 you learn of that fact?  
 23 MR. ABBOTT:  
 24 A. I would have only learned that later in my  
 25 tenure.

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1 MR. SIMMONS:  
 2 Q. Okay, can you tell me about when, at what  
 3 stage in your tenure and how you came to learn  
 4 of that?  
 5 MR. ABBOTT:  
 6 A. It would have been during the, you know, ER/PR  
 7 period, but exactly when, I really could not  
 8 say. But my sense is that it was in the later  
 9 period, not initially.  
 10 MR. SIMMONS:  
 11 Q. Yeah, do you know if it was known to the  
 12 department prior to the ER/PR issues coming up  
 13 in the summer of 2005 that there were other  
 14 parts of the country that did have laboratory  
 15 accreditation programs and that Newfoundland  
 16 and Labrador did not?  
 17 MR. ABBOTT:  
 18 A. I really don't know.  
 19 MR. SIMMONS:  
 20 Q. You don't know.  
 21 MR. ABBOTT:  
 22 A. No.  
 23 MR. SIMMONS:  
 24 Q. Okay. I understand that there are a variety  
 25 of accreditation programs available for

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1 specific areas within health care, aside from  
 2 the general accreditation of hospitals and  
 3 institutions. Is that something that the  
 4 department monitors or makes itself aware of  
 5 or in any way promotes here in Newfoundland  
 6 and Labrador?  
 7 MR. ABBOTT:  
 8 A. Well, it's a good question in terms of our  
 9 role here. It is used quite often by those  
 10 coming forward looking for resources, whether  
 11 it's directly through a health authority or in  
 12 a program area because that happened quite  
 13 often, to say look, you know, we want to be  
 14 accredited, we'd find out about that and we  
 15 obviously support that in general. But at the  
 16 end of the day and what is the cost,  
 17 additional cost to achieve that, so it was a  
 18 bit of a balancing act here. Question do we  
 19 have an inventory of that which is accredited  
 20 and that which is not? I suspect we don't and  
 21 it's something that I've never looked for.  
 22 MR. SIMMONS:  
 23 Q. And has it ever been the policy of the  
 24 department to take any active role in  
 25 identifying where opportunities for

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1 accreditation are?  
 2 MR. ABBOTT:  
 3 A. Up to the time I left, I would say no.  
 4 MR. SIMMONS:  
 5 Q. Commissioner, I don't know if you want to take  
 6 an afternoon break, but if you do, that might  
 7 be an appropriate spot.  
 8 THE COMMISSIONER:  
 9 Q. Is this a good time?  
 10 MR. SIMMONS:  
 11 Q. Yes, it is.  
 12 THE COMMISSIONER:  
 13 Q. Well, in that case, we'll take fifteen.  
 14 (RECESS)  
 15 THE COMMISSIONER:  
 16 Q. Thank you, please be seated. Mr. Simmons.  
 17 MR. SIMMONS:  
 18 Q. Thank you, Commissioner. Mr. Abbott, I want  
 19 to ask you a few things concerning a couple of  
 20 meetings that happened in the summer of 2005  
 21 with people from Eastern Health around the  
 22 plans for disclosure of information publicly  
 23 and to the patients.  
 24 MR. ABBOTT:  
 25 A. Yes.

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1 MR. SIMMONS:  
 2 Q. And first I wanted to show you exhibit P-0071  
 3 please? And I've lost track of whether Mr.  
 4 Coffey showed you this one earlier or not.  
 5 This particular exhibit is a draft of  
 6 materials that had been prepared at Eastern  
 7 Health.  
 8 MR. ABBOTT:  
 9 A. Yes.  
 10 MR. SIMMONS:  
 11 Q. And it includes, for example, a draft media  
 12 release with the date on it of "July 18th,  
 13 2005, breast cancer tests being re-examined."  
 14 MR. ABBOTT:  
 15 A. Yes.  
 16 MR. SIMMONS:  
 17 Q. Which was, appears to be, at least,  
 18 preparation for making a public announcement  
 19 roundabout that time and if we go further  
 20 through the document, on the last page, page  
 21 14, there is what appears here to perhaps be  
 22 an early draft of a letter actually to  
 23 patients.  
 24 MR. ABBOTT:  
 25 A. Okay.

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1 MR. SIMMONS:  
 2 Q. And if you take a look at it, the context of  
 3 it suggests that it's a letter to inform  
 4 patients that their samples were going to be  
 5 retested. We understand that this was around-  
 6 these documents were created prior to the  
 7 meeting with the minister on the 21st of July.  
 8 MR. ABBOTT:  
 9 A. Yes.  
 10 MR. SIMMONS:  
 11 Q. And then if we go to P-0075 please? This is  
 12 the briefing note prepared by Eastern Health  
 13 which we looked at earlier, it's dated July  
 14 20th, 2005 and if you go to the third page  
 15 under "Actions", the first paragraph in the  
 16 second sentence there where it says,  
 17 "regardless" reads, "Regardless, the  
 18 laboratory is still going ahead with retesting  
 19 the specimens and officials will meet with the  
 20 oncologists to see how they would like to  
 21 proceed with informing patients of their  
 22 conversion and possible changes in treatment."  
 23 So the briefing note is speaking of actually  
 24 working out a way to contact patients.  
 25 MR. ABBOTT:

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1 A. Yes.  
 2 MR. SIMMONS:  
 3 Q. And then the third document that I know you  
 4 were shown before is P-0074 please? This is  
 5 from the same day, the 20th, and there's an e-  
 6 mail here which went from Mr. Tilley to Ms.  
 7 Dawe, who was the chair of the board, and in  
 8 the second full paragraph of that e-mail,  
 9 beginning, "I've been in touch with the  
 10 minister who is edging us to go public, no  
 11 doubt about the need to do that, but not until  
 12 I know the size and shape of it." So when you  
 13 look at those documents together -  
 14 MR. ABBOTT:  
 15 A. Yes.  
 16 MR. SIMMONS:  
 17 Q. We can see there appears to have been work  
 18 done for public disclosure, notification to  
 19 patients, consideration of the need to consult  
 20 with oncologists about how to communicate with  
 21 patients and a thought that, although we need  
 22 to go public, we might not be quite ready for  
 23 it yet. And my question then is, when we come  
 24 to the briefing with the minister on the 21st  
 25 of July, how does that encapsulation of the

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1 situation fit with your recollection of what  
 2 was communicated at that meeting?  
 3 MR. ABBOTT:  
 4 A. The one significant difference you presented  
 5 is there was no discussion or reference made  
 6 to the preparatory work that we are in fact  
 7 ready to go. It was, we have an issue, we are  
 8 still scoping it out.  
 9 MR. SIMMONS:  
 10 Q. Yes.  
 11 MR. ABBOTT:  
 12 A. And yes, we do obviously need to notify  
 13 patients.  
 14 MR. SIMMONS:  
 15 Q. Yes.  
 16 MR. ABBOTT:  
 17 A. But it did not, at least it wasn't speaking of  
 18 being imminent, imminent in either that day,  
 19 that week or the next week.  
 20 MR. SIMMONS:  
 21 Q. And in addition to notifying the patients, was  
 22 it also understood at that meeting that there  
 23 was consideration being given to notifying the  
 24 public generally, as well as the patients, but  
 25 at that the time might not be right yet for

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1 that?  
 2 MR. ABBOTT:  
 3 A. Again, in terms of the public in a, sort of a  
 4 release or what have you, we didn't really get  
 5 into that type, that I recall, that type of a  
 6 discussion at that briefing.  
 7 MR. SIMMONS:  
 8 Q. Okay. Now in any event, by the end of that  
 9 meeting, if I understood your evidence earlier  
 10 correctly, there wasn't really any financial  
 11 decision made by the end of that meeting, it  
 12 was a matter of going away, working further  
 13 and coming back later to report to the  
 14 minister.  
 15 MR. ABBOTT:  
 16 A. Yes, we weren't ready, we were still scoping  
 17 this out and would, and in terms of looking at  
 18 the internal advice and suggestions is we want  
 19 to make sure we have, we understand what this  
 20 is about and how we are going to notify  
 21 patients.  
 22 MR. SIMMONS:  
 23 Q. Right. And we know there was another meeting  
 24 with the minister then on August 15th, but you  
 25 weren't at that meeting, so you can't tell us

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1 what happened, but you've told us generally  
 2 before what was reported back to you or what  
 3 you learned about it.  
 4 MR. ABBOTT:  
 5 A. Yes.  
 6 MR. SIMMONS:  
 7 Q. And did you understand then from that meeting  
 8 that the decision had been made to notify  
 9 individual patients, but to do that when there  
 10 were retest results available to inform -  
 11 MR. ABBOTT:  
 12 A. Well that's how it seemed to evolve, it was  
 13 starting going down that track, is that we  
 14 would be notifying, you know, Eastern Health  
 15 would be notifying patients, though I still,  
 16 you know, there was some discussion do we do  
 17 all or, verses are we waiting for just test  
 18 results.  
 19 MR. SIMMONS:  
 20 Q. Right. Now based on the fact that these were  
 21 issues that had to be discussed and  
 22 considered, would it be fair to say that there  
 23 was no standing policy or clear answer evident  
 24 to everybody about how to tackle this problem  
 25 of notifying patients and how to deal with

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1 notifying the public in this set of  
 2 circumstances?  
 3 MR. ABBOTT:  
 4 A. Well certainly from the department, we didn't  
 5 have anything clearly set out, there's nothing  
 6 specific in legislation that speaks to that,  
 7 you know, and certainly one could argue is a  
 8 deficiency because other jurisdictions address  
 9 this in different ways within--and the  
 10 requirements along quality reviews and how  
 11 things get communicated. So we certainly  
 12 didn't have anything specific to guide us. We  
 13 knew that patient notification was a standard  
 14 issue and responsibility for a health  
 15 authority, but in this case, given what would  
 16 appear to be significant numbers -  
 17 MR. SIMMONS:  
 18 Q. Uh-hm.  
 19 MR. ABBOTT:  
 20 A. How you do that appropriately and effectively  
 21 was sort of the question mark.  
 22 MR. SIMMONS:  
 23 Q. Right. Exhibit P-0307 please? Mr. Coffey  
 24 showed you this one earlier also. This comes  
 25 a little bit later, October 14th, '05 and it



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1 was your e-mail to Ms. Cheeseman suggesting a  
 2 topic for a media retreat or a communication's  
 3 retreat and your suggestion was an issue  
 4 around communications related to patient  
 5 safety issues, example, current ER/PR breast  
 6 cancer testing.  
 7 MR. ABBOTT:  
 8 A. Yes.  
 9 MR. SIMMONS:  
 10 Q. So this suggests that you recognize that there  
 11 was a void here in how to handle  
 12 communications in an issue like this and that  
 13 it was something worthy of paying some  
 14 attention to on your communication's retreat?  
 15 MR. ABBOTT:  
 16 A. Yes, and, you know, we were talking patient  
 17 safety, this is a significant adverse event,  
 18 how do you do this when you are certainly  
 19 dealing with large numbers and what can we  
 20 learn from this, because obviously we were  
 21 collectively struggling with this issue, both  
 22 as a department and a health authority, and we  
 23 had talked, there had been conversation in the  
 24 department, I believe, with myself and Carolyn  
 25 Chaplin on this and when this opportunity

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1 arose, I suggested then it be considered.  
 2 MR. SIMMONS:  
 3 Q. So in the summer of 2005 then, do I take it  
 4 that the department didn't really have any  
 5 resources or other experience available that  
 6 it could use to assist Eastern Health in  
 7 making its decisions about how to handle  
 8 communication publicly and to the patients in  
 9 these circumstances?  
 10 MR. ABBOTT:  
 11 A. No, other than it would have been as part of a  
 12 collaborative effort to say, look, you know,  
 13 here's what we know and here's what our  
 14 individual experiences might have been, but  
 15 nothing formal to offer.  
 16 MR. SIMMONS:  
 17 Q. Right. Now you describe it as a collaborative  
 18 effort, did you have any sense as to whether  
 19 what as going on within Eastern Health around  
 20 these issues was collaborative or involving  
 21 more people or what approach they were taking  
 22 to how they were going to make decisions about  
 23 this.  
 24 MR. ABBOTT:  
 25 A. Within Eastern Health?

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1 MR. SIMMONS:  
 2 Q. Yes.  
 3 MR. ABBOTT:  
 4 A. Yes, based on what they had said, the fact  
 5 that it would involve, you know, pathology,  
 6 oncology, patient managers, the quality area,  
 7 as well as communications, as well as some of  
 8 the senior executive, Dr. Williams and--at the  
 9 time and Mr. Tilley.  
 10 MR. SIMMONS:  
 11 Q. Did that sound like an appropriate approach to  
 12 the question, to addressing the problem to  
 13 you?  
 14 MR. ABBOTT:  
 15 A. Yeah, I, you know, I accepted that that would  
 16 be part of their process to reach a decision.  
 17 MR. SIMMONS:  
 18 Q. And do I understand correctly from what you've  
 19 said before that you and the department didn't  
 20 really regard this as your decision to make,  
 21 you wanted to be informed about what Eastern  
 22 Health was doing, but you would leave it to  
 23 Eastern Health to make those decisions around  
 24 communication itself.  
 25 MR. ABBOTT:

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1 A. Yes, well it certainly wasn't the department,  
 2 or mine as deputy minister, the minister had a  
 3 more direct role and interest in that issue  
 4 and if he wanted anything specifically done,  
 5 then he would communicate to the health  
 6 authority. Outside of that, it was the health  
 7 authorities to manage.  
 8 MR. SIMMONS:  
 9 Q. Right. So when we came to the end of the  
 10 summer of 2005, then you're at the end of  
 11 August getting into September, did you and the  
 12 department know then what Eastern Health's  
 13 plan was, how they were going to approach  
 14 communication? In general terms.  
 15 MR. ABBOTT:  
 16 A. In general terms, you know, again we're  
 17 talking of them getting to more, waiting for  
 18 test results and notifying then, but in a  
 19 clear plan laid out specifically, that part  
 20 really wasn't, I guess, presented, but it was  
 21 we will deal with this as events arise.  
 22 MR. SIMMONS:  
 23 Q. Nevertheless though, the minister did not  
 24 intervene or take any steps to intervene or  
 25 call the board chair -

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1 MR. ABBOTT:  
 2 A. No.  
 3 MR. SIMMONS:  
 4 Q. Or direct you to take any action.  
 5 MR. ABBOTT:  
 6 A. That's correct.  
 7 MR. SIMMONS:  
 8 Q. So can we presume then that the minister, by  
 9 extension of the department, were satisfied at  
 10 that point that Eastern Health was handling  
 11 the matter, those issues adequately.  
 12 MR. ABBOTT:  
 13 A. If the minister didn't indicate anything else,  
 14 then you would have to assume that, but  
 15 whether I did, I wouldn't just be extension  
 16 say that to the department, but I accepted  
 17 that and as I said earlier, the fact that the  
 18 minister was fully apprised of this, you know,  
 19 three separate briefings, so that was, as I  
 20 said, that was his comfort level vis-a-vis  
 21 Eastern Health, even though he has, you know,  
 22 internally he -  
 23 MR. SIMMONS:  
 24 Q. Had different views.  
 25 MR. ABBOTT:

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1 A. He may have different views.  
 2 MR. SIMMONS:  
 3 Q. Right, as did you?  
 4 MR. ABBOTT:  
 5 A. Yes.  
 6 MR. SIMMONS:  
 7 Q. And you've told us in your examination when  
 8 Mr. Coffey was questioning you and I think I  
 9 got this right, I noted that you had said that  
 10 by mid August, the Eastern Health position on  
 11 disclosure was reasoned and reasonable, but  
 12 was not your preferred.  
 13 MR. ABBOTT:  
 14 A. Yes.  
 15 MR. SIMMONS:  
 16 Q. Now, by "reasoned" what did you mean when you  
 17 said it was reasoned?  
 18 MR. ABBOTT:  
 19 A. Well I guess refer back to your earlier  
 20 question in terms they had brought people  
 21 together, they had brought different  
 22 perspectives together, they looked at what was  
 23 doable and what they wanted to do and so in  
 24 that sense--and reached a conclusion. So from  
 25 that perspective was reasoned and reasonable

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1 within the context, they wanted to make sure  
 2 that the oncologists and other physicians were  
 3 on side and more importantly that's what they  
 4 were telling us, the physicians were advising  
 5 them, look, these are our patients, we think  
 6 we are best to advise, so that's quote "in the  
 7 reasonable category", so that's how I took  
 8 that or at least that's how I would have  
 9 analyzed that.  
 10 MR. SIMMONS:  
 11 Q. Now we know that in the beginning of October,  
 12 October 2nd, The Independent newspaper ran a  
 13 story.  
 14 MR. ABBOTT:  
 15 A. Yes.  
 16 MR. SIMMONS:  
 17 Q. And that knowledge became public then that  
 18 Eastern Health was doing the retesting of  
 19 these tissue samples. Now you were shown  
 20 exhibit P-0142, could we see that one again,  
 21 please? This was an e-mail from October 3rd,  
 22 the day after the Independent story, from Ms.  
 23 Mundon to you. And this was the one that  
 24 discussed the merits of doing news release and  
 25 expressed the views shared by Ms. Bonnell and

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1 Ms. Mundon that there would be little point in  
 2 doing a news release at that stage?  
 3 MR. ABBOTT:  
 4 A. Yes.  
 5 MR. SIMMONS:  
 6 Q. And you recall being asked some questions  
 7 concerning that. And did you know at the time  
 8 you received this what steps Eastern Health  
 9 was taking to publicly communicate about this  
 10 issue?  
 11 MR. ABBOTT:  
 12 A. No. Well, I knew that they were doing media  
 13 interviews.  
 14 MR. SIMMONS:  
 15 Q. Yes.  
 16 MR. ABBOTT:  
 17 A. And that there was individual patient  
 18 notification through their process, but that  
 19 would have been the extent.  
 20 MR. SIMMONS:  
 21 Q. Did you know that there was information posted  
 22 on the Eastern Health web site?  
 23 MR. ABBOTT:  
 24 A. Other than I see this reference here, I  
 25 wouldn't--that wouldn't necessarily been -

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1 MR. SIMMONS:  
 2 Q. Exhibit -  
 3 MR. ABBOTT:  
 4 A. - conscious -  
 5 MR. SIMMONS:  
 6 Q. - 0343, please? Okay. This is a page from,  
 7 it actually says, "Health Care Corporation of  
 8 St. John's."  
 9 MR. ABBOTT:  
 10 A. Um-hm.  
 11 MR. SIMMONS:  
 12 Q. So I guess they hadn't reached the point yet  
 13 where they changed the name of the  
 14 organization on the web site. But if you look  
 15 in the bottom right-hand corner, there's a  
 16 date there, 03/10.  
 17 MR. ABBOTT:  
 18 A. Um-hm.  
 19 MR. SIMMONS:  
 20 Q. 2005?  
 21 MR. ABBOTT:  
 22 A. Yes.  
 23 MR. SIMMONS:  
 24 Q. Which I take it to be October 3rd, 2005. And  
 25 it's "Frequently asked questions about ER/PR."

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1 MR. ABBOTT:  
 2 A. Yes.  
 3 MR. SIMMONS:  
 4 Q. And it goes on for, it's not particularly  
 5 long, but it does go on for a couple of pages.  
 6 So this would quality as being a public  
 7 communication by Eastern Health on the issue,  
 8 would it not?  
 9 MR. ABBOTT:  
 10 A. Yes, and I do recall going to that site.  
 11 MR. SIMMONS:  
 12 Q. Yes.  
 13 MR. ABBOTT:  
 14 A. At some point. But it was, you know -  
 15 MR. SIMMONS:  
 16 Q. Yes. And this is, in fact, though -  
 17 MR. ABBOTT:  
 18 A. - later in the time.  
 19 MR. SIMMONS:  
 20 Q. - contemporaneous with that discussion in the  
 21 e-mail message -  
 22 MR. ABBOTT:  
 23 A. Yes.  
 24 MR. SIMMONS:  
 25 Q. - that we just seen about whether to issue a

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1 press release or not. And 0345, please? This  
 2 one is a collection of some different media  
 3 stories. And the first one we have here is  
 4 from October 5th, 2005 from the Telegram. The  
 5 date is, you can see there?  
 6 MR. ABBOTT:  
 7 A. Yes.  
 8 MR. SIMMONS:  
 9 Q. And if you look, for example, round about in  
 10 the middle column of the third there, you'll  
 11 begin to see references to Dr. Williams at  
 12 various points in the story?  
 13 MR. ABBOTT:  
 14 A. Yes.  
 15 MR. SIMMONS:  
 16 Q. So it appears here that Dr. Williams was  
 17 giving interviews to the Telegram and giving  
 18 information for their story on October 5th?  
 19 MR. ABBOTT:  
 20 A. Yes.  
 21 MR. SIMMONS:  
 22 Q. And there's a series more of these. I'll go  
 23 right to page 23, please? I won't go through  
 24 them all. Page 23 is a transcript of, from  
 25 VOCM, Newfoundland and Labrador Today, and

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1 it's from October 25th, so we're now 20 days  
 2 later. And it's actually an interview with  
 3 Dr. Williams. And it goes on for several  
 4 pages with the interviewer asking questions of  
 5 Dr. Williams?  
 6 MR. ABBOTT:  
 7 A. Right.  
 8 MR. SIMMONS:  
 9 Q. So in the context where there is information  
 10 posted on the web site and there are  
 11 interviews being given right from the  
 12 Independent story through to the end of the  
 13 month, does that--would that be something to  
 14 take into account when determining whether a  
 15 press release on the 3rd was something that  
 16 was going to add anything to what was being  
 17 done?  
 18 MR. ABBOTT:  
 19 A. Well, again, sometimes it's, I guess, a matter  
 20 of perception and how you do that.  
 21 MR. SIMMONS:  
 22 Q. Um-hm.  
 23 MR. ABBOTT:  
 24 A. But normally in terms of getting, from a  
 25 government agency, getting information out, a

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1 press release type an approach is sort of  
 2 standard procedure, because then it tells all  
 3 the information together and puts it in a  
 4 context and lays it out. Now, I was following  
 5 these in the fall and, yes, it was a way of  
 6 getting information out. Again, as I said at  
 7 one point, it's sort of in the reactive, you  
 8 are now responding to an event as opposed to  
 9 saying what, you know, what the event was and  
 10 what the Eastern Health's approach to it was  
 11 as opposed, you know, to waiting for the media  
 12 to call. But it gets a lot of that  
 13 information out, so it was, and it was good  
 14 reporting on that, at least my reading of it,  
 15 that some of the main points were being  
 16 covered and were consistent with what we would  
 17 have known.

18 MR. SIMMONS:  
 19 Q. And offering interviews to the media gives  
 20 the, would you agree with me, gives the added  
 21 advantage of the interaction, the question and  
 22 answer interaction will allow questions that  
 23 are of interest to the interviewer to be -

24 MR. ABBOTT:  
 25 A. Yes.

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1 MR. SIMMONS:  
 2 Q. - to be more directly addressed than a news  
 3 release that goes out with no further comment  
 4 on it?

5 MR. ABBOTT:  
 6 A. Sure.

7 MR. SIMMONS:  
 8 Q. Okay.

9 THE COMMISSIONER:  
 10 Q. Can't you go both? Do a press release and  
 11 then say "So and so will be available."?

12 MR. ABBOTT:  
 13 A. Oh, yes, yes, that was in terms of -

14 THE COMMISSIONER:  
 15 Q. I'm just--one does not--I mean, in the world  
 16 to which I'm now being exposed and I'm not  
 17 familiar, one does not preclude the other,  
 18 does it?

19 MR. ABBOTT:  
 20 A. No. And there's variations on that again,  
 21 yes.

22 MR. SIMMONS:  
 23 Q. Okay. Document P-0124, please, page 8? This  
 24 is the only briefing note I'll refer you to, I  
 25 think. And this particular briefing note is,

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1 I believe, from November 7th of 2005. I'll  
 2 just go down. Yes, November 7th, 2005 there  
 3 on the bottom. You were referred to this one  
 4 already. And this has anticipated questions  
 5 here. Now, this is a question and answer  
 6 briefing note. Now, if I understand  
 7 correctly, this is prepared, this format of  
 8 briefing note is prepared for use by the  
 9 minister in preparing to deal with questions  
 10 in the House of Assembly or perhaps from the  
 11 media?

12 MR. ABBOTT:  
 13 A. Primarily the House of Assembly, yes.

14 MR. SIMMONS:  
 15 Q. And the anticipated questions, is that an  
 16 attempt by the drafter of the note to try to  
 17 anticipate the way that the opposition may put  
 18 the question to the minister?

19 MR. ABBOTT:  
 20 A. Yes.

21 MR. SIMMONS:  
 22 Q. Okay. These briefing note documents, these  
 23 are not documents that are used by the  
 24 department to develop policy or to assist in  
 25 decision making, are they?

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1 MR. ABBOTT:  
 2 A. Absolutely correct.

3 MR. SIMMONS:  
 4 Q. Okay. So when we read the questions that are  
 5 put in these briefing notes, these are not  
 6 questions that the department is posing that  
 7 they want to analyze and find themselves  
 8 answers to, these are merely the questions  
 9 that it's anticipated the opposition may  
 10 choose to put to the minister?

11 MR. ABBOTT:  
 12 A. Yes.

13 MR. SIMMONS:  
 14 Q. So when we see the second bullet under  
 15 "Anticipated questions" which says, "How did  
 16 this happen and what is being done to correct  
 17 this problem?" The "How did this happen"  
 18 question is not necessarily, maybe it is, but  
 19 it's not necessarily something that the  
 20 department has adopted as a question it needs  
 21 to go out and find the answer to?

22 MR. ABBOTT:  
 23 A. That would be correct.

24 MR. SIMMONS:  
 25 Q. Okay. Now, it's been explained to me that

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1 when this issue came up in 2005, during the  
 2 summer, within Eastern Health, that the first  
 3 priority was that because there might be  
 4 patients who could still benefit from a change  
 5 in treatment even a long time after their  
 6 cancer, that their samples should be retested  
 7 to find those and give them the opportunity  
 8 for change in treatment.  
 9 MR. ABBOTT:  
 10 A. Yes.  
 11 MR. SIMMONS:  
 12 Q. Was that explained to you at any point in the  
 13 summer of 2005?  
 14 MR. ABBOTT:  
 15 A. I'm not sure if I follow the question. In  
 16 terms of -  
 17 MR. SIMMONS:  
 18 Q. Were you told that a reason for undertaking  
 19 the retesting was to find any patients who  
 20 could benefit from a change in treatment?  
 21 MR. ABBOTT:  
 22 A. Oh, yes, yes, yes. I'm sorry. Yeah, I mean,  
 23 we have the test and obviously the benefit of  
 24 the test results should then be relayed to  
 25 their--to a patient's physician, yes.

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1 MR. SIMMONS:  
 2 Q. Right. So one issue facing Eastern Health  
 3 was, we have patients who have been tested in  
 4 the past, we have to find which of those might  
 5 benefit from a change in treatment?  
 6 MR. ABBOTT:  
 7 A. Yes.  
 8 MR. SIMMONS:  
 9 Q. Another issue then would be, we are doing  
 10 testing today and into tomorrow and we have to  
 11 be sure that we are doing that correctly?  
 12 MR. ABBOTT:  
 13 A. Yes.  
 14 MR. SIMMONS:  
 15 Q. So that, so that second issue would be do we  
 16 have a problem with our testing now?  
 17 MR. ABBOTT:  
 18 A. Um-hm.  
 19 MR. SIMMONS:  
 20 Q. And if so, what do we have to do to fix it?  
 21 MR. ABBOTT:  
 22 A. Yes.  
 23 MR. SIMMONS:  
 24 Q. Now, you were told that there were steps being  
 25 taken by Eastern Health such as bringing in

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1 external consultants to look at the  
 2 functioning of the immunohistochemical service  
 3 with the laboratory?  
 4 MR. ABBOTT:  
 5 A. Yes.  
 6 MR. SIMMONS:  
 7 Q. What did you understand the primary purpose of  
 8 bringing in those consultants to be?  
 9 MR. ABBOTT:  
 10 A. To help Eastern Health identify if they had a  
 11 problem, what the problem is, what the  
 12 solutions might be.  
 13 MR. SIMMONS:  
 14 Q. To address, I guess, the current situation?  
 15 MR. ABBOTT:  
 16 A. Yes.  
 17 MR. SIMMONS:  
 18 Q. And the go forward situation, okay. Now, I'm  
 19 not arguing that the question of what went  
 20 wrong is not relevant or not an important one,  
 21 but in order to deal with the issue of are  
 22 there patients from the past who need the  
 23 treatment change and the issue of are we  
 24 providing a proper service today, would it, in  
 25 your view, have been necessary to focus on the

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1 question of what went wrong in the past?  
 2 MR. ABBOTT:  
 3 A. No. And I guess that was sort of some of my  
 4 previous answers is I was, you know, listening  
 5 to Eastern Health and they were saying, "Look,  
 6 these are the immediate issues that we want to  
 7 address and this is what we want to focus on  
 8 and plan to focus on." And we really did not  
 9 get into, I didn't, and they didn't present it  
 10 in terms of that we really needed to focus on  
 11 what went wrong, quote, unquote, what we need  
 12 to focus on was what the issues contributing  
 13 to this today and how we improve on it. And  
 14 through the results of any retesting then we'd  
 15 made, obviously we'd make that information  
 16 available to the patients.  
 17 MR. SIMMONS:  
 18 Q. In your experience in working in the health  
 19 care system for the department an otherwise  
 20 had you been exposed to any other situations  
 21 where external reviewers of one sort or  
 22 another were used to look at a service or a  
 23 function of care?  
 24 MR. ABBOTT:  
 25 A. Well, I mean, I think that's common practice,

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1 whether it's health care or any other sector  
 2 and whether it's done on an individual basis  
 3 or a team or a firm to come in to review,  
 4 assess and analyze, provide findings and  
 5 recommendations would be standard procedure.  
 6 And that's exactly how I would have viewed  
 7 what Eastern Health was doing with respect to  
 8 the lab issue.  
 9 MR. SIMMONS:  
 10 Q. Okay. You were asked a number of questions  
 11 about the lead up to Eastern Health's media  
 12 briefing in December of 2006?  
 13 MR. ABBOTT:  
 14 A. Yes.  
 15 MR. SIMMONS:  
 16 Q. And you were asked if you were told or if  
 17 anything was communicated to you as to whether  
 18 or not Eastern Health had any legal advice  
 19 that limited the sorts of things it could  
 20 disclose at that briefing. And I just want to  
 21 make sure I understood your evidence on that  
 22 point. Did I understand you correctly to say  
 23 that no one had said anything to you, but you  
 24 gathered from the written materials that you  
 25 saw that there had been some legal advice that

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1 limited what Eastern Health would -  
 2 MR. ABBOTT:  
 3 A. Yes. And it may, again, in terms of the, say,  
 4 the briefing of the minister, again, some of  
 5 the--one of the documents I saw here making  
 6 reference, you know, that we have legal advice  
 7 or there are legal issues at play here and  
 8 that will influence what we can say. But it  
 9 didn't, we didn't go explore that any further.  
 10 MR. SIMMONS:  
 11 Q. So if we want to trace down what the source of  
 12 your information was about that, we can go to  
 13 the documents, what we can find in the paper  
 14 is what would have been known to you?  
 15 MR. ABBOTT:  
 16 A. I think that, yeah -  
 17 MR. SIMMONS:  
 18 Q. And I -  
 19 MR. ABBOTT:  
 20 A. - there's nothing different than that, that's  
 21 for sure.  
 22 MR. SIMMONS:  
 23 Q. And I don't intend to chase that through with  
 24 you now. When Minister Osborne was on the  
 25 stand, he told us that in the three portfolios

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1 that he had filled in government, that it was  
 2 a common practice, a common conception that  
 3 when something was subject to litigation, that  
 4 normally one did not talk about it in the  
 5 media?  
 6 MR. ABBOTT:  
 7 A. Yes.  
 8 MR. SIMMONS:  
 9 Q. Yes. Was that a practice that was known to  
 10 you or an approach that was known to you in  
 11 the Department of Health?  
 12 MR. ABBOTT:  
 13 A. For the two and a half years I was there I  
 14 don't know we ever had to really make, you  
 15 know, deal with that other than in this  
 16 particular instance. But just based on my own  
 17 experience over time in government that that  
 18 would have been generally accepted advice and  
 19 if we knew that there was a court case, that,  
 20 shall we say, lawyers either side were  
 21 involved, we would make--we would consult with  
 22 our solicitor before advising a minister on  
 23 what he could or could not say.  
 24 MR. SIMMONS:  
 25 Q. Okay. In the spring, I guess--well, actually,

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1 I guess, May 15th, 2007 there was a CBC news  
 2 story which publicly reported on some of the  
 3 retesting numbers that had been contained in  
 4 the affidavit filed in the class action by  
 5 Eastern Health.  
 6 MR. ABBOTT:  
 7 A. Yes.  
 8 MR. SIMMONS:  
 9 Q. And in the questions Mr. Coffey asked you he  
 10 referred to, I think, the conclusions  
 11 expressed in those stories that there was a 40  
 12 percent error rate or conversion rate or a 40  
 13 percent change in test results?  
 14 MR. ABBOTT:  
 15 A. Yes, um-hm.  
 16 MR. SIMMONS:  
 17 Q. In any event, and that the media was comparing  
 18 that to statements from Eastern Health that it  
 19 was expected that there would be a ten percent  
 20 change?  
 21 MR. ABBOTT:  
 22 A. Yes.  
 23 MR. SIMMONS:  
 24 Q. Do you recall those?  
 25 MR. ABBOTT:

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1 A. Yes.

2 MR. SIMMONS:

3 Q. Did you have any occasion or know if anyone in

4 your department had any occasion to look at

5 that comparison and to see what basis the 40

6 percent was being calculated on and what basis

7 the ten percent statement had been made to see

8 if that was a fair comparison?

9 MR. ABBOTT:

10 A. I don't remember any particular analysis or

11 discussion around that. I was familiar,

12 certainly, with--and when I heard the 40

13 percent, I understood it, you know, that,

14 yeah, I can see where he would have come up

15 with that. The exact math, obviously, I went

16 back and referred to the briefing note -

17 MR. SIMMONS:

18 Q. Yes.

19 MR. ABBOTT:

20 A. - when we looked at the conversions.

21 MR. SIMMONS:

22 Q. Yeah.

23 MR. ABBOTT:

24 A. But in terms of the ten percent, again, where

25 that, I know there might have been some

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1 references in the past, but didn't look at

2 that same -

3 MR. SIMMONS:

4 Q. So did you understand the -

5 MR. ABBOTT:

6 A. - set of numbers.

7 MR. SIMMONS:

8 Q. - 40 percent to be, when you went back and

9 looked at it, did you conclude that the 40

10 percent was based on a comparison of the

11 number of tests that had changed compared to

12 the number of retests done?

13 MR. ABBOTT:

14 A. Yes.

15 MR. SIMMONS:

16 Q. Instead of compared to the number of total

17 tests?

18 MR. ABBOTT:

19 A. That's right, yes.

20 MR. SIMMONS:

21 Q. Okay. All right. Now I'd like to show you P-

22 0345, please? I think that's the right one.

23 These are media reports again. And this is

24 the same one I showed you earlier. This is

25 October 5th, 2005 and it's reporting on Dr.

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1 Williams' interview with the Telegram.

2 MR. ABBOTT:

3 A. Um-hm.

4 MR. SIMMONS:

5 Q. And if we go to the fourth column -

6 MR. ABBOTT:

7 A. Yes, I see it.

8 MR. SIMMONS:

9 Q. Difficult to make it out. He's quoted as

10 saying, "We had about 73 percent of tests that

11 were positive, so we're only retesting the 27

12 percent or so that were negative." So the

13 retests are 27 percent of the total

14 population?

15 MR. ABBOTT:

16 A. Yes.

17 MR. SIMMONS:

18 Q. And from the early results Williams says, "It

19 appears that only about ten percent of the

20 overall tests performed over the past seven

21 years show different results."

22 MR. ABBOTT:

23 A. Yes.

24 MR. SIMMONS:

25 Q. So it appears that the statement was that the

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1 early data was showing ten percent of the

2 total number of tests, not just the retests?

3 MR. ABBOTT:

4 A. Yes. I mean, I understand it in that context.

5 MR. SIMMONS:

6 Q. Okay. Are you aware of anyone from Eastern

7 Health ever making any representation, you

8 know, other than that to you?

9 MR. ABBOTT:

10 A. Again, if I understand the question, I don't

11 think--there was never any suggestion to down

12 play the actual numbers.

13 MR. SIMMONS:

14 Q. No.

15 MR. ABBOTT:

16 A. So, no.

17 MR. SIMMONS:

18 Q. Okay.

19 MR. ABBOTT:

20 A. Again, looking at the data that was supplied,

21 that was, I guess, was sort of quite evident.

22 MR. SIMMONS:

23 Q. Okay.

24 THE COMMISSIONER:

25 Q. I'm sorry, I'm just--up until now I had been

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1 thinking that what the data you had gotten  
 2 stayed away from percentages, what they were  
 3 doing was giving you numbers?  
 4 MR. ABBOTT:  
 5 A. Yes.  
 6 THE COMMISSIONER:  
 7 Q. And you could draw whatever conclusions you  
 8 want based on the numbers you got?  
 9 MR. ABBOTT:  
 10 A. Yes. And I guess Mr. Boone's (sic.) question  
 11 was -  
 12 UNKNOWN SPEAKER:  
 13 Q. Simmons.  
 14 MR. ABBOTT:  
 15 A. - around the percentages were they trying to  
 16 down play it by saying, using a particular  
 17 number.  
 18 THE COMMISSIONER:  
 19 Q. Um-hm.  
 20 MR. ABBOTT:  
 21 A. But having the data there certainly from the  
 22 fall, you know, both in terms of, say, the  
 23 summer of 2006 and the fall of 2006, we would  
 24 have known what the numbers were. And so  
 25 there wasn't a suggestion of it being anything

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1 different, I guess, than what it was.  
 2 MR. SIMMONS:  
 3 Q. Okay.  
 4 MR. ABBOTT:  
 5 A. So if, so using, if I heard the number ten  
 6 percent being used, I heard the number of  
 7 three and four percent, well, you know, we  
 8 knew, based on that table, what the numbers  
 9 were.  
 10 MR. SIMMONS:  
 11 Q. And if--I'm going to suggest that the total  
 12 number of tests is something just under 3,000.  
 13 MR. ABBOTT:  
 14 A. Yes.  
 15 MR. SIMMONS:  
 16 Q. If we went back to the briefing note, you'll  
 17 see it's 2700 and some odd.  
 18 MR. ABBOTT:  
 19 A. That's right.  
 20 MR. SIMMONS:  
 21 Q. Ten percent of that is between 27--270 and  
 22 300.  
 23 MR. ABBOTT:  
 24 A. Yes.  
 25 MR. SIMMONS:

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1 Q. Which isn't that far off what the number of  
 2 actual changes were at the end?  
 3 MR. ABBOTT:  
 4 A. That's right.  
 5 MR. SIMMONS:  
 6 Q. Okay. So following--starting on May 15th  
 7 then, over the next couple of days, you've  
 8 told us in some detail about the events in the  
 9 House.  
 10 MR. ABBOTT:  
 11 A. Yes.  
 12 MR. SIMMONS:  
 13 Q. In the media, with Cabinet, and I gather from  
 14 what you've told us that there seemed to be  
 15 political pressure building -  
 16 MR. ABBOTT:  
 17 A. Yes.  
 18 MR. SIMMONS:  
 19 Q. - on the government through that time period  
 20 to do something?  
 21 MR. ABBOTT:  
 22 A. Yes.  
 23 MR. SIMMONS:  
 24 Q. And you've told us yourself that it had become  
 25 a political issue, as opposed to just a health

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1 care issue?  
 2 MR. ABBOTT:  
 3 A. Yes.  
 4 MR. SIMMONS:  
 5 Q. When the directive was given to Eastern Health  
 6 to hold the press conference, did you see that  
 7 as a move by government to attempt to relieve  
 8 the political pressure that was being placed  
 9 on them?  
 10 MR. ABBOTT:  
 11 A. I would put it more in the--that the health  
 12 sector was now being seen doing something. If  
 13 that had the advantage, I guess, from the  
 14 political end of relieving pressure, well so  
 15 be it, but it's this is mounting. We now need  
 16 to take some action to make sure we are seen  
 17 getting--and Eastern Health on behalf of--in  
 18 this case, on behalf of government, was out  
 19 there getting information, more information  
 20 out, better information, what have you. But  
 21 relieving pressure, certainly in the House,  
 22 they can say that this has taken place. We  
 23 are being open. We are being transparent.  
 24 MR. SIMMONS:  
 25 Q. Okay. Thank you very much, Mr. Abbott. I



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1 don't have any other questions for you.  
 2 MR. ABBOTT:  
 3 A. Thank you.  
 4 THE COMMISSIONER:  
 5 Q. Thank you, Mr. Simmons. Mr. Browne?  
 6 MR. BROWNE:  
 7 Q. Thank you, Commissioner. I have no questions  
 8 arising from Mr. Abbott's evidence. Thank  
 9 you, Mr. Abbott.  
 10 THE COMMISSIONER:  
 11 Q. Thank you. Ms. O'Dea?  
 12 MS. O'DEA:  
 13 Q. Thank you, Commissioner. We have no  
 14 questions.  
 15 THE COMMISSIONER:  
 16 Q. Ms. Newbury.  
 17 MR. JOHN ABBOTT, EXAMINATION BY MS. JENNIFER NEWBURY  
 18 MS. NEWBURY:  
 19 Q. Good afternoon, Mr. Abbott. Jennifer Newbury  
 20 appearing for the Canadian Cancer Society,  
 21 Newfoundland and Labrador division.  
 22 MR. ABBOTT:  
 23 A. Yes.  
 24 MS. NEWBURY:  
 25 Q. I want to ask you some questions, first of all

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1 starting off with the authority of the  
 2 Department of Health and Community Services,  
 3 as it relates to Eastern Health.  
 4 MR. ABBOTT:  
 5 A. Yes.  
 6 MS. NEWBURY:  
 7 Q. And I believe it was your evidence that the  
 8 Department of Health and Community Services,  
 9 during the time that you were the deputy  
 10 minister, could not direct a regional health  
 11 authority to do or not do a particular action?  
 12 MR. ABBOTT:  
 13 A. Yes.  
 14 MS. NEWBURY:  
 15 Q. Okay, and if the Department of Health had  
 16 attempted to direct Eastern Health, and I  
 17 don't know if there are any examples of that  
 18 while you were deputy minister, if they  
 19 attempted to do that, do you have any idea how  
 20 Eastern Health would have responded or did  
 21 respond, if there are any examples?  
 22 MR. ABBOTT:  
 23 A. Well, again, there were, and continues to this  
 24 day, there are lots of conversations between  
 25 the department and each of the health

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1 authorities and there are issues that come to  
 2 our attention, whether it's patient or  
 3 resident or client concerns, complaints, what  
 4 have you, about how they're being received  
 5 within the authority, and we will go to, at  
 6 any number of levels, from the department to  
 7 the health authority and say "look, will you  
 8 review this. This is what's come to our  
 9 attention," and in essence, try to refer the  
 10 issue back to the health authority. But  
 11 really to your point, if the issue was such  
 12 that we really wanted--needed to direct an  
 13 outcome, one of two things would happen.  
 14 Normally, that would certainly land on my  
 15 desk and then I would either direct--either  
 16 call the CEO myself to say "look, this is--we  
 17 really think as a department that's something  
 18 you need to do," and you know, "are we of the  
 19 same understanding of the need to do  
 20 something?" But if there was a clear--  
 21 alternately, I would have one of my senior  
 22 staff do that. If the response from the  
 23 authority was "no, we cannot do it. We do not  
 24 want to do it," what have you, but we as a  
 25 department felt it needed to be addressed, we

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1 then would engage the minister and say "look,  
 2 here's the situation. We think you need to  
 3 consider and take this action." If he agreed,  
 4 then it would be up to him then to make  
 5 contact with the Board chair or possibly the  
 6 CEO directly, but generally through the Board  
 7 chair, and we've had--there were, through, as  
 8 I mentioned the other day, there were a couple  
 9 examples where that, in fact, was what  
 10 happened.  
 11 MS. NEWBURY:  
 12 Q. And at that level, would the minister be  
 13 directing the CEO of Eastern Health or would  
 14 the minister engage in the same thing, try to  
 15 work it out with them and to resolve the  
 16 issues with Eastern Health?  
 17 MR. ABBOTT:  
 18 A. Well again, you generally work on the premise  
 19 that, you know, the issue is clear, you know,  
 20 it's a yes or a no approach here, and then he  
 21 would speak with the Board chair to say "look,  
 22 this has come to my attention. I want this to  
 23 happen." So that would be the extent of,  
 24 shall we say the word, direction, because the  
 25 legislation doesn't--at that point, wasn't

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1 allowing or that particular course of action  
 2 to be--wasn't necessarily contemplated, but it  
 3 was certainly understood within the health  
 4 authorities and the minister that those  
 5 conversations can and could take place.  
 6 MS. NEWBURY:  
 7 Q. Okay, and in relation to the legislation, I  
 8 wonder if I can call up, Registrar, Exhibit P-  
 9 0059, please? This is the Regional Health  
 10 Authorities Act.  
 11 MR. ABBOTT:  
 12 A. Um-hm.  
 13 MS. NEWBURY:  
 14 Q. Which is now in force as of April the 1st,  
 15 2008, I believe.  
 16 MR. ABBOTT:  
 17 A. Yes.  
 18 MS. NEWBURY:  
 19 Q. And I want to refer to the third page there of  
 20 that exhibit. Two of us controlling the  
 21 mouse. I'll let you do it. Now on page  
 22 three, Section 5 deals with ministerial  
 23 directions, and again, this legislation came  
 24 into force April 1st, 2008, and I believe it  
 25 was assented to on the 26th of May, 2006.

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1 Does that fit with your recollection?  
 2 MR. ABBOTT:  
 3 A. I'm sorry, the?  
 4 MS. NEWBURY:  
 5 Q. That it was assented to, the legislation  
 6 itself, in May of 2006? I think that's the -  
 7 MR. ABBOTT:  
 8 A. Yes, and enacted, yes, in this spring, yes.  
 9 MS. NEWBURY:  
 10 Q. Now on page three, Section 5, it states that  
 11 "the minister may give directions to an  
 12 authority, including directions for the  
 13 purpose of achieving objectives and priorities  
 14 as established under Section 3," and it also  
 15 provides, in subsection B, "providing  
 16 guidelines for the authority to follow in  
 17 carrying out its duties and responsibilities,  
 18 and the exercise of its powers under this  
 19 Act." You're generally aware of those  
 20 provisions?  
 21 MR. ABBOTT:  
 22 A. Yes.  
 23 MS. NEWBURY:  
 24 Q. At the time, and it refers back to Section 3  
 25 as well. I should show you that.

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1 MR. ABBOTT:  
 2 A. Yeah, and part--and in terms of drafting that  
 3 legislation, I did play a significant part in  
 4 it because I had known, based on my experience  
 5 right up to and including the department, that  
 6 there were these ambiguities, as it were, as  
 7 to the roles and relationships and working  
 8 relationships and in some other legislation in  
 9 other sectors, those types of questions had  
 10 sort of been addressed. So we said let's  
 11 bring those good things, as it were, into this  
 12 legislation.  
 13 MS. NEWBURY:  
 14 Q. Okay. So you were -  
 15 THE COMMISSIONER:  
 16 Q. Excuse me, Ms. Newbury.  
 17 MS. NEWBURY:  
 18 Q. Sure.  
 19 THE COMMISSIONER:  
 20 Q. But actually this is right on a topic that I  
 21 had a question for. So can I just -  
 22 MS. NEWBURY:  
 23 Q. Yes, absolutely.  
 24 THE COMMISSIONER:  
 25 Q. - slip in here, and it really went to that

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1 point. Does this legislation reflect an  
 2 exercise in theory or were the departments and  
 3 the authorities having a problem and the  
 4 department said "well, let's make this crystal  
 5 clear, so nobody can doubt it"?  
 6 MR. ABBOTT:  
 7 A. Over time, there were a number of instances  
 8 where there was, sort of, a clash in both  
 9 required actions and in vision and  
 10 interpretation, both from the authorities'  
 11 side, both at the board level and at the staff  
 12 level and in the government side, at the  
 13 ministerial, premier/ministerial level, and at  
 14 the bureaucratic level. So when the decision  
 15 was made to set up the health authorities and  
 16 my involvement in that, I said "well, this is  
 17 an opportune time now to let's get this right  
 18 and let's go back to some very basic  
 19 principles here. What is it the government  
 20 really wanted and what did it really want to  
 21 do in terms of directing the affairs of a  
 22 health authority, and make sure we  
 23 specifically identify those." We put those--  
 24 so in consultation within our own staff, with  
 25 the health authorities, with our legal counsel

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1 and with the Cabinet secretariat, we put that  
 2 together and then presented that to Cabinet as  
 3 a major difference from how business had been  
 4 operated up until this was passed.  
 5 THE COMMISSIONER:  
 6 Q. So any ambiguities that might have been there  
 7 and might have led to difficulty in the past  
 8 would hopefully be solved by this legislation?  
 9 MR. ABBOTT:  
 10 A. Yes.  
 11 THE COMMISSIONER:  
 12 Q. Sorry, Ms. Newbury.  
 13 MS. NEWBURY:  
 14 Q. Thank you. Now Ms. Dawe, Joan Dawe, Chair of  
 15 the Board of Trustees at the time you were  
 16 deputy minister, and as I understand her  
 17 evidence, stated that the authorities, and I  
 18 think, I'm not sure if she was referring to  
 19 all, but certainly Eastern Regional Health  
 20 Authority operated in a manner leaning towards  
 21 following the spirit and intent of the  
 22 Regional Health Authorities Act, even though  
 23 it had not yet been proclaimed.  
 24 MR. ABBOTT:  
 25 A. Yes.

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1 MS. NEWBURY:  
 2 Q. Were you aware that that was her view of  
 3 Eastern Health's approach to this legislation?  
 4 MR. ABBOTT:  
 5 A. Yeah, that wouldn't surprise me, and as a  
 6 department, we were, you know, sort of trying  
 7 to do the same thing, recognizing when push  
 8 came to shove, we had followed the existing  
 9 legislation, but the spirit and intent was  
 10 what we were working towards.  
 11 MS. NEWBURY:  
 12 Q. Okay, and aside from the route that you just  
 13 explained about the minister having this  
 14 ability to provide or apply pressure and also  
 15 recognizing that this Regional Health  
 16 Authority Act is being followed, at least in  
 17 spirit and intent, before it came into force,  
 18 aside from that part, did Eastern Health ever  
 19 look to the Department of Health in an  
 20 advisory capacity, you know, just for extra  
 21 feedback, even if Department of Health wasn't  
 22 particularly interested from its own  
 23 perspective in directing Eastern Health one  
 24 way or the other? Would Eastern Health say  
 25 "listen, you know, it would be useful to have

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1 another perspective" on an issue and actually  
 2 go to Department of Health for that purpose?  
 3 MR. ABBOTT:  
 4 A. Yeah, I would accept that it would be  
 5 generally though in the context, "this is how  
 6 we're approaching it, and are you okay with  
 7 it?" more so.  
 8 MS. NEWBURY:  
 9 Q. Okay.  
 10 MR. ABBOTT:  
 11 A. They were very careful not to come looking for  
 12 advice, because it's one of these cases, you  
 13 seek it, you might not like it. So they  
 14 weren't going down that road very often.  
 15 MS. NEWBURY:  
 16 Q. Okay.  
 17 MR. ABBOTT:  
 18 A. But it would be more in, "look, this is how  
 19 we're approaching the issue. Is it acceptable  
 20 to you?" and if they thought it might require  
 21 the minister's general okay or acceptance, you  
 22 know, "can you tell us if the minister might  
 23 be okay with it?"  
 24 MS. NEWBURY:  
 25 Q. Right. So it's not looking for detailed

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1 advice as such?  
 2 MR. ABBOTT:  
 3 A. No.  
 4 MS. NEWBURY:  
 5 Q. But running it by the Department of Health to  
 6 give the minister a chance to say "no, I don't  
 7 like -  
 8 MR. ABBOTT:  
 9 A. Yes.  
 10 MS. NEWBURY:  
 11 Q. - it to go that way"?  
 12 MR. ABBOTT:  
 13 A. Yeah, and depending on the working  
 14 relationships and that might have happened at  
 15 multiple levels, but the CEOs would certainly  
 16 be in contact with me around--on the high  
 17 level critical issues that they thought they  
 18 needed to do just that.  
 19 MS. NEWBURY:  
 20 Q. Okay, and would you agree that the Department  
 21 of Health, and in particular the minister,  
 22 would have significant experience in dealing  
 23 with public issues, given that it's  
 24 accountable routinely to the public,  
 25 particularly in the House of Assembly?

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1 MR. ABBOTT:  
 2 A. Well, I mean, that's, you know, certainly a  
 3 role, and the minister's role. Then you'd  
 4 have to look at it for each minister, their  
 5 experience with that, in terms of holding  
 6 office, holding elected office and holding  
 7 ministerial office, and obviously that would  
 8 vary through the--you know, over time their  
 9 responsibility doesn't change, but their  
 10 experience to execute does.  
 11 MS. NEWBURY:  
 12 Q. Okay, and of course, even if you have a new  
 13 minister, then you've got some continuity in  
 14 terms of the officials at the Department of  
 15 Health?  
 16 MR. ABBOTT:  
 17 A. Well, yes. Again, that does vary.  
 18 MS. NEWBURY:  
 19 Q. That changes to.  
 20 MR. ABBOTT:  
 21 A. If you look at when I came in, there was a  
 22 change, you know, of both minister and deputy  
 23 minister within a very short period of time.  
 24 So that does happen, and so you're dependent--  
 25 then a minister is dependent obviously on, as

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1 I was as deputy minister, would be dependent  
 2 on continuity, you know, down the line as it  
 3 were.  
 4 MS. NEWBURY:  
 5 Q. Sure, okay. Did you feel that Eastern Health  
 6 was considering the Department of Health's--  
 7 you know, whether it was deputy minister or  
 8 the minister, their sort of experience and  
 9 advice in terms of their dealings,  
 10 interactions with public and individual people  
 11 as it related to health issues? Did you see  
 12 any of the discussions in that light or was it  
 13 simply, as you explained earlier, running  
 14 issues by the Minister to give him a chance to  
 15 -  
 16 MR. ABBOTT:  
 17 A. I think it's more the latter. They felt, and  
 18 because they were literally dealing, you know,  
 19 with the patients and clients and residents on  
 20 a daily basis and their clinicians and others,  
 21 that they felt they would be in the best  
 22 position how to engage and communicate and  
 23 disclose with them.  
 24 MS. NEWBURY:  
 25 Q. So you didn't feel that Eastern Health saw the

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1 Department of Health as having any particular  
 2 expertise or -  
 3 MR. ABBOTT:  
 4 A. No, ours would be at a very high, you know,  
 5 level, media piece, not on a individual case  
 6 basis.  
 7 MS. NEWBURY:  
 8 Q. But how about on that piece there, dealing  
 9 with the--there were two issues that Eastern  
 10 Health had to deal with.  
 11 MR. ABBOTT:  
 12 A. Yes.  
 13 MS. NEWBURY:  
 14 Q. They had to deal with patient notification,  
 15 also the public notification issue.  
 16 MR. ABBOTT:  
 17 A. I think on the public notification, because  
 18 then that's--you see the minister's office  
 19 being more engaged in that over time because  
 20 then it becomes "a public issue" that the  
 21 minister then they would need to know where he  
 22 was and what communication style and messaging  
 23 he was comfortable with, and that theirs could  
 24 be consistent with that, if need be.  
 25 MS. NEWBURY:

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1 Q. During your time with the Health Care  
 2 Corporation of St. John's Board, I understand  
 3 your evidence last week that the governance  
 4 model was more or less a hybrid model?  
 5 MR. ABBOTT:  
 6 A. Yes.  
 7 MS. NEWBURY:  
 8 Q. Was it more policy governance and a little bit  
 9 of dealing with critical operational issues?  
 10 MR. ABBOTT:  
 11 A. Well -  
 12 MS. NEWBURY:  
 13 Q. Or half and half?  
 14 MR. ABBOTT:  
 15 A. - you know, to look at that, I would say  
 16 almost, you know, I was going to say like a  
 17 60/40. What we were seeing is that we had  
 18 committees in place that were speaking--  
 19 looking at program delivery, operational  
 20 issues, and then at the full Board level, we  
 21 dealt with things from a policy--you know,  
 22 from the committees, based on their  
 23 recommendation and then the larger policy  
 24 issues facing us. So we didn't get into, at  
 25 the full Board level, get into a lot of

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1 detailed operational issues. For instance, we  
 2 would not have dealt with an individual client  
 3 issue or patient issue or physician issue,  
 4 unless it had been screened through one of the  
 5 committees, and as a result of their  
 6 assessment, "look, this has some significant  
 7 implications for the Board and/or the  
 8 organization and we need to bring it forward."  
 9 MS. NEWBURY:  
 10 Q. Okay. So the committees themselves would tend  
 11 to deal much more with operational issues and  
 12 they would filter some critical things on  
 13 through to the full Board?  
 14 MR. ABBOTT:  
 15 A. Yes.  
 16 MS. NEWBURY:  
 17 Q. Okay, and in terms of having those matters  
 18 brought--I assume there has to be some process  
 19 for matters that are operational in nature to  
 20 be brought to the committees themselves.  
 21 MR. ABBOTT:  
 22 A. Um-hm.  
 23 MS. NEWBURY:  
 24 Q. And I'm just wondering what criteria had been  
 25 established to ensure that appropriate

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1 operational issues were brought to those  
 2 committees?  
 3 MR. ABBOTT:  
 4 A. Well each committee would sort of address that  
 5 for themselves. As I say, we had a quality  
 6 initiatives committee and it was dealing with  
 7 that on a program-by-program basis. So they  
 8 would have talked to the program and clinical  
 9 chiefs, what are the issues, what do you need  
 10 to bring forward to discuss, the impacts on  
 11 quality and how we can improve there. We had  
 12 a finance and properties committee, so it  
 13 would have looked at all of those kinds of  
 14 issues. There was the -  
 15 MS. NEWBURY:  
 16 Q. Would those all be documented, the criteria?  
 17 MR. ABBOTT:  
 18 A. Yes, and then obviously the medical advisory  
 19 committee, in terms of clinical issues and  
 20 they were fully documented, and there were -  
 21 MS. NEWBURY:  
 22 Q. Including the criteria as to what would be  
 23 brought to -  
 24 MR. ABBOTT:  
 25 A. Yeah, I--on that, I can't really say what they

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1 would have, you know, would have said on that.  
 2 I think, you know, it was fairly open. If a  
 3 program director or clinical chief or others  
 4 within that program wanted to bring something  
 5 forward, I don't think anybody was going to  
 6 say don't. To the degree they're going to  
 7 discuss it would be another matter.  
 8 MS. NEWBURY:  
 9 Q. Okay, and then the next level, in terms of the  
 10 committee filtering it on through, if  
 11 necessary, to the full Board itself, were  
 12 there any criteria established -  
 13 MR. ABBOTT:  
 14 A. Well, they would have--the reports that I  
 15 recall spoke of their deliberations, their  
 16 minutes, what they decided and they might have  
 17 put on top of that a memo to say "we met, we  
 18 discussed and the issue that the Board needs  
 19 to be apprised of is this, and here's why."  
 20 Many times it was just tabled for information,  
 21 that would have been in our--tabled as part of  
 22 the agenda, but we wouldn't necessarily then  
 23 have to discuss it.  
 24 MS. NEWBURY:  
 25 Q. So it was basically left up to the judgment of

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1 the members of the -  
 2 MR. ABBOTT:  
 3 A. And the chair, yes.  
 4 MS. NEWBURY:  
 5 Q. And the chair of the board?  
 6 MR. ABBOTT:  
 7 A. The chair of those committees.  
 8 MS. NEWBURY:  
 9 Q. Of the committees?  
 10 MR. ABBOTT:  
 11 A. Yes.  
 12 MS. NEWBURY:  
 13 Q. Right, okay. You were asked--discussed in  
 14 some detail the July 21st 2005 briefing of the  
 15 minister, and I believe it was your evidence  
 16 that you were concerned with the issue going  
 17 public in an uncontrolled manner, and at that  
 18 point, I think as of July 21st, there were  
 19 several patients who'd already been advised of  
 20 the conversion of their results, and you had a  
 21 concern yourself--I'm not sure if you  
 22 articulated it at the time, but you did have a  
 23 concern about the impact upon patients who  
 24 might hear this for the first time through the  
 25 media.

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1 MR. ABBOTT:  
 2 A. Yes.  
 3 MS. NEWBURY:  
 4 Q. So I've captured that correctly, have I?  
 5 MR. ABBOTT:  
 6 A. Yes.  
 7 MS. NEWBURY:  
 8 Q. Okay, and I think you -  
 9 MR. ABBOTT:  
 10 A. Well, the media or others, you know.  
 11 MS. NEWBURY:  
 12 Q. Right, sure, if the word got out, then it  
 13 might--and it's not getting out in a  
 14 controlled manner, then you had some concerns  
 15 about how that would impact patients.  
 16 MR. ABBOTT:  
 17 A. Yes.  
 18 MS. NEWBURY:  
 19 Q. Okay, and I think it was your evidence as well  
 20 that others at the briefing had an alternate  
 21 view, and the reasons why they did not want to  
 22 go public at that time, and this is my  
 23 understanding of your evidence, so correct me  
 24 if I'm wrong, your understanding was that  
 25 Eastern Health was still trying to get

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1 information and a handle on the issue and  
 2 there were several questions: what is it that  
 3 we're really dealing with here; what do these  
 4 conversion rates really mean; what can we  
 5 tell, should we tell at this juncture. Were  
 6 these questions raised as it related to  
 7 patient notification, as well as notification  
 8 to the public at large?  
 9 MR. ABBOTT:  
 10 A. I think it's fair to say that it was on the  
 11 form in terms of patient notification. If  
 12 we're going to be notifying patients, what are  
 13 we going to tell them based on what do we  
 14 know?  
 15 MS. NEWBURY:  
 16 Q. Okay. So it's individual patient notification?  
 17 MR. ABBOTT:  
 18 A. Yes.  
 19 MS. NEWBURY:  
 20 Q. And was it suggested by anyone at that  
 21 meeting, July 21st 2005, or any time in the  
 22 next couple of weeks when these issues were  
 23 being discussed, that the ER/PR results that  
 24 were under scrutiny at that time, may in fact  
 25 be reliable?

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1 MR. ABBOTT:  
 2 A. In terms of the results provided by whom?  
 3 MS. NEWBURY:  
 4 Q. Just the retesting results. And I ask you  
 5 this question -  
 6 MR. ABBOTT:  
 7 A. Okay, the retest results, okay.  
 8 MS. NEWBURY:  
 9 Q. Because you were--one of the questions that  
 10 you understood Eastern Health was posing, what  
 11 is it that we're really dealing with here and  
 12 I guess, I'm wondering whether there was any  
 13 expression by anyone there that perhaps there  
 14 isn't a concern about reliability of the  
 15 results. I want to understand what you took  
 16 from those discussions.  
 17 MR. ABBOTT:  
 18 A. Well, it was on their own testing, not on the  
 19 retesting. I think it's fair to say that the  
 20 retest results were confirming that they had  
 21 an issue and then that required them to send,  
 22 you know--the conclusion then was we'd better  
 23 send them all out because we recognized that  
 24 there is some inconsistency, obviously, now in  
 25 the results from our own lab.

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1 MS. NEWBURY:  
 2 Q. Okay. So, understood that there was some  
 3 concerns about the retest results, but did you  
 4 have any reason -  
 5 MR. ABBOTT:  
 6 A. No, no, I don't think I'm saying that. All  
 7 I'm saying is they tested, they retested and  
 8 you know, found that there was a problem  
 9 through the retest and based on that, they  
 10 knew they had a problem in the lab and said we  
 11 will take all of those and back ten years to  
 12 retest all.  
 13 MS. NEWBURY:  
 14 Q. Okay. So, as of the July 21 meeting or in the  
 15 next few weeks following that, if an ER  
 16 negative patient had approached Eastern Health  
 17 and inquired about her results, about the  
 18 reliability of her results--at this point in  
 19 time, of course, the patient only knows one  
 20 result.  
 21 MR. ABBOTT:  
 22 A. Yes.  
 23 MS. NEWBURY:  
 24 Q. She might have been told in 2003 or 1999 or  
 25 what have you that she was ER negative. So,

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1 if a patient from that group came forward to  
 2 Eastern Health in late July or early August,  
 3 is it your understanding that she could not be  
 4 assured that those initial results were  
 5 reliable?  
 6 MR. ABBOTT:  
 7 A. Well, there was no discussion around that, at  
 8 all and I really can't answer that.  
 9 MS. NEWBURY:  
 10 Q. Okay. And in terms of notification of the  
 11 individual patients at that time and I get the  
 12 sense that Eastern Health is trying to get a  
 13 handle on how large the problem is?  
 14 MR. ABBOTT:  
 15 A. Yes.  
 16 MS. NEWBURY:  
 17 Q. And they're perhaps also trying to get a  
 18 handle on what the cause of the problem is, is  
 19 that fair to say?  
 20 MR. ABBOTT:  
 21 A. Well, that there's an issue in the lab and now  
 22 how do we find out what that is.  
 23 MS. NEWBURY:  
 24 Q. Okay. In terms of the individual patient,  
 25 would you have thought it to be of immediate

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1 concern to that individual patient what the  
 2 source of the problem is, as opposed to  
 3 whether or not her results are reliable or  
 4 not?  
 5 MR. ABBOTT:  
 6 A. I guess, at that time it would be irrespective  
 7 how we got there.  
 8 MS. NEWBURY:  
 9 Q. Um-hm.  
 10 MR. ABBOTT:  
 11 A. We had identified that there is an issue with  
 12 your test. We have determined that we need to  
 13 do a retest and as a result of that retest, we  
 14 will tell you what you, obviously, you need to  
 15 know through your physician. So, the cause of  
 16 all of that, how important that was, literally  
 17 at that time, for a patient, I don't know, we  
 18 didn't really focus and I know I didn't focus  
 19 on that particular, that aspect.  
 20 MS. NEWBURY:  
 21 Q. And did you focus at all on whether or not an  
 22 individual patient would have, as an immediate  
 23 concern, whether or not she or he, in some  
 24 cases, might be part of a small group or a  
 25 large group of people whose tests might be

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1 inaccurate?  
 2 MR. ABBOTT:  
 3 A. No, because I think when it was presented to  
 4 us it was--you know, we were talking a large  
 5 number. So, it didn't--I went immediately in  
 6 my thinking that we have a large number of  
 7 people that potentially could be impacted  
 8 here.  
 9 MS. NEWBURY:  
 10 Q. All right. So, at that time, it was  
 11 understood that ER negative patient results  
 12 were unreliable? They really couldn't assure  
 13 one given patient that her results -  
 14 MR. ABBOTT:  
 15 A. No, based on what -  
 16 MS. NEWBURY:  
 17 Q. - were accurate.  
 18 MR. ABBOTT:  
 19 A. - I understood happened, that would be fair.  
 20 MS. NEWBURY:  
 21 Q. But they didn't want to disclose that to the  
 22 patient at the time. And do I understand that  
 23 it was the fact that they didn't know how  
 24 large the problem was and the cause of the  
 25 problem. Was that playing any role in the

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1 decision not to notify the patient at the  
 2 time?  
 3 MR. ABBOTT:  
 4 A. Yeah, and how to explain it, so all of the--  
 5 you know, pull all of that together and the  
 6 view being then, started to be expressed by  
 7 the oncologists that, you know, how best to do  
 8 this would be through their physician as  
 9 opposed to, say, a letter coming from Eastern  
 10 Health or an approach from Eastern Health,  
 11 itself.  
 12 MS. NEWBURY:  
 13 Q. So, the mechanism of -  
 14 MR. ABBOTT:  
 15 A. Yes.  
 16 MS. NEWBURY:  
 17 Q. - notification was important at the time. And  
 18 was there also concern expressed by the  
 19 oncologists about providing to the patient,  
 20 information that the results were unreliable,  
 21 but they don't know yet -  
 22 MR. ABBOTT:  
 23 A. Yes.  
 24 MS. NEWBURY:  
 25 Q. - whether or not there's going to be a

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1 different -

2 MR. ABBOTT:

3 A. And there was--so, you start to see reference

4 to raising, you know, undue concern, fear

5 amongst the patients in the absence of telling

6 there's a problem, but having no real

7 information to follow up on that.

8 MS. NEWBURY:

9 Q. Okay. Did anyone at the meeting, either July

10 21, 2005 or your subsequent meeting of August

11 5 or any time around this period consider the

12 option that the patient should be notified,

13 simply that their results are unreliable at

14 this time and that we're going to take steps

15 to address that?

16 MR. ABBOTT:

17 A. Well not the way you put it, we thought that

18 there is an issue and it would have an impact

19 on your test results, so unless we're saying

20 the same thing here, I would think, you know,

21 for one, that yes, my opinion was that we

22 should do that now. How we frame up that

23 letter and communicate, we'd obviously have to

24 work on it.

25 MS. NEWBURY:

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1 Q. So you expressed that view and did Minister

2 Ottenheimer express that view as well, in

3 those terms?

4 MR. ABBOTT:

5 A. No. As I indicated before, I guess he kept

6 his own counsel, we were there to have the

7 briefing, get the views and opinions and then

8 he, you know, took that under consideration

9 and, but in saying that, he had asked Eastern

10 Health to provide him with more information

11 and to, and that's why we had a series of

12 meetings in August month.

13 MS. NEWBURY:

14 Q. Okay. Did anyone discuss the issue in terms

15 of the right of the patient for disclosure to

16 -

17 MR. ABBOTT:

18 A. Again, we talked about I think the full range

19 of options here and considerations and I would

20 say yes, that was considered.

21 MS. NEWBURY:

22 Q. Were you the only one speaking -

23 MR. ABBOTT:

24 A. No, I think everybody, you know, understood

25 what the options were here and what were the

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1 factors to be considered, but as that meeting

2 and subsequent meetings indicated, how they

3 concluded was around balancing both who and

4 what and how.

5 MS. NEWBURY:

6 Q. Right. And those deliberations took place

7 over more than just one meeting.

8 MR. ABBOTT:

9 A. Yes.

10 MS. NEWBURY:

11 Q. Was there any discussion about seeking

12 guidance from someone perhaps outside of

13 Eastern Health in terms of the disclosure

14 issue, the how, what, when issue?

15 MR. ABBOTT:

16 A. Not at that time, no.

17 MS. NEWBURY:

18 Q. Okay, and was there any thought to engaging a

19 consultation with the ethics committee at that

20 time?

21 MR. ABBOTT:

22 A. I'm not sure when the, in terms of ethics

23 review and consideration was first identified,

24 but it wasn't at that early stage, no.

25 MS. NEWBURY:

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1 Q. I know there was an ethics consultation

2 regarding the samples of deceased patients -

3 MR. ABBOTT:

4 A. That's right.

5 MS. NEWBURY:

6 Q. About a year later.

7 MR. ABBOTT:

8 A. At one point, I can't place it, when the

9 ethics review was being suggested, I was under

10 the impression that we were looking at the

11 whole issue that we were going to, you know,

12 this whole matter would be considered by

13 ethics committee in terms of how the issue was

14 being addressed and how patients were being

15 notified, as well as obviously how the

16 deceased were being addressed. It was only

17 later that I realized that we were only

18 dealing with one component.

19 MS. NEWBURY:

20 Q. Okay, and it wasn't discussed in those early

21 meetings.

22 MR. ABBOTT:

23 A. No.

24 MS. NEWBURY:

25 Q. Once it was decided that the patients would



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1 not be notified until they had the results  
 2 from their retesting, and this was back in  
 3 July, August -  
 4 MR. ABBOTT:  
 5 A. Yes.  
 6 MS. NEWBURY:  
 7 Q. Was there any discussion about having a  
 8 contingency plan in place in case there were  
 9 any obstacles at all faced by Eastern Health  
 10 in their plan and an example might be a delay  
 11 in receiving the results back from Eastern  
 12 Health or, you know, encountering a larger  
 13 than expected number of samples to be retested  
 14 or any other problems that might -  
 15 MR. ABBOTT:  
 16 A. There was no discussion in, you know, that I  
 17 was present around that, the view was we will  
 18 be sending these out, we're doing it ASAP. As  
 19 soon as we get the results back, we will be  
 20 doing notification and the view was that that  
 21 was going to take place over a series of  
 22 weeks, maybe a month or so and so the time  
 23 period would be contained.  
 24 MS. NEWBURY:  
 25 Q. Right.

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1 MR. ABBOTT:  
 2 A. But to your point, there was no contingency  
 3 plan talked about in my presence and I do not  
 4 know if there was one developed.  
 5 MS. NEWBURY:  
 6 Q. Did anyone express the view that, you know,  
 7 we've decided to wait until we get the retest  
 8 results back, but we're going to have to keep  
 9 a close eye on this because if the time slips  
 10 away from us, you know, we've got a situation  
 11 here where there are a number of patients with  
 12 unreliable results and perhaps, you know, if  
 13 we can't get the results back and let them  
 14 know in a timely fashion, maybe we ought to  
 15 reconsider and notify them immediately that  
 16 there is a potential problem -  
 17 MR. ABBOTT:  
 18 A. There was no specific conversation and  
 19 discussion around that, but that was something  
 20 I obviously was starting to see in September  
 21 month that this was now starting to and  
 22 certainly to October, as I said the other day,  
 23 this was starting to, shall we say unravel in  
 24 terms of what we thought how this was going to  
 25 go, verses how in fact it went.

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1 MS. NEWBURY:  
 2 Q. Right. And the unravelling in October was  
 3 primarily due to the breaking of the story in  
 4 the media?  
 5 MR. ABBOTT:  
 6 A. Well, no and plus the delays and collecting  
 7 samples, you know, we--they weren't all there,  
 8 getting them in from the regions, getting the  
 9 test results back and how patients were being  
 10 notified and it wasn't going to done like  
 11 clockwork, as I guess one thought it was when  
 12 we discussed it in the latter part of August.  
 13 MS. NEWBURY:  
 14 Q. So were there any plans at that time, aside  
 15 from the media story breaking, were there any  
 16 plans then to reconsider we should send out a  
 17 letter?  
 18 MR. ABBOTT:  
 19 A. No, not from the department, no.  
 20 MS. NEWBURY:  
 21 Q. I'd like to refer to exhibit P-0804 please?  
 22 This is a document that you were shown  
 23 earlier, it's an e-mail that originated from  
 24 Ross Reid.  
 25 MR. ABBOTT:

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1 A. Uh-hm.  
 2 MS. NEWBURY:  
 3 Q. And you indicated, I believe, that you treated  
 4 this e-mail request from Mr. Reid as being a  
 5 concern, particular to an individual?  
 6 MR. ABBOTT:  
 7 A. Yes.  
 8 MS. NEWBURY:  
 9 Q. Okay, and I just wanted to refer you there to  
 10 the content of Mr. Reid's e-mail, if you can  
 11 see about halfway down the page there, Mr.  
 12 Reid says, "This woman has three concerns at  
 13 this point. The first one, the mistake is a  
 14 serious one that will have an impact on  
 15 hundreds of women and their families. Point  
 16 two, she believes she would never have been  
 17 told if she did not ask, did not press for  
 18 information about her own medical condition.  
 19 The question is not just that those with  
 20 change results be told, but that all be told,  
 21 it is their right to expect this level of  
 22 disclosure and respect." And item No. 3, "The  
 23 retesting is taking time as Mount Sinai is  
 24 very busy and this is time that many women do  
 25 not have. She believes it is not good enough

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1 to wait for one hospital lab, that every  
 2 effort should be made to make up for the five  
 3 months of therapy some women may have lost."  
 4 Now, did you consider the possibility that  
 5 this friend and the concerns are relayed by  
 6 Mr. Reid, that they're concerns, not really  
 7 just addressing her own personal situation,  
 8 but in some sense she seems to be considering  
 9 herself representative of other women who have  
 10 had problems with their test results and in  
 11 some ways, acting as an advocate for other  
 12 women. Did you read the e-mail like that at  
 13 all?  
 14 MR. ABBOTT:  
 15 A. Not that way, again it was, you know, a person  
 16 relating to Mr. Reid who is now relating it to  
 17 me, so the effect of what was relayed here and  
 18 its importance, on an individual basis, I felt  
 19 at that time that these were obviously  
 20 legitimate concerns that this individual has  
 21 and the best way to have them addressed and  
 22 resolved was that she speak to Dr. Williams.  
 23 And I didn't generalize it to a larger  
 24 population and a larger concern at this point.  
 25 I certainly noted it, we had seen some other

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1 reports in the media that there were, issues  
 2 had been raised and our experience has been  
 3 that as those issues were raised and we, one  
 4 of our staff had contacted Eastern Health, it  
 5 was explained as to, you know, what that  
 6 situation was, vis-a-vis that particular  
 7 person that would have reported in the media.  
 8 And again, when you look at this, that was in  
 9 that same context.  
 10 MS. NEWBURY:  
 11 Q. Now if you look down towards the end, the very  
 12 end of the e-mail from Mr. Reid in his last  
 13 full paragraph, he states, "I pass this on as  
 14 a perspective not always considered and would  
 15 appreciate guidance on how to proceed."  
 16 MR. ABBOTT:  
 17 A. Yes.  
 18 MS. NEWBURY:  
 19 Q. Did you take anything from that that maybe Mr.  
 20 Reid thought this is a perspective, not just  
 21 we want to take care of this individual's  
 22 concerns, but this is a perspective that might  
 23 be of interest to the department?  
 24 MR. ABBOTT:  
 25 A. Well, again, depending on how you read it, I

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1 didn't read any more, this is a perspective  
 2 not always considered, well I didn't  
 3 necessarily had been saying that it hadn't  
 4 been, I had, others probably had and would  
 5 appreciate guidance on how to proceed, well  
 6 that was my response back that we would  
 7 suggest that, you know, a course of action  
 8 would be to contact Bob Williams directly.  
 9 MS. NEWBURY:  
 10 Q. And in your reply, the top of the page, you  
 11 state to Mr. Reid "thanks, Ross, for this  
 12 information. Your friend's issues and  
 13 concerns are one shared by us at the  
 14 department, as well as Eastern Health."  
 15 MR. ABBOTT:  
 16 A. Um-hm.  
 17 MS. NEWBURY:  
 18 Q. Did you think that perhaps Mr. Reid might be  
 19 under the impression that you're taking this  
 20 into account, not just in terms of Eastern  
 21 Health and Dr. Williams taking care of this,  
 22 but that the Department of Health is sharing  
 23 her concerns and might perhaps do something  
 24 more than just refer her on to Dr. Williams?  
 25 MR. ABBOTT:

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1 A. No.  
 2 MS. NEWBURY:  
 3 Q. Okay. Did you have any other discussions with  
 4 Mr. Reid subsequent to this e-mail about that  
 5 particular issue?  
 6 MR. ABBOTT:  
 7 A. No, he did thank me, you know, for doing what  
 8 I did and that we had taken it--you know, we  
 9 had addressed his request.  
 10 MS. NEWBURY:  
 11 Q. Now last week, you testified about a meeting  
 12 with Peter Dawe of the Canadian Cancer  
 13 Society, and you had relayed to him about some  
 14 concerns and reservations that had been raised  
 15 by Minister Ottenheimer, and as I understood  
 16 it, the concerns were not so much that Mr.  
 17 Dawe was criticizing, but how he was  
 18 criticizing in the media some of the actions -  
 19 MR. ABBOTT:  
 20 A. Yes.  
 21 MS. NEWBURY:  
 22 Q. - particular to Eastern Health, as opposed to  
 23 the Department of Health?  
 24 MR. ABBOTT:  
 25 A. No, no.

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1 MS. NEWBURY:  
 2 Q. Oh, it was Department of Health, was it?  
 3 MR. ABBOTT:  
 4 A. It was department/government.  
 5 MS. NEWBURY:  
 6 Q. Okay. Did that include Eastern Health or was  
 7 it just -  
 8 MR. ABBOTT:  
 9 A. No, no.  
 10 MS. NEWBURY:  
 11 Q. Just the Department of Health, okay, and you  
 12 stated that some of his language--or you  
 13 relayed to Mr. Dawe, as I understand it, that  
 14 some of his language went further than we  
 15 think is warranted, and I take the "we" to be  
 16 the Department of Health?  
 17 MR. ABBOTT:  
 18 A. No, we, the minister.  
 19 MS. NEWBURY:  
 20 Q. We, the minister, okay, and you were asked by  
 21 Mr. Coffey if you used any examples in trying  
 22 to relay this information -  
 23 MR. ABBOTT:  
 24 A. Yes.  
 25 MS. NEWBURY:

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1 Q. - to Mr. Dawe, and you couldn't recall last  
 2 week. I'm just wondering if you've had a  
 3 chance to think of any examples?  
 4 MR. ABBOTT:  
 5 A. Well, the one that seems to come to mind,  
 6 because I thought about it after, was with  
 7 respect to--I think there was an issue around  
 8 medical transportation and I did--I think I  
 9 had a document and I showed him, "look, you  
 10 know, this is"--and I might have had the  
 11 transcript, you know, and I indicated to him  
 12 this was what he had said in the media, which  
 13 had really made it seem, I think, that we  
 14 either had none nothing or very little or not  
 15 enough or weren't responsive, and we said, you  
 16 know, and sort of recognized we may not have  
 17 gone, in terms of the initiative of the day,  
 18 as far as the Cancer Society would have liked,  
 19 but the way he positioned it in the media and  
 20 in terms of what he had said, we thought was,  
 21 you know, less than helpful or appropriate and  
 22 I indicated to him that, and he said "fair  
 23 enough. I understand what you're--why you're  
 24 telling me this and why you say that," and I  
 25 think his response, "it wasn't my intent" what

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1 have you, and which I accepted, but I said,  
 2 you know, "Peter, the words are what they are,  
 3 and that's what we are hearing. This is what  
 4 we are reading, and it is causing some  
 5 consternation within the--with the minister  
 6 and amongst his colleagues."  
 7 MS. NEWBURY:  
 8 Q. And what is it about the medical  
 9 transportation issue in particular that caused  
 10 some difficulties with the minister?  
 11 MR. ABBOTT:  
 12 A. Again, not having that document in front of  
 13 me, it was how he responded to that or an  
 14 issue around that, and the fact that  
 15 government was dealing with it and it was  
 16 making changes, it was making improvements, as  
 17 well as other investments. We talked about  
 18 Herceptin, other things being considered, and  
 19 it was just the minister was having  
 20 difficulty, you know, himself and probably  
 21 amongst his colleagues and saying, look, you  
 22 know, why are we getting these criticisms when  
 23 we're doing all--supposedly doing all these  
 24 things. Is the Canadian Cancer Society, you  
 25 know, understanding what we're doing and are

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1 these criticisms warranted? And that was--or  
 2 perceived criticisms, anyway, warranted?  
 3 And because of the relationship and the  
 4 nature of it, and we felt, the department, and  
 5 I felt as deputy minister that we needed to  
 6 sustain a good working relationship with the  
 7 Canadian Cancer Society and if this was going  
 8 to be undermining that relationship,  
 9 particularly with the minister, then the onus  
 10 was on us, and I think that was the discussion  
 11 I had with the minister, then you need to make  
 12 sure that is communicated to Mr. Dawe. Well,  
 13 he agreed, but me making that suggestion, I  
 14 was assuming or probably hoping that it would  
 15 be the minister that would have the  
 16 conversation with him, but it turned out that  
 17 it was going to--I was the point man for that.  
 18 MS. NEWBURY:  
 19 Q. Can you recall whether there was any reference  
 20 to any of the public comments that Mr. Dawe  
 21 was making about ER/PR issues, and in  
 22 particular, whether there might be impact,  
 23 endangerment or impact upon lives of patients?  
 24 MR. ABBOTT:  
 25 A. No. No, I don't recall that. I think, as I

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1 said, there were--I know there were, you know,  
 2 Peter Dawe had been in the media around this  
 3 issue, obviously in the fall, and I remember  
 4 having a conversation, I believe with George  
 5 Tilley, to say "look, Peter is making some  
 6 comments. Are you in contact with him? Are  
 7 you making the information available to him,  
 8 so that he is informed? And that would  
 9 minimize any complaints or criticisms that he  
 10 felt he would have to make."  
 11 MS. NEWBURY:  
 12 Q. So if it turns out that he was fully informed,  
 13 but still saw fit to criticize, where  
 14 appropriate, would there still be any pressure  
 15 applied to Mr. Dawe to -  
 16 MR. ABBOTT:  
 17 A. Well, then it speaks to--you know, then it  
 18 would speak to, I guess, you know, why is he  
 19 doing it if he had the information. And  
 20 again, part of this is how he's communicating  
 21 and, you know, and the world we're living in,  
 22 people are very sensitive to criticism. I  
 23 don't care who it is, minister or not, Eastern  
 24 Health authority or not. So you know, that  
 25 was just the reality and to me, by me having

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1 that conversation with him, if it helped,  
 2 great. If he dismissed it, well, that's--you  
 3 know, so be it. But he, as I said, we had a  
 4 good conversation. He thanked me for bringing  
 5 that to his attention. He sort of basically  
 6 understood, accepted--not that he was saying  
 7 he was going to change anything, but he would  
 8 be mindful of this on a go-forward basis.  
 9 MS. NEWBURY:  
 10 Q. Okay. But is it fair to say that you could  
 11 both actually have the same information, you  
 12 could both be working from the same set of  
 13 basic facts, as to where the Department of  
 14 Health is on a particular issue, but he still  
 15 might have a different view point?  
 16 MR. ABBOTT:  
 17 A. Oh certainly.  
 18 MS. NEWBURY:  
 19 Q. And you wouldn't expect him, would you, to not  
 20 advocate for something more, over and above  
 21 then perhaps what Department of Health has -  
 22 MR. ABBOTT:  
 23 A. No, no, no, and it was--and again, using  
 24 medical transportation as an example, I was  
 25 quite cognizant of where the Cancer Society

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1 was on that issue, and know some of the  
 2 research they had done, and I know what we  
 3 were doing as a department. So for him to--on  
 4 behalf of the Society, to advocate for more  
 5 improvements and all of that, was not the  
 6 issue. But it was some of the language used  
 7 around that, that was causing the grief.  
 8 MS. NEWBURY:  
 9 Q. Now I understand that that meeting took place  
 10 in January of 2006.  
 11 MR. ABBOTT:  
 12 A. I think that would be -  
 13 MS. NEWBURY:  
 14 Q. That sounds about right to you?  
 15 MR. ABBOTT:  
 16 A. Yes.  
 17 MS. NEWBURY:  
 18 Q. Okay, and so you're saying that if I were to  
 19 go back and look in the couple of weeks before  
 20 that, I would see some article in the news  
 21 that was the source of the consternation for  
 22 the minister?  
 23 MR. ABBOTT:  
 24 A. Yes.  
 25 MS. NEWBURY:

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1 Q. Okay, and you don't recall anything offhand?  
 2 MR. ABBOTT:  
 3 A. I think it might be, you know, as I said, if  
 4 you're looking, that the medical  
 5 transportation piece might be -  
 6 MS. NEWBURY:  
 7 Q. But you can't recall is it a CBC online story  
 8 or something that was in "The Telegram"?  
 9 MR. ABBOTT:  
 10 A. I think it was--no, there was an interview--I  
 11 think it was--you know, it may have been a CBC  
 12 interview.  
 13 MS. NEWBURY:  
 14 Q. It was an interview?  
 15 MR. ABBOTT:  
 16 A. Yes.  
 17 MS. NEWBURY:  
 18 Q. Okay, and you can't recall whether or not  
 19 there was any comment made by Mr. Dawe about  
 20 ER/PR and it endangering lives? You said you  
 21 can't recall it, but would you--if Mr. Dawe  
 22 said there was some discussion about that,  
 23 would you agree or disagree?  
 24 MR. ABBOTT:  
 25 A. To be honest, you know, I really do not

1 remember that being said.  
 2 THE COMMISSIONER:  
 3 Q. Ms. Newbury, it's now five.  
 4 MS. NEWBURY:  
 5 Q. I just had one more -  
 6 THE COMMISSIONER:  
 7 Q. If you have one more.  
 8 MS. NEWBURY:  
 9 Q. Well, one more -  
 10 THE COMMISSIONER:  
 11 Q. One more area?  
 12 MS. NEWBURY:  
 13 Q. Yes.  
 14 THE COMMISSIONER:  
 15 Q. Yes. There are others who have questions to  
 16 ask of the witness, so I suggest we break for  
 17 the day, and you can start in the morning.  
 18 MS. NEWBURY:  
 19 Q. Okay, thank you.  
 20 THE COMMISSIONER:  
 21 Q. Mr. Abbott, I'm sure you would prefer not to  
 22 spend tomorrow morning with us, and only thing  
 23 I can say to you is that there is light at the  
 24 end of the tunnel, and we all hope it's not a  
 25 train.

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

1 MR. ABBOTT:  
 2 A. There is a tomorrow after tomorrow, thank you.  
 3 THE COMMISSIONER:  
 4 Q. 9:30.  
 5 (CONCLUDED AT 5:00 P.M.)

Inquiry on Hormone Receptor Testing

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