

COMMISSION OF INQUIRY  
ON HORMONE RECEPTOR TESTING

BEFORE THE HONOURABLE JUSTICE CAMERON - COMMISSIONER

MAY 8, 2008

Appearances:

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

LIST OF EXHIBITS

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1 THE COMMISSIONER:

2 Q. Please be seated. Mr. Coffey.

3 MR. ROBERT THOMPSON, EXAMINATION BY BERNARD COFFEY, Q.C.

4 - CONTINUED

5 COFFEY, Q.C.:

6 Q. Thank you, Commissioner. If we could open,

7 please, Exhibit P-0312? Thank you. Page

8 five, and this is a copy of that 2:37 p.m.

9 July 19th e-mail, Mr. Thompson, that Mr. Cake

10 forwarded to you at 2:51. Mr. Thompson, the

11 phrase "there's a possibility the significance

12 of any announcement will be minimized"-

13 MR. THOMPSON:

14 A. Um-hm.

15 COFFEY, Q.C.:

16 Q. - coming as it did from Carolyn Chaplin,

17 director of communications in the Department

18 of Health, how would a person in your

19 position, at the time, have interpreted that?

20 MR. THOMPSON:

21 A. Well, it's an ambiguous--it's ambiguously

22 phrased, so I would have had to read into it

23 in some fashion and it could have meant that

24 the potential announcement or publicity on

25 this might be less than initially thought,

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1 because emerging information that she talks  
 2 about in the first line, the significance of  
 3 it is now might be less than what we thought  
 4 this morning. So that's one way that you  
 5 could think about it. The other, based on the  
 6 kinds of things that we know now, is that  
 7 there was an emerging sense within Eastern  
 8 Health that perhaps the immediate--you know,  
 9 that immediate week wasn't the right time to  
 10 go public with this, no matter -  
 11 COFFEY, Q.C.:  
 12 Q. And I appreciate that, but that's what we know  
 13 now. I'm asking about you at the time, as the  
 14 clerk.  
 15 MR. THOMPSON:  
 16 A. Okay.  
 17 COFFEY, Q.C.:  
 18 Q. On the afternoon of July 19th, like in your  
 19 world, how would you have interpreted that?  
 20 MR. THOMPSON:  
 21 A. Well then, the first way that I mentioned  
 22 would probably be the way I would have  
 23 interpreted it.  
 24 COFFEY, Q.C.:  
 25 Q. And so having read this that afternoon, you

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1 would have known that--well, first of all, she  
 2 was advising, on behalf of the Department of  
 3 Health, was advising your office, the Cabinet  
 4 Secretariat, "no action is required at this  
 5 time."  
 6 MR. THOMPSON:  
 7 A. Right.  
 8 COFFEY, Q.C.:  
 9 Q. No action is required of whom?  
 10 MR. THOMPSON:  
 11 A. Well, that's not clear either, but as I said  
 12 yesterday, it's possible that she was  
 13 responding to a telephone call from Gary Cake,  
 14 if he had followed up on my earlier e-mail to  
 15 tell her that we had a view as to what should  
 16 be in the communications plan. But it could  
 17 have been a reference to other things as well.  
 18 COFFEY, Q.C.:  
 19 Q. And you, I take it, would have understood from  
 20 this that they, the Department of Health,  
 21 would be in a better position to forward  
 22 relevant briefing materials at that time,  
 23 which is the latter part of this week?  
 24 MR. THOMPSON:  
 25 A. Right.

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1 COFFEY, Q.C.:  
 2 Q. That would be to forward, in this context,  
 3 would be to forward it to the Cabinet  
 4 Secretariat? "We have arranged a briefing and  
 5 -  
 6 MR. THOMPSON:  
 7 A. Well, actually what it -  
 8 COFFEY, Q.C.:  
 9 Q. - we will be in a better position."  
 10 MR. THOMPSON:  
 11 A. "We have arranged a briefing with the health  
 12 authority for the latter part of the week."  
 13 COFFEY, Q.C.:  
 14 Q. Yes.  
 15 MR. THOMPSON:  
 16 A. "And will be in," so yes, if you read it  
 17 literally, it's that the department would be  
 18 in a better position.  
 19 COFFEY, Q.C.:  
 20 Q. To forward such briefing materials to  
 21 yourselves?  
 22 MR. THOMPSON:  
 23 A. Right.  
 24 COFFEY, Q.C.:  
 25 Q. And as you've pointed out yesterday, in the

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1 normal course, bearing in mind the subject  
 2 matter of the initial e-mail, that would be  
 3 expected?  
 4 MR. THOMPSON:  
 5 A. Um-hm.  
 6 COFFEY, Q.C.:  
 7 Q. Okay, and you're also advised "no public  
 8 announcement will be forthcoming this week."  
 9 MR. THOMPSON:  
 10 A. Right.  
 11 COFFEY, Q.C.:  
 12 Q. Which in your world meant, I take it, that it  
 13 wasn't going to get into the media that week?  
 14 MR. THOMPSON:  
 15 A. Yes.  
 16 COFFEY, Q.C.:  
 17 Q. Okay, and you've testified that you have no  
 18 recollection of any other conversations,  
 19 communications about this at all, July 19th or  
 20 any time really that summer?  
 21 MR. THOMPSON:  
 22 A. That's correct.  
 23 COFFEY, Q.C.:  
 24 Q. And is that possible because there were no  
 25 other communications or conversations about

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1 this?  
 2 MR. THOMPSON:  
 3 A. Sure, that's possible, and it's possible that  
 4 there were conversations as well.  
 5 COFFEY, Q.C.:  
 6 Q. But you are a person who relies upon your  
 7 memory significantly?  
 8 MR. THOMPSON:  
 9 A. Yeah, but to carry on, put it in context for  
 10 me.  
 11 COFFEY, Q.C.:  
 12 Q. In the sense of so now, I mean, bearing in  
 13 mind that we're sitting here at a public  
 14 inquiry and you have had a chance to review a  
 15 significant amount of material -  
 16 MR. THOMPSON:  
 17 A. Um-hm.  
 18 COFFEY, Q.C.:  
 19 Q. - in relation to this from Eastern Health, and  
 20 presumably the other parties involved in this,  
 21 particularly Eastern Health, there is nothing  
 22 else that has sparked any memory in you as to  
 23 any communications after July--on July--any  
 24 other communications on July 19th or  
 25 afterward?

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1 MR. THOMPSON:  
 2 A. No, there's just nothing that sparked a  
 3 memory. I've looked at my calendar from that  
 4 period of time to try to see if there were any  
 5 meetings on this topic, and there weren't. To  
 6 see what else was on the agenda to see if it  
 7 might spark any additional memory, and that  
 8 week, what was happening in Cabinet  
 9 Secretariat was the preparation for a Cabinet  
 10 retreat the following week in Stephenville.  
 11 So there was a hectic environment that week,  
 12 lots of opportunity for conversations with  
 13 departments as they were sending materials in  
 14 for the retreat, but nothing within all of  
 15 that detail that would bring back any  
 16 additional recollection right now.  
 17 COFFEY, Q.C.:  
 18 Q. And in all the materials that you've reviewed,  
 19 particularly that from the Department of  
 20 Health, that have been filed with the  
 21 Commission, there is no record at all, is  
 22 there, that you've seen that reflects any  
 23 further communication between the Department  
 24 of Health personnel and Cabinet Secretariat  
 25 after that 2:37 p.m. e-mail?

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1 MR. THOMPSON:  
 2 A. That's correct.  
 3 COFFEY, Q.C.:  
 4 Q. And no one makes a note suggesting "I talked  
 5 to Robert, told him--explained the  
 6 background."  
 7 MR. THOMPSON:  
 8 A. Nothing that I've seen.  
 9 COFFEY, Q.C.:  
 10 Q. Nothing at all.  
 11 MR. THOMPSON:  
 12 A. Right.  
 13 COFFEY, Q.C.:  
 14 Q. So it's entirely possible, based upon your  
 15 lack of memory and the absence of any  
 16 documentation reflecting any communication  
 17 with Cabinet Secretariat, that after July  
 18 19th, that 2:37 p.m e-mail, there is no  
 19 further communication between the Department  
 20 of Health or Eastern Health and Cabinet  
 21 Secretariat until September?  
 22 MR. THOMPSON:  
 23 A. It's entirely possible that something happened  
 24 or that nothing happened.  
 25 COFFEY, Q.C.:

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1 Q. And there's no evidence though that anything  
 2 did happen, is there?  
 3 MR. THOMPSON:  
 4 A. Correct.  
 5 COFFEY, Q.C.:  
 6 Q. And the one thing that you knew at 2:37 p.m.  
 7 was--2:51 p.m., I'm sorry, or whenever you  
 8 read that e-mail from Gary Cake, the 2:51 p.m.  
 9 one that day, was that--the one thing that you  
 10 knew was that there was not going to be any  
 11 announcement that week?  
 12 MR. THOMPSON:  
 13 A. Right.  
 14 COFFEY, Q.C.:  
 15 Q. Okay. You had not been told that the problem  
 16 has been gone away, the underlying clinical  
 17 problem?  
 18 MR. THOMPSON:  
 19 A. No. Well, I can't recall that it was  
 20 COFFEY, Q.C.:  
 21 Q. Sure.  
 22 MR. THOMPSON:  
 23 A. And I certainly don't believe it was.  
 24 COFFEY, Q.C.:  
 25 Q. Yes. So if we could, please, could we bring

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1 up, please, P-0075? This is a briefing note.  
 2 It's dated July 20th, there at the bottom of  
 3 the page, 2005. It's three pages long. It's--  
 4 you see someone has handwritten "meet with  
 5 minister, July 21, 2005"  
 6 MR. THOMPSON:  
 7 A. Um-hm.  
 8 COFFEY, Q.C.:  
 9 Q. It's on Eastern Health stationery briefing  
 10 note-ER/PR receptors, background, and it goes  
 11 on for some three pages, or perhaps two and a  
 12 half pages of single-spaced typing. Have you  
 13 looked within the department--I'm sorry, the  
 14 Cabinet Secretariat's records for a copy of  
 15 this?  
 16 MR. THOMPSON:  
 17 A. We have looked. I haven't done the search  
 18 myself, but I've directed the search to  
 19 happen, and it hasn't been found.  
 20 COFFEY, Q.C.:  
 21 Q. And who's actually conducted the search?  
 22 MR. THOMPSON:  
 23 A. The primary person would be Sandra Barnes,  
 24 who's the deputy clerk, assisted by Renee  
 25 Pendergast.

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1 COFFEY, Q.C.:  
 2 Q. And Ms. Barnes and Ms. Pendergast, I take it,  
 3 in this context, you've asked them to do that  
 4 because you think they'd be thorough in doing  
 5 it?  
 6 MR. THOMPSON:  
 7 A. Indeed, and because they're responsible for  
 8 the records management.  
 9 COFFEY, Q.C.:  
 10 Q. And there's no trace found of this one?  
 11 MR. THOMPSON:  
 12 A. No.  
 13 COFFEY, Q.C.:  
 14 Q. Is there--has there been any trace found of  
 15 any briefing note on this topic or related to  
 16 breast cancer testing prior to October of  
 17 2005?  
 18 MR. THOMPSON:  
 19 A. No.  
 20 COFFEY, Q.C.:  
 21 Q. If we could, please, Exhibit P-0313? Now Mr.  
 22 Thompson, this is one of those five e-mails  
 23 that you provided to Mr. Pritchard and he to  
 24 us late March 31st of this year or early on  
 25 April 1. It's an e-mail from Carolyn Chaplin

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1 dated Friday, September 30th, 2005 at 4:42  
 2 p.m. to Bruce Cooper, and he's the gentleman  
 3 who you advised was probably the Cabinet  
 4 officer responsible for Department of Health.  
 5 MR. THOMPSON:  
 6 A. That's correct.  
 7 COFFEY, Q.C.:  
 8 Q. Elizabeth Matthews, Josephine Cheeseman,  
 9 yourself and Sherry McDonald, and it's copied  
 10 to Tansy Mundon and subject is "heads up  
 11 Eastern Health issue. Eastern Health  
 12 Authority has contacted us to advise that an  
 13 issue that had been ongoing throughout the  
 14 summer concerning ER/PR testing of breast  
 15 cancer patients is about to hit the media.  
 16 Late this afternoon, Eastern Health was  
 17 contacted by 'The Independent' inquiring  
 18 whether the health authority had an issue with  
 19 its mammogram screening. Dr. Kara Laing,  
 20 oncologist, spoke with 'The Independent' to  
 21 respond, in addition to NTV. Lynn Burry  
 22 contacted the authority at 4:15 this  
 23 afternoon. Eastern Health will be calling NTV  
 24 back, but given the late hour of the day, it  
 25 won't be possible for them to get a body for a

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1 clip tonight. They're going to offer comment  
 2 for Monday's news."  
 3 Would you have seen this on Friday,  
 4 September 30th or over that weekend?  
 5 MR. THOMPSON:  
 6 A. Likely, yes.  
 7 COFFEY, Q.C.:  
 8 Q. If we could, please, Exhibit P-0163, page--P-  
 9 0163, page four, please? Sir, this is an e-  
 10 mail, well in fact, the bottom one, the bottom  
 11 part of it is--it's two e-mails. The bottom  
 12 part of it is the same one I just referred you  
 13 to, but the top one is an e-mail from Tansy  
 14 Mundon to Carolyn Chaplin, Josephine  
 15 Cheeseman, Bruce Cooper, Sherry McDonald,  
 16 Elizabeth Matthews and Robert Thompson. It's  
 17 September 30th 2005 at 4:59 p.m. It's re:  
 18 heads up Eastern Health issue, and she writes  
 19 "Carolyn, I was just in the process of writing  
 20 the same e-mail. Signed Tansy."  
 21 Now sir, there is no e-mail--or I should  
 22 ask you, are you aware of any e-mail from  
 23 yourself or anyone in the Cabinet Secretariat  
 24 or the Premier's office back to either Ms.  
 25 Mundon or Ms. Chaplin looking for information

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1 concerning the actual underlying problem?  
 2 MR. THOMPSON:  
 3 A. I'm only aware of e-mails that we've disclosed  
 4 or that I've seen from Eastern Health. So if  
 5 there's no e-mail among that group, then I'm  
 6 not aware of any other.  
 7 COFFEY, Q.C.:  
 8 Q. At the time, looking at this, and bearing in  
 9 mind that there was an October 2nd  
 10 "Independent" story, two days later, when you  
 11 received this, do you know, did you recall at  
 12 the time that--well, first of all, did you  
 13 know anything about what this was about?  
 14 MR. THOMPSON:  
 15 A. I don't recall what it is that I recalled on  
 16 that day. I don't recall my sense of the  
 17 issue that day, and so it's hard to  
 18 reconstruct, but given that I did have those  
 19 earlier e-mails in that summer, there's a  
 20 likelihood that I would have tied the two  
 21 together, perhaps with any other conversations  
 22 that may have occurred and had a notion or had  
 23 some recollection that this had occurred or  
 24 that this issue had been under way. But I'm  
 25 speculating right now as to what I recall or

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1 what I knew at that time.  
 2 COFFEY, Q.C.:  
 3 Q. Having received that that day, if indeed you  
 4 did relate it back to the 1200 to 1500  
 5 patients and errors in breast cancer testing,  
 6 here it's referred to as ER/PR testing of  
 7 breast cancer patients, wouldn't it have been  
 8 important, at that point, on a Friday  
 9 afternoon or a Saturday morning, whenever you  
 10 actually read your e-mail, to ascertain what  
 11 the scope of the issue was?  
 12 MR. THOMPSON:  
 13 A. Well, we know that in some fashion the  
 14 communication must have went to the Department  
 15 of Health to produce a briefing note or maybe  
 16 we were alerted that they were already  
 17 preparing one because a briefing note did come  
 18 through within a few days. So a briefing note  
 19 process began, I presume, coincidence with  
 20 this heads up, that there was a media story  
 21 under way.  
 22 COFFEY, Q.C.:  
 23 Q. And in that regard, if we could look, please,  
 24 at Exhibit P-0163, page nine? Now sir, here,  
 25 this is a series of e-mails. When we look at

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1 the very bottom of page nine, we see that  
 2 that's that 4:41 p.m. e-mail from Ms. Chaplin  
 3 to yourself, amongst other people, and we see  
 4 Ms. Mundon's e-mail, again to the whole group  
 5 of you at 4:59, referring to her having been  
 6 in the process of writing the same e-mail.  
 7 Now there's another series of e-mails which  
 8 are probably an e-mail exchange between Ms.  
 9 Mundon and Carolyn Chaplin at 5:01 and 5:07  
 10 p.m. Ms. Chaplin, on September 30th 2005, at  
 11 5:01 p.m. says "Thanks, Tansy. Are they  
 12 preparing revised briefing note? It has been  
 13 a while since they did one (I believe late  
 14 July)" and if we could just look back at the  
 15 same exhibit, page six, please? This puts it  
 16 perhaps more clearly. This is a simple--this  
 17 is 5:07 p.m. or 5:01 p.m. e-mail from Ms.  
 18 Chaplin to Ms. Mundon asking are they  
 19 preparing a revised briefing note, and then  
 20 there's a direct response at 5:07 p.m from Ms.  
 21 Mundon to Ms. Chaplin saying "Eastern has  
 22 prepared a note and it's being revised. I'm a  
 23 little puzzled about why Susan called you when  
 24 she had already spoke to me."  
 25 Now sir, as Ms. Chaplin, I take it,

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1 worked in the consultation and communications  
 2 branch -  
 3 MR. THOMPSON:  
 4 A. Right.  
 5 COFFEY, Q.C.:  
 6 Q. i.e. she worked for a group that worked for  
 7 you?  
 8 MR. THOMPSON:  
 9 A. Yes.  
 10 COFFEY, Q.C.:  
 11 Q. So late on the afternoon, that Friday  
 12 afternoon, September 30th, this certainly  
 13 suggests that she had ascertained and did  
 14 ascertain from Ms. Mundon, Department of  
 15 Health, that there was going to be a briefing  
 16 note.  
 17 MR. THOMPSON:  
 18 A. Yes.  
 19 COFFEY, Q.C.:  
 20 Q. Now here the briefing note, I take it, was  
 21 forthcoming because the matter was about to  
 22 hit the media?  
 23 MR. THOMPSON:  
 24 A. Yes.  
 25 COFFEY, Q.C.:

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1 Q. There's no indication, is there, in the  
 2 materials, that series of e-mails we've just  
 3 looked at for September 30th, that the  
 4 underlying problem is any more serious or less  
 5 serious than it originally was?  
 6 MR. THOMPSON:  
 7 A. Correct.  
 8 COFFEY, Q.C.:  
 9 Q. Now back on July 19th 2005, your reaction, I  
 10 take it within minutes of seeing Gary Cake's  
 11 e-mail, was to ask for a com plan.  
 12 MR. THOMPSON:  
 13 A. Um-hm.  
 14 COFFEY, Q.C.:  
 15 Q. Specify--not ask for one, specify a certain  
 16 approach or assurance be included in a com  
 17 plan.  
 18 MR. THOMPSON:  
 19 A. To specify a certain feature of the com plan.  
 20 COFFEY, Q.C.:  
 21 Q. On September 30th 2005, there's no such--  
 22 there's no record anyway, of any such follow  
 23 up or similar reaction by yourself.  
 24 MR. THOMPSON:  
 25 A. Right.

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1 COFFEY, Q.C.:  
 2 Q. Are you able to tell the Commissioner why  
 3 that's so?  
 4 MR. THOMPSON:  
 5 A. Well, I can't say clearly how I would have  
 6 processed that e-mail that day, and all I can  
 7 say is that I took the information that was on  
 8 the paper as good information and you'd  
 9 probably have to go to the part of the e-mail  
 10 where I know that I'd received it, just so I  
 11 could review it again.  
 12 COFFEY, Q.C.:  
 13 Q. Sure, not a problem.  
 14 MR. THOMPSON:  
 15 A. Because I don't know whether I--it's not  
 16 indicated in this page whether or not I'd  
 17 received these subsequent e-mails back and  
 18 forth about the preparation of a briefing  
 19 note.  
 20 COFFEY, Q.C.:  
 21 Q. No, and there's not. That's why I was  
 22 pointing those out to you. There's no sign--  
 23 that exchange is between, at least on the  
 24 record we have, is between Ms. Chaplin of the  
 25 communications and consultation branch, your

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1 office, and the Department of Health.  
 2 MR. THOMPSON:  
 3 A. Right.  
 4 COFFEY, Q.C.:  
 5 Q. The actual one, there are two e-mails the  
 6 record shows would have ended up in your e-  
 7 mail account. If we could look at, please, P-  
 8 0313, page one? And that's the first I showed  
 9 you, and the second one is P-0163, page four,  
 10 please, which is the same e-mail except that  
 11 as well, it includes the commentary by Ms.  
 12 Mundon.  
 13 MR. THOMPSON:  
 14 A. Sure. Okay, so there's no indication of what  
 15 I may have done in response to this, whether I  
 16 may have received any additional communication  
 17 from anybody else by phone or had any  
 18 conversation, for example, with Sherry  
 19 McDonald or Bruce Cooper, who are on the same  
 20 floor as I am, but it's evident from the  
 21 exchanges of e-mails that a briefing note  
 22 process started and I was likely aware of  
 23 that, but I can't say for sure.  
 24 COFFEY, Q.C.:  
 25 Q. Now do you--in all the documentation you've

Page 24

1 reviewed, is there any sign that on September  
 2 30th, 2005, or thereafter, that the Department  
 3 of Health ever provided the Cabinet  
 4 Secretariat with the Department of Health's  
 5 com plan, Eastern Health's com plan or a  
 6 combined com plan?  
 7 MR. THOMPSON:  
 8 A. No, I don't believe so.  
 9 COFFEY, Q.C.:  
 10 Q. Where you had been prompt in asking to be  
 11 informed as to the com plan back in July, July  
 12 19th -  
 13 MR. THOMPSON:  
 14 A. Um-hm.  
 15 COFFEY, Q.C.:  
 16 Q. - are you able to tell the Commissioner or  
 17 explain to the Commissioner why you never went  
 18 looking for a com plan in September 30th or  
 19 October 1 or October 2 or 3 or 4 or 5?  
 20 MR. THOMPSON:  
 21 A. It's actually an unusual thing for me to go  
 22 looking for a communications plan on any  
 23 issue, because communications have a set of  
 24 officials that are involved in that process  
 25 and that business day to day, and so the July

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1 19th e-mails actually stand out as a little  
 2 bit unusual in that regard. I think the focus  
 3 of my message to them was, on that day, was  
 4 around an evaluation needs to be done, and  
 5 given that a communications plan was the  
 6 vehicle that was being talked about in that e-  
 7 mail to me that perhaps that's why I responded  
 8 in the context of a com plan. If that e-mail  
 9 on July 19th had come forward and said a  
 10 briefing note is being prepared on this issue  
 11 that's to be forwarded, perhaps my response  
 12 would have been "let's make sure the briefing  
 13 note says that an evaluation should be done"  
 14 and so the key issue for me was perhaps the  
 15 evaluation--that should be done on that day.  
 16 If we come forward to September 30th, so it's  
 17 not unusual to me that I would not have looked  
 18 for a communications plan and that's not the  
 19 core of my business. While we do have a  
 20 branch of Cabinet, of Executive Council  
 21 responsible for that, my sense is that they  
 22 would do a good job on those issues and any  
 23 time a -  
 24 COFFEY, Q.C.:  
 25 Q. Who would do a good job?

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1 MR. THOMPSON:  
 2 A. Well, all the people that are involved in  
 3 assessing and evaluating and then  
 4 communicating an issue. They would ensure  
 5 that the right building blocks are in place to  
 6 make sure that an issue is communicated well.  
 7 COFFEY, Q.C.:  
 8 Q. Who's "they" in this context?  
 9 MR. THOMPSON:  
 10 A. Whether it be Eastern Health communications  
 11 people, the department's communications people  
 12 or those with whom they're in touch in the  
 13 Cabinet--in the communications and  
 14 consultations branch. So the point I'm trying  
 15 to bring across here is that it wouldn't be a  
 16 natural reflex for me to reach out and say  
 17 "show me the communications plan." It would  
 18 be--and for this particular message, I would  
 19 be looking at this and really just processing  
 20 the information saying now I'm aware that  
 21 there's something happening. There's no  
 22 indication in it that there's an intervention  
 23 required on by part. There are other people  
 24 in the department and other people in  
 25 Executive Council and in the Premier's office

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1 aware of this. It sounds like all the right  
 2 people have been engaged or are being  
 3 informed, so I would continue to look forward  
 4 to receiving more information, but not  
 5 necessarily get engaged myself. And remember,  
 6 the primary business of Cabinet Secretariat is  
 7 the processing of decisions in the Cabinet and  
 8 making sure that people who need to know about  
 9 information are being informed. So this  
 10 didn't require a decision of Cabinet by my  
 11 estimation today, and people were being  
 12 informed.  
 13 COFFEY, Q.C.:  
 14 Q. I take it it didn't require a decision of  
 15 Cabinet back in July 19th either?  
 16 MR. THOMPSON:  
 17 A. No.  
 18 COFFEY, Q.C.:  
 19 Q. Okay. So what, if anything, in principle is  
 20 different between what you were told on July  
 21 19th and what you were told on September 30th,  
 22 in the e-mails?  
 23 MR. THOMPSON:  
 24 A. Well, the difference would have been, and this  
 25 is my analysis today rather than necessarily

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1 on that day, is that on July 19th, there was  
 2 going to be a communications plan and there  
 3 was an unfolding situation that had been  
 4 termed to be major. On this day, clearly  
 5 there's--the issues under--involved in this  
 6 case had been under way for some period of  
 7 time and I'm sitting there on that day not  
 8 really knowing what I presume had unfolded in  
 9 the intervening months, and just a different  
 10 point in time. One would have had the  
 11 assumption that many good people were working  
 12 on the issue in the interim and -  
 13 COFFEY, Q.C.:  
 14 Q. Well, what--well, why would you believe that?  
 15 What, based upon your recollection now or  
 16 anything that we've seen in the documents?  
 17 MR. THOMPSON:  
 18 A. Well, I guess it's just a natural starting  
 19 assumption, and from the kind of experience  
 20 that I have, that if an issue was identified  
 21 in July and here we are in September 30th and  
 22 Carolyn is saying this issue that had been  
 23 ongoing throughout the summer that my starting  
 24 assumption would be that good people are  
 25 engaged in a clinical context and in a

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1 communications context and in a management  
 2 context. If those assumptions turn out later  
 3 to be wrong, well, those are things that will  
 4 be uncovered, but perhaps that's the  
 5 assumption that one starts with, given the  
 6 nature of the people that are working on this.  
 7 COFFEY, Q.C.:  
 8 Q. But you have no memory of any of this?  
 9 MR. THOMPSON:  
 10 A. No, I'm just constructing this for you today.  
 11 COFFEY, Q.C.:  
 12 Q. Okay. So, and is there any record at all of  
 13 any com plan that you've seen?  
 14 MR. THOMPSON:  
 15 A. No.  
 16 COFFEY, Q.C.:  
 17 Q. To this day?  
 18 MR. THOMPSON:  
 19 A. No.  
 20 COFFEY, Q.C.:  
 21 Q. In fact, is the absence of same significant by  
 22 its absence?  
 23 MR. THOMPSON:  
 24 A. It's a good question, and I think that given  
 25 the nature of the issue, and looking back on

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1 it from today, I think that it is significant  
 2 by its absence.  
 3 COFFEY, Q.C.:  
 4 Q. In fact, it's not only an absence in Eastern  
 5 Health and an absence in the Department of  
 6 Health, but also its absence in the Cabinet  
 7 Secretariat?  
 8 MR. THOMPSON:  
 9 A. Well, they're generally on an issue -  
 10 COFFEY, Q.C.:  
 11 Q. They had all been involved.  
 12 MR. THOMPSON:  
 13 A. Correct. Generally on an issue there'd be one  
 14 communications plan and it would be shared  
 15 with and given opportunity, for example, for  
 16 others to have comment.  
 17 COFFEY, Q.C.:  
 18 Q. Sure.  
 19 MR. THOMPSON:  
 20 A. And in a case like this, I would expect the  
 21 communications plan to exist within Eastern  
 22 Health and that the department would certainly  
 23 be apprised of it, but as we know now, or at  
 24 least as I believe we know now, such  
 25 communications plan for the eventuality that

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1 this may become a public issue did not exist.  
 2 One has to assume that people were prepared in  
 3 their minds, and as we know from some of the  
 4 material, they were prepared in their minds to  
 5 respond if it did become a public issue, but  
 6 being prepared to respond is a little bit  
 7 different than a full communications plan.  
 8 COFFEY, Q.C.:  
 9 Q. And so from your perspective now looking back  
 10 on it, whose oversight was that?  
 11 MR. THOMPSON:  
 12 A. The primary responsibility for a  
 13 communications plan to exist and to identify -  
 14 - with an evaluation of the eventuality, how  
 15 we respond if this happens or that happens  
 16 would be in Eastern Health.  
 17 THE COMMISSIONER:  
 18 Q. Mr. Thompson, just so that I understand the  
 19 purpose of such plans and the nature of the  
 20 events unfolding at least from your  
 21 perspective as they should have --  
 22 MR. THOMPSON:  
 23 A. Uh-hm.  
 24 THE COMMISSIONER:  
 25 Q. Do I take it from what you're saying that you

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1 believe that the situation having been known  
 2 at least in July within Government, perhaps  
 3 earlier within Eastern Health, but at least in  
 4 July within Government, and now you're coming  
 5 at it from late September, you seem to be  
 6 saying you would have assumed that within  
 7 Eastern Health at least there would have been  
 8 a recognition that eventually the matter is  
 9 going to become public and you would have  
 10 worked out your plan for how you deal with it,  
 11 whether you control its becoming public or it  
 12 becomes public without your wanting to do so?  
 13 Is that part of what a communications  
 14 department does?  
 15 MR. THOMPSON:  
 16 A. Yes. What I'm saying, and of course I'm  
 17 reconstructing it more from today because I  
 18 don't know how I would have processed it on  
 19 September 30th '05, but given the nature of  
 20 what we know now and the magnitude of the  
 21 retesting exercise and the communications  
 22 issues, that it would likely give rise to that  
 23 there should have been planning to deal with a  
 24 managed release of information as an option,  
 25 or a plan to respond to an unmanaged release



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1 of information such as a media story that  
 2 breaks the story, or some other kind of  
 3 response to patients perhaps. Therefore, the  
 4 organization would have been prepared in one  
 5 fashion or another with its messages and a  
 6 clear basis on which to communicate what the  
 7 organization is planning. So preparing for  
 8 that kind of eventuality is good  
 9 organizational process. My sense is that  
 10 there was -- and I can't speak for Eastern  
 11 Health clearly, but my sense is that they had  
 12 thought about and written in some memos about  
 13 some of these eventualities, and Eastern  
 14 Health may say that patched together  
 15 constitutes a plan. I can't say. They would  
 16 have to speak to that, but I'm not aware of  
 17 the existence of a comprehensive plan.  
 18 THE COMMISSIONER:  
 19 Q. Okay.  
 20 COFFEY, Q.C.:  
 21 Q. Certainly not in keeping with what you had in  
 22 mind when you used the words "com plan" on  
 23 July 19th?  
 24 MR. THOMPSON:  
 25 A. Well, that memo to me would put into my mind a

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1 more formal analysis and -- it's a planning  
 2 document, yes.  
 3 COFFEY, Q.C.:  
 4 Q. Sir, I take it that at least based upon those  
 5 e-mails of September 30th, and I appreciate  
 6 the one where the two -- at 5:01 p.m. and 5:07  
 7 p.m. and between Ms. Chaplin and Ms. Mundon  
 8 are referring to a revised briefing note.  
 9 Thank you. It's at page 9 of 0163. It did  
 10 not involve yourself, but Ms. Chaplin was in  
 11 your office and was a subordinate of yours,  
 12 and you would have understood, I take it, that  
 13 The Independent would publish this story on  
 14 the weekend. That was your understanding, you  
 15 would have known that on a Sunday?  
 16 MR. THOMPSON:  
 17 A. That's right.  
 18 COFFEY, Q.C.:  
 19 Q. So that in terms of ensuring or checking to  
 20 ensure that before you left work that day on  
 21 Friday that there might be something in hand  
 22 early the following week in terms of briefing  
 23 note, you wouldn't be surprised if you had  
 24 learned from Ms. Chaplin that Ms. Mundon had  
 25 told her it will be along, the briefing note

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1 will be along?  
 2 MR. THOMPSON:  
 3 A. No, I wouldn't be surprised to learn that, no.  
 4 COFFEY, Q.C.:  
 5 Q. That's something -- it would be important in  
 6 your world to have something in hand early the  
 7 following week?  
 8 MR. THOMPSON:  
 9 A. Yes.  
 10 COFFEY, Q.C.:  
 11 Q. Now, sir, I take it then, Mr. Thompson, that  
 12 again the only thing that had occurred to your  
 13 knowledge between July 19th and now September  
 14 30th to prompt this briefing note request from  
 15 the Cabinet Secretariat, Ms. Chaplin making  
 16 the request on behalf of the Cabinet  
 17 Secretariat, was the fact that it would going  
 18 public? That's the only thing?  
 19 MR. THOMPSON:  
 20 A. That appears to be it.  
 21 COFFEY, Q.C.:  
 22 Q. So the chief concern would be to be informed  
 23 because it's going public?  
 24 MR. THOMPSON:  
 25 A. At that time.

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1 COFFEY, Q.C.:  
 2 Q. And it wouldn't be to be informed because we  
 3 want to know really what the underlying  
 4 problem is and what's being done to address  
 5 it?  
 6 MR. THOMPSON:  
 7 A. Well, the kind of thing that would trigger  
 8 another briefing note in normal circumstances  
 9 if the media break was not the issue, would  
 10 have been a milestone had been reached in the  
 11 underlying event, completion of testing or a  
 12 report on the -- the we're about to bring --  
 13 that Eastern Health was about to go public  
 14 with the results or some milestone, so that  
 15 would --  
 16 COFFEY, Q.C.:  
 17 Q. But that's going public again. The underlying  
 18 issue in the July 19th, 1200 to 1500 women  
 19 errors in breast cancer testing --  
 20 MR. THOMPSON:  
 21 A. Uh-hm.  
 22 COFFEY, Q.C.:  
 23 Q. '97 to 2004, a major issue.  
 24 MR. THOMPSON:  
 25 A. Yes.

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1 COFFEY, Q.C.:

2 Q. In your analysis. Following up, asking for a

3 briefing note as to what is being done to

4 address that issue, where is it, where is the

5 care of the patients, how did it happen,

6 please inform the Cabinet Secretariat.

7 MR. THOMPSON:

8 A. Uh-hm.

9 COFFEY, Q.C.:

10 Q. There's no sign that that happened.

11 MR. THOMPSON:

12 A. That's correct.

13 COFFEY, Q.C.:

14 Q. On July 19th and September 30th.

15 MR. THOMPSON:

16 A. That's correct, right.

17 COFFEY, Q.C.:

18 Q. And other than an assumption that somehow or

19 another this was being addressed properly

20 clinically, is there any other reason you can

21 think of as to why you would not ask in July

22 or early August where is this?

23 MR. THOMPSON:

24 A. Well, if there had been conversations,

25 monitoring conversations between Cabinet

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1 Secretariat and the Department, and I don't

2 know if there were, that may have generated a

3 sense of ongoing activity, but no milestone

4 for a report to be generated, but as I was

5 saying earlier, we would expect a briefing

6 note to occur at an appropriate milestone,

7 whatever that may be. Sometimes on some

8 issues we may have an interest for an update

9 where there is no milestone, but typically we

10 would not, and we would wait for the

11 department to identify the next point in time

12 where it makes sense to brief the Premier, the

13 Cabinet, so that they would bring it forward.

14 So it can operate both ways. In this case, it

15 would appear that there was no milestone in

16 this period, or at least not one that we

17 perceived or one that --

18 COFFEY, Q.C.:

19 Q. Well, if you perceived. I mean, I --

20 MR. THOMPSON:

21 A. No, no, fair enough, but not one that perhaps

22 the department has perceived as well, but

23 there was no briefing note in between, so the

24 release to the media from a patient becomes

25 the event that generates the next briefing

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1 note.

2 COFFEY, Q.C.:

3 Q. So I take it then that from the Cabinet

4 Secretariat's perspective at the time, that

5 unless the note was generated due to the

6 department's perception of a milestone,

7 whether due to actual clinical issues,

8 evaluations, results, or because it was going

9 public from their end --

10 MR. THOMPSON:

11 A. Uh-hm.

12 COFFEY, Q.C.:

13 Q. Either of them would be potentially milestones

14 and they would see fit to generate a briefing

15 note.

16 MR. THOMPSON:

17 A. Uh-hm.

18 COFFEY, Q.C.:

19 Q. Unless that occurred -- from the Cabinet

20 Secretariat's perspective, unless it was a

21 public media issue, there was nothing in place

22 to ensure, or track, or to inquire of, prompt

23 briefing note of the department to get an

24 assurance that the problem which you have

25 described as major was being properly

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1 addressed and how it was being addressed. So

2 there was nothing in place?

3 MR. THOMPSON:

4 A. There was no occasion upon which we reached

5 out in a briefing note. Whether or not, as we

6 talked about yesterday, there were subsequent

7 conversations about shaping the sense of

8 urgency around this issue, shaping the sense

9 of how it was being handled by Eastern Health

10 as the primary entity handling it, and given

11 that it wasn't an issue that Cabinet

12 Secretariat -- that was one of Cabinet

13 Secretariat's projects, it's not unusual that

14 Cabinet Secretariat would not reach out absent

15 a milestone and ask for a briefing note. So

16 that -- that just happens to be the context of

17 how I think that summer shaped up.

18 COFFEY, Q.C.:

19 Q. Yeah.

20 MR. THOMPSON:

21 A. So if there were events that were occurring

22 that were, in fact, milestones and should have

23 justified a briefing note, well that's another

24 issue, but I'm trying to describe to you from

25 where we sit that it may not have triggered a

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1 briefing note request because of those  
 2 reasons.  
 3 COFFEY, Q.C.:  
 4 Q. Well, in that -- based upon what you just  
 5 described, the only thing that might have  
 6 triggered a briefing note from your end, a  
 7 request, was a media issue?  
 8 MR. THOMPSON:  
 9 A. In the absence of knowledge of a milestone,  
 10 that's a fair point.  
 11 COFFEY, Q.C.:  
 12 Q. Okay. So if it was going public, you'd ask,  
 13 that's a milestone, but other than that, it's  
 14 left to --  
 15 MR. THOMPSON:  
 16 A. We likely had no knowledge on which to say now  
 17 is the time to ask for a briefing note.  
 18 COFFEY, Q.C.:  
 19 Q. And in terms of -- you know, you've referred  
 20 to, well, it's possible that there were  
 21 ongoing discussions or whatever, but you have  
 22 no memory of it at all?  
 23 MR. THOMPSON:  
 24 A. That's correct.  
 25 COFFEY, Q.C.:

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1 Q. And you haven't been informed that anybody  
 2 else in Cabinet Secretariat has any such  
 3 memory?  
 4 MR. THOMPSON:  
 5 A. That's correct, but I did note --  
 6 COFFEY, Q.C.:  
 7 Q. There was no documentary evidence.  
 8 MR. THOMPSON:  
 9 A. No, but it's hard for me to understand based  
 10 on the records that we have looked at, or that  
 11 with the expectation of a briefing note on  
 12 July 19th, and the fact that the issues had  
 13 been assessed as major that week, that there  
 14 would not have been some kind of communication  
 15 which really shaped this issue for us. I'm  
 16 thinking, and what I'm asserting to you is, is  
 17 that that's a very plausible possibility, and,  
 18 no, I can't say that it occurred, but in the  
 19 absence of that it would have been more likely  
 20 that we would have reached out at some point  
 21 and asked for something to fill in some of  
 22 those gaps. So there's a likelihood that that  
 23 would have happened if the issue had not been  
 24 properly shaped for us in some fashion.  
 25 THE COMMISSIONER:

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1 Q. I just want to make sure I understand. I  
 2 understand that as a working kind of  
 3 relationship between you and the Department of  
 4 Health which would be a primary vehicle for  
 5 information regarding Eastern Health coming to  
 6 you --  
 7 MR. THOMPSON:  
 8 A. Uh-hm.  
 9 THE COMMISSIONER:  
 10 Q. The right thing was done in July when you were  
 11 advised that there was this major issue coming  
 12 down the pipe.  
 13 MR. THOMPSON:  
 14 A. Uh-hm.  
 15 THE COMMISSIONER:  
 16 Q. You got a subsequent e-mail on the same day  
 17 which indicated that perhaps the earlier one  
 18 had ratcheted up the urgency of it more than  
 19 was necessary.  
 20 MR. THOMPSON:  
 21 A. Uh-hm.  
 22 THE COMMISSIONER:  
 23 Q. And that seemed to be a trigger for everybody  
 24 taking a big sigh and no longer viewing it as  
 25 quite the urgent matter.

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1 MR. THOMPSON:  
 2 A. Uh-hm.  
 3 THE COMMISSIONER:  
 4 Q. And then I understand you to be saying that as  
 5 far as Cabinet Secretariat was concerned, or  
 6 at least on an official level, was no further  
 7 communication until the last of September.  
 8 MR. THOMPSON:  
 9 A. Right.  
 10 THE COMMISSIONER:  
 11 Q. And there's nothing to indicate that anybody  
 12 asked for either the briefing note that you  
 13 understood was on the way in July or any other  
 14 note in between, and your explanation is, as I  
 15 understand it, that you wouldn't go looking  
 16 for a briefing note unless there were a  
 17 milestone, in which case you would expect a  
 18 briefing note, and included in the milestone  
 19 is something happening within the organization  
 20 of the adverse event or it becoming public,  
 21 and in the case of the end of September, it  
 22 was going public that triggered it coming back  
 23 to you.  
 24 MR. THOMPSON:  
 25 A. Right.

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1 THE COMMISSIONER:  
 2 Q. And your not having received the briefing note  
 3 that you knew was underway in July, and any  
 4 other briefing note regarding it during that  
 5 period of time, either meant there was no  
 6 milestone or somehow through another process  
 7 which you don't remember and nobody in your  
 8 organization remembers, somebody told you  
 9 something which eased your mind about it?  
 10 MR. THOMPSON:  
 11 A. And the reason I -- that's correct, everything  
 12 you said would be a fair summary, and the  
 13 reason I think that something likely happened  
 14 like that is that the second e-mail from  
 15 Carolyn Chaplin, based on reading it now,  
 16 would not likely have removed all -- would not  
 17 likely have created a certainty that it wasn't  
 18 a major issue, and that more information was  
 19 needed. So even though the pressure had been  
 20 reduced, the likelihood of some additional  
 21 communication would be the thing that would  
 22 have eased our mind for that long a period of  
 23 time, but I can't -- I'm trying to create as  
 24 well a second understanding of it because it's  
 25 clear that one understanding might be that

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1 absolutely nothing was communicated back and  
 2 forth, but I think there's an equally likely  
 3 possibility, if not more, that some  
 4 communications happened that continued to  
 5 shape our understanding of it, but indeed I  
 6 can't document those.  
 7 COFFEY, Q.C.:  
 8 Q. And as best your search can tell, there's  
 9 absolutely no record?  
 10 MR. THOMPSON:  
 11 A. That's right.  
 12 COFFEY, Q.C.:  
 13 Q. Handwritten, typed, verbally, electronically  
 14 recorded in any manner?  
 15 MR. THOMPSON:  
 16 A. That's right.  
 17 COFFEY, Q.C.:  
 18 Q. Of any such communication?  
 19 MR. THOMPSON:  
 20 A. That's right.  
 21 COFFEY, Q.C.:  
 22 Q. Now during that time period -- let me see. I  
 23 take it that during that time period Mr.  
 24 Ottenheimer was still Minister of Health.  
 25 MR. THOMPSON:

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1 A. Correct.  
 2 COFFEY, Q.C.:  
 3 Q. Throughout that time period. There would have  
 4 been Cabinet meetings during that time period?  
 5 MR. THOMPSON:  
 6 A. Uh-hm.  
 7 COFFEY, Q.C.:  
 8 Q. Did you ever speak to Mr. Ottenheimer about  
 9 this matter?  
 10 MR. THOMPSON:  
 11 A. No, I don't believe I did.  
 12 COFFEY, Q.C.:  
 13 Q. And I say that first or last, in 2005 or 2007?  
 14 MR. THOMPSON:  
 15 A. In 2007 -- well, in these new responsibilities  
 16 that I have, I've talked to Mr. Ottenheimer  
 17 about that time sure, several times.  
 18 COFFEY, Q.C.:  
 19 Q. Okay, but -- but that's since you've become  
 20 Chair of the Task Force?  
 21 MR. THOMPSON:  
 22 A. Correct.  
 23 COFFEY, Q.C.:  
 24 Q. We'll come to that. Mr. Osborne at one point  
 25 was Minister of Health. Did you ever speak to

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1 him about the ER/PR issue?  
 2 MR. THOMPSON:  
 3 A. No.  
 4 COFFEY, Q.C.:  
 5 Q. And Mr. Wiseman, I take it you didn't speak to  
 6 him about it?  
 7 MR. THOMPSON:  
 8 A. I'm sorry, only in the context of my current  
 9 responsibilities, yes.  
 10 COFFEY, Q.C.:  
 11 Q. Yes, okay, and Mr. Wiseman, ever speak to him  
 12 about it before May 15th, 2007?  
 13 MR. THOMPSON:  
 14 A. No, no.  
 15 COFFEY, Q.C.:  
 16 Q. Okay.  
 17 MR. THOMPSON:  
 18 A. Perhaps there's one other thing I could say  
 19 that helped put us back in that place, back in  
 20 September of 2005, and it relates to a  
 21 conversation I recently had with Sherry  
 22 McDonald, who is now Deputy Minister of  
 23 Government Services and who at that time was  
 24 the Assistant Secretary for Social Policy --  
 25 now she was on vacation that week, so she

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1 wasn't present for the e-mail exchange, but  
 2 when she came back from vacation.  
 3 COFFEY, Q.C.:  
 4 Q. She was on vacation for that week and for  
 5 three weeks after.  
 6 MR. THOMPSON:  
 7 A. Okay.  
 8 COFFEY, Q.C.:  
 9 Q. As it turns out. Go ahead.  
 10 MR. THOMPSON:  
 11 A. So she wasn't present for that period, but one  
 12 of her responsibilities was to maintain a  
 13 liaison with all of the relevant departments  
 14 in her area, and in September of that year she  
 15 had what would be a normal set of meetings  
 16 with all of the deputy ministers within the  
 17 social sector, and she maintained notes on  
 18 those meetings. So when I was checking her e-  
 19 mails last month, she told me that she also  
 20 checked her own notes of that time and there's  
 21 a record of a meeting there between her and  
 22 John Abbott, and the purpose of the meeting is  
 23 to review what are the large issues coming  
 24 forward for this fall, what are the items that  
 25 may come up in the Legislature, what are your

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1 priorities for this fall, and there's no  
 2 record of ER/PR in her notes. So while it's  
 3 not a definitive explanation of anything, it  
 4 helped me to understand that the department,  
 5 at least in that conversation, had not  
 6 identified ER/PR and the management of it or  
 7 any decisions related to it as a significant  
 8 watch file for them. Now why that would be  
 9 the case and so forth, I'm not certain, but it  
 10 does give one the impression that the  
 11 intensity of communications on that issue is  
 12 not high, and, therefore -- and not an issue  
 13 at the core of the department's agenda.  
 14 Certainly at the core of what Eastern Health  
 15 is doing, but not one at the core of the  
 16 department's agenda.  
 17 COFFEY, Q.C.:  
 18 Q. Well, after July 19th, perhaps not only not  
 19 high, but non-existent potentially?  
 20 MR. THOMPSON:  
 21 A. Well, there were certain briefings that  
 22 occurred with the Minister -- with the  
 23 department and with the Minister.  
 24 COFFEY, Q.C.:  
 25 Q. Oh, I apologize, between the department and

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1 Eastern Health?  
 2 MR. THOMPSON:  
 3 A. Between the department and Eastern Health,  
 4 that's where briefings were occurring during  
 5 the summer, but not between the department and  
 6 Cabinet Secretariat.  
 7 COFFEY, Q.C.:  
 8 Q. That's what I'm getting at.  
 9 MR. THOMPSON:  
 10 A. Okay, yes.  
 11 COFFEY, Q.C.:  
 12 Q. So in terms of that, the department after July  
 13 19th, in fact there may have been no  
 14 communication after that day between the  
 15 department and Cabinet Secretariat about this  
 16 at all?  
 17 MR. THOMPSON:  
 18 A. Very likely.  
 19 COFFEY, Q.C.:  
 20 Q. Not only toned down --  
 21 MR. THOMPSON:  
 22 A. Yeah.  
 23 COFFEY, Q.C.:  
 24 Q. But none at all, because there's no record of  
 25 anything.

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1 MR. THOMPSON:  
 2 A. Nothing that we have on record.  
 3 COFFEY, Q.C.:  
 4 Q. If we could, please, Exhibit P-0124, page six.  
 5 Now this is a briefing note, Department of  
 6 Health and Community Services -- it's from the  
 7 Department of Health and Community Services in  
 8 this context. The title is "Testing of breast  
 9 cancer patients at St. John's Hospitals". The  
 10 issue is media coverage regarding potential  
 11 breast cancer diagnostic errors within Eastern  
 12 Regional Integrated Health Authority, and at  
 13 the top of the page there it's copied to the  
 14 Premier, Mr. Reid, Mr. Crawley, Ms. Matthews,  
 15 Mr. Taylor -- J. Paddock is?  
 16 MR. THOMPSON:  
 17 A. An officer in the Premier's Office.  
 18 COFFEY, Q.C.:  
 19 Q. Okay. Who's -- what's Paddock's first name?  
 20 MR. THOMPSON:  
 21 A. Jeff.  
 22 COFFEY, Q.C.:  
 23 Q. Jeff Paddock. What's his function or role?  
 24 MR. THOMPSON:  
 25 A. His primary function is speech writing.

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1 COFFEY, Q.C.:

2 Q. Yourself, Ms. Barnes, Ms. McDonald, Mr. Cake,

3 and J. Mullaley is?

4 MR. THOMPSON:

5 A. Julia Mullaley, who is the Executive Director

6 for Planning and Coordination in Cabinet

7 Secretariat.

8 COFFEY, Q.C.:

9 Q. So these are all the senior people, I take it,

10 in the Premier's Office and Cabinet

11 Secretariat?

12 MR. THOMPSON:

13 A. Correct.

14 COFFEY, Q.C.:

15 Q. Sir, just look at this. There is on the

16 second page of it, Executive Council, October

17 5, 2005, registry stamp. I take it that's the

18 official version?

19 MR. THOMPSON:

20 A. Yes.

21 COFFEY, Q.C.:

22 Q. It's prepared by M. Hennessey and J. Abbott,

23 Department of Health and Community Services,

24 reviewed by B. Cooper and S. McDonald, Cabinet

25 Secretariat, October 5, 2005. Sir, you would

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1 have read this?

2 MR. THOMPSON:

3 A. Yes.

4 COFFEY, Q.C.:

5 Q. And the purpose of you reading it would be

6 what?

7 MR. THOMPSON:

8 A. Well, the purpose of the briefing note is to

9 convey information on an important matter from

10 the department, so it would really to be --

11 receive the information.

12 COFFEY, Q.C.:

13 Q. With a view to what?

14 MR. THOMPSON:

15 A. Well, it's possible with a view to nothing

16 more than being aware. If a decision is

17 requested or direction requested by the

18 department, it would be indicated in the note

19 and then it might be handled in a more active

20 fashion, but if there's no request for

21 direction, then generally it's for straight

22 information. I should note that if there are

23 issues that arise from the note, from one's

24 own analysis of the note that produce

25 additional questions back to the department,

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1 then that would just provoke more information

2 sharing.

3 COFFEY, Q.C.:

4 Q. And this particular note is which of those?

5 Is it request direction?

6 MR. THOMPSON:

7 A. As I understand it, it's to inform. Now, sir,

8 so you would have read this on October 5th,

9 6th, or 7th, sometime that week?

10 MR. THOMPSON:

11 A. That's right.

12 COFFEY, Q.C.:

13 Q. Having read this at the time, is there

14 anything in this note that refers to the

15 patients having been contacted?

16 MR. THOMPSON:

17 A. I have to scan down through it.

18 COFFEY, Q.C.:

19 Q. Go right ahead. About the fact that there was

20 a retesting going on.

21 MR. THOMPSON:

22 Q. Okay, so having scanned it, and there's

23 certainly reference to a substantial amount of

24 retesting under way and there's a reference to

25 a certain number of communications under way

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1 with Via (phonetic) attending physicians with

2 individuals whose treatment could be impacted.

3 COFFEY, Q.C.:

4 Q. But there's no indication in this that the

5 patients whose samples were being retested,

6 the fact that they were being retested, okay,

7 that was no indication that the patients had

8 been informed about that here, is there?

9 MR. THOMPSON:

10 Q. No, that there's no indication from my

11 scanning of it that there is contact made with

12 patients whose tests were being retested.

13 COFFEY, Q.C.:

14 Q. Did that occur to you at the time, the fact

15 that that's--there's no reference to it here?

16 MR. THOMPSON:

17 Q. Well, I can't recall it occurring to me at the

18 time and I'd say it likely did not occur to me

19 at the time, given my lack of, or not being

20 close to this issue.

21 COFFEY, Q.C.:

22 Q. So at the time, I take it, at least as the

23 clerk, you weren't concerned to insure that

24 patients were so notified?

25 MR. THOMPSON:

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1 Q. I think reading it today, and I have before  
 2 today, of course, the things that stand out to  
 3 me are things like, are about the actions and  
 4 communications that are actually being taken,  
 5 such as the view of the Ventana system and  
 6 there seemed to be some comfort level with  
 7 that, the fact that a large group of samples  
 8 are being retested and that--at Mount Sinai.  
 9 And I think it says that current newly tested  
 10 patients are being tested at Mount Sinai, as  
 11 well, implying that testing has stopped at  
 12 Eastern Health. So--and a few other things.  
 13 Those kinds of indications that actions have  
 14 been taken to address potential harm to new  
 15 patients and to examine what the situation is  
 16 with patients who had been tested under the  
 17 former system. It's those kinds of things  
 18 that which would have stood out to me as  
 19 opposed to, I guess, a matter that was not in  
 20 it, given the kind of background information I  
 21 already had on this issue. It's perhaps not  
 22 the kind of issue that would have popped out  
 23 at me.  
 24 COFFEY, Q.C.:  
 25 Q. Okay. Now, looking at this, is there any

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1 reference in this to the actual total number  
 2 of patients whose test results are going to be  
 3 retested?  
 4 MR. THOMPSON:  
 5 Q. No. There's some information in it on the  
 6 number of tests that have been sent off for  
 7 retesting so far that are weak positive.  
 8 COFFEY, Q.C.:  
 9 Q. That's 323?  
 10 MR. THOMPSON:  
 11 Q. Right.  
 12 COFFEY, Q.C.:  
 13 Q. That's the first bullet under "Current  
 14 Status". But in terms of like the total  
 15 number, because this says "have been sent" and  
 16 it doesn't say -  
 17 MR. THOMPSON:  
 18 Q. No, that's right -  
 19 COFFEY, Q.C.:  
 20 Q. - all -  
 21 MR. THOMPSON:  
 22 Q. - there's no reference to that.  
 23 COFFEY, Q.C.:  
 24 Q. So in terms of making inquiries as to the  
 25 total number of patients who might be affected

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1 in that their samples would be retested, was  
 2 any inquiry made further, to your knowledge,  
 3 of the Department of Health or Eastern Health  
 4 as to, look, how many people are involved in  
 5 this?  
 6 MR. THOMPSON:  
 7 Q. No inquiry by me, at least not on a  
 8 documentary basis.  
 9 COFFEY, Q.C.:  
 10 Q. Do you have any memory of being informed about  
 11 kind of a ball park figure as to how many  
 12 might be involved?  
 13 MR. THOMPSON:  
 14 Q. I don't recall now. And of course, in the  
 15 days and weeks following this, Eastern Health  
 16 was doing media work, responding to  
 17 interviews, and whether or not more  
 18 information was layered onto this in those  
 19 interviews, I'm not aware right now, but maybe  
 20 you have some of those as exhibits.  
 21 COFFEY, Q.C.:  
 22 Q. And would you rely upon media reports to  
 23 supplement or fill in the gaps in a briefing  
 24 note?  
 25 MR. THOMPSON:

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1 Q. Well -  
 2 COFFEY, Q.C.:  
 3 Q. Would you actually do that?  
 4 MR. THOMPSON:  
 5 Q. You would in a practical manner, because if  
 6 you have direct quotes from people like Dr.  
 7 Robert Williams, who was, as I recall from the  
 8 material, doing those media interviews in the  
 9 main and being a source of authority with the  
 10 organization, sure, that would, in practical  
 11 terms, supplement your information. You might  
 12 wish that that information, if it was relevant  
 13 and helpful, should have been in the briefing  
 14 note. But, yeah, you would combine all your  
 15 sources of knowledge.  
 16 COFFEY, Q.C.:  
 17 Q. I take it that knowing the total number of  
 18 retests or projected retests would be  
 19 relevant?  
 20 MR. THOMPSON:  
 21 Q. It's an important fact.  
 22 COFFEY, Q.C.:  
 23 Q. Here looking at that "Current Status" bullet,  
 24 the first one, the sentence after the  
 25 reference to 323 says, "To date, 73 of the

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1 samples have been reviewed and it appears that  
 2 of those there are 16 to 20 individuals whose  
 3 treatment could be impacted."  
 4 MR. THOMPSON:  
 5 Q. Right.  
 6 COFFEY, Q.C.:  
 7 Q. See that? Now, again, a quick arithmetic,  
 8 that's approximately 25 percent?  
 9 MR. THOMPSON:  
 10 Q. Um-hm.  
 11 COFFEY, Q.C.:  
 12 Q. In that context, of the then available results  
 13 that had been reviewed. So, I mean, even  
 14 projecting that out at 323, that would a  
 15 quarter would be about, give or take, about  
 16 80?  
 17 MR. THOMPSON:  
 18 Q. Um-hm.  
 19 COFFEY, Q.C.:  
 20 Q. So did you, like, in reading this, would your  
 21 approach be, they're going to look to see what  
 22 the overall impact would be on patients, go  
 23 through this with a view to trying to figure  
 24 out quickly, because they don't actually spell  
 25 it out here in terms of percentages and

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1 projecting out in this note? Would you have  
 2 approached it in that way?  
 3 MR. THOMPSON:  
 4 Q. I'm not sure what I did on that day. With  
 5 some issues it deserves that kind of analysis,  
 6 certainly with issues that are, that one has a  
 7 high degree of familiarity with. But what you  
 8 expect the writers of briefing notes to do is  
 9 to focus the reader directly on the key issues  
 10 so that there's no uncertainty about the  
 11 magnitude and the importance of what's in the  
 12 note. If a note buries key issues, obscures  
 13 key issues, then it's not a good note. So the  
 14 approach that one takes to a note is to read  
 15 it on its face and on its face it will bring  
 16 out the key issues. Now, these kinds of  
 17 calculations you wouldn't normally do, I  
 18 wouldn't normally do, but I can understand how  
 19 you've made those calculations there and they  
 20 are relevant to understanding the data.  
 21 COFFEY, Q.C.:  
 22 Q. At the time this note was received on October  
 23 5, 2005 and you read through it and the fact  
 24 that samples were being retested from, as you  
 25 look at that again, that first paragraph under

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1 "Current Status" when you read that, you kind  
 2 of do the arithmetic, it's 1997 through 2004.  
 3 They've already, St. John's hospitals have  
 4 sent off 1999 to 2004. And now this final  
 5 sentence says, "The samples for '97, '98 from  
 6 St. John's hospitals will soon be sent for  
 7 testing, retesting," suggesting that a reader  
 8 would be informed that the period in question  
 9 was '97 to 2004, correct?  
 10 MR. THOMPSON:  
 11 Q. Right.  
 12 COFFEY, Q.C.:  
 13 Q. And 323 samples report as weakly positive to  
 14 negative had been sent and there were more to  
 15 go, so that wouldn't be the total. When you  
 16 look at this, as well, under "Background" the  
 17 fourth bullet says that "A representative from  
 18 Ventana visited the laboratory in July."  
 19 MR. THOMPSON:  
 20 Q. Um-hm.  
 21 COFFEY, Q.C.:  
 22 Q. See that? Suggesting that certainly they'd  
 23 been engaged before July or by July engaged in  
 24 this process. In looking at this is there any  
 25 sense or any information in it that spells out

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1 when Eastern Health became aware of the  
 2 problem, other than an assertion under the  
 3 "Background" second bullet, "in 2005"?  
 4 MR. THOMPSON:  
 5 Q. No.  
 6 COFFEY, Q.C.:  
 7 Q. So a reader of this would have no way of  
 8 knowing, just based upon what's in this, as to  
 9 when Eastern Health became aware of the  
 10 problem?  
 11 MR. THOMPSON:  
 12 Q. Um-hm.  
 13 COFFEY, Q.C.:  
 14 Q. As the Cabinet Secretariat, you know, as the  
 15 clerk, would you have been curious to know how  
 16 long they had had this and known about it?  
 17 MR. THOMPSON:  
 18 Q. Well, sure, curious on that fact, absolutely.  
 19 COFFEY, Q.C.:  
 20 Q. And in terms of the fact that there is such  
 21 wide-scale retesting going on, apparently, by  
 22 this point in time, the fact that they don't  
 23 say, however, how many are likely to be  
 24 involved in the retesting, they don't say when  
 25 exactly they found out about it, the problem,



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1 did it occur to you at the time or anybody, to  
 2 your knowledge, to ask the Department of  
 3 Health or Eastern Health why it was only now  
 4 that the Cabinet Secretariat was getting a  
 5 briefing note on it, how it could remain  
 6 unknown to the Cabinet Secretariat?  
 7 MR. THOMPSON:  
 8 Q. Um-hm.  
 9 COFFEY, Q.C.:  
 10 Q. In a detail fashion until now?  
 11 MR. THOMPSON:  
 12 Q. Did it occur to me to ask anyone why we're  
 13 only seeing this now?  
 14 COFFEY, Q.C.:  
 15 Q. MR. YOUNG:  
 16 COFFEY, Q.C.:  
 17 Q.  
 18 MR. THOMPSON:  
 19 Q. Well, I can't recall whether it did, but it's  
 20 possible that it didn't in the sense that we  
 21 were being presented here now with the  
 22 information on work that had taken place over  
 23 the summer period. And the impression that I  
 24 would gather from this overall note would have  
 25 been--because you try to understand, you don't

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1 focus in on the details that you're raising  
 2 right here as the first matter, you focus on  
 3 the broader picture and first of all, do we  
 4 have an issue here which is something is out  
 5 of control and not being well managed, or do  
 6 we have an issue in which good work is being  
 7 done to clear up a problem. So that's the  
 8 first way that you would approach the overall  
 9 note. And you know, without paying reference  
 10 right now to the kinds of issues that we've  
 11 come to know since, one would look at this  
 12 note and one would detect a fairly high level  
 13 of volume of activity for retesting, detect  
 14 that the harm that could have come to patients  
 15 presently, that potential source of harm has  
 16 been removed. You detect the--and on and on.  
 17 You detect that some communication has started  
 18 with patients, that a consumer telephone line  
 19 is being set up. One wouldn't--me, at that  
 20 time, I wouldn't have the understanding of all  
 21 of the internal perceptions about when people  
 22 should have been contacted and when they  
 23 weren't and the total number, so oblivious to  
 24 that kind of information, the impression that  
 25 one gets from this briefing note is that

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1 there's a high level of engagement and  
 2 management of a serious matter and that now  
 3 that the matter has been put in the media,  
 4 that you're aware, as well, that Eastern  
 5 Health is taking on the job of answering  
 6 questions in the media. So as a general  
 7 impression that's the one that one gets. Now,  
 8 if one then says, "Well, where are the  
 9 weaknesses and the critical analytical points"  
 10 and dive into the note, one can generate extra  
 11 questions, but I don't know if I did generate  
 12 any extra questions that day.  
 13 COFFEY, Q.C.:  
 14 Q. And looking at "Background" here, because when  
 15 you look at this note, having read it, you  
 16 understood what was the problem?  
 17 MR. THOMPSON:  
 18 Q. Within the background section, you mean?  
 19 COFFEY, Q.C.:  
 20 Q. Yes, yeah, what was the problem? From a  
 21 patient's perspective, what was the problem,  
 22 what had caused it, what was the problem?  
 23 MR. THOMPSON:  
 24 Q. That ER/PR test result or results were  
 25 incorrect.

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1 COFFEY, Q.C.:  
 2 Q. And the implication of that was what, what was  
 3 your understanding?  
 4 MR. THOMPSON:  
 5 Q. They weren't receiving the therapy that they  
 6 might have been prescribed if it was correct.  
 7 COFFEY, Q.C.:  
 8 Q. Okay.  
 9 THE COMMISSIONER:  
 10 Q. Mr. Thompson, help me here with roles, the  
 11 department's role and the Cabinet  
 12 Secretariat's role -  
 13 MR. THOMPSON:  
 14 Q. Sure.  
 15 THE COMMISSIONER:  
 16 Q. - in receiving this briefing note, which I  
 17 presume came through the department to you.  
 18 Does a line department look at a briefing note  
 19 from an authority in a different way than  
 20 Cabinet does?  
 21 MR. THOMPSON:  
 22 Q. From an authority? Oh, I see.  
 23 THE COMMISSIONER:  
 24 Q. From a health authority. Is the analysis done  
 25 within Department of Health?

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1 MR. THOMPSON:  
 2 Q. Yes.  
 3 THE COMMISSIONER:  
 4 Q. Put on your cap as an old deputy minister of  
 5 health, for the moment, if you would. What  
 6 kind of analysis would you in the Department  
 7 of Health do of that briefing note as opposed  
 8 to the kind of analysis that you did in your  
 9 position in Cabinet Secretariat when you  
 10 received it?  
 11 MR. THOMPSON:  
 12 Q. Right, right. Well, sure -  
 13 THE COMMISSIONER:  
 14 Q. What would be the difference?  
 15 MR. THOMPSON:  
 16 Q. Well, as a deputy minister or within a  
 17 department one would collect this information  
 18 from Eastern Health, first of all, to  
 19 establish all the basic facts and to give in  
 20 the briefing note some sense of the dimension  
 21 of the problem and how it was being handled  
 22 and to--the department, as well, would try to  
 23 anticipate the kinds of questions that the  
 24 Premier and others would wish to know about an  
 25 issue. So that's one type of analysis,

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1 anticipating the obvious questions. And the  
 2 note would try to address--or in terms of  
 3 analysis of the problem would try to address,  
 4 I think, whether the matter was being well  
 5 handled, whether there were any elements of  
 6 the issue that were out of control or weren't-  
 7 -that posed additional problems. Are there  
 8 other implications based on the facts of this  
 9 matter, are there other implications which we  
 10 do not yet have control of, that we do not yet  
 11 understand? So the department should do an  
 12 analysis like that in order to advance it on  
 13 to others so that they can have a complete  
 14 understanding of the problem. The other  
 15 agencies and the other people who receive this  
 16 note for information purposes therefore should  
 17 be--have a quick understanding of all those  
 18 things that the department found out about the  
 19 item that is going on within Eastern Health.  
 20 Am I addressing your point?  
 21 THE COMMISSIONER:  
 22 Q. Perhaps you are, but let's go back and see  
 23 what I've gleaned from that. So Eastern  
 24 Health, as I understand the process, Eastern  
 25 Health prepares a briefing note, sends it to

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1 the department. The department just doesn't  
 2 send it on to Cabinet Secretariat?  
 3 MR. THOMPSON:  
 4 Q. no.  
 5 THE COMMISSIONER:  
 6 Q. The department has its own input by either  
 7 going back to ask further questions or adding  
 8 further information?  
 9 MR. THOMPSON:  
 10 Q. Right.  
 11 THE COMMISSIONER:  
 12 Q. Although I'm quite sure you can find  
 13 paragraphs from Eastern Health directly  
 14 reproduced in your briefing note which  
 15 eventually gets to you. But when you're  
 16 describing what the department does in its  
 17 role, it seems to me that you're describing an  
 18 operation which is almost like they're making  
 19 sure that Eastern Health's briefing note is up  
 20 to snuff for you as opposed to they're having  
 21 a role in respect of the information in the  
 22 briefing note?  
 23 MR. THOMPSON:  
 24 Q. Right. Well, okay, I think what you're  
 25 bringing me back to are what are the roles of

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1 the three organizations and what kind of  
 2 information should be of importance to each of  
 3 those organizations in their role.  
 4 THE COMMISSIONER:  
 5 Q. Okay.  
 6 MR. THOMPSON:  
 7 Q. So, and first of all, I don't know whether  
 8 this note actually had a draft text prepared  
 9 initially in Eastern Health or whether the  
 10 initial draft text was prepared within the  
 11 department, based on phone calls and obtaining  
 12 of information directly, I just don't know  
 13 that.  
 14 COFFEY, Q.C.:  
 15 Q. To assist you in that, P-0124, please, page 2?  
 16 Now, this is -  
 17 MR. THOMPSON:  
 18 Q. Okay.  
 19 COFFEY, Q.C.:  
 20 Q. The came out of Eastern Health.  
 21 MR. THOMPSON:  
 22 Q. Okay.  
 23 COFFEY, Q.C.:  
 24 Q. Ended up in the department, as it turned out.  
 25 MR. THOMPSON:

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1 Q. Okay.  
 2 COFFEY, Q.C.:  
 3 Q. So, and as the Commissioner is pointing out,  
 4 much of the same text. There's some editing  
 5 but much of it is -  
 6 MR. THOMPSON:  
 7 Q. Sure.  
 8 COFFEY, Q.C.:  
 9 Q. - almost verbatim.  
 10 MR. THOMPSON:  
 11 Q. Okay. So in light of that, Eastern Health has  
 12 served a role in trying to describe factually  
 13 to the department what's going on within its  
 14 organization because it has the primary  
 15 responsibility for the activity and for the  
 16 response process. So it has to account to the  
 17 Department of Health and to the minister about  
 18 its actions. It -  
 19 THE COMMISSIONER:  
 20 Q. Accountability in this sense being you have to  
 21 explain?  
 22 MR. THOMPSON:  
 23 Q. Correct.  
 24 THE COMMISSIONER:  
 25 Q. Okay.

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1 MR. THOMPSON:  
 2 Q. Inform and explain. And I've always regarded  
 3 accountability as sustaining confidence, as  
 4 well.  
 5 THE COMMISSIONER:  
 6 Q. Okay.  
 7 MR. THOMPSON:  
 8 Q. Through that. And so they prepare a note that  
 9 tries to serve that function. It's then up to  
 10 the Department of Health not just simply to  
 11 pass through that information, but to analyze  
 12 that information to the extent that they can  
 13 be comfortable that they received answers to  
 14 obvious questions and that the note actually  
 15 explains the facts correctly, completely, that  
 16 the implications are pointed out and that--and  
 17 likely future progress of this issue. In  
 18 other words, it will allow the--part of the  
 19 accountability function is to have enough  
 20 information in the hands of the department and  
 21 the minister that if the minister is called on  
 22 to speak in the House of Assembly or in the  
 23 public through the media about this issue,  
 24 that the minister is possessed of sufficient  
 25 information to say that they have accounted to

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1 us and were satisfied with the kinds of  
 2 questions we've asked them. Now, the note  
 3 then that gets passed on to Cabinet  
 4 Secretariat and the Premier who are not  
 5 engaged more directly and the accountability  
 6 relationship is really for information and  
 7 intelligence of all the issues that are  
 8 occurring within government.  
 9 THE COMMISSIONER:  
 10 Q. Okay.  
 11 MR. THOMPSON:  
 12 Q. If there's a decision to be made in a Cabinet  
 13 process, we actually wouldn't expect to see a  
 14 briefing note unless it was a preliminary or  
 15 something coming and we want you to know about  
 16 the decision that needs to be made by Cabinet,  
 17 because the vehicle for that information is a  
 18 formal Cabinet submission. Briefing notes are  
 19 sometimes used to get a direction from the  
 20 Premier on a modest or a matter that doesn't  
 21 need full Cabinet decision or to obtain his  
 22 sense of perspective. But this note here on  
 23 September--or October 5th is an information  
 24 note, so it doesn't call on the Premier or the  
 25 Cabinet Secretariat to make any action, but

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1 certainly the Premier's office or Cabinet  
 2 Secretariat should, if they see something in  
 3 this, that they feel independently they would  
 4 like to respond to, to query, to make an  
 5 action on, they certainly have the opportunity  
 6 to do so, but that's not the expectation in  
 7 that exchange.  
 8 THE COMMISSIONER:  
 9 Q. But the--okay, let's go back to the department  
 10 for a moment. The department gets a briefing  
 11 note, perhaps goes back to Eastern Health for  
 12 further explanation, but my understanding of  
 13 what you're saying is that the department's  
 14 role at that point is to determine whether or  
 15 not the thing has been properly handled within  
 16 Eastern Health?  
 17 MR. THOMPSON:  
 18 Q. Correct. That's right.  
 19 THE COMMISSIONER:  
 20 Q. And you would not expect the department, as I  
 21 understand it, to do anything other than pass  
 22 on the information unless it had concerns that  
 23 the thing wasn't being properly handled in  
 24 Eastern Health, is that it?  
 25 MR. THOMPSON:

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1 Q. No, no. Sorry.  
 2 THE COMMISSIONER:  
 3 Q. Well, I mean, in the sense of, for example,  
 4 the department gets information about a quite  
 5 serious matter having to do with the care of a  
 6 large number of citizens?  
 7 MR. THOMPSON:  
 8 Q. Um-hm.  
 9 THE COMMISSIONER:  
 10 Q. That obviously has to heighten your concerns  
 11 and your interests and you might respond more  
 12 quickly and more, let us say, with more energy  
 13 than you would if you got a report from  
 14 Eastern Health that said, you know, we've got  
 15 a problem with this machine, we're going to  
 16 have to replace it five months down the road,  
 17 it's coming down the pipe, but it'll be okay  
 18 for five months.  
 19 MR. THOMPSON:  
 20 Q. Um-hm.  
 21 THE COMMISSIONER:  
 22 Q. You know, you've got something which is truly  
 23 serious on your hands.  
 24 MR. THOMPSON:  
 25 Q. Yes.

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1 THE COMMISSIONER:  
 2 Q. So Eastern Health provides the information,  
 3 provides information about the basic  
 4 understanding of the event. The department's  
 5 role, as I'm gathering from those who have  
 6 been here, is to determine whether or not in  
 7 its view Eastern Health is properly handling  
 8 it?  
 9 MR. THOMPSON:  
 10 Q. Right.  
 11 THE COMMISSIONER:  
 12 Q. And as I understand it, whether or not the  
 13 solving of the problem requires direct  
 14 intervention by the department for some  
 15 reason. For example, if the solving of the  
 16 problem would require large amounts of money -  
 17 MR. THOMPSON:  
 18 Q. Sure.  
 19 THE COMMISSIONER:  
 20 Q. - then that's the department's function to  
 21 deal with the budgetary interest and they  
 22 would get involved in preparing necessary  
 23 documentation to deal with that aspect of it.  
 24 MR. THOMPSON:  
 25 Q. Sure, yes.

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1 THE COMMISSIONER:  
 2 Q. But if it was outside of that which the  
 3 department normally got involved with, under  
 4 what circumstances would a department say,  
 5 "Okay, this is so big," or would they ever  
 6 say, "This is so big that we have to put our  
 7 oar in more than we would normally," if you  
 8 would? Or does the department just say  
 9 "You're handling it. Our examination of what  
 10 you're doing would indicate that it's going in  
 11 a particular direction that might not be the  
 12 wisest direction in our opinion, but it's a  
 13 direction arrived at with due consideration,  
 14 therefore go to it and let us know what  
 15 happens in the end."  
 16 MR. THOMPSON:  
 17 Q. Yes. So a department could receive a note and  
 18 query the note and reach the view that this is  
 19 being well handled and well managed and thank  
 20 you for the information and we're satisfied  
 21 and leave it at that. A department could,  
 22 indeed, do that, yes.  
 23 THE COMMISSIONER:  
 24 Q. Um-hm.  
 25 MR. THOMPSON:

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1 Q. The trigger that might send the note then over  
 2 to Cabinet Secretariat and the Premier's  
 3 office might--would include, clearly, the  
 4 degree of significance and importance of the  
 5 issue itself, whether or not it's about to  
 6 break in the media, but also if it has that  
 7 additional element of an urgent matter that  
 8 may cause a public concern in a public  
 9 setting, that would clearly require the  
 10 department to inform the Premier's office and  
 11 Cabinet Secretariat about that matter. Now,  
 12 if within the context of that very, that  
 13 sensitive issue that's being forwarded there's  
 14 also a--if there's a budgetary consideration  
 15 that the department can handle on its own, it  
 16 wouldn't advance that, necessarily, that  
 17 decision -  
 18 THE COMMISSIONER:  
 19 Q. Okay.  
 20 MR. THOMPSON:  
 21 Q. - for the action of the Premier or the  
 22 Cabinet. But if it's a type of decision  
 23 that's beyond the department's capacity to  
 24 handle on its own, it certainly might note  
 25 that issue in that note and advise that a

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1 Treasury Board submission or a Cabinet  
 2 submission will be made in due course.  
 3 THE COMMISSIONER:  
 4 Q. Does your--does the Cabinet Secretariat do a  
 5 separate analysis about whether or not the  
 6 thing is being managed properly?  
 7 MR. THOMPSON:  
 8 Q. Well, in this case?  
 9 THE COMMISSIONER:  
 10 Q. Um-hm.  
 11 MR. THOMPSON:  
 12 Q. In this case we do have staff that review the  
 13 quality of the briefing notes that come in  
 14 before they get circulated further, and so at  
 15 that stage I'd call it a sort of quality  
 16 review because our people read the draft note,  
 17 want to make sure that the language is clear  
 18 and that the meanings are clear. And  
 19 secondly, if there is any obvious unanswered  
 20 questions that should be answered in the note,  
 21 they will ask the department for more  
 22 information or for the department to re-edit  
 23 the note. If it's a simple matter, sometimes  
 24 that's filled in at Cabinet Secretariat and,  
 25 in fact, becomes a fresh note, that it gets

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1 circulated with perhaps 90 percent content  
 2 from the department and the additional 10  
 3 percent based on those clarifications from  
 4 Cabinet Secretariat. If the department in  
 5 such a note had said, you know, or implied or  
 6 inferred that they had confidence in the way  
 7 Eastern Health is handling it, we wouldn't  
 8 launch an independent assessment of that.  
 9 We'd certainly read what's there and if  
 10 there's anything in the note that gives  
 11 concern about the manner in which it's being  
 12 held, we could independently go back and  
 13 express a concern and look into it. But--so  
 14 one could go in that direction. But if  
 15 there's confidence inferred, implies or  
 16 explicitly stated in the department's note  
 17 that here's the process, things are in  
 18 control, that's barring some obvious marker  
 19 that it's otherwise, that will get the message  
 20 out faster -  
 21 THE COMMISSIONER:  
 22 Q. I suppose that's what I'm saying, would you,  
 23 if you had either implied or expressly  
 24 received the information--sorry, start again.  
 25 If the briefing note content either through

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1 implication or expressly indicated that the  
 2 department's analysis was that it was being  
 3 handled properly within the institution, the  
 4 health authority, then I suppose my question  
 5 is do you accept that at face value or do you  
 6 do a further analysis to determine whether or  
 7 not you're okay with that or does everybody  
 8 wait until perhaps it's evident that it wasn't  
 9 being handled?  
 10 MR. THOMPSON:  
 11 Q. Part of this is a relationship issue, as well.  
 12 The people who read it initially in Cabinet  
 13 Secretariat are receiving it from people that  
 14 they deal with frequently. Often a note has  
 15 been signed off up to the deputy minister  
 16 level, maybe even by the minister, so it comes  
 17 over with a sense that this is a fairly  
 18 authoritative point of view from the  
 19 department. But there's no--so unless there's  
 20 an obvious reason why to doubt or if there's  
 21 something in the note that gives rise to a  
 22 doubt, the view that's expressed by the  
 23 department and given the speed at which this  
 24 process is operating, the view that's  
 25 expressed by the department is likely to be

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1 taken as a reasonable view of the matter. But,  
 2 Commissioner, if--and there are occasions when  
 3 we get notes from departments that are big  
 4 gaps, that don't leave us with confidence as  
 5 something that the department has a grasp of  
 6 the issue in play and we will, I wouldn't call  
 7 it launch an investigation, but perhaps it's a  
 8 less formal process, but we won't accept the  
 9 note as it is and we will work with them more  
 10 closely to get a better appraisal of the  
 11 situation before passing it on to the Premier.  
 12 THE COMMISSIONER:  
 13 Q. And that's the judgment call made by you and  
 14 the people who work with you on reviewing the  
 15 note?  
 16 MR. THOMPSON:  
 17 Q. Well, sometimes it'll be the Cabinet officer,  
 18 the assistant secretary or could have been  
 19 myself as the deputy clerk, it could vary from  
 20 circumstance to circumstance.  
 21 THE COMMISSIONER:  
 22 Q. Okay.  
 23 MR. THOMPSON:  
 24 A. Thank you. Sorry, Mr. Coffey, I've done it  
 25 again.

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1 COFFEY, Q.C.:

2 Q. No, no, Commissioner. Actually, in terms of

3 just that point and where that September 30th

4 note actually touched the Department of

5 Health, Exhibit P-0141, page 1, 0141, page 1.

6 You'll see there that Denise Dunn, who is Dr.

7 Williams' then EA on Friday September 30th at

8 2005 at 5:04 p.m. sent it to a number of

9 people, including Ms. Hennessey. See that

10 right there? And we just look to the second

11 page, that's that note.

12 MR. THOMPSON:

13 Q. Okay.

14 COFFEY, Q.C.:

15 Q. We just saw in a different exhibit standpoint.

16 Now, on that, in answering the Commissioner's

17 questions just then you indicated that one of

18 the, I believe, as you framed it, one of the

19 purposes of a briefing note being prepared by

20 an outside--well, a health authority, for

21 example, outside agency, for the department

22 would be, did you use the words, "intended to

23 sustain confidence," to explain that what

24 we've done -

25 MR. THOMPSON:

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1 Q. On a matter like this the note should be clear

2 enough, and if there's an implication or--

3 don't want to get tongue tied here. There

4 should be enough information in the note on a

5 complicated issue within a health authority to

6 convey whether or not the matter is being

7 handled competently, and if it is and if that

8 inference and that sense of it comes through,

9 then, yes, it does sustain confidence. If

10 there's no reason for confidence to be had,

11 that should also come out through the note.

12 COFFEY, Q.C.:

13 Q. Yes, and -

14 MR. THOMPSON:

15 Q. The matter is not just passing through mere

16 facts, that's not what the briefing note

17 process is about. There has to be some filter

18 from the department's perspective about what's

19 going on.

20 COFFEY, Q.C.:

21 Q. In terms of the note the department would

22 receive from the health authority?

23 MR. THOMPSON:

24 Q. Yes, but as it re-maps that note and prepares

25 it for the minister.

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1 COFFEY, Q.C.:

2 Q. Yes.

3 MR. THOMPSON:

4 Q. There should be a filter, the department's

5 lens put on that issue.

6 COFFEY, Q.C.:

7 Q. And I'm right now just because you had been

8 the deputy minister of health at one point, a

9 note coming in to the department from a health

10 authority, if the health authority was to

11 include statements of fact that would not

12 sustain confidence or might undermine

13 confidence, I take it that there would be a

14 negative incentive in that regard from the

15 health authority's perspective? If you tell

16 the department something that's not going to

17 engender confidence in the department, you

18 would anticipate -

19 MR. THOMPSON:

20 Q. In the authority, you mean?

21 COFFEY, Q.C.:

22 Q. Yes. The next thing the department is asking

23 presumably very pointed questions about what's

24 going on?

25 MR. THOMPSON:

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1 Q. Sure.

2 COFFEY, Q.C.:

3 Q. And, in fact, ultimately that's ultimately

4 what happened in June of '07 with yourself?

5 MR. THOMPSON:

6 Q. Um-hm.

7 COFFEY, Q.C.:

8 Q. And the communications with patients, wasn't

9 it?

10 MR. THOMPSON:

11 Q. Right.

12 COFFEY, Q.C.:

13 Q. So that in terms of the structure as it is,

14 there's a disincentive built into it in terms

15 of the health authority being blunt if the

16 bluntness involves acknowledging to the

17 department that we haven't actually perhaps

18 addressed this matter as well as we could

19 have?

20 MR. THOMPSON:

21 Q. I don't know if there's a disincentive to do

22 it. I mean, it's an actual human tendency to

23 portray one's own work as reasonable in the

24 circumstances. But here we have a group of

25 high level professionals who have written

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1 reports many times and they know that if they  
 2 pass on information that doesn't allow the  
 3 department and the minister to gain a clear  
 4 understanding, then that's a worse offence  
 5 than perhaps anything else. If there's a  
 6 deliberate misleading which is sort of perhaps  
 7 a more harsher of putting what it is that  
 8 you've just said -  
 9 COFFEY, Q.C.:  
 10 Q. For example, by omission as opposed to -  
 11 MR. THOMPSON:  
 12 Q. By whatever technique, if there's a deliberate  
 13 misleading of the minister or the Premier,  
 14 that's a very serious matter. And so I don't  
 15 think there's a disincentive to mislead as a  
 16 consequence because the consequences of  
 17 misleading are even more serious, I believe.  
 18 COFFEY, Q.C.:  
 19 Q. Okay. Now, sir, when we looked at that  
 20 briefing note of October 5, that's P-0124,  
 21 page 6, if we just look at page 7 of it,  
 22 please? Thank you. This is the second page  
 23 of it. And feel free to look at the first  
 24 page, if you like. Is there anything in this  
 25 note which indicates that there is any

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1 activity being conducted or planned, even, or  
 2 had been conducted to ascertain what had  
 3 caused the problem in the past?  
 4 MR. THOMPSON:  
 5 Q. Well, the only, I think the only thing that  
 6 one could read that into would be the second-  
 7 last paragraph regarding an external peer  
 8 review to review current practices and  
 9 procedures within the laboratory service.  
 10 Now, that leaves an impression, though, that  
 11 the review will look at what's happening right  
 12 now to fix what's happening now, if something  
 13 is happening incorrectly now. It doesn't  
 14 leave one with the impression that a  
 15 retrospective review of the causes that may  
 16 have--if, in fact, we find out that there was  
 17 inappropriate testing under way, it doesn't  
 18 leave one literally with the impression that  
 19 that's part of their mandate.  
 20 COFFEY, Q.C.:  
 21 Q. And if we could look at P-0312, page 5,  
 22 please? Sorry, I apologize, page 3, I  
 23 apologize. Now this is your e-mail of 10:51  
 24 a.m. to Mr. Cake on July 19th. As you told me  
 25 yesterday, of course, not only did you want

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1 the fact that the com plan include a reference  
 2 to, an assurance, therefore a reference to  
 3 that once the solution is set in motion an  
 4 evaluation will be done to determine the  
 5 specific or systemic reasons why this  
 6 occurred, ie, past tense, so that the matter  
 7 will be properly addressed in the long term.  
 8 Now, as you just acknowledged, in the October  
 9 5th briefing note, which you would have read,  
 10 there's no such reference to any kind of look  
 11 back, is there? Can you explain why when you  
 12 read it -  
 13 MR. THOMPSON:  
 14 Q. Can we go back to -  
 15 COFFEY, Q.C.:  
 16 Q. We certainly can. It's the one we were  
 17 looking at was P-0124, page 7. Yes, it's  
 18 right there. Okay?  
 19 MR. THOMPSON:  
 20 Q. Sorry, go ahead.  
 21 COFFEY, Q.C.:  
 22 Q. So I was just--like your initial reaction, in  
 23 fact, within minutes, was to stipulate that a  
 24 com plan include this assurance. And as you  
 25 pointed out yesterday, it wouldn't be just the

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1 assurance, giving the assurance would mean  
 2 actually do the work, as well?  
 3 MR. THOMPSON:  
 4 Q. Um-hm.  
 5 COFFEY, Q.C.:  
 6 Q. To look back and find out why this had  
 7 occurred. Yet, on October 5 there's no  
 8 assurance there at all?  
 9 MR. THOMPSON:  
 10 Q. Right.  
 11 COFFEY, Q.C.:  
 12 Q. That Eastern Health has any intention to look  
 13 back in the sense of try and figure out how  
 14 this happened, it's just to look at what's  
 15 going on now for the future?  
 16 MR. THOMPSON:  
 17 Q. Um-hm.  
 18 COFFEY, Q.C.:  
 19 Q. And their note also does indicate, when we  
 20 look earlier in it, that the machine had  
 21 changed in the sense that they weren't using  
 22 the DAKO, they'd stopped that in '04 and  
 23 they're now looking at the Ventana?  
 24 MR. THOMPSON:  
 25 Q. Um-hm.

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1 COFFEY, Q.C.:

2 Q. Which would be their current practices and

3 procedures or at least part of their current

4 practices and procedures would be the Ventana.

5 So was there anything, you know, on October 5

6 or thereabouts that lead you to believe that

7 there was actually going to be a look back as

8 to why this occurred?

9 MR. THOMPSON:

10 Q. Well, okay, I can't recall what I was thinking

11 that day when I read that note and whether I

12 did that kind of analysis. But one can look

13 at the note now and try to reassemble what

14 might be the kind of reaction that one might

15 have had. And as I mentioned earlier, one--

16 the first pass on a note like this gives an

17 impression of a lot of activity, a lot of

18 engagement and management of the issue. And

19 one of the things that stands out is that

20 there is a retrospective analysis under way of

21 the--in terms of the retesting of patients.

22 So they, patients from those years are being

23 retested to find out whether or not they had

24 inaccurate testing done. So that's, it

25 doesn't say, of course, that that's a process

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1 of trying to determine the cause.

2 COFFEY, Q.C.:

3 Q. Yes.

4 MR. THOMPSON:

5 Q. But, you know, we're still here dealing with

6 information that fairly fresh eyes coming to

7 an issue like that, so there's a retrospective

8 aspect of that under way. There's also the

9 reviews that are under way to look at current

10 practices and procedures. One could infer

11 from that that current practices and

12 procedures may well be similar to what had

13 been in place when inappropriate testing was

14 taking place, but we don't know that for sure.

15 So by way of all that what I'm saying to you

16 is that the thought that occurred to me on

17 July 19th, which I think was the right

18 thought, did not occur to me on this same

19 date, but I was faced with an issue that was

20 in motion and many good things happening and

21 so that impression, perhaps, prevailed on me

22 on that day rather than the specific point of

23 a retrospective review about cause.

24 COFFEY, Q.C.:

25 Q. And on October 5 wouldn't you have been, you

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1 know, I mean, as clerk responsible for the

2 civil service, including the Department of

3 Health of the province at the time, wouldn't

4 you have been curious to know, look, how did

5 this ever happen?

6 MR. THOMPSON:

7 A. It's an important question.

8 COFFEY, Q.C.:

9 Q. And as clerk, wouldn't it have been important

10 to stipulate that somebody find out and tell

11 you?

12 MR. THOMPSON:

13 A. Well, as clerk -

14 COFFEY, Q.C.:

15 Q. As you did on July 19th. You set it in

16 motion.

17 MR. THOMPSON:

18 A. Well, as clerk, that's an important question

19 to ask if one is engaged in this incident.

20 This matter was being managed with the

21 Department of--sorry, the health authority,

22 with communication with the Department of

23 Health. I had a note here which was informing

24 me of this and it was informing me of an

25 ongoing process with multiple parts. If I had

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1 analyzed it from the point of view and then

2 became aware from this note that there's no

3 clear process. There may be one here, may not

4 be worded well, but if there's no clear

5 process here to determine the original cause,

6 it would have been a good thing to have asked

7 about to determine if that was part of the

8 things that were under way.

9 COFFEY, Q.C.:

10 Q. So then by the time you've read the October

11 5th note, two things really, I take it, that

12 had been of considerable interest to you on

13 July 19th which was that there be a proper com

14 plan and that whatever else, the com plan give

15 the public an assurance that there will be an

16 evaluation done as to why it occurred. By the

17 end of reading that October 5th note, you had

18 no assurance that there was any com plan in

19 existence, nor that there would be this look

20 back in the sense of actually trying to find

21 out what happened, why it happened.

22 MR. THOMPSON:

23 A. Yeah, it's--you've said that I was interested

24 in seeing two things happen, but really just

25 one.



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1 COFFEY, Q.C.:

2 Q. One.

3 MR. THOMPSON:

4 A. Because -

5 COFFEY, Q.C.:

6 Q. Back in July?

7 MR. THOMPSON:

8 A. Yeah, the com plan was a given in those e-

9 mails. So it wouldn't have been that I was

10 asking for a com plan to be done. But what I

11 was asking was for that evaluation to be done.

12 COFFEY, Q.C.:

13 Q. And I take it then that as this note, you

14 didn't request a further supplement for the

15 October 5th one, briefing note. There was no

16 gap noticed, from your perspective, in it?

17 MR. THOMPSON:

18 A. As far as I know I didn't see a gap between

19 the earlier e-mails to the extent that I

20 recall what was in them, and this briefing

21 note.

22 THE COMMISSIONER:

23 Q. Mr. Coffey, whenever you can find a convenient

24 time, we'll take the morning break.

25 COFFEY, Q.C.:

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1 Q. This is just that, Commissioner. Go on to

2 something else, thank you.

3 THE COMMISSIONER:

4 Q. All right, take 15 minutes.

5 (BREAK)

6 THE COMMISSIONER:

7 Q. Please be seated. Mr. Coffey.

8 COFFEY, Q.C.:

9 Q. Thank you, Commissioner. If we could, please,

10 Exhibit P-0164? Now this, sir, is a document,

11 it's actually 30 pages long. It's entitled

12 confidential Memorandum to Executive Council.

13 The title is New Treatment Therapies for

14 Cancer Patients, and the issue is described as

15 "whether to introduce new treatment therapies

16 to targeted cancer patients in Newfoundland

17 and Labrador," and it's HCS2005-037. Now what

18 type of a document is a Memorandum to

19 Executive Council? What's its purpose and

20 what, if any, involvement would it require of

21 you or your immediate staff?

22 MR. THOMPSON:

23 A. Okay. Well, it's a formal Cabinet submission

24 and it indicates therefore that a minister

25 wishes to have a decision of the Cabinet,

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1 based on the issues included in this paper,

2 and the paper is designed to include a

3 background statement and analysis of the

4 issues, the reasons for approving a certain

5 course of action, assessing the alternatives

6 and in making recommendations. It will also

7 include appendices, as necessary, to fill out

8 the issue.

9 Now when a minister signs off on a

10 Cabinet submission, it's sent to Cabinet

11 Secretariat and actually arrives at the desk

12 of the Deputy Clerk of the Executive Council.

13 COFFEY, Q.C.:

14 Q. Sorry, what would come over?

15 MR. THOMPSON:

16 A. The submission, including all of its

17 appendices.

18 COFFEY, Q.C.:

19 Q. Okay, got you, and this would be this

20 Memorandum to Executive Council, that's the

21 submission?

22 MR. THOMPSON:

23 A. Correct.

24 COFFEY, Q.C.:

25 Q. Okay. Go ahead, I'm sorry.

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1 MR. THOMPSON:

2 A. And then a decision would be made by the

3 deputy clerk as to which committee of Cabinet

4 it would be routed, and so this paper, coming

5 from the Department of Health, would likely be

6 routed to the social policy committee of

7 Cabinet or if it's a purely financial matter,

8 it would be routed to the Treasury Board, and

9 one of those committees, normally within the

10 next week to two weeks, would have a meeting,

11 an agenda of a variety of submissions. It

12 would get debated and a recommendation from

13 that committee would be made to Cabinet.

14 Now I've just skipped over though the

15 involvement of our staff. When each paper

16 arrives, it's provided to the appropriate

17 assistant secretary and Cabinet officer that

18 deals with that department and they begin, if

19 they haven't already begun it on a draft

20 version of the paper in the weeks leading up,

21 they begin an analysis of this paper to

22 determine is it complete, is it clear, have

23 all the relevant options been assessed? Does

24 it answer the questions, the kinds of

25 questions that ministers may ask? And where

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1 does it fit within the overall strategy of the  
 2 government, the government's overall  
 3 priorities? So those are the kinds of  
 4 questions.  
 5 If there's data in a submission that  
 6 doesn't add up, it doesn't make sense somehow,  
 7 then that data would be analyzed and questions  
 8 would arise on that. So the whole purpose is  
 9 making this submission, and whatever analysis  
 10 that Cabinet Secretariat writes up, so  
 11 together making this submission ready for a  
 12 decision, to try to remove as many of the  
 13 potential--resolve as many of the potential  
 14 questions in advance, so that the decision  
 15 making process with ministers is as smooth as  
 16 possible.  
 17 We, of course, don't always anticipate  
 18 every question and that's natural, and so, but  
 19 after that's completed, the analysis that  
 20 Cabinet Secretariat prepares, normally by the  
 21 Cabinet officer and then by the assistant  
 22 secretary signed off at that level, would be  
 23 attached to the Cabinet paper as it goes to  
 24 the first Cabinet committee, and then after a  
 25 recommendation emerges from that committee, a

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1 recommendation from the committee may be  
 2 attached to that set of documents, and the  
 3 recommendation of the committee, of course,  
 4 can be different than the recommendation of  
 5 the originating minister, and if so, any  
 6 variations will be ultimately considered by  
 7 the full Cabinet in making the final decision.  
 8 COFFEY, Q.C.:  
 9 Q. Now sir, and your involvement in this, your  
 10 personal involvement, if at all, would be  
 11 where?  
 12 MR. THOMPSON:  
 13 A. Well, I make an effort to read all of the  
 14 Cabinet submissions when they come in during  
 15 the period when they're being analyzed and  
 16 going through committee. So I would then, in  
 17 the week of a Cabinet meeting, have a full  
 18 binder prepared for me on all of the  
 19 submissions that are likely to be on the  
 20 agenda that Thursday, because typically  
 21 Cabinet day is a Thursday, and then we also  
 22 have summaries of all papers prepared. I'd be  
 23 involved in reviewing those summaries, and  
 24 then that book would become the--or similar  
 25 copies of that book would be provided to--

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1 under my direction and under the deputy  
 2 clerk's direction, would be provided to the  
 3 Premier and so it's really at that last stage  
 4 of preparation and oversight, is everything in  
 5 this book ready for the Premier and for  
 6 Cabinet? Are we ready to make a decision?  
 7 And in particular, are there any outstanding  
 8 issues or issues of particular note that need  
 9 to be provided to the Premier before he goes  
 10 in to chair the Cabinet meeting?  
 11 COFFEY, Q.C.:  
 12 Q. So would the entire package end up before the  
 13 Cabinet, the Premier -  
 14 MR. THOMPSON:  
 15 A. Yes.  
 16 COFFEY, Q.C.:  
 17 Q. - before the Cabinet and then the Premier  
 18 would receive the entire package finalized  
 19 before it came up in Cabinet?  
 20 MR. THOMPSON:  
 21 A. Correct.  
 22 COFFEY, Q.C.:  
 23 Q. And then -  
 24 MR. THOMPSON:  
 25 A. And so would every minister.

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1 COFFEY, Q.C.:  
 2 Q. And every minister as well then would have it  
 3 as well, and that's not just a summary, but  
 4 that's the whole -  
 5 MR. THOMPSON:  
 6 A. All the appendices as well.  
 7 COFFEY, Q.C.:  
 8 Q. All appendices, okay. Now looking at this  
 9 document, who's responsible for preparing the  
 10 communications plan--well, first of all, I  
 11 should ask you. A Memorandum to Executive  
 12 Council is supposed to be comprised of what,  
 13 when it comes from the department?  
 14 MR. THOMPSON:  
 15 A. Normally the five-page submission itself and  
 16 any relevant appendices, one of which is a  
 17 communications plan.  
 18 COFFEY, Q.C.:  
 19 Q. Okay, and that is one that originates within  
 20 the department?  
 21 MR. THOMPSON:  
 22 A. Within the department, that's right.  
 23 COFFEY, Q.C.:  
 24 Q. Is there anyone from the Cabinet Secretariat  
 25 communications group that gets involved in it?

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1 MR. THOMPSON:  
 2 A. Well, the -  
 3 COFFEY, Q.C.:  
 4 Q. Is there a communications and consultation  
 5 branch briefing note?  
 6 MR. THOMPSON:  
 7 A. As I understand it, and I recall, when we  
 8 receive the submission, the communications  
 9 plan will be analyzed by an officer within the  
 10 communications and consultations branch.  
 11 There could be a dialogue back and forth  
 12 between that officer and the communications  
 13 director in the department. The notes on the  
 14 completeness and the appropriateness of the  
 15 plan then would be given to the Cabinet  
 16 officer who was pulling together the main  
 17 Cabinet Secretariat analysis. So that if there  
 18 are special points to be made on the  
 19 communications plan, they would be summarized  
 20 into the Cabinet Secretariat analysis.  
 21 COFFEY, Q.C.:  
 22 Q. And there might be a briefing note from the  
 23 communications and consultations branch  
 24 itself, like an actual specific note?  
 25 MR. THOMPSON:

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1 A. My understanding is that a note would be--or a  
 2 paragraph perhaps would be inserted into the  
 3 full Cabinet Secretariat analysis.  
 4 COFFEY, Q.C.:  
 5 Q. We'll look at this one in particular. So it  
 6 would come up from the department, having been  
 7 signed off by the minister, this submission to  
 8 Cabinet Secretariat?  
 9 MR. THOMPSON:  
 10 A. Right.  
 11 COFFEY, Q.C.:  
 12 Q. With a view that it would go to Cabinet?  
 13 MR. THOMPSON:  
 14 A. Right.  
 15 COFFEY, Q.C.:  
 16 Q. Full Cabinet. A Cabinet officer would be  
 17 involved responsible for that department?  
 18 MR. THOMPSON:  
 19 A. Right.  
 20 COFFEY, Q.C.:  
 21 Q. To review it. The consultations and  
 22 communications branch representative would  
 23 review it?  
 24 MR. THOMPSON:  
 25 A. Um-hm.

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1 COFFEY, Q.C.:  
 2 Q. Would the assistant secretary for Cabinet for  
 3 that particular -  
 4 MR. THOMPSON:  
 5 A. Yes.  
 6 COFFEY, Q.C.:  
 7 Q. - committee of Cabinet review it?  
 8 MR. THOMPSON:  
 9 A. Yes.  
 10 COFFEY, Q.C.:  
 11 Q. You would review it?  
 12 MR. THOMPSON:  
 13 A. I would read the paper during that period and  
 14 ultimately look at the analysis as well when  
 15 it's ready, but I wouldn't sign off on it.  
 16 COFFEY, Q.C.:  
 17 Q. Sure. And the significance of you signing off  
 18 or not would be what?  
 19 MR. THOMPSON:  
 20 A. Only that so much volume of work throughout,  
 21 it means that I haven't participated in and  
 22 approved all of the analysis in the Cabinet--  
 23 now I have to take responsibility for it to  
 24 the Premier and the Cabinet that if there's  
 25 something--an error there, I'll take

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1 responsibility for making sure those kinds of  
 2 errors don't happen again, but I don't  
 3 actually participate in the day-to-day signing  
 4 off of those analyses.  
 5 COFFEY, Q.C.:  
 6 Q. Okay, but the people who do, I take it, are  
 7 recorded in the documents themselves?  
 8 MR. THOMPSON:  
 9 A. Yes.  
 10 COFFEY, Q.C.:  
 11 Q. And there's a social policy committee of  
 12 Cabinet, an economic policy committee of  
 13 Cabinet?  
 14 MR. THOMPSON:  
 15 A. Right.  
 16 COFFEY, Q.C.:  
 17 Q. But there was a third committee, I take it?  
 18 MR. THOMPSON:  
 19 A. Treasury Board.  
 20 COFFEY, Q.C.:  
 21 Q. Treasury Board, okay. Now looking at this  
 22 particular exhibit, first of all, have you  
 23 seen--I gather because of your comments, you  
 24 would have seen this back in 2005, but have  
 25 you seen this more recently?

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1 MR. THOMPSON:  
 2 A. Yes.  
 3 COFFEY, Q.C.:  
 4 Q. Okay. This one, which social policy  
 5 committees of Cabinet did this one pass  
 6 through?  
 7 MR. THOMPSON:  
 8 A. Which committee of Cabinet?  
 9 COFFEY, Q.C.:  
 10 Q. Yes, which committee of Cabinet? I'm sorry, I  
 11 apologize, which committee of Cabinet.  
 12 MR. THOMPSON:  
 13 A. I can't tell from this particular--from the  
 14 heading here. I should have looked into that  
 15 before I came here today. Because it's  
 16 primarily an allocation of funding for a new  
 17 drug, it's likely it went to Treasury Board,  
 18 but it could have gone to social policy, but--  
 19 so I'm merely guessing here today, I admit,  
 20 that I think it would probably have been  
 21 Treasury Board.  
 22 COFFEY, Q.C.:  
 23 Q. Okay, if we look at page 12, please? You have  
 24 fair instincts, because there you are, that's  
 25 Treasury Board's recommendation to Cabinet,

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1 and if we look at the next page, just go ahead  
 2 there, Treasury Board comment, which would  
 3 originate in Treasury Board itself.  
 4 MR. THOMPSON:  
 5 A. Similar to a Cabinet Secretariat analysis.  
 6 COFFEY, Q.C.:  
 7 Q. Is there any sign--and I'm going to be taking  
 8 you through some of this, but would there be  
 9 any--if it did pass through another committee  
 10 of Cabinet, would there be something here to  
 11 indicate that it did?  
 12 MR. THOMPSON:  
 13 A. Oh yes, indeed, but it's a general rule,  
 14 broken in the rare exception, that--the  
 15 general rule is that a paper will only go to  
 16 one committee of Cabinet. If there's other  
 17 ministers who are not on that committee who  
 18 have a special interest in the paper, they can  
 19 be invited to sit on that committee, but in  
 20 terms of a good business process, it only goes  
 21 to one committee.  
 22 COFFEY, Q.C.:  
 23 Q. So if it ended up before Treasury Board, which  
 24 this one did -  
 25 MR. THOMPSON:

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1 A. Right.  
 2 COFFEY, Q.C.:  
 3 Q. - that would be the committee -  
 4 MR. THOMPSON:  
 5 A. Correct.  
 6 COFFEY, Q.C.:  
 7 Q. - dealt with it. Who makes the decision as to  
 8 which committee it goes to?  
 9 MR. THOMPSON:  
 10 A. The deputy clerk.  
 11 COFFEY, Q.C.:  
 12 Q. Ms. Barnes?  
 13 MR. THOMPSON:  
 14 A. Right.  
 15 COFFEY, Q.C.:  
 16 Q. Would she consult you about it or -  
 17 MR. THOMPSON:  
 18 A. Sometimes. Like this one, this one is not  
 19 abnormally complex, but some others are. Some  
 20 papers have clear financial issues and clear  
 21 policy issues and exactly which way to route  
 22 it is rarely, but sometimes the subject of a  
 23 discussion.  
 24 COFFEY, Q.C.:  
 25 Q. Now this particular one, if we look at--well,

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1 let's go back, if I could. The first page is--  
 2 -well, actually this one is five pages long,  
 3 the first part of it. There is a--if I just  
 4 could, there is the title, Memorandum, or  
 5 sorry, the fact that it's a memorandum, a  
 6 title. The issue is framed. There's a  
 7 portion for recommendations, there are three  
 8 of them, and it's recommended that the  
 9 Minister of Health and Community Services be  
 10 authorized to. There's a background and there  
 11 are alternatives. "Option one, maintain the  
 12 status quo. Option two, approve new treatment  
 13 therapies for patients with breast cancer,  
 14 colorectal cancer and multiple myeloma.  
 15 Option three, approve new therapies for  
 16 patients in the early stages of breast  
 17 cancer," and then there's a section  
 18 "legislative/regulatory considerations."  
 19 Financial considerations is another section.  
 20 Interdepartmental considerations, aboriginal  
 21 considerations, intergovernmental  
 22 considerations, other jurisdictions, other  
 23 consultations, and environmental  
 24 considerations, gender analysis and finally,  
 25 communications and consultation plan, and

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1 under that, there's a note "a communications  
 2 plan is included in as Annex 2" and if we look  
 3 down below here, although this particular page  
 4 is not signed by Mr. Ottenheimer, there's a  
 5 place for his signature as minister. October  
 6 26th, 2005, and the attachments, Annex 1  
 7 letters from Eastern Health and annex 2 is  
 8 communications plan.  
 9 Now sir, communications plan, I take it--  
 10 perhaps I should go back a bit. You referred  
 11 to these as being five pages. I take it is  
 12 there some rule that they be five pages?  
 13 MR. THOMPSON:  
 14 A. I meant Cabinet submissions.  
 15 COFFEY, Q.C.:  
 16 Q. Cabinet submissions.  
 17 MR. THOMPSON:  
 18 A. Not communications -  
 19 COFFEY, Q.C.:  
 20 Q. Oh no, I appreciate. No, but the Cabinet  
 21 submission?  
 22 MR. THOMPSON:  
 23 A. That's a general expectation, but some are  
 24 shorter, some are longer.  
 25 COFFEY, Q.C.:

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1 Q. Okay, and here, just look at--and normally, I  
 2 take it, the communications plan would be  
 3 included in the Cabinet submission itself?  
 4 MR. THOMPSON:  
 5 A. That's correct.  
 6 COFFEY, Q.C.:  
 7 Q. It would be part of it?  
 8 MR. THOMPSON:  
 9 A. Yes.  
 10 COFFEY, Q.C.:  
 11 Q. Which would be included in those five pages?  
 12 MR. THOMPSON:  
 13 A. No, no, as I understand it, that can be  
 14 additional pages.  
 15 COFFEY, Q.C.:  
 16 Q. Okay. So if we could, if we look at the  
 17 communications plan or annex two, page six,  
 18 and there's consulted with M. Hennessey, which  
 19 would be Moira Hennessey and J. Abbott, John  
 20 Abbott. Date drafted October 24th 2005.  
 21 Anticipated announcement date, late fall. And  
 22 then there's a communications analysis, the  
 23 public environment, and it goes on for a full  
 24 page, single spaced. Goes into the second  
 25 page and then there's strategic considerations

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1 with three bullets. Target audience, I think  
 2 it's nine bullets. Communications objectives,  
 3 two bullets, and then messages, on the page  
 4 eight of this document has five bullets, and  
 5 then there's a heading the announcement.  
 6 Interdepartmental coordination is another  
 7 heading. Briefing of MHAs and evaluation  
 8 criteria.  
 9 So the communications plan here covers a  
 10 full three pages, almost a full three pages,  
 11 and the whole rest of it covers less than  
 12 five. That would be the -  
 13 MR. THOMPSON:  
 14 A. Right.  
 15 COFFEY, Q.C.:  
 16 Q. Now why, from your perspective, the--well, the  
 17 degree of development of the communications  
 18 analysis as compared to the rest of it? Well,  
 19 the analysis otherwise as to whether or not  
 20 colorectal patients should have had their  
 21 treatments funded, you know, as opposed to  
 22 early breast cancer patients, because that's  
 23 what the rest of the analysis in the beginning  
 24 of this is about, options one, two and three.  
 25 MR. THOMPSON:

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1 A. I still don't understand your question.  
 2 COFFEY, Q.C.:  
 3 Q. Okay. If you could, if you look at page two,  
 4 I'll just go back a bit here, sir, okay, page  
 5 two there, alternatives, option one, next  
 6 page, option two and option three are dealt  
 7 with in about a page and a half.  
 8 MR. THOMPSON:  
 9 A. Um-hm.  
 10 COFFEY, Q.C.:  
 11 Q. The three options, and the communications plan  
 12 takes up a full three pages, the analysis of  
 13 that.  
 14 MR. THOMPSON:  
 15 A. Right.  
 16 COFFEY, Q.C.:  
 17 Q. Is there any reason why the communications  
 18 plan is twice as long as the analysis of the  
 19 options?  
 20 MR. THOMPSON:  
 21 A. There's no magic in that.  
 22 COFFEY, Q.C.:  
 23 Q. Okay. If we could, please, I'm just going to  
 24 look at the communications plan annexed to,  
 25 and then the analysis. Midway down the page

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1 there's a reference to a recent Globe and Mail  
 2 article, October 19th, 2005, that touted  
 3 Herceptin as an effective drug against an  
 4 aggressive form of early breast cancer in  
 5 three studies involving thousands of women  
 6 with early stage disease cutting the risk of  
 7 relapse in half, and it goes on to talk about  
 8 where Herceptin -- what it's particular usage  
 9 is in this regard, and then the writer says,  
 10 "Locally there has been significant recent  
 11 media attention around inaccurate results from  
 12 hormone receptor test for cancer patients.  
 13 Eastern Health became aware of a problem with  
 14 test results for hormone receptors when a  
 15 breast cancer patient became ill in spite of  
 16 testing negative. As a precautionary measure,  
 17 tissue samples dating back to 1997 are being  
 18 sent out of the province for retesting at  
 19 Mount Sinai Hospital in Toronto. Patients who  
 20 test positive for hormone receptors may be  
 21 offered Tamoxifen, a drug that interferes with  
 22 estrogen and progesterone. There has been  
 23 significant reaction to the issue. Breast  
 24 cancer survivor, Gerri Rogers, in a recent  
 25 Globe and Mail article expressed concern over

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1 the timing for treatment, "If the case were to  
 2 be that in fact there was an error in the  
 3 pathology, then the window of opportunity for  
 4 the effectiveness of Tamoxifen in my case has  
 5 kind of passed". Peter Dawe, Director of  
 6 Newfoundland and Labrador Chapter of the  
 7 Canadian Cancer Society was quoted as saying  
 8 that this, "Has the potential to be a big  
 9 issue for the province's health care system  
 10 and patients. It alters the treatment. You  
 11 could be having inadequate treatment based on  
 12 a new result. There is a group that has the  
 13 test result in question, and our fear is that  
 14 they should have received treatment and  
 15 didn't". The writer goes on to say, "The  
 16 story has also received national media  
 17 attention. A recent CBC story, October 20th,  
 18 2005, titled "Unreliable tests give lesson to  
 19 all labs", quotes a medical technology expert  
 20 warning that the lab problem that occurred in  
 21 Newfoundland and Labrador could be repeated  
 22 across the country. Given the negative  
 23 coverage of this story and the resulting lack  
 24 of confidence among breast cancer patients in  
 25 the reliability of testing procedures in the

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1 province, it is important that the government  
 2 respond with positive messages about the  
 3 introduction of Herceptin to the provincial  
 4 systemic therapy [chemotherapy] program". So,  
 5 sir, the portion of the communications plan  
 6 that I just read to you, is that the sort of  
 7 thing you would expect to see in such a  
 8 communications plan?  
 9 MR. THOMPSON:  
 10 A. We'd expect to see a canvassing of media that  
 11 might have relevance to the issues that are in  
 12 the paper so as to alert the Cabinet to the  
 13 environment that exists related to cancer  
 14 therapy, yes, but would we -- is your question  
 15 would we expect to see such a focus on ER/PR  
 16 in a paper related to other kinds of therapy?  
 17 Is that your question?  
 18 COFFEY, Q.C.:  
 19 Q. Yes.  
 20 MR. THOMPSON:  
 21 A. Okay. It's -- whoever the author was of this  
 22 communications plan chose to perceive it this  
 23 way that these articles dealing -- given that  
 24 they deal with cancer therapy and concerns  
 25 around cancer treatment in the province, that

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1 that was a relevant matter for the ministers  
 2 to want to know about.  
 3 COFFEY, Q.C.:  
 4 Q. In fact, they deal in particular with breast  
 5 cancer patients, the stories do?  
 6 MR. THOMPSON:  
 7 A. That's correct.  
 8 COFFEY, Q.C.:  
 9 Q. Now there's a heading -- that comes out under  
 10 the heading "Public Environment". Is public  
 11 environment a standardized heading in these --  
 12 MR. THOMPSON:  
 13 A. Yes.  
 14 COFFEY, Q.C.:  
 15 Q. Sorts of analysis.  
 16 MR. THOMPSON:  
 17 A. Uh-hm.  
 18 COFFEY, Q.C.:  
 19 Q. Okay. Strategic considerations, target  
 20 audience, and communications objectives,  
 21 messages, the announcement, interdepartmental  
 22 coordination, briefing of MHA's, and  
 23 evaluation criteria also kind of standard  
 24 headings?  
 25 MR. THOMPSON:

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1 A. Yes.  
 2 COFFEY, Q.C.:  
 3 Q. Categories. Looking at the strategic  
 4 considerations, the author has written, "Given  
 5 the timing of ongoing negotiations between  
 6 physicians and government, the announcement  
 7 will be welcomed by the NLMA and oncologists,  
 8 in particular, and would hope to address one  
 9 of physician's key issues of concern;  
 10 recruitment and retention. Maintaining the  
 11 status quo may result in oncologists choosing  
 12 to pursue employment in other provinces where  
 13 new cancer therapies are supported. Herceptin  
 14 is already being administered by other  
 15 provinces in Canada for early breast cancer  
 16 treatment. A failure to provide the drug in  
 17 this province may result in criticism, the  
 18 government is refusing to provide cancer  
 19 patients with the most current and beneficial  
 20 treatment possible, and given recent media  
 21 reports about ER/PR testing and the public's  
 22 resulting loss of confidence in the health  
 23 system, it is important that government  
 24 respond to the needs of breast cancer  
 25 patients". So, sir, what's the purpose of the

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1 strategic considerations being addressed?  
 2 MR. THOMPSON:  
 3 A. Well, it's really a nuance difference that and  
 4 what is the public environment, and as I  
 5 understand, strategic considerations are more  
 6 pointed identification of the context in which  
 7 this decision will be made and the issues  
 8 perhaps which the province is working on, and  
 9 how those issues might be positively or  
 10 negatively affected when a decision is  
 11 communicated.  
 12 COFFEY, Q.C.:  
 13 Q. Now, sir, are you aware that the two million  
 14 dollars that was being suggested to be  
 15 approved here and subsequently is approved by  
 16 Cabinet, according to the arithmetic in this,  
 17 thereby increased the total budget for this  
 18 for systemic, I believe -- provincial systemic  
 19 chemotherapy program by about 30 percent?  
 20 MR. THOMPSON:  
 21 A. I'm not aware of the volume, no.  
 22 COFFEY, Q.C.:  
 23 Q. Okay. And in terms of the communications  
 24 analysis anyway by whoever prepared this, and  
 25 bearing in mind the public environment and the

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1 strategic considerations, I take it one of the  
 2 messages or the message from the writer is  
 3 that there's a problem with breast cancer  
 4 testing in the media, there's a lot of  
 5 criticism going on in relation to it, and this  
 6 might somehow mitigate that criticism?  
 7 MR. THOMPSON:  
 8 A. Yeah, I think that there's a flavour of that  
 9 here from the writer of the communications  
 10 plan which is a -- it almost seems to me like  
 11 an add-on to the core message of the  
 12 communications plan because there's five core  
 13 messages on the next page.  
 14 COFFEY, Q.C.:  
 15 Q. Uh-hm.  
 16 MR. THOMPSON:  
 17 A. And they all address the core issues related  
 18 to the specific drug and the benefits of  
 19 those. So the paper -- you know, the body of  
 20 the submission, and even the body of the com  
 21 plan, which is really focused on the messages,  
 22 what are the messages we're going to  
 23 communicate, are focused on substantive  
 24 elements of the submission and the analysis  
 25 related to the ER/PR situation is tacked on as

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1 a relevant point, but is not core to the  
 2 overall thrust of the submission.  
 3 COFFEY, Q.C.:  
 4 Q. If we could, please, look at page 30 of the  
 5 exhibit. Now this is part, I take it, of --  
 6 it's entitled "Secret", stamped "secret" bold  
 7 print -- it's typed "Secret" bold print.  
 8 Attached to HCS 2005-037, and as well TBM  
 9 2005-284, and that would be, I take it, the  
 10 Treasury Board document. Communications and  
 11 Consultation Branch briefing note, and it's  
 12 titled "New treatment therapies for cancer  
 13 patients". If you'll look, sir, at the very  
 14 bottom of this, it's dated November 1, 2005,  
 15 prepared by Melanie O'Neil, reviewed by  
 16 Carolyn Chaplin. I take it Ms. Chaplin by  
 17 this point in time, November 1, 2005, would  
 18 have been a director?  
 19 MR. THOMPSON:  
 20 A. In the Cabinet Secretariat?  
 21 COFFEY, Q.C.:  
 22 Q. Yeah.  
 23 MR. THOMPSON:  
 24 A. I don't recall her position.  
 25 COFFEY, Q.C.:

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1 Q. Okay, and who is Melanie O'Neil?  
 2 MR. THOMPSON:  
 3 A. Oh, I'm sorry, Carolyn was the director, yes,  
 4 and Melanie would have been -- I didn't think  
 5 that she was the director, so she would have  
 6 been a communications specialist or  
 7 communications officer within the  
 8 Communications and Consultations Branch.  
 9 COFFEY, Q.C.:  
 10 Q. Here it's three paragraphs long. The comment  
 11 as it's referred to here in the left is a  
 12 branch comment.  
 13 MR. THOMPSON:  
 14 A. Uh-hm.  
 15 COFFEY, Q.C.:  
 16 Q. Which would be the Communications and  
 17 Consultations Branch's comment. One, the  
 18 Communications and Consultations Branch agrees  
 19 with the Communications approach outlined in  
 20 the appended communications plan. However,  
 21 recommends strengthening the key messages to  
 22 focus on government's recent investments to  
 23 enhance cancer services, improve access to  
 24 chemotherapy, and increased funding for new  
 25 drug treatments. As noted in the strategic

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1 considerations section of the plan", and that  
 2 presumably is the one I referred you to  
 3 earlier, "this announcement is a positive  
 4 counter to the recent media reports regarding  
 5 inaccurate results around hormone receptor  
 6 testing". So I -- does that suggest that at  
 7 least Ms. O'Neil and Ms. Chaplin certainly saw  
 8 the nexus or the connection?  
 9 MR. THOMPSON:  
 10 A. Yes.  
 11 COFFEY, Q.C.:  
 12 Q. Between -- and the usage of or the relevance  
 13 of being -- or amounting to a positive counter  
 14 to the negative media reports. You'd agree  
 15 with that?  
 16 MR. THOMPSON:  
 17 A. Yes.  
 18 COFFEY, Q.C.:  
 19 Q. Number two, the plan, strategic considerations  
 20 should note potential outcry from alzheimer  
 21 supporters and the department is asked to  
 22 consult with the Communications and  
 23 Consultation Branch on timing of the  
 24 announcement. Number three, the department's  
 25 roll out strategy should also include

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1 utilizing stakeholders endorsement, i.e.  
 2 Canadian Cancer Society in any announcement.  
 3 So the third paragraph, what sort of thing  
 4 would that relate to?  
 5 MR. THOMPSON:  
 6 A. The roll --  
 7 COFFEY, Q.C.:  
 8 Q. The roll out strategy.  
 9 MR. THOMPSON:  
 10 A. The roll out strategy is actually the  
 11 execution of the announcement itself, so  
 12 choosing which channels to communicate it, and  
 13 should there be a news release only or a press  
 14 conference. If it's a press conference, who  
 15 should be the presenters, who should we invite  
 16 to be present. All of those operational  
 17 considerations are the roll out strategy.  
 18 COFFEY, Q.C.:  
 19 Q. I take it here referring to include utilizing  
 20 stakeholder endorsement, Canadian Cancer  
 21 Society, would be I take it to have them  
 22 participate in it and endorse it?  
 23 MR. THOMPSON:  
 24 A. Yes, indeed.  
 25 COFFEY, Q.C.:

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1 Q. Okay.  
 2 MR. THOMPSON:  
 3 A. Whether at the front table or just in the  
 4 audience, it's not clear to me.  
 5 COFFEY, Q.C.:  
 6 Q. And the Canadian Cancer Society's  
 7 representative at the time, at least  
 8 spokesperson at the time locally in  
 9 Newfoundland, was Mr. Peter Dawe.  
 10 MR. THOMPSON:  
 11 A. Right.  
 12 COFFEY, Q.C.:  
 13 Q. Who is referred to in that -- the commentary  
 14 we saw earlier.  
 15 MR. THOMPSON:  
 16 A. Yes.  
 17 COFFEY, Q.C.:  
 18 Q. And he had been critical of the ER/PR,  
 19 handling of the matter by Eastern Health --  
 20 the handling of the ER/PR by Eastern Health?  
 21 MR. THOMPSON:  
 22 A. Was he by that time?  
 23 COFFEY, Q.C.:  
 24 Q. Well, I'll just look back so you can get some  
 25 -- if you could go back to page six, please,



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1 of the exhibit. Thank you. At the very bottom  
 2 of the page, the fourth last line, the writer  
 3 says, "Peter Dawe, Director of the  
 4 Newfoundland and Labrador Branch -- I'm sorry,  
 5 Chapter of the Canadian Cancer Society was  
 6 quoted as saying that this "has the potential  
 7 to be a big issue for the province's health  
 8 care system and patients. It alters the  
 9 treatment. You could be having an inadequate  
 10 treatment based on a test result. There is a  
 11 group that has the test results in question  
 12 and our fear is that they should have received  
 13 treatment and didn't". Does that suggest he  
 14 was being critical at the time?  
 15 MR. THOMPSON:  
 16 A. No, no, not necessarily. He's just analysing  
 17 the issue at hand. I wouldn't regard that to  
 18 be a criticism.  
 19 COFFEY, Q.C.:  
 20 Q. Did you understand at the time that he was  
 21 being critical of Eastern Health?  
 22 MR. THOMPSON:  
 23 A. Well, I don't recall that I thought about it  
 24 at the time, but as I read it today, this  
 25 sounds more like a patient advocate group

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1 expressing an opinion that some people may  
 2 have received incorrect treatment and that may  
 3 have had an impact on them. Because adverse  
 4 events are an unfortunate regular occurrence  
 5 in the health system, the mere indication that  
 6 they've happened is not necessarily a  
 7 criticism of Eastern Health.  
 8 COFFEY, Q.C.:  
 9 Q. Okay, and page 30 again, please. Sir, the  
 10 second paragraph, the reference by Ms. O'Neil  
 11 and Ms. Chaplin to the plan, "Strategic  
 12 considerations should note potential outcry  
 13 from alzheimer supporters", and Communications  
 14 and Consultation, the department is being  
 15 asked to consult with them on the timing of  
 16 the announcement. Now what possible relevance  
 17 would this have here now to the underlying --  
 18 MR. THOMPSON:  
 19 A. This is perhaps a really important point to  
 20 understand the context of how pharmaceuticals  
 21 get approved for funding in the Department of  
 22 Health and across the country. If I recall  
 23 correctly, there's a certain drug related to  
 24 alzheimers and other dementias that was -- had  
 25 been consistently requested by patient

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1 advocates for many years, or some years, and  
 2 it was not meeting with approval by funding  
 3 agencies. Now several provinces across the  
 4 country had approved and Newfoundland was  
 5 among the group that had not yet approved it,  
 6 and the reason that it had not yet approved  
 7 was based on clinical evidence, research  
 8 evidence that it was not certain that there  
 9 was clinical benefit associated with this  
 10 particular drug. Certainly there were people  
 11 on both sides of that question, and especially  
 12 clinicians who observed in many cases a  
 13 benefit associated with the drug, but  
 14 nonetheless the research studies that are the  
 15 basis for the decisions that are made by the  
 16 drug managers and by the department at budget  
 17 time, were indicating that expenditure on this  
 18 would not necessarily be associated with a  
 19 clear clinical benefit. So it's hard to  
 20 approve a drug if it's not associated with a  
 21 clear clinical benefit. Now it's important to  
 22 note this here because approving funding for  
 23 drugs for the purpose that they show a clear  
 24 clinical benefit, even though it may be quite  
 25 clear in the research literature and other

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1 evidence, still may raise with the Alzheimer's  
 2 Society an opportunity to make their case  
 3 related to the drug that they're advocating  
 4 should be on the formulary and should be  
 5 funded. So it's no surprise to see that  
 6 mentioned in this context.  
 7 COFFEY, Q.C.:  
 8 Q. And again what relevance would the fact that  
 9 there might be a potential outcry from  
 10 alzheimer supporters have to the timing of the  
 11 announcement?  
 12 MR. THOMPSON:  
 13 A. Well, I think that was my point that the  
 14 Alzheimer's Society may well react to this  
 15 announcement by saying that if government is  
 16 approving drugs for that purpose, then they  
 17 should also approve drugs for alzheimer's  
 18 conditions, and that's part of the  
 19 communications environment, so the branch was  
 20 alerting people to that point.  
 21 COFFEY, Q.C.:  
 22 Q. Sir, the colorectal cancer drugs which there  
 23 was approval being sought for here, they're  
 24 referred to in option two. If we could look  
 25 at page three, please, in terms of -- at least

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1 the first five pages, approval of new  
 2 treatment therapies for patients with breast  
 3 cancer or colorectal cancer and multiple  
 4 myeloma. The option three is simply the  
 5 request involving early stage of breast  
 6 cancer, Herceptin, for that purpose, and the  
 7 status quo was number one, option one.  
 8 There's no option four, which would be to do  
 9 the colorectal drugs and not the Herceptin.  
 10 Did you notice that at the time?  
 11 MR. THOMPSON:  
 12 A. No.  
 13 COFFEY, Q.C.:  
 14 Q. Sir, if you would look, please, at page 22.  
 15 Actually, if I could, please, I apologize, go  
 16 back to page 16, please, first of all. This  
 17 stamp there on the top right hand side, Mr.  
 18 Thompson, Executive Council, October 27th,  
 19 2005, received, is that -- the handwriting,  
 20 see that there?  
 21 MR. THOMPSON:  
 22 A. Could you read the handwriting again, please?  
 23 COFFEY, Q.C.:  
 24 Q. Well, I'm asking you because it was presumably  
 25 done by somebody in your larger office.

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1 MR. THOMPSON:  
 2 A. Okay.  
 3 COFFEY, Q.C.:  
 4 Q. It's October 27th, 2005. Would that be --  
 5 MR. THOMPSON:  
 6 A. Okay, it looks like referred to TB, October  
 7 27th, '05. It looks like Sandra Barnes.  
 8 COFFEY, Q.C.:  
 9 Q. Sandra Barnes, which would be in keeping with  
 10 your earlier suggestion it would have been  
 11 her. If we could look, please, at page 22.  
 12 Now this is one of the letters from Eastern  
 13 Health, okay -- actually, there are two of  
 14 them, so I'll show you both. The first of  
 15 them is -- the first in terms of order in the  
 16 exhibit is July 26th, 2005. It's a letter  
 17 from Mr. Tilley to Mr. Abbott, and he says --  
 18 he concludes with, "I'm attaching  
 19 correspondence from our clinical experts for  
 20 your review. The financial implications of  
 21 keeping in step with the rest of the country  
 22 are staggering. I would appreciate hearing  
 23 from you as to how we need to approach this  
 24 issue". Sincerely, George Tilley, and it's  
 25 copied to Patricia Pilgrim, Robert Williams,

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1 and Beverley Clarke, and there's an  
 2 attachment. Do you see that reference there?  
 3 MR. THOMPSON:  
 4 A. Uh-hm.  
 5 COFFEY, Q.C.:  
 6 Q. And it apparently had come to the Deputy  
 7 Minister's Office on July 28th, 2005. The  
 8 next page of the exhibit, page 22, is a letter  
 9 of July 25, 2005, to Mr. Tilley, CEO of  
 10 Eastern Health, the received stamp from his  
 11 office. If I could, please -- just a moment.  
 12 On the third page of that letter, it's signed  
 13 by Dr. Kara Laing, Director of Medical  
 14 Oncology, and Mr. Rick Abbott, the Provincial  
 15 Pharmacy Director, and again this particular  
 16 letter from those two individuals is carboned  
 17 to a number of people. The actual letter  
 18 itself to Mr. Tilley is, "Re; additional  
 19 funding for provincial systemic therapy  
 20 budget". Now, sir, at the time in the early  
 21 fall of 2005, certainly in October of 2005, I  
 22 take it there was no -- to your memory,  
 23 nothing going on in the media concerning any  
 24 kind of criticism involving colorectal cancer  
 25 testing?

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1 MR. THOMPSON:  
 2 A. I can't recall any.  
 3 COFFEY, Q.C.:  
 4 Q. The one that was there was breast cancer  
 5 testing was in the media?  
 6 MR. THOMPSON:  
 7 A. Alzheimers may have been -- which is not  
 8 cancer, but it may have been in the media as  
 9 well, but -- because frequently there are  
 10 stories about non-approval of requested drugs,  
 11 but none that I can recall right now.  
 12 COFFEY, Q.C.:  
 13 Q. And this is not requesting, in any case. This  
 14 whole submission to Executive Council does not  
 15 request money for alzheimer's drugs?  
 16 MR. THOMPSON:  
 17 A. No.  
 18 COFFEY, Q.C.:  
 19 Q. No. Do you recall this going through in  
 20 October, 2005, at all?  
 21 MR. THOMPSON:  
 22 A. I don't recall the details of it going  
 23 through. I have a general recollection of a  
 24 paper like this gone through at some point in  
 25 time.

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1 COFFEY, Q.C.:

2 Q. If we could look, please, at Exhibit P-0128,

3 page 16. This is a news release of November

4 9th, 2005, Health and Community Services.

5 It's entitled improving access to treatment

6 therapies for breast cancer patients. Is this

7 the news release involving the announcement of

8 Herceptin?

9 MR. THOMPSON:

10 A. It certainly looks like it, yes.

11 COFFEY, Q.C.:

12 Q. Okay. As the Clerk of the Council, would you

13 be made aware when this was going to be

14 actually made public?

15 MR. THOMPSON:

16 A. No, once a decision is made, I'm pretty far

17 removed from the announcement process.

18 COFFEY, Q.C.:

19 Q. Now in that analysis that came over from -- or

20 accompanied the submission, the memorandum,

21 there are references to a number of stories,

22 media stories, and I've taken you through

23 those, okay, the ones that are referred to

24 there. The Cabinet Secretariat, does the

25 Cabinet Secretariat keep track of or monitor

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1 media coverage?

2 MR. THOMPSON:

3 A. Yes.

4 COFFEY, Q.C.:

5 Q. Does it do so in any systematic way?

6 MR. THOMPSON:

7 A. I think it is systematic, but I wouldn't be

8 able to tell you about the nature and full

9 extent of all the different media that they

10 survey and on what topics.

11 COFFEY, Q.C.:

12 Q. Who would know if they, in fact, did monitor,

13 for example, the ER/PR media coverage in

14 October of 2005, November of 2005?

15 MR. THOMPSON:

16 A. Josephine Cheeseman, Carolyn Chaplin, would

17 know that.

18 COFFEY, Q.C.:

19 Q. And your understanding is what, as to how they

20 actually keep track of it, keep a record of

21 it?

22 MR. THOMPSON:

23 A. That's the part that I can't speak to, the

24 manner in which they keep a record of it.

25 COFFEY, Q.C.:

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1 Q. Exhibit P-100. This is an e-mail. I only

2 bring it up here, not because you're copied on

3 it or anything, but it's an e-mail between Ms.

4 Mundon and Ms. Hennessey -- actually, a series

5 of e-mails and involving other people at well.

6 When you look down toward the bottom of the

7 page there you'll notice some of the e-mail

8 exchanges involved Mr. Abbott, Darrell Hynes,

9 but the one at nine minutes past midnight from

10 Ms. Hennessey to Ms. Mundon and Mr. Rumboldt,

11 she writes in the third line, "This is

12 becoming less and less acceptable, and it is

13 likely the Minister will be subject to some

14 hard questioning on why things went wrong and

15 why it is taking so long to get the results

16 from Mount Sinai". Now, sir, if

17 communications personnel in the department and

18 an ADM, such as Ms. Hennessey, and you had

19 worked with Ms. Hennessey --

20 MR. THOMPSON:

21 A. Uh-hm.

22 COFFEY, Q.C.:

23 Q. In the past -- had identified and were

24 speaking of in writing a situation from a

25 patient's perspective this is becoming less

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1 and less acceptable, and it is likely the

2 Minister at that time, Mr. Ottenheimer, will

3 be subject to some hard questioning on why

4 things went wrong and why it's taking so long

5 to get the results. Would the Cabinet

6 Secretariat be monitoring that, that sort of

7 an issue?

8 MR. THOMPSON:

9 A. We wouldn't be monitoring it if we didn't have

10 information about it, and if we did, our

11 expectation is that the department would be

12 monitoring it and would be updating us on

13 critical milestones or on details of a

14 situation that was sensitive or dynamic.

15 COFFEY, Q.C.:

16 Q. So after that October 5, 2005, Executive

17 Council briefing note came up, and presumably

18 that memo -- what's the exact -- memorandum to

19 Executive Council.

20 MR. THOMPSON:

21 A. Uh-hm.

22 COFFEY, Q.C.:

23 Q. Which I referred you to. After those had come

24 through your hands, I take it in terms of

25 monitoring where ER/PR was, was left in whose

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1 hands?

2 MR. THOMPSON:

3 A. Primarily in the hands of the department to

4 alert us when they felt it was necessary about

5 milestones and sensitive communications

6 issues. So that's the primary place where

7 it's responsible, and if the officer in our

8 department responsible for -- sorry, in

9 Executive Council responsible for

10 communicating with the department would --

11 could from time to time ask -- raise where is

12 this issue, they may get a verbal response

13 that could result, if in their assessment

14 there was some significant occurrence

15 happening, a briefing note could result from

16 that, but that would be the other mechanism.

17 COFFEY, Q.C.:

18 Q. So something that's a sensitive communications

19 issue, to use your phrase, a situation

20 involving, as apparently it did, the ER/PR

21 retesting, a conclusion with the Department of

22 Health that the minister, their Minister,

23 would be subject to some hard questioning

24 about why things went wrong and what's taken

25 so long. Is that a sensitive communications

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1 issue?

2 MR. THOMPSON:

3 A. Not necessarily. Here I see an ADM

4 identifying something that needs to be--we

5 need an answer on something for the Minister's

6 briefing book for the House of Assembly and

7 communicating that in a direct way, in other

8 words, managing it, taking action on it, and

9 that's not necessarily something that would--I

10 would expect would be put into a briefing note

11 and sent over to us.

12 COFFEY, Q.C.:

13 Q. Well, if we could, please, to give you some

14 sense of what was going on at the time in the

15 media, Exhibit P-0395, please, and if we

16 could, please, page three? Now this is a

17 summary of--it's actually a transcript of a

18 media interview apparently conducted Monday,

19 December 5th 2005 at 7:10 a.m., item number

20 seven, CBC Radio in St. John's between Jeff

21 Gilhooly and Peter Dawe, and I appreciate that

22 the interview, it is about, as you can see

23 from the couple of lines, the intro says "it's

24 been several months since the Eastern Health

25 Authority discovered a test done on some

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1 breast cancer patients in this province

2 having--producing a false"--I'm sorry, "since

3 the Eastern Health Authority discovered a test

4 done on some breast cancer patients in this

5 province have been producing false results."

6 MR. THOMPSON:

7 A. Um-hm.

8 COFFEY, Q.C.:

9 Q. And the interview then goes on for three

10 pages, single spaced, but to give you some

11 sense of at least at one point in the

12 interview, the approach, Mr. Dawe talking,

13 when you look at the third page, which is page

14 five of the exhibit, he says "well, if you

15 look at, you know, what the lesson learned,

16 you know, from my--it's easy for me to say it,

17 I'm not working in that system, but from

18 outside the system and advocating for people

19 with cancer, you're going to say look, you

20 know your first response has got to be can we

21 protect life here. You know, whose life is it

22 that we can, you know, put a priority on to

23 literally save your life, and if you go

24 through that process, if you think through

25 that process first, then you know you're going

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1 to come up with some different decisions that

2 are made, right." And this was said in the

3 context of whether or not the samples being

4 sent were prioritized as to whether or not the

5 patients were living or dead, okay?

6 MR. THOMPSON:

7 A. Okay.

8 COFFEY, Q.C.:

9 Q. So that's one thing said on December 5 on CBC

10 locally apparently, and in terms of this, page

11 six of the exhibit is a transcript of an

12 interview, Tuesday, December 6th 2005, at 1:43

13 p.m., item number three. It's on VOXM Radio,

14 St. John's, between Gerry Phelan and again,

15 Mr. Dawe, and Mr. Phelan introduces this with

16 "the Canadian Cancer Society is critical of

17 the amount of time it's taking to review

18 botched results for breast cancer tests," and

19 he points out "some of these tests done since

20 1997 may have given the wrong results," and he

21 suggests that "Peter Dawe, executive director

22 of the Canadian Cancer Society for this

23 province, says the retesting should have been

24 done by the end of October, and he says that

25 only about half of the 800 women have had

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1 their tests looked at for a second time," and  
 2 in terms of that, again in terms of the last  
 3 part of the interview transcribed here,  
 4 attributes the following to Mr. Dawe. "He  
 5 says 'well, there's no doubt that if you look  
 6 at the entire group of women, if you look at  
 7 the experience they've gone through and the  
 8 delays of getting on a drug like Tamoxifen.  
 9 Tamoxifen in the clinical trials has shown one  
 10 particular clinical trial at 33 percent  
 11 increase in survival rate over a two-year  
 12 period and so there is no doubt that, you  
 13 know, taking a group of people, you can't pick  
 14 out which one and it's almost impossible on an  
 15 individual basis, but you know, if you take a  
 16 group of people, almost a thousand women, and  
 17 then you know a hundred of them should have  
 18 been on Tamoxifen, there's no doubt that lives  
 19 were and have been endangered and will be  
 20 endangered unless this process is hurried  
 21 along," and that apparently is the final  
 22 comment there.  
 23 With that as a background for what was  
 24 being said in the media and in terms of that  
 25 e-mail exchange we looked at, are you telling

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1 the Commissioner that the Cabinet  
 2 Secretariat's communications and consultation  
 3 branch would not have been keeping track of  
 4 this?  
 5 MR. THOMPSON:  
 6 A. No, I'm not saying that. They may well have  
 7 kept track of that.  
 8 COFFEY, Q.C.:  
 9 Q. And the purpose in them doing so would be  
 10 what?  
 11 MR. THOMPSON:  
 12 A. Well -  
 13 COFFEY, Q.C.:  
 14 Q. From your perspective, as the clerk?  
 15 MR. THOMPSON:  
 16 A. To monitor media on any number of issues of  
 17 public interest across government, and to  
 18 circulate them, the ones that they may find  
 19 the most important to be circulated to  
 20 decision makers, either within departments or  
 21 particularly within the Premier's office and  
 22 Cabinet Secretariat.  
 23 COFFEY, Q.C.:  
 24 Q. And the purpose of doing so was what?  
 25 MR. THOMPSON:

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1 A. Well, to ensure that information is available  
 2 so there's, number one, no surprises if  
 3 there's a--if something is occurring and let's  
 4 say a minister could potentially be questioned  
 5 on a matter, it's important that the minister  
 6 not be surprised and have some appreciation of  
 7 the way that an issue has unfolded already.  
 8 Secondly, if there is any concern that a  
 9 decision maker identifies in a media story,  
 10 then the person is possessed of the  
 11 information and can make that inquiry or take  
 12 an action as necessary.  
 13 COFFEY, Q.C.:  
 14 Q. So what would have to happen for that to  
 15 occur, to actually intervene? If you're  
 16 monitoring it and you're watching what's going  
 17 on -  
 18 MR. THOMPSON:  
 19 A. Yeah, yeah.  
 20 COFFEY, Q.C.:  
 21 Q. - you're hearing in the media and there's, at  
 22 times, a fair amount of criticism -  
 23 MR. THOMPSON:  
 24 A. Are you saying these were sent to me? Because  
 25 I'm not sure that they were.

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1 COFFEY, Q.C.:  
 2 Q. No, I'm not saying they were sent to you. No,  
 3 not at all.  
 4 MR. THOMPSON:  
 5 A. So you're talking about me or -  
 6 COFFEY, Q.C.:  
 7 Q. Your group, you in particular and the people  
 8 working for you.  
 9 MR. THOMPSON:  
 10 A. Right.  
 11 COFFEY, Q.C.:  
 12 Q. What would have to have happened during  
 13 November and December of '05 before somebody  
 14 would have said, or you know, "Robert, you got  
 15 something about this" or you would have,  
 16 having seen it or become aware of it, think  
 17 "I've got to intervene here"?  
 18 MR. THOMPSON:  
 19 A. Well, our first instinct would not be to  
 20 intervene in the sense I think in which you  
 21 mean it, which is to kind of take over and  
 22 instruct something to happen, but our  
 23 instinct, if we felt that there was an  
 24 unmanaged situation of a sensitive variety, we  
 25 would go to the Department and say "tell us

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1 more. Provide us with a briefing note so we  
 2 can better understand the facts behind this  
 3 matter." We don't regard media reports or  
 4 interviews as a fully coherent set of facts  
 5 all the time. Clearly they're indicators of  
 6 something and so we would always want to have  
 7 information from a department to give us a  
 8 full comprehensive view. So if that, if this  
 9 item had been perceived in that sense, a  
 10 natural thing to do would be to request a  
 11 briefing note or--now, yes, to request a  
 12 briefing note, potentially to make a call and  
 13 find out what's going on, but either one of  
 14 those could have been triggered.  
 15 COFFEY, Q.C.:  
 16 Q. How would something in that context become  
 17 unmanaged or recognized as being not managed?  
 18 MR. THOMPSON:  
 19 A. Well, when I say unmanaged what I mean is  
 20 that--is a very general term to describe -  
 21 COFFEY, Q.C.:  
 22 Q. That's why I'm asking.  
 23 MR. THOMPSON:  
 24 A. Yes, to describe how there's a item of concern  
 25 percolating in the public environment which is

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1 not accompanied by an explanation as to how  
 2 the matter is being dealt with. So Peter Dawe  
 3 is there describing a situation which he  
 4 thinks is not being handled in a timely  
 5 fashion and that there's some consequences to  
 6 that. So, you know, that fits into my very  
 7 general term of unmanaged because it's not  
 8 accompanied by this additional explanation,  
 9 perhaps to set it in context. So that's the  
 10 sort of thing that could cause the Cabinet  
 11 Secretariat or the communications branch to  
 12 ask for more explanation or cause the  
 13 department, on its own, to gather more  
 14 information on it.  
 15 COFFEY, Q.C.:  
 16 Q. After October 5th 2005, do you know, to your  
 17 knowledge, did the Cabinet Secretariat, having  
 18 received that briefing note, when did they  
 19 next request information, to your knowledge,  
 20 concerning this matter?  
 21 MR. THOMPSON:  
 22 A. Well, to my knowledge, the next time that we  
 23 requested information was in July of '06.  
 24 COFFEY, Q.C.:  
 25 Q. And I take it then that there was--if there

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1 was any monitoring of this issue going on  
 2 within the Cabinet Secretariat, I take it you  
 3 weren't monitoring it yourself?  
 4 MR. THOMPSON:  
 5 A. Not directly, no.  
 6 COFFEY, Q.C.:  
 7 Q. Well, how about indirectly? Do you recall -  
 8 MR. THOMPSON:  
 9 A. Well, I don't recall -  
 10 COFFEY, Q.C.:  
 11 Q. - in a sense of being consciously aware of it?  
 12 MR. THOMPSON:  
 13 A. No, I have no conscious memory of discussions  
 14 or telephone calls during that period.  
 15 Whether--and that would not be surprising in  
 16 the context that I would have expected, if  
 17 there's any monitoring going on, it would have  
 18 been done by Cabinet officers and the  
 19 assistant secretary and if something, in their  
 20 view, needed to be alerted to me, then they  
 21 would do that.  
 22 COFFEY, Q.C.:  
 23 Q. Okay, and you have no memory of them ever  
 24 doing so?  
 25 MR. THOMPSON:

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1 A. No.  
 2 COFFEY, Q.C.:  
 3 Q. Okay. If we could, please, Exhibit P-0811?  
 4 Now sir, this is an e-mail from Mr. Cake, Gary  
 5 Cake, Monday July 31st, 2006, 10:05 a.m., to  
 6 Mr. Abbott, copied to Marilyn McCormack.  
 7 Subject is a briefing note and it says "John,  
 8 would you please have a briefing note prepared  
 9 on the issue in a front-page story in 'The  
 10 Independent' yesterday re: law suit being  
 11 launched by breast cancer patients. For your  
 12 information, the only note in our system on  
 13 this matter is dated October 5/05. Thanks,  
 14 Gary." Now, do you know if you were working,  
 15 like, in late July, early August?  
 16 MR. THOMPSON:  
 17 A. This July 31st, I think, is just before going  
 18 on vacation.  
 19 COFFEY, Q.C.:  
 20 Q. Okay.  
 21 MR. THOMPSON:  
 22 A. I believe I went on vacation on August 4th. I  
 23 did look at my calendar on that. But this is  
 24 an interesting request because it shows that  
 25 Cabinet Secretariat had, you know, seen a news

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1 item, wanted to reach out and find out what  
 2 was going on, so it shows that this process  
 3 does happen from time to time. And the  
 4 explanation as to why it may not happen on any  
 5 one other occasion will, you know, depend  
 6 upon whether or not the substance of the  
 7 matter was noticed by officials in the Cabinet  
 8 Secretariat and the assessment that they made  
 9 about whether it was a sensitive issue that  
 10 needed to be--that we needed more information  
 11 on. So clearly on this date that seemed to be  
 12 the case. I can't explain why it wasn't on the  
 13 other case, but so it's a good example of the  
 14 ebb and flow of activities.  
 15 COFFEY, Q.C.:  
 16 Q. And yeah, the one thing that is mentioned here  
 17 are the--the story is categorized as being one  
 18 involving a lawsuit being launched by breast  
 19 cancer patients?  
 20 MR. THOMPSON:  
 21 A. Um-hm.  
 22 COFFEY, Q.C.:  
 23 Q. Okay, you see the reference to lawsuit?  
 24 MR. THOMPSON:  
 25 A. Um-hm.

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1 COFFEY, Q.C.:  
 2 Q. If we could, please, just looking back at P-  
 3 0124, page 7, which is that last October 25  
 4 briefing note that Mr. Cake references in his  
 5 e-mail. In the fourth last bullet it says,  
 6 "There could be some potential litigation  
 7 issues for families of deceased patients."  
 8 MR. THOMPSON:  
 9 A. Right.  
 10 COFFEY, Q.C.:  
 11 Q. "Once the families are notified." Well, back  
 12 on October 5, 2005 what relevance would that  
 13 have to the Cabinet Secretariat?  
 14 MR. THOMPSON:  
 15 A. Well, not to the Cabinet Secretariat in  
 16 particular, but to any reader of that note.  
 17 COFFEY, Q.C.:  
 18 Q. Yes.  
 19 MR. THOMPSON:  
 20 A. Whoever wrote it was suggesting that this is  
 21 the type of issue that could result in  
 22 litigation and that's a noteworthy item.  
 23 COFFEY, Q.C.:  
 24 Q. And why is that?  
 25 MR. THOMPSON:

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1 A. Well, whenever a public agency might be sued  
 2 by anyone over a tendering contract, by a  
 3 patient of the health authority, by a family  
 4 who has, you know, activities in relation to a  
 5 school board and on and on, those are always  
 6 of general interest and the subject of  
 7 communications.  
 8 COFFEY, Q.C.:  
 9 Q. And so they're of interest to the Cabinet  
 10 Secretariat and the Premier's office?  
 11 MR. THOMPSON:  
 12 A. It's an alert to say that this is one, this is  
 13 an issue that's occurring and just want you to  
 14 be aware of that.  
 15 COFFEY, Q.C.:  
 16 Q. Well, that was on October 5?  
 17 MR. THOMPSON:  
 18 A. Right.  
 19 COFFEY, Q.C.:  
 20 Q. Now if we go to P-0811, apparently there had  
 21 been no briefing note since October 5.  
 22 MR. THOMPSON:  
 23 A. Um-hm.  
 24 COFFEY, Q.C.:  
 25 Q. And I'm not going to subject you going through

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1 all the media coverage that occurred involving  
 2 this issue between October 5 -  
 3 MR. THOMPSON:  
 4 A. Sure.  
 5 COFFEY, Q.C.:  
 6 Q. - and July 31st. But are you aware that there  
 7 was a significant amount of media coverage?  
 8 MR. THOMPSON:  
 9 A. The kind of general impression that I carry in  
 10 my head is that there were periodic spurts of  
 11 media coverage from the point in time in July  
 12 when the story broke.  
 13 COFFEY, Q.C.:  
 14 Q. Sure. That would be October?  
 15 MR. THOMPSON:  
 16 A. Sorry, October, yes, yes.  
 17 COFFEY, Q.C.:  
 18 Q. Yes.  
 19 MR. THOMPSON:  
 20 A. October until the present time. And but,  
 21 yeah, so I know there's lots of media coverage  
 22 out there, but I wouldn't be able to segment  
 23 it for you.  
 24 COFFEY, Q.C.:  
 25 Q. And did you discuss this with Mr. Cake at the

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1 time?  
 2 MR. THOMPSON:  
 3 A. This e-mail?  
 4 COFFEY, Q.C.:  
 5 Q. Or the e-mail or the subject matter of the e-  
 6 mail?  
 7 MR. THOMPSON:  
 8 A. I don't think so, but I don't recall.  
 9 COFFEY, Q.C.:  
 10 Q. Okay. If we could, please, Exhibit P-0815?  
 11 Now, this is an e-mail from Tansy Mundon to  
 12 Gary Cake. You'll notice at the bottom there  
 13 it's copied to Mr. John Abbott. And it says,  
 14 it's July 31st, 2006 at 4:40 p.m., "BN,"  
 15 briefing note, dash, ER/PR. "Gary, as per  
 16 John's request, please see attached briefing  
 17 note prepared by Eastern Health regarding  
 18 ER/PR. Thanks, Tansy." She being the  
 19 director of communications for the Department  
 20 of Health. And then we look at the  
 21 attachment, that is the attached briefing  
 22 note. It is two pages long. And it's  
 23 prepared by Heather Predham, assistant  
 24 director quality and risk management, dated  
 25 July 31st, 2006 "RE: estrogen and progesterone

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1 receptor testing update." And she says, "The  
 2 total number of patients sent for retesting  
 3 was 939. The majority of results have been  
 4 returned, reviewed and the individual patients  
 5 informed. Exceptions to this are listed  
 6 below." And they are the DCIS category, the  
 7 retro converters category. And then the  
 8 deceased, 174 patients identified at that  
 9 point as being deceased. And legal activity,  
 10 the Hanlon claim, and that's described in  
 11 three, less than three lines, and the Doucette  
 12 claim is described in less than four lines.  
 13 Do you recall whether or not Mr. Cake made you  
 14 aware of either this briefing note or its  
 15 contents?  
 16 MR. THOMPSON:  
 17 A. No.  
 18 COFFEY, Q.C.:  
 19 Q. So he did not?  
 20 MR. THOMPSON:  
 21 A. I don't recall and I don't think that he did.  
 22 The nature of the work in our office is such  
 23 that many people can be working on briefing  
 24 notes on any number of topics before they  
 25 would be passed to me in draft form.

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1 COFFEY, Q.C.:  
 2 Q. Sure. And this is certainly not in the format  
 3 that you would expect a briefing note, I take  
 4 it?  
 5 MR. THOMPSON:  
 6 A. No.  
 7 COFFEY, Q.C.:  
 8 Q. Now, sir, you've indicated August 4 you went  
 9 on vacation?  
 10 MR. THOMPSON:  
 11 A. Right.  
 12 COFFEY, Q.C.:  
 13 Q. You came back when?  
 14 MR. THOMPSON:  
 15 A. The 20th.  
 16 COFFEY, Q.C.:  
 17 Q. If we could, please, Exhibit P-0125, page 31?  
 18 Now, sir, this is a briefing note of, again,  
 19 it's briefing note, Department of Health and  
 20 Community Services, title, "Update on  
 21 Pathology Reports and Legal Action for Women  
 22 Diagnosed with Breast Cancer." In that  
 23 distribution list in the top right-hand side  
 24 it's distribution list is dated August 18th,  
 25 2006. And it's copied to the Premier, Mr.

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1 Crawley, Mr. Reid, Ms. Matthews, yourself, Ms.  
 2 Barnes and Mr. Cake and Ms. Cheeseman and  
 3 others. This note, I believe, is four pages  
 4 long?  
 5 MR. THOMPSON:  
 6 A. Um-hm.  
 7 COFFEY, Q.C.:  
 8 Q. See that, it's stamped down there, "Executive  
 9 Council, August 18th, 2006, Registry." And do  
 10 you recall when you came back--I take it you  
 11 wouldn't have reviewed this while you were on  
 12 vacation?  
 13 MR. THOMPSON:  
 14 A. Um-um.  
 15 COFFEY, Q.C.:  
 16 Q. No. Did you review this when you came back?  
 17 MR. THOMPSON:  
 18 A. I'm not certain that I did, but clearly--or  
 19 the likelihood is that it was on my desk  
 20 awaiting for my coming back and that normally  
 21 I would take time to meet with senior staff to  
 22 find out what were the key issues that needed  
 23 to be dealt with upon coming back and what had  
 24 happened while I was away. I'd go through my  
 25 in box that would contain not just briefing



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1 notes, but also other types of files and  
 2 correspondence, go through my e-mail and  
 3 essentially try to catch up. But sometimes  
 4 that process would take several days because  
 5 of other meetings that would be backed up from  
 6 when I was away. So I'm certain that this was  
 7 in my purview somewhere, but I can't recall  
 8 reading it. And I'll just add to that, it's  
 9 possible I didn't because when one gets back  
 10 just trying to get back into the stream of  
 11 things that there are certain things that you  
 12 set aside if it's not being pointed out to you  
 13 as an urgent item. And but on the other hand,  
 14 when I was first made aware of this note in  
 15 2007, in May, 2007 I remember pulling out this  
 16 note and looking at it and being surprised by  
 17 the structure of the note with so much data in  
 18 it and it being an odd--looking note, I'm  
 19 saying, "Where did this--I don't remember  
 20 reading this." So I guess my message to you  
 21 is that I may have read it, I may have scanned  
 22 it, but I don't recall doing so.

23 COFFEY, Q.C.:

24 Q. And on the fourth page of it it says "Prepared  
 25 by/approved by Heather Predham, Eastern

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1 Health, Moira Hennessey, Health and Community  
 2 Services. Reviewed by Marilyn McCormack, Gary  
 3 Cake of the Cabinet Secretariat." See that?

4 MR. THOMPSON:

5 A. Um-hm.

6 COFFEY, Q.C.:

7 Q. Now, so I take it then that you're telling the  
 8 Commissioner that, you know, throughout August  
 9 and September of 2006 if you read this, it  
 10 didn't make any impression on you?

11 MR. THOMPSON:

12 A. No.

13 COFFEY, Q.C.:

14 Q. Is there anything about what's in it, bearing  
 15 in mind that, you know, what your impression  
 16 in May of '07 when you pulled it out and had a  
 17 look at it, anything in the note which might  
 18 explain why, if you did read it, it didn't  
 19 make an impression?

20 MR. THOMPSON:

21 A. The main reason I think that it may not have  
 22 made an impression if I did read it would--or  
 23 it may not have lingered with me, perhaps is a  
 24 better way to phrase it, because the note does  
 25 indicate that it's for information purposes

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1 only. I forget exactly where that's stated  
 2 now. Do you recall where that's stated?

3 COFFEY, Q.C.:

4 Q. Yes, it's on the fourth page. It's actually  
 5 page 34. Yeah, you're there. Keep going.  
 6 "Action required."

7 MR. THOMPSON:

8 A. Okay. And action required is the kind of  
 9 section one would focus on if one was rapidly  
 10 processing documents, sometimes you take a  
 11 briefing note and if you're really rushed to  
 12 get through it, you'll read the issue, the key  
 13 statements up front, you'll flip right back to  
 14 if there's any action required, because then  
 15 that will give you an automatic way to start  
 16 handling it if an action is required. And  
 17 this says, "This note is provided for  
 18 information purposes only." So, reading that  
 19 would be a key reason why, if it was to be set  
 20 aside quickly without any follow through,  
 21 that's the kind of single that that line would  
 22 provide.

23 COFFEY, Q.C.:

24 Q. Sure. Now, in relation to that though that's  
 25 not all it says there. It goes on to say,

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1 "should the Premier require further detail,  
 2 officials from Eastern Health as well as legal  
 3 counsel, will be available for an in-person  
 4 briefing".

5 MR. THOMPSON:

6 A. Sure. And that's sort of a specific question  
 7 of the Premier.

8 COFFEY, Q.C.:

9 Q. Well, if you read the whole of it, you would  
 10 have read that paragraph as well.

11 MR. THOMPSON:

12 A. More than likely, yes.

13 COFFEY, Q.C.:

14 Q. And if you only read something in it to see if  
 15 there's anything, what if anything is  
 16 required, you pointed out to looked to that  
 17 portion of it, action required and information  
 18 purposes only. The reference to, "should the  
 19 Premier require further detail from Eastern  
 20 Health as well as their legal counsel"--sorry,  
 21 "officials from Eastern Health as well as  
 22 legal counsel would be available for an in-  
 23 person briefing", would you have asked as to  
 24 whether or not Mr. Williams had seen this and  
 25 if that briefing had occurred?

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1 MR. THOMPSON:  
 2 A. No. I would likely have left that to Brian  
 3 Crawley or the Premier's assistant or the  
 4 Premier himself to take action on that.  
 5 COFFEY, Q.C.:  
 6 Q. I appreciate that, but you were gone when this  
 7 came through.  
 8 MR. THOMPSON:  
 9 A. Right.  
 10 COFFEY, Q.C.:  
 11 Q. You were away, coming back to--would you have  
 12 asked, well, did that happen?  
 13 MR. THOMPSON:  
 14 A. Very unlikely.  
 15 COFFEY, Q.C.:  
 16 Q. And why is that?  
 17 MR. THOMPSON:  
 18 A. We all receive these notes. If there are  
 19 pieces relevant to each party, then they  
 20 generally take care of them. It was an  
 21 information note, it wouldn't have alerted me  
 22 to a imminent decision and therefore, it would  
 23 have, in terms of, next steps and the kind of  
 24 things one takes action on, and queries  
 25 further, it just wouldn't have been on the top

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1 of my list to do so.  
 2 COFFEY, Q.C.:  
 3 Q. Okay. At the time, I take it your  
 4 understanding of the purpose of the note, if  
 5 you read it, was to advise your office and the  
 6 Premier's office as to the current status of  
 7 pathology testing and legal claims.  
 8 MR. THOMPSON:  
 9 A. Right.  
 10 COFFEY, Q.C.:  
 11 Q. That's the issue. Well, can we look at the  
 12 second, I'm sorry, the third page of this.  
 13 The current status, legal activity. It says,  
 14 "currently only two legal claims have been  
 15 filed", and the "two" is bolded. See that?  
 16 MR. THOMPSON:  
 17 A. Um-hm.  
 18 COFFEY, Q.C.:  
 19 Q. And under the second one, there's a reference  
 20 to that suit by Ms. Doucette as being a class  
 21 action proceeding. Why would the Cabinet  
 22 Secretariat or Premier's office being  
 23 interested even in knowing what the status of  
 24 this was?  
 25 MR. THOMPSON:

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1 A. Sometimes--well, first of all, the item in the  
 2 newspaper, which is the root of this -  
 3 COFFEY, Q.C.:  
 4 Q. Sure.  
 5 MR. THOMPSON:  
 6 A. - although I can't recall the details of the  
 7 article, it's summarized in the e-mail as  
 8 having to do with legal action being  
 9 initiated. And if that's what prompted the  
 10 briefing note, then it's not surprising to see  
 11 some facts related to a legal action in the  
 12 briefing note.  
 13 COFFEY, Q.C.:  
 14 Q. What relevance, again, would that have to the  
 15 Premier's office or the Cabinet Secretariat if  
 16 Eastern Health is being sued?  
 17 MR. THOMPSON:  
 18 A. Well, it's an agent of the Crown and -  
 19 COFFEY, Q.C.:  
 20 Q. Okay.  
 21 MR. THOMPSON:  
 22 A. So, it's a general point of--legal actions  
 23 against the Crown, wherever they occur, is an  
 24 item on which regularly we will see briefing  
 25 notes because it's a risk to the Crown in

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1 terms of finances. So, it's just one of those  
 2 issues that would generally arise.  
 3 COFFEY, Q.C.:  
 4 Q. And that's so even if the Crown agency has  
 5 insurance, it's understood -  
 6 MR. THOMPSON:  
 7 A. I'm not sure people were thinking that  
 8 through, but if there was an action against  
 9 the Crown, not surprised to see information on  
 10 that.  
 11 COFFEY, Q.C.:  
 12 Q. And here under the, as you say, looking back  
 13 on it in May of '07, there are quite a number  
 14 of numbers here, categories of patients, very  
 15 detailed, at least, compared to what you've  
 16 been told back in October -  
 17 MR. THOMPSON:  
 18 A. Yes.  
 19 COFFEY, Q.C.:  
 20 Q. - of '05--very detailed accounts of the number  
 21 of patients that fell in the certain  
 22 categories, why they were so categorized and  
 23 so on?  
 24 MR. THOMPSON:  
 25 A. Um-hm.

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1 COFFEY, Q.C.:

2 Q. And if you did read it as you say you read it

3 and just kind of filed it away.

4 MR. THOMPSON:

5 A. Well, that's right. And -

6 COFFEY, Q.C.:

7 Q. From your perspective, what you would you

8 expect to happen, like in the future? I mean

9 where was this going?

10 MR. THOMPSON:

11 A. Well, first of all, the unusual structure of

12 this note is the thing that stands out in it

13 for me with a detailed table of data. This is

14 not the norm for briefing notes because this

15 doesn't meet the definition of brief in

16 briefing note. And that's why when I looked

17 at it later, I was surprised not to remember

18 it then because of the unusual nature of the

19 note. So, it gives me some indication that if

20 I did read it, I scanned it very quickly and

21 set it aside. So, in setting it aside, I had

22 no expectation that if I did set it aside, as

23 I described, then in setting it aside, I would

24 not have had any expectations, any next steps,

25 at least involving Cabinet Secretariat were

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1 necessary because it was an information note.

2 And if action was being taken either on

3 communications or on a decision the Cabinet

4 needed to be made, that the department would

5 come forth in due course.

6 COFFEY, Q.C.:

7 Q. And the fac that it was long or lengthy, just

8 looking at it, would you say struck you--in

9 May of '07--and you did have a copy of this

10 yourself in May of '07, you didn't have to go

11 looking for it in sense of you already

12 possessed a copy.

13 MR. THOMPSON:

14 A. Yes, I asked for it to be pulled from the file

15 and there it was.

16 COFFEY, Q.C.:

17 Q. And therefore, I take it, in August of '06,

18 the fact that it was lengthy would have struck

19 you as well?

20 MR. THOMPSON:

21 A. I think so, yeah. Now, whether I would

22 remember it, I'm not sure, but it is a

23 striking feature of this briefing note.

24 COFFEY, Q.C.:

25 Q. And if you received a lengthy briefing note,

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1 wouldn't you be curious to know, well, what's

2 this about?

3 MR. THOMPSON:

4 A. Well, yeah, I wondered why it had to take that

5 much space to deliver a briefing note.

6 COFFEY, Q.C.:

7 Q. Okay. And had you ever seen in any other

8 briefing note such a suggestion that "should

9 the Premier require further detail, officials

10 from Eastern Health as well as their legal

11 counsel will be available for an in-person

12 briefing"? Can you recall any other briefing

13 note where the Department of Health, in

14 effect, offered to provide Eastern Health or

15 any other Healths authorities' officials and

16 their lawyer to brief the Premier?

17 MR. THOMPSON:

18 A. I can't recall any other.

19 COFFEY, Q.C.:

20 Q. Okay. So, that in itself would be unusual,

21 that sort of -

22 MR. THOMPSON:

23 A. Well, not unusual in the sense that an offer

24 is made for other people to come and brief the

25 Premier on topics included in this. It's

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1 really a courtesy. So, it wouldn't be unusual

2 in that context.

3 COFFEY, Q.C.:

4 Q. But why is it then unusual--I apologize,

5 that's my word--but you'd never seen anything

6 like it before and you haven't since in terms

7 of a lawyer being offered up?

8 MR. THOMPSON:

9 A. I can't recall. That's the question you

10 asked, can I recall? And I don't recall. If

11 you wish, I can examine all of our briefing

12 notes to see where offers of additional

13 briefing are made and I'm pretty certain I'll

14 find some. Whether they include legal counsel

15 as well as officials, I don't know, but I'm

16 pretty sure we'll find some.

17 COFFEY, Q.C.:

18 Q. Okay.

19 COMMISSIONER:

20 Q. Mr. Coffey, wherever you can find a place,

21 we'll break for lunch.

22 COFFEY, Q.C.:

23 Q. Sir, are you aware that at least, like under

24 the penultimate draft, how you become aware

25 that the penultimate draft of this August 18

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1 briefing note, under the word summary--if  
 2 you'd bring you P-0172, please, page 4. In  
 3 the accompanying e-mail this particular  
 4 briefing note was described as the final, in  
 5 caps and bold print. I apologize, I've gone  
 6 past it. There under "summary" and this last  
 7 paragraph, it says, Eastern Health advises 22  
 8 women were greatly impacted by the change in  
 9 status of the ER/PR receptor tests", okay?  
 10 MR. THOMPSON:  
 11 A. Um-hm.  
 12 COFFEY, Q.C.:  
 13 Q. See that?  
 14 MR. THOMPSON:  
 15 A. Yes.  
 16 COFFEY, Q.C.:  
 17 Q. And if could just go back, please, to the  
 18 equivalent passage in P-0125, page 31, I  
 19 apologize, page 33. If you look down through  
 20 the page there, under summary, it says,  
 21 "Eastern Health advises 22 women were impacted  
 22 by the change in the change in the status of  
 23 the ER/PR receptor test". Do you see that the  
 24 word "greatly" has been removed from the final  
 25 version.

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1 MR. THOMPSON:  
 2 A. Yes.  
 3 COFFEY, Q.C.:  
 4 Q. Before you came here today, were you aware  
 5 that that word, there's that difference?  
 6 MR. THOMPSON:  
 7 A. I understand, yes I am, through the work on  
 8 getting the disclosures done.  
 9 COFFEY, Q.C.:  
 10 Q. Have you made any inquiries in that regard as  
 11 to how that would--got removed?  
 12 MR. THOMPSON:  
 13 A. Well, I've talked to Moira and Gary Cake on  
 14 it, not sure if I talked to Marilyn McCormack  
 15 about this, but--and there's been other  
 16 internal discussions, yes.  
 17 COFFEY, Q.C.:  
 18 Q. And have you--has anyone provided an  
 19 explanation as to who removed it?  
 20 MR. THOMPSON:  
 21 A. Well, not a--well yes, some explanation. As I  
 22 understand it, there was a discussion and I  
 23 think it would have been between Moira  
 24 Hennessey and Marilyn McCormack about whether  
 25 that word was conveying some precise meaning

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1 or not. And so, as an adjective, it was taken  
 2 out as an editing decision.  
 3 COFFEY, Q.C.:  
 4 Q. Are you aware that it was not there in the  
 5 first place, "greatly" was inserted and then  
 6 removed, has anyone explained that to you?  
 7 MR. THOMPSON:  
 8 A. Now, I wasn't aware of that.  
 9 COFFEY, Q.C.:  
 10 Q. Okay, you weren't. And -  
 11 MR. THOMPSON:  
 12 A. So, you're saying to me that it was missing in  
 13 and earlier draft.  
 14 COFFEY, Q.C.:  
 15 Q. Um-hm, well, if we look, if you actually,  
 16 carefully examine them and you weren't  
 17 involved in it, so-  
 18 MR. THOMPSON:  
 19 A. No, it's just an interesting thing you said to  
 20 me, I didn't know.  
 21 COFFEY, Q.C.:  
 22 Q. Okay. So, -  
 23 COMMISSIONER:  
 24 Q. So, Mr. Coffey, you're suggesting to the  
 25 witness that, in fact, if he goes back to the

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1 history of this document, he'll find that  
 2 "greatly" was not there; it subsequently got  
 3 inserted and then got removed again.  
 4 COFFEY, Q.C.:  
 5 Q. Apparently, but we'll, you know, in terms--  
 6 it's the removal--certainly you had become  
 7 aware before you came here in your preparation  
 8 for -  
 9 MR. THOMPSON:  
 10 A. Yes.  
 11 COFFEY, Q.C.:  
 12 Q. - over the past months. And you've made  
 13 inquiries?  
 14 MR. THOMPSON:  
 15 A. Yes.  
 16 COFFEY, Q.C.:  
 17 Q. And I was just--your understanding as to whose  
 18 decision was it to remove them?  
 19 MR. THOMPSON:  
 20 A. Well, these are conversations that didn't  
 21 focus so explicitly on this that I'm  
 22 absolutely certain, but as I understand it,  
 23 Moira Hennessey and Marilyn McCormack had this  
 24 discussion and there was an editing decision  
 25 made. I could be wrong about that, but that's

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1 the kind of sense I've framed up -  
 2 COFFEY, Q.C.:  
 3 Q. I thank you very much for that, Mr. Thompson.  
 4 I can advise the Commissioner that both of  
 5 those people will be testifying in due course.  
 6 Thank you.  
 7 COMMISSIONER:  
 8 Q. But the obvious question to ask Mr. Thompson  
 9 arising out of this is would the presence of  
 10 the word "greatly" in respect of the impact on  
 11 these 22 people made any difference to a  
 12 person looking at it?  
 13 MR. THOMPSON:  
 14 A. Yes, it changes the meaning of the sentence.  
 15 In mentoring people who are writing briefing  
 16 notes, I generally do advise them to avoid  
 17 adjectives wherever possible and adverbs. If  
 18 they actually lend an imprecise  
 19 interpretation, that's not helpful to the  
 20 reader. And sometimes it's easy to add an  
 21 adjective which actually portrays an issue in  
 22 an inappropriate light in exact light. So,  
 23 when an adjective gets removed, it's typically  
 24 not a big deal. There's a more sober  
 25 assessment of what's going on, but in this

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1 context, I would agree that, as a reader, it  
 2 would make a difference to the interpretation  
 3 of that sentence.  
 4 COMMISSIONER:  
 5 Q. Thank you. I think we should take the  
 6 luncheon break. 2:10.  
 7 COFFEY, Q.C.:  
 8 Q. Thank you.  
 9 (LUNCH BREAK)  
 10 THE COMMISSIONER:  
 11 Q. Please be seated. Mr. Coffey.  
 12 COFFEY, Q.C.:  
 13 Q. Thank you, Commissioner. Exhibit P-0197,  
 14 please. This is a four-page exhibit, Mr.  
 15 Thompson. It's an e-mail from Tansy Mundon.  
 16 The first page of it is to Elizabeth Matthews  
 17 and Andrea Nolan. Tuesday, December 12, 2006  
 18 at 12:34 p.m. The subject is "a briefing note  
 19 for Premier on ER/PR" and the text says,  
 20 "Elizabeth/Andrea, for the Premier's  
 21 information, this issue was in the media  
 22 today. Thanks, Tansy". Andrea Nolan is whom?  
 23 MR. THOMPSON:  
 24 A. She's communications person, assistant in the  
 25 Premier's office.

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1 COFFEY, Q.C.:  
 2 Q. The attached note is a question and answer  
 3 briefing note from the Department of Health  
 4 and Community Services. The title is "ER/PR  
 5 testing, St. John's" and the issue is framed  
 6 "as a mistake in testing may have led to  
 7 incorrect testing for 170 women in this  
 8 province suffering from breast cancer. Not  
 9 receiving proper treatment could mean a life  
 10 and death issue for women going through  
 11 cancer". And there are four anticipated  
 12 questions. And then there are five key  
 13 messages noted and other suggested responses.  
 14 There are two of them and then a background.  
 15 And it goes on then from there in some length.  
 16 The note itself is three pages long, drafted  
 17 by Beverley Griffiths, approved by Moira  
 18 Hennessey, dated December 12, 2006.  
 19 Sir, do you know if--the e-mail from Ms.  
 20 Mundon is to Ms. Matthews and Ms. Nolan--do  
 21 you know if this ever made it to the Cabinet  
 22 Secretariat?  
 23 MR. THOMPSON:  
 24 A. I don't think so. I never saw the note at the  
 25 time, to the best of my knowledge and I don't

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1 believe we've ever found it in the records of  
 2 Cabinet Secretariat.  
 3 COFFEY, Q.C.:  
 4 Q. So, what, if anything, is your understanding  
 5 about how such an e-mail and attached briefing  
 6 note, if it ended up the Premier's office with  
 7 his director of communications, how that might  
 8 be handled?  
 9 MR. THOMPSON:  
 10 A. Well, I don't in particular what system  
 11 Elizabeth Matthews has or Andrea Nolan has,  
 12 but in general terms, what this appears to be  
 13 to me is a piece of information from a  
 14 communications director to two other people  
 15 centrally involved in communications--here's  
 16 for your information, here's a heads up, you  
 17 know, please be aware of this. And it may not  
 18 incite any additional action or distribution,  
 19 but that of course, would depend upon the  
 20 assessment of those who received it.  
 21 COFFEY, Q.C.:  
 22 Q. Now sir, if we could, please, sir, there was a  
 23 media briefing, a technical media briefing, do  
 24 you have any understanding of what a technical  
 25 media briefing is as opposed to a media

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1 briefing?  
 2 MR. THOMPSON:  
 3 A. Well, a media briefing, whether it's technical  
 4 or not is usually done in camera in the sense  
 5 that it's without camera, without attribution,  
 6 but it's an opportunity to perhaps, in a more  
 7 informal way, convey a large amount of  
 8 information. Some it may be technical, but it  
 9 gives an opportunity for a lot of back and  
 10 forth between the media and the Eastern  
 11 Health, in this case, so that the media can  
 12 properly--or ask all the questions that they  
 13 need to and get answers from some experts who  
 14 might be involved in the briefing.  
 15 COFFEY, Q.C.:  
 16 Q. And I take it, as well, that it might be  
 17 associated with, at times, a press conference  
 18 too?  
 19 MR. THOMPSON:  
 20 A. Yes, in the provincial government, a technical  
 21 briefing usually precedes a press conference.  
 22 COFFEY, Q.C.:  
 23 Q. Okay. And at a press conference there'd be a  
 24 press release.  
 25 MR. THOMPSON:

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1 A. Correct.  
 2 COFFEY, Q.C.:  
 3 Q. And potentially some interviews?  
 4 MR. THOMPSON:  
 5 A. Yes.  
 6 COFFEY, Q.C.:  
 7 Q. Just looking at this, again, to -  
 8 THE COMMISSIONER:  
 9 Q. Before you do that, on this business of  
 10 technical briefing, other than the  
 11 circumstances around the budget, when might  
 12 you use technical briefings as a prelude to -  
 13 MR. THOMPSON:  
 14 A. Well, a good example is a few weeks ago,  
 15 before we released the communications report  
 16 from my office, we--the way it was released to  
 17 the media was by way of a technical briefing.  
 18 The material in it contained a number of  
 19 tables and needed explanations on the  
 20 assumptions behind the statistics in those  
 21 tables. So, we chose the venue of a technical  
 22 briefing to provide that and allow for a back  
 23 and forth with the media to understand it.  
 24 THE COMMISSIONER:  
 25 Q. So, it's for the purpose of getting down to

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1 the nitty gritty of things which you might not  
 2 otherwise have an opportunity to do in the  
 3 context of a press conference.  
 4 MR. THOMPSON:  
 5 A. That's right. And to separate it from a press  
 6 conference where a minister may wish to focus  
 7 on a set of core messages which might get lost  
 8 is they are combined in the technical  
 9 briefing.  
 10 THE COMMISSIONER:  
 11 Q. Okay, thank you.  
 12 COFFEY, Q.C.:  
 13 Q. And at a technical briefing, the nitty gritty  
 14 of something might be examined or explained -  
 15 MR. THOMPSON:  
 16 A. Yes.  
 17 COFFEY, Q.C.:  
 18 Q. For example, the briefing you're referring to  
 19 several weeks ago, in terms of the technical  
 20 end of it, would you distribute actual written  
 21 materials in relation to that?  
 22 MR. THOMPSON:  
 23 A. Sometime yes, sometimes no.  
 24 COFFEY, Q.C.:  
 25 Q. I take it the advantage of distributing actual

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1 materials reduced to writing or print has the  
 2 advantage of it's concrete.  
 3 MR. THOMPSON:  
 4 A. Yes.  
 5 COFFEY, Q.C.:  
 6 Q. And it's less susceptible to misunderstanding  
 7 or misinterpretation.  
 8 MR. THOMPSON:  
 9 A. Yes. Or in addition, some things could be in  
 10 writing and some things, supplementary  
 11 material could be displayed on a screen.  
 12 COFFEY, Q.C.:  
 13 Q. Sure, a graphic PowerPoint presentation -  
 14 MR. THOMPSON:  
 15 A. Yes.  
 16 COFFEY, Q.C.:  
 17 Q. - those kinds of things.  
 18 MR. THOMPSON:  
 19 A. Yes.  
 20 COFFEY, Q.C.:  
 21 Q. Of course, that could always be then  
 22 distributed too.  
 23 MR. THOMPSON:  
 24 A. Yes.  
 25 COFFEY, Q.C.:

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1 Q. A hard copy of it.  
 2 MR. THOMPSON:  
 3 A. Yes.  
 4 COFFEY, Q.C.:  
 5 Q. And in terms of this particular matter, when  
 6 we look at background on the second page of  
 7 this particular briefing note which is page 3  
 8 of the exhibit, look down under background.  
 9 It's got "the chronology of the ER/PR  
 10 retesting is as follows" and it begins with  
 11 May 2005. And then it refers to July 2005,  
 12 late July 2005, August 2005, October 2005,  
 13 October 2006, February to May 2006 and June to  
 14 November 2006, late November 2006 and finally  
 15 December 11, 2006, "Eastern Health releases  
 16 outcomes of laboratory review to the public.  
 17 A technical briefing was also provided to the  
 18 media". See that?  
 19 MR. THOMPSON:  
 20 A. Um-hm.  
 21 COFFEY, Q.C.:  
 22 Q. Now, would you think in the context or  
 23 consider that the events of December 11, 2006,  
 24 "Eastern Health releases outcomes of  
 25 laboratory review to the public. A technical

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1 briefing was also provided to the media," that  
 2 whatever might be true of the earlier events  
 3 specified here, that that certainly would be a  
 4 milestone?  
 5 MR. THOMPSON:  
 6 A. Yes.  
 7 COFFEY, Q.C.:  
 8 Q. And yet I gather that there was no  
 9 accompanying--no briefing note to the Cabinet  
 10 Secretariat in relation to that apparent  
 11 milestone?  
 12 MR. THOMPSON:  
 13 A. Right.  
 14 COFFEY, Q.C.:  
 15 Q. Either from Eastern Health or from Department  
 16 of Health?  
 17 MR. THOMPSON:  
 18 A. Right.  
 19 COFFEY, Q.C.:  
 20 Q. And I say briefing note in the sense of the  
 21 Cabinet Secretariat type briefing note.  
 22 MR. THOMPSON:  
 23 A. Right.  
 24 COFFEY, Q.C.:  
 25 Q. Other than--and this one does refer to, as I

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1 just looked at the first page of it, that e-  
 2 mail at 12:34 on December 12th from Ms. Mundon  
 3 to the Premier's office communication staff.  
 4 Are you aware of any other briefing note at  
 5 all in relation to this aspect of the matter?  
 6 MR. THOMPSON:  
 7 A. No.  
 8 COFFEY, Q.C.:  
 9 Q. Are you able to offer any explanation, you  
 10 know, to the Commissioner as to why there is  
 11 no other such briefing note, either was  
 12 requested by--Cabinet Secretariat reached out  
 13 for it or offered up by the Department?  
 14 MR. THOMPSON:  
 15 A. I agree with you that this is the kind of  
 16 milestone where a briefing note could be  
 17 offered by the Department or for that matter,  
 18 a briefing note could be requested by Cabinet  
 19 Secretariat. But of course, not every  
 20 milestone on every issue faced across all, you  
 21 know, 15 to 20 departments gets treated with a  
 22 briefing note. When I answered earlier about  
 23 milestones, my indication was a milestone is a  
 24 good time to do that, but it's not universally  
 25 applied. Now so that's one part of the

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1 answer, or context.  
 2 A second part would be that the  
 3 possibility that in conveying that from Tansy  
 4 Mundon to Elizabeth Matthews, the Department  
 5 may have felt that that was an adequate  
 6 transmission of information to the centre,  
 7 even though it's not the one that we are part  
 8 of, in Cabinet Secretariat, but they may felt  
 9 that that was adequate, if Mr. Abbott and if  
 10 the Minister were aware of it, and I don't  
 11 know if they were, but that's a second point  
 12 of context, and perhaps that's it. It's  
 13 clearly there was media activity on it in the  
 14 following days. My sense of it was, and it's  
 15 a very general sense in my memory now, that  
 16 media activity, information conveyed by  
 17 Eastern Health, and some kind of concluding  
 18 point, if you like, to an event that was  
 19 contained and managed by Eastern Health. So  
 20 not reaching out for a briefing note would  
 21 have been a judgment call. Whether or not we  
 22 actively processed it, I can't say.  
 23 COFFEY, Q.C.:  
 24 Q. And if we could look, please, at Exhibit P-  
 25 0428? Just looking at--now, this is at least

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1 some media coverage from December of 2006.  
 2 And if we just look at page 2 of it, please?  
 3 Thank you. There's an interview at 5 p.m. on  
 4 December 11th, 2006 or a broadcast from a CBC  
 5 Radio interview between David Bartlett and  
 6 Mark Quinn and Peter Dawe. And Mr. Quinn, in  
 7 the middle of that transcript, says, well, the  
 8 last two sentences of the quotation attributed  
 9 to him in the middle of that says, "Peter Dawe  
 10 is with the Canadian Cancer Society. He wants  
 11 to know how many women who since died also had  
 12 the wrong results." And then there's Mr.  
 13 Quinn is quoted as saying, "Eastern Health is  
 14 facing a class action suit. Health  
 15 authorities aren't saying if the problem is  
 16 caused by human error or technical problems.  
 17 Hormone receptor tests still aren't being done  
 18 in the province. Eastern Health hopes to  
 19 being doing them here again early next year."  
 20 Give some sense of what's going on at the  
 21 time, the ER/PR coverage at page 3 of the  
 22 exhibit is a summary of coverage and  
 23 apparently quotations attributed to various  
 24 media personnel. CBC TV, December 11th, 2006,  
 25 Chris O'Neil-Yates, there's a quotation there

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1 from her, attributed to her. In the middle of  
 2 the second paragraph she's quoted as saying,  
 3 "Because of a class action lawsuit Eastern  
 4 Health will not say how many of those samples  
 5 had a false result." Which is out of the 939  
 6 samples that had to be retested. She goes on  
 7 to say, "Eastern Health will only say that 117  
 8 patients require treatment changes. The  
 9 corporation also won't say how many of the  
 10 patients are part of the retesting or how many  
 11 patients who passed away had the initial false  
 12 test." And goes on to talk about Eastern  
 13 Health saying it's putting quality assurance  
 14 measures in place to restore public confidence  
 15 before it resumes the test, and says it  
 16 doesn't know how the false results happened,  
 17 at least in the media coverage, anyway.  
 18 There's another one then, NTV, December 11th,  
 19 2006. This would be presumably the television  
 20 coverage. And going on to page 4 of the  
 21 exhibit, Carolyn Stokes in the middle of that  
 22 page there's a quotation attributed to her  
 23 saying, "Eastern Health referred almost 3000  
 24 samples dating back to 1997 and sent over 900  
 25 to Mount Sinai Hospital to be retested. As a

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1 result 117 women were told they were given  
 2 inappropriate cancer treatments. That number  
 3 doesn't include the number of false results or  
 4 patients who are now deceased. Eastern Health  
 5 says that number can't be released due to a  
 6 class action lawsuit that has been launched  
 7 against them. And so now, Mr. Thompson, that,  
 8 I'm not suggesting that's exhaustive of the  
 9 media coverage at the time.  
 10 MR. THOMPSON:  
 11 A. No, no, no.  
 12 COFFEY, Q.C.:  
 13 Q. But it's certainly perhaps reflective of it.  
 14 MR. THOMPSON:  
 15 A. Um-hm.  
 16 COFFEY, Q.C.:  
 17 Q. At the time in looking at, at least, those  
 18 quotations attributed to various people on  
 19 December 11 and 12, does that suggest that the  
 20 matter has been concluded in the sense of--or  
 21 what stage, if you paid any attention to it at  
 22 all at the time, would you have thought this  
 23 is?  
 24 MR. THOMPSON:  
 25 A. Well, trying to put myself where my mind might

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1 have been at the time in listening to media  
 2 coverage generally, I was drawing the  
 3 conclusion that here was a report from Eastern  
 4 Health about the results of retesting over a,  
 5 you know, significant period of time and the  
 6 impact that it had on their patients. So it  
 7 was--whether or not everything had been  
 8 concluded, well, one important piece had not  
 9 been concluded. I'm not sure if I was aware  
 10 of it at the time in that important piece  
 11 being that the laboratory was still not  
 12 conducting ER/PR tests at that time, so the  
 13 process is, indeed, not factually concluded.  
 14 But there's some sense that a conclusion had  
 15 come to the resting process.  
 16 COFFEY, Q.C.:  
 17 Q. And, you know, if a matter of that magnitude  
 18 is in the media at the time it's being  
 19 reported, even if you didn't think to get a  
 20 briefing note or weren't aware or advertent to  
 21 it, to get a briefing note beforehand, why  
 22 wouldn't you say, "Well, why don't I have a  
 23 briefing note on this? Where is it?" and ask  
 24 for it?  
 25 MR. THOMPSON:



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1 A. Yeah, it's a good question. And I thought you  
 2 were going to focus in on given the media  
 3 comments that pointed out that there was  
 4 information missing -  
 5 COFFEY, Q.C.:  
 6 Q. Yes, that's what I -  
 7 MR. THOMPSON:  
 8 A. - as being perhaps the trigger that should  
 9 have alerted us to do so. That's a good  
 10 question. And looking back on the material  
 11 now it would have been appropriate for us to  
 12 request a briefing note. It would have been  
 13 even more appropriate, I think, for the  
 14 department to have picked up on this, the gap  
 15 between the--or the kinds of questions that  
 16 were not addressed here and in the information  
 17 that they knew were available and brought  
 18 forward a briefing note based on that to  
 19 clarify what might have been an obvious  
 20 difference between what the media was--or the  
 21 questions that the media were raising. But  
 22 again, I think it's going to be necessary, and  
 23 I don't know if you've asked this of John  
 24 Abbott about why there wasn't a briefing note  
 25 provided to Cabinet Secretariat and the

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1 Premier at that time and whether or not they  
 2 felt that the note provided by Tansy Mundon  
 3 covered that off. I think those are important  
 4 points to round out this discussion.  
 5 COFFEY, Q.C.:  
 6 Q. And in terms of this matter, in terms of  
 7 whether or not the department was aware of  
 8 would have been aware that certain things were  
 9 not going to be said by Eastern Health at  
 10 their media briefing, I take it that are you  
 11 aware one or the other of what the department  
 12 knew at the time, what was so advised on  
 13 December 11th?  
 14 MR. THOMPSON:  
 15 A. Well, I wasn't aware then what it is that the  
 16 department had been briefed on. I've become  
 17 aware since what they had on November 23rd and  
 18 what then was released on December 12th or  
 19 11th by Eastern Health. So -  
 20 COFFEY, Q.C.:  
 21 Q. And what the department was so advised on  
 22 December 11th was to be released and not to be  
 23 released, are you aware of that?  
 24 MR. THOMPSON:  
 25 A. Yes, I've come to understand that the

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1 department had an expectation coming out of  
 2 their November 23rd meeting, but they weren't  
 3 advised precisely in advance of December 11th  
 4 the content that would be released on that  
 5 day.  
 6 COFFEY, Q.C.:  
 7 Q. How about on December 11th itself?  
 8 MR. THOMPSON:  
 9 A. I understand they were provided with the  
 10 briefing material and I think that was the  
 11 material that was sent by Tansy, was it not?  
 12 COFFEY, Q.C.:  
 13 Q. Yes.  
 14 MR. THOMPSON:  
 15 A. Um-hm.  
 16 COFFEY, Q.C.:  
 17 Q. And that material explicitly says, does it  
 18 not, that conversion rates are not going to be  
 19 talked about, error rates and causes are not  
 20 going to be talked about?  
 21 MR. THOMPSON:  
 22 A. Yeah, you'd have to bring it up again for me  
 23 to confirm it, but that sounds right.  
 24 COFFEY, Q.C.:  
 25 Q. As you said -

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1 COMMISSIONER:  
 2 Q. While we're on this topic, is there--with this  
 3 new system, at least new since the last  
 4 contact I had with government operations, put  
 5 it that way, where there is almost a parallel  
 6 system with communications on one side, to  
 7 some extent integrated into the department but  
 8 to some extent separate from the department?  
 9 MR. THOMPSON:  
 10 A. Um-hm.  
 11 COMMISSIONER:  
 12 Q. It seems to run all the way up through every  
 13 department through Secretariat, to the  
 14 Premier's office?  
 15 MR. THOMPSON:  
 16 A. Um-hm.  
 17 COMMISSIONER:  
 18 Q. What steps, if any, are there to insure that  
 19 things don't get lost?  
 20 MR. THOMPSON:  
 21 A. Do you mean what steps are there to insure  
 22 that information that one network has that the  
 23 other network also has?  
 24 COMMISSIONER:  
 25 Q. Um-hm.

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1 MR. THOMPSON:  
 2 A. The only system that's there, really, is the  
 3 actions by individuals on both sides of--on  
 4 both of those networks to be sending material  
 5 back and forth, and it's something that they  
 6 do frequently and often. I receive regular e-  
 7 mails with attached media stories from, right  
 8 now from communications personnel in the  
 9 Department of Health and in Cabinet  
 10 Secretariat, so they're making an effort to do  
 11 that. And as we are, for example, in the last  
 12 technical briefing that occurred as we are  
 13 moving towards a time when we have information  
 14 that we think needs to be publicly announced,  
 15 we're bringing them into our world in order to  
 16 collaborate. So it's really the expectations  
 17 that both networks are sharing with each other  
 18 that are in operation. We don't have a shared  
 19 directory, though, in which all of this is  
 20 deposited, so we don't have an electronic  
 21 information system in which we both tap into.  
 22 It's just the expectations that we have that  
 23 we share appropriately.  
 24 COFFEY, Q.C.:  
 25 Q. So that if they don't think to send and you

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1 don't think to ask, it can -  
 2 MR. THOMPSON:  
 3 A. It can fall between the cracks, yes, it can.  
 4 COFFEY, Q.C.:  
 5 Q. That's, I gather, well, one person assumes in  
 6 one system that their counterpart in the  
 7 administrative system communications think  
 8 that--communications director thinks that the  
 9 DM is sending it, the DM thinks that the  
 10 communications director is sending it and  
 11 neither of them sends it?  
 12 MR. THOMPSON:  
 13 A. Right. And we don't know here whether Tansy  
 14 Mundon would have thought that, for example,  
 15 Moira Hennessey and John Abbott were sending a  
 16 note over or not, we just don't know that.  
 17 COFFEY, Q.C.:  
 18 Q. Although, certainly if there was a briefing  
 19 note being prepared for the Cabinet  
 20 Secretariat, the communications director from  
 21 the department would expect to be at least -  
 22 MR. THOMPSON:  
 23 A. Would receive that, yeah.  
 24 COFFEY, Q.C.:  
 25 Q. - receive it, wouldn't she?

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1 MR. THOMPSON:  
 2 A. I think so.  
 3 COFFEY, Q.C.:  
 4 Q. Yes. On this point, if you look at, please,  
 5 page 14? This is again part of the same  
 6 exhibit P-0428, this is the coverage on  
 7 December 13th, 2006, Wednesday morning at 8:45  
 8 a.m. CBC Radio in St. John's. It's an  
 9 interview of Mr. Gilhooly with Mr. Mark Quinn,  
 10 also Dr. Oscar Howell is quoted there, bottom  
 11 of the page. They continue on and then Mr.  
 12 Dawe, there's some quotations attributed to  
 13 him on page 15 of the exhibit. Mr. Dawe is  
 14 quoted as saying, "What we're not seeing still  
 15 is a full explanation of the numbers of people  
 16 that were affected overall and some idea of  
 17 what actually went wrong with the process.  
 18 Knowing how many people actually ended up with  
 19 a different treatment because of the issue  
 20 tells you about the impact of what that issue  
 21 had on a number of people. I guess what it  
 22 doesn't tell you about is the actual scope of  
 23 what went wrong." Now, sir, Cabinet  
 24 Secretariat has a whole branch that monitors  
 25 the media, doesn't it?

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1 MR. THOMPSON:  
 2 A. Um-hm.  
 3 COFFEY, Q.C.:  
 4 Q. And in mid December of 2006 and into January  
 5 2007, I take it, you got no sign as the clerk  
 6 that they had noticed these kind of complaints  
 7 in the media about Eastern Health not being  
 8 forthcoming?  
 9 MR. THOMPSON:  
 10 A. Well, I don't think that anyone brought to my  
 11 attention that there's a big gap here, an  
 12 unanswered question, it needs to be brought to  
 13 your attention and acted upon. In that sense  
 14 I don't think that a big alert like that came  
 15 to my attention.  
 16 COFFEY, Q.C.:  
 17 Q. Okay. In terms of that, have you since made  
 18 any inquiries as to why that was not brought  
 19 to your attention?  
 20 MR. THOMPSON:  
 21 A. I haven't made an inquiry about why there  
 22 wasn't an alert brought to my attention on  
 23 that date, no.  
 24 COFFEY, Q.C.:  
 25 Q. Okay.

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1 COMMISSIONER:  
 2 Q. Mr. Thompson, there's something about this  
 3 that bothers me, and that is that the idea  
 4 that we are now talking about whether or not  
 5 somebody followed a media story to determine  
 6 whether or not there were gaps in information.  
 7 And it seems to me that's a very bad way -  
 8 MR. THOMPSON:  
 9 A. I agree.  
 10 COMMISSIONER:  
 11 Q. - to determine whether or not something needs  
 12 to be done, should be done, etcetera.  
 13 MR. THOMPSON:  
 14 A. Um-hm.  
 15 COMMISSIONER:  
 16 Q. So how could--how is it that you believe gaps  
 17 in information should have been brought to  
 18 your attention?  
 19 MR. THOMPSON:  
 20 A. First of all, I think that the department--in  
 21 this context, the starting point is Eastern  
 22 Health. Eastern Health has come to a point  
 23 where it wants to make--to transmit  
 24 information to the public. And it's Eastern  
 25 Health's issue to do so, so it's the primary

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1 drive for what the content of that release  
 2 will be. So we know now, I know now, I didn't  
 3 know then, that they briefed the minister and  
 4 provided more information than which they  
 5 subsequently gave to the media. And it's at  
 6 that point the department's examining of that  
 7 information should have alerted them, that  
 8 should have been the point of first defence,  
 9 that there was a disclosure gap at that point.  
 10 Now, I understand that they received a copy of  
 11 the media release the very day that the media  
 12 release was made, so perhaps there wasn't  
 13 enough time to process that or do that  
 14 analysis on the spot, but nevertheless, that's  
 15 where if it was to occur, it could potentially  
 16 have occurred. And if it was salient to them  
 17 based on that alone, I would have expected the  
 18 normal course would be for the department to  
 19 go back to Eastern Health and act on it.  
 20 That's the sort of thing that doesn't need a  
 21 Cabinet Secretariat intervention to assist  
 22 with, that's something the department can do  
 23 on its own. Now, what we know, as well, is  
 24 that the department believes--or didn't pick  
 25 up on it then and it didn't pick up on it

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1 based on the media material where the  
 2 questions were posed. So, you know, if the  
 3 department was to pick up on this disclosure  
 4 gap from the media materials, that again would  
 5 have been an occasion when the department  
 6 could have taken action with Eastern Health to  
 7 correct that matter, as well. So, you know,  
 8 Cabinet Secretariat is very much a third and  
 9 different line of defence, if you like, and  
 10 without being alerted to it by the department  
 11 we have, I guess, fewer sensors to focus in on  
 12 one issue within one department among all the  
 13 issues that we're dealing with, even though I  
 14 will agree with you, the point that there were  
 15 indications in this material that there was a--  
 16 -that there were unanswered questions that  
 17 were still out there. Would we have known  
 18 that--when I say "we" I mean Cabinet  
 19 Secretariat and the communications branch,  
 20 would we have known the significance of these  
 21 questions, the degree to which they might  
 22 urgently be, need to be corrected? Maybe,  
 23 maybe not. But even so, I think the first  
 24 line of defence there would have been between  
 25 the department and Eastern Health.

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1 COFFEY, Q.C.:  
 2 Q. Do you know, sir, if in terms of the  
 3 communications branch that there's--if there  
 4 has been any thorough search done as to what  
 5 media coverage they had, were maintaining at  
 6 the time? Because when we look at this,  
 7 Exhibit 0428, you look at the top of the page  
 8 of each of those, you'll see the source is  
 9 "Volume 4, source, Pat Pilgrim, Tab 13, media,  
 10 December, 2006."  
 11 MR. THOMPSON:  
 12 A. Um-hm.  
 13 COFFEY, Q.C.:  
 14 Q. And they have a whole bunch of media excerpts.  
 15 MR. THOMPSON:  
 16 A. Sure.  
 17 COFFEY, Q.C.:  
 18 Q. That came out of Eastern Health. Has there  
 19 been any effort made to ascertain what the  
 20 Cabinet Secretariat's communication branch has  
 21 in its files?  
 22 MR. THOMPSON:  
 23 A. Well, I don't know the extent of search that  
 24 was made. When we asked Cabinet Secretariat  
 25 to do their search, I don't know if they

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1 actually went into the communications branch  
 2 and searched their media clipping file to  
 3 bring out what was there. I'll find that out  
 4 for you, determine that.  
 5 COFFEY, Q.C.:  
 6 Q. If you would, because they do keep very  
 7 extensive -  
 8 MR. THOMPSON:  
 9 A. Yes.  
 10 COFFEY, Q.C.:  
 11 Q. - record, don't they? And it's entirely  
 12 possible that not only this coverage, the  
 13 excerpts I've pointed you to, but it's  
 14 entirely possible that there's those and maybe  
 15 even more?  
 16 MR. THOMPSON:  
 17 A. Um-hm.  
 18 COMMISSIONER:  
 19 Q. Now that I'm on this, can we just come back to  
 20 this business of the role of the  
 21 communications people?  
 22 MR. THOMPSON:  
 23 A. Right.  
 24 COMMISSIONER:  
 25 Q. Is it expected that a person whose job it is

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1 to follow media and media interest in an  
 2 event, leaving aside the understandable role  
 3 vis-a-vis a minister where it seems to me  
 4 quite logical that a minister would want to  
 5 know what was being said in the public about a  
 6 matter which fell within his or her portfolio  
 7 and be in a position to answer questions that  
 8 might be on people's mind at the time, but  
 9 leaving that aside, is it expected that a  
 10 person in the communications department or  
 11 division or whatever it's called would be in a  
 12 position to and be expected to assess media  
 13 interviews like the ones we have discussed  
 14 here for the purpose of determining whether  
 15 further action should be taken by a department  
 16 or Cabinet Secretariat, is that part of their  
 17 job or are they just supposed to give that to  
 18 you and you figure it out?  
 19 MR. THOMPSON:  
 20 A. No, I believe it to be part of a  
 21 communications director's job or a  
 22 communications specialist to analyze media and  
 23 identify sensitivities or gaps or messages or  
 24 maybe interpretations by media that may be  
 25 inaccurate and bring those kinds of things to

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1 the attention of the minister or other  
 2 officials to say we have an issue here within  
 3 this. Either the story didn't get across well  
 4 or we don't look particularly well as a  
 5 consequence of this, or there's a gap, and  
 6 then to suggest maybe we could do something  
 7 about that, maybe there's a next step or a  
 8 follow up. So that kind of analytical  
 9 process, yes, I do believe it to be part of  
 10 their role.  
 11 THE COMMISSIONER:  
 12 Q. Except that that's a really big role, if  
 13 you're supposed to keep track of the major  
 14 issues in a department and have the kind of  
 15 knowledge to be able to really determine  
 16 whether or not the full story is getting out.  
 17 MR. THOMPSON:  
 18 A. It's a big role and when they--so I can't  
 19 suggest that they can detect every nuance in  
 20 every story. Sometimes there needs to be a  
 21 specialist's perspective shed upon that as  
 22 well, but if there's a sense that there's a  
 23 problem that's coming in media coverage, they  
 24 may wish to consult with the individual in the  
 25 department who can help them out. But a

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1 communications director's job, nonetheless, is  
 2 to ensure--is to assess the coverage that is  
 3 made to see whether, if I can put it in these  
 4 terms, whether the objectives of the  
 5 communications plan or the objectives of the  
 6 communications event were actually delivered  
 7 through the media coverage that occurred after  
 8 the event.  
 9 THE COMMISSIONER:  
 10 Q. And if the objectives of the plan are  
 11 inconsistent with the objectives of the  
 12 department?  
 13 MR. THOMPSON:  
 14 A. That's the question, what happens then?  
 15 THE COMMISSIONER:  
 16 Q. That's the question. What happens then?  
 17 MR. THOMPSON:  
 18 A. Well, it depends. For example, sometimes  
 19 you'll find that media will emphasize a point  
 20 in a story that's not necessarily the one that  
 21 had been hoped for, but that's just the nature  
 22 of the game. The reporters will write their  
 23 own stories around angles that they believe  
 24 are the important parts of a story and  
 25 sometimes an assessment is made that that--

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1 it'll just have to lie. We'll just have to  
 2 move on and try and perhaps communicate in a  
 3 different way on the next available  
 4 opportunity. If there is an error that needs  
 5 to be corrected in coverage, sometimes the  
 6 communications director will make contact with  
 7 the reporter or with the editor, news director  
 8 of that organization and point out the error  
 9 and ask for a change or a retraction. So  
 10 those are -  
 11 THE COMMISSIONER:  
 12 Q. I suppose what I'm asking is the standard by  
 13 which a person in the communications side  
 14 looks at a story and the standard, if I'm  
 15 hearing you right, is the story is assessed on  
 16 the basis of the communication plan?  
 17 MR. THOMPSON:  
 18 A. Yes.  
 19 THE COMMISSIONER:  
 20 Q. And did it do what it had to do?  
 21 MR. THOMPSON:  
 22 A. Right.  
 23 THE COMMISSIONER:  
 24 Q. In terms of the proposed plan, did it go the  
 25 way that the plan had anticipated it would go?

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1 MR. THOMPSON:  
 2 A. Right.  
 3 THE COMMISSIONER:  
 4 Q. That kind of thing.  
 5 MR. THOMPSON:  
 6 A. Yes.  
 7 THE COMMISSIONER:  
 8 Q. But it seems to me that if I were in the  
 9 Department of Health, the kind of information  
 10 I might like to know may not be necessarily  
 11 the kind of information that Eastern Health's  
 12 communication plan dictates should be  
 13 distributed.  
 14 MR. THOMPSON:  
 15 A. Right.  
 16 THE COMMISSIONER:  
 17 Q. So if I want to know that, my route is to go,  
 18 presumably, to Eastern Health through the  
 19 appropriate person and say "I want a briefing  
 20 note. I want a briefing. I want this  
 21 information, let alone what you say you want  
 22 to communicate." Is that the route you go?  
 23 MR. THOMPSON:  
 24 A. I don't fully understand the question.  
 25 THE COMMISSIONER:

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1 Q. Well, my concern here is that supposing, for  
 2 example, the plan includes not releasing  
 3 information.  
 4 MR. THOMPSON:  
 5 A. Right.  
 6 THE COMMISSIONER:  
 7 Q. If I'm assessing it on the basis of whether or  
 8 not the communication plan was successful,  
 9 then it's successful if the information is not  
 10 released.  
 11 MR. THOMPSON:  
 12 A. Yes, I understand.  
 13 THE COMMISSIONER:  
 14 Q. But from the Department of Health's  
 15 perspective, it might be that that information  
 16 should have been released or it might be that  
 17 what was released was not the full story and  
 18 the Department of Health may either have  
 19 wanted that released or want the information  
 20 for their own purposes.  
 21 MR. THOMPSON:  
 22 A. Sure.  
 23 THE COMMISSIONER:  
 24 Q. So their avenue is to go directly to the  
 25 appropriate officials at Eastern Health?

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1 MR. THOMPSON:  
 2 A. Yes.  
 3 THE COMMISSIONER:  
 4 Q. In this case, or any other authority, for that  
 5 matter, and say "give me that information."  
 6 MR. THOMPSON:  
 7 A. Yes, and to connect to this case, just to see  
 8 if I understand, given that there was certain  
 9 information that was not released, which we  
 10 now know that the Department had a general  
 11 expectation was to be released, if the  
 12 Department, either the communications director  
 13 or others in the department, had detected that  
 14 that information had not been released and  
 15 felt that it should have been released and  
 16 felt that it was an important matter, then it  
 17 would be the department's role, if they wished  
 18 to follow up on it, to go back to Eastern  
 19 Health and to find an explanation as to why  
 20 that was the case and if there was a--if this  
 21 was an issue of a fundamental disagreement  
 22 that a different course of action was needed,  
 23 they would have to work that out between them.  
 24 I don't think working that out could  
 25 necessarily be contained to just between

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1 communications directors. A difference of  
 2 opinion of that magnitude would probably have  
 3 to be dealt with at more senior levels.  
 4 THE COMMISSIONER:  
 5 Q. Okay, thank you.  
 6 COFFEY, Q.C.:  
 7 Q. And so the department, from that perspective,  
 8 might either learn of the intended planned  
 9 approach of not releasing certain information,  
 10 either because they were made privy to the com  
 11 plan -  
 12 MR. THOMPSON:  
 13 A. Right.  
 14 COFFEY, Q.C.:  
 15 Q. - of a health authority such as Eastern  
 16 Health, such as apparently is contained in P-  
 17 0104, page 30, which is the actual material  
 18 sent to the Department on December 11th, or  
 19 they might find out by actually paying  
 20 attention to the media coverage afterward and  
 21 hear what people are complaining about not  
 22 being told?  
 23 MR. THOMPSON:  
 24 A. Right.  
 25 COFFEY, Q.C.:

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1 Q. Do you know if any search has been done in the  
 2 Department of Health director of  
 3 communications' office as to what media  
 4 coverage they were aware of during that time?  
 5 MR. THOMPSON:  
 6 A. Well -  
 7 COFFEY, Q.C.:  
 8 Q. During the time of December 11th, 12th, 13th,  
 9 14th, do you know if -  
 10 MR. THOMPSON:  
 11 A. Yeah. Our directive to people involved in the  
 12 Department would have included the director of  
 13 communications and would have included all  
 14 material, e-mails, correspondence, media  
 15 clippings, and I presume that that would have  
 16 shown up from that search. If there's any  
 17 perceived gap there, we could certainly look  
 18 again.  
 19 COFFEY, Q.C.:  
 20 Q. And if you could, in respect of the Department  
 21 of Health, because I gather that you're not  
 22 certain that it was actually done in your own  
 23 communications branch?  
 24 MR. THOMPSON:  
 25 A. No, because I was one step removed. I was in

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1 the Department of Health then and I don't know  
 2 how they--when the request was made, how they  
 3 went around then and scooped up this  
 4 information. So I'd have to check on that.  
 5 COFFEY, Q.C.:  
 6 Q. Okay, and if you could for both the Cabinet  
 7 Secretariat's communications branch and the  
 8 Department of Health's director of  
 9 communications. Now we had understood that--  
 10 and I'm speaking for myself and Ms. Chaytor,  
 11 that we had--certainly had already received  
 12 all this information.  
 13 MR. THOMPSON:  
 14 A. Yes, as I'm assuming you have as well, and  
 15 I'll be surprised -  
 16 COFFEY, Q.C.:  
 17 Q. And we may have.  
 18 MR. THOMPSON:  
 19 A. I'll be surprised to find anything there that  
 20 you don't already have.  
 21 COFFEY, Q.C.:  
 22 Q. Actual media clippings and/or summaries of  
 23 media coverage.  
 24 MR. THOMPSON:  
 25 A. Okay.

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1 COFFEY, Q.C.:  
 2 Q. If we could, please, Exhibit P-0201? Sir,  
 3 this is a letter of March 8th, 2007, and  
 4 before I delve into it, so now looking back at  
 5 it, your memory of it, as clerk at the time,  
 6 was you certainly would have been aware that  
 7 there was a media briefing December 11th?  
 8 MR. THOMPSON:  
 9 A. Yes.  
 10 COFFEY, Q.C.:  
 11 Q. And -  
 12 MR. THOMPSON:  
 13 A. After the fact, more than likely.  
 14 COFFEY, Q.C.:  
 15 Q. Yes, and you have no memory of being--kind of  
 16 getting a heads up that this was going to  
 17 occur?  
 18 MR. THOMPSON:  
 19 A. No.  
 20 COFFEY, Q.C.:  
 21 Q. It occurred, and then your understanding then,  
 22 as the year 2006 ended, was what, in terms of  
 23 the ER/PR issue?  
 24 MR. THOMPSON:  
 25 A. As I said earlier, I believe I had this

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1 general understanding that a report had been  
 2 made, that it was generally a conclusion to  
 3 the retest process, and I'm not sure if I knew  
 4 whether or not the laboratory was testing for  
 5 ER/PR again.  
 6 COFFEY, Q.C.:  
 7 Q. And how about the class action law suit or law  
 8 suits?  
 9 MR. THOMPSON:  
 10 A. I would have had a general understanding that  
 11 was still outstanding.  
 12 COFFEY, Q.C.:  
 13 Q. Now in terms of following that, because you've  
 14 indicated that law suits are something of  
 15 interest to be followed, and where the  
 16 government or a government agency is a  
 17 defendant. Were there any, to your knowledge,  
 18 any arrangements made to follow that, the  
 19 class action issue? Because that was about to  
 20 -  
 21 MR. THOMPSON:  
 22 A. No differently than regular reporting from the  
 23 Department of Health on ER/PR.  
 24 COFFEY, Q.C.:  
 25 Q. Now looking at this, and this is a letter on

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1 Eastern Health letterhead from the Department  
 2 of Laboratory Medicine to Mr. John Abbott in  
 3 his capacity as deputy minister. It involves  
 4 the recruitment and retention of pathologists.  
 5 MR. THOMPSON:  
 6 A. Right.  
 7 COFFEY, Q.C.:  
 8 Q. And it's from, if we look at the second page  
 9 of it, it's from Dr. Nash Denic, who's  
 10 president of the Newfoundland Association of  
 11 Pathologists and he's, at that point, interim  
 12 clinical chief of the Laboratory Medicine  
 13 program at Eastern Health. This, in the main,  
 14 he sets out in the beginning "as per our  
 15 recent conversation, I'm writing you and  
 16 Minister Wiseman to reenforce the issues  
 17 regarding recruitment and retention of  
 18 pathologists in Newfoundland. We've  
 19 communicated this problem over the last three  
 20 years to the Department of Health. A document  
 21 generated by the external reviewer retained by  
 22 government has also addressed this issue in  
 23 detail."  
 24 And he goes on at some detail or with  
 25 some detail about it, and he concludes by

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1 saying "the oncology bonus that we requested  
 2 is a minimum supplement to a current  
 3 remuneration package that's equally deserved  
 4 by pathologists as it is deserved by the other  
 5 groups which are receiving it. It will help  
 6 to stabilize the current pathology group and  
 7 attract new 'blood' to our program. We are  
 8 seeking a prompt resolution of these serious  
 9 issues by government."  
 10 It's carboned or copied here to Mr.  
 11 Wiseman, the minister, Premier Danny Williams,  
 12 the Honourable Tom Marshall, Minister of  
 13 Finance, and Mr. Rob Ritter, the executive  
 14 director of the NLMA. Were you aware of the  
 15 pathology remuneration process?  
 16 MR. THOMPSON:  
 17 A. No.  
 18 COFFEY, Q.C.:  
 19 Q. Transpiring or going on in the background?  
 20 MR. THOMPSON:  
 21 A. No.  
 22 COFFEY, Q.C.:  
 23 Q. Okay. A letter such as this that is copied  
 24 to--well, in this context, Premier Williams,  
 25 would that come to your office?

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1 MR. THOMPSON:  
 2 A. No.  
 3 COFFEY, Q.C.:  
 4 Q. Where would that go?  
 5 MR. THOMPSON:  
 6 A. Well, in general, correspondence to the  
 7 Premier would not come to the Cabinet  
 8 Secretariat. We wouldn't deal with that.  
 9 There was a routine within the Premier's  
 10 office itself to route correspondence that  
 11 required the Premier's--an answer from the  
 12 Premier, sort of out to departments to  
 13 generate responses or maybe routed to  
 14 individuals within the Premier's office to  
 15 generate a draft response and I can't speak in  
 16 detail to how that particular routine works,  
 17 but that's how I understand. Those are the  
 18 main outlines of it.  
 19 COFFEY, Q.C.:  
 20 Q. What about a letter which is sent to actually--  
 21 -well, two different ministers, Minister of  
 22 Health and Minister of Finance, and the  
 23 Premier?  
 24 MR. THOMPSON:  
 25 A. I'm sorry, to who was it addressed in the

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1 main?  
 2 COFFEY, Q.C.:  
 3 Q. It's addressed to John Abbott. I'll show you.  
 4 MR. THOMPSON:  
 5 A. Okay.  
 6 COFFEY, Q.C.:  
 7 Q. To Mr. Abbott.  
 8 MR. THOMPSON:  
 9 A. Right, and so the question is still on the  
 10 Premier, how it -  
 11 COFFEY, Q.C.:  
 12 Q. Well, the Premier, like a matter that is  
 13 coming in, apparently to three different  
 14 departments, the Premier's office being one  
 15 department, Mr. Wiseman's and Mr. Marshall's  
 16 being two other departments, now is there any  
 17 effort to coordinate the response within  
 18 government?  
 19 MR. THOMPSON:  
 20 A. Well, it only requires one response, but it  
 21 may require, depending upon the nature of the  
 22 issue, that Mr. Abbott, when he prepares a  
 23 draft response, to circulate it back to these  
 24 other people to alert them to the nature of  
 25 the response that he might make. Now in this

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1 case, it's unlikely he would consult with Mr.  
 2 Ritter, being outside government, but very  
 3 likely he would consult with the minister and  
 4 possibly with the Premier and Minister of  
 5 Finance or their officials before something is  
 6 signed off. But given the--I don't know  
 7 enough about the nature of this issue to  
 8 predict any more specifically than that, what  
 9 would have happened here.  
 10 COFFEY, Q.C.:  
 11 Q. Are you aware that in mid May the oncology  
 12 stipend was given to pathologists?  
 13 MR. THOMPSON:  
 14 A. Yes.  
 15 COFFEY, Q.C.:  
 16 Q. Just looking here at this, on the second page  
 17 of the letter, Dr. Denic has written "while  
 18 already in crisis, any further deterioration  
 19 of manpower can result in consequences that  
 20 may be beyond repair. Unfortunately the most  
 21 recent problem in testing of ER/PR of breast  
 22 cancer patients and future delivery of sub-  
 23 specialty pathology service to patient care  
 24 depends on proper resources such as manpower."  
 25 So I gather then that you never became aware

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1 of this?  
 2 MR. THOMPSON:  
 3 A. No.  
 4 COFFEY, Q.C.:  
 5 Q. And that's not part then of the role of the  
 6 Cabinet Secretariat?  
 7 MR. THOMPSON:  
 8 A. That's correct.  
 9 COFFEY, Q.C.:  
 10 Q. So the person, from your perspective, as the  
 11 then clerk, who in the Premier's office would  
 12 you think would be tasked with dealing with  
 13 this, the person in which position?  
 14 MR. THOMPSON:  
 15 A. I'm not sure. I mean, there's several  
 16 officials that are responsible for mail--could  
 17 be responsible for mail tracking and I doubt  
 18 anyone in the Premier's office would have  
 19 participated in drafting a response, but I'm  
 20 not sure which official.  
 21 COFFEY, Q.C.:  
 22 Q. Would it be communications, chief of staff?  
 23 MR. THOMPSON:  
 24 A. In the line under the chief of staff, I think,  
 25 whether it be the administrative head on the

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1 floor or the special assistant or simply the  
 2 person who deals with the routing of mail,  
 3 just to make sure, you know, a check off is  
 4 done that a response had been sent. I'd be  
 5 purely speculating.  
 6 COFFEY, Q.C.:  
 7 Q. Okay. If we could, please, Exhibit P-0282?  
 8 Sir, this just happens to be an e-mail from  
 9 Ms. Hennessey to Ms. Fry, Tuesday, May 15th  
 10 2007 at 2:34 p.m. It's a House of Assembly  
 11 note on ER/PR and it says "can you please e-  
 12 mail the note to Ms. Elizabeth Matthews, the  
 13 Premier's communications director. Janet made  
 14 a few edits at 1:25. Thanks, Moira." I only  
 15 refer to that here because by then, this was a  
 16 public issue.  
 17 MR. THOMPSON:  
 18 A. Um-hm.  
 19 COFFEY, Q.C.:  
 20 Q. In terms of ER/PR in May of '07, had you had  
 21 any other exposure other than what we've  
 22 already talked about to it that you can  
 23 recall?  
 24 MR. THOMPSON:  
 25 A. No.



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1 COFFEY, Q.C.:

2 Q. What happened then in May?

3 MR. THOMPSON:

4 A. There was a media report that morning

5 identifying an affidavit in front of the court

6 that contained results on ER/PR testing that

7 showed a higher degree of test error than had

8 previously been known and released by Eastern

9 Health, and that was essentially the

10 disclosure gap that we've talked about before.

11 COFFEY, Q.C.:

12 Q. Um.

13 MR. THOMPSON:

14 A. So it became public that day.

15 COFFEY, Q.C.:

16 Q. And where were you when you first heard it?

17 MR. THOMPSON:

18 A. I think I was dressing in the morning.

19 COFFEY, Q.C.:

20 Q. Dressing. Just listening to the radio and

21 there it was.

22 MR. THOMPSON:

23 A. That's right.

24 COFFEY, Q.C.:

25 Q. What then happened? I mean, you go to work.

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1 What happens then?

2 MR. THOMPSON:

3 A. Well, I can't recall exactly how it unfolded

4 during the day, but I do recall a sense of

5 this is a really important issue that we need

6 -- we, being Cabinet Secretariat, the

7 Premier's Office, in particular, need to know

8 more about and quickly because it was --

9 whenever there is a gap between what the

10 public knows and expects to know, or if there

11 is a -- it can give rise to an issue of

12 confidence and some sense of betrayal, and

13 even though it might have been too early to

14 conclude that at that moment, one needed to

15 know more about it rapidly to ensure that --

16 to bring about coherence and clarity on the

17 issue.

18 COFFEY, Q.C.:

19 Q. What happened then?

20 MR. THOMPSON:

21 A. Well, I'm not sure what else happened that

22 day, but I know that in the days that

23 followed, there was a Cabinet briefing

24 requested from the department, followed by, of

25 course, much dialogue in the House of

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1 Assembly. I'm not sure which order it came

2 in, but it quickly became a major item of

3 discussion and debate in the House of Assembly

4 and calls for a public inquiry or

5 investigation of some sort, and the Cabinet --

6 the Premier and Cabinet became focused on it

7 and desiring the briefing from the department,

8 desiring Eastern Health to do a more public --

9 a full public disclosure on this data, and

10 then Cabinet being engaged in the development

11 of terms of reference for a public inquiry.

12 COFFEY, Q.C.:

13 Q. Now, sir, did you speak, do you recall,

14 initially with Mr. Wiseman about this?

15 MR. THOMPSON:

16 A. I --

17 COFFEY, Q.C.:

18 Q. I shouldn't say initially, but did you speak

19 with Mr. Wiseman about it?

20 MR. THOMPSON:

21 A. I don't recall speaking to Mr. Wiseman about

22 it. In those first few days?

23 COFFEY, Q.C.:

24 Q. Yes.

25 MR. THOMPSON:

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1 A. I don't recall doing that.

2 COFFEY, Q.C.:

3 Q. And meeting with him and him being upset?

4 MR. THOMPSON:

5 A. Me having a meeting with him?

6 COFFEY, Q.C.:

7 Q. Yes.

8 MR. THOMPSON:

9 A. I don't recall that.

10 COFFEY, Q.C.:

11 Q. Okay, and perhaps when I think about it,

12 there's another individual who will be along

13 and who will testify as to that. So your

14 chief dealings or your dealings in the

15 beginning were with whom on this issue?

16 MR. THOMPSON:

17 A. Well, the first thing I can recall that

18 involved Cabinet Secretariat and me was to

19 ensure that we had a Cabinet presentation made

20 from the Department of Health, and then --

21 COFFEY, Q.C.:

22 Q. Who requested that? Whose idea was it to

23 request that?

24 MR. THOMPSON:

25 A. I think it may well have been the Premier's

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1 and I think it was communicated to me by Brian  
 2 Crawley, and so -- but the request for the  
 3 briefing may well have gone directly from the  
 4 Premier's Office to the Department of Health,  
 5 but it was made known to us. So we would have  
 6 started to coordinate with the Department of  
 7 Health to pull that briefing in, and what I  
 8 mean by that is that one of our roles in  
 9 gearing up for a Cabinet meeting is to liaise  
 10 fairly frequently with a department that is  
 11 making a presentation to ensure that the draft  
 12 is in good quality, we have a chance to look  
 13 at it ideally before it goes into the Cabinet  
 14 room, I'm not sure whether we did have that  
 15 opportunity with that briefing day, and to lay  
 16 the basis for productive briefings. So that  
 17 would have been where our energy would have  
 18 been focused. Whether or not a briefing note  
 19 accompanied all of this prior to the Cabinet  
 20 meeting, I can't recall.  
 21 COFFEY, Q.C.:

22 Q. And so your role, I take it, as Clerk, you  
 23 would have understood would be to make sure  
 24 that whenever that Cabinet briefing was to  
 25 occur, it actually occurred, I gather, on

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1 Thursday, May 17th, that there was material  
 2 available for someone or both that in a  
 3 coherent fashion could brief the Cabinet?  
 4 MR. THOMPSON:  
 5 A. Correct.  
 6 COFFEY, Q.C.:

7 Q. And brief the Cabinet as to what?  
 8 MR. THOMPSON:  
 9 A. A complete overview of the development of the  
 10 ER/PR testing problems and what government  
 11 knew and when during this process to focus in  
 12 on why there was this public concern right now  
 13 that data had been released -- that the media  
 14 story on CBC had identified data that wasn't  
 15 previously released to the public and wasn't  
 16 known or well known within government. So to  
 17 get to the heart of all those issues so that  
 18 the Cabinet, as a whole, could have a clear  
 19 understanding. Already in those early days  
 20 there was a sense of a lack of confidence in  
 21 the communications that had occurred  
 22 previously. We needed to get a clear  
 23 understanding on how that emerging lack of  
 24 confidence had taken place.  
 25 COFFEY, Q.C.:

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1 Q. And what was it that caused this view that --  
 2 or stirred this view or concern which you've  
 3 described as a lack of confidence? What was  
 4 it?  
 5 MR. THOMPSON:  
 6 A. At its core --  
 7 COFFEY, Q.C.:

8 Q. Yes.  
 9 MR. THOMPSON:  
 10 A. Was the gap between the statistical gap, the  
 11 reporting gap between what was known in the  
 12 public domain, 117 people impacted, and the  
 13 report by CBC on May 15th that over 300 people  
 14 had had testing errors. It seemed like a  
 15 really important piece of information that the  
 16 public should have known about at an earlier  
 17 point in time if it had been available, and it  
 18 appeared that it was available and it wasn't  
 19 out in the public. So there's a big gap here.  
 20 So that creates an emerging confidence issue  
 21 that the government had to answer -- to find  
 22 out more about, and to determine really was  
 23 there an issue of confidence, an issue of  
 24 concern buried within that. I don't think any  
 25 conclusions had been reached at that early

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1 point in time, but the questions were being  
 2 posed.  
 3 COFFEY, Q.C.:

4 Q. So I take it that you would have made  
 5 inquiries yourself such as, for example, to go  
 6 and see what briefing notes you had?  
 7 MR. THOMPSON:  
 8 A. I'm not sure if we searched then or waited to  
 9 see the Cabinet briefing, but we did conduct a  
 10 search in and around that time.  
 11 COFFEY, Q.C.:

12 Q. And it wouldn't have been difficult to track  
 13 them down because there were only two of them?  
 14 MR. THOMPSON:  
 15 A. Uh-hm.  
 16 COFFEY, Q.C.:

17 Q. And the August 18th, 2006, one had, I take it,  
 18 generally the 317 figure in it?  
 19 MR. THOMPSON:  
 20 A. Yeah, my --  
 21 COFFEY, Q.C.:

22 Q. Not exactly, but close thereto.  
 23 MR. THOMPSON:  
 24 A. My recollection is that the first time I  
 25 looked at that note was after the Cabinet

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1 briefing because I can recall learning about  
 2 that sequence from the briefing and then going  
 3 back and seeking the note to see whether we  
 4 had it in our system.  
 5 COFFEY, Q.C.:  
 6 Q. So the -- if we could bring up, please -- you  
 7 would have sat through the Cabinet briefing on  
 8 May 17th?  
 9 MR. THOMPSON:  
 10 A. Uh-hm.  
 11 COFFEY, Q.C.:  
 12 Q. Mr. Abbott would have actually done the  
 13 briefing?  
 14 MR. THOMPSON:  
 15 A. Yes.  
 16 COFFEY, Q.C.:  
 17 Q. There would have been a slide show projected  
 18 onto a screen?  
 19 MR. THOMPSON:  
 20 A. Yes.  
 21 COFFEY, Q.C.:  
 22 Q. If we could, please, Exhibit 0827. If you  
 23 could just look at this. It's, of course,  
 24 title "Briefing for Cabinet". Outlining the  
 25 background, what the department knew and when,

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1 public communications issues and quality  
 2 assurance. I take it that there would have  
 3 been some kind of "voice over" as it were by  
 4 Mr. Abbott?  
 5 MR. THOMPSON:  
 6 A. Right.  
 7 COFFEY, Q.C.:  
 8 Q. In relation to this.  
 9 MR. THOMPSON:  
 10 A. He was standing in the room in front of the  
 11 screen and providing comments.  
 12 COFFEY, Q.C.:  
 13 Q. Commentary, and under -- outlining, this is  
 14 background, but it's ER/PR testing, how was  
 15 the problem discovered, internal review  
 16 completed, decision made to retest all  
 17 negative ER/PR results from May '97 to August,  
 18 2005. The next deck or slide is July, 2005,  
 19 ER/PR testing, Health Sciences Centre, August,  
 20 2005, tests sent to Mount Sinai, Toronto, for  
 21 retesting newly diagnosed cases. September,  
 22 2005, external review is conducted. The  
 23 background continues, October, 2005, first  
 24 results received from Mount Sinai, tumor board  
 25 established to review individual cases and

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1 make recommendations on treatment. February,  
 2 2006, final test results received from Mount  
 3 Sinai for retested patients. February, 2007,  
 4 testing resumed at Health Sciences Centre.  
 5 Then under background, total cases reviewed,  
 6 2,706. Negative cases sent to Mount Sinai,  
 7 939. 763 live, 176 deceased. Test results  
 8 changed for 317 of 763, and treatment changed  
 9 for 117 of the 317 patients retested. No  
 10 treatment change for 200. All patients  
 11 notified of test results. 103 of 176 deceased  
 12 test results retested, results provided on  
 13 request. Then, sir, it goes on about in the  
 14 next slide -- there's a series of slides with  
 15 the heading, "What the department knew and  
 16 when". So the purpose then of ascertaining  
 17 what the department knew and when was what?  
 18 MR. THOMPSON:  
 19 A. Well, it's a question that the department had  
 20 prepared to brief the Cabinet because already  
 21 the question -- one of the obvious questions  
 22 was if there was a disclosure gap to the  
 23 public, was the department already possessed  
 24 of that information prior to when this  
 25 disclosure gap opened up.

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1 COFFEY, Q.C.:  
 2 Q. Now when we look through that, there's just a  
 3 series of dates; July 20th, July 21st, July  
 4 25th, and it's a succinct summary of whether  
 5 it's a briefing note or a meeting or somebody  
 6 being briefed. August 5th, September 1st,  
 7 2005, September 5th, 2005, October 28th, 2005,  
 8 and I note that neither the October 3rd nor  
 9 the October 5th briefing notes are referenced  
 10 there. Now it's October 3rd, 2005, briefing  
 11 note for the Minister. The one to the Cabinet  
 12 Secretariat is not there. November 7th, 2005;  
 13 December 5th, 2005; February 23rd, 2006; April  
 14 27th, 2006; May 18th, 2006; August 18th, 2006;  
 15 October 24th, 2006; November 23rd, 2006;  
 16 November 27th, 2006; and December 12th, 2006,  
 17 and finally March 9th, 2007; April 19th, 2007;  
 18 May 15th, 2007; May 15th, 2007; May 16th,  
 19 2007. Now, sir, we look then under public  
 20 communications issues, which is the heading of  
 21 the next slide. In terms of the December '06  
 22 briefing, the third bullet says, "Media  
 23 technical briefing provided in December, 2006.  
 24 Numbers provided; 939 tests sent for  
 25 retesting; 117 individuals had treatment

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1 changes", and then the fourth bullet says,  
 2 "Further details unveiled in court affidavit".  
 3 First bullet is, "Current media focus on  
 4 confidence, personal cases, and perceived  
 5 "cover up" on error rate". Now, sir, and I'll  
 6 just -- to give you a certain degree of  
 7 comfort here, I'll go on to page -- public  
 8 communications issues, page 14, and it's  
 9 quality assurance, "Eastern Health has  
 10 implemented a number of quality control  
 11 measures", and the next, steps in question;  
 12 comments is the last page. Now, sir, what  
 13 we've just gone through, is there any  
 14 reference in it at all to what Eastern Health  
 15 chose not to say in December of '06 in what we  
 16 just looked at?  
 17 MR. THOMPSON:  
 18 A. Can you just go back?  
 19 COFFEY, Q.C.:  
 20 Q. Yes, you can go right ahead, go back.  
 21 MR. THOMPSON:  
 22 A. I'm looking for the reference here to the 939  
 23 and the 117.  
 24 COFFEY, Q.C.:  
 25 Q. Yes. I think you'll find it right there in

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1 the middle of page 13.  
 2 MR. THOMPSON:  
 3 A. And they just note here that there are further  
 4 details unveiled in the court affidavit, but  
 5 there's no reference specifically in this page  
 6 as to what those details are.  
 7 COFFEY, Q.C.:  
 8 Q. Do you know if the Cabinet was told?  
 9 MR. THOMPSON:  
 10 A. Well, my sense -- I can't recall exactly now,  
 11 but my sense is that the Cabinet was told that  
 12 there were details, extra numbers. They were  
 13 in the media that morning -- or by that  
 14 morning, and although they weren't referenced  
 15 here, it was known that there were extra  
 16 numbers available.  
 17 COFFEY, Q.C.:  
 18 Q. Was it explained to the Cabinet why, or the  
 19 rationale for not really see the numbers in  
 20 December of '06?  
 21 MR. THOMPSON:  
 22 A. I can't recall all the kinds of things that  
 23 John Abbott would have explained, but I'm sure  
 24 he would have been asked why that was the  
 25 case, and my general recollection is that the

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1 department didn't realize, didn't under --  
 2 didn't know at the time that those had not  
 3 been released, had not picked up the fact that  
 4 they were not released, so had carried on  
 5 unaware that that was the case.  
 6 COFFEY, Q.C.:  
 7 Q. Do you recall if Mr. Abbott was asked during  
 8 that Cabinet briefing, or even afterward, how  
 9 it was possible that the department was not so  
 10 aware?  
 11 MR. THOMPSON:  
 12 A. I don't recall if he was asked that question  
 13 exactly. In other words, was there a probing  
 14 and a -- there was certainly tough questions,  
 15 you know, about we needing to find out more  
 16 how this could have happened, was there any  
 17 deliberate effort to conceal this, so that  
 18 needed some more investigation, but there was  
 19 no -- I don't recall the "Q" and the "A" on  
 20 that item at that time.  
 21 COFFEY, Q.C.:  
 22 Q. Do you think it was a -- consider that perhaps  
 23 it would be a pertinent question?  
 24 MR. THOMPSON:  
 25 A. Yes, absolutely, and it may well have been

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1 asked.  
 2 COFFEY, Q.C.:  
 3 Q. And if it was, you were told what? You  
 4 understood, I take it, he was telling you, he  
 5 was conveying to the Cabinet that "he", the  
 6 department was not aware up until May --  
 7 MR. THOMPSON:  
 8 A. Right.  
 9 COFFEY, Q.C.:  
 10 Q. That certain numbers had not been used.  
 11 MR. THOMPSON:  
 12 A. That was the general gist of what he told the  
 13 Cabinet that day.  
 14 COFFEY, Q.C.:  
 15 Q. And yet the media, you were certainly aware by  
 16 May 17th that media were clear in their  
 17 reporting in mid May that certain numbers had  
 18 not been given out?  
 19 MR. THOMPSON:  
 20 A. Uh-hm.  
 21 COFFEY, Q.C.:  
 22 Q. And you don't recall if anyone actually asked  
 23 him, "Why didn't you know that, Mr. Abbott,  
 24 you are the Deputy Minister"?  
 25 MR. THOMPSON:

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1 A. Sure, sure. I'm not sure if they asked him  
 2 why didn't you know that. I think it would  
 3 have been clear that the affidavit had emerged  
 4 in between this time, it emerged without the  
 5 department having knowledge that it did, and  
 6 that the department was unaware that this --  
 7 at the time when someone crossed these  
 8 documents together, the December document and  
 9 the court document, that the gap would be  
 10 obvious. I mean, that kind of information  
 11 came to the table during the Cabinet meeting,  
 12 and my sense of it is that it was -- that the  
 13 explanation that day didn't go beyond an  
 14 acknowledgement that the department wasn't  
 15 aware of the existence of the affidavit, the  
 16 data in it, and the unfortunate -- and that  
 17 being an unfortunate circumstance. I don't  
 18 recall there being a more detailed explanation  
 19 of how or why that circumstance would have  
 20 come about.  
 21 COFFEY, Q.C.:  
 22 Q. Was it that they didn't know about the  
 23 affidavit or they didn't know about its  
 24 contents, or don't recall?  
 25 MR. THOMPSON:

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1 A. Yeah, I don't recall that detail.  
 2 COFFEY, Q.C.:  
 3 Q. Because there are briefing notes that -- in  
 4 fact, that December 12th note refers to the  
 5 affidavit.  
 6 MR. THOMPSON:  
 7 A. Right, right, right. So I don't know the  
 8 answer to that.  
 9 COFFEY, Q.C.:  
 10 Q. If we could, please, P-0241.  
 11 THE COMMISSIONER:  
 12 Q. When you can find a convenient spot, we'll  
 13 take the afternoon break, Mr. Coffey.  
 14 COFFEY, Q.C.:  
 15 Q. Yes. Now this is a Cabinet directive dated  
 16 May 17th, 2005, signed by Ms. Barnes,  
 17 "Presentation on estrogen/progesterone  
 18 receptors ER/PR testing was received from the  
 19 Deputy Minister, Department of Health and  
 20 Community Services. Direction was provided to  
 21 the Minister to direct Eastern Health to  
 22 provide a technical briefing to media and  
 23 other interested parties on this matter".  
 24 MR. THOMPSON:  
 25 A. Uh-hm, yeah.

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1 COFFEY, Q.C.:  
 2 Q. I take it that was the consensus around the  
 3 table, as it were?  
 4 MR. THOMPSON:  
 5 A. Yes.  
 6 COFFEY, Q.C.:  
 7 Q. And what was it anticipated that Eastern  
 8 Health was now going to do other than hold the  
 9 technical briefing, for what purpose?  
 10 MR. THOMPSON:  
 11 A. To clarify the very same kinds of questions  
 12 that the Cabinet was discussing, which was to  
 13 reveal to the public the full range of data  
 14 that should have been released in December and  
 15 to provide an explanation as to why it wasn't  
 16 released at that time. Those would have been  
 17 the kind of core issues that they should have  
 18 covered.  
 19 COFFEY, Q.C.:  
 20 Q. In terms of the data itself, presumably that  
 21 was there out in the affidavit.  
 22 MR. THOMPSON:  
 23 A. Well, fair enough, but it's still incumbent  
 24 upon Eastern Health as the holder of the data,  
 25 and who knows, there could be more context, in

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1 fact, more data, more meaningful conclusions  
 2 that could be shared and all of that needed to  
 3 get out into the public as soon as possible.  
 4 COFFEY, Q.C.:  
 5 Q. I take it if the data was already out there  
 6 and CBC was reporting it, it was -- Mr. Tilley  
 7 was supposed to explain to the media why he  
 8 hadn't released it in December?  
 9 MR. THOMPSON:  
 10 A. Yes.  
 11 COFFEY, Q.C.:  
 12 Q. It's more the why as opposed to the what?  
 13 MR. THOMPSON:  
 14 A. Well, there could be additional what as well.  
 15 COFFEY, Q.C.:  
 16 Q. Now during the -- you would have been aware  
 17 that Mr. Tilley was available during that  
 18 Cabinet briefing?  
 19 MR. THOMPSON:  
 20 A. Yes, I -- later in the morning I encountered  
 21 him outside the Cabinet meeting.  
 22 COFFEY, Q.C.:  
 23 Q. Had anyone at the Cabinet briefing asked,  
 24 well, where is Mr. Tilley?  
 25 MR. THOMPSON:

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1 A. I don't recall them asking. I'm not even  
 2 aware if they knew that he was out there  
 3 because I understand that he was there  
 4 potentially to be available to address a  
 5 different Cabinet submission that was on the  
 6 agenda that day.  
 7 COFFEY, Q.C.:  
 8 Q. Now the May 18th, 2006 briefing note, whether  
 9 or not Mr. Osborne had seen it apparently  
 10 arose as an issue that day?  
 11 MR. THOMPSON:  
 12 A. Which?  
 13 COFFEY, Q.C.:  
 14 Q. August 18th, 2006 briefing note.  
 15 MR. THOMPSON:  
 16 A. Yes.  
 17 COFFEY, Q.C.:  
 18 Q. The second Cabinet Secretariat briefing note,  
 19 or Executive Council briefing note. Do you  
 20 recall that coming up?  
 21 MR. THOMPSON:  
 22 A. Yes.  
 23 COFFEY, Q.C.:  
 24 Q. What happened?  
 25 MR. THOMPSON:

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1 A. Well, Mr. Abbott, in his accounting of all of  
 2 the notes that had been prepared over the  
 3 past, mentioned that note. I recall Mr.  
 4 Osborne expressing surprise that such a note  
 5 existed because he didn't have it in his own  
 6 records. I think he had reviewed his own  
 7 records to find out what it is that he knew,  
 8 and he expressed that disbelief at the Cabinet  
 9 table, so there was a difference of opinion --  
 10 not a difference of opinion, but that kind of  
 11 exchange, "it exists, I'm surprised it exists,  
 12 I've never seen that before".  
 13 COFFEY, Q.C.:  
 14 Q. Okay. Did Mr. Williams participate in that  
 15 exchange?  
 16 MR. THOMPSON:  
 17 A. There was a discussion between Mr. Williams  
 18 and Mr. Osborne. I don't know if it was at  
 19 that moment around the table or just as the  
 20 meeting was concluding when there was an  
 21 expression from the Premier that it was an  
 22 unusual situation that a Minister would not be  
 23 aware of a Cabinet -- of a briefing note that  
 24 emerged from his own department, and so the  
 25 sense of it was, how can that be explained,

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1 that's an unusual circumstance.  
 2 COFFEY, Q.C.:  
 3 Q. He was perhaps sceptical?  
 4 MR. THOMPSON:  
 5 A. Yes.  
 6 COFFEY, Q.C.:  
 7 Q. At the time, because that briefing note has, I  
 8 won't say all the numbers, but pretty close to  
 9 all the numbers that were contained in the  
 10 November 23rd '06 briefing note. As it turns  
 11 out, not only did the government have -- did  
 12 the department have all the numbers or most of  
 13 the numbers, significant numbers, by mid  
 14 August, 2006, but so did the Cabinet  
 15 Secretariat?  
 16 MR. THOMPSON:  
 17 A. Yes.  
 18 COFFEY, Q.C.:  
 19 Q. So if you didn't know that during the Cabinet  
 20 briefing, you certainly learned it shortly  
 21 thereafter?  
 22 MR. THOMPSON:  
 23 A. Yes.  
 24 COFFEY, Q.C.:  
 25 Q. What, if anything, did that cause you to

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1 question in terms of how that could have --  
 2 did you question yourself as to how that could  
 3 have happened?  
 4 MR. THOMPSON:  
 5 A. No, I didn't question myself in quite that  
 6 sense. When I learned of the note, I went  
 7 back to confirm whether or not we had it. We  
 8 did have it. I examined the note and saw a  
 9 circulation list on it, and quickly drew an  
 10 assumption that it was a note being for  
 11 information only perhaps was seen to be as not  
 12 requiring action, but set aside, and,  
 13 therefore, it didn't -- it didn't create a  
 14 wave within Cabinet Secretariat at that time.  
 15 So I was able to put it in context as to why  
 16 it didn't get actioned at that time, although  
 17 I was certainly -- had wished that I kept a  
 18 more present memory of it because it would  
 19 have been -- enabled me to brief the Premier  
 20 more fully even before the Cabinet briefing  
 21 about things that we knew, not just within  
 22 Cabinet Secretariat, but in the Premier's  
 23 Office as well, but that wasn't the case. It  
 24 was a note that while read by a number of  
 25 people had sort of quickly submerged as a note

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1 of interest when it came through in August.  
 2 COFFEY, Q.C.:  
 3 Q. Was there any discussion when this matter  
 4 arose about whether or not Mr. Osborne had  
 5 seen a briefing of August 18th between him and  
 6 Mr. Abbott?  
 7 MR. THOMPSON:  
 8 A. Sorry?  
 9 COFFEY, Q.C.:  
 10 Q. Was there any discussion in the Cabinet room  
 11 between Mr. Abbott and Mr. Osborne about that  
 12 briefing note?  
 13 MR. THOMPSON:  
 14 A. I don't recall any discussion then between  
 15 them.  
 16 COFFEY, Q.C.:  
 17 Q. I'm sorry.  
 18 MR. THOMPSON:  
 19 A. Hearing.  
 20 COFFEY, Q.C.:  
 21 Q. I take it, hearing or seeing?  
 22 MR. THOMPSON:  
 23 A. No, hearing or seeing.  
 24 COFFEY, Q.C.:  
 25 Q. If we could take the break, please,

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1 Commissioner. Thank you.  
 2 THE COMMISSIONER:  
 3 Q. Fifteen minutes.  
 4 (RECESS)  
 5 (NO AUDIO FEED)  
 6 MR. THOMPSON:  
 7 A. Well, some of the people that are -- well, for  
 8 the people that are listed on the circulation  
 9 list, so it's Premier's Office, Cabinet  
 10 Secretariat, and I'm not sure if there's  
 11 anybody on that list in the broader Executive  
 12 Council, Ross Reid perhaps if he's still on  
 13 it.  
 14 COFFEY, Q.C.:  
 15 Q. His name is listed at least on one of them.  
 16 Now on that point -- thank you for reminding  
 17 me of Mr. Reid because I had meant to ask you,  
 18 Mr. Reid was at one point the Deputy Minister  
 19 to the Premier?  
 20 MR. THOMPSON:  
 21 A. Right.  
 22 COFFEY, Q.C.:  
 23 Q. And though you describe yourself as -- one of  
 24 your job roles as clerk as performing that  
 25 function.

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1 MR. THOMPSON:  
 2 A. Well, I didn't use those words.  
 3 COFFEY, Q.C.:  
 4 Q. No, well, you described the Cabinet  
 5 Secretariat as performing equivalent role for  
 6 the Premier as the support staff would for a  
 7 minister in the department.  
 8 MR. THOMPSON:  
 9 A. Right.  
 10 COFFEY, Q.C.:  
 11 Q. That's the way you phrased it.  
 12 MR. THOMPSON:  
 13 A. Uh-hm.  
 14 COFFEY, Q.C.:  
 15 Q. And as you are the head person in the Cabinet  
 16 Secretariat, that would be the kind of  
 17 equivalent to a deputy minister's position?  
 18 MR. THOMPSON:  
 19 A. In some respects, yes.  
 20 COFFEY, Q.C.:  
 21 Q. So in that regard in terms of yourself and Mr.  
 22 Reid and the deputy minister sort of role for  
 23 the Premier, how did that work?  
 24 MR. THOMPSON:  
 25 A. Well, in his role as Deputy Minister to the

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1 Premier being within Executive Council, he was  
 2 an important advisor to the Premier on a  
 3 variety of different policy fronts. He didn't  
 4 have an operational role or a secretariat that  
 5 worked with him permanently, but he did take  
 6 on projects which from time to time would have  
 7 staff associated with them. So, for example,  
 8 the priority of the government in the first  
 9 couple of years was program renewal and in  
 10 that capacity and working as Deputy Minister  
 11 for the Premier, he headed up an office that  
 12 reviewed programs from every department and  
 13 agency and cost reduction opportunities, and  
 14 then presented reports to the Cabinet on where  
 15 some efficiencies may exist, so -- and some  
 16 new initiatives as well. So that's an example  
 17 of the kind of role that he undertook for the  
 18 Premier.  
 19 COFFEY, Q.C.:  
 20 Q. But in terms of the administrative sort of  
 21 duties performed by a Deputy Minister, I take  
 22 it that was your --  
 23 MR. THOMPSON:  
 24 A. Within Executive Council, that's right.  
 25 COFFEY, Q.C.:

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1 Q. Sure, that was your role. If we could,  
 2 Commissioner, have entered Exhibit P-0947,  
 3 please.  
 4 THE COMMISSIONER:  
 5 Q. Yes, P-0947 entered.  
 6 EXHIBIT P-0947 MARKED AND ENTERED  
 7 COFFEY, Q.C.:  
 8 Q. Would you open that, please, Registrar, when  
 9 you're ready. Thank you. This is a position  
 10 description for a deputy minister, and it was  
 11 provided to the Commissioner, I believe  
 12 earlier today, as a result of a request to Mr.  
 13 Pritchard that we be provided with a job  
 14 description, as it were, a position  
 15 description for a Deputy Minister of Health.  
 16 MR. THOMPSON:  
 17 A. Uh-hm.  
 18 COFFEY, Q.C.:  
 19 Q. And this particular one, I gather, although I  
 20 haven't reproduced it here, I understand that  
 21 the accompanying e-mail that came with this  
 22 indicates that this is the most recent one, at  
 23 least they could find immediately, and this is  
 24 dated May 24th, 1995. It's for the then  
 25 Deputy Minister, Dr. Robert Williams, the

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1 department is Health, the division is  
 2 Executive, and you, of course, in 2001 to 2003  
 3 were Deputy Minister of Health. Was there  
 4 ever a position description or job description  
 5 for you?  
 6 MR. THOMPSON:  
 7 A. Well, there wasn't an updated position  
 8 description that I prepared. I'm not sure  
 9 whether I would have been provided with this  
 10 particular one at the time, and if I was, it  
 11 perhaps would have been noteworthy then about  
 12 the large organizational changes that had  
 13 occurred in between 1995 and 2001, in  
 14 particular with the addition of Community  
 15 Health Services to the department. So if this  
 16 is the last one that exists, it may well be  
 17 the last one--or that you've been able to  
 18 find, it may well be the last one that was  
 19 actually updated.  
 20 COFFEY, Q.C.:  
 21 Q. So you having been deputy minister for just  
 22 under three years, you never actually had a  
 23 job description describing your job, first nor  
 24 last, I take it?  
 25 MR. THOMPSON:

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1 A. Not specifically. Of course, I have a pretty  
 2 acute awareness of what the expectations are,  
 3 but perhaps not through a job description.  
 4 COFFEY, Q.C.:  
 5 Q. Now sir, for other positions in government, is  
 6 it your experience that there are such job  
 7 descriptions?  
 8 MR. THOMPSON:  
 9 A. Every position should have a position  
 10 description.  
 11 COFFEY, Q.C.:  
 12 Q. And amongst other things, that would describe  
 13 their duties and responsibilities?  
 14 MR. THOMPSON:  
 15 A. Correct, and it serves as a basis, not only to  
 16 guide the expectations of the position, but  
 17 also it guides the compensation process.  
 18 COFFEY, Q.C.:  
 19 Q. Now sir, during the Cabinet briefing of May  
 20 17th and afterward, what then--perhaps I'll  
 21 just go on, leave that and go on. What  
 22 happened after the Cabinet briefing, from your  
 23 perspective?  
 24 MR. THOMPSON:  
 25 A. After the Cabinet briefing, there was a--I

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1 think it was the next day that Eastern Health  
 2 provided the public media briefing.  
 3 Subsequent to that, there was a briefing for  
 4 members of the House of Assembly. There was  
 5 still a lot of questioning that occurred in  
 6 the House of Assembly each day, and there was  
 7 an exercise that started, and I forget on  
 8 which day it started, but an internal exercise  
 9 to develop options for a review or options for  
 10 some kind of review process that would occur  
 11 on the whole experience with the ER/PR  
 12 testing.  
 13 COFFEY, Q.C.:  
 14 Q. I take it that you were involved in that  
 15 exercise?  
 16 MR. THOMPSON:  
 17 A. Yes, I was.  
 18 COFFEY, Q.C.:  
 19 Q. And was it your idea or did somebody ask you  
 20 to -  
 21 MR. THOMPSON:  
 22 A. It wasn't my idea to begin a process, but--so  
 23 someone would have asked me, likely the  
 24 Premier, but I took on a chief coordinating  
 25 role in developing an options paper.



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1 COFFEY, Q.C.:

2 Q. Do you recall the Premier asking you to do

3 this?

4 MR. THOMPSON:

5 A. Not specifically.

6 COFFEY, Q.C.:

7 Q. If we could, Exhibit P-0833, please?

8 MR. THOMPSON:

9 A. Now this is an e-mail of--well, it's a couple

10 of e-mails, but one of them is May 18~~th~~2007

11 at 9:51 a.m. It's from Ms. Hennessey to John

12 Abbott and she says "I have reviewed the

13 information provided by RT," which is

14 presumably is Robert Thompson, "in an e-mail

15 earlier today about options and questions for

16 the review. The options appear to be fine,"

17 and then goes on to talk about it there, and

18 the pros and cons, from her perspective, and

19 then at the top of the page there, at 10: 45

20 a.m., she says "Robert, attached is my e-mail

21 to John Abbott," JA, "and the brainstorming

22 done yesterday afternoon about a possible

23 question for review. My last e-mail may not

24 have had the brainstorming ideas attached."

25 Signed Moira.

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1 And if I could, just look at page three

2 of this, these ER/PR questions. Was this a

3 series of questions prepared, in the main, by

4 yourself?

5 MR. THOMPSON:

6 A. I remember the questions at a further stage of

7 evolution than these, but these may well have

8 been my first draft.

9 COFFEY, Q.C.:

10 Q. Now sir, what do you recall about the overall

11 reaction, at least from your perspective, to

12 the May 18th briefing, media briefing that

13 Eastern Health conducted?

14 MR. THOMPSON:

15 A. The reaction publicly or internally?

16 COFFEY, Q.C.:

17 Q. Both.

18 MR. THOMPSON:

19 A. So well, publicly, there was, I guess, a lot

20 of attention centred around the apology by

21 George Tilley for--apology that related to the

22 communications issue and the admission that

23 more information should have been made at that

24 time. I think it fed some degree of public

25 anxiety about why that had not been disclosed

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1 at the time, and so lots of public commentary,

2 in a sense of major public issue.

3 Internally--sorry, your question was

4 what, just simply what I recall about the

5 reaction to it?

6 COFFEY, Q.C.:

7 Q. Well, your impression of it, your

8 understanding of--well, he apologized and you

9 look at a transcript or listen to it as to

10 what he said about it, but was it--from your

11 perspective, was this satisfactory? Was there

12 anything further to be done?

13 MR. THOMPSON:

14 A. Well, that was on the 17th, I think?

15 COFFEY, Q.C.:

16 Q. It was on the 18th.

17 MR. THOMPSON:

18 A. On the 18th, okay. Well, you know,

19 coincidental with that happening, there seemed

20 to be a decision already formulating that a

21 review process had to occur and I don't recall

22 whether the review decision came about after

23 the apology and the news conference or before.

24 My recollection is it's more or less

25 simultaneous these things are occurring. So

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1 if what you're asking is whether, you know,

2 the--whether there was an effort to see if

3 that was going to be enough, the apology was

4 going to be enough to satisfy the public mood

5 and then, if not, then we'll move on to some

6 broader sense of review. I didn't see it as

7 an "if then" kind of exercise.

8 COFFEY, Q.C.:

9 Q. Okay, and if we look at, please, Exhibit P-

10 0830? Now this is an e-mail from yourself to

11 Mr. Abbott, Ms. Barnes, Don Burrage, who I

12 take it was, at the time, Associate Deputy

13 Minister of Justice?

14 MR. THOMPSON:

15 A. Right.

16 COFFEY, Q.C.:

17 Q. And Moira Hennessey, May 18th 2007, 12:09

18 a.m., which is just past midnight, and this

19 is--it says "please provide feedback ASAP on

20 these revised options and questions. The

21 questions are very hard-hitting and need to be

22 shaped somewhat, but we need to make it

23 clear"--I'm sorry, "but we need to get it

24 clear what we want a review to tell us."

25 Signed Robert, as clerk.

1 So in fact this one, this particular e-  
 2 mail, I should have asked you about it before  
 3 the one I just referred you to, is the one  
 4 presumably you sent to Ms. Hennessey?  
 5 MR. THOMPSON:  
 6 A. Right.  
 7 COFFEY, Q.C.:  
 8 Q. And the decision, at least as outlined here,  
 9 in terms of reviewing options and questions  
 10 that might be asked, was already in motion the  
 11 night before Mr. Tilley held his press  
 12 conference.  
 13 MR. THOMPSON:  
 14 A. Okay.  
 15 COFFEY, Q.C.:  
 16 Q. Now sir, in--and I appreciate, I'm not  
 17 proposing at all to, you know, look behind the  
 18 actual Terms of Reference, but I take it the  
 19 pros and cons were weighed of different  
 20 approaches?  
 21 MR. THOMPSON:  
 22 A. Right.  
 23 COFFEY, Q.C.:  
 24 Q. And what types of questions might be put. In  
 25 developing the questions, it's apparent--and

1 A. Well, first of all, we were given a--I was  
 2 given an open blank page as to write questions  
 3 on, to canvas what--the different ways to pose  
 4 questions. So we developed them as broadly as  
 5 we could initially and we wanted to capture  
 6 what seemed to be the major issues, and one of  
 7 the major issues would clearly be, did--to the  
 8 extent that a problem did occur, did exist,  
 9 what impact did that have on the health, the  
 10 direct health and quality of life of the group  
 11 of patients involved and on any individuals  
 12 involved, and we grouped these two together as  
 13 clinical, call them clinical questions, and  
 14 which would require a certain kind of  
 15 expertise, medical, scientific expertise,  
 16 statistical, and would probably be based on  
 17 some kind of estimating procedure or  
 18 probabilistic analysis and leaning on other  
 19 studies that had found results pertaining to  
 20 ER/PR testing, but also to the health of  
 21 breast cancer patients and how they react to  
 22 Tamoxifen and other adjuvant therapies.  
 23 So this was a fairly complex question and  
 24 the decision making process ultimately was  
 25 that it didn't want to get the Inquiry into

1 I'm not going to take you through all the  
 2 material, I'm going to suggest to you, it's  
 3 apparent that some of the questions originally  
 4 posed, but then decided not to become a part  
 5 of the Terms of Reference referred to or might  
 6 arguably refer to the idea of trying to  
 7 ascertain whether any individual patient's  
 8 health was affected by the ER/PR issue.  
 9 MR. THOMPSON:  
 10 A. Right.  
 11 COFFEY, Q.C.:  
 12 Q. You recall that that did come up at one point.  
 13 MR. THOMPSON:  
 14 A. Um-hm.  
 15 COFFEY, Q.C.:  
 16 Q. And there was a decision made not to -  
 17 MR. THOMPSON:  
 18 A. Right.  
 19 COFFEY, Q.C.:  
 20 Q. - pursue that. Why was that?  
 21 MR. THOMPSON:  
 22 A. Well -  
 23 COFFEY, Q.C.:  
 24 Q. Not to pursue that aspect.  
 25 MR. THOMPSON:

1 that clinical pursuit of that nature, but  
 2 rather have the Inquiry focus on issues of  
 3 communications and did officials respond  
 4 appropriately, the nature and extent of the  
 5 problem that was indicated, and whether or not  
 6 testing at the current time is best practice  
 7 and meets the needs of the population now. So  
 8 those emerged among, you know, the decision  
 9 makers as the extent that they wanted the  
 10 Inquiry to take on.  
 11 COFFEY, Q.C.:  
 12 Q. And if we could, please, if we could look at  
 13 Exhibit P-0865? Now sir, and I appreciate  
 14 this was for you, I expect, early days, okay,  
 15 but this is an e-mail, at the top of the page--  
 16 there's a series of e-mails here between  
 17 yourself and Mr. Abbott and/or Ms. Hennessey,  
 18 but in particular, the one at the top of the  
 19 page here, at 2:40 p.m., it's to Mr. Abbott  
 20 and Ms. Hennessey and you've written "yes, you  
 21 could get names of these people from George,  
 22 but don't ask him generally who he would  
 23 suggest for the review. As for the other  
 24 info, I have read the materials available to  
 25 me more closely and I'm a little better

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1 informed. There seems to be a standard of 75  
 2 percent positive as revealed by the literature  
 3 and our results were ranging from 62 percent  
 4 to 83 percent between 2000 to 2004. This  
 5 still leaves many questions. Example: was the  
 6 75 percent standard based on the same testing  
 7 system as ours?" and you go on. "As for the  
 8 specific reasons why the errors occurred, the  
 9 best explanation is in Heather Predham's  
 10 affidavit, but even there, it simply provides  
 11 a menu of possibilities, not a precise  
 12 conclusion. As I think about this more, the  
 13 question for Cabinet on the clinical part of  
 14 the review is whether it wants this conducted  
 15 by a public review or simply leave it to the  
 16 litigation. The issues are similar. The  
 17 question for us to decide on is whether the  
 18 Court case will actually address all of the  
 19 issues which are important for the public  
 20 interest." Signed Robert.  
 21 I take it then in terms of the clinical,  
 22 as you put it, issues would be left for the  
 23 litigation part of it?  
 24 MR. THOMPSON:  
 25 A. There's a sense that those issues would be on

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1 the table in the litigation and would--and in  
 2 particular, would be addressed at the level of  
 3 the individual.  
 4 COFFEY, Q.C.:  
 5 Q. Sure. Now on that, the second last paragraph  
 6 of your e-mail here, you say "as for the  
 7 specific reasons why the errors occurred, the  
 8 best explanation is in Heather Predham's  
 9 affidavit," which I take it by this point,  
 10 you'd read?  
 11 MR. THOMPSON:  
 12 A. Right.  
 13 COFFEY, Q.C.:  
 14 Q. Now you're addressing your mind to why, at  
 15 this point. Did you ask anybody?  
 16 MR. THOMPSON:  
 17 A. Ask anybody what?  
 18 COFFEY, Q.C.:  
 19 Q. The specific reasons why the errors occurred?  
 20 Like does anybody in the room know that kind  
 21 of question, gather people around and say -  
 22 MR. THOMPSON:  
 23 A. Well, at that point, as I recall, I was trying  
 24 to draw those matters from the written  
 25 material.

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1 COFFEY, Q.C.:  
 2 Q. Okay. How about afterward?  
 3 MR. THOMPSON:  
 4 A. Well, after--well, you mean in the immediate  
 5 day?  
 6 COFFEY, Q.C.:  
 7 Q. Or up until the affidavits--not, I'm sorry,  
 8 the affidavits, up until the external review  
 9 is actually -  
 10 MR. THOMPSON:  
 11 A. Came into my hands.  
 12 COFFEY, Q.C.:  
 13 Q. - came into your hands.  
 14 MR. THOMPSON:  
 15 A. Well, there's two occasions when, as deputy  
 16 minister of the Department and working on the  
 17 Task Force matters, we asked Eastern Health  
 18 for those reviews, but because -  
 19 COFFEY, Q.C.:  
 20 Q. When was that?  
 21 MR. THOMPSON:  
 22 A. Once was on June 29th, by way of a letter to  
 23 Eastern Health asking them to provide to us  
 24 all the relevant materials related to ER/PR,  
 25 and the second was a further occasion later

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1 that summer when Mr. Pritchard reiterated our  
 2 request for that material.  
 3 COFFEY, Q.C.:  
 4 Q. So was it you asked Mr. Pritchard to convey  
 5 the request?  
 6 MR. THOMPSON:  
 7 A. Yes, yes.  
 8 COFFEY, Q.C.:  
 9 Q. And what were you told was the response?  
 10 MR. THOMPSON:  
 11 A. At that point, we were being told that the so-  
 12 called peer reviews were protected under the  
 13 Evidence Act and were not discloseable to the  
 14 Inquiry and thus would not be disclosed to the  
 15 government as well.  
 16 COFFEY, Q.C.:  
 17 Q. And this was conveyed to you by Mr. Pritchard?  
 18 MR. THOMPSON:  
 19 A. Yes.  
 20 COFFEY, Q.C.:  
 21 Q. In the sense of the result.  
 22 MR. THOMPSON:  
 23 A. It may have been conveyed to me by Ms. Jones  
 24 as well.  
 25 COFFEY, Q.C.:

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1 Q. That would be Louise Jones?  
 2 MR. THOMPSON:  
 3 A. Right.  
 4 COFFEY, Q.C.:  
 5 Q. Did anyone -  
 6 MR. THOMPSON:  
 7 A. If I may add too?  
 8 COFFEY, Q.C.:  
 9 Q. Sure.  
 10 MR. THOMPSON:  
 11 A. During the course of June, I recall having a  
 12 conversation with George Tilley during one of  
 13 several different meetings, and these were  
 14 general discussions about the ER/PR process  
 15 and the set up of the Commission of Inquiry  
 16 and what is it that actually happened and  
 17 George reiterated to me, at that time, his  
 18 feeling that there is no one cause. There  
 19 were so many things that were variables in the  
 20 testing process and that it was impossible to  
 21 pin it down, and so that's why we haven't been  
 22 able to say here is the one error that caused  
 23 it and that's why we haven't blamed anyone for  
 24 the testing process.  
 25 COFFEY, Q.C.:

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1 Q. That was Mr. Tilley's -  
 2 MR. THOMPSON:  
 3 A. Right.  
 4 COFFEY, Q.C.:  
 5 Q. Did you take up with him the idea that well,  
 6 okay, if you can't name one, maybe there's two  
 7 or three.  
 8 MR. THOMPSON:  
 9 A. Yeah, I didn't take, you know, that kind of  
 10 approach in that kind of meeting. So I didn't  
 11 explore that issue further, and while I concur  
 12 that an explanation for this sort of thing is  
 13 an important matter to have in the public  
 14 domain, I didn't take it up in that sense.  
 15 COFFEY, Q.C.:  
 16 Q. But then you, I take it, did then, in August,  
 17 in the sense of went looking for these  
 18 external review reports?  
 19 MR. THOMPSON:  
 20 A. Yes.  
 21 COFFEY, Q.C.:  
 22 Q. When you sent your general request, I take it,  
 23 in June to Eastern--you sent it to Eastern  
 24 Health and the other three hospital  
 25 authorities.

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1 MR. THOMPSON:  
 2 A. That's right.  
 3 COFFEY, Q.C.:  
 4 Q. Health authorities. You were looking for all  
 5 documentation?  
 6 MR. THOMPSON:  
 7 A. Right.  
 8 COFFEY, Q.C.:  
 9 Q. Of possible relevance to the Commission's  
 10 mandate?  
 11 MR. THOMPSON:  
 12 A. Correct.  
 13 COFFEY, Q.C.:  
 14 Q. On that point, did you notice--I take it by  
 15 August, you wouldn't have yet received a whole  
 16 lot of information, documentary wise, from  
 17 Eastern Health?  
 18 MR. THOMPSON:  
 19 A. No, that's right.  
 20 COFFEY, Q.C.:  
 21 Q. Okay. So what caused you then in August to go  
 22 looking for external reviews specifically?  
 23 MR. THOMPSON:  
 24 A. Well, actually it was--we identified it on a  
 25 long list of information that we wanted from

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1 Eastern Health, I guess, and the dates are not  
 2 clear to me, but by August, let's say, we had  
 3 done some reading, more reading of available  
 4 documents and from that reading, we were able  
 5 to enumerate a list of specific things that we  
 6 were interested in obtaining from Eastern  
 7 Health and we included those two reviews on  
 8 that list.  
 9 COFFEY, Q.C.:  
 10 Q. And that was you had asked Mr. Pritchard to  
 11 inquire of Mr. Simmons?  
 12 MR. THOMPSON:  
 13 A. I may have sent it directly as well. I don't  
 14 recall, but certainly there was a--in the end,  
 15 the process of disclosure from that list was  
 16 directed into the hands of a discussion  
 17 between the two counsel.  
 18 COFFEY, Q.C.:  
 19 Q. Did you feel that you may have spoken to Ms.  
 20 Jones about this at some point?  
 21 MR. THOMPSON:  
 22 A. Well, I certainly talked to her about the  
 23 list.  
 24 COFFEY, Q.C.:  
 25 Q. Okay.

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1 MR. THOMPSON:  
 2 A. And about when we were going to--because I was  
 3 encouraging her to deliver on that.  
 4 COFFEY, Q.C.:  
 5 Q. So was this list written?  
 6 MR. THOMPSON:  
 7 A. There was a list. Yes, I think it was  
 8 written.  
 9 COFFEY, Q.C.:  
 10 Q. Okay, and you were encouraging her to provide  
 11 the material on the list?  
 12 MR. THOMPSON:  
 13 A. Right.  
 14 COFFEY, Q.C.:  
 15 Q. And she told you that the external reviews are  
 16 not discloseable?  
 17 MR. THOMPSON:  
 18 A. She told me that she wanted the disclosure to  
 19 occur through a dialogue between the two  
 20 counsel and that they would start moving on--  
 21 quickly on making blocks of that material  
 22 available and she may well have told me at  
 23 that time that the external reviews were a  
 24 separate category, but I don't have a really  
 25 clear recollection of what she would have

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1 said. But by then I was already becoming  
 2 aware that Eastern Health treated those  
 3 reports in a different category than all the  
 4 rest.  
 5 COFFEY, Q.C.:  
 6 Q. And this conversation with Ms. Jones would  
 7 have been when, approximately, like what  
 8 month?  
 9 MR. THOMPSON:  
 10 A. Late July, early August, late August.  
 11 COFFEY, Q.C.:  
 12 Q. Did Ms. Jones ever tell you that she had found  
 13 a covering letter and copies of the five  
 14 reports on Mr. Tilley's desk?  
 15 MR. THOMPSON:  
 16 A. No.  
 17 COFFEY, Q.C.:  
 18 Q. The letter being addressed to Mr. Abbott?  
 19 MR. THOMPSON:  
 20 A. Right.  
 21 COFFEY, Q.C.:  
 22 Q. Conveying, or ostensibly being a covering  
 23 letter to convey them?  
 24 MR. THOMPSON:  
 25 A. Yeah, this information that Mr. Tilley and Ms.

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1 Jones spoke to, no, I wasn't aware of that  
 2 until it was made available in this room.  
 3 COFFEY, Q.C.:  
 4 Q. In the Inquiry here?  
 5 MR. THOMPSON:  
 6 A. Right.  
 7 COFFEY, Q.C.:  
 8 Q. So I take it Mr.--in light of that Mr. Tilley  
 9 at no point advised you that Mr. Abbott had  
 10 asked for those reports?  
 11 MR. THOMPSON:  
 12 A. No.  
 13 COFFEY, Q.C.:  
 14 Q. And he was in a process of sending them over  
 15 when Mr. Abbott switched positions?  
 16 MR. THOMPSON:  
 17 A. Which I'm surprised about because it would  
 18 have been clearly relevant to my mandate. And  
 19 if he was prepared to send it to Mr. Abbott,  
 20 I'm surprised that he would not have forwarded  
 21 it to me as an alternative.  
 22 COFFEY, Q.C.:  
 23 Q. Apparently he's just told us you just weren't  
 24 Mr. Abbott.  
 25 MR. THOMPSON:

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1 A. Yes, I guess so.  
 2 COFFEY, Q.C.:  
 3 Q. Okay. I take it then in looking for those  
 4 reports in August of 2007 you, in terms of  
 5 your review of what was available to you up to  
 6 that point and had come, I take it, to the  
 7 conclusion if there was an answer to what, or  
 8 potentially to what had caused the problem,  
 9 potentially, it might be found in those  
 10 reports?  
 11 MR. THOMPSON:  
 12 A. Well, it was clear that those reports would be  
 13 illuminating documents. It wasn't clear to me  
 14 that those, that the mandate for those  
 15 reviewers extended back over this full ten-  
 16 year period, and that's an important point to  
 17 me because--or it was an important analytical  
 18 point because if the terms of reference of the  
 19 Commission are to be fully delivered upon,  
 20 about the causes of the problems or what it is  
 21 that had happened, one would have to, you  
 22 know, explore the full ten-year period. And  
 23 my sense at that time is that the mandate of  
 24 the reviewers was to look at the present  
 25 procedures and practices in the Eastern Health

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1 lab and to, you know, make recommendations to  
 2 improve those. So it wasn't clear to me that  
 3 there would be enough information in those  
 4 that would lend retrospective conclusions.  
 5 One would hope that they would, one might draw  
 6 the conclusion that if something's happening  
 7 now, it perhaps existed in the past, but  
 8 clearly they would be illuminating documents.  
 9 COFFEY, Q.C.:  
 10 Q. Did anyone, like, during this early, this  
 11 first couple of months you were again -  
 12 MR. THOMPSON:  
 13 A. Sorry.  
 14 COFFEY, Q.C.:  
 15 Q. - I apologize.  
 16 MR. THOMPSON:  
 17 A. I wanted just to add to that question. In the  
 18 review of documents that started to become  
 19 available, as well, there was insight could be  
 20 gained partially, snapshots or fragments into  
 21 some of the conclusions that the reviewers had  
 22 made that might exist in notes made by others  
 23 who had sat in on briefings, memos between  
 24 people saying now we have to do this, now that  
 25 we've heard a result or a recommendation and

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1 Heather Predham's own affidavit. So we were  
 2 trying to accumulate all of these things, and  
 3 they did start to form an impression of what  
 4 had gone wrong and what was being fixed, but  
 5 it doesn't substitute for the, perhaps the  
 6 focused nature of what the reviews would have  
 7 contained.  
 8 COFFEY, Q.C.:  
 9 Q. No. So, you know, in the early, say, first  
 10 three or four months as the deputy, acting  
 11 deputy minister, again, I take it you took  
 12 that up May 30th?  
 13 MR. THOMPSON:  
 14 A. Right.  
 15 COFFEY, Q.C.:  
 16 Q. 2007. Did you ever learn who the reviewers  
 17 had been, who the individuals were?  
 18 MR. THOMPSON:  
 19 A. At that time?  
 20 COFFEY, Q.C.:  
 21 Q. Yes.  
 22 MR. THOMPSON:  
 23 A. I can't recall their names being known to me.  
 24 They may have been in briefing notes that I  
 25 had read, but I can't recall.

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1 COFFEY, Q.C.:  
 2 Q. As the then acting deputy minister, from your  
 3 perspective, how satisfactory a state of  
 4 affairs was it that a Crown entity, Eastern  
 5 Health, was not prepared to send over those  
 6 reports to you?  
 7 MR. THOMPSON:  
 8 A. Well, my sense of it was that it was  
 9 unfortunate, but I did have some sense of the  
 10 kind of argument they were making.  
 11 COFFEY, Q.C.:  
 12 Q. Sure.  
 13 MR. THOMPSON:  
 14 A. Which over time became clear that they were  
 15 making the argument that if they shared it  
 16 with the department, it would lessen the kind  
 17 of protection that the documents would have in  
 18 the kind of settings that they were supposed  
 19 to be protected from. So it wasn't  
 20 satisfactory, we weren't satisfied that we  
 21 didn't have the information, but we came to  
 22 understand the argument that they were putting  
 23 forth. And of course, subsequently we knew  
 24 that the Commission was also actively engaged  
 25 in looking for the documents and we were

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1 satisfied to see that process play out, as  
 2 well.  
 3 COFFEY, Q.C.:  
 4 Q. Now, in terms of that, you know, you've told  
 5 the Commissioner now that when you got into  
 6 this a bit, you realized, okay, they're not  
 7 going to give us those reports and they might  
 8 be of significant value in trying to figure  
 9 out at least what could conceivably be known?  
 10 MR. THOMPSON:  
 11 A. Yes.  
 12 COFFEY, Q.C.:  
 13 Q. Based upon by then done investigations and  
 14 they were kind of pieces of a puzzle as it  
 15 were, fragments, as you put it, of information  
 16 here and there from which you might infer,  
 17 possibly, what had transpired. Did you ever  
 18 ask anybody in the Department of Health or  
 19 Eastern Health about how that state of affairs  
 20 could come about, how is it possible that by  
 21 the late summer, early fall of 2007 I am  
 22 sitting here as the acting deputy minister and  
 23 I can't find out, there's an Inquiry going on,  
 24 yes, but I can't find out what the cause of  
 25 the problem was when your instinct had been on

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1 July 19th, 2005 to insure that, in fact, that  
 2 answer is available?  
 3 MR. THOMPSON:  
 4 A. Well, -  
 5 COFFEY, Q.C.:  
 6 Q. So did you ever ask anybody about that in  
 7 terms of -  
 8 MR. THOMPSON:  
 9 A. I was aware, at that point in time, that we  
 10 didn't have a report in our possession that  
 11 outlined the cause of the problem, so it was  
 12 obvious to me that that was the state of  
 13 affairs. And it was also obvious that while  
 14 these external reviews had been done, that it  
 15 wasn't clear to me that they, even they would  
 16 answer completely, you know, the questions  
 17 that you're posing here. And on top of that I  
 18 was satisfied that the government had created  
 19 the Commission to answer that very question.  
 20 And so whether or not--whatever the external  
 21 reviewers had said, we would have a process  
 22 that would get to the bottom of this. And so  
 23 in effect that also was part of the context  
 24 for--or it conditioned the kind of how we felt  
 25 in being told, no, that we couldn't have those

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1 external reviews and that we were, you know,  
 2 we were going to get to the bottom of this one  
 3 way or another. The--we felt fairly  
 4 comfortable that the lab was currently  
 5 operating, okay, so the lab was operating now  
 6 at a high level of proficiency, that was the  
 7 sense that we had. We had a sense that the  
 8 findings of the database effort aside, that  
 9 testing had been done and that those who  
 10 needed new therapy were being taken care of  
 11 and that a Commission had been created to get  
 12 to the bottom of many of the important  
 13 questions. So while it would have been  
 14 clearly a convenience and a good thing to have  
 15 access to those reports, it wasn't something  
 16 that -  
 17 COFFEY, Q.C.:  
 18 Q. Oh, I'm not asking, sir, about access to the  
 19 reports. I appreciate that. I'm asking, if I  
 20 could -  
 21 MR. THOMPSON:  
 22 A. Well, it's an important context, I think, for  
 23 this discussion.  
 24 COFFEY, Q.C.:  
 25 Q. Yeah. What I'm asking is is this, did you ask

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1 anyone, as the acting deputy minister, how the  
 2 state of affairs could come about where I, as  
 3 the acting deputy minister, or whether it's me  
 4 or whomever, being an acting deputy minister  
 5 or deputy minister of health could be put into  
 6 a position by the fall of '07 that if there is  
 7 an answer or there isn't an answer--what I'm  
 8 getting at is this, sir, you're sitting there  
 9 in your desk, people's lives have been  
 10 affected.  
 11 MR. THOMPSON:  
 12 A. Um-hm.  
 13 COFFEY, Q.C.:  
 14 Q. There's been an investigation conducted?  
 15 MR. THOMPSON:  
 16 A. Um-hm.  
 17 COFFEY, Q.C.:  
 18 Q. You had been a deputy minister of health  
 19 yourself?  
 20 MR. THOMPSON:  
 21 A. Right.  
 22 COFFEY, Q.C.:  
 23 Q. You had been clerk. And how can a state of  
 24 affairs exist where apparently you're being  
 25 told there's no answer and if there is an

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1 answer, it's in a report you can't see?  
 2 MR. THOMPSON:  
 3 A. Yeah.  
 4 COFFEY, Q.C.:  
 5 Q. And did you ask Mr. Tilley or Ms. Jones or  
 6 John Abbott or Moira Hennessey--well, John  
 7 Abbott was gone, I apologize, Ms. Hennessey,  
 8 how can this come about that you can have this  
 9 sort of large-scale event, the government  
 10 being advised it's being investigated, being  
 11 assured it's being properly investigated, and  
 12 yet, no one ever provides an explanation as to  
 13 why it happened? I appreciate that's what  
 14 we're about here.  
 15 MR. THOMPSON:  
 16 A. No, no, fair enough.  
 17 COFFEY, Q.C.:  
 18 Q. But I'm talking about at the time, did you ask  
 19 anybody?  
 20 MR. THOMPSON:  
 21 A. No, I didn't ask anybody a question phrased  
 22 that way. But then I have to take you through  
 23 another loop because there was an impression  
 24 created in my mind at that time which took  
 25 awhile, actually, to sort out. The impression

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1 was that the answer to the question of what  
 2 was the cause actually existed and that it  
 3 was--and that the answer was that there were  
 4 many, many factors that caused the problems  
 5 with testing, so many factors, in fact, that  
 6 it was impossible to name one or a few to  
 7 point the finger and say, "Here is a nicely  
 8 packaged cause for this." So this is the  
 9 impression that gets created for me and it  
 10 gets created for me in Heather Predham's  
 11 affidavit, in my conversations with George  
 12 Tilley, in periodic notes that I would--  
 13 briefing notes that I would read or  
 14 correspondence. And while, you know, not a  
 15 particularly satisfying explanation and there  
 16 is no one report that I have access to which  
 17 brings me through this in a coherent way,  
 18 there is a certain logic that was encompassed  
 19 within that that seemed to add up to an  
 20 explanation, not an explanation that's  
 21 necessarily acceptable, but nonetheless, a  
 22 sense of an explanation. So in that month, in  
 23 June, that was the kind of web that was being  
 24 spun, that sounds bad but it's not what I  
 25 mean, but nonetheless, that's the kind of

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1 sense in which, which was being created for me  
 2 to obtain an understanding of what had  
 3 happened. So with that as a background, it  
 4 didn't occur to me to say is it a satisfactory  
 5 state of affairs that we're here today, not--  
 6 without a report because it was, there was a  
 7 widely shared view, you know, you talk to Mr.  
 8 Tilley, you talk to people in the department,  
 9 you look at the affidavit, you know, you pick  
 10 up this general sense that this is the  
 11 explanation. And so that was the circumstance  
 12 at that time.  
 13 COFFEY, Q.C.:  
 14 Q. Yeah. Now, you--I apologize, go ahead.  
 15 COMMISSIONER:  
 16 Q. Are you saying that when you talked to Mr.  
 17 Tilley and to Ms. Jones, that you got the  
 18 impression that they had an understanding of  
 19 what happened?  
 20 MR. THOMPSON:  
 21 A. That their understanding of the causes of the  
 22 problem were multi-layered, so many factors  
 23 that it's impossible to point to one or  
 24 another cause.  
 25 COMMISSIONER:

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1 Q. And life isn't neat and never messy, so that -  
 2 MR. THOMPSON:  
 3 A. Correct.  
 4 COMMISSIONER:  
 5 Q. - you know, I have some difficult with the  
 6 idea that because there might be more than one  
 7 cause of an event, that somehow you can't  
 8 explain it.  
 9 MR. THOMPSON:  
 10 A. No, I agree with you on that. But that was  
 11 the impression that was being provided to me,  
 12 that the examinations that had been done were  
 13 so multi-factored that it's impossible to say  
 14 what the--in any kind of straight forward,  
 15 simple term that here are the main--is the  
 16 main cause or causes and but rather that there  
 17 may have been many, and when I say many, let's  
 18 say more than ten, more than 20 causes that if  
 19 all corrected and properly controlled in the  
 20 laboratory environment leads to a more  
 21 effective solution. That was the impression  
 22 being given to me.  
 23 COMMISSIONER:  
 24 Q. All right. And the impression being given to  
 25 you by both CEOs -

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1 MR. THOMPSON:  
 2 A. More particularly Mr. Tilley.  
 3 COMMISSIONER:  
 4 Q. Mr. Tilley and then later Ms. Jones was that,  
 5 in fact, they did understand, it was a complex  
 6 answer, but they understood there was an  
 7 answer?  
 8 MR. THOMPSON:  
 9 A. I was--yes, I was given the view that it was--  
 10 that they understood the problem to be that  
 11 way.  
 12 COMMISSIONER:  
 13 Q. All right, thank you.  
 14 COFFEY, Q.C.:  
 15 Q. And now, sir, you have seen those external  
 16 reviews?  
 17 MR. THOMPSON:  
 18 A. Yes.  
 19 COFFEY, Q.C.:  
 20 Q. Since. You would have received them when,  
 21 approximately?  
 22 MR. THOMPSON:  
 23 A. After the court decision.  
 24 COFFEY, Q.C.:  
 25 Q. And you would have reviewed them?



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1 MR. THOMPSON:  
 2 A. Yes.  
 3 COFFEY, Q.C.:  
 4 Q. And what was your impression upon reviewing  
 5 them?  
 6 MR. THOMPSON:  
 7 A. My impression was that there is a way to more  
 8 precisely explain some of the main factors  
 9 that caused the problems with testing and that  
 10 the slides that Dr. Banerjee was able to look  
 11 at actually can take you back in time in to  
 12 2002 and other accessions and that what he  
 13 could observe can help draw some conclusions  
 14 about what the test, the nature of the testing  
 15 at the time and the--and some of the  
 16 procedures in use. So I was somewhat  
 17 impressed by the fact that there was a way to  
 18 go and to do something today and have that  
 19 window into the past. Now, one didn't get an  
 20 impression from the report that he could  
 21 identify every factor in testing in each and  
 22 every year of the past, but there was a  
 23 technique to look back in some respects. And  
 24 there were lists of factors that may have  
 25 contributed to the error, both in the Banerjee

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1 and the Wegrynowski report. Some factors were  
 2 in the Banerjee report were identified as most  
 3 likely factors. Now, most likely actually  
 4 troubled me a little bit because it didn't say  
 5 with certainty, but it was most likely. It's  
 6 not a bad term. And I was--what I was also--  
 7 what also made an impression upon me was the--  
 8 that there were a long list of factors,  
 9 contributing factors, contextual factors,  
 10 laboratory, environmental factors that needed  
 11 to be improved and may have played some role.  
 12 So the impression I had is, yes, that problems  
 13 could have been more precisely explained, but  
 14 I also came out with an impression that those  
 15 who are characterizing it as complex, multi-  
 16 factored, can't point to one particular cause,  
 17 I came away with an impression that I can see  
 18 how they would have read it that way, but  
 19 there are alternative ways to read it, as  
 20 well.  
 21 COFFEY, Q.C.:  
 22 Q. And in terms of in those alternative ways to  
 23 read it, I take it that--put it this way.  
 24 You're not medically trained yourself?  
 25 MR. THOMPSON:

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1 A. No.  
 2 COFFEY, Q.C.:  
 3 Q. But in reading those reports did you get--do  
 4 you think you had some fair sense, perhaps, of  
 5 what had happened, potentially, to cause the  
 6 problems?  
 7 MR. THOMPSON:  
 8 A. Get a fair sense, yes.  
 9 COFFEY, Q.C.:  
 10 Q. If I could, please, Commissioner--after the  
 11 Commission of Inquiry was announced May 22,  
 12 2007, there did arise an issue involving  
 13 retesting, sorry, resumption of testing in St.  
 14 John's in a sense of what was actually being  
 15 tested currently in St. John's. Do you recall  
 16 that?  
 17 MR. THOMPSON:  
 18 A. You called it an incident.  
 19 COFFEY, Q.C.:  
 20 Q. No, in the sense, it arose in the sense of  
 21 public -  
 22 MR. THOMPSON:  
 23 A. The issue arose.  
 24 COFFEY, Q.C.:  
 25 Q. Yes, the issue arose, in the sense of--I

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1 shouldn't have used the word incident--the  
 2 fact that retesting had already resumed in St.  
 3 John's February 1, 2007 and yet, minister,  
 4 apparently, he's told us had assumed or  
 5 thought or been led to believe or conclude  
 6 that they were doing all Newfoundland.  
 7 MR. THOMPSON:  
 8 A. Yes.  
 9 COFFEY, Q.C.:  
 10 Q. But in fact, that wasn't so.  
 11 MR. THOMPSON:  
 12 A. Right.  
 13 COFFEY, Q.C.:  
 14 Q. Did you become aware of that?  
 15 MR. THOMPSON:  
 16 A. I was aware that there was a misunderstanding,  
 17 yes.  
 18 COFFEY, Q.C.:  
 19 Q. And were you involved in--no, that's--after the  
 20 Terms of Reference were published May 22, what  
 21 then was your next involvement in this  
 22 yourself?  
 23 MR. THOMPSON:  
 24 A. I'm not sure if anything really did occur for  
 25 me between the 22nd and about the 25th or 26th

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1 when I started to have discussions with the  
 2 Premier's office about a new role related to  
 3 the Commission. So, I can't recall any  
 4 particular involvement in that period.  
 5 COFFEY, Q.C.:  
 6 Q. Okay. And then those discussions, I take it  
 7 are the ones you referred to in terms of you  
 8 becoming chair of this task force and  
 9 secretary to Cabinet?  
 10 MR. THOMPSON:  
 11 A. Right.  
 12 COFFEY, Q.C.:  
 13 Q. Led to that?  
 14 MR. THOMPSON:  
 15 A. Correct.  
 16 COFFEY, Q.C.:  
 17 Q. And your role then was, you've described to us  
 18 your understanding of your role in both those  
 19 regards. After Mr. Abbott left on May 30 from  
 20 your perspective, what was your immediate  
 21 concern taking over the Department of Health  
 22 and getting this task force and secretary  
 23 position up and running.  
 24 MR. THOMPSON:  
 25 A. Well, immediate concern was to understand what

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1 the issues are in the department and to put  
 2 your hand on the controls, so to speak, to--  
 3 and really important in that respect was to  
 4 support the minister in relation to question  
 5 period because the House of Assembly was still  
 6 open. And normally, the thing that drives  
 7 your day when the House of Assembly is open is  
 8 to make sure the minister is prepared for  
 9 question period. In relation to the task  
 10 force and the other work, first step had to be  
 11 completing work on getting the Terms of  
 12 Reference for the Inquiry completed and turned  
 13 in a legal instrument. And then thirdly, to  
 14 begin the thought process of what kind of  
 15 staff and budget might I need separately for  
 16 the work of the task force.  
 17 COFFEY, Q.C.:  
 18 Q. Okay. And then, what then happened as you got  
 19 into, in terms of--you began to read, I take  
 20 it, what you could, what documents were  
 21 available.  
 22 MR. THOMPSON:  
 23 A. Um-hm.  
 24 COFFEY, Q.C.:  
 25 Q. And as well though, I'm going to suggest to

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1 you that in early June there a question arose  
 2 in your mind about the accuracy or reliability  
 3 of what Eastern Health was telling you.  
 4 MR. THOMPSON:  
 5 A. Right.  
 6 COFFEY, Q.C.:  
 7 Q. Tell the Commissioner how that came about and  
 8 -  
 9 MR. THOMPSON:  
 10 A. Sure, yes. The minister had, on more than one  
 11 occasion in the House of Assembly had  
 12 reiterated the views or information from  
 13 Eastern Health about the fact that all  
 14 patients that had been retested had been  
 15 communicated with. And that statement had  
 16 become sort of an article of faith that  
 17 Eastern Health's information must be accurate,  
 18 particularly because it was being asserted in  
 19 such a clear and unambiguous fashion. And  
 20 there were occasions when there might be an  
 21 alternative view expressed in the media in  
 22 some fashion. And in recent days I've looked  
 23 back at some of that material and other than  
 24 Mr. Reid in the House of Assembly was saying  
 25 otherwise, I recall from the time that there

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1 was an open line caller saying otherwise.  
 2 There may have been more people saying  
 3 otherwise. And so some doubts started to  
 4 appear in my mind and I was expressing this to  
 5 the Minister that, you know, perhaps we should  
 6 be cautious about reiterating that particular  
 7 point until we look into this more and find  
 8 out and start asking some questions.  
 9 COFFEY, Q.C.:  
 10 Q. Now, you understood that the minister was  
 11 relying upon whom in terms of making those  
 12 assurances up to that point?  
 13 MR. THOMPSON:  
 14 A. Well, relying upon the information, assertions  
 15 of Eastern Health information that perhaps was  
 16 obtained from the advertisement that was  
 17 placed in early June and perhaps briefing note  
 18 material that would have been written by the  
 19 department with information that was sourced  
 20 from Eastern Health.  
 21 COFFEY, Q.C.:  
 22 Q. I'm going to suggest to you in terms of the  
 23 backgrounder, May 22, 2007 announcement of the  
 24 Commission that, in fact, that very topic was  
 25 addressed by Elizabeth Matthews, in fact.

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1 MR. THOMPSON:  
 2 A. Right.  
 3 COFFEY, Q.C.:  
 4 Q. Wasn't it?  
 5 MR. THOMPSON:  
 6 A. Well, I know that that backgrounder contained  
 7 information that we relied upon as factual  
 8 including that item. And so, the government,  
 9 not just the minister, was asserting that to  
 10 be true as well.  
 11 COFFEY, Q.C.:  
 12 Q. And Ms. Matthews suggested a change to reflect  
 13 the fact that it was not only so much the  
 14 patients were contacted or their physician  
 15 were contacted?  
 16 MR. THOMPSON:  
 17 A. Right.  
 18 COFFEY, Q.C.:  
 19 Q. So, she was aware that the patients might not  
 20 be contacted directly, but perhaps indirectly  
 21 through their physicians.  
 22 MR. THOMPSON:  
 23 A. Okay.  
 24 COFFEY, Q.C.:  
 25 Q. Do you recall -

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1 MR. THOMPSON:  
 2 A. I recall it, but not the detailed words.  
 3 COFFEY, Q.C.:  
 4 Q. Okay. If we could, please, Exhibit P-0231.  
 5 And this is a series of e-mails between  
 6 yourself and Ms. Mundon and, in fact, the  
 7 minister at one point and Moira Hennessey is  
 8 involved as well. The one at 4:08 on June 6  
 9 to yourself says, "further to the exchange in  
 10 question period today where Gerry Reid said  
 11 that Eastern Health was misleading the public  
 12 in its full page ad by saying that they  
 13 informed all patients and their doctors of  
 14 their individual test results. Deanne Fleet  
 15 asked for a response from government. She was  
 16 unable to wait for the minister to do an  
 17 interview, but I indicated that we would send  
 18 a statement to their producer. Here's what  
 19 I'm suggesting, please advise if you're okay  
 20 with this". And you responded at 4:38 saying,  
 21 "I like the idea of referring to previously  
 22 released material. The only possible  
 23 remaining question is whether some of the  
 24 communications only went to physicians raising  
 25 the possibility that physicians did not

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1 contact patients. In other words, is it  
 2 possible that some patients were not contacted  
 3 at all"? And she reassures you at 4:40, "can  
 4 reconfirm for me today on the phone"--that is  
 5 Ms. Mundon does--"that Susan Bonnell  
 6 reconfirmed for her today on the phone that  
 7 once a letter was sent to physicians regarding  
 8 patients that they followed up with individual  
 9 physicians to ensure that patients were  
 10 contacted.  
 11 And if I could, please, before we break  
 12 for the argument or the application,  
 13 Commissioner, Exhibit P-0471. If we could, I  
 14 referred to that earlier e-mail of the 6th  
 15 just simply to put the one of 7th now in  
 16 context, Mr. Thompson. The bottom of the page  
 17 there's one from George Tilley, he addresses  
 18 it to you, June 7 at 1:07 p.m. "Robert,  
 19 attached in a reply from our risk manager on  
 20 the question you raised. With respect to  
 21 Burin we are in the process of preparing our  
 22 release for tomorrow. Signed, George". And  
 23 then Ms. Predham's reply which Mr. Tilley  
 24 referred to, had occurred apparently on the  
 25 same day that 1302 hours and then to get right

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1 to it, "at 1:39 p.m. you wrote back to Mr.  
 2 Tilley saying, "George, the return e-mail has  
 3 unnerved us, let us explain". Okay. And I  
 4 take it there's a fairly lengthy text then as  
 5 to why you were concerned.  
 6 MR. THOMPSON:  
 7 A. Um-hm.  
 8 COFFEY, Q.C.:  
 9 Q. And then does that accurately reflect the  
 10 state of affairs at the time?  
 11 MR. THOMPSON:  
 12 A. Absolutely.  
 13 COFFEY, Q.C.:  
 14 Q. And you point out at the bottom, you conclude  
 15 by saying "these three statements are  
 16 qualified statements therefore, we need to  
 17 receive from you the exact number of patients  
 18 that were contacted in October 2005 out of the  
 19 total of 763. If there are any patients not  
 20 contacted in October 2005, when were they  
 21 contacted since that time. As you can  
 22 appreciate, this is very important to  
 23 determine with great urgency, please call me  
 24 when you have read this e-mail. Thanks,  
 25 Robert".

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1 Now, Mr. Thompson, by this point, how  
 2 were you feeling?  
 3 MR. THOMPSON:  
 4 A. Let down, we were let down that there was  
 5 apparent inaccurate information that we had  
 6 been relying upon. And I guess in the world I  
 7 operate the quality information that's handed  
 8 on to a minister and the government needs to  
 9 be accurate. And if it's inaccurate, it needs  
 10 to be a really good explanation and a correct  
 11 made of that. But in this case here we see an  
 12 inaccuracy or potential inaccuracy because  
 13 while we know that Eastern Health is  
 14 qualifying its statements about all patients  
 15 having been contacted, we don't know the  
 16 extent of the qualification. We don't know  
 17 all the explanations behind it, but we are  
 18 unnerved. So, it was a clear focused message  
 19 to George that this is a really serious issue  
 20 and that we need to get to the bottom of it as  
 21 quickly as we can, work out what the correct  
 22 numbers truly are, so the minister, in  
 23 particular will be able to rely upon accurate  
 24 information and not information that has  
 25 qualifiers, but unstated qualifiers.

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1 COFFEY, Q.C.:  
 2 Q. And if I could just press the point a little  
 3 bit, Commissioner, please, in the sense of  
 4 time. Mr. Thompson, just to put this in  
 5 context then, as of May 22, 2007 the issue of  
 6 or the idea that some patients had not been  
 7 contacted, I take it, hadn't even, wasn't  
 8 really crossing their radar at that point?  
 9 You were taking at face value Eastern Health's  
 10 -  
 11 MR. THOMPSON:  
 12 A. I was taking at face value and I hadn't seen  
 13 or comprehended or--anything that would have  
 14 lead me to analyze the data further to try to  
 15 sort out this question. But by then, by this  
 16 date too many questions were gurgling around  
 17 the environment and they needed to be  
 18 investigated.  
 19 COFFEY, Q.C.:  
 20 Q. Okay. And, Commissioner, I understand that  
 21 there's an application?  
 22 COMMISSIONER:  
 23 Q. There is.  
 24 COFFEY, Q.C.:  
 25 Q. Thank you.

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1 COMMISSIONER:  
 2 Q. I agreed to break at 4:30.  
 3 COFFEY, Q.C.:  
 4 Q. Thank you.  
 5 COMMISSIONER:  
 6 Q. We're a little past that now.  
 7 COFFEY, Q.C.:  
 8 Q. Thank you. I'm just going to move aside here.  
 9 COMMISSIONER:  
 10 Q. Just for the benefit of the witness, thank  
 11 you, very much. I ask that you return at 9:30  
 12 in the morning.  
 13 MR. THOMPSON:  
 14 A. Sure.  
 15 COMMISSIONER:  
 16 Q. We have an application to deal with so we'll  
 17 carry on. Perhaps if you'd make room for Mr.  
 18 Crosbie there?  
 19 COFFEY, Q.C.:  
 20 Q. Yes.  
 21 COMMISSIONER:  
 22 Q. Now, Mr. Crosbie, I understand you have a  
 23 request?  
 24 CHESLEY CROSBIE, Q.C. IS HEARD  
 25 CROSBIE, Q.C.:

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1 Q. I do, Madam Commissioner. I understand that  
 2 Mr. Tilley, who as we all remember, did not  
 3 finish his evidence when he was here after  
 4 many days, that it's intended for him to be  
 5 called back to do that, to finish his evidence  
 6 on Monday and Tuesday next week.  
 7 COMMISSIONER:  
 8 Q. Yes.  
 9 CROSBIE, Q.C.:  
 10 Q. If those two days are necessary, in fact. I  
 11 sat through his evidence as a representative  
 12 of the members of the breast cancer testing  
 13 class action and it had been my intention to  
 14 do the cross-examination of Mr. Tilley, which  
 15 would be about an hour's worth of cross-  
 16 examination, I anticipate. I was concerned  
 17 because I had a long-standing vacation planned  
 18 and I leave tomorrow and I'm not back until  
 19 the 26th or the night or early morning of the  
 20 26th of May. So I had a conversation with Ms.  
 21 Chaytor, one of your co-counsel, and I  
 22 followed up that with a confirmatory e-mail  
 23 asking that, if possible, Mr. Tilley not be  
 24 called back to complete his evidence until I  
 25 was available to appear again at the

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1 Commission in person. And now I get the news  
 2 today or yesterday that Mr. Tilley, in fact,  
 3 is scheduled to come back on Monday or  
 4 Tuesday.  
 5 What I would--I can understand that there  
 6 are many other interests and compelling  
 7 demands that the Commission has to take into  
 8 account other than those of just one lawyer.  
 9 However, so what I'm proposing is that I could  
 10 do the cross-examination and as I say, it  
 11 should be no more than an hour, maybe an hour  
 12 and a quarter, something like that, via video  
 13 link for the purpose of Mr. Tilley's  
 14 convenience and I could do it here from this  
 15 room, presumably. Mr. Tilley could use a  
 16 facility near at hand to his office in Ottawa  
 17 or, in fact, these days it's easy enough to  
 18 rig up a laptop with a web cam on top of it  
 19 and it could be done that way.  
 20 The added inconvenience might be for my  
 21 friend, Mr. Simmons, who would doubtless want  
 22 the opportunity to do any necessary redirect,  
 23 as well, but I'm sure that could be  
 24 accommodated. I'm sure Mr. Tilley would not  
 25 be enthusiastic about having the period during

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1 which he may be subjected being asked  
 2 questions drawn out in that manner, and I can  
 3 understand that from his point of view.  
 4 However, I suppose it's also a potential that  
 5 any witness could be recalled while the  
 6 Commission is in session, whether it's because  
 7 a particular counsel is not--wishes to  
 8 complete cross-examination or for any good  
 9 reason.  
 10 So that would be my request, that Mr.  
 11 Tilley be that the Commission could carry on  
 12 with Mr. Tilley on Monday and Tuesday as has  
 13 apparently been planned, but that I be given  
 14 an opportunity to perform my part of that, my  
 15 cross-examination by a video link for the  
 16 purpose of minimizing inconvenience and  
 17 expense at some subsequent time when I'm  
 18 available to do it, and he is also.  
 19 THE COMMISSIONER:  
 20 Q. You're not suggesting, however, that you're  
 21 the only counsel in your firm--I mean,  
 22 obviously Ms. Russell has been here for a  
 23 large part of it, other counsel on other  
 24 occasions, and indeed, Ms. Russell has done  
 25 the cross-examination of certain witnesses.

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1 CROSBIE, Q.C.:  
 2 Q. Absolutely, and I'm sure they'd do a very good  
 3 job.  
 4 THE COMMISSIONER:  
 5 Q. Well -  
 6 CROSBIE, Q.C.:  
 7 Q. I do feel, however -  
 8 THE COMMISSIONER:  
 9 Q. - they seem to be doing all right.  
 10 CROSBIE, Q.C.:  
 11 Q. Yes. I do feel, however, that I have class  
 12 members who would expect me to, having been  
 13 present for all the testimony of Mr. Tilley so  
 14 far, to do the cross-examination of Mr.  
 15 Tilley. So I'm asking this on behalf of class  
 16 members who I think would reasonably expect  
 17 that I be the one to do that.  
 18 THE COMMISSIONER:  
 19 Q. Is there anything else you want to add?  
 20 CROSBIE, Q.C.:  
 21 Q. No.  
 22 THE COMMISSIONER:  
 23 Q. Thank you.  
 24 CROSBIE, Q.C.:  
 25 Q. Thank you.

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1 THE COMMISSIONER:  
 2 Q. Mr. Simmons?  
 3 MR. SIMMONS:  
 4 Q. Thank you, Commissioner. I can certainly  
 5 sympathize with Mr. Crosbie's situation,  
 6 though I'm a little bit envious of his being  
 7 able to go on vacation.  
 8 THE COMMISSIONER:  
 9 Q. I was tempted to ask him where he was going,  
 10 and then I decided it would depress me so much  
 11 I wouldn't really to know.  
 12 MR. SIMMONS:  
 13 Q. No. Three points I was going to make. The  
 14 first is that both Ms. Taylor and Ms. Russell,  
 15 as you've pointed out, have been here and I  
 16 think although they may not have been  
 17 intending to cross-examine Mr. Tilley, they  
 18 can certainly have a good familiarity with the  
 19 proceedings at the Inquiry. The transcripts  
 20 of Mr. Tilley's evidence are available all on  
 21 the internet and I'm quite confident, I think,  
 22 that they'd be able to do a perfectly  
 23 satisfactory job of doing that.  
 24 Another point though is that I--the  
 25 sequence of examinations has been that I would

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1 not be doing my examination of Mr. Tilley  
 2 until Mr. Crosbie or the other lawyer from his  
 3 firm has completed theirs, and likewise,  
 4 Commission counsel would be doing their re-  
 5 direct after I was finished, and if we proceed  
 6 in the manner that's now proposed, we'd both  
 7 be doing that by some form of video link  
 8 rather than here in the hearing room as  
 9 normally we would expect to. So there's an  
 10 added element of that there to it as well.  
 11 And the third point is that Mr. Tilley's  
 12 evidence has been considerably drawn out  
 13 already. He was originally scheduled to start  
 14 some almost two weeks, I think, before he did.  
 15 He had made a trip down then for that and  
 16 spent a week here and had to return to Ottawa.  
 17 Came down again to begin his evidence. Made a  
 18 third trip down already and this coming week  
 19 will be his fourth. And although it's  
 20 proposed that he not make another trip down,  
 21 I'd like to see an opportunity to get Mr.  
 22 Tilley's evidence finished, so that at least  
 23 he can move on from that, and weighing and  
 24 balancing those things against the  
 25 inconvenience to Mr. Crosbie, I think that the

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1 right decision would be to try to get Mr.  
 2 Tilley finished completely next week.  
 3 THE COMMISSIONER:  
 4 Q. Do we have any other counsel involved in this  
 5 matter wish to make any kind of submission on  
 6 the point? Mr. Pritchard?  
 7 MR. PRITCHARD:  
 8 Q. The province doesn't have any position on the  
 9 application.  
 10 THE COMMISSIONER:  
 11 Q. Mr. Browne?  
 12 MR. BROWNE:  
 13 Q. No, Commissioner, thank you.  
 14 THE COMMISSIONER:  
 15 Q. Sorry, Ms. O'Dea, I'm always going in the  
 16 wrong direction.  
 17 MS. O'DEA:  
 18 Q. We have no comments on it.  
 19 CROSBIE, Q.C.:  
 20 Q. I'm sure, speaking for Ms. Russell and Ms.  
 21 Taylor, they're disappointed in not being able  
 22 to hear anyone extol their abilities of cross-  
 23 examination. Now's your chance.  
 24 THE COMMISSIONER:  
 25 Q. Mr. Coffey or Ms. Chaytor.

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1 COFFEY, Q.C.:  
 2 Q. No, no, Commissioner.  
 3 CHAYTOR, Q.C.:  
 4 COFFEY, Q.C.:  
 5 Q. No, thank you.  
 6 THE COMMISSIONER:  
 7 Q. All right then. Thank you. Mr. Crosbie,  
 8 while I understand your wish to personally be  
 9 involved in the cross-examination of Mr.  
 10 Tilley, Mr. Tilley has really accommodated us  
 11 quite nicely over a long period of time, as  
 12 his counsel has pointed out. He's come here  
 13 on four separate occasions. He's been  
 14 extended--he has been subjected to a lot of  
 15 examination, can expect a fair amount more,  
 16 and frankly, I think he's entitled to have it  
 17 done with on the next trip. You have here  
 18 very capable counsel, I will extol their  
 19 virtues if nobody else has, at least they've  
 20 certainly demonstrated during the period of  
 21 time that I have been here in respect of the  
 22 Commission that they are capable individuals  
 23 and have cross-examined, in my view, quite  
 24 effectively. The transcripts are on the  
 25 website. They are available. You're in a

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1 position to brief them, and therefore, I am  
 2 not satisfied that we should delay the  
 3 completion of the examination of Mr. Tilley  
 4 further. We'll proceed with it, with  
 5 examination and cross-examination next week,  
 6 and I'm assuming that you'll convey the points  
 7 that you particularly wanted to have put to  
 8 them to the counsel who work with you on this  
 9 file.  
 10 So that should resolve things for the  
 11 day, I think. We'll meet in the morning at  
 12 9:30. Thank you all. Have a good trip, Mr.  
 13 Crosbie.  
 14 (UPON CONCLUSION AT 4:43 p.m)

CERTIFICATE

1  
2 I, Judy Moss, hereby certify that the foregoing is  
3 a true and correct transcript in the matter of the  
4 Commission of Inquiry on Hormone Receptor Testing,  
5 heard on the 8th 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 8th day of May, A.D., 2008  
13 Judy Moss

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