

COMMISSION OF INQUIRY  
ON HORMONE RECEPTOR TESTING

BEFORE THE HONOURABLE JUSTICE CAMERON - COMMISSIONER

June 18, 2008

Appearances:

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

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MR. DARRELL HYNES - SWORN

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1 COMMISSIONER:  
2 Q. Please be seated. Mr. Simmons.  
3 MS. TANSY MUNDON, EXAMINATION BY MR. DANIEL SIMMONS  
4 MR. SIMMONS:  
5 Q. Good morning, Ms. Mundon, my name is Dan  
6 Simmons, I’m here for Eastern Health. I’m  
7 going to have to go back over some of the  
8 things that you’ve been through for the last  
9 couple of days in your direct examination, but  
10 first of all I wanted to just ask you a couple  
11 of questions about when you first came to the  
12 Department of Health, which I think was in  
13 September of 2005?  
14 MS. MUNDON:  
15 A. Correct.  
16 MR. SIMMONS:  
17 Q. Right. You’d worked in government for a  
18 number of years before that as communications  
19 director and in a communications capacity in  
20 several other departments, I think?  
21 MS. MUNDON:  
22 A. Yes, correct.  
23 MR. SIMMONS:  
24 Q. You’ve told us about that. Had you had any  
25 prior experience through that in dealing with

Page 5

1 health-related matters?

2 MS. MUNDON:

3 A. No, I had not.

4 MR. SIMMONS:

5 Q. When you came to the department in September

6 of '05, did you have any kind of an

7 orientation generally into the way health care

8 was delivered in the province, the structure

9 of the programs, the authorities, the

10 structure of the department, that sort of

11 thing?

12 MS. MUNDON:

13 A. I would have been given a high-level

14 orientation by the director of communications

15 who was there at the time, yes.

16 MR. SIMMONS:

17 Q. Um-hm. How extensive was that, was it a

18 morning, was it a week?

19 MS. MUNDON:

20 A. It would have been during an afternoon.

21 MR. SIMMONS:

22 Q. Um-hm.

23 MS. MUNDON:

24 A. Yes.

25 MR. SIMMONS:

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1 Q. Okay. So we've heard through other witnesses

2 and other evidence about the structure of the

3 health care organizations that existed then

4 for regional health authorities, role of the

5 department, the types of services the health

6 authorities provide, types of services the

7 department provides. You would have had to

8 have been introduced to all that in that

9 afternoon, would you?

10 MS. MUNDON:

11 A. Well, I would have certainly been given a

12 high-level orientation at that time, but

13 certainly in the following days throughout

14 that I would quickly become familiar with the

15 structure and the way that it would work.

16 MR. SIMMONS:

17 Q. Okay. Now, the communications function is one

18 function within the Department of Health. But

19 if I understand correctly, because of the sort

20 of unique nature of that function you have to

21 be fairly knowledgeable about the activities of

22 the department in general?

23 MS. MUNDON:

24 A. Yes.

25 MR. SIMMONS:

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1 Q. Is that right? So did you get any kind of

2 orientation from other people within the

3 department, like the deputy ministers, the

4 deputy minister or the assistant deputies for

5 the different areas to tell you what those

6 areas were, what they did, how they related

7 with the health authorities and those sorts of

8 things?

9 MS. MUNDON:

10 A. No formal orientation, but again, through

11 dealing with issues in early days, then I

12 would have had discussions with the assistant

13 deputy ministers and the deputy minister.

14 MR. SIMMONS:

15 Q. Okay. And aside from your time in other

16 government departments before you came to

17 health, did you have anything else in your

18 background that gave you any direct knowledge

19 of the way health care was delivered or how it

20 was administered?

21 MS. MUNDON:

22 A. No, I did not.

23 MR. SIMMONS:

24 Q. Okay. Now, I expect that's probably not

25 uncommon for people in communications

Page 8

1 positions, though, is it?

2 MS. MUNDON:

3 A. No, it's not.

4 MR. SIMMONS:

5 Q. That people in communications positions, in a

6 sense, have to be generalists in that they

7 have to learn about the areas that they're

8 going to be communicating about?

9 MS. MUNDON:

10 A. Yes, that's right.

11 MR. SIMMONS:

12 Q. Okay. So would you have known then in

13 September of '05 that Eastern Health was a

14 relatively new organization just created in

15 April of that year?

16 MS. MUNDON:

17 A. Yes, I was aware of that.

18 MR. SIMMONS:

19 Q. Okay. And did you know much about what the

20 range and breadth of services were that

21 Eastern Health was responsible for providing?

22 MS. MUNDON:

23 A. Yes, I did.

24 MR. SIMMONS:

25 Q. Okay. You knew it included acute care

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1 hospitals?  
 2 MS. MUNDON:  
 3 A. Yes.  
 4 MR. SIMMONS:  
 5 Q. Long-term care, community health?  
 6 MS. MUNDON:  
 7 A. Mental health.  
 8 MR. SIMMONS:  
 9 Q. Even ambulance services?  
 10 MS. MUNDON:  
 11 A. Yes.  
 12 MR. SIMMONS:  
 13 Q. All that?  
 14 MS. MUNDON:  
 15 A. Yes.  
 16 MR. SIMMONS:  
 17 Q. Okay. Had you ever have any involvement in  
 18 dealing with the Health Care Corporation of  
 19 St. John's?  
 20 MS. MUNDON:  
 21 A. No, I did not.  
 22 MR. SIMMONS:  
 23 Q. Okay. Did you know anything about how  
 24 communications was structured in the Health  
 25 Care of St. John's, Health Care Corporation of

Page 10

1 St. John's organization?  
 2 MS. MUNDON:  
 3 A. May have had general knowledge, but not a lot  
 4 of knowledge at the time.  
 5 MR. SIMMONS:  
 6 Q. Um-hm.  
 7 MS. MUNDON:  
 8 A. Because I wouldn't have been dealing directly  
 9 with the communications people at that time.  
 10 MR. SIMMONS:  
 11 Q. Right. And would you have had any knowledge  
 12 of how the communications staff at the  
 13 department related and interacted with the  
 14 communications staff at Health Care  
 15 Corporation of St. John's?  
 16 MS. MUNDON:  
 17 A. I would have had some general knowledge in  
 18 terms of talking with Ms. Chaplin.  
 19 MR. SIMMONS:  
 20 Q. Okay. And what did she tell you about that?  
 21 MS. MUNDON:  
 22 A. Just that under the former structure with the  
 23 14 boards that it would be sometimes difficult  
 24 from a communications perspective given the  
 25 number of boards and, of course, the number of

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1 staff associated with that.  
 2 MR. SIMMONS:  
 3 Q. Okay. So it would be difficult from the  
 4 department's perspective to maintain  
 5 communications with 14 different authorities?  
 6 MS. MUNDON:  
 7 A. Yes.  
 8 MR. SIMMONS:  
 9 Q. Okay. So when the authorities then were  
 10 reduced from 14 to four, was there an  
 11 expectation then that it would become easier  
 12 for the department's communications staff to  
 13 stay on top of communications issues coming  
 14 from those four authorities since the number  
 15 of them was now reduced?  
 16 MS. MUNDON:  
 17 A. I can't really speak to that because that  
 18 would have occurred before my time.  
 19 MR. SIMMONS:  
 20 Q. Um-hm.  
 21 MS. MUNDON:  
 22 A. The reorganization would have occurred before  
 23 I came to the department, so I can't really  
 24 say if that was what the thought was at that  
 25 time.

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1 MR. SIMMONS:  
 2 Q. Okay. From the perspective of Eastern Health,  
 3 which is the largest of the four regional  
 4 health authorities, you would have known then  
 5 that it was only since April that Eastern  
 6 Health had been given the responsibility for  
 7 this large range of services?  
 8 MS. MUNDON:  
 9 A. Yes.  
 10 MR. SIMMONS:  
 11 Q. Did you have any appreciation for the volume  
 12 of work that the communications department at  
 13 Eastern Health had to handle or the range of  
 14 issues that had to handle within their  
 15 organization?  
 16 MS. MUNDON:  
 17 A. Yes, I would have an understanding about that,  
 18 and similarly the Department of Health has  
 19 also a broad scope, as well, and would include  
 20 similar services that you would describe with  
 21 Eastern Health.  
 22 MR. SIMMONS:  
 23 Q. Right, okay. You would have appreciated,  
 24 would you, that the communications staff and  
 25 department in Eastern Health had potentially a

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1 much broader range and number of issues to  
 2 deal with on a regular basis than had the  
 3 staff, say, in Health Care Corporation of St.  
 4 John's, which was an organization with a  
 5 narrower mandate?  
 6 MS. MUNDON:  
 7 A. Yes, I would understand that.  
 8 MR. SIMMONS:  
 9 Q. Okay. Now, when you came to the Department of  
 10 Health in September of 2005, what did you  
 11 learn about the relationships, the  
 12 interactions between the other staff in the  
 13 department, the non-communication staff, the  
 14 minister, the deputy minister, the assistant  
 15 deputy minister and people on down with  
 16 counterparts in the regional health  
 17 organizations and in particular with Eastern  
 18 Health, did you learn anything about how that  
 19 worked?  
 20 MS. MUNDON:  
 21 A. Yes, I would say generally that I did.  
 22 MR. SIMMONS:  
 23 Q. Yeah. What did you understand that--how did  
 24 you understand that relationship to function,  
 25 those interactions to function?

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1 MS. MUNDON:  
 2 A. I would understand that, as I was told in my--  
 3 or as I said in my testimony, that Eastern  
 4 Health was an arms-length organization.  
 5 MR. SIMMONS:  
 6 Q. Yes.  
 7 MS. MUNDON:  
 8 A. That there would be interaction between, as  
 9 you say, counterparts in the--from the  
 10 department and Eastern Health.  
 11 MR. SIMMONS:  
 12 Q. Um-hm.  
 13 MS. MUNDON:  
 14 A. That the expectation was that if there was an  
 15 issue within the health authority, that the  
 16 department would be made aware of that and  
 17 that the--between the department and the  
 18 departmental--or sorry, the departmental rep  
 19 and the individual from Eastern Health, that  
 20 there would be an ongoing sharing of  
 21 information.  
 22 MR. SIMMONS:  
 23 Q. Okay. We've heard from others that the chair  
 24 of the board, the counterpart of the chair of  
 25 the board of Eastern Health would be the

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1 minister; the counterpart of the CEO would be  
 2 the deputy minister; the counterpart of vice  
 3 presidents in the Eastern Health would be the  
 4 assistant deputy ministers. Was that your  
 5 understanding of the way that functioned?  
 6 MS. MUNDON:  
 7 A. That was my understanding. However, I know in  
 8 reality that wasn't always necessarily the  
 9 case.  
 10 MR. SIMMONS:  
 11 Q. Okay. But that was the way it was meant to  
 12 function?  
 13 MS. MUNDON:  
 14 A. That was the way it was meant to function,  
 15 yes.  
 16 MR. SIMMONS:  
 17 Q. Right. So aside from the communications staff  
 18 and the interactions and communications  
 19 between the communications staff, there was a  
 20 whole existing structure in place between the  
 21 department and Eastern Health for  
 22 communicating information about the  
 23 operational aspects of the organizations?  
 24 MS. MUNDON:  
 25 A. Yes.

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1 MR. SIMMONS:  
 2 Q. Right? Yeah. And the exchange of information  
 3 about operational issues, was that to  
 4 primarily take place between that side of the  
 5 organizations or primarily to take place  
 6 between the communications people?  
 7 MS. MUNDON:  
 8 A. Primarily, ideally it should occur between  
 9 those people as opposed to the communications  
 10 function.  
 11 MR. SIMMONS:  
 12 Q. Um-hm. And where you sat as director of  
 13 communications, your expectation would have  
 14 been that information about operational issues  
 15 would have flowed in that other chain?  
 16 MS. MUNDON:  
 17 A. Yes.  
 18 MR. SIMMONS:  
 19 Q. Primarily, okay. Now, in your role as a  
 20 communications director it's not something  
 21 that I was familiar with before becoming  
 22 involved in this Inquiry, so I've been  
 23 learning about it like everyone else as we go  
 24 along.  
 25 MS. MUNDON:

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1 A. Yes.  
 2 MR. SIMMONS:  
 3 Q. And I'll give you an impression. You've given  
 4 us a number of impressions about things that  
 5 you've had on the way through. I'll give you  
 6 an impression and you can just tell me if I'm  
 7 on the right track or on the wrong track or  
 8 sort me out where I've gone wrong. My  
 9 impression is that the communications function  
 10 has two sides to it, it has an information and  
 11 an information outside.  
 12 MS. MUNDON:  
 13 A. Yes.  
 14 MR. SIMMONS:  
 15 Q. And the information outside seems to me to be  
 16 like the director has the responsibility to  
 17 ensure that information that the department  
 18 wants to communicate out to the outside world  
 19 is effectively communicated through press  
 20 releases and other means?  
 21 MS. MUNDON:  
 22 A. Yes, as we call external communications.  
 23 MR. SIMMONS:  
 24 Q. External communications.  
 25 MS. MUNDON:

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1 A. Yes.  
 2 MR. SIMMONS:  
 3 Q. And the communications people as people  
 4 knowledgeable about how to communicate but not  
 5 necessarily trained in health care issues are  
 6 like translators, they take the technical  
 7 information from the people who understand  
 8 health care and translate it so that the  
 9 public understands it once it's communicated?  
 10 MS. MUNDON:  
 11 A. Correct, in consultation, obviously, with the  
 12 relevant people in the department or the  
 13 authority, yes.  
 14 MR. SIMMONS:  
 15 Q. And it's also an information in function,  
 16 which is that in our example the  
 17 communications director gathers information  
 18 for the use of the minister?  
 19 MS. MUNDON:  
 20 A. Yes.  
 21 MR. SIMMONS:  
 22 Q. And that information would come from sources  
 23 within the department, but also from agencies  
 24 that report to the department, like Eastern  
 25 Health and the other health authorities?

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1 MS. MUNDON:  
 2 A. Yes. I would say that the information  
 3 gathering on issues would primarily come from  
 4 the officials within the department.  
 5 MR. SIMMONS:  
 6 Q. Um-hm.  
 7 MS. MUNDON:  
 8 A. And that from a communications perspective,  
 9 certainly, there would be the information in,  
 10 as you label it.  
 11 MR. SIMMONS:  
 12 Q. Okay.  
 13 MS. MUNDON:  
 14 A. From communications staff, yes.  
 15 MR. SIMMONS:  
 16 Q. And the purpose or a goal or objective of the  
 17 information out function, communicating out to  
 18 the public, is to convey those key messages or  
 19 information that the department and the  
 20 minister want the public and the media to  
 21 know?  
 22 MS. MUNDON:  
 23 A. Yes, that certainly would be one aspect of it,  
 24 yes.  
 25 MR. SIMMONS:

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1 Q. Right, okay. And in the information in  
 2 function, the gathering of information from  
 3 the department and from outside agencies and  
 4 the collection of it to funnel it up to the  
 5 minister, I gather that the objective of that  
 6 is to make sure that the minister is informed  
 7 so that the minister can speak to issues in  
 8 the house and to the media and to the public?  
 9 MS. MUNDON:  
 10 A. And to also be aware of what's happening  
 11 within the health care system, recognizing  
 12 that the minister, you know, could be asked at  
 13 any point in time about any issue when he's  
 14 out in public.  
 15 MR. SIMMONS:  
 16 Q. Because I would have thought that that piece  
 17 of knowing what's happening in the health care  
 18 system for the sake of the overall management  
 19 of the system would have been a function of  
 20 the other side of the department, because it's  
 21 the staff, the ADMS, the deputy minister who  
 22 have the responsibility for the running of  
 23 affairs of the department?  
 24 MS. MUNDON:  
 25 A. Yes, you're correct. However, we know that in

Page 21

1 reality there's not always that fine line  
 2 drawn.  
 3 MR. SIMMONS:  
 4 Q. Um-hm.  
 5 MS. MUNDON:  
 6 A. There's a fine line, there's not always that  
 7 line drawn in the sand that, you know, the two  
 8 would cross over, obviously.  
 9 MR. SIMMONS:  
 10 Q. Um-hm.  
 11 MS. MUNDON:  
 12 A. So if the minister is, you know, being  
 13 informed on an issue, then obviously he's  
 14 being informed for his information.  
 15 MR. SIMMONS:  
 16 Q. Um-hm.  
 17 MS. MUNDON:  
 18 A. And could likely be informed, as well, for a  
 19 potential media interview or onward.  
 20 MR. SIMMONS:  
 21 Q. Okay. So the minister has a, for want of a  
 22 better word, I'll say a policy role or an  
 23 operational role in ensuring that the  
 24 department's responsibilities are carried out  
 25 for the public at large?

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1 MS. MUNDON:  
 2 A. Yes.  
 3 MR. SIMMONS:  
 4 Q. In practice, do the ministers rely on their  
 5 communications staff to gather information for  
 6 them for the purpose of them discharging that  
 7 role?  
 8 MS. MUNDON:  
 9 A. No, not generally, no.  
 10 MR. SIMMONS:  
 11 Q. No?  
 12 MS. MUNDON:  
 13 A. No.  
 14 MR. SIMMONS:  
 15 Q. Okay. So they rely on their communication  
 16 staff then for the purpose of gathering  
 17 information so that they can be prepared to  
 18 respond in the house, to the media and to the  
 19 public?  
 20 MS. MUNDON:  
 21 A. Yes, and as you said earlier, that information  
 22 would be gathered from usually within the  
 23 department.  
 24 MR. SIMMONS:  
 25 Q. Right.

Page 23

1 MS. MUNDON:  
 2 A. Yes.  
 3 MR. SIMMONS:  
 4 Q. Okay. Now I have some more specific questions  
 5 for you. I'm going to start with your first  
 6 involvement with the ER/PR matter, which is  
 7 when you had the telephone call from Susan  
 8 Bonnell, I believe, on the 30th of September,  
 9 2005?  
 10 MS. MUNDON:  
 11 A. Yes.  
 12 MR. SIMMONS:  
 13 Q. That's when she told you The Independent was  
 14 going to be doing the story. You'd only been  
 15 three weeks in the department then?  
 16 MS. MUNDON:  
 17 A. Yes.  
 18 MR. SIMMONS:  
 19 Q. Okay. How comfortable were you at that point  
 20 with your level of knowledge about the way the  
 21 administration of health care worked and the  
 22 way the department functioned, how far along  
 23 were you in your learning curve at that point?  
 24 MS. MUNDON:  
 25 A. Well I had already acknowledged the fact that

Page 24

1 I was very new to the department at the time  
 2 and it was my first recollection of dealing  
 3 with the issue itself.  
 4 MR. SIMMONS:  
 5 Q. Right. And you've already told us that even  
 6 though we know that there was a briefing note  
 7 from the 20th of July that had gone to the  
 8 department from Eastern Health talking about  
 9 the ER/PR issue, that you weren't aware that  
 10 that note existed, hadn't seen it?  
 11 MS. MUNDON:  
 12 A. That's correct.  
 13 MR. SIMMONS:  
 14 Q. At that time. And it was quite some time  
 15 after that before you became aware that that  
 16 note was even there, wasn't it?  
 17 MS. MUNDON:  
 18 A. Correct.  
 19 MR. SIMMONS:  
 20 Q. Yeah. More than a year later?  
 21 MS. MUNDON:  
 22 A. I can't say specifically how long, but it  
 23 likely was.  
 24 MR. SIMMONS:  
 25 Q. Um-hm, okay. You'd had a briefing from

Page 25

1 Carolyn Chaplin, but did I understand you to  
 2 say that there was no discussion of this ER/PR  
 3 issue in that -  
 4 MS. MUNDON:  
 5 A. Not that I recall. May have -  
 6 MR. SIMMONS:  
 7 Q. - in that briefing?  
 8 MS. MUNDON:  
 9 A. - been very high level, but not certainly  
 10 something that I would have remembered.  
 11 MR. SIMMONS:  
 12 Q. Yeah. And so the call from Susan Bonnell then  
 13 was the first you'd ever heard of it?  
 14 MS. MUNDON:  
 15 A. Yes.  
 16 MR. SIMMONS:  
 17 Q. Okay. How much do you actually remember about  
 18 the discussion on that call?  
 19 MS. MUNDON:  
 20 A. You know, I remember, as I indicated in my  
 21 testimony, that Ms. Bonnell had called me  
 22 about the story.  
 23 MR. SIMMONS:  
 24 Q. Um-hm.  
 25 MS. MUNDON:

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1 A. That high-level explanation of the issue being  
 2 very complicated, you know, affecting a small  
 3 number of people, of women.  
 4 MR. SIMMONS:  
 5 Q. Um-hm.  
 6 MS. MUNDON:  
 7 A. And that the story was going to be in The  
 8 Independent that Sunday.  
 9 MR. SIMMONS:  
 10 Q. Right, okay. So given your lack of prior  
 11 involvement and your lack of background  
 12 knowledge, it would have been difficult for  
 13 you to take anything other than a fairly high-  
 14 level understanding out of that call?  
 15 MS. MUNDON:  
 16 A. That's correct.  
 17 MR. SIMMONS:  
 18 Q. Correct, yeah. Now, one of the things you  
 19 mentioned in your direct examination was that  
 20 one thing that stuck in your mind was that you  
 21 were told that the retesting would affect a  
 22 small number of women?  
 23 MS. MUNDON:  
 24 A. Yes.  
 25 MR. SIMMONS:

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1 Q. Now, can you recall anything about how that  
 2 information was conveyed to you? I know it's  
 3 awfully difficult to remember the words from  
 4 something so long ago.  
 5 MS. MUNDON:  
 6 A. Yes.  
 7 MR. SIMMONS:  
 8 Q. But a small number could be an absolute number  
 9 or it could be a small portion of the total  
 10 number, there could be different meanings that  
 11 would be attached to that. Can you tell us  
 12 what -  
 13 MS. MUNDON:  
 14 A. I don't recall being given a specific number.  
 15 MR. SIMMONS:  
 16 Q. No.  
 17 MS. MUNDON:  
 18 A. I was told it was a small number. It wasn't  
 19 my interpretation of a number that ended up  
 20 being a small number, it was communicated to  
 21 me as being a small number.  
 22 MR. SIMMONS:  
 23 Q. Yeah. Do you know if Ms. Bonnell knew that  
 24 you hadn't seen the July 20th briefing note  
 25 and hadn't had a briefing about what had gone

Page 28

1 on during the summer and the meetings that had  
 2 taken place with the department?  
 3 MS. MUNDON:  
 4 A. I would certainly would think that she  
 5 wouldn't have known, given the fact that we  
 6 were having a conversation--that she would  
 7 have known that I wouldn't have seen it  
 8 because we were having a conversation on the  
 9 issue and my knowledge of it obviously would  
 10 be nil at that point in time.  
 11 MR. SIMMONS:  
 12 Q. Okay. So you presume that she may have been  
 13 able to deduce from your lack of knowledge  
 14 that you hadn't seen the briefing note?  
 15 MS. MUNDON:  
 16 A. Yes, and the fact that I was in the department  
 17 for three weeks.  
 18 MR. SIMMONS:  
 19 Q. Okay. Well, it would be reasonable to expect,  
 20 though, that someone new in that position  
 21 would have had a briefing on what some of the  
 22 key issues were and would have access to all  
 23 the briefing notes that were available in the  
 24 department, wouldn't it?  
 25 MS. MUNDON:

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1 A. Not necessarily. The other point is that I  
 2 had asked her for a briefing note.  
 3 MR. SIMMONS:  
 4 Q. Um-hm.  
 5 MS. MUNDON:  
 6 A. And in, you know, asking her for a briefing  
 7 note, I certainly would have told her if I  
 8 would have seen a previous briefing note. I'm  
 9 asking her for a briefing note, I'm not asking  
 10 her for another version of a briefing note  
 11 that I had seen, for example.  
 12 MR. SIMMONS:  
 13 Q. Okay. Now, after that call you did follow the  
 14 media reports with The Independent and the  
 15 subsequent media reports afterwards, did you?  
 16 MS. MUNDON:  
 17 A. Yes.  
 18 MR. SIMMONS:  
 19 Q. And you would have been aware that Eastern  
 20 Health, through their spokesperson, primarily  
 21 Dr. Williams at that time, gave quite a few  
 22 interviews in the month of October?  
 23 MS. MUNDON:  
 24 A. Yes.  
 25 MR. SIMMONS:

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1 Q. That were reported in various media?  
 2 MS. MUNDON:  
 3 A. Yes.  
 4 MR. SIMMONS:  
 5 Q. One of the early reports was an article in the  
 6 Evening Telegram on the 5th of October and  
 7 that's at P-0345, please? We referred to this  
 8 one before and I'll just refer you to it for a  
 9 moment. I presume that you would have followed  
 10 the reports in the Telegram?  
 11 MS. MUNDON:  
 12 A. Yes.  
 13 MR. SIMMONS:  
 14 Q. And that these would have been distributed  
 15 around the department?  
 16 MS. MUNDON:  
 17 A. Yes.  
 18 MR. SIMMONS:  
 19 Q. Yeah, okay. Now, I haven't noted the page.  
 20 Here we go. Now, we have it here and I'm just  
 21 going to point out some things here on the  
 22 issue of the number of patients affected.  
 23 MS. MUNDON:  
 24 A. Um-hm.  
 25 MR. SIMMONS:

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1 Q. And if you look at the second column, the  
 2 bottom of the second column, there's a  
 3 statement in the article that says, "About 350  
 4 of the tests are done annually in the  
 5 province."  
 6 MS. MUNDON:  
 7 A. Um-hm.  
 8 MR. SIMMONS:  
 9 Q. So we have a number, total number of tests.  
 10 And then if you go to the fourth column,  
 11 second full paragraph, it says, "And from the  
 12 early results Williams said it appears only  
 13 about 10 percent of the overall tests  
 14 performed over the past seven years show  
 15 different results."  
 16 MS. MUNDON:  
 17 A. Um-hm.  
 18 MR. SIMMONS:  
 19 Q. So although the math is not done here, it's  
 20 fairly easy to see that 350 tests for seven  
 21 years are going to add up to a fairly  
 22 significant number and ten percent of that is  
 23 still going to be a fairly large number of  
 24 people?  
 25 MS. MUNDON:

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1 A. Um.  
 2 MR. SIMMONS:  
 3 Q. If you take ten percent of 350, for example,  
 4 it's 35 per year, multiply it by seven, it's  
 5 over 200, over 200 people that stand to be  
 6 affected by this. You could see that by  
 7 looking at this story?  
 8 MS. MUNDON:  
 9 A. Well, I could see it now, certainly.  
 10 MR. SIMMONS:  
 11 Q. Yes.  
 12 MS. MUNDON:  
 13 A. But I wouldn't be looking at it from that lens  
 14 when I would have been reading it.  
 15 MR. SIMMONS:  
 16 Q. No.  
 17 MS. MUNDON:  
 18 A. Especially since the director would have told  
 19 me that it would have been a small number of  
 20 people.  
 21 MR. SIMMONS:  
 22 Q. Okay. But from looking at the story, though,  
 23 you could see here that Eastern Health was  
 24 giving information to the media about what  
 25 this early expectation was about the number of



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1 patients that could be affected, right?

2 MS. MUNDON:

3 A. I guess from this, yes.

4 MR. SIMMONS:

5 Q. Okay, and that that same information was

6 available to you at least through the media,

7 from looking at these stories?

8 MS. MUNDON:

9 A. I guess if that's the way that I have to rely

10 on information from Eastern Health, through

11 the media, then you're correct.

12 MR. SIMMONS:

13 Q. Okay, and you'd agree with me that Eastern

14 Health wasn't holding back anything from the

15 public here about what their understanding was

16 at the time of how many people stood to be

17 affected by this?

18 MS. MUNDON:

19 A. I would say there would be an inconsistency

20 certainly in what was communicated to me in

21 the small number and what is in this media

22 article.

23 MR. SIMMONS:

24 Q. Okay. Now did you ask Ms. Bonnell what she

25 meant by small number?

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1 MS. MUNDON:

2 A. I can't recall if I did or not.

3 MR. SIMMONS:

4 Q. Was it important enough to you at the time for

5 you to need to inquire more about what a small

6 number was?

7 MS. MUNDON:

8 A. I reference the importance of a small number

9 because it, for me at the time, downplayed the

10 significance of the issue in that call.

11 MR. SIMMONS:

12 Q. Okay. Now from Ms. Bonnell's point of view

13 through, she would have known that there'd

14 been a briefing note that had gone on July

15 20th. She would have known that there'd been

16 a series of discussions over the course of the

17 summer of 2005 and that all this information

18 should have been in the possession of the

19 Department, whether in your possession or not,

20 correct?

21 MS. MUNDON:

22 A. Correct.

23 MR. SIMMONS:

24 Q. And I'm suggesting that it would have been

25 reasonable for her to believe that you, the

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1 new person coming into the Department, would

2 have been briefed enough on this issue to have

3 had that kind of background available to you?

4 MS. MUNDON:

5 A. That may have been a reasonable expectation on

6 her part, yes.

7 MR. SIMMONS:

8 Q. Okay, and given that reasonable expectation,

9 she may not have attached any particular

10 significance to saying it's a small number

11 there, thinking that you would have had access

12 to the information that the Department already

13 knew about this issue?

14 MS. MUNDON:

15 A. However, as you correctly point out in this

16 article, that's not consistent. A small

17 number is not consistent with the information

18 that we know is in this article. So I would

19 wonder why someone would classify it as a

20 small number if it wasn't, in fact, a small

21 number.

22 MR. SIMMONS:

23 Q. Okay. Could it be that she told you that it

24 was a small portion of the total tests done?

25 MS. MUNDON:

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1 A. I don't recall it being a small portion, no.

2 I recall it being a small number, and in fact,

3 I have used that phrase in a number of e-

4 mails.

5 MR. SIMMONS:

6 Q. Okay. Now you've told us also that in the

7 time period following The Independent story,

8 there was some discussion about the merits of

9 a news release?

10 MS. MUNDON:

11 A. Yes.

12 MR. SIMMONS:

13 Q. And the document that--one of the documents

14 that deals with that is P-0142, and I'll just

15 bring it up as a reference point, please. You

16 were examined on this before, so I'm not going

17 to go through it in great detail with you, but

18 here, you are reporting to a number of people,

19 Mr. Abbott, Moira Hennessey, Ed Hunt, Darrell

20 Hynes and the Minister that you'd had a

21 discussion about whether a news release should

22 be issued, that Ms. Bonnell had communicated

23 Eastern Health's position that it was too late

24 to do that here, it wouldn't be of benefit.

25 And the upshot of all this though was that you

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1 did agree with her here on this occasion,  
 2 didn't you?  
 3 MS. MUNDON:  
 4 A. I agree with her from the perspective of a  
 5 news release being issued in a proactive  
 6 manner. The opportunity for that had passed.  
 7 MR. SIMMONS:  
 8 Q. Right, so what you said here though is you did  
 9 agree with her assessment that there was no  
 10 point in issuing a press release now at this  
 11 time.  
 12 MS. MUNDON:  
 13 A. I wouldn't say that there would be no point,  
 14 because I did ask for the frequently asked  
 15 questions to be posted, but given the fact, at  
 16 the time, that a number of interviews had  
 17 occurred -  
 18 MR. SIMMONS:  
 19 Q. Right.  
 20 MS. MUNDON:  
 21 A. - that the opportunity for a proactive--a news  
 22 release to be issued in a proactive manner had  
 23 indeed passed at that point.  
 24 MR. SIMMONS:  
 25 Q. Now the discussion here though was not about

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1 issuing a press release in a proactive manner.  
 2 There is--The Independent had already broken  
 3 the story. So the discussion here was about  
 4 issuing a news release now, after the story  
 5 having been broken, right?  
 6 MS. MUNDON:  
 7 A. One interview at that time, yes.  
 8 MR. SIMMONS:  
 9 Q. Yes, okay. But the story had been broken.  
 10 The story was already out in the media, right?  
 11 MS. MUNDON:  
 12 A. The story was in the media, yes.  
 13 MR. SIMMONS:  
 14 Q. Yes.  
 15 MS. MUNDON:  
 16 A. And if you notice my previous e-mail, my e-  
 17 mail earlier that day, when I outlined my  
 18 intentions of discussing with Ms. Bonnell the  
 19 merits of doing a news release, you know, my  
 20 concern was that there may be a confusion from  
 21 isolated--like one isolated interview on the  
 22 issue and given that my knowledge at the time  
 23 was that it was a St. John's issue, you know,  
 24 I was certainly concerned about ensuring that  
 25 the St. John's media, at least, were covering

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1 the issue.  
 2 MR. SIMMONS:  
 3 Q. Okay. So early on, The Independent breaks a  
 4 story. You know there's been one interview.  
 5 You want to make sure that enough information  
 6 gets out so that there's no confusion about  
 7 it.  
 8 MS. MUNDON:  
 9 A. Yes.  
 10 MR. SIMMONS:  
 11 Q. One of those options is a press release.  
 12 MS. MUNDON:  
 13 A. Yes.  
 14 MR. SIMMONS:  
 15 Q. Another option is more interviews and  
 16 responding to the interview requests. Would  
 17 that be right?  
 18 MS. MUNDON:  
 19 A. Another option is frequently asked questions,  
 20 yes.  
 21 MR. SIMMONS:  
 22 Q. Yes, okay, and do you know that there was  
 23 information posted to the website?  
 24 MS. MUNDON:  
 25 A. Yes.

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1 MR. SIMMONS:  
 2 Q. In response to that, and that there were  
 3 interviews given, as we've already  
 4 established, throughout October.  
 5 MS. MUNDON:  
 6 A. Yes.  
 7 MR. SIMMONS:  
 8 Q. And in this e-mail, you said "I tend to agree  
 9 with Susan this time with the news release."  
 10 So what you communicated to the Minister and  
 11 others was that you did agree that there did  
 12 not have to be a news release at this point.  
 13 MS. MUNDON:  
 14 A. That was certainly my perception after talking  
 15 to Ms. Bonnell. Again, being in the  
 16 Department for less than a month and knowing  
 17 that she was managing the issue from a  
 18 communications perspective and certainly had  
 19 more knowledge of the file than I would at the  
 20 time, yes.  
 21 MR. SIMMONS:  
 22 Q. Right, so you would have deferred to her  
 23 assessment and her judgment on it, given her  
 24 greater knowledge about the circumstances?  
 25 MS. MUNDON:

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1 A. Yes.  
 2 MR. SIMMONS:  
 3 Q. Now the fact that--deciding to issue a press  
 4 release, would that be an operational issue  
 5 for Eastern Health, the actions they take like  
 6 that? Is that an operational issue?  
 7 MS. MUNDON:  
 8 A. No.  
 9 MR. SIMMONS:  
 10 Q. No? It's not?  
 11 MS. MUNDON:  
 12 A. Well, yes, an operational issue for them, as  
 13 opposed to, you mean, the Department? Yes.  
 14 MR. SIMMONS:  
 15 Q. Yes.  
 16 MS. MUNDON:  
 17 A. Yes.  
 18 MR. SIMMONS:  
 19 Q. Okay. So it is their decision to make.  
 20 MS. MUNDON:  
 21 A. It is their decision to make, yes. The Deputy  
 22 Minister had asked me to contact--or in the  
 23 discussions with the Minister, we had decided  
 24 that, you know, it would be a good idea to  
 25 discuss the merits with Ms. Bonnell and that's

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1 why I went back in that e-mail to the Deputy  
 2 Minister to indicate that, you know, they  
 3 didn't feel that a news release was warranted  
 4 at the time.  
 5 MR. SIMMONS:  
 6 Q. Right, okay. Now at the end of your e-mail to  
 7 the Minister and others, where you've talked  
 8 about--you've said you tended to agree with  
 9 Susan. It says "it seems the opportunity has  
 10 passed. I believe we should continue to  
 11 monitor the coverage and the reaction," which  
 12 I presume you did do?  
 13 MS. MUNDON:  
 14 A. Yes.  
 15 MR. SIMMONS:  
 16 Q. And you said "if we did issue a news release  
 17 at this point, it would be picked up by local  
 18 newspapers and would probably draw attention  
 19 to the issue unnecessarily." Had you had any  
 20 discussion with Ms. Bonnell about that point?  
 21 MS. MUNDON:  
 22 A. I think we did have a discussion about  
 23 community newspapers, yes.  
 24 MR. SIMMONS:  
 25 Q. You think you did?

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1 MS. MUNDON:  
 2 A. Yes.  
 3 MR. SIMMONS:  
 4 Q. Did you?  
 5 MS. MUNDON:  
 6 A. I can't say with absolute certainty if I did  
 7 or not.  
 8 MR. SIMMONS:  
 9 Q. Why do you think you did?  
 10 MS. MUNDON:  
 11 A. I think I did because it's in the context of  
 12 this e-mail in which I'm relaying information  
 13 that I had from a conversation with her.  
 14 MR. SIMMONS:  
 15 Q. Okay. Well, the e-mail doesn't say that this  
 16 information about local newspapers came from  
 17 the conversation with Ms. Bonnell.  
 18 MS. MUNDON:  
 19 A. No, it doesn't clearly spell that out, no.  
 20 MR. SIMMONS:  
 21 Q. So do you remember having any conversation  
 22 with her about local newspapers and the issue  
 23 of a press release for the benefit of local  
 24 newspapers? Can you tell me you did or you  
 25 didn't?

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1 MS. MUNDON:  
 2 A. I can't say with absolute certainty if I did.  
 3 MR. SIMMONS:  
 4 Q. From looking at this e-mail, are you deducing  
 5 from this e-mail that you think you did.  
 6 MS. MUNDON:  
 7 A. Again, I can't say with absolute certainty. I  
 8 did say earlier and my knowledge at the time  
 9 was that this was an isolated St. John's  
 10 issue. Certainly Ms. Bonnell would have known  
 11 that that was not the case, and -  
 12 MR. SIMMONS:  
 13 Q. Now -  
 14 MS. MUNDON:  
 15 A. - she would also know that through interviews,  
 16 primarily in the St. John's media, that you  
 17 wouldn't be issuing a news release. You  
 18 wouldn't be getting that information out to  
 19 community newspapers through interviews with  
 20 isolated media.  
 21 MR. SIMMONS:  
 22 Q. Now why did you think this was an isolated St.  
 23 John's issue?  
 24 MS. MUNDON:  
 25 A. That was my knowledge at the time.

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1 MR. SIMMONS:  
 2 Q. From where?  
 3 MS. MUNDON:  
 4 A. I believe it was from the discussion that I  
 5 had with Ms. Hennessey and Mr. Abbott on  
 6 October 3rd, 2005.  
 7 MR. SIMMONS:  
 8 Q. Had Ms. Bonnell told you that?  
 9 MS. MUNDON:  
 10 A. No, she did not.  
 11 MR. SIMMONS:  
 12 Q. She had not?  
 13 MS. MUNDON:  
 14 A. No.  
 15 MR. SIMMONS:  
 16 Q. So you know that Ms. Bonnell didn't tell you  
 17 it was an isolated St. John's issue, and you  
 18 think that came from Mr. Abbott and Ms.  
 19 Hennessey?  
 20 MS. MUNDON:  
 21 A. Yes.  
 22 MR. SIMMONS:  
 23 Q. So it would seem to me that if your source of  
 24 that information was within the Department and  
 25 not Ms. Bonnell, it would make it less likely

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1 that you had any discussion with her about the  
 2 local newspaper issue, because the local  
 3 newspaper issue would have come out of that  
 4 knowledge.  
 5 MS. MUNDON:  
 6 A. Not necessarily. I had the conversation with  
 7 Mr. Abbott and Ms. Hennessey prior--before my  
 8 conversation with Ms. Bonnell. So again, I  
 9 can't say with certainty if I did or did not.  
 10 MR. SIMMONS:  
 11 Q. Okay, all right. So before you went back and  
 12 called Ms. Bonnell back about the press  
 13 release issue, you'd had this conversation  
 14 with Ms. Hennessey and Mr. Abbott?  
 15 MS. MUNDON:  
 16 A. Yes.  
 17 MR. SIMMONS:  
 18 Q. What else did you learn in that conversation?  
 19 MS. MUNDON:  
 20 A. I can't recall now what else we would have  
 21 discussed.  
 22 MR. SIMMONS:  
 23 Q. Okay. Now one of the other things you told  
 24 us, the day before yesterday now, about this  
 25 initial time period here, was that you said

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1 that Ms. Bonnell did tell you that the  
 2 department had endorsed the approach that  
 3 Eastern Health had taken back in July  
 4 regarding not immediately communicating the  
 5 issue to the public and about wanting to get  
 6 test results and notify patients beforehand,  
 7 have I got that right?  
 8 MS. MUNDON:  
 9 A. That is what she communicated to me and that  
 10 is what I put in this e-mail as well.  
 11 MR. SIMMONS:  
 12 Q. Right. Now did you tell Mr. Abbott and Ms.  
 13 Hennessey that Ms. Bonnell had told you that,  
 14 that the department had endorsed that approach  
 15 in July?  
 16 MS. MUNDON:  
 17 A. Yes, because as I indicate--well, it's in this  
 18 e-mail here that and that was part of the  
 19 reason -  
 20 MR. SIMMONS:  
 21 Q. Did they take any issue with that fact, that  
 22 information?  
 23 MS. MUNDON:  
 24 A. Well I had sent this e-mail, I don't recall a  
 25 conversation with them after this particular

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1 e-mail. I didn't get a response to this e-  
 2 mail.  
 3 MR. SIMMONS:  
 4 Q. Uh-hm, okay. So they didn't take issue with  
 5 the contention that the department had  
 6 endorsed the approach taken by Eastern Health  
 7 during the summer of '05?  
 8 MS. MUNDON:  
 9 A. They certainly didn't reply to this e-mail.  
 10 MR. SIMMONS:  
 11 Q. Did they otherwise take issue with that fact  
 12 with you or offer any comment on it  
 13 whatsoever?  
 14 MS. MUNDON:  
 15 A. Not that I recall. I can't specifically  
 16 recall if they did or not.  
 17 MR. SIMMONS:  
 18 Q. Okay. P-1439 please? You've already looked  
 19 at these Executive Committee Minutes and this  
 20 is the Executive Committee of Department of  
 21 Health and Community Services, October 28th,  
 22 2005?  
 23 MS. MUNDON:  
 24 A. Yes.  
 25 MR. SIMMONS:

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1 Q. And people in attendance included Mr. Abbott,  
 2 Ms. Hennessey, yourself, Mr. Hynes, Dr. Hunt  
 3 and a number of other people and the note we  
 4 have here, item 5, ER/PR retesting, reads:  
 5 "Tansy Mundon noticed Eastern region is not  
 6 keeping her in the loop on communications  
 7 issues. She was unaware of the interview Dr.  
 8 Williams did on Out of the Fog. Tansy Mundon  
 9 to e-mail John Abbott regarding this issue.  
 10 John Abbott to follow up with George Tilley."  
 11 Now we know that Dr. Williams had done quite a  
 12 few interviews during the course of October,  
 13 since the story first broke.  
 14 MS. MUNDON:  
 15 A. Yes.  
 16 MR. SIMMONS:  
 17 Q. Had Eastern Health been in the practice of  
 18 informing you every time that one of these  
 19 interviews took place?  
 20 MS. MUNDON:  
 21 A. Yes, yes they were.  
 22 MR. SIMMONS:  
 23 Q. Okay, now how did they--how did they know to  
 24 do that? Was that something that you had  
 25 asked Susan Bonnell to ensure to do?

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1 MS. MUNDON:  
 2 A. I can't recall if I asked her to do that or if  
 3 it was generally understood that they would do  
 4 that.  
 5 MR. SIMMONS:  
 6 Q. Uh-hm, so it may have been generally  
 7 understood and was happening.  
 8 MS. MUNDON:  
 9 A. Yes.  
 10 MR. SIMMONS:  
 11 Q. Or you might have specifically said that you  
 12 wanted to be informed of all immediate  
 13 contacts.  
 14 MS. MUNDON:  
 15 A. I can't recall, yes.  
 16 MR. SIMMONS:  
 17 Q. Was your expectation that you would be  
 18 informed in advance of every media contact  
 19 that Eastern Health made?  
 20 MS. MUNDON:  
 21 A. Not every media contact on every issue, no,  
 22 but certainly an issue like this that we had  
 23 already discussed, that it was certainly--I  
 24 would certainly expect to be aware of  
 25 interviews that were being done.

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1 MR. SIMMONS:  
 2 Q. Okay.  
 3 MS. MUNDON:  
 4 A. And not necessarily before, you know, they did  
 5 the interview, but certainly just to let me  
 6 know and all it would take was a quick e-mail  
 7 to say "interview done, story to air tonight"  
 8 or something to that effect.  
 9 MR. SIMMONS:  
 10 Q. Okay. And what sorts of things would they not  
 11 have to notify you of because you said not of?  
 12 MS. MUNDON:  
 13 A. Well just, you know, routine issues from a  
 14 communication's perspective that -  
 15 MR. SIMMONS:  
 16 Q. Okay. Okay, but in this case, even though it  
 17 was a series of interviews over a period of  
 18 time, you still expected that in every case  
 19 you would be told that the interview is being  
 20 done.  
 21 MS. MUNDON:  
 22 A. Yes.  
 23 MR. SIMMONS:  
 24 Q. What about when press releases were being  
 25 issued, even aside from ER/PR, any time

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1 Eastern Health wanted to issue a press  
 2 release, would you have an expectation that  
 3 you would receive an advance copy?  
 4 MS. MUNDON:  
 5 A. I had an expectation that I would receive a  
 6 copy at the same time that it was being  
 7 issued. I did not review their materials from  
 8 that perspective.  
 9 MR. SIMMONS:  
 10 Q. No, no. Did you ever communicate to anyone in  
 11 the communications department of Eastern  
 12 Health that you had an expectation that you  
 13 would receive advance copies of press  
 14 materials or press releases to be issued by  
 15 Eastern Health?  
 16 MS. MUNDON:  
 17 A. Yes, I did.  
 18 MR. SIMMONS:  
 19 Q. You did communicate that?  
 20 MS. MUNDON:  
 21 A. Yes.  
 22 MR. SIMMONS:  
 23 Q. When did you do that?  
 24 MS. MUNDON:  
 25 A. That would have been early in my time in the

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1 department.  
 2 MR. SIMMONS:  
 3 Q. So early in your time there, you told who?  
 4 MS. MUNDON:  
 5 A. It would have been Ms. Bonnell.  
 6 MR. SIMMONS:  
 7 Q. So you told Ms. Bonnell that you wanted to see  
 8 press releases Eastern Health was going to  
 9 issue before they went to the media?  
 10 MS. MUNDON:  
 11 A. At the same time as they were -  
 12 MR. SIMMONS:  
 13 Q. At the same time as going to the media.  
 14 MS. MUNDON:  
 15 A. Like I understood that I wouldn't be reviewing  
 16 them for content, but just as a courtesy to  
 17 include me in the distribution list as a news  
 18 release was being issued.  
 19 MR. SIMMONS:  
 20 Q. And it was at the same time as they were  
 21 issued, no advance notice whatsoever was  
 22 required.  
 23 MS. MUNDON:  
 24 A. Well certainly if advance notice could happen,  
 25 you know, on an issue like this, it would

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1 certainly be helpful.  
 2 MR. SIMMONS:  
 3 Q. Okay, thank you. Now in this particular case  
 4 you said you were unaware of the interview Dr.  
 5 Williams did on "Out of the Fog". Did you see  
 6 the interview?  
 7 MS. MUNDON:  
 8 A. No, I did not.  
 9 MR. SIMMONS:  
 10 Q. Did you get a transcript of it?  
 11 MS. MUNDON:  
 12 A. I believe I had the tape of the interview,  
 13 yes.  
 14 MR. SIMMONS:  
 15 Q. You had the tape of the interview. What was  
 16 the issue in particular about this interview  
 17 that caused concern?  
 18 MS. MUNDON:  
 19 A. I'm not sure if there was one particular  
 20 issue, it was just the fact that it was  
 21 another interview on this issue that had taken  
 22 place and that, you know, I wasn't given a  
 23 heads up on it.  
 24 MR. SIMMONS:  
 25 Q. And you were concerned enough about this to

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1 raise it at the executive meeting and decided  
 2 obviously at that meeting that you'd contact  
 3 Mr. Abbott, Mr. Abbott would take it up with  
 4 the CEO of the organization?  
 5 MS. MUNDON:  
 6 A. I didn't ask that Mr. Abbott take it up with  
 7 the CEO. I didn't go to the meeting to make  
 8 that request. I provide an update on  
 9 communications issues at the executive meeting  
 10 and I would have expressed concern about the  
 11 fact that an interview had taken place on this  
 12 issue and that I wasn't aware of it, just  
 13 because again the public has an expectation  
 14 that the Minister, you know, is kept apprised  
 15 of issues like this.  
 16 MR. SIMMONS:  
 17 Q. Because that's, in some respects, that's an  
 18 interesting point, the view that there's an  
 19 expectation that the Minister must always be  
 20 able to speak to issues that are within the  
 21 operational purview of Eastern Health.  
 22 MS. MUNDON:  
 23 A. I didn't say that he would have to speak to  
 24 the issue, I said that there's an expectation  
 25 that he would be aware of the issue.

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1 MR. SIMMONS:  
 2 Q. Okay, for what purpose then?  
 3 MS. MUNDON:  
 4 A. An issue like this, it certainly would be, the  
 5 public would expect the Minister to be aware  
 6 of the issue. He is the Minister of Health,  
 7 after all.  
 8 MR. SIMMONS:  
 9 Q. You could make the argument that if the  
 10 position of the department, as a whole, and  
 11 the Minister is that issues like this are  
 12 under the operational control of Eastern  
 13 Health, that is Eastern Health makes the  
 14 decisions and takes the responsibility for it,  
 15 the argument can be made that if the Minister  
 16 is asked to comment, that the Minister should  
 17 say it's not my place to comment, that's an  
 18 Eastern Health matter.  
 19 MS. MUNDON:  
 20 A. Yes, I agree; however, that doesn't mean that  
 21 the Minister shouldn't be aware of the issue.  
 22 MR. SIMMONS:  
 23 Q. Okay. Was there an expectation or a desire  
 24 that the Minister be informed enough to  
 25 actually comment on those issues if asked?

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1 MS. MUNDON:  
 2 A. Sorry, can you repeat that?  
 3 MR. SIMMONS:  
 4 Q. Well we've never, I don't think we've ever  
 5 seen anything here where a Minister said, well  
 6 I can't comment on that because that's an  
 7 Eastern Health matter. In reality the desire  
 8 is that the Minister should be able to speak  
 9 to some extent to the issue to satisfy the  
 10 media request for comment on it, even if it's  
 11 an Eastern Health matter, isn't that the  
 12 reality of what happens here?  
 13 MS. MUNDON:  
 14 A. Sometimes, yes, depending on again the  
 15 Minister didn't provide--or there were no  
 16 interviews with the Minister on this issue at  
 17 this point in time.  
 18 MR. SIMMONS:  
 19 Q. No. Now one of the things you said in your  
 20 direct examination was that and I'll just read  
 21 from the quote from the transcript, you said  
 22 "I just had the impression in general from the  
 23 relationship with the department in Eastern  
 24 Health that unless the department asked a  
 25 specific question, then they may not get that

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1 specific answer." And you described that as  
 2 an impression in general from the  
 3 relationship.  
 4 MS. MUNDON:  
 5 A. Uh-hm.  
 6 MR. SIMMONS:  
 7 Q. Now what was the source of your impression,  
 8 how did--why did you form that impression?  
 9 MS. MUNDON:  
 10 A. Well one specific thing I can point to is the  
 11 patient notification aspect, the fact that the  
 12 department was told, well even in that case we  
 13 asked the question and were told the incorrect  
 14 answer. The other piece of information was -  
 15 MR. SIMMONS:  
 16 Q. Now when was that?  
 17 MS. MUNDON:  
 18 A. That would have been in the spring of 2007.  
 19 MR. SIMMONS:  
 20 Q. Okay, so the spring of 2007.  
 21 MS. MUNDON:  
 22 A. But before that, I mean, I can go back to  
 23 December of 2006 with the media briefing, you  
 24 know, if I didn't ask the question are you not  
 25 going to disclose the numbers? Well then, I

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1 wasn't going to be told.  
 2 MR. SIMMONS:  
 3 Q. Okay, that's two examples.  
 4 MS. MUNDON:  
 5 A. Yes.  
 6 MR. SIMMONS:  
 7 Q. You've referred to those before.  
 8 MS. MUNDON:  
 9 A. Yes.  
 10 MR. SIMMONS:  
 11 Q. Aside from those, any other examples that you  
 12 were involved in?  
 13 MS. MUNDON:  
 14 A. In terms of if you go back and look at the  
 15 briefing notes now, you know, information that  
 16 should have been included in those notes that  
 17 was not included in those notes, so you know,  
 18 if the question wasn't answered, then perhaps  
 19 the information wasn't forthcoming. That was  
 20 my, as I said, that was my impression.  
 21 MR. SIMMONS:  
 22 Q. So who did you ever take that up with?  
 23 MS. MUNDON:  
 24 A. I didn't feel it was my place to take it up  
 25 with anybody in terms of the fact that it was

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1 happening at the departmental level and not  
 2 specifically from the communication's aspect.  
 3 MR. SIMMONS:  
 4 Q. Uh-hm. Did you ever ask anything of your  
 5 counterparts in Eastern Health that they  
 6 refused to answer?  
 7 MS. MUNDON:  
 8 A. No. And I don't think I've said that in -  
 9 MR. SIMMONS:  
 10 Q. No, but I'm just asking you now.  
 11 MS. MUNDON:  
 12 A. Yes, no.  
 13 MR. SIMMONS:  
 14 Q. No. So anytime you asked the question, you  
 15 did get an answer?  
 16 MS. MUNDON:  
 17 A. That I'm aware of, yes.  
 18 MR. SIMMONS:  
 19 Q. Are there any specific examples in your  
 20 dealings with your counterparts at Eastern  
 21 Health where you feel that your question  
 22 wasn't specific enough to get the answer that  
 23 you wanted? Your dealings with your  
 24 counterparts.  
 25 MS. MUNDON:

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1 A. Well certain, again from a communication's  
 2 perspective on the patient notification  
 3 aspect, you know, that, as we know -  
 4 MR. SIMMONS:  
 5 Q. Okay, now tell me about who you spoke to about  
 6 that when you feel that you didn't get the  
 7 answer that you needed?  
 8 MS. MUNDON:  
 9 A. I spoke to Ms. Bonnell.  
 10 MR. SIMMONS:  
 11 Q. Okay, when was that?  
 12 MS. MUNDON:  
 13 A. I can't specifically recall the date now, but  
 14 it would have been--it wouldn't have been just  
 15 on one occasion, I would have asked the  
 16 question -  
 17 MR. SIMMONS:  
 18 Q. Okay, and was your question was had all  
 19 patients been notified of their retesting -  
 20 MS. MUNDON:  
 21 A. Had all patients been contacted.  
 22 MR. SIMMONS:  
 23 Q. Had all patients been contacted. And Ms.  
 24 Bonnell told you that they had?  
 25 MS. MUNDON:

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1 A. Yes.  
 2 MR. SIMMONS:  
 3 Q. Do you have any reason to believe that she  
 4 thought that that was not true?  
 5 MS. MUNDON:  
 6 A. No.  
 7 MR. SIMMONS:  
 8 Q. So if she thought that was the answer to the  
 9 question, that all the patients had been  
 10 contacted, you weren't being misled by her,  
 11 were you?  
 12 MS. MUNDON:  
 13 A. If that's the case, no.  
 14 MR. SIMMONS:  
 15 Q. And you had no reason to think that she didn't  
 16 believe that to be true?  
 17 MS. MUNDON:  
 18 A. But I wouldn't have any proof otherwise, no.  
 19 MR. SIMMONS:  
 20 Q. Okay. Well let's move on to the November 23rd  
 21 meeting with the Minister and people of  
 22 Eastern Health that happened outside of the  
 23 House.  
 24 THE COMMISSIONER:  
 25 Q. I'm sorry, Mr. Simmons, before we leave this

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1 one, because I will forget the question that  
 2 was popping through my head if we don't do it  
 3 now. When you were answering Mr. Simmons'  
 4 question regarding this, you said something  
 5 like that was another example. And yesterday  
 6 when this exhibit was up and you were  
 7 answering questions from Ms. Chaytor, I had  
 8 gotten the impression that at this stage other  
 9 than this particular issue with Dr. Williams,  
 10 you had had no complaint about being kept out  
 11 of the loop, was I wrong in that?  
 12 MS. MUNDON:  
 13 A. No, that's accurate, Madam Commissioner. I  
 14 don't recall saying that this was another  
 15 example in the context of this.  
 16 THE COMMISSIONER:  
 17 Q. Okay, so yesterday--well I've give you my  
 18 impression of what I got from what you had  
 19 said either yesterday or the day before,  
 20 whichever it was and you tell me whether or  
 21 not I have it right or wrong.  
 22 MS. MUNDON:  
 23 A. Yes.  
 24 THE COMMISSIONER:  
 25 Q. I understood from your evidence as a result of

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1 Ms. Chaytor's questioning that the notation  
 2 here regarding the interview that Dr. Williams  
 3 had done in "Out of the Fog" that you said you  
 4 had not been given a heads up on it, as it  
 5 were.  
 6 MS. MUNDON:  
 7 A. Correct.  
 8 THE COMMISSIONER:  
 9 Q. Was the first occasion where you had  
 10 identified a circumstance where you had not  
 11 been given such a heads up.  
 12 MS. MUNDON:  
 13 A. Correct.  
 14 THE COMMISSIONER:  
 15 Q. All right, thank you. Sorry, Mr. Simmons.  
 16 MR. SIMMONS:  
 17 Q. Thank you, Commissioner. We'll go to the 23rd  
 18 of November meeting and I understand there was  
 19 one hand out or one piece of paper produced by  
 20 Eastern Health at that meeting and that that  
 21 was the sheet with the retest result numbers  
 22 on it.  
 23 MS. MUNDON:  
 24 A. Yes.  
 25 MR. SIMMONS:



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1 Q. Do you recall there being anything else, any  
 2 other materials that were used at that  
 3 meeting?  
 4 MS. MUNDON:  
 5 A. No.  
 6 MR. SIMMONS:  
 7 Q. Okay, that one is at P-0125, page 42 please?  
 8 There you go, I got it right. This is the one  
 9 you're referring to, is it?  
 10 MS. MUNDON:  
 11 A. Yes.  
 12 MR. SIMMONS:  
 13 Q. Okay. And we've heard from other witnesses  
 14 that at this meeting, I believe it was Mr.  
 15 Tilley gave a presentation and ran through the  
 16 information on this, on this sheet, do you  
 17 recall that?  
 18 MS. MUNDON:  
 19 A. I don't recall going through all the specific  
 20 numbers, no.  
 21 MR. SIMMONS:  
 22 Q. Okay. You told us that what you did recall  
 23 was a discussion about particular numbers from  
 24 this.  
 25 MS. MUNDON:

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1 A. Yes.  
 2 MR. SIMMONS:  
 3 Q. Which parts of the information on this sheet  
 4 do you recall being discussed?  
 5 MS. MUNDON:  
 6 A. I recall there was a discussion around the  
 7 deceased numbers.  
 8 MR. SIMMONS:  
 9 Q. Yes.  
 10 MS. MUNDON:  
 11 A. And as well, as I indicated in my testimony  
 12 the numbers 104 and 2760 were used and it was  
 13 said that it was within three percent margin  
 14 of error.  
 15 MR. SIMMONS:  
 16 Q. Okay. Now was there any discussion of the  
 17 other numbers here? Because there's a series  
 18 of breakdowns of, for example, retests where  
 19 there were no change in results, retests where  
 20 there were change in results, retests where  
 21 there were no changes in treatment and retests  
 22 where there were changes in treatment. Was  
 23 this explained and talked about at the  
 24 meeting?  
 25 MS. MUNDON:

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1 A. I don't recall that, no.  
 2 MR. SIMMONS:  
 3 Q. Don't recall.  
 4 MS. MUNDON:  
 5 A. No.  
 6 MR. SIMMONS:  
 7 Q. Okay. Now there are no percentages or rates  
 8 included in the information on this sheet, are  
 9 there?  
 10 MS. MUNDON:  
 11 A. No.  
 12 MR. SIMMONS:  
 13 Q. There's no presentation of any particular  
 14 error rate or change rate or margin of error  
 15 anything like that?  
 16 MS. MUNDON:  
 17 A. No.  
 18 MR. SIMMONS:  
 19 Q. Included in this pre-prepared information.  
 20 MS. MUNDON:  
 21 A. That's right.  
 22 MR. SIMMONS:  
 23 Q. Correct. Now if you were to take these  
 24 numbers, I'm going to suggest that there's  
 25 various ways that you could calculate rates

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1 and percentages, depending on which numbers  
 2 you choose.  
 3 MS. MUNDON:  
 4 A. As we know that, yes.  
 5 MR. SIMMONS:  
 6 Q. Aren't there?  
 7 MS. MUNDON:  
 8 A. Yes.  
 9 MR. SIMMONS:  
 10 Q. There are multiple ways you could do it.  
 11 MS. MUNDON:  
 12 A. Yes.  
 13 MR. SIMMONS:  
 14 Q. Depends on whether you compare changes to the  
 15 total number of tests done originally or to  
 16 the total number of tests done, right?  
 17 MS. MUNDON:  
 18 A. Yes.  
 19 MR. SIMMONS:  
 20 Q. Depends on whether you're comparing using the  
 21 number of treatment changes or the total  
 22 number of changed test results.  
 23 MS. MUNDON:  
 24 A. Yes.  
 25 MR. SIMMONS:

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1 Q. And it would even depend on whether you were  
 2 able to include or exclude the results of the  
 3 deceased?  
 4 MS. MUNDON:  
 5 A. Yes.  
 6 MR. SIMMONS:  
 7 Q. There's multiple ways that it could be done.  
 8 MS. MUNDON:  
 9 A. Correct.  
 10 MR. SIMMONS:  
 11 Q. Now, when you were examined on this initially,  
 12 you told us that there was some discussion  
 13 around the rate of error.  
 14 MS. MUNDON:  
 15 A. Yes.  
 16 MR. SIMMONS:  
 17 Q. And Eastern Health had indicated that they  
 18 didn't like to use the terminology, "rate of  
 19 error".  
 20 MS. MUNDON:  
 21 A. Um-hm.  
 22 MR. SIMMONS:  
 23 Q. And that because they really didn't know what  
 24 a true rate of error was at this stage, and  
 25 there was some discussion in the meeting about

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1 the fact that if you don't have the deceased  
 2 numbers, then how can you calculate a true  
 3 rate of error.  
 4 MS. MUNDON:  
 5 A. Um-hm.  
 6 MR. SIMMONS:  
 7 Q. That's what you told us. So, was the position  
 8 taken by Eastern Health at that meeting that  
 9 they didn't know the way to calculate an  
 10 error rate based on the information here and  
 11 that there wasn't any single way to do it that  
 12 they were comfortable presenting?  
 13 MS. MUNDON:  
 14 A. I don't recall them saying that in that way,  
 15 no. I recall, as I said, that there was some,  
 16 there was a level of uncomfortableness with  
 17 using the terminology "rate of error".  
 18 However, that being said, they did, in that  
 19 meeting, use the 2760 and the 104 and 3  
 20 percent margin of error.  
 21 MR. SIMMONS:  
 22 Q. Who did that?  
 23 MS. MUNDON:  
 24 A. I can't recall specifically who did it.  
 25 MR. SIMMONS:

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1 Q. When you're examined on this, after the  
 2 portion I just read, Ms. Chaytor asked you who  
 3 made that comment and you said, "I can't  
 4 recall who made it".  
 5 MS. MUNDON:  
 6 A. Um-hm.  
 7 MR. SIMMONS:  
 8 Q. Then you were asked, "what was Eastern  
 9 Health's issue with using the phraseology  
 10 'rate of error'" and your answer was, "I think  
 11 they just didn't like the terminology because  
 12 they didn't feel that they could truly define  
 13 a rate of error".  
 14 MS. MUNDON:  
 15 A. Um-hm.  
 16 MR. SIMMONS:  
 17 Q. So, despite what you're telling us about  
 18 comparing the numbers that you pointed out,  
 19 was the upshot of what Eastern Health was  
 20 presenting was that they felt they couldn't  
 21 define a rate of error that they could use  
 22 here? Because that's what you said initially.  
 23 MS. MUNDON:  
 24 A. But why would they--yes, I do acknowledge the  
 25 fact that they were uncomfortable with rate of

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1 error, but -  
 2 MR. SIMMONS:  
 3 Q. Right.  
 4 MS. MUNDON:  
 5 A. - you know, why were led, 2760, 104, 3 percent  
 6 which was an acceptable margin of error.  
 7 MR. SIMMONS:  
 8 Q. Now, 3 percent doesn't show up in any of the  
 9 materials that follow this. It doesn't show  
 10 up in the Department of Health and Community  
 11 Services briefing notes, does it?  
 12 MS. MUNDON:  
 13 A. No.  
 14 MR. SIMMONS:  
 15 Q. No. It doesn't show up in any materials  
 16 prepared by Eastern Health.  
 17 MS. MUNDON:  
 18 A. No.  
 19 MR. SIMMONS:  
 20 Q. No, okay. In your direct evidence, from your  
 21 questions before and you mentioned the 3  
 22 percent, you said that it was a 3 percent  
 23 margin of error compared to national  
 24 standards, I understood you to say.  
 25 MS. MUNDON:

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1 A. Um-hm.  
 2 MR. SIMMONS:  
 3 Q. What was your understanding then about what  
 4 national standards may have been spoken of at  
 5 that meeting?  
 6 MS. MUNDON:  
 7 A. I can't specifically recall now.  
 8 MR. SIMMONS:  
 9 Q. Was there any discussion about positivity  
 10 rates and the idea of how many tests you would  
 11 expect to be positive in a per year with this  
 12 test.  
 13 MS. MUNDON:  
 14 A. I can't recall that.  
 15 MR. SIMMONS:  
 16 Q. Can't recall that?  
 17 MS. MUNDON:  
 18 A. No.  
 19 MR. SIMMONS:  
 20 Q. There wasn't any discussion or you can't  
 21 recall if there was or there wasn't.  
 22 MS. MUNDON:  
 23 A. I can't recall if there was or if there  
 24 wasn't.  
 25 MR. SIMMONS:

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1 Q. Now, if you look at this sheet that was handed  
 2 out, I don't think the number of 117 is there.  
 3 MS. MUNDON:  
 4 A. No.  
 5 MR. SIMMONS:  
 6 Q. How did--and later we know that 117 was the  
 7 number that was used by Eastern Health. Was  
 8 there any discussion at this meeting of that  
 9 117 number?  
 10 MS. MUNDON:  
 11 A. I can't recall there being.  
 12 MR. SIMMONS:  
 13 Q. Okay. If we go to page 39 on this same  
 14 exhibit, there's a briefing note here,  
 15 question and answer briefing note.  
 16 MS. MUNDON:  
 17 A. Yes.  
 18 MR. SIMMONS:  
 19 Q. And I'll try to go down to the end of it here,  
 20 dated November 2006.  
 21 MS. MUNDON:  
 22 A. Yes.  
 23 MR. SIMMONS:  
 24 Q. So, this was prepared four days after that  
 25 briefing.

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1 MS. MUNDON:  
 2 A. Yes.  
 3 MR. SIMMONS:  
 4 Q. And if we look at the third last bullet here  
 5 on page 41, there are some numbers there,  
 6 Eastern Health provided a briefing to the  
 7 Health and Community Services minister on  
 8 November 23. The details are, "total cases  
 9 reviewed, 2760; total patients retested, 939;  
 10 resulted obtained and reviewed, 939"--that  
 11 number is actually wrong, that should be a  
 12 763--"patients who are deceased, 176. And  
 13 then it says, "patients" and doesn't explain,  
 14 "117".  
 15 MS. MUNDON:  
 16 A. Um-hm.  
 17 MR. SIMMONS:  
 18 Q. Do you have any idea where that 117 number  
 19 came from in this November 27 -  
 20 MS. MUNDON:  
 21 A. No, I wouldn't have been involved with the  
 22 drafting of that briefing note -  
 23 MR. SIMMONS:  
 24 Q. Would you have reviewed this briefing note?  
 25 Would it have come to you for you to see?

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1 MS. MUNDON:  
 2 A. I don't review briefing notes for approval. I  
 3 would have been focused certainly on the key  
 4 messages and question/answer section.  
 5 MR. SIMMONS:  
 6 Q. Would you get it for information?  
 7 MS. MUNDON:  
 8 A. I would get it for information.  
 9 MR. SIMMONS:  
 10 Q. Okay. So you would have been able to see that  
 11 this 117 number was here in this briefing note  
 12 on the 27th?  
 13 MS. MUNDON:  
 14 A. Yes. I wouldn't have the one-page sheet and  
 15 be comparing, contrasting the numbers in that  
 16 context.  
 17 MR. SIMMONS:  
 18 Q. And I'll go back to the first page of the  
 19 briefing note.  
 20 MS. MUNDON:  
 21 A. Um-hm.  
 22 MR. SIMMONS:  
 23 Q. The key messages, these are the things, you  
 24 are involved in the key messages, right?  
 25 MS. MUNDON:

1 A. Yes.  
 2 MR. SIMMONS:  
 3 Q. Second one, "Our first priority was to the 117  
 4 patients who had negative ER/PR results." So  
 5 117 is repeated there in the key messages, as  
 6 well?  
 7 MS. MUNDON:  
 8 A. Um-hm.  
 9 MR. SIMMONS:  
 10 Q. Would you have been involved in drafting the  
 11 key messages and editing them?  
 12 MS. MUNDON:  
 13 A. Well, as I said earlier, there were occasions  
 14 where the key messages would have been drafted  
 15 by staff and I would have looked at them, so I  
 16 can't say for certain that I wrote this.  
 17 MR. SIMMONS:  
 18 Q. Um-hm.  
 19 MS. MUNDON:  
 20 A. It's likely that it may have been written by a  
 21 staff member and that I would certainly see  
 22 it, yes.  
 23 MR. SIMMONS:  
 24 Q. You would have known from the November 23rd  
 25 presentation or from looking at the hand out

1 MS. MUNDON:  
 2 A. Yes.  
 3 MR. SIMMONS:  
 4 Q. Right?  
 5 MS. MUNDON:  
 6 A. Correct.  
 7 MR. SIMMONS:  
 8 Q. And when you looked at these key messages, the  
 9 number you had in there was the 117, not the  
 10 larger number of tests that changed why would  
 11 you not have included something here to make  
 12 sure that the people who were going to use  
 13 this briefing note were aware that Eastern  
 14 Health had given the department this  
 15 information about the larger number of tests  
 16 that had changed?  
 17 MS. MUNDON:  
 18 A. Because, as I indicated earlier to you, the  
 19 focus in that briefing was on the 2760 and the  
 20 other number and that was where the focus was.  
 21 The focus, I don't recall them, Eastern Health  
 22 taking us through the numbers and talking  
 23 about conversion rates or anything like that.  
 24 MR. SIMMONS:  
 25 Q. So was there any discussion at all about the

1 that came from Eastern Health that we just  
 2 looked at, you would have known how many tests  
 3 changed?  
 4 MS. MUNDON:  
 5 A. Um-hm.  
 6 MR. SIMMONS:  
 7 Q. And that it wasn't 117, that it was--we can go  
 8 back and look at the number, that it's over  
 9 300?  
 10 MS. MUNDON:  
 11 A. There were a lot of numbers at that meeting  
 12 and I certainly wouldn't have been tuned in  
 13 to, without having the sheet in front of me,  
 14 looking at all those numbers.  
 15 MR. SIMMONS:  
 16 Q. Yeah, okay.  
 17 MS. MUNDON:  
 18 A. And, you know, I wasn't managing the file.  
 19 I'm, you know, dealing with it from a  
 20 communications perspective, so I wouldn't  
 21 looking at it with that lens.  
 22 MR. SIMMONS:  
 23 Q. But you do want to make sure that what's  
 24 communicated accurately reflects the  
 25 information that's available?

1 number of tests that had actually changed?  
 2 MS. MUNDON:  
 3 A. I can't recall -  
 4 MR. SIMMONS:  
 5 Q. In the meeting? There was--you can't recall  
 6 there being any?  
 7 MS. MUNDON:  
 8 A. I can't recall if there was or if there  
 9 wasn't.  
 10 MR. SIMMONS:  
 11 Q. If there was or if there wasn't, okay.  
 12 MR. PRITCHARD:  
 13 Q. Commissioner, excuse me. I wonder, there are  
 14 two November 27th briefing notes and I think  
 15 we've determined that one of them actually  
 16 wasn't done on November 27th, it's a draft of  
 17 the December 11th note. And I'm wondering if  
 18 this might be -  
 19 MR. SIMMONS:  
 20 Q. That may be the case.  
 21 MR. PRITCHARD:  
 22 Q. - the one. It makes reference to -  
 23 COMMISSIONER:  
 24 Q. Okay, we should resolve that.  
 25 MR. PRITCHARD:

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1 Q. So, I believe this is the one that was  
 2 actually a draft of--this was probably done  
 3 after the 27th.  
 4 THE COMMISSIONER:  
 5 Q. Okay, so there's a second November 27th--a  
 6 second memo with November 27 on it, although  
 7 not both having been done.  
 8 MR. PRITCHARD:  
 9 Q. That's right. I believe it's the other one  
 10 that is actually the November 27 note. This  
 11 appears to be--makes reference to things that  
 12 happened after November 27, suggesting that it  
 13 was a draft, probably done December 11.  
 14 MS. MUNDON:  
 15 A. That certainly makes sense because I don't  
 16 recall the number 117 being used before -  
 17 THE COMMISSIONER:  
 18 Q. And are you able to tell me which one is the  
 19 one that you'd--where we can find the one that  
 20 you say is the genuine one.  
 21 MR. PRITCHARD:  
 22 Q. It should be right in the proximity of this  
 23 one. If we look at the start of this one,  
 24 Commissioner, you'll notice it makes reference  
 25 under "Issue" to December 12.

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1 THE COMMISSIONER:  
 2 Q. Yes.  
 3 MR. PRITCHARD:  
 4 Q. And I believe it's probably the next one in  
 5 the sequence, one or -  
 6 THE COMMISSIONER:  
 7 Q. My recollection is that the witness was taken  
 8 through that yesterday, the day before and -  
 9 MR. PRITCHARD:  
 10 Q. This may be it here.  
 11 THE COMMISSIONER:  
 12 Q. Okay. So, this is now on page 43/44/45.  
 13 MR. SIMMONS:  
 14 Q. You are correct, Mr. Pritchard, my apologies  
 15 for having misunderstood the import of that  
 16 particular note. And as we look at it, we can  
 17 see in this particular one that -  
 18 THE COMMISSIONER:  
 19 Q. Thank you, Mr. Pritchard.  
 20 MR. SIMMONS:  
 21 Q. - the 117 doesn't appear to be mentioned in  
 22 this note which we're taking to be the actual  
 23 November 27 note. So, the other one would  
 24 have been the draft following.  
 25 MS. MUNDON:

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1 A. Which makes sense.  
 2 MR. SIMMONS:  
 3 Q. Let me take you then to P-0314 and page 10,  
 4 please. This is another copy of that same  
 5 hand out from that particular meeting and we  
 6 were told by Minister Osborne that this was  
 7 the copy on which he kept his notes.  
 8 MS. MUNDON:  
 9 A. Um-hm.  
 10 MR. SIMMONS:  
 11 Q. And if you look on bottom left there, he's got  
 12 a note, he's got two portions of the numbers  
 13 marked. One was under the heading "change in  
 14 results, but does not require treatment  
 15 change", there's a subheading there which has  
 16 13.  
 17 MS. MUNDON:  
 18 A. Um-hm.  
 19 MR. SIMMONS:  
 20 Q. And then he's got under "change in results  
 21 that requires treatment change", there's 104.  
 22 MS. MUNDON:  
 23 A. Um-hm.  
 24 MR. SIMMONS:  
 25 Q. And he's written those, "add those equals 117

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1 to get true number". So, it appears that  
 2 Minister Osborne had noted during the meeting  
 3 some discussion of the 117 number. Do you  
 4 have any recollection of that coming out in  
 5 the discussion at the meeting on the 23rd of  
 6 November?  
 7 MS. MUNDON:  
 8 A. I don't recall the specifics around that.  
 9 MR. SIMMONS:  
 10 Q. Okay. P-0195, please. This is an e-mail from  
 11 the 27th of November. You were shown this  
 12 earlier and the discussion that you had with  
 13 Ms. Chaytor around this was about the request  
 14 for meeting on the 4th of December with Mr.  
 15 Abbott, Mr. Tilley, Ms. Bonnell and yourself.  
 16 And one of the things that you said was that  
 17 you couldn't recall specifically why the  
 18 request was made, but you said it may have  
 19 been around the communications materials and  
 20 the fact they would be preparing them and we  
 21 wouldn't have seen them up to that point or  
 22 had any sense of what was going to be in the  
 23 materials.  
 24 MS. MUNDON:  
 25 A. That certainly wouldn't be the whole purpose

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1 of the meeting, no.  
 2 MR. SIMMONS:  
 3 Q. No, it wouldn't have been. And, in fact,  
 4 would there even have been, at this point any  
 5 concern about getting access to those  
 6 materials because the meeting with the  
 7 minister had just been on the 23rd, the  
 8 briefing wasn't going to be until the 11th of  
 9 December.  
 10 MS. MUNDON:  
 11 A. That's correct.  
 12 MR. SIMMONS:  
 13 Q. So, while you mentioned that, that wasn't -  
 14 MS. MUNDON:  
 15 A. Said it may have been.  
 16 MR. SIMMONS:  
 17 Q. - that my have been, but you don't have a  
 18 recollection of that being a purpose for a  
 19 meeting here.  
 20 MS. MUNDON:  
 21 A. No.  
 22 MR. SIMMONS:  
 23 Q. So, do you recall there being any outstanding  
 24 requests that you'd made for access to those  
 25 briefing materials which wasn't satisfied?

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1 MS. MUNDON:  
 2 A. Well, I knew at that point in time that they  
 3 hadn't been drafted.  
 4 MR. SIMMONS:  
 5 Q. Okay. So, you knew by then that they hadn't  
 6 been prepared.  
 7 MS. MUNDON:  
 8 A. That's right.  
 9 MR. SIMMONS:  
 10 Q. Now, at the meeting on December 4, did Eastern  
 11 Health, people from Eastern Health bring any  
 12 concerns to that meeting from their side of  
 13 the communications relationship?  
 14 MS. MUNDON:  
 15 A. I can't recall there being anything, no. They  
 16 may have just said in general that, you know,  
 17 communications is a two-way flow type thing.  
 18 MR. SIMMONS:  
 19 Q. Um-hm, okay. Was there any perception that  
 20 the type of relationship and the extent of it  
 21 or the expectations around the communications  
 22 relationship between the health authority and  
 23 the department had been changing over time?  
 24 MS. MUNDON:  
 25 A. In what kind of text would you -

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1 MR. SIMMONS:  
 2 Q. In that the department was becoming more  
 3 demanding of the health authorities in -  
 4 MS. MUNDON:  
 5 A. Certainly we had a new minister at that time  
 6 who had greater expectations for, you know,  
 7 receiving information and being kept in the  
 8 loop, yes.  
 9 MR. SIMMONS:  
 10 Q. Okay. And how had that affected the way that  
 11 you had to carry out your responsibilities?  
 12 MS. MUNDON:  
 13 A. Well, just as I indicated, there'd be greater  
 14 expectation for information.  
 15 MR. SIMMONS:  
 16 Q. Okay. Had that been communicated by you to  
 17 any of your counterparts at Eastern Health  
 18 prior to this December 4 meeting?  
 19 MS. MUNDON:  
 20 A. I'm pretty sure that it did, yes. I would  
 21 have told them that there was a new minister  
 22 and I would have been explaining the  
 23 differences in the styles between the two  
 24 ministers.  
 25 MR. SIMMONS:

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1 Q. Okay. Now, at the meeting, you've told us  
 2 that the outcome wasn't satisfactory to you  
 3 from that meeting. Was the outcome that the  
 4 other participants hadn't agreed to change the  
 5 way that they way approached informing the  
 6 department about things that they were doing?  
 7 Was that what was unsatisfactory to you?  
 8 MS. MUNDON:  
 9 A. Yes.  
 10 MR. SIMMONS:  
 11 Q. Okay. And that was Mr. Abbott's position as  
 12 well?  
 13 MS. MUNDON:  
 14 A. I wouldn't say it was Mr. Abbott's position.  
 15 Mr. Abbott didn't dispute it.  
 16 MR. SIMMONS:  
 17 Q. So, what were the concrete things that you  
 18 wanted to change at that meeting?  
 19 MS. MUNDON:  
 20 A. Well, I just wanted there to be a greater co-  
 21 operation between myself and Eastern Health,  
 22 similar to what I would have with the other  
 23 three health authorities.  
 24 MR. SIMMONS:  
 25 Q. Okay. Up to that point, the one example of

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1 not being informed of something was Dr.  
 2 Williams' interview on Out of the Fog.  
 3 MS. MUNDON:  
 4 A. Um-hm.  
 5 MR. SIMMONS:  
 6 Q. Right?  
 7 MS. MUNDON:  
 8 A. That's the one documented example, yes.  
 9 MR. SIMMONS:  
 10 Q. The one documented one, okay. Were there any  
 11 others other than that?  
 12 MS. MUNDON:  
 13 A. There would have been, yes, because I wouldn't  
 14 have had the discussion with Mr. Abbott if  
 15 there was not.  
 16 MR. SIMMONS:  
 17 Q. Can you remember any others?  
 18 MS. MUNDON:  
 19 A. I can't recall the specifics right now.  
 20 MR. SIMMONS:  
 21 Q. Was there any concern expressed that you  
 22 wanted an opportunity to see press materials  
 23 that would be released by Eastern Health prior  
 24 to them being released, not to approve them,  
 25 but that you wanted to at least be aware of

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1 them and be able to respond to Eastern Health  
 2 before they released them.  
 3 MS. MUNDON:  
 4 A. Well, as I indicated earlier, I certainly  
 5 would have liked to have seen a copy before or  
 6 at the same time they were going out; again,  
 7 not to edit them.  
 8 MR. SIMMONS:  
 9 Q. So, was there anything that came out of that  
 10 meeting by way of a direction to Eastern  
 11 Health to do anything differently?  
 12 MS. MUNDON:  
 13 A. Well, I certainly wouldn't have the authority  
 14 to given direction.  
 15 MR. SIMMONS:  
 16 Q. Did the deputy minister -  
 17 MS. MUNDON:  
 18 A. Not that I recall.  
 19 MR. SIMMONS:  
 20 Q. - ask Eastern Health to do anything  
 21 differently?  
 22 MS. MUNDON:  
 23 A. No.  
 24 MR. SIMMONS:  
 25 Q. Had anyone from Eastern Health expressed any

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1 concern about the timeliness of getting  
 2 feedback from the department about materials  
 3 that they intended to release by way of press  
 4 releases?  
 5 MS. MUNDON:  
 6 A. I can't recall any specifics around that.  
 7 MR. SIMMONS:  
 8 Q. Okay. Then on December 11, the media briefing  
 9 took place at Eastern Health. P-104 is  
 10 Eastern Health materials, please. So, by this  
 11 time you'd been to the November 23 briefing.  
 12 MS. MUNDON:  
 13 A. Um-hm.  
 14 MR. SIMMONS:  
 15 Q. And you've told us that your impression was,  
 16 coming out of that, was that all the  
 17 information at the briefing on the 23rd would  
 18 be used when Eastern Health gave its media  
 19 briefing.  
 20 MS. MUNDON:  
 21 A. Correct.  
 22 MR. SIMMONS:  
 23 Q. And you describe that as an impression.  
 24 MS. MUNDON:  
 25 A. Yes.

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1 MR. SIMMONS:  
 2 Q. Why did you describe that as your impression?  
 3 MS. MUNDON:  
 4 A. Because I can't recall specifically someone  
 5 stating that this sheet would be used, for  
 6 example, but I certainly had the impression  
 7 when I left that meeting, as I know others  
 8 did, that all the information would be  
 9 disclosed.  
 10 MR. SIMMONS:  
 11 Q. Was there any discussion at all about what  
 12 Eastern Health would actually include in the  
 13 briefing for the media, the meeting on the  
 14 23rd?  
 15 MS. MUNDON:  
 16 A. Was there discussion around communications  
 17 materials?  
 18 MR. SIMMONS:  
 19 Q. No. Was there any discussion at all about  
 20 just what information Eastern Health would or  
 21 would not release at the technical briefing  
 22 for the media that was coming up?  
 23 MS. MUNDON:  
 24 A. They didn't refer to any specific documents,  
 25 but as I said earlier, it certainly was my

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1 impression, leaving that meeting, that all the  
 2 information would be disclosed and there was  
 3 nothing stated to the contrary.  
 4 MR. SIMMONS:  
 5 Q. Okay. Nothing stated to the contrary, but can  
 6 you tell us whether or not you recall there  
 7 even being any discussion about the issue at  
 8 the November 23 meeting?  
 9 MS. MUNDON:  
 10 A. There was certainly discussion about the  
 11 briefing and the general, you know, the fact  
 12 that individuals would be present there to  
 13 answer questions. So, there was a general  
 14 discussion about the briefing, yes.  
 15 MR. SIMMONS:  
 16 Q. Can you recall--do you or don't you recall if  
 17 there was discussion about whether or not any  
 18 particular numbers or any particular items of  
 19 information would or would not be released?  
 20 MS. MUNDON:  
 21 A. Again, I can't say specifically; I can't point  
 22 to any specific conversation, but it was my  
 23 impression -  
 24 MR. SIMMONS:  
 25 Q. Right.

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1 MS. MUNDON:  
 2 A. - leaving the meeting that it would be  
 3 disclosed.  
 4 MR. SIMMONS:  
 5 Q. Right. So, you can't say -  
 6 MS. MUNDON:  
 7 A. And I don't feel that I would come to that  
 8 impression on my own.  
 9 MR. SIMMONS:  
 10 Q. Right, but you can't tell us who said what, if  
 11 anything, to leave you with that impression  
 12 other than that was the general impression  
 13 that you had when you left the meeting.  
 14 MS. MUNDON:  
 15 A. I can't tell you any specific comment, no.  
 16 MR. SIMMONS:  
 17 Q. So then on December 11 you did get these  
 18 materials. You've told us that you probably  
 19 didn't read down through them all. You  
 20 probably looked at the press release and the  
 21 key messages and at some later point, took a  
 22 closer look at the materials.  
 23 MS. MUNDON:  
 24 A. um-hm.  
 25 MR. SIMMONS:

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1 Q. But you did distribute them fairly widely  
 2 within your department, right.  
 3 MS. MUNDON:  
 4 A. Yes.  
 5 MR. SIMMONS:  
 6 Q. Okay. And if we go to page four, that's the  
 7 press release.  
 8 MS. MUNDON:  
 9 A. Yes.  
 10 MR. SIMMONS:  
 11 Q. You did read down through this.  
 12 MS. MUNDON:  
 13 A. Yes.  
 14 MR. SIMMONS:  
 15 Q. And you would have seen the numbers that were  
 16 in this.  
 17 MS. MUNDON:  
 18 A. Yes.  
 19 MR. SIMMONS:  
 20 Q. 2760 total tests, 939 retests, 117 patients  
 21 identified as requiring treatment changes.  
 22 MS. MUNDON:  
 23 A. Yes.  
 24 MR. SIMMONS:  
 25 Q. All right. You would have known, if not the

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1 number, you would have known from the briefing  
 2 on the 23rd that there were more than 117  
 3 tests that actually changed when retested.  
 4 There were some that changed, but there were  
 5 not treatment changes for patients.  
 6 MS. MUNDON:  
 7 A. I would have known that, but I wouldn't  
 8 expect, as I said earlier, I wouldn't expect  
 9 all of the numbers to be outlined in a news  
 10 release.  
 11 MR. SIMMONS:  
 12 Q. Okay. So, you would have known that though?  
 13 MS. MUNDON:  
 14 A. Well, what I was--what I'd be looking at this  
 15 news release, I certainly wouldn't have had  
 16 the one page fax sheet with me to be comparing  
 17 and contrasting the numbers.  
 18 MR. SIMMONS:  
 19 Q. Did or did not?  
 20 MS. MUNDON:  
 21 A. I did not.  
 22 MR. SIMMONS:  
 23 Q. You did not, no, but when you left the meeting  
 24 on the 23rd, you knew there were more than 117  
 25 tests that had changed, right?



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1 MS. MUNDON:  
 2 A. Well, again as I said to you, I don't recall  
 3 going down, like a breakdown of all the  
 4 numbers. Certainly, the impression that was  
 5 left with me, like, they brought up the 2760  
 6 and the 107 and again, that was where we were  
 7 led with the 3 percent margin of error.  
 8 MR. SIMMONS:  
 9 Q. In May of '07 when there's the public issue  
 10 about the fact that or about the total number  
 11 of retests not having been released.  
 12 MS. MUNDON:  
 13 A. Yes.  
 14 MR. SIMMONS:  
 15 Q. The whole discussion then seems to be premised  
 16 on the fact that that was a very important  
 17 number.  
 18 MS. MUNDON:  
 19 A. Yes.  
 20 MR. SIMMONS:  
 21 Q. Right. Did you recognize that as an important  
 22 number on the 23rd of November or any time  
 23 before you read this press release?  
 24 MS. MUNDON:  
 25 A. I can't say for certain if I recognized it as

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1 being important number because it wasn't  
 2 conveyed as an important number in that  
 3 briefing.  
 4 MR. SIMMONS:  
 5 Q. Okay. So, when you read this press release,  
 6 you did not and would recognized the absence  
 7 of that information from this press release?  
 8 MS. MUNDON:  
 9 A. I would certainly have been aware that there  
 10 would be more numbers.  
 11 MR. SIMMONS:  
 12 Q. Um-hm.  
 13 MS. MUNDON:  
 14 A. And as I said before, I wouldn't necessarily  
 15 expect those numbers to be contained within a  
 16 news release, but my expectation would have  
 17 been that the health authority would have  
 18 provided an explanation on all of the numbers  
 19 to the public.  
 20 MR. SIMMONS:  
 21 Q. Right. Would you expect the important numbers  
 22 to be in the press release?  
 23 MS. MUNDON:  
 24 A. In hindsight, yes, I would.  
 25 MR. SIMMONS:

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1 Q. At the time, would you have expected the  
 2 important numbers to be in the press release?  
 3 MS. MUNDON:  
 4 A. I would have expected, as I said, for all the  
 5 numbers to be provided to the public.  
 6 MR. SIMMONS:  
 7 Q. Would you have expected the important numbers  
 8 at the time to be in the press release?  
 9 MS. MUNDON:  
 10 A. Important numbers from whose perspective, I  
 11 guess, is the question.  
 12 MR. SIMMONS:  
 13 Q. From yours.  
 14 MS. MUNDON:  
 15 A. Yes, I would expect important numbers to be  
 16 there.  
 17 MR. SIMMONS:  
 18 Q. Did you think the number of total treatment  
 19 changes was an important number?  
 20 MS. MUNDON:  
 21 A. Yes.  
 22 MR. SIMMONS:  
 23 Q. So, you would have expected it to be in the  
 24 press release?  
 25 MS. MUNDON:

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1 A. Again, when I read through this news release,  
 2 I'm not analysing it and I don't have the  
 3 sheet in front of me, I'm not comparing and  
 4 contrasting the numbers.  
 5 MR. SIMMONS:  
 6 Q. Okay.  
 7 MS. MUNDON:  
 8 A. And I'm not looking at it from the lens of the  
 9 fact that information will not be disclosed.  
 10 I'm assuming that the information will be  
 11 disclosed. So, the numbers that you decide to  
 12 put in a news release aren't necessarily, you  
 13 know, don't explain to me the fact that you're  
 14 not including the rest of the numbers.  
 15 MR. SIMMONS:  
 16 Q. Right. Page six is the key messages, you  
 17 would have looked at these also.  
 18 MS. MUNDON:  
 19 A. Yes.  
 20 MR. SIMMONS:  
 21 Q. The 117 is there, but other numbers aren't as  
 22 well.  
 23 MS. MUNDON:  
 24 A. Yes, but that's not--again, that wouldn't be  
 25 out of the ordinary for key messages not to

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1 have a breakdown of all the numbers.  
 2 MR. SIMMONS:  
 3 Q. But you'd expect the important numbers to be  
 4 there.  
 5 MS. MUNDON:  
 6 A. Not necessarily in the key messages, no.  
 7 MR. SIMMONS:  
 8 Q. Okay. And I think you've already been  
 9 referred to page 26, we'll just go there  
 10 quickly. This is the part you say you didn't  
 11 read on the 11th, but read it some later  
 12 point. I'm sorry, not this page, it was a  
 13 later page. This a page from the presentation  
 14 that's there and it's got Eastern Health  
 15 outcomes and it lists the various numbers that  
 16 were the ones that were released to the media.  
 17 MS. MUNDON:  
 18 A. Um-hm.  
 19 MR. SIMMONS:  
 20 Q. Would you, at some point, have looked at this  
 21 slide when you went through this presentation?  
 22 MS. MUNDON:  
 23 A. It would have been at a later point in time.  
 24 MR. SIMMONS:  
 25 Q. Um-hm, yes. Now, would that have been within

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1 December of '06 or--I mean, would you have -  
 2 MS. MUNDON:  
 3 A. I can't recall.  
 4 MR. SIMMONS:  
 5 Q. - just put this aside when you got it and  
 6 gotten back to it in a few days or was it put  
 7 aside an never looked at again until the issue  
 8 came up in May of '07?  
 9 MS. MUNDON:  
 10 A. I can't recall.  
 11 MR. SIMMONS:  
 12 Q. Can you recall ever looking at this slide?  
 13 MS. MUNDON:  
 14 A. Yes.  
 15 MR. SIMMONS:  
 16 Q. Can you recall looking at it before May of  
 17 '07?  
 18 MS. MUNDON:  
 19 A. I can't recall if I did or not.  
 20 MR. SIMMONS:  
 21 Q. Okay. And page 30 is the one you were  
 22 referred to earlier which has question nine  
 23 about what is the rate of error which makes  
 24 it, I'd suggest, pretty clear that the 117  
 25 number is being released and that that's the

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1 extent of the information that's being  
 2 released here.  
 3 MS. MUNDON:  
 4 A. So, one would have to go through the Q and Es  
 5 to find out that, yes.  
 6 MR. SIMMONS:  
 7 Q. Well, first of all, do you agree with me that  
 8 question nine makes that reasonably clear?  
 9 MS. MUNDON:  
 10 A. Reasonably clear, but again, it's a vague  
 11 answer.  
 12 MR. SIMMONS:  
 13 Q. Anyone reading the whole package would have  
 14 known what Eastern Health's position was on  
 15 what information was being released at that  
 16 briefing.  
 17 MS. MUNDON:  
 18 A. They still wouldn't know whoever, if the  
 19 numbers were going to be provided at the  
 20 briefing itself by the officials who would be  
 21 there to explain the numbers and the  
 22 breakdown.  
 23 MR. SIMMONS:  
 24 Q. Having left the meeting on November 23 with  
 25 the impression that all numbers would be

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1 released, having received the entire briefing  
 2 materials on the 11th of December, had you  
 3 read through them all, would you not have  
 4 realized that there was a question to be asked  
 5 about whether any numbers were being released  
 6 other than the ones in the briefing materials?  
 7 MS. MUNDON:  
 8 A. Again, I wouldn't have been looking at it from  
 9 that lens. I would have been trusting to the  
 10 fact that the numbers would all be released.  
 11 So, I wouldn't be looking at it from the lens  
 12 of what's not being released.  
 13 MR. SIMMONS:  
 14 Q. Um-hm, okay.  
 15 MS. MUNDON:  
 16 A. So, I can't say with certainty if I read  
 17 through all this and I went to question number  
 18 nine which is a vague answer, question and  
 19 answer, that I would have assumed from that  
 20 that all the numbers would not have been  
 21 released, no. Again, the numbers could still  
 22 have been released at the briefing that day,  
 23 by the officials. They could have provided a  
 24 breakdown to the media at that point.  
 25 MR. SIMMONS:

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1 Q. Okay. So, it's possible that the other  
 2 numbers could have been released, but from the  
 3 materials you were provided with, in reading  
 4 through them, would you not agree that it  
 5 certainly appeared that these were the only  
 6 numbers that were going to be released to the  
 7 media.  
 8 MS. MUNDON:  
 9 A. Certainly in hindsight you can see that. But  
 10 again, you know, my expectation would  
 11 certainly have been that if that was going to  
 12 occur, if numbers would not be disclosed, that  
 13 I would have certainly expected to have known  
 14 that and not to have had to find it on my own  
 15 or find out through the media.  
 16 MR. SIMMONS:  
 17 Q. Okay. The materials were circulated fairly  
 18 widely within the department. Did anyone else  
 19 raise any issue about it?  
 20 MS. MUNDON:  
 21 A. Not that I'm aware of, not with me.  
 22 MR. SIMMONS:  
 23 Q. Okay. You then followed the media reports  
 24 after the briefing on December 11th?  
 25 MS. MUNDON:

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1 A. Um-hm.  
 2 MR. SIMMONS:  
 3 Q. Correct?  
 4 MS. MUNDON:  
 5 A. Certainly some of them, yes.  
 6 MR. SIMMONS:  
 7 Q. Certainly some of them. Ms. Chaytor showed  
 8 you, I think, a number of them?  
 9 MS. MUNDON:  
 10 A. Yes.  
 11 MR. SIMMONS:  
 12 Q. On the way through. And it's quite clear from  
 13 those that the media understood and  
 14 appreciated at the time that they weren't  
 15 being given the number of test changes?  
 16 MS. MUNDON:  
 17 A. Yes.  
 18 MR. SIMMONS:  
 19 Q. Right. So Eastern Health was not concealing  
 20 that fact from the media or the public that  
 21 they had this information but were not  
 22 releasing it? They weren't concealing or  
 23 hiding the fact that they had this number,  
 24 were they?  
 25 MS. MUNDON:

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1 A. No. However, they were using the rationale of  
 2 a pending court case -  
 3 MR. SIMMONS:  
 4 Q. Right.  
 5 MS. MUNDON:  
 6 A. - when at a later point we know that the  
 7 information was disclosed.  
 8 MR. SIMMONS:  
 9 Q. Okay. But they weren't hiding that fact, they  
 10 weren't concealing it?  
 11 MS. MUNDON:  
 12 A. I guess not.  
 13 MR. SIMMONS:  
 14 Q. And did you pick up on the fact that Eastern  
 15 Health had said that we're not releasing all  
 16 the numbers when you read any of those media  
 17 stories at the time?  
 18 MS. MUNDON:  
 19 A. No. And again, I pointed to those media  
 20 clippings that I did read.  
 21 MR. SIMMONS:  
 22 Q. Um-hm.  
 23 MS. MUNDON:  
 24 A. Certainly, and they were not clear in those,  
 25 at least those clippings at the time.

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1 MR. SIMMONS:  
 2 Q. Okay. And clippings were circulated fairly  
 3 widely within the department?  
 4 MS. MUNDON:  
 5 A. Yes.  
 6 MR. SIMMONS:  
 7 Q. And I presume people in the department read  
 8 the newspaper?  
 9 MS. MUNDON:  
 10 A. Yes.  
 11 MR. SIMMONS:  
 12 Q. As you do. And no one in the department came  
 13 to you and said anything about the fact that  
 14 the media were reporting that Eastern Health  
 15 had chosen not to release some of these  
 16 numbers?  
 17 MS. MUNDON:  
 18 A. No.  
 19 MR. SIMMONS:  
 20 Q. Not one person?  
 21 MS. MUNDON:  
 22 A. No.  
 23 MR. SIMMONS:  
 24 Q. Given the level of interest and attention paid  
 25 to what the media reports on and when, looking

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1 back on it, don't you find that kind of  
 2 surprising?  
 3 MS. MUNDON:  
 4 A. Well, I don't find it surprising from the fact  
 5 of that I did--like, that there are e-mails in  
 6 which I send some of the transcripts to people  
 7 and in those particular transcripts it doesn't  
 8 reference the fact that information is not  
 9 released.  
 10 MR. SIMMONS:  
 11 Q. Um-hm.  
 12 MS. MUNDON:  
 13 A. So if there were, for example, eight or nine  
 14 clippings in total, which I don't know if I  
 15 even had the transcripts of the two television  
 16 news articles, for example, then, you know, I  
 17 may have looked at the ones that I saw and  
 18 didn't pick up on it and probably didn't pay  
 19 attention to the rest of them because I had  
 20 already reviewed coverage, some of the  
 21 coverage.  
 22 MR. SIMMONS:  
 23 Q. Okay.  
 24 MS. MUNDON:  
 25 A. And I wouldn't, again, I wouldn't be expecting

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1 to find that in the media, I wouldn't be  
 2 expecting to have to find out that in the  
 3 media. I would be expecting for Eastern  
 4 Health to have given me a heads up on that.  
 5 MR. SIMMONS:  
 6 Q. Well, they gave you the materials and I'd  
 7 suggest it's apparent from the materials.  
 8 MS. MUNDON:  
 9 A. They gave me the materials, but again, unless  
 10 you go to question No. 9 in the Q and A  
 11 document, then you wouldn't find out. And I  
 12 would suggest to you that colleagues should,  
 13 counterparts should give each other a heads up  
 14 on something of that significance.  
 15 MR. SIMMONS:  
 16 Q. Okay. Now, in your evidence you used a phrase  
 17 where you said that Eastern Health had  
 18 intentionally withheld information and mislead  
 19 the public. That's a phrase that you used,  
 20 that Eastern Health had mislead the public by  
 21 withholding information. Do you recall saying  
 22 that?  
 23 MS. MUNDON:  
 24 A. Yes.  
 25 MR. SIMMONS:

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1 Q. Okay. Now, Eastern Health openly told the  
 2 media, which is the conduit for this  
 3 information to the public, that they were not  
 4 releasing all the information, so they did  
 5 withhold some information. But they openly  
 6 told the media, you know that now?  
 7 MS. MUNDON:  
 8 A. Um-hm.  
 9 MR. SIMMONS:  
 10 Q. You say you didn't, you didn't know it at the  
 11 time, but you know it now?  
 12 MS. MUNDON:  
 13 A. Yes.  
 14 MR. SIMMONS:  
 15 Q. That they openly told the media that we have  
 16 information we're not giving you, and the  
 17 media reported that to the public?  
 18 MS. MUNDON:  
 19 A. Um-hm.  
 20 MR. SIMMONS:  
 21 Q. So how did Eastern Health mislead the public  
 22 about that information?  
 23 MS. MUNDON:  
 24 A. It certainly mislead the public when it comes  
 25 to patient notification.

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1 MR. SIMMONS:  
 2 Q. No, no. This is what we're talking about now,  
 3 I think, is the briefing in 2006.  
 4 MS. MUNDON:  
 5 A. The explanation given at the time for not  
 6 providing the information to the public, we  
 7 know, was related to pending court action.  
 8 MR. SIMMONS:  
 9 Q. So that's what was misleading, was it?  
 10 MS. MUNDON:  
 11 A. Yes, it was, well, it was misleading, the fact  
 12 that at a later point the court affidavit  
 13 becomes public and that information becomes  
 14 public, so what was the rationale in using  
 15 that as an excuse -  
 16 MR. SIMMONS:  
 17 Q. Did you ever -  
 18 MS. MUNDON:  
 19 A. - for not disclosing the information? It was  
 20 misleading.  
 21 MR. SIMMONS:  
 22 Q. Do you know whether anyone at Eastern Health  
 23 who communicated that information had any idea  
 24 what was going to be in the affidavits that  
 25 would be filed in the course of the litigation

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1 at the time that they had their press  
 2 conference in December of '06?  
 3 MS. MUNDON:  
 4 A. Well, I would suggest if they didn't know  
 5 that, why would they use that as a rationale,  
 6 pending court case, for not disclosing the  
 7 numbers?  
 8 MR. SIMMONS:  
 9 Q. You told us that in your experience it wasn't  
 10 uncommon when there was litigation for  
 11 government not to comment publicly in the  
 12 media on it. Do you recall telling us that?  
 13 MS. MUNDON:  
 14 A. Not to comment publicly, yes. But picking and  
 15 choosing numbers that you're going to disclose  
 16 to the media is a different thing, I would  
 17 suggest.  
 18 MR. SIMMONS:  
 19 Q. Okay. So -  
 20 MS. MUNDON:  
 21 A. If they weren't not commenting, they were  
 22 commenting to the public, they had a briefing  
 23 to provide and update on where the issue was.  
 24 MR. SIMMONS:  
 25 Q. Um-hm.

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1 MS. MUNDON:  
 2 A. And they cherry picked numbers to provide to  
 3 the public.  
 4 MR. SIMMONS:  
 5 Q. Okay. So if they were to follow what you  
 6 described as the usual practice in your  
 7 experience in government, they wouldn't have  
 8 held the briefing at all?  
 9 MS. MUNDON:  
 10 A. Well, they certainly wouldn't have, on one  
 11 hand, tell the briefing and provide a comment  
 12 on some of the numbers and then use the  
 13 rationale of the court litigation for not  
 14 disclosing others.  
 15 MR. SIMMONS:  
 16 Q. Okay. So having chosen to have the briefing  
 17 despite the litigation, they qualified what  
 18 they could say by saying there was litigation,  
 19 they disclosed the number of treatment  
 20 changes, they told the media that they weren't  
 21 going to give them the other information.  
 22 Now, what's misleading, how is the public--  
 23 what is Eastern Health doing in all that  
 24 that's misleading?  
 25 MS. MUNDON:

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1 A. Well, I just explained, the misleading piece  
 2 is using the excuse of court litigation for  
 3 not disclosing those particular numbers.  
 4 MR. SIMMONS:  
 5 Q. Okay. And that's the only thing you intended  
 6 to say was misleading when you say Eastern  
 7 Health mislead the public, is it, about that  
 8 December briefing?  
 9 MS. MUNDON:  
 10 A. In that context, yes.  
 11 MR. SIMMONS:  
 12 Q. About that December briefing, only that. In  
 13 May of '07, then, once the CBC report came out  
 14 on the 15th and you've described to us your  
 15 meetings with the minister on the 16th and so  
 16 on. Were you aware of what stage the class  
 17 action litigation was at at that time, were  
 18 you aware that a stage in the proceeding  
 19 called the Certification Hearing was set to  
 20 take place within a couple of weeks of those,  
 21 of the 15th of May?  
 22 MS. MUNDON:  
 23 A. I may or may not have been aware at that time.  
 24 MR. SIMMONS:  
 25 Q. Okay. So you don't know if you were aware of

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1 that fact or not?  
 2 MS. MUNDON:  
 3 A. No, I'm not aware.  
 4 MR. SIMMONS:  
 5 Q. P-0433, page 7, please? These are some  
 6 excerpts here from the news. And there's--  
 7 these were some collected by Eastern Health.  
 8 and I presume the department was collecting  
 9 media clippings around this time, as well,  
 10 given the extent of the public interest and  
 11 the media attention paid to this issue?  
 12 MS. MUNDON:  
 13 A. Yes.  
 14 MR. SIMMONS:  
 15 Q. At that time, yeah. There's a piece here from  
 16 the CBC News website and it's May 16th, 9:51  
 17 a.m. It says, "Minister Defends Eastern  
 18 Health." It says, "The Newfoundland and  
 19 Labrador government is scrambling to restore  
 20 confidence in the provincial health care  
 21 system over a controversy involving Eastern  
 22 Health. Eastern Health said in December that  
 23 763 breast cancer patients who had been given  
 24 hormone receptor tests since 2005 could expect  
 25 a 10 percent error rate." Do you--from what

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1 you know now we know that Eastern Health did  
 2 not make--did not release an error rate, ten  
 3 percent or otherwise, at the December, 2006  
 4 media briefing?  
 5 MS. MUNDON:  
 6 A. Yes.  
 7 MR. SIMMONS:  
 8 Q. You're aware of that?  
 9 MS. MUNDON:  
 10 A. Yes.  
 11 MR. SIMMONS:  
 12 Q. Right. CBC is reporting that they had. And  
 13 then they go on to say "On Monday CBC News  
 14 revealed that 42 percent of the test results  
 15 involving 317 patients were wrong." Do you  
 16 have any recollection of the general, the  
 17 general tone and import of the media coverage  
 18 at this time, around May 15th and 16th?  
 19 MS. MUNDON:  
 20 A. I wasn't in the office on May 15th, I was off  
 21 sick the day the story broke.  
 22 MR. SIMMONS:  
 23 Q. Um-hm, yeah. Well, on the 16th, in the days  
 24 that followed, do you recall if the issue was  
 25 being portrayed in the media as one where

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1 Eastern Health had deliberately mislead by  
 2 releasing an error rate that they should have  
 3 known would be wrong?  
 4 MS. MUNDON:  
 5 A. I don't recall.  
 6 MR. SIMMONS:  
 7 Q. Don't recall that, okay. From looking at this  
 8 particular story, in this case, anyway, that  
 9 appears to be what this story is stating?  
 10 MS. MUNDON:  
 11 A. Um-hm.  
 12 MR. SIMMONS:  
 13 Q. Okay. Thank you, very much, Ms. Mundon, I  
 14 don't have any other questions for you.  
 15 MS. MUNDON:  
 16 A. Thank you.  
 17 COMMISSIONER:  
 18 Q. Yes, Ms. Hennebury?  
 19 MS. HENNEBURY:  
 20 Q. No questions.  
 21 COMMISSIONER:  
 22 Q. Ms. O'Dea?  
 23 MS. O'DEA:  
 24 Q. No questions.  
 25 COMMISSIONER:

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1 Q. Ms. Newbury?  
 2 MS. TANSY MUNDON, EXAMINATION BY MS. JENNIFER NEWBURY  
 3 MS. NEWBURY:  
 4 Q. Good morning, Ms. Mundon.  
 5 MS. MUNDON:  
 6 A. Good morning.  
 7 MS. NEWBURY:  
 8 Q. Jennifer Newbury for the Canadian Cancer  
 9 Society, Newfoundland and Labrador Division.  
 10 MS. MUNDON:  
 11 A. Um-hm.  
 12 MS. NEWBURY:  
 13 Q. I just have a few questions for you this  
 14 morning.  
 15 MS. MUNDON:  
 16 A. Um-hm.  
 17 MS. NEWBURY:  
 18 Q. First of all, if I could have Exhibit 1478,  
 19 please? Okay. You were shown this exhibit  
 20 yesterday or the day before, I believe.  
 21 MS. MUNDON:  
 22 A. Um-hm.  
 23 MS. NEWBURY:  
 24 Q. And this is minutes of a meeting, portions of  
 25 the minutes of a meeting from October 7th,

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1 2005 from the Executive Committee. And these  
 2 were weekly meetings on Fridays?  
 3 MS. MUNDON:  
 4 A. Correct.  
 5 MS. NEWBURY:  
 6 Q. Okay. Are the minutes of meetings circulated  
 7 to the attendees once they have been prepared?  
 8 MS. MUNDON:  
 9 A. Yes.  
 10 MS. NEWBURY:  
 11 Q. Okay. And are they approved at subsequent  
 12 meetings?  
 13 MS. MUNDON:  
 14 A. Yes, for the most part.  
 15 MS. NEWBURY:  
 16 Q. And is there any opportunity to amend minutes,  
 17 either formally or informally at subsequent  
 18 meetings?  
 19 MS. MUNDON:  
 20 A. I would guess so. In some cases we would not  
 21 get a copy of the minutes until the meeting  
 22 itself or perhaps the day before.  
 23 MS. NEWBURY:  
 24 Q. Okay. And this one here, page 2, you had  
 25 indicated some, I guess, uncertainty as to

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1 what had happened there regarding the problem  
 2 with breast screening program as it's stated  
 3 there. Is that something that you would have  
 4 addressed at the time at the following  
 5 Executive Committee meeting?  
 6 MS. MUNDON:  
 7 A. I may have. If the--if it was amended--like,  
 8 I don't recall any minutes with amendments in,  
 9 from the previous meetings.  
 10 MS. NEWBURY:  
 11 Q. Um-hm.  
 12 MS. MUNDON:  
 13 A. So in other words, if that did occur, I don't  
 14 believe that it would have been put in writing  
 15 to that effect.  
 16 MS. NEWBURY:  
 17 Q. Okay.  
 18 MS. MUNDON:  
 19 A. And there was no follow up, there was no  
 20 follow up in the next meeting, there's no  
 21 follow-up material on that.  
 22 MS. NEWBURY:  
 23 Q. Okay.  
 24 COMMISSIONER:  
 25 Q. I'm sorry, I didn't follow that.

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1 MS. MUNDON:  
 2 A. I'm just saying that if there--if I did bring  
 3 up an issue with it, Madam Commissioner, that  
 4 it's very unlikely that it would show up in  
 5 writing on the minutes from the next meeting.  
 6 I've never seen that happen, even though I  
 7 know that things--that there was clarification  
 8 made on a number of points, I don't recall it  
 9 ever being put in writing. And I do know that  
 10 on the next minutes from the meeting that  
 11 there is no reference to this at all, under  
 12 this -  
 13 MS. NEWBURY:  
 14 Q. So there's no reflection in the subsequent  
 15 minutes of meeting that this had been amended?  
 16 MS. MUNDON:  
 17 A. Or any follow up -  
 18 MS. NEWBURY:  
 19 Q. Or that there's any clarification?  
 20 MS. MUNDON:  
 21 A. Exactly.  
 22 MS. NEWBURY:  
 23 Q. Okay. And so are you saying that no one there  
 24 at the meeting would even take a handwritten  
 25 note or mark on it that that was amended to--

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1 just for record keeping purposes?  
 2 MS. MUNDON:  
 3 A. The handwritten notes are used to develop the  
 4 written or the typed minutes.  
 5 MS. NEWBURY:  
 6 Q. Okay.  
 7 MS. MUNDON:  
 8 A. And as I've said, I don't recall any minutes  
 9 ever having any amendments made, anything like  
 10 that.  
 11 MS. NEWBURY:  
 12 Q. So it doesn't surprise you then that if there  
 13 had been any clarification or amendments to  
 14 this particular item, that there would be no  
 15 record of that?  
 16 MS. MUNDON:  
 17 A. That's correct.  
 18 MS. NEWBURY:  
 19 Q. Okay. And as far as you recall even though  
 20 there have been amendments to minutes from  
 21 time to time, it's not the practice of the  
 22 department to--or the Executive Committee to  
 23 make sure that it's formally recorded?  
 24 MS. MUNDON:  
 25 A. No. These minutes are very, the minutes are

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1 not very detailed at all, they've very high-  
 2 level minutes.  
 3 MS. NEWBURY:  
 4 Q. Sure, okay. And the same comment then would  
 5 apply to action items, that there would be no  
 6 record of action items being followed  
 7 subsequently?  
 8 MS. MUNDON:  
 9 A. There would be a discussion, certainly, of  
 10 action items at the following meeting, but not  
 11 necessarily--like, if it was of importance and  
 12 it was discussed, it would be noted in the  
 13 high-level minutes.  
 14 MS. NEWBURY:  
 15 Q. Right.  
 16 MS. MUNDON:  
 17 A. Yes.  
 18 MS. NEWBURY:  
 19 Q. What is, for example, an item is not followed  
 20 up, is there any formal way of recording items  
 21 that are not completed, say, someone forgot to  
 22 do something or didn't appreciate that they  
 23 were to take a certain activity following a  
 24 meeting, is there any way to track that just  
 25 to make sure that you're catching all of the

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1 things that you're supposed to do?

2 MS. MUNDON:

3 A. I don't know if there's a formal way to

4 measure it, but certainly everybody has a copy

5 of the meetings from one meeting to another.

6 MS. NEWBURY:

7 Q. Okay.

8 MS. MUNDON:

9 A. And you know, they would be reviewed.

10 MS. NEWBURY:

11 Q. Okay. And you can't recall anything coming of

12 what appears to be a direction there to you to

13 contact, for example, contact George Tilley

14 regarding development of protocol? I'm not

15 sure if that was -

16 MS. MUNDON:

17 A. Again, I don't think that was intended for me

18 to contact Mr. Tilley because he certainly

19 would not be my counterpart in the

20 organization.

21 MS. NEWBURY:

22 Q. Right, okay. So you think that was directed

23 at someone else?

24 MS. MUNDON:

25 A. Mr. Abbott, I think, yes.

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1 MS. NEWBURY:

2 Q. Yeah. And in terms of the lessons learned

3 perspective, which you were directed to share

4 with other communication staff in the

5 government, there's no formal record that

6 you're aware of of that having been completed?

7 MS. MUNDON:

8 A. There's no formal record of that, no.

9 MS. NEWBURY:

10 Q. Okay. And that's not unusual, there's no

11 formal process in place to follow action

12 items, generally? I'm just wondering whether

13 that was missed or whether you just don't

14 remember because there is no formal method of

15 tracking action items?

16 MS. MUNDON:

17 A. I don't think it would be missed in terms of

18 if there was an expectation for me to do

19 something, I don't think that I would not do

20 it. I may have had--I'm just saying that the

21 way it's characterized in this is not

22 necessarily reflective, I don't think, of the

23 conversation at that meeting and that if I was

24 to discuss lessons learned with other

25 communications staff, it could have been

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1 intended that I would just have an informal

2 conversation with a few other communications

3 people instead of the way that it's presented

4 here.

5 MS. NEWBURY:

6 Q. Okay. But is there any--just in terms of

7 going back and looking at what may have

8 happened two or three years ago, is there

9 anything recorded that someone can look to to

10 say this is what Ms. Mundon understood had to

11 be done and this is, in fact, what she did do

12 as a result of this action item?

13 MS. MUNDON:

14 A. I'm not aware of anything that there would be.

15 Again, you know, I'd report to the deputy

16 minister, so I'd certainly report back to him

17 on that.

18 MS. NEWBURY:

19 Q. So if it shows up in a subsequent meeting,

20 then there might be some note of it, but not

21 necessarily tying it to action item from the -

22 MS. MUNDON:

23 A. Correct.

24 MS. NEWBURY:

25 Q. - October 7th, 2005 meeting?

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1 MS. MUNDON:

2 A. Correct.

3 MS. NEWBURY:

4 Q. And there is no--that's consistent with the

5 practice, I guess, or the lack of practice on

6 following action items for the Department of

7 Health, in terms of formally recording the

8 follow up of action items?

9 MS. MUNDON:

10 A. Specifically for executive meeting?

11 MS. NEWBURY:

12 Q. Yeah.

13 MS. MUNDON:

14 A. Yes.

15 MS. NEWBURY:

16 Q. Okay.

17 MS. MUNDON:

18 A. Again, it doesn't mean action wasn't taken.

19 There's many discussions that would occur at

20 the executive meeting and in no way do I feel

21 that the short notes that are taken, you know,

22 would reflect all the discussion that would

23 take place.

24 MS. NEWBURY:

25 Q. I appreciate that. But I guess for you to be



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1 able to tell me to day this is what I did in  
 2 relation to that particular action item, you  
 3 can't be specific because there's no record  
 4 that you can turn to -  
 5 MS. MUNDON:  
 6 A. Correct.  
 7 MS. NEWBURY:  
 8 Q. - to say, here is what I did in follow up to  
 9 this action -  
 10 MS. MUNDON:  
 11 A. No written record, that's correct.  
 12 MS. NEWBURY:  
 13 Q. Okay. Great, thank you. I just want to ask  
 14 you a couple of questions about the November  
 15 23rd, 2006 meeting. If I could have Exhibit  
 16 0125, please, page 42? Now, you were asked  
 17 questions about this meeting and this document  
 18 by both Ms. Chaytor and Mr. Simmons. I  
 19 understood, and correct me if I'm wrong, I  
 20 understood that you heard Eastern Health refer  
 21 to a three percent rate of error during the  
 22 meeting?  
 23 MS. MUNDON:  
 24 A. Margin of error, yes.  
 25 MS. NEWBURY:

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1 Q. Was it margin of error or rate of error,  
 2 because I think you used both?  
 3 MS. MUNDON:  
 4 A. Margin of error.  
 5 MS. NEWBURY:  
 6 Q. So it's margin of error?  
 7 MS. MUNDON:  
 8 A. Yes.  
 9 MS. NEWBURY:  
 10 Q. And any references that you made in your  
 11 evidence to rate of error, you don't believe  
 12 are correct, you think it was specifically the  
 13 margin of error?  
 14 MS. MUNDON:  
 15 A. Well, I know I already said that Eastern  
 16 Health had an issue with using the terminology  
 17 rate of error.  
 18 MS. NEWBURY:  
 19 Q. Right.  
 20 MS. MUNDON:  
 21 A. But rate of error was used consistently, you  
 22 know, from that point on in terms of any  
 23 discussions or, you know, referenced in  
 24 briefing notes or whatever as opposed to a  
 25 margin of error.

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1 MS. NEWBURY:  
 2 Q. Right.  
 3 COMMISSIONER:  
 4 Q. So are you saying they were interchangeable?  
 5 MS. MUNDON:  
 6 A. Yes.  
 7 MS. NEWBURY:  
 8 Q. And were they interchangeable at any time  
 9 during the meeting of November 23rd or is the  
 10 only time that they referred to rate of error  
 11 at that meeting to say that they don't like  
 12 using the term "rate of error"?  
 13 MS. MUNDON:  
 14 A. I think it would have been in that meeting  
 15 that they didn't like using the terminology  
 16 "rate of error".  
 17 MS. NEWBURY:  
 18 Q. Okay. So when they used the figure of three  
 19 percent, it was tied to the term "margin of  
 20 error" as opposed to rate of error?  
 21 MS. MUNDON:  
 22 A. As I recall, yes.  
 23 MS. NEWBURY:  
 24 Q. And I also understand it was your evidence  
 25 that there was some discussion about the fact

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1 that they didn't have all of the deceased  
 2 numbers as the samples were retesting, then  
 3 how could you calculate a true rate of error?  
 4 MS. MUNDON:  
 5 A. Was the concern expressed.  
 6 MS. NEWBURY:  
 7 Q. And was it your understanding that the three  
 8 percent figure was derived from using the  
 9 numbers 104 and 2,760?  
 10 MS. MUNDON:  
 11 A. Yes.  
 12 MS. NEWBURY:  
 13 Q. Okay, and aside from not having all of the  
 14 numbers from the deceased patients, which I  
 15 understand from your evidence was one of the  
 16 reasons why they didn't like using the term  
 17 "rate of error", am I correct?  
 18 MS. MUNDON:  
 19 A. Yes.  
 20 MS. NEWBURY:  
 21 Q. Okay, were there any other factors that caused  
 22 Eastern Health to be concerned about using the  
 23 term "rate of error"?  
 24 MS. MUNDON:  
 25 A. Not that I'm aware of, just that they, you

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1 know, weren't certain that--they were  
 2 uncomfortable using the word "rate of error"  
 3 and you know, they didn't know if they could  
 4 determine a rate of error because of the  
 5 deceased numbers.  
 6 MS. NEWBURY:  
 7 Q. Okay, and there were no other factors that  
 8 come to your mind that they might have been  
 9 concerned about?  
 10 MS. MUNDON:  
 11 A. No.  
 12 MS. NEWBURY:  
 13 Q. Was there any concern or were there any  
 14 reservations expressed during the meeting by  
 15 anyone from Eastern Health about using the  
 16 figure 2,760 to calculate the -  
 17 MS. MUNDON:  
 18 A. Not that I recall, no.  
 19 MS. NEWBURY:  
 20 Q. Okay, and were there any concerns expressed or  
 21 reservations expressed by anyone from Eastern  
 22 Health about using the figure 104 to determine  
 23 that three percent figure?  
 24 MS. MUNDON:  
 25 A. I can't recall if there was.

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1 MS. NEWBURY:  
 2 Q. I'd like to refer to Exhibit 1623, please.  
 3 This is a communications plan that I believe  
 4 was prepared by you on July 11th, 2007, and on  
 5 page two of the exhibit, there is a heading  
 6 "target audiences, key stakeholders."  
 7 MS. MUNDON:  
 8 A. Um-hm.  
 9 MS. NEWBURY:  
 10 Q. What is the purpose of listing the various  
 11 stakeholders or target audience?  
 12 MS. MUNDON:  
 13 A. Just to list the stakeholders for the  
 14 Department and certainly in this context,  
 15 where it was a communications plan for the  
 16 Department for the summer period, you know,  
 17 the different--the major stakeholders out  
 18 there from the health care perspective that  
 19 would be related to certainly what was  
 20 happening within the media at that time in the  
 21 public environment.  
 22 MS. NEWBURY:  
 23 Q. That's how you choose the stakeholders?  
 24 MS. MUNDON:  
 25 A. Yes.

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1 MS. NEWBURY:  
 2 Q. But once you've chosen the stakeholders or the  
 3 target audience, what do you do then, as part  
 4 of your communications plan? Do you make sure  
 5 that these various groups get press releases,  
 6 as an example?  
 7 MS. MUNDON:  
 8 A. No, that's not the role of identifying target  
 9 audiences.  
 10 MS. NEWBURY:  
 11 Q. Okay. What is the role for identifying the  
 12 key stakeholders?  
 13 MS. MUNDON:  
 14 A. Just for the people reading the communications  
 15 plan that they are aware that these are the  
 16 identified target audiences or key  
 17 stakeholders.  
 18 MS. NEWBURY:  
 19 Q. Does that help shape the message or the  
 20 content of the communication by the  
 21 Department?  
 22 MS. MUNDON:  
 23 A. No, not particularly. It's just to identify  
 24 the stakeholders that, you know, would be--the  
 25 relevant stakeholders in the context of what

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1 is in the media at that time, and you know,  
 2 with the relevant issues. Just to, I guess,  
 3 you know, put it there as a reminder that  
 4 these are the stakeholders that are interested  
 5 or included in this.  
 6 MS. NEWBURY:  
 7 Q. So would you ever try -  
 8 THE COMMISSIONER:  
 9 Q. Which would be everybody -  
 10 MS. MUNDON:  
 11 A. Yes, true.  
 12 THE COMMISSIONER:  
 13 Q. - who lived in the province.  
 14 MS. MUNDON:  
 15 A. Very high--yeah, very high level though.  
 16 MS. NEWBURY:  
 17 Q. Would you try to speak to certain  
 18 stakeholders, you know, perhaps make sure that  
 19 issues pertinent to one stakeholder might be  
 20 emphasized or covered off? I'm just really  
 21 trying to grapple with why you would list the  
 22 stakeholders.  
 23 MS. MUNDON:  
 24 A. Again, it's just--it's almost like a  
 25 formality, as such. It's just listing, as

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1 part of the different headings contained  
 2 within a communications plan. This is a  
 3 consistent heading that's always there. So  
 4 normally within--if you're drafting  
 5 communications plan, for example, on one  
 6 particular issue, which is not the case in  
 7 this context, but with one issue, then okay,  
 8 here are your relevant stakeholders for this  
 9 small isolated issue, for example. In this  
 10 case, where it's a communications plan for the  
 11 summer months, of course, there would be a lot  
 12 of stakeholders because you're talking about a  
 13 communications strategy for the summer months  
 14 in the context of what is out there in the  
 15 public at that time and what programs or  
 16 services you're trying to communicate to the  
 17 public or what communications vehicles you're  
 18 going to use to do that. So like it's not--  
 19 again, it's just to fulfil that component of  
 20 the heading, as opposed to having any follow-  
 21 up action specifically with stakeholders.  
 22 MS. NEWBURY:  
 23 Q. So in preparing the communications plan, there  
 24 is no role for, say, two-way communication  
 25 with stakeholders to seek input from, you

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1 know, a group that might be interested in one  
 2 of the issues, for example, that has been  
 3 highlighted in the summer communications plan?  
 4 MS. MUNDON:  
 5 A. Well, for example, if we were to, as part of  
 6 the summer communications plan, if one of the  
 7 action items was to have a news conference,  
 8 let's say, or just say we were having an  
 9 opening of the new cancer centre in Grand  
 10 Falls, for example, you know, in that context,  
 11 then you know, certainly there would be  
 12 communication with the stakeholders at that  
 13 point because there would be the back and  
 14 forth on the news release, inclusion of a  
 15 quote, and that sort of thing. So that would  
 16 be a specific action item. But listed in this  
 17 context as just the target audience as key  
 18 stakeholders, just being listed as a list of  
 19 them.  
 20 MS. NEWBURY:  
 21 Q. Okay. So then if you were to, as part of this  
 22 communications plan, take some sort of action,  
 23 and a more narrow issue is going to be part of  
 24 a communications activity by the Department,  
 25 would there then be a role for two-way

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1 communication with stakeholders, in terms of  
 2 seeking input from a stakeholder, you know,  
 3 what kind of information do you think we  
 4 should include in our press release or at the  
 5 press conference, or are there any issues that  
 6 you think we should cover of? Or is it simply  
 7 a matter of the Department of Health  
 8 communicating with a stakeholder, once you've  
 9 decided what you want to do?  
 10 MS. MUNDON:  
 11 A. I would certainly say that feedback would be  
 12 welcomed, you know, and that in the past, with  
 13 different events, that we certainly would  
 14 welcome stakeholder input and I know that I've  
 15 had conversations with stakeholders myself, in  
 16 terms of developing materials for events in  
 17 which I would welcome input from stakeholders.  
 18 MS. NEWBURY:  
 19 Q. Okay. So I take it then that the feedback  
 20 that you would look for would not just be  
 21 after an event -  
 22 MS. MUNDON:  
 23 A. No.  
 24 MS. NEWBURY:  
 25 Q. - how did it go, but also before the event,

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1 you know, what kind of material do you think  
 2 or what kind of information do you think we  
 3 should include in our material?  
 4 MS. MUNDON:  
 5 A. Yes.  
 6 MS. NEWBURY:  
 7 Q. Okay, and I think you've answered my other  
 8 question, how is that to be done. You've  
 9 indicated that you personally have had  
 10 communication with various stakeholders.  
 11 MS. MUNDON:  
 12 A. Yes, and it might not necessarily be me. It  
 13 could be someone else within the Department,  
 14 for example.  
 15 MS. NEWBURY:  
 16 Q. Okay. So it could be the ADM or a  
 17 communications person that might -  
 18 MS. MUNDON:  
 19 A. Yes.  
 20 MS. NEWBURY:  
 21 Q. - get some input from stakeholders?  
 22 MS. MUNDON:  
 23 A. Yes.  
 24 MS. NEWBURY:  
 25 Q. Okay, and is this a process that has been

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1 followed by the Department of Health at any  
 2 time prior to these communications plans,  
 3 which I understand didn't exist prior to this  
 4 first one here?  
 5 MS. MUNDON:  
 6 A. Oh, they did. They do exist, the  
 7 communications plans.  
 8 MS. NEWBURY:  
 9 Q. Okay, they do exist, okay.  
 10 MS. MUNDON:  
 11 A. Yes.  
 12 MS. NEWBURY:  
 13 Q. So this was not the first communications plan.  
 14 I must have misunderstood the evidence.  
 15 MS. MUNDON:  
 16 A. No, there are communications plans ongoing on  
 17 issues every day essentially, throughout  
 18 government. This particular plan was designed  
 19 for that particular time period. So I know  
 20 though for a few years, there were  
 21 communications strategies for spring, summer,  
 22 fall and winter, you know, in that broader  
 23 context. But communications plans on general  
 24 issues are being done all the time.  
 25 MS. NEWBURY:

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1 Q. All the time, okay. So the communication,  
 2 seeking input from stakeholders, that is  
 3 something that you would have seen as  
 4 appropriate and would have been done even  
 5 before the summer of 2007, before this  
 6 communications plan?  
 7 MS. MUNDON:  
 8 A. Yes.  
 9 MS. NEWBURY:  
 10 Q. And would it be appropriate to communicate  
 11 with stakeholders subsequent to communications  
 12 to ascertain whether or not the message was  
 13 adequate, whether there were any concerns  
 14 about communications by the Department of  
 15 Health?  
 16 MS. MUNDON:  
 17 A. Well, for example, if there was a particular  
 18 event, many occasions, I've spoken to the  
 19 stakeholders at the event itself and received  
 20 feedback from them at the event as to how they  
 21 felt the event went and if messages were  
 22 communicated.  
 23 MS. NEWBURY:  
 24 Q. And that, in your view, was an appropriate  
 25 role for a communications director to have

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1 that direct interaction with stakeholders?  
 2 MS. MUNDON:  
 3 A. It certainly would be desirable, yes.  
 4 MS. NEWBURY:  
 5 Q. Okay. Thank you. Those are all the questions  
 6 I have. Thank you.  
 7 THE COMMISSIONER:  
 8 Q. Thank you. Ms. Taylor, do you have any  
 9 questions?  
 10 MS. TAYLOR:  
 11 Q. I have no questions.  
 12 MR. PIKE:  
 13 Q. No questions, Commissioner, thank you.  
 14 THE COMMISSIONER:  
 15 Q. All right then. Mr. Pritchard, it's about  
 16 time for the morning break, so I'm going to  
 17 leave it to you. Do you want to press on now  
 18 or would you want to come back after the  
 19 break, which is really my way of saying do you  
 20 have any number of questions that are going to  
 21 take a little time?  
 22 MR. PRITCHARD:  
 23 Q. I don't have a lot of questions. Probably ten  
 24 minutes or so, but I wouldn't mind taking the  
 25 break now.

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1 THE COMMISSIONER:  
 2 Q. All right. Then I'll take the break and then  
 3 come back.  
 4 (RECESS)  
 5 THE COMMISSIONER:  
 6 Q. Please be seated. Mr. Pritchard.  
 7 MS. TANSY MUNDON, EXAMINATION BY MR. ROLF PRITCHARD  
 8 MR. PRITCHARD:  
 9 Q. Thank you, Commissioner. Good morning, Ms.  
 10 Mundon.  
 11 MS. MUNDON:  
 12 A. Good morning.  
 13 MR. PRITCHARD:  
 14 Q. Ms. Mundon, I want to start by asking you some  
 15 questions about the briefing notes, just to  
 16 clarify a few things here, and you mentioned,  
 17 I think, that your key responsibility with  
 18 respect to the briefing notes really is  
 19 assembling the Minister's House of Assembly  
 20 briefing book.  
 21 MS. MUNDON:  
 22 A. Correct.  
 23 MR. PRITCHARD:  
 24 Q. So it's more of gathering up the notes and  
 25 putting them in the book. You don't actually

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1 write them, correct?  
 2 MS. MUNDON:  
 3 A. Correct.  
 4 MR. PRITCHARD:  
 5 Q. Okay, and in that capacity then, you're not  
 6 called upon to review the notes or edit them  
 7 as you put them into the Minister's briefing  
 8 book, are you?  
 9 MS. MUNDON:  
 10 A. No.  
 11 MR. PRITCHARD:  
 12 Q. No, and you wouldn't go through the notes and  
 13 then verify that information is correct or  
 14 anything along those lines, would you?  
 15 MS. MUNDON:  
 16 A. No.  
 17 MR. PRITCHARD:  
 18 Q. And in particular, to the extent that you are  
 19 involved in notes, I think your evidence was  
 20 that you're not involved in issues notes. Is  
 21 that correct?  
 22 MS. MUNDON:  
 23 A. Correct.  
 24 MR. PRITCHARD:  
 25 Q. Okay. So for example, the briefing note that

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1 we have seen and referred to frequently in  
 2 these proceedings, the 18th of August 2006  
 3 note, your involvement in that is really  
 4 incidental. You happen to be in the right or  
 5 wrong place at a certain time when someone  
 6 needed information conveyed to someone else.  
 7 Is that correct?  
 8 MS. MUNDON:  
 9 A. That's correct.  
 10 MR. PRITCHARD:  
 11 Q. Okay. Now I just want to refer you now to a  
 12 document we looked at earlier that was number  
 13 P-0279, please. Now this was an e-mail that  
 14 we looked at earlier, and this had to do with  
 15 assembling the House of Assembly briefing  
 16 book.  
 17 MS. MUNDON:  
 18 A. Yes.  
 19 MR. PRITCHARD:  
 20 Q. And you pointed us to a comment at the end of  
 21 the text in, I guess the second last  
 22 paragraph, where you say "if you require me to  
 23 write questions for the briefing notes, please  
 24 advise ASAP" and initially when you gave your  
 25 evidence, I had understood that you wrote the

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1 questions and suggested responses, but am I  
 2 correct in understanding that you only do that  
 3 in some instances?  
 4 MS. MUNDON:  
 5 A. That's correct.  
 6 MR. PRITCHARD:  
 7 Q. Okay. So in many cases, the writer of the  
 8 note is the person who has composed those  
 9 questions and suggested responses or key  
 10 messages?  
 11 MS. MUNDON:  
 12 A. Correct.  
 13 MR. PRITCHARD:  
 14 Q. So when it comes to you, you may add a  
 15 question and key message or you may not,  
 16 depending on how adequately you feel the  
 17 subject has been canvassed already?  
 18 MS. MUNDON:  
 19 A. That's right.  
 20 THE COMMISSIONER:  
 21 Q. Is that up to you then? You make the  
 22 determination of whether or not the questions  
 23 come up to your standard, as it were? You  
 24 decide if there should be other questions  
 25 added or if some should be deleted or is it a

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1 case of somebody saying to you "would you do  
 2 the questions for this particular briefing  
 3 note?" or both perhaps?  
 4 MS. MUNDON:  
 5 A. Both. In some instances, people would ask me  
 6 to write the questions. In some other  
 7 instances, I would look at it and determine  
 8 that, for example, the questions were of a  
 9 very general nature and unlikely to be asked.  
 10 However, if the questions were generally on  
 11 the right track, then I wouldn't change them.  
 12 THE COMMISSIONER:  
 13 Q. Okay, thank you.  
 14 MR. PRITCHARD:  
 15 Q. Thank you, Commissioner. Ms. Mundon, just  
 16 ending off the subject of briefing notes then,  
 17 with respect to that e-mail that we saw where  
 18 you conveyed the December 12th 2006 briefing  
 19 note to the Premier's office -  
 20 MS. MUNDON:  
 21 A. Yes.  
 22 MR. PRITCHARD:  
 23 Q. - that was done, I understand, because there  
 24 had been a media briefing. It was in the news  
 25 and the House was open, so you felt it was

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1 important on your own initiative to send that  
 2 briefing note forward. Is that correct?  
 3 MS. MUNDON:  
 4 A. Correct.  
 5 MR. PRITCHARD:  
 6 Q. Okay. Now Ms. Mundon, I want to ask you a few  
 7 questions about the 23rd of November 2006, and  
 8 in that respect, I want to refer you to a  
 9 particular version. We've seen several  
 10 versions of the note that was handed out by  
 11 Eastern Health. I'd like to refer to the one  
 12 now, it's Exhibit 0314, page ten, I believe.  
 13 Okay, and we've heard in evidence earlier that  
 14 this particular version of this note was one  
 15 that was provided to the Commission by Mr. Tom  
 16 Osborne and has written on it notes that he  
 17 made during that meeting, and I just wanted to  
 18 draw your attention. You'll note, towards the  
 19 bottom here, it's scratched out, it's three or  
 20 four percent, it says within rate of error.  
 21 MS. MUNDON:  
 22 A. Um-hm.  
 23 MR. PRITCHARD:  
 24 Q. I think your evidence earlier was that you  
 25 recall, I think the term you used was margin

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1 of error.  
 2 MS. MUNDON:  
 3 A. Yes.  
 4 MR. PRITCHARD:  
 5 Q. But you recall that number being discussed?  
 6 MS. MUNDON:  
 7 A. Yes, I do.  
 8 MR. PRITCHARD:  
 9 Q. And was it being discussed--was that a  
 10 calculation that the Minister did or was that  
 11 information that was put forth by Eastern  
 12 Health, do you recollect?  
 13 MS. MUNDON:  
 14 A. That was information that was put forward by  
 15 Eastern Health.  
 16 MR. PRITCHARD:  
 17 Q. Okay, and in terms of the numbers here, do you  
 18 recall, would anyone at the meeting have said  
 19 "now, you know, here's this number 104 and  
 20 here's this number 213, and you can put those  
 21 together." Was there any kind of manipulation  
 22 of the numbers like that, that you recall?  
 23 MS. MUNDON:  
 24 A. No, there was not.  
 25 MR. PRITCHARD:

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1 Q. Okay. So you've told us earlier that what you  
 2 recall was the 104 out of 2760, was that the  
 3 only sort of ratio or percentage that you  
 4 recall being discussed?  
 5 MS. MUNDON:  
 6 A. Yes, it is.  
 7 MR. PRITCHARD:  
 8 Q. And Ms. Mundon, I think in your evidence  
 9 earlier, you mentioned that towards the end of  
 10 the meeting, the Minister made some comment  
 11 stressing the importance of disclosure or  
 12 being upfront. What do you recollect about  
 13 those comments?  
 14 MS. MUNDON:  
 15 A. I just recall that the Minister, you know,  
 16 just leading into the meeting, the Minister  
 17 was very interested in the status of the issue  
 18 and certainly felt that it was time to now go  
 19 public, now that all the information was in  
 20 and obtained by Eastern Health, it was now  
 21 time to go public and to provide the public  
 22 with a full picture of what was happening  
 23 here. It certainly was the purpose of this  
 24 briefing, on that day, and it certainly was  
 25 the Minister's expectation at the conclusion

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1 of that meeting that the information would be  
 2 disclosed in its entirety.  
 3 MR. PRITCHARD:  
 4 Q. Now when you say that was the Minister's  
 5 expectation, was that your impression or did  
 6 he discuss that with you?  
 7 MS. MUNDON:  
 8 A. I believe that he discussed that with me.  
 9 MR. PRITCHARD:  
 10 Q. Okay. I'd just like to refer to Exhibit 0186,  
 11 page two, please. That's not the one I was  
 12 looking for. Ms. Mundon, you mentioned in  
 13 your evidence that you had occasion, in the  
 14 spring of 2007, to speak with representatives  
 15 of Eastern Health, Susan Bonnell in  
 16 particular, and you had a discussion with her  
 17 respecting the disclosure that had unfolded in  
 18 December.  
 19 MS. MUNDON:  
 20 A. Yes.  
 21 MR. PRITCHARD:  
 22 Q. And her evidence to you was that a decision  
 23 had been made on or about December 9th to  
 24 change the nature of what they were working  
 25 on, and to remove any reference to the rate of

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1 error?

2 MS. MUNDON:

3 A. That's certainly contained in the e-mail that

4 she forwarded to me, yes.

5 MR. PRITCHARD:

6 Q. All right, and did she contact you or did

7 anyone from Eastern Health contact you on or

8 about December 9th or 10th to advise you of

9 that?

10 MS. MUNDON:

11 A. No, they did not.

12 MR. PRITCHARD:

13 Q. Okay, and when you received the disclosure

14 package from Eastern Health, we'll call it

15 disclosure package, on the morning of December

16 11th, was there any phone call or anything to

17 give you a heads up that there had been this

18 change in their thinking at least?

19 MS. MUNDON:

20 A. No, there was not.

21 MR. PRITCHARD:

22 Q. Okay, and following the briefing by Eastern

23 Health on December 11th, did you receive any

24 calls from the media or anything expressing

25 their discontent with what had unfolded on the

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1 11th?

2 MS. MUNDON:

3 A. No, I did not.

4 MR. PRITCHARD:

5 Q. Okay, might that have been a heads up to you

6 that there had been some problem?

7 MS. MUNDON:

8 A. Yes, it would have been.

9 MR. PRITCHARD:

10 Q. Okay, and did the Minister get a question

11 following the briefing on December 11th in the

12 House regarding that issue?

13 MS. MUNDON:

14 A. No, he did not.

15 MR. PRITCHARD:

16 Q. Okay, thank you, Ms. Mundon, those are all my

17 questions. Ms. Chaytor may have some further

18 questions for you.

19 MS. TANSY MUNDON, RE-EXAMINATION BY SANDRA CHAYTOR, Q.C.

20 CHAYTOR, Q.C.:

21 Q. Just a couple of points for clarification and

22 the three percent issue has already been

23 clarified by Mr. Pritchard. If I could have,

24 please, P-1478 again please? These were the

25 minutes of October 7th, 2005, the executive

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1 meeting.

2 MS. MUNDON:

3 A. Yes.

4 CHAYTOR, Q.C.:

5 Q. And the reference to there going to be follow

6 up on this, I just wanted to take you to

7 another document, in fairness to you, Ms.

8 Mundon, that I don't think you've seen. It's

9 P-0307 please? And this is an e-mail from Mr.

10 Abbott to Josephine Cheeseman, 17 days later,

11 on the 14th of October, 2005. "Re: Item for

12 Retreat. The issues around communications

13 related to patient safety issues, example,

14 current ER/PR breast cancer testing. Is there

15 an established protocol as to when patients

16 and the media are informed? What is the

17 relationship between the department and the

18 RIHA's when these issues arise, et cetera."

19 So it appears that Mr. Abbott did follow up on

20 this issue. Do you recall any discussion

21 yourself then further around this?

22 MS. MUNDON:

23 A. I do recall a general discussion about the

24 retreat, the communications retreat being

25 planned and just a general discussion with Mr.

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1 Abbott and the suggestion that this be brought

2 up at the communications retreat. But I don't

3 believe the retreat had gone ahead.

4 CHAYTOR, Q.C.:

5 Q. Okay. And just one other point, if we could

6 have, please, P-1363. I'm sorry, let's try P-

7 1292. Yes. This is the e-mail then on

8 September 30th, 2005 at 5:17 p.m. from Ms.

9 Bonnell to yourself and this is where she

10 attaches the briefing note of that date to

11 you, which is about a page and a quarter. We

12 looked at that yesterday. And then if we

13 could have P-0142 please? And I believe there

14 is a--could I just go back to P-0163 please,

15 sorry. Wrong page, that's the problem, sorry,

16 it's page 3. Okay, that's fine, I can find it

17 in my binder.

18 THE COMMISSIONER:

19 Q. Ms. Bonnell, while Ms. Chaytor is locating

20 that document, I just had a small question of

21 clarification which maybe you can help me

22 with. On a number of occasions during your

23 testimony, you've used the expression "high

24 level", like high level minutes, high level

25 orientation. Can you tell me what you mean by

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1 high level? Is it who is there or what's done  
 2 within the -  
 3 MS. MUNDON:  
 4 A. No, just your general -  
 5 THE COMMISSIONER:  
 6 Q. Very general.  
 7 MS. MUNDON:  
 8 A. Yeah, top of the trees.  
 9 THE COMMISSIONER:  
 10 Q. Okay, I've heard that one as well during the  
 11 course of the hearings, all right.  
 12 CHAYTOR, Q.C.:  
 13 Q. Sorry about that, Commissioner, it is P-0163  
 14 but it's at page 12, thank you, Mr. Coffey.  
 15 And this is where you forward the September  
 16 30th briefing note on to Mr. Hynes and that's  
 17 at 8:12 in the morning and I believe we looked  
 18 at this briefly yesterday.  
 19 MS. MUNDON:  
 20 A. Uh-hm.  
 21 CHAYTOR, Q.C.:  
 22 Q. That's on October 3rd at 8:12 in the morning.  
 23 MS. MUNDON:  
 24 A. Uh-hm.  
 25 CHAYTOR, Q.C.:

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1 Q. And then if we look at, please, P-0142? And  
 2 this was the e-mail that has come up again in  
 3 your cross-examination by other counsel and  
 4 this is now in the afternoon, almost 3:00 in  
 5 the afternoon on October 3rd and the issue  
 6 about "if we did issue a news release at this  
 7 point, it would be picked up by local  
 8 newspapers and would probably draw attention  
 9 to the issue unnecessarily." And you've  
 10 explained that what you meant by that was you  
 11 thought it was a St. John's only issue.  
 12 MS. MUNDON:  
 13 A. Yes.  
 14 CHAYTOR, Q.C.:  
 15 Q. And the other newspapers would be newspapers  
 16 across the island or across the province.  
 17 MS. MUNDON:  
 18 A. Yes.  
 19 CHAYTOR, Q.C.:  
 20 Q. That's what you understood from that.  
 21 MS. MUNDON:  
 22 A. Yes.  
 23 CHAYTOR, Q.C.:  
 24 Q. If we could go back then please to P-0163,  
 25 page 12, and again this is what you forwarded

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1 in the morning to Mr. Hynes, that morning and  
 2 it says, "All laboratory directors in the  
 3 province were contacted over the past few  
 4 months to submit all negative ER and PR  
 5 reports and samples for the same time period  
 6 for retesting. This process is underway. 78  
 7 samples from 1997 to 2004 from Gander and  
 8 Carbonear are in the process of being  
 9 submitted. Specimens from Grand Falls have  
 10 just been received." And Ms. Mundon, this  
 11 wasn't a lengthy document, that's the document  
 12 that was forwarded to you by Ms. Bonnell and  
 13 the on to others in the department through  
 14 you, earlier in the day. Did you read the  
 15 document?  
 16 MS. MUNDON:  
 17 A. I assume that I would have read it, yes.  
 18 CHAYTOR, Q.C.:  
 19 Q. Yes, so by that afternoon you would have been  
 20 aware that this involved patients across the  
 21 province, it says "All laboratory directors  
 22 have been contacted and asked to send their  
 23 samples in."  
 24 MS. MUNDON:  
 25 A. I should have been aware, yes, however, I

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1 wasn't aware at that time that that was the  
 2 case. I know it was contained in the briefing  
 3 note, but I recall not being aware at that  
 4 time.  
 5 CHAYTOR, Q.C.:  
 6 Q. Okay. Those are all my questions,  
 7 Commissioner, thank you.  
 8 THE COMMISSIONER:  
 9 Q. Thank you, Ms. Chaytor. Thank you, Ms. Mundon  
 10 for your contribution.  
 11 MS. MUNDON:  
 12 A. Thank you.  
 13 THE COMMISSIONER:  
 14 Q. Now, do we have another witness in the wings?  
 15 CHAYTOR, Q.C.:  
 16 Q. We do. The next witness is Darrell Hynes.  
 17 Good morning, Mr. Hynes.  
 18 MR. HYNES:  
 19 A. Thank you, good morning.  
 20 CHAYTOR, Q.C.:  
 21 Q. If we could ask that the witness be affirmed  
 22 or sworn?  
 23 MR. DARRELL HYNES (SWORN) EXAMINATION BY SANDRA CHAYTOR,  
 24 Q.C.  
 25 REGISTRAR:



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1 Q. Would you please state and spell your complete  
 2 name for the Commission?  
 3 MR. HYNES:  
 4 A. Darrell Hynes, D-A-R-R-E-L-L H-Y-N-E-S.  
 5 CHAYTOR, Q.C.:  
 6 Q. Commissioner, we have three new exhibits to  
 7 enter through Mr. Hynes. It's P-1626, P-1627  
 8 and P-1628 which I would ask, please, to have  
 9 entered.  
 10 THE COMMISSIONER:  
 11 Q. Entered.  
 12 EXHIBITS ENTERED AND MARKED P-1626 THROUGH TO P-1628  
 13 CHAYTOR, Q.C.:  
 14 Q. Thank you, Commissioner. Mr. Hynes, if you  
 15 could begin please by giving us a brief  
 16 summary of your educational background and  
 17 your career?  
 18 MR. HYNES:  
 19 A. Okay. I was born and raised in St. John's, I  
 20 have a Bachelor of Arts Degree from Memorial  
 21 University with a major in Political Science  
 22 and a Business minor. I have a certificate in  
 23 Public Administration from Memorial as well  
 24 and I also have a certificate in Business  
 25 Administration from Memorial University and

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1 I'm currently working on a Bachelor of  
 2 Business Administration degree which I hope to  
 3 complete in the near future. From  
 4 approximately June 1997 to the fall of 1999, I  
 5 worked as a member's assistant to Norman  
 6 Doyle, MP for St. John's East. From  
 7 approximately late fall of 1999 to the spring  
 8 of 2000, I worked in the constituency office  
 9 of Charlie Power, who, at that time, was the  
 10 MP for St. John's West and I was his executive  
 11 assistant. From approximately May 2000 to  
 12 November 2003, I worked in the St. John's West  
 13 constituency office of the Honourable Lyola  
 14 Hearn, MP for St. John's West. In November of  
 15 2003, I was asked and accepted a position as  
 16 John Ottenheimer's executive assistant. At  
 17 that time, first in the departments of Youth  
 18 Services and Post-Secondary Education, which  
 19 were later combined into one department of  
 20 Education. From approximately October of 2004  
 21 to March 2006, I was in the Department of  
 22 Health and Community Services, again as the  
 23 executive assistant to Minister Ottenheimer.  
 24 In March, approximately March 21st of 2006 to  
 25 April 4th, 2006, I was in the Department of

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1 Intergovernmental Affairs, again as the  
 2 executive assistant to John Ottenheimer. On  
 3 April 5th, 2006, I was asked to go back to the  
 4 Department of Health and I accepted a position  
 5 as a policy advisor to the Honourable Tom  
 6 Osborne in the Minister's office and I  
 7 remained there from April 5th, 2006 to January  
 8 20th, 2007. On January 22nd, 2007, I was  
 9 moved to policy advisor position with the  
 10 Honourable Tom Marshall, Minister of Finance  
 11 and President to the Treasury Board in his  
 12 office in St. John's, and since November of  
 13 2007 to the present, I'm a policy advisor to  
 14 the Honourable Patty Pottle, Minister of  
 15 Aboriginal Affairs in her office here in St.  
 16 John's.  
 17 CHAYTOR, Q.C.:  
 18 Q. Okay, thank you. And Mr. Hynes, when did you  
 19 finish your Bachelor of Arts degree?  
 20 MR. HYNES:  
 21 A. My Bachelor of Arts degree, I completed  
 22 approximately May of 1998.  
 23 CHAYTOR, Q.C.:  
 24 Q. And your career since then, your BA is in  
 25 Political Science and Business and your career

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1 since then has been in politics?  
 2 MR. HYNES:  
 3 A. Yes, for a number of six or seven different  
 4 politicians, yes.  
 5 CHAYTOR, Q.C.:  
 6 Q. Yes, okay. And tell us, you're the first  
 7 executive assistant that we've had. Could you  
 8 tell the Commissioner what it is that an  
 9 executive assistant to a Minister--what would  
 10 your duties be?  
 11 MR. HYNES:  
 12 A. Okay. The role of the executive assistant is  
 13 certainly to assist the Minister in carrying  
 14 out his or her duties and I see that as four  
 15 different roles, really, there's a  
 16 governmental role which involves the House of  
 17 Assembly, there's a departmental role which  
 18 involves actually running a department as a  
 19 minister of the Crown; there's certainly a  
 20 political role which involves liaising with  
 21 the party and party officials and the party  
 22 bureaucracy, I guess, as a partisan party, I  
 23 mean, political and there's a smaller amount  
 24 of constituency duties and so again, you try  
 25 to support the Minister in these four areas to

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1 make sure he or she has whatever they need to  
 2 do an effective job.  
 3 CHAYTOR, Q.C.:  
 4 Q. Okay.  
 5 MR. HYNES:  
 6 A. Did you want me to elaborate on perhaps each  
 7 individual one, ma'am, or are you -  
 8 CHAYTOR, Q.C.:  
 9 Q. Yes, and perhaps when I ask you about your  
 10 role as an EA with Mr. Ottenheimer we can get  
 11 into some more detail in terms of how you  
 12 would have interactions with them.  
 13 MR. HYNES:  
 14 A. Okay.  
 15 CHAYTOR, Q.C.:  
 16 Q. But right now that's fine, and you're  
 17 currently a policy advisor and when you went  
 18 with Minister Osborne in April, 2006, you went  
 19 as a policy advisor and not as an ER.  
 20 MR. HYNES:  
 21 A. Yes.  
 22 CHAYTOR, Q.C.:  
 23 Q. What is the difference? What does a policy  
 24 advisor do?  
 25 MR. HYNES:

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1 A. Well at that time I believe Minister Osborne  
 2 bought, he had an existing EA with him and I  
 3 was asked to go back as an supplement, I  
 4 guess, to his office in a new position, I  
 5 guess. Essentially it's still very much the  
 6 role of helping and assisting the Minister in  
 7 running his department and the governmental  
 8 role in supporting him in the House of  
 9 Assembly when the House of Assembly is open.  
 10 I guess there would be a lot less contact with  
 11 constituencies and the political arm of his  
 12 district, whether that's his local district  
 13 association or party officials in his  
 14 district, I would not have any role or  
 15 involvement with those type local--small  
 16 political constituency matters, that would be  
 17 handled by his executive assistant.  
 18 CHAYTOR, Q.C.:  
 19 Q. And you would still have the role of  
 20 supporting him with House of Assembly and with  
 21 the running of the department.  
 22 MR. HYNES:  
 23 A. Right, yes.  
 24 CHAYTOR, Q.C.:  
 25 Q. And you said that you went with Minister

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1 Ottenheimer in 2003 and stayed with Minister  
 2 Ottenheimer through a change in portfolios and  
 3 then went with him again in March, I guess, it  
 4 would be, 2006, when he left the Department of  
 5 Health?  
 6 MR. HYNES:  
 7 A. Yes, that's correct.  
 8 CHAYTOR, Q.C.:  
 9 Q. And you came back shortly thereafter because  
 10 you were asked to come back. Who asked you to  
 11 come back into the department?  
 12 MR. HYNES:  
 13 A. Well just to clarify for the Commission, I  
 14 guess, the executive assistant is essentially  
 15 you move with your minister. So I mean, as  
 16 your minister changes portfolios or takes on  
 17 new challenges, you essentially move from  
 18 department to department. But I was asked at  
 19 that time to go back by the Premier's office  
 20 to assist Minister Osborne in his new role.  
 21 CHAYTOR, Q.C.:  
 22 Q. Okay, and was it explained to you why that was  
 23 thought to be necessary?  
 24 MR. HYNES:  
 25 A. I guess there was a couple of reasons. One

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1 was Minister Osborne was coming from a very  
 2 different department. I think he came from  
 3 Environment and Conservation, that perhaps did  
 4 not have as broad a scope of responsibilities  
 5 and issues and certain budget and influence in  
 6 people's lives that, you know, it was viewed  
 7 that he could use perhaps some transition help  
 8 and where I had been there with Minister  
 9 Ottenheimer for approximately a year and a  
 10 half, they viewed it that I could be of some  
 11 help in a transitional period.  
 12 CHAYTOR, Q.C.:  
 13 Q. Okay, and so you were actually left the  
 14 Department of Health for about a three-week  
 15 period and then came back in April of 2006.  
 16 MR. HYNES:  
 17 A. That's correct.  
 18 CHAYTOR, Q.C.:  
 19 Q. And stayed on as a policy advisor to Minister  
 20 Osborne?  
 21 MR. HYNES:  
 22 A. That's correct, yes.  
 23 CHAYTOR, Q.C.:  
 24 Q. And when the portfolio again changed hands in  
 25 2007 and Minister Wiseman took over, why

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1 didn't you stay on at that point in time?  
 2 MR. HYNES:  
 3 A. I was asked to go with Minister Marshall's  
 4 office in the Department of Finance to take on  
 5 a similar position there.  
 6 CHAYTOR, Q.C.:  
 7 Q. And so there wasn't seen to be a need for the  
 8 transition for Minister Wiseman?  
 9 MR. HYNES:  
 10 A. I guess not and I assume, Ms. Chaytor, that it  
 11 was perhaps because he had been there as a  
 12 parliamentary secretary for a, you know, a  
 13 fair number of years and had a, perhaps a good  
 14 handle on the health issues he would be  
 15 facing.  
 16 CHAYTOR, Q.C.:  
 17 Q. On the department.  
 18 MR. HYNES:  
 19 A. And as well, I think he had worked in his  
 20 previous life to getting involved in politics,  
 21 he had worked actually in the health care  
 22 system.  
 23 CHAYTOR, Q.C.:  
 24 Q. Okay, and he hadn't been a minister before, so  
 25 in terms of you assisting Minister Osborne

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1 with the transition, he had been a minister  
 2 before, so it wasn't so much that aspect of  
 3 the job, it was more the aspect of Minister  
 4 Osborne not having background in health?  
 5 MR. HYNES:  
 6 A. I would say, yes, that's correct.  
 7 CHAYTOR, Q.C.:  
 8 Q. So in terms of your time then as the EA within  
 9 the Department of Health and Community  
 10 Services for Minister Ottenheimer, tell us a  
 11 little more detail then about that? How would  
 12 you interact with the Minister? How much  
 13 contact would you have on a day-to-day basis?  
 14 MR. HYNES:  
 15 A. I would have to say I enjoyed an excellent  
 16 working relationship with both ministers,  
 17 actually, but certainly Minister Ottenheimer.  
 18 We had certainly daily contact and I would  
 19 have to characterize it as almost unfeathered  
 20 or untethered because, I mean, certain  
 21 officials, I guess in a large department like  
 22 that may only see the Minister once a year at  
 23 the Christmas party, but I mean, I'd be in his  
 24 office half a dozen times a day or he'd be in  
 25 my office or we'd talk on the phone as many

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1 and more times besides that or more. So we  
 2 had a very close working relationship and, you  
 3 know, that would help certainly with me, in my  
 4 role as trying to anticipate, deal with and  
 5 resolve political problems that I viewed to  
 6 assist him. And also acting as a conduit  
 7 between if there was an issue with an official  
 8 in the department, they needed some  
 9 clarification in the Minister's office,  
 10 oftentimes that would come through me or if  
 11 the Minister had made a decision or  
 12 communicated some information, that would go  
 13 back through me. So, I mean, obviously I  
 14 worked very closely with the Deputy Minister,  
 15 but ultimately I reported directly to the  
 16 Minister himself.  
 17 CHAYTOR, Q.C.:  
 18 Q. And so given the high degree of interaction  
 19 and your close working relationship with  
 20 Minister Ottenheimer, I take it if you were  
 21 apprised of issues that were going on within  
 22 the department, if Minister Ottenheimer knew  
 23 about it, you knew about it?  
 24 MR. HYNES:  
 25 A. Unless it was something, you know, obviously

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1 Cabinet discussions he would never discuss  
 2 with me, but generally, I mean, if he felt  
 3 there was something he wanted to get my advice  
 4 and counsel on, he would raise it with me or  
 5 if there was some issue that came up that I  
 6 felt was important that needed his attention  
 7 that he should be aware of, I would not  
 8 hesitate to bring it to his attention.  
 9 CHAYTOR, Q.C.:  
 10 Q. Okay, so it worked both ways. So if it was  
 11 anything of any significance brought to your  
 12 attention, you certainly would be sharing it  
 13 with the Minister?  
 14 MR. HYNES:  
 15 A. Sure.  
 16 CHAYTOR, Q.C.:  
 17 Q. And did Minister Ottenheimer usually seek out  
 18 your advice or ask your opinion on the issues  
 19 that he was dealing with?  
 20 MR. HYNES:  
 21 A. Yes, I'd have to say he, you know, would seek  
 22 my advice and my insight, I guess, fairly  
 23 often and I mean, oftentimes if there was an  
 24 issue coming up for discussion, we would sit  
 25 in his office and perhaps it might be the

1 deputy bringing forward his opinion, I would  
 2 bring forward my opinion, the communications  
 3 person, depending on the issue, may or may not  
 4 be in the room, but ultimately the Minister  
 5 would make the decision and we'd move forward,  
 6 but I mean, my opinion, I guess was valued as  
 7 much as the others in the room.

8 CHAYTOR, Q.C.:

9 Q. Yes, and I take it you weren't shy in sharing  
 10 your opinion with him?

11 MR. HYNES:

12 A. No, shy is probably not something I've often  
 13 been accused of.

14 CHAYTOR, Q.C.:

15 Q. Okay, well both of us. And I take it then  
 16 that your dialogue with him on the issues,  
 17 that you had open and frank dialogue with him?

18 MR. HYNES:

19 A. Yes, I mean, I would often tell him, Ms.  
 20 Chaytor, that--I would give him opinions and  
 21 angles on an issue that perhaps even I didn't  
 22 agree with, and I would tell him as such, that  
 23 Minister, you know, here's something else to  
 24 consider. I don't think it's the way to go,  
 25 but I'll bring this out for discussion, so I

1 I remember that, and she just said that she  
 2 had gotten some information from Eastern  
 3 Health that there was a significant issue--a  
 4 significant issue had arisen. I remember  
 5 there was, you know, approximately 1000, 1500  
 6 people over a period of time and, you know, I  
 7 guess Eastern Health were called in to give  
 8 the Minister's office or us the heads up and  
 9 that's what she brought to my attention, and  
 10 that was the first that I heard of it.

11 CHAYTOR, Q.C.:

12 Q. That was the first you heard of it, and of  
 13 course, Ms. Chaplin was the director of  
 14 communications at the time in the department.  
 15 What was your working relationship like with  
 16 Ms. Chaplin?

17 MR. HYNES:

18 A. We had a very good relationship because  
 19 oftentimes when we would travel to a, either a  
 20 federal or provincial meeting or meetings with  
 21 the various health authorities, that we'd both  
 22 accompany the Minister, so you'd spend a lot  
 23 of time together. I had known her from even  
 24 way back to university days, so I think we  
 25 have a fairly cordial good working

1 would, you know, bring as many issues forward  
 2 and as many possibilities that I could.

3 CHAYTOR, Q.C.:

4 Q. And as many different perspectives to the  
 5 issue that you could think of.

6 MR. HYNES:

7 A. Absolutely.

8 CHAYTOR, Q.C.:

9 Q. So of course, we're here discussing what we've  
 10 come to call the ER/PR issue. When, Mr.  
 11 Hynes, did you first hear about the ER/PR  
 12 issue or any information dealing with it?

13 MR. HYNES:

14 A. That would certainly be in July of 2005  
 15 because, you know, I've had some time to go  
 16 back through various notes and my phone logs  
 17 and everything else and like I say, I vaguely  
 18 remember a conversation very late in the day  
 19 on July 18th. Ms. Carolyn Chaplin, whose  
 20 office was very close to mine and we had an  
 21 excellent relationship because she was our  
 22 director of communications at the time. I  
 23 recall her popping into my office late in the  
 24 day and I believe it was definitely after  
 25 5:00, so there wasn't too many people around,

1 relationship and physically in the department  
 2 at that time, her office was very close to me,  
 3 so I mean, if she'd often pass by, she'd pop  
 4 in or if I was down that way, I'd pop in. So  
 5 we had a very close relationship.

6 CHAYTOR, Q.C.:

7 Q. Okay, and I take it that the executive  
 8 assistant to the Minister and the director of  
 9 communications would, just by virtue of your  
 10 roles, you would be in contact a lot during  
 11 any given work day?

12 MR. HYNES:

13 A. Sure, because she was paid to give, I guess,  
 14 communications' advice to the Minister and I  
 15 was paid to give political advice and I mean a  
 16 lot of times these things came together.

17 CHAYTOR, Q.C.:

18 Q. And so on the 18th, it was later in the day,  
 19 you recall having this discussion with Ms.  
 20 Caplin, do you recall her saying anything else  
 21 about it or what advice did you have to give  
 22 her in terms of from a political angle what  
 23 needs to happen?

24 MR. HYNES:

25 A. No, I mean, my initial reaction was, you know,

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1 does the Minister know? Who else may? And  
 2 she indicated I think at that time that she  
 3 had tried to make contact with Mr. Abbott, who  
 4 was the deputy, and the Minister and I don't  
 5 remember if she said she had been up to the  
 6 office looking for him to see if they were  
 7 still around or if she called, I'm not clear  
 8 on that, but she said she tried to contact  
 9 both individuals.

10 CHAYTOR, Q.C.:  
 11 Q. So you're not sure whether or not had already  
 12 spoken with the deputy or the Minister?  
 13 MR. HYNES:  
 14 A. No, not at that point I don't believe she had.  
 15 I mean, in my own memory, I think she had just  
 16 probably gotten off the phone and she might  
 17 have just been walking up past my office to  
 18 get up to the ministerial suite where a  
 19 minister's office would have been.

20 CHAYTOR, Q.C.:  
 21 Q. Okay, and you hadn't heard of this issue  
 22 before, it's the first time you're hearing of  
 23 it?  
 24 MR. HYNES:  
 25 A. Yes.

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1 CHAYTOR, Q.C.:  
 2 Q. And so the Minister hadn't mentioned it to you  
 3 prior to July 18th?  
 4 MR. HYNES:  
 5 A. No.

6 CHAYTOR, Q.C.:  
 7 Q. And to your knowledge did the Minister know  
 8 about it before now looking at it? Did the  
 9 Minister know before July 18th?  
 10 MR. HYNES:  
 11 A. No.

12 CHAYTOR, Q.C.:  
 13 Q. And ultimately who is it that told the  
 14 Minister? Was it you? Was it Ms. Chaplin?  
 15 How did the Minister become advised of the  
 16 issue?  
 17 MR. HYNES:  
 18 A. I seem to recall when we talked--I don't  
 19 remember talking to the Minister that evening,  
 20 but I seem to recall that morning, me, him and  
 21 Carolyn and chatting and Carolyn, I guess,  
 22 maybe filling in more information she knew at  
 23 that time.

24 CHAYTOR, Q.C.:  
 25 Q. So the next morning on July 19th?

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1 MR. HYNES:  
 2 A. Yes.

3 CHAYTOR, Q.C.:  
 4 Q. Okay, and so you remember being there when the  
 5 Minister is being informed of the issue?  
 6 MR. HYNES:  
 7 A. Yes.

8 CHAYTOR, Q.C.:  
 9 Q. And that was yourself and Ms. Chaplin. Was  
 10 anyone else present?  
 11 MR. HYNES:  
 12 A. No, I vaguely remember having another  
 13 conversation that morning with Mr. Abbott who  
 14 is a deputy, but I don't believe he was at  
 15 that, when we were chatting in the office.

16 CHAYTOR, Q.C.:  
 17 Q. Okay, and when you spoke to Mr. Abbott about  
 18 it later on the morning of July 19th, did he  
 19 seem to already be aware of the issue?  
 20 MR. HYNES:  
 21 A. Not at that time because I seem to recall I  
 22 told him, "John, what's going on?" And he  
 23 didn't immediately tell me "I'm aware of this"  
 24 so I suggested to him, you know, you should  
 25 talk to George right away, Mr. Tilley, and see

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1 what you can find out and, you know, we need  
 2 to get a briefing note and try to get our  
 3 minds and handle around what's going.

4 CHAYTOR, Q.C.:  
 5 Q. So from your point of view when you're told  
 6 this and I take it you had been in the  
 7 political arena about, going on close to ten  
 8 years I guess at that point, well five years,  
 9 I guess in 2005, wasn't it, five, six years.

10 MR. HYNES:  
 11 A. Well I started in '97.

12 CHAYTOR, Q.C.:  
 13 Q. Oh '97, so -

14 MR. HYNES:  
 15 A. It's about a decade.

16 CHAYTOR, Q.C.:  
 17 Q. Okay, going on close to a decade. How  
 18 significant was an issue like that to you?  
 19 What had been told to you by Carolyn?  
 20 MR. HYNES:  
 21 A. You know, looking back certainly on the  
 22 initial--that initial information was, you  
 23 know, the 1000 to 1500 number was very  
 24 significant and the fact you could have a  
 25 number of people affected, I mean, it was

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1 significant, very significant.  
 2 CHAYTOR, Q.C.:  
 3 Q. Yes, okay, and your political antenna, I take  
 4 it, went up?  
 5 MR. HYNES:  
 6 A. Oh, no question that this, you know, this  
 7 could be a serious, you know, we could have a  
 8 major issue.  
 9 CHAYTOR, Q.C.:  
 10 Q. And you hadn't had any experience, I take it,  
 11 in dealing with an issue of that magnitude  
 12 prior to then?  
 13 MR. HYNES:  
 14 A. No, I mean there was, you know, there was  
 15 certainly other challenging issues during my  
 16 time there, but nothing affecting, I guess,  
 17 individual patients to that degree and, you  
 18 know, sometimes there'd be structural problems  
 19 with the system, whether it was wait list for  
 20 an individual surgery that became a problem or  
 21 accessing a particular service, but this was  
 22 the first time there was, you know, some  
 23 information that a large number of people  
 24 could be fairly significant impacted.  
 25 CHAYTOR, Q.C.:

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1 Q. Yes, and I take it up until the time that you  
 2 left the department then in early 2007, no  
 3 other issue had come forward of this magnitude  
 4 either?  
 5 MR. HYNES:  
 6 A. Not certainly perhaps in scope of, again the  
 7 number of people, I mean, I was involved in a  
 8 number of different files that had very  
 9 serious consequences oftentimes for  
 10 individuals, but nothing to this magnitude, I  
 11 guess.  
 12 CHAYTOR, Q.C.:  
 13 Q. Yes, involving so many, involving hundreds of  
 14 people.  
 15 MR. HYNES:  
 16 A. Yeah, potentially, yes.  
 17 CHAYTOR, Q.C.:  
 18 Q. Potentially, yes. Okay, so anything else you  
 19 recall of your discussion then that morning  
 20 with Mr. Abbott? He didn't seem to know and  
 21 you suggested to him that perhaps he should  
 22 call Mr. Tilley. Anything else discussed?  
 23 MR. HYNES:  
 24 A. Not that I recall because I seem to think this  
 25 would have happened fairly early because after

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1 we interviewed in April, I went back and  
 2 checked my phone logs and on 8:40 that  
 3 morning, July 19th, the Minister called me.  
 4 So he was in his office because the number I  
 5 have recorded is an inside line in his office,  
 6 so I would suggest me and him talked fairly  
 7 early that morning.  
 8 CHAYTOR, Q.C.:  
 9 Q. So you have a phone log of your -  
 10 MR. HYNES:  
 11 A. Well my workbooks that I've turned over to the  
 12 Commission and, you know, gone for notes and  
 13 all that, but I mean, I have a note that  
 14 Minister Osborne spoke to me at 8:40 on that  
 15 morning.  
 16 CHAYTOR, Q.C.:  
 17 Q. On July 19th?  
 18 MR. HYNES:  
 19 A. That's correct, yes.  
 20 THE COMMISSIONER:  
 21 Q. Which Minister?  
 22 MR. HYNES:  
 23 A. Minister Ottenheimer, I'm sorry, Madam  
 24 Commissioner.  
 25 CHAYTOR, Q.C.:

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1 Q. Minister Ottenheimer, yes, thank you. So that  
 2 was 8:40 in the morning?  
 3 MR. HYNES:  
 4 A. Yes.  
 5 CHAYTOR, Q.C.:  
 6 Q. So is that when you would have first spoken to  
 7 him about the issue and informed him of the  
 8 issue?  
 9 MR. HYNES:  
 10 A. Yeah, my note says that we talked about an  
 11 entirely different issue, but you know, I  
 12 would suspect that's the first time we spoke  
 13 directly and then when he, you know, I  
 14 probably either went up to his office or  
 15 shortly thereafter we--me, him and Ms. Chaplin  
 16 met and discussed it.  
 17 CHAYTOR, Q.C.:  
 18 Q. I would take it the issue was such that the  
 19 first opportunity you got to speak to the  
 20 Minister about it, you spoke to him about it?  
 21 MR. HYNES:  
 22 A. I would suggest, I mean, if he called me about  
 23 an issue, I'd say oh, by the way, are you  
 24 aware and that's what would have led to, I  
 25 guess, a discussion in his office directly.

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1 CHAYTOR, Q.C.:

2 Q. And in your mind what had to happen was Mr.

3 Abbott needed to speak to Mr. Tilley to get

4 more information, that there should be a

5 briefing of the Minister?

6 MR. HYNES:

7 A. Yes. And we would have set up a meeting,

8 certainly, as quickly as we could get the

9 parties together to try to get a first-hand

10 account of what's going on.

11 CHAYTOR, Q.C.:

12 Q. Yes, okay, and the fact that that did take

13 place within a relatively short period of time

14 within a couple of days, I take it we can

15 assume from that that this was seen as an

16 urgent important issue for the department?

17 MR. HYNES:

18 A. No question because normally the Minister's

19 calendar would be filled up to such a degree

20 in so far ahead of time, that his ability to

21 free up time would only be done for, you know,

22 a Cabinet meeting or something very urgent or

23 pressing that he viewed that was important

24 enough.

25 CHAYTOR, Q.C.:

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1 Q. Did you at any point in that initial day or so

2 when you heard about this for the first time

3 on July 18th, did you speak to Ms. Hennessey

4 about it?

5 MR. HYNES:

6 A. No, not that I'm aware, no.

7 CHAYTOR, Q.C.:

8 Q. And do you know why you wouldn't have? We

9 understand she was responsible for Board

10 Services.

11 MR. HYNES:

12 A. Yeah, I can't offer an explanation why. I

13 mean, I don't know if I may have assumed

14 Carolyn would have spoken to Moira as part of

15 her role. I mean, I was more, I guess--when I

16 heard it, I was more interested in the next

17 steps, which we just discussed, and making

18 sure the Minister was aware.

19 CHAYTOR, Q.C.:

20 Q. Okay, and in terms of your usual interaction

21 with the ADM, with Ms. Hennessey, how frequent

22 would you have interaction with her?

23 MR. HYNES:

24 A. We had a fairly good--a very good working

25 relationship and we would have fairly close

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1 interactions, because most issues that you

2 tended to deal with in the Minister's office

3 went back to Eastern Health or became a

4 hospital issue or a nursing home issue or a

5 long-term care issue, which were all under her

6 purview. So you had, more than any other ADM

7 or administrator in the Department, you dealt

8 with her on issues, or officials under her.

9 CHAYTOR, Q.C.:

10 Q. Okay, and how about then Mr. Abbott, how much

11 interaction would you have on a day-to-day

12 basis with Mr. Abbott?

13 MR. HYNES:

14 A. More difficult to say because sometimes he'd

15 be out of the office for other meetings and

16 commitments, because he was quite busy

17 himself, but certainly we had a good

18 relationship and I wouldn't hesitate bringing

19 issues forward to him that I viewed as a

20 concern, or if he thought there was something

21 that should be raised in my radar, he would

22 raise it with me, and you know, we enjoyed

23 that relationship.

24 CHAYTOR, Q.C.:

25 Q. Okay, and how does the EA and the DM, how do

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1 your two roles--do they overlap or is it that

2 you bring a political lens to all of the

3 issues? How does that work?

4 MR. HYNES:

5 A. That's perhaps a good way to explain it, Ms.

6 Chaytor. I tend to bring a political lens,

7 because ultimately, at the end of the day, the

8 Deputy Minister is responsible for the overall

9 administration of the Department. I mean, I

10 have no authority to go and order or direct an

11 official to do something. My role would be to

12 make sure the Minister gets whatever advice he

13 or she may need, once the decision is made

14 that it's implemented, and then if I needed to

15 relay that to the Deputy Minister that, you

16 know, we've decided on this course of action,

17 the Minister is okay with this decision, and

18 you need to do X, Y or Z to make it happen.

19 CHAYTOR, Q.C.:

20 Q. Okay, and you and Mr. Abbott, I take it,

21 understood one another's roles and had a good

22 working relationship?

23 MR. HYNES:

24 A. Yes, I would have to say because I know in

25 February of '05, which was only a few months

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1 after I arrived there, he invited me to join  
 2 the weekly executive meetings, and that was  
 3 somewhat unusual across Government, even  
 4 according to my colleagues that I chatted  
 5 with, that most executive assistants were not  
 6 invited into the weekly executive meetings.  
 7 CHAYTOR, Q.C.:  
 8 Q. Okay.  
 9 MR. HYNES:  
 10 A. But he viewed it, I guess, Mr. Abbott put it  
 11 to me that he viewed it to be beneficial for  
 12 me to understand how the Department worked and  
 13 it would also be helpful for the officials to  
 14 have my voice at the table to provide feedback  
 15 about what the Minister's wishes and advice  
 16 may or may not have been.  
 17 CHAYTOR, Q.C.:  
 18 Q. Okay. Now on the 19th then or the morning of  
 19 the 19th, were there any other meetings or  
 20 discussions around the issue?  
 21 MR. HYNES:  
 22 A. Not that I can be definitive about, no.  
 23 CHAYTOR, Q.C.:  
 24 Q. Okay, and if we could look, please, at P-0300?  
 25 We have a number of exhibits, Mr. Hynes, and

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1 they'll come up on your screen.  
 2 MR. HYNES:  
 3 A. Okay.  
 4 CHAYTOR, Q.C.:  
 5 Q. And this is not a Department e-mail, so I'm  
 6 not sure if you've seen this before or not,  
 7 but it's from Ms. Predham and it's dated  
 8 Monday, July 18th, 2005, and it's 12:29 p.m.,  
 9 so it's the middle of the day, and it goes to  
 10 individuals within Eastern Health. My purpose  
 11 in showing it to you is that she's providing  
 12 an update to Dr. Williams and she says "I was  
 13 speaking to Deborah Thomas today and the  
 14 Department of Health has been notified and is  
 15 now involved. They would like a letter sent  
 16 to each woman outlining the problem and the  
 17 steps we are taking to address it. That draft  
 18 letter will have to be seen by our lawyer  
 19 first, of course. I guess we'll have to  
 20 decide tomorrow or the next day re: advising  
 21 the public?" and she has a question mark.  
 22 Mr. Hynes, in your discussion with Ms.  
 23 Chaplin on July 18th, later in the day, was  
 24 there any discussion about the Department  
 25 having mentioned sending a letter to the

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1 patients?  
 2 MR. HYNES:  
 3 A. No, not that I'm aware. The first discussion  
 4 I remember of a letter was on July 21st when  
 5 we met with them and there was talk of patient  
 6 notification. That was the first time I ever  
 7 remember hearing any discussion of a letter.  
 8 CHAYTOR, Q.C.:  
 9 Q. Okay, and on the 19th then, I take it, you  
 10 didn't hear in your discussions then with Mr.  
 11 Abbott or your discussions with the Minister,  
 12 there was no talk of a letter going to the  
 13 patients?  
 14 MR. HYNES:  
 15 A. No.  
 16 CHAYTOR, Q.C.:  
 17 Q. And do you know then who in the Department  
 18 made this request or suggestion, if it indeed  
 19 were made?  
 20 MR. HYNES:  
 21 A. I mean, I would certainly not have the  
 22 authority in my position to tell Eastern  
 23 Health to do it. So I would assume it would--  
 24 if they had that, it would have to come from a  
 25 deputy minister, an assistant deputy minister

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1 level, because, you know, you're talking about  
 2 a fairly significant course of action, to  
 3 direct a health authority to do something.  
 4 CHAYTOR, Q.C.:  
 5 Q. Yes, and if a letter, in fact, had been  
 6 requested July 18th, or sometime prior to  
 7 then, by the Department, would it surprise you  
 8 that you weren't apprised of that and didn't  
 9 know that this had happened?  
 10 MR. HYNES:  
 11 A. Well, it would certainly maybe indicate that  
 12 the Department knew even prior to the 18th,  
 13 because if they're talking about a letter and  
 14 that's midday, by the sound of the e-mail, but  
 15 again, I don't know who may have, in the  
 16 Department, given that notification to Ms.  
 17 Thomas or whoever wrote the e-mail, Ms.  
 18 Predham.  
 19 CHAYTOR, Q.C.:  
 20 Q. And it certainly wasn't told to you?  
 21 MR. HYNES:  
 22 A. No, I have no information or knowledge of  
 23 that, no.  
 24 CHAYTOR, Q.C.:  
 25 Q. And the first you hear of the letter is July



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1 21st?

2 MR. HYNES:

3 A. That's correct.

4 CHAYTOR, Q.C.:

5 Q. When you first heard of the issue and you

6 started thinking about what needs to happen

7 here, did you think about patient notification

8 or public notification? Were those thoughts

9 running through your head?

10 MR. HYNES:

11 A. I think in the very early--you know, the whole

12 19th, 20th, before we met with them, I think

13 it was just trying to get--make sure we could

14 get information from Eastern Health, which

15 would have been a briefing note about what

16 exactly their situation was, what exactly

17 their recommendation would be, and to try to

18 bring the players to the table to make sure,

19 you know, we could decide on a course of

20 action and go forward from that point. So I

21 mean, I don't remember conversations again on

22 the, you know, 19th-20th, saying we need to

23 get a letter done, or because, you know, how--

24 the best course to do this notification stuff,

25 I only remember it being discussed for the

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1 first time, at least internally in the

2 Department, on the 21st.

3 CHAYTOR, Q.C.:

4 Q. And when you spoke with Minister Ottenheimer

5 about it on the morning of the 19th, what were

6 his concerns or what were his thoughts around

7 the issues?

8 MR. HYNES:

9 A. Well, obviously, he was, you know, very

10 concerned, very troubled by it, because I

11 think he recognized that this could be a huge,

12 you know, very significant issue in health

13 care in the province, and he was very, you

14 know, concerned. I mean, I also remember that

15 day that--and I still recall, I thought there

16 was a prescheduled lunch with Mr. Tilley that

17 had been set up sometime before this, before

18 this issue being raised with the Department.

19 CHAYTOR, Q.C.:

20 Q. On the 19th?

21 MR. HYNES:

22 A. On the 19th, and I still think he was going to

23 have lunch with Mr. Tilley and obviously, I

24 mean, I'm sure this might have been discussed

25 or Mr. Tilley might have raised it with him at

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1 that time.

2 CHAYTOR, Q.C.:

3 Q. Yes, okay. So it's your understanding that he

4 did go to lunch with Mr. Tilley that day?

5 MR. HYNES:

6 A. I know it was certainly scheduled, Ms.

7 Chaytor, because I know it had moved in his

8 calendar a number of times that fall because

9 of scheduling conflicts with the Minister

10 and/or Mr. Tilley, and I know it was scheduled

11 for that day, and you know, I still have a

12 recollection that after he talked to Mr.

13 Tilley that afternoon, that he reflected that

14 Mr. Tilley seemed sullen or down or troubled

15 that this whole issue was starting to come

16 forward, I guess. Now whether that occurred

17 at a lunch or if they chatted on the phone and

18 the lunch never took place, you know, I can

19 only say my understanding is they were going

20 to have lunch.

21 CHAYTOR, Q.C.:

22 Q. And you knew that he had a prearranged lunch,

23 and you had assumed he went to lunch because

24 he came after--sometime I take it after the

25 luncheon period and told you that Mr. Tilley

Page 196

1 seemed, in your words, sullen?

2 MR. HYNES:

3 A. Yeah.

4 CHAYTOR, Q.C.:

5 Q. So he had some kind of discussion, whether it

6 was face to face or not with Mr. Tilley, he

7 met with Mr. Tilley or he had talked to Mr.

8 Tilley around midday on the 19th?

9 MR. HYNES:

10 A. That would be my recollection.

11 CHAYTOR, Q.C.:

12 Q. And did he tell you anything else about his

13 discussion with Mr. Tilley?

14 MR. HYNES:

15 A. No, just--I mean, I think it was more he found

16 Mr. Tilley's demeanour very troubling, because

17 I mean, I always found Mr. Tilley very

18 professional, very frank, and I mean, when the

19 Minister came back, he seemed quite troubled

20 that Mr. Tilley again seemed, you know, sullen

21 and troubled by, you know, I guess what the

22 issue that--but I mean, I don't recall the

23 Minister telling me "here's what George

24 relayed to me."

25 CHAYTOR, Q.C.:

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1 Q. Any specifics of that?

2 MR. HYNES:

3 A. No, just more or less the Minister was

4 troubled by his demeanour and his persona at

5 the meeting.

6 CHAYTOR, Q.C.:

7 Q. Yes, and when you spoke with the Minister that

8 morning, you and Ms. Chaplin, I take it the

9 Minister was given all the information that

10 Ms. Chaplin had regarding the issue, the same

11 information that had been relayed to you that

12 it's 1,000 to 1500 patients, it involves

13 breast cancer, all of that information, going

14 back a period of years, that was told to the

15 Minister on the morning of the 19th?

16 MR. HYNES:

17 A. Yeah. Now I don't know if Ms. Chaplin--I

18 mean, it was loosely talked about when we met,

19 but I don't know if Ms. Chaplin had already

20 spoken to him, because I mean, you know, she

21 did indicate she was trying to reach him on

22 the 18th. So they very well may have talked

23 that night and that information would have

24 been relayed at that time. I mean, we just

25 had a more general discussion on the morning

Page 198

1 about, you know, what are we going to do.

2 CHAYTOR, Q.C.:

3 Q. Yes, but the Minister understood the same

4 magnitude of the issue that you understood it

5 to be?

6 MR. HYNES:

7 A. I would say that's a safe statement.

8 CHAYTOR, Q.C.:

9 Q. And when he came back from his lunch with--or

10 after his discussion, I shouldn't say lunch,

11 may or may not have been a lunch, but when he

12 came back after his discussion with Mr.

13 Tilley, Mr. Tilley's demeanour seemed sullen,

14 was there any indication by the Minister that

15 Mr. Tilley doesn't think this issue is what we

16 think it is. It's not of that magnitude?

17 MR. HYNES:

18 A. No, I don't remember that. You know, I don't

19 remember that, making that connection or the

20 Minister making that statement, no.

21 CHAYTOR, Q.C.:

22 Q. And you think if that had happened during the

23 lunch that the Minister would have relayed

24 that information to you, given your

25 relationship with Minister Ottenheimer? If he

Page 199

1 had any information at that point in time

2 that, you know, "Darrell, this is not what we

3 were thinking, it's not quite that or they

4 don't know what it is," do you think that

5 would have been told to you?

6 MR. HYNES:

7 A. Yeah, if it was something new that deviated

8 significantly from what we understood to be

9 the information at the time, because certainly

10 that was the case when we met on the 21st,

11 that he may have shared it then, but maybe

12 they didn't get into that level of detail at

13 their lunch.

14 CHAYTOR, Q.C.:

15 Q. Okay.

16 MR. HYNES:

17 A. Presumably, I mean, it could very well have

18 been, by the time they had lunch, and again,

19 if they did have lunch, then Mr. Tilley would

20 know that there was a meeting scheduled for

21 two days after, that they would be coming in

22 to fully inform us.

23 CHAYTOR, Q.C.:

24 Q. And when you spoke with the Minister yourself

25 in your conversations on the 19th and

Page 200

1 indicated what course of action that you think

2 needed to happen, did the Minister have any

3 advice or instruction for you or for Ms.

4 Chaplin?

5 MR. HYNES:

6 A. No, I do recall the issue of notifying the

7 Premier's office came up, because the

8 Minister, I guess recognized that this was a

9 significant issue that should be brought

10 forward, and it was agreed that rather than

11 duplicate efforts, rather than me call my

12 colleague, Ms. Chaplin would just call, I

13 believe the director of communications,

14 whoever she would report to in the Premier's

15 office.

16 CHAYTOR, Q.C.:

17 Q. Okay, and we think that was Ms. Matthews.

18 MR. HYNES:

19 A. Yes, sure, it would have been at that time,

20 yes.

21 CHAYTOR, Q.C.:

22 Q. Okay. So who was it that suggested that the

23 Premier's office be contacted?

24 MR. HYNES:

25 A. Minister Osborne, I think, wanted to make sure

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1 that that was done.  
 2 CHAYTOR, Q.C.:  
 3 Q. Minister Ottenheimer?  
 4 MR. HYNES:  
 5 A. Minister--I apologize, Minister Ottenheimer.  
 6 CHAYTOR, Q.C.:  
 7 Q. That's okay.  
 8 MR. HYNES:  
 9 A. I apologize, Ms. Chaytor, for mis-speaking.  
 10 CHAYTOR, Q.C.:  
 11 Q. No, that's fine. So the Minister asked that  
 12 that happen?  
 13 MR. HYNES:  
 14 A. Yes.  
 15 CHAYTOR, Q.C.:  
 16 Q. And do you know whether or not Carolyn did  
 17 that? Did she speak to you that day and let  
 18 you know whether or not she had spoken with  
 19 Ms. Matthews?  
 20 MR. HYNES:  
 21 A. Again, if she did, you know, she may have  
 22 walked by my office and said "I've talked to  
 23 Elizabeth, and we're trying to get more  
 24 information," just, you know, a passing  
 25 comment to that degree, that she'd given the

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1 heads up. I'm sure she would have assured me  
 2 that she had passed on the heads up.  
 3 CHAYTOR, Q.C.:  
 4 Q. Okay, and did she indicate to you whether or  
 5 not she'd contacted anyone else?  
 6 MR. HYNES:  
 7 A. No.  
 8 CHAYTOR, Q.C.:  
 9 Q. Were you aware that she had contacted Cabinet  
 10 Secretariat?  
 11 MR. HYNES:  
 12 A. I would have become aware of that after. At  
 13 that time, no.  
 14 CHAYTOR, Q.C.:  
 15 Q. Okay. And when did you learn that?  
 16 MR. HYNES:  
 17 A. I would say more around probably the 20th or  
 18 21st when we had, you know, we may have been  
 19 talking more, getting ready for the meeting on  
 20 the 21st, she would have, you know, said that  
 21 I, you know, Cabinet Secretariat has been  
 22 given a heads up.  
 23 CHAYTOR, Q.C.:  
 24 Q. Okay, so it's a day or two later before you  
 25 realized Cabinet Secretariat had been brought

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1 into the picture?  
 2 MR. HYNES:  
 3 A. Yeah, to the best of my recollection, I mean,  
 4 I may have been told on the 19th, but that's  
 5 how I recall.  
 6 CHAYTOR, Q.C.:  
 7 Q. Okay. And if we could look, please, at P-  
 8 0312? And, Mr. Hynes, this is an e-mail  
 9 that's gone from Mr. Cake, Gary Cake, to  
 10 Robert Thompson on July 19th, 2005 at 10:32  
 11 a.m., so it's that morning. "Major Health  
 12 Matter" is the subject. "Robert, Carolyn  
 13 Chaplin just called from HCS to provide a  
 14 heads up that a major story will break from  
 15 the Eastern Health board as early as this  
 16 Thursday, but more likely next Monday. The  
 17 Eastern Health board has recently discovered  
 18 errors in its breast cancer testing program.  
 19 This matter affects clients who were subject  
 20 to breast cancer testing from 1997 to April,  
 21 2004. I understand that an estimated 1200 to  
 22 1500 clients will need to be retested. The  
 23 Eastern Health board is currently working on a  
 24 strategy for communicating this news to  
 25 affected clients and the public at large.

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1 Legal advice is being engaged in this process.  
 2 HCS will be advised of the communication  
 3 strategy. A briefing note is currently being  
 4 prepared. Carolyn has also alerted Elizabeth  
 5 to this matter." Signed, "Gary." How does  
 6 that compare to the information that was  
 7 relayed to you by Ms. Chaplin on the afternoon  
 8 of the 18th?  
 9 MR. HYNES:  
 10 A. You know, whether I remember, Ms. Chaytor, it  
 11 was, you know, 1000 to 1500. I mean, I  
 12 remember when you showed me this in April, the  
 13 1500 number definitely looked familiar. And  
 14 again, this period of time, six, seven years,  
 15 from '97 to '04, that would certainly look and  
 16 that, you know, the other thing I take away, I  
 17 guess, from it would involve breast cancer.  
 18 CHAYTOR, Q.C.:  
 19 Q. Yes, okay.  
 20 MR. HYNES:  
 21 A. Some problem with there, some, you know,  
 22 unspecified problem.  
 23 CHAYTOR, Q.C.:  
 24 Q. And the idea that it's a major story that's  
 25 going to break as early as Thursday, but more

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1 likely next Monday, the idea that this story  
 2 was imminent, that it was going to become a  
 3 public issue, was that relayed to you by Ms.  
 4 Chaplin?  
 5 MR. HYNES:  
 6 A. I don't remember getting a sense of urgency  
 7 because certainly when we met with them on the  
 8 21st, which I know is two days later, I mean,  
 9 they weren't near in a position to tell  
 10 anything to anybody because they were still  
 11 very much going through an internal process  
 12 trying to figure out how many people were  
 13 involved, what years were involved and what  
 14 exactly they were dealing with.  
 15 CHAYTOR, Q.C.:  
 16 Q. So you don't recall any discussion that this  
 17 is about to become a public issue within as  
 18 early, could be as two days before your  
 19 briefing ever takes place with the minister on  
 20 the 21st, you don't remember that being  
 21 discussed?  
 22 MR. HYNES:  
 23 A. I don't remember making that specific linkage  
 24 that this is urgent and we got to do something  
 25 right away. I mean, you know, our course of

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1 action was to get--arrange a briefing with  
 2 Eastern Health as quickly as we could, get a  
 3 briefing note done as quickly as we could, and  
 4 make sure the minister was apprised as quickly  
 5 as we could.  
 6 CHAYTOR, Q.C.:  
 7 Q. And I take it if you were aware that it could  
 8 break by Thursday, you'd be having your  
 9 meeting before Thursday?  
 10 MR. HYNES:  
 11 A. Presumably, yes.  
 12 CHAYTOR, Q.C.:  
 13 Q. Why did the--why did the minister think that  
 14 the Premier's office needed to be notified of  
 15 the issue?  
 16 MR. HYNES:  
 17 A. Well, I would suspect, looking at the numbers  
 18 here, you know, this would be a significant  
 19 public issue for government, I would say.  
 20 CHAYTOR, Q.C.:  
 21 Q. And, Mr. Hynes, even if the numbers were not  
 22 1200 to 1500 but 200 to 500 or 200, those are  
 23 still significant numbers, I would take it?  
 24 MR. HYNES:  
 25 A. No, exactly, because especially if you're

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1 talking about errors which would lead to, you  
 2 know, believe there was some kind of  
 3 underlying problems and especially breast  
 4 cancer, which, I mean, as we all know, I  
 5 guess, it's a very emotional issue and, you  
 6 know, it affects so many people and so many  
 7 families that it would certainly, you know,  
 8 that would raise an antenna for me just  
 9 because of the type of disease it was.  
 10 CHAYTOR, Q.C.:  
 11 Q. Yes, okay. So even if the numbers were lower,  
 12 you would still think it prudent to notify the  
 13 Premier's office?  
 14 MR. HYNES:  
 15 A. Even if she hadn't, I might have or, you know,  
 16 depending on the discussion when we did, I  
 17 mean, you know, the numbers are less  
 18 important, I mean, it's a significant public  
 19 policy issue, political issue.  
 20 CHAYTOR, Q.C.:  
 21 Q. That's right. And the idea that legal advise  
 22 is being engaged in this process, did Ms.  
 23 Chaplin indicate anything to you about Eastern  
 24 Health seeking legal advise on the issue?  
 25 MR. HYNES:

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1 A. Not at that time, no. That came up on the  
 2 21st.  
 3 CHAYTOR, Q.C.:  
 4 Q. Okay. So on the 21st you recall discussion  
 5 around legal advice?  
 6 MR. HYNES:  
 7 A. Yes.  
 8 CHAYTOR, Q.C.:  
 9 Q. But you don't recall Ms. Chaplin telling you  
 10 that?  
 11 MR. HYNES:  
 12 A. No.  
 13 CHAYTOR, Q.C.:  
 14 Q. Okay. And if you were to have picked up the  
 15 phone and phoned the Premier's office yourself  
 16 to your counterpart, who would you have  
 17 called?  
 18 MR. HYNES:  
 19 A. I would have thought at that time I reported  
 20 to Steve Dinn, who was the executive assistant  
 21 in the Premier's office, who's now the chief  
 22 of staff.  
 23 CHAYTOR, Q.C.:  
 24 Q. Okay. So when--you report directly to the  
 25 minister, but do you also report to the

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1 Premier's office?  
 2 MR. HYNES:  
 3 A. Excuse me.  
 4 CHAYTOR, Q.C.:  
 5 Q. Or I should say then as an executive  
 6 assistant?  
 7 MR. HYNES:  
 8 A. Yeah, well, I guess, Ms. Chaytor, all  
 9 political contracts like mine are signed off  
 10 by the Premier's office and I guess we all  
 11 serve at leisure, so ultimately, you know,  
 12 even though you work for a minister, your  
 13 appointment has to be approved by the  
 14 Premier's office and your contract signed by  
 15 the Premier's office. So I would, you know,  
 16 consider them indirectly, you know, a  
 17 superior, I guess.  
 18 CHAYTOR, Q.C.:  
 19 Q. Okay. And so you had a regular reporting to  
 20 Mr. Dinn?  
 21 MR. HYNES:  
 22 A. I wouldn't say regular. I mean, I--you know,  
 23 I didn't call often, but certainly me and Mr.  
 24 Dinn and are friends from university, as well,  
 25 so I mean, we would sometimes socialize

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1 together, as well, and you'd see him out  
 2 around and this kind of thing.  
 3 CHAYTOR, Q.C.:  
 4 Q. Okay. And we've heard that directors of  
 5 communication would have monthly meetings or  
 6 scheduled monthly meetings, anyhow. Was there  
 7 a similar thing for EAs across government?  
 8 MR. HYNES:  
 9 A. Much less frequently, but we did meet  
 10 occasionally.  
 11 CHAYTOR, Q.C.:  
 12 Q. Okay. And did you ever in your meetings with  
 13 other EAs discussion the ER/PR issue?  
 14 MR. HYNES:  
 15 A. No.  
 16 CHAYTOR, Q.C.:  
 17 Q. So what kinds of issues would be discussed in  
 18 your meetings with the other EAs?  
 19 MR. HYNES:  
 20 A. Could be just a general place where people  
 21 could talk about their issues and it could be  
 22 someone seeking advice among our colleagues  
 23 about an issue they were having with their  
 24 department, getting cooperation, it could be  
 25 I'm trying to do this for my minister, can

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1 anyone suggest a course of action. could be  
 2 someone talking about the travel rules and if  
 3 we're allowed to go to a particular function  
 4 on behalf of a minister and what's allowed and  
 5 what's not allowed and trying to get some  
 6 advice about other people's experiences, just  
 7 generally a, you know, throw around ideas and  
 8 get some feedback from your colleagues because  
 9 there's no one else, really, on a day-to-day  
 10 basis you can go to for that kind of stuff.  
 11 CHAYTOR, Q.C.:  
 12 Q. Right, okay. So an issue that's going on  
 13 within your department, you would only seek  
 14 out advice from others if you are having any  
 15 particular difficulty in dealing with the  
 16 issue from your job function point of view?  
 17 MR. HYNES:  
 18 A. That would be a safe statement, yeah.  
 19 CHAYTOR, Q.C.:  
 20 Q. Is there anything else before I leave this  
 21 0312, page 1, is there anything else on that  
 22 in the content of that e-mail that stands out  
 23 to you, Mr. Hynes, or anything that you think  
 24 -  
 25 MR. HYNES:

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1 A. No, I don't believe, Ms. Chaytor.  
 2 CHAYTOR, Q.C.:  
 3 Q. So I take it it's fairly consistent with what  
 4 you were told except for the issue of this  
 5 becoming a public issue imminently and legal  
 6 advice, you don't recall that being said?  
 7 MR. HYNES:  
 8 A. No, I don't remember an imminent--like, this  
 9 is going to be out there, you know, the next  
 10 day or so or any -  
 11 CHAYTOR, Q.C.:  
 12 Q. And the idea of a communication strategy being  
 13 worked on, do you recall that being discussed?  
 14 MR. HYNES:  
 15 A. I mean, I remember, I guess, Carolyn saying  
 16 Eastern were still going through, you know,  
 17 internally trying to identify what they were  
 18 dealing with, the amount of people and, I  
 19 guess, what would flow from that then is how  
 20 you communicate this. So, I mean, if you call  
 21 that a communication strategy, I mean, I  
 22 still--I understood Eastern Health were still  
 23 very much going through an internal process,  
 24 put it that way.  
 25 CHAYTOR, Q.C.:

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1 Q. Okay. And that was even as early as the 18th  
 2 when Ms. Chaplin spoke to you, that there was  
 3 still -  
 4 MR. HYNES:  
 5 A. 18th, 19th, I mean, we may have had a more in  
 6 depth conversation with the minister on the  
 7 19th.  
 8 CHAYTOR, Q.C.:  
 9 Q. Okay. And a briefing note currently being  
 10 prepared, and again, this is at 10:30 in the  
 11 morning on July 19th, and you had indicated  
 12 that a briefing note would be a good idea. So  
 13 the idea that they were already preparing one,  
 14 did Ms. Chaplin tell you that when you  
 15 suggested, well, we need to get a briefing  
 16 note?  
 17 MR. HYNES:  
 18 A. I wouldn't find that remarkable to remember  
 19 because that would be an assumed thing in  
 20 government, to be honest, that a note would be  
 21 prepared almost immediately.  
 22 CHAYTOR, Q.C.:  
 23 Q. Okay. And then as the 19th went on, I take  
 24 it, you weren't aware that this contact had  
 25 been made at all with the Cabinet Secretariat.

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1 Were you made aware of any other contact then  
 2 back from Cabinet Secretariat or any other  
 3 communications at all to Mr. Cake on this  
 4 issue by Ms. Chaplin?  
 5 MR. HYNES:  
 6 A. No, not that I can recall right now.  
 7 CHAYTOR, Q.C.:  
 8 Q. Okay.  
 9 MR. HYNES:  
 10 A. Because it wouldn't be something that would  
 11 involve me. I would not have normal dealings  
 12 with Cabinet Secretariat or be a part of that  
 13 process.  
 14 CHAYTOR, Q.C.:  
 15 Q. Okay. And if I could just take you through  
 16 here, on page 2 of the exhibit is Mr. Thompson  
 17 forwarding this on to Mr. Crawley. And he  
 18 says, "This is major. Once the solution is  
 19 set into motion, we will expect the department  
 20 and the board to undertake appropriate  
 21 evaluation to determine why this has  
 22 happened." I take it that wouldn't surprise  
 23 you that Mr. Thompson is seeing fit to pass--  
 24 to notify Mr. Crawley of the issue?  
 25 MR. HYNES:

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1 A. No. I mean, Mr. Thompson was, I guess, at  
 2 that time the clerk of Executive Council and  
 3 if he understood from Mr. Cake, who was under  
 4 him, that this was an issue, he would want to  
 5 advise the Premier's office and the most  
 6 senior person in the Premier's office would be  
 7 Mr. Crawley.  
 8 CHAYTOR, Q.C.:  
 9 Q. Okay. And the idea of expecting the  
 10 department and the board to undertake  
 11 appropriate evaluation to determine why this  
 12 has happened, was that idea ever communicated  
 13 to you or did you ever hear that discussed in  
 14 the department?  
 15 MR. HYNES:  
 16 A. No.  
 17 CHAYTOR, Q.C.:  
 18 Q. And in terms of that as being a plan of action  
 19 to have--to undertake an evaluation to  
 20 determine how this happened, from your point  
 21 of view would you think that would be a  
 22 prudent thing to do?  
 23 MR. HYNES:  
 24 A. Well, I guess any time you undertake a course  
 25 of action, you would hope, unless you're going

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1 to measure, there's no way to understand if  
 2 you're, you know, achieving your targets and  
 3 your goals, you know, I guess.  
 4 CHAYTOR, Q.C.:  
 5 Q. Okay. But to undertake an evaluation to  
 6 determine why this happened, presumably why  
 7 there could be these many tests that need to  
 8 be retested?  
 9 MR. HYNES:  
 10 A. I don't--I mean, on July 19th I don't remember  
 11 that being something I was privy to or  
 12 something that was in my mind set at that  
 13 point. Again, we're at the very early stages,  
 14 just trying to understand and get our minds  
 15 around what had happened.  
 16 CHAYTOR, Q.C.:  
 17 Q. Yes. And I'm just thinking, though, in terms  
 18 of that being a--and, of course, Mr. Thompson  
 19 doesn't seem to be suggesting it has to happen  
 20 immediately, he's saying once the solution is  
 21 set into motion. But I take it you wouldn't  
 22 take issue with that being a good idea, to -  
 23 MR. HYNES:  
 24 A. No.  
 25 CHAYTOR, Q.C.:

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1 Q. - undertake an evaluation to figure out what  
 2 happened here?  
 3 MR. HYNES:  
 4 A. And if Mr. Thompson felt that, you know, I  
 5 guess he would have communicated that to Mr.  
 6 Abbott as the deputy who would have reported  
 7 to him.  
 8 CHAYTOR, Q.C.:  
 9 Q. Okay. And then we have Mr. Thompson's e-mail  
 10 back to Mr. Cake, who had notified him of it,  
 11 saying, "Thanks. Please ensure the department  
 12 and the board include in their com plan the  
 13 assurance that once the solution is set into  
 14 motion, that an evaluation will be done to  
 15 determine the specific or systemic reasons why  
 16 this occurred so that the matter will be  
 17 properly addressed in the long term. I'd like  
 18 to see this aspect before it goes out.  
 19 Thanks." And again, that was not communicated  
 20 to you, at least, in the department?  
 21 MR. HYNES:  
 22 A. No. Again, I mean, Cabinet Secretariat I  
 23 would not have any indirect or direct dealings  
 24 with in my role.  
 25 CHAYTOR, Q.C.:

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1 Q. And who normally then within the department  
 2 would be responsible for seeing that this is  
 3 carried out, what Mr. Thompson is asking to  
 4 have carried out?  
 5 MR. HYNES:  
 6 A. Gary Cake would normally, I guess, go to the  
 7 deputy or assistant deputy minister in the  
 8 department.  
 9 CHAYTOR, Q.C.:  
 10 Q. Okay. And this is just Mr. Cake forwarding on  
 11 to Mr. Thompson. And then I think page 5 we  
 12 have Ms. Chaplin back to Mr. Cake on July 19th  
 13 at 2:37 p.m. in the afternoon, and she copies  
 14 this to Mr. Abbott. "Gary, Further to this  
 15 morning and incoming information this  
 16 afternoon is required at this time. We have  
 17 arranged a briefing with the health authority  
 18 for the latter part of this week and will be  
 19 in a better position to forward relevant  
 20 briefing materials at that time. No public  
 21 announcement will be forthcoming this week and  
 22 there is a possibility that the significance  
 23 of any announcement will be minimized.  
 24 Carolyn Chaplin, Director of Communications."  
 25 And I take it from what you've told us, Mr.

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1 Hynes, you weren't aware that this  
 2 communication went back to Cabinet  
 3 Secretariat?  
 4 MR. HYNES:  
 5 A. Not that it went to Cabinet Secretariat, no.  
 6 I mean, I remember Ms. Chaplin telling me  
 7 that, you know, there had been movement in the  
 8 information coming from Eastern Health and,  
 9 you know, they were still very much trying to  
 10 get a handle on what was going on.  
 11 CHAYTOR, Q.C.:  
 12 Q. Okay. And what did you understand by that,  
 13 what was the movement, what had changed?  
 14 MR. HYNES:  
 15 A. My recollection is, ma'am, from the initial  
 16 reports that the numbers and the amount of  
 17 people potentially involved were significantly  
 18 revised downward.  
 19 CHAYTOR, Q.C.:  
 20 Q. Okay. And -  
 21 MR. HYNES:  
 22 A. And that's why I think when you look at the  
 23 significance of any announcement would be  
 24 minimized, I think that just means that the  
 25 numbers were changing.

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1 CHAYTOR, Q.C.:  
 2 Q. So the numbers of people who may be impacted -  
 3 MR. HYNES:  
 4 A. Potentially impacted, yes.  
 5 CHAYTOR, Q.C.:  
 6 Q. So that testing would not have to be for 1200  
 7 or 1000 to 1500 people, that it was some  
 8 lesser number of people that would have to be  
 9 tested?  
 10 MR. HYNES:  
 11 A. That was certainly my understanding, yes.  
 12 CHAYTOR, Q.C.:  
 13 Q. Okay. And was there anything else in terms of  
 14 change in information provided that day?  
 15 MR. HYNES:  
 16 A. No, that would be the biggest thing I would  
 17 take away from that. And of course that, you  
 18 know, they're not in a position to make a  
 19 public announcement, I guess, again, because  
 20 internally, I guess, they still weren't sure  
 21 exactly what they were dealing with.  
 22 CHAYTOR, Q.C.:  
 23 Q. And you had understood that, though, from your  
 24 prior discussion, as well, with Ms. Chaplin,  
 25 that they weren't--didn't quite have a handle

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1 on what they were dealing with?

2 MR. HYNES:

3 A. No, that became clear as we got into the

4 process.

5 CHAYTOR, Q.C.:

6 Q. Okay. So when you first spoke with her on the

7 18th, it seemed clear, this was definite

8 information. On the morning of the 19th had

9 there been any shifting in that?

10 MR. HYNES:

11 A. I think when we first talked to the minister,

12 there was, you know, we were still, you know,

13 dealing with that rough numbers, as we

14 understood, and an approximate period of time,

15 as we understood it. But clearly, I mean, by

16 the afternoon it's reflected here that the

17 information Ms. Chaplin had gotten, it had

18 changed.

19 CHAYTOR, Q.C.:

20 Q. Okay. And your recollection was that she

21 discussed that with you or told you that there

22 had been some change and that the numbers

23 weren't expected, the numbers of people to be

24 retested weren't in that range?

25 MR. HYNES:

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1 A. Yes, that's correct.

2 CHAYTOR, Q.C.:

3 Q. Did you have any idea or did she offer any

4 suggestion as to -

5 MR. HYNES:

6 A. No, there was never a specific number. And I

7 think that related again that Eastern Health

8 were still trying to identify internally

9 themselves what was involved and what numbers

10 were, they were dealing with.

11 CHAYTOR, Q.C.:

12 Q. Yes. And I would take it that, as you've said

13 earlier, that if it's 200 people, it's still

14 significant?

15 MR. HYNES:

16 A. Yes. I mean -

17 CHAYTOR, Q.C.:

18 Q. If it's 20 people, it's significant?

19 MR. HYNES:

20 A. Well, for those 20 people, certainly. And I

21 mean, it's, it's an issue.

22 CHAYTOR, Q.C.:

23 Q. Okay. So nothing else then stands out as to

24 what happened on the 19th?

25 MR. HYNES:

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1 A. No.

2 CHAYTOR, Q.C.:

3 Q. And was there any further discussion with the

4 minister, was the minister apprised of this

5 new information?

6 MR. HYNES:

7 A. Not by me, but I assume Ms. Chaplin did.

8 CHAYTOR, Q.C.:

9 Q. And did you know this information that somehow

10 there had been some movement, did you know

11 that prior to your afternoon discussion with

12 the minister when he told you that Mr. Tilley

13 seemed down or sullen?

14 MR. HYNES:

15 A. No, I think this would have been after because

16 I don't remember having the ability to correct

17 him and say, you know, the latest information

18 we have is this is not quite as bad as we may

19 have thought.

20 CHAYTOR, Q.C.:

21 Q. And you didn't take it on yourself to speak to

22 the minister again and make sure he was aware

23 of the new situation?

24 MR. HYNES:

25 A. No. And I suspect Ms. Chaplin would have

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1 obviously done it and then probably would have

2 told me or I would have gotten, talked to the

3 minister later on that day and he would have

4 told me I'm aware of the latest and -

5 CHAYTOR, Q.C.:

6 Q. Okay. And were you aware of whether or not

7 the Premier's office had been contacted to

8 share the new information?

9 MR. HYNES:

10 A. No, not that I'm aware.

11 CHAYTOR, Q.C.:

12 Q. Did you yourself have any discussions with

13 anyone in the Premier's office regarding this

14 issue?

15 MR. HYNES:

16 A. No.

17 CHAYTOR, Q.C.:

18 Q. So in terms of the next day, then, on into the

19 20th, do you recall anything about any

20 discussions around the issue the next day, the

21 day prior to the meeting?

22 MR. HYNES:

23 A. No. I mean, I, you know, not that I can be

24 definitive about.

25 CHAYTOR, Q.C.:



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1 Q. Okay, and there was a briefing note prepared  
 2 July 20th by Eastern Health. Did you receive  
 3 that before the meeting or was that something  
 4 that was handed out at the meeting?  
 5 MR. HYNES:  
 6 A. I'm not sure if it was circulated prior or  
 7 walked into the meeting, because sometimes  
 8 they arrived a number of different ways.  
 9 CHAYTOR, Q.C.:  
 10 Q. Okay, and tell us then what you next recall  
 11 then. What do you recall then? I take it  
 12 it's the 21st that the meeting happens. Tell  
 13 us about that. What do you recall?  
 14 MR. HYNES:  
 15 A. Well, I remember the meeting was the first  
 16 thing in the morning. I remember Minister  
 17 Ottenheimer was there, Ms. Chaplin, Dr.  
 18 Williams, George Tilley, Susan Bonnell, Don  
 19 Cook who's chief of Laboratory Medicine, and  
 20 John Abbott, the deputy minister, was in the  
 21 room and you know, it was in the Minister's  
 22 boardroom in the Department of Education  
 23 (sic.) and it started approximately 9:00.  
 24 CHAYTOR, Q.C.:  
 25 Q. Okay, it's pretty good recall, all right, and

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1 what is it then--did anything happen--first of  
 2 all, were all of those individuals present for  
 3 all of the discussions?  
 4 MR. HYNES:  
 5 A. No, Ms. Chaytor. As I explained to you in  
 6 April, I have a recollection that myself and  
 7 the Minister and Dr. Williams and George  
 8 Tilley had a private conversation in the  
 9 Minister's office. Unfortunately, I'm not  
 10 definitive on if it was prior to the July 21st  
 11 meeting or prior to another meeting that fall,  
 12 because--and I remember we were in--what had  
 13 happened was the party was waiting to go into  
 14 the boardroom and the Minister came out and  
 15 invited Mr. Tilley and Mr. Williams in. I  
 16 joined them in the Minister's office. We  
 17 closed the door and had a chat, and then we  
 18 went out and joined the larger group in the  
 19 boardroom. I'm unclear, unfortunately, if  
 20 that was July 21st. Some of the conversation  
 21 makes me think it was pretty early on in the  
 22 process, which makes me think it may have been  
 23 the 21st, but it could have been, you know,  
 24 before the August 15th meeting.  
 25 CHAYTOR, Q.C.:

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1 Q. But it was the issue of ER/PR that was being  
 2 discussed that day, whichever meeting it was?  
 3 MR. HYNES:  
 4 A. Yes, no question, ma'am. No question.  
 5 CHAYTOR, Q.C.:  
 6 Q. All right, and what, in this pre-meeting, if  
 7 you will, the pre-meeting, if it were on the  
 8 21st, what is it that you remember standing  
 9 out? What was discussed?  
 10 MR. HYNES:  
 11 A. I remember Mr. Tilley being fairly animated  
 12 that they really didn't have an idea at that  
 13 point what they were dealing with, that I  
 14 remember discussion, which I found fairly  
 15 troubling, that they said it could be a  
 16 national phenomenon. That what they had  
 17 discovered in the lab in St. John's,  
 18 Newfoundland, could, you know, transcend and  
 19 go across the country and this would become a  
 20 national problem and it had been discovered  
 21 here, and that's certainly the impression that  
 22 was left.  
 23 I remember discussion that they really  
 24 didn't internally yet have a good handle on  
 25 the numbers and the years involved and what

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1 exactly they were dealing with, and I think  
 2 they were really struggling internally to come  
 3 to grips with that process.  
 4 CHAYTOR, Q.C.:  
 5 Q. And this was discussed in the smaller group?  
 6 MR. HYNES:  
 7 A. Yes.  
 8 CHAYTOR, Q.C.:  
 9 Q. Okay, and what was the purpose of there being  
 10 the smaller group? It was Minister  
 11 Ottenheimer; it was Mr. Tilley, yourself and  
 12 Dr. Williams, was it?  
 13 MR. HYNES:  
 14 A. Yeah.  
 15 CHAYTOR, Q.C.:  
 16 Q. And why the smaller group first?  
 17 MR. HYNES:  
 18 A. No particular reason. Oftentimes when a group  
 19 was coming to meet with the Minister,  
 20 especially the CEO of the Board or if they  
 21 happened to be there with the Board Chairman,  
 22 the Minister would invite them in for a few  
 23 minutes and usually it was chat or find out  
 24 how things were going, but you know, Minister  
 25 asked them in and we had some informal chat

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1 about the issue before we joined the larger  
 2 group.  
 3 CHAYTOR, Q.C.:  
 4 Q. So the senior people were invited in?  
 5 MR. HYNES:  
 6 A. Yes, just the senior people, which wasn't  
 7 uncommon. Again, if the chairman and CEO of  
 8 the Central Health Authority happened to be in  
 9 and we had a meeting, the Minister would often  
 10 invite them in and exchange pleasantries and  
 11 offer a coffee and have some loose chat before  
 12 we went into a larger group.  
 13 CHAYTOR, Q.C.:  
 14 Q. Why did you find Mr. Tilley's comment that  
 15 this could be a national phenomenon to be  
 16 troubling?  
 17 MR. HYNES:  
 18 A. Well, again, if--you know, if you were to  
 19 extrapolate the numbers, you know, it could  
 20 get very serious for conceivably hundreds of  
 21 thousands of people. I mean, if you look at  
 22 we're only one small lab. If this is a  
 23 national problem, what they've discovered,  
 24 then it could be, you know, significant.  
 25 CHAYTOR, Q.C.:

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1 Q. And were there questions of Mr. Tilley around  
 2 that, what inquiries are being made to  
 3 determine if that, in fact, is the case?  
 4 MR. HYNES:  
 5 A. I remember another part of the conversation,  
 6 and I apologize, Ms. Chaytor, in advance, I'm  
 7 unclear if it happened at that pre-meeting on  
 8 July 21st, but I remember another private  
 9 meeting that Mr. Tilley said that he had just,  
 10 with the stroke of a pen, invested \$500,000 in  
 11 quality control in the lab in St. John's, and  
 12 I found that significant because with their  
 13 ongoing budget problems for Mr. Tilley just to  
 14 say "look, I'm not shagging around with this.  
 15 I'm spending the \$500,000, Minister" and you  
 16 know, "we'll have to deal with it at the end  
 17 of the budget process." I found that  
 18 significant, and I believe that may have been  
 19 the 21st as well, even though, again, that was  
 20 fairly early on. But I remember that point  
 21 succinctly.  
 22 CHAYTOR, Q.C.:  
 23 Q. Yes, and so with a stroke of the pen, they  
 24 were able to come up with this \$500,000 to  
 25 spend on quality assurance?

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1 MR. HYNES:  
 2 A. That they would have had the money, that's  
 3 right.  
 4 CHAYTOR, Q.C.:  
 5 Q. Yes.  
 6 MR. HYNES:  
 7 A. That would be unusual for any health authority  
 8 to spend that without a budget allocation or a  
 9 request to the Department.  
 10 CHAYTOR, Q.C.:  
 11 Q. So I take it you understood that to mean that  
 12 there was a significant amount of money needed  
 13 to be spent on quality assurance in that lab?  
 14 MR. HYNES:  
 15 A. Well, something with the lab. I'm not  
 16 entirely sure if it was quality assurance. I  
 17 seem to recall it was, but clearly that it was  
 18 a significant investment.  
 19 CHAYTOR, Q.C.:  
 20 Q. Is there anything else around the private  
 21 meeting that stands out in your mind?  
 22 MR. HYNES:  
 23 A. Just that, I mean, Dr. Williams or Mr. Tilley  
 24 again were very unsure of the numbers, unsure  
 25 of the people, unsure, you know, what they

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1 were dealing with. My only other recollection  
 2 is I asked, and I don't know why, but I just  
 3 asked were there any--was there any fear that  
 4 this could be a criminal issue or a malicious  
 5 intent by someone to deliberately, you know,  
 6 do something with the technology or the  
 7 process or whatever they were doing, and you  
 8 know, that was clearly not the case, I was  
 9 told, that there was nothing sinister going  
 10 on.  
 11 CHAYTOR, Q.C.:  
 12 Q. Okay, and were they able to tell you what was  
 13 going on?  
 14 MR. HYNES:  
 15 A. No.  
 16 CHAYTOR, Q.C.:  
 17 Q. If they were able to say it wasn't deliberate,  
 18 were they able to say "well, we know it's not  
 19 deliberate because it's this"?  
 20 MR. HYNES:  
 21 A. No.  
 22 CHAYTOR, Q.C.:  
 23 Q. Okay. Were you given any indication, either  
 24 in the pre-meeting or in the larger meeting of  
 25 the whole group, any indication as to what the

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1 cause may be?  
 2 MR. HYNES:  
 3 A. Very early on, I remember there was a fair  
 4 amount of discussion around the DAKO system  
 5 and the multi-step process, that it was 40  
 6 steps. There was a lot of manual manipulation  
 7 and at any point in the process, that could  
 8 cause a problem, and you know, there was  
 9 certainly suggestions that that could be the  
 10 problem, and I think that perhaps plays into  
 11 how this could be a national phenomenon,  
 12 because with that technology still being used  
 13 around the country, then, you know, this, what  
 14 we've discovered, again could lead to a  
 15 national problem.  
 16 CHAYTOR, Q.C.:  
 17 Q. So that's what you took it to mean when it was  
 18 suggested that this could be a national  
 19 problem, that it was somehow related to the  
 20 type of equipment that's being used?  
 21 MR. HYNES:  
 22 A. At least, you know, early on, I'd have to say  
 23 that's an accurate statement.  
 24 CHAYTOR, Q.C.:  
 25 Q. Okay. Before we go into the larger group

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1 then, is there anything else? Is that it in  
 2 the private meeting that stands out in your  
 3 mind?  
 4 MR. HYNES:  
 5 A. I would say yes.  
 6 THE COMMISSIONER:  
 7 Q. Ms. Chaytor, it's getting near the break time  
 8 for lunch, so wherever it's an appropriate  
 9 spot, we'll do that.  
 10 CHAYTOR, Q.C.:  
 11 Q. Okay. Well, I'm going to be some time on that  
 12 meeting, so perhaps we'll take the break now,  
 13 if that's convenient.  
 14 THE COMMISSIONER:  
 15 Q. All right then. Why don't we reconvene at ten  
 16 after two. Thank you.  
 17 (LUNCH BREAK)  
 18 THE COMMISSIONER:  
 19 Q. Please be seated. Ms. Chaytor.  
 20 CHAYTOR, Q.C.:  
 21 Q. Thank you, Commissioner. Good afternoon, Mr.  
 22 Hynes.  
 23 MR. HYNES:  
 24 A. Good afternoon, Ms. Chaytor.  
 25 CHAYTOR, Q.C.:

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1 Q. I believe when we broke, we were about to  
 2 speak about the July 21st 2005 meeting. So  
 3 perhaps you could tell the Commissioner what  
 4 you recall about that meeting?  
 5 MR. HYNES:  
 6 A. Okay. First of all, I just want to note  
 7 there's two typographical errors in the typed  
 8 transcript of my notes that I provided.  
 9 CHAYTOR, Q.C.:  
 10 Q. Okay.  
 11 MR. HYNES:  
 12 A. And I apologize for those. I noticed in -  
 13 CHAYTOR, Q.C.:  
 14 Q. Those are at P-0136.  
 15 THE COMMISSIONER:  
 16 Q. Okay.  
 17 MR. HYNES:  
 18 A. I noticed, Ms. Chaytor, in preparing for  
 19 today, from my handwritten notes, and I  
 20 apologize for the quality of my handwritten  
 21 notes, but comparing those to the typed  
 22 transcript, I did not indicate in the typed  
 23 transcript John Abbott was in the meeting.  
 24 Because you'll notice in the handwritten  
 25 version, JA, that would stand for Mr. Abbott,

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1 and I apologize to the Commission for that.  
 2 And as well, in the third typed bullet from  
 3 the bottom, in the typed transcript, it's 2000  
 4 and 2004 obviously. That's an extra zero, and  
 5 I apologize for that mistake.  
 6 CHAYTOR, Q.C.:  
 7 Q. Thank you, Mr. Hynes. And what do you recall-  
 8 -apart from what we see here in your notes,  
 9 and I'll take you through that, what do you  
 10 recall about this meeting?  
 11 MR. HYNES:  
 12 A. I guess I'll -  
 13 CHAYTOR, Q.C.:  
 14 Q. Tell us where it took place and who was there.  
 15 MR. HYNES:  
 16 A. Sure, okay. It was July 21st and we began  
 17 first thing in the morning, approximately nine  
 18 a.m. It included Minister Ottenheimer,  
 19 Carolyn Chaplin, the director of  
 20 communications, Dr. Bob Williams from Eastern  
 21 Health, Mr. Tilley of course the CEO, Susan  
 22 Bonnell, and Don Cook, the chief of Laboratory  
 23 Medicine.  
 24 CHAYTOR, Q.C.:  
 25 Q. Yes, I think in your note it say Don Cash, so

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1 that's Don Cook?  
 2 MR. HYNES:  
 3 A. Yeah, and I apologize again for that error.  
 4 CHAYTOR, Q.C.:  
 5 Q. No, that's good.  
 6 MR. HYNES:  
 7 A. I remember it was a fairly wide ranging  
 8 meeting. You know, again, they were still  
 9 very much, at this point, trying to come to  
 10 grips with the amount of time and exactly what  
 11 they were dealing with. Because I remember  
 12 there was some talk and discussion that this  
 13 could have been an isolated problem to one  
 14 year, 2002-2003, and I also remember, at some  
 15 point during the meeting, there was a  
 16 reference to Dr. Ejeckam and some period of  
 17 time that the lab had been shut down during  
 18 one or more of those years.  
 19 I also remember there was talk that,  
 20 again, this could be a national--which  
 21 followed from our previous private meeting,  
 22 that this could be a national issue, and as  
 23 well, I remember, even though it's not  
 24 reflected here, there was significant talk, in  
 25 my view, of the disclosure and what legal

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1 process that could--how that could unfold.  
 2 CHAYTOR, Q.C.:  
 3 Q. And what do you recall being discussed around  
 4 the last issue, disclosure, and the legal  
 5 process and how were those two connected?  
 6 MR. HYNES:  
 7 A. I recall, Ms. Chaytor, there was discussion  
 8 around the issue that had happened in Labrador  
 9 Grenfell in the preceding period of time where  
 10 there was a class action lawsuit filed against  
 11 Labrador Grenfell Regional Integrated Health  
 12 Authority about--I'm not sure the underlying  
 13 exact medical issue, but I believe it had  
 14 something to do with sterilization of  
 15 equipment and how that was used in a test  
 16 performed, and I believe, you know, a number  
 17 of women were impacted because of this  
 18 sterilization issue, and I recall there was an  
 19 issue of how the Labrador Grenfell Health  
 20 Authority had notified the patients or  
 21 notified the women impacted, I guess, that  
 22 that became an issue and because of that, it  
 23 had given rise to a class action lawsuit and I  
 24 believe there had been a settlement. That  
 25 ultimately, you know, they had won the case, I

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1 guess.  
 2 CHAYTOR, Q.C.:  
 3 Q. And who raised the issue of the Labrador  
 4 Grenfell class action within that meeting?  
 5 MR. HYNES:  
 6 A. It would have been Eastern Health. I'm not  
 7 entirely sure if it was Mr. Tilley or someone  
 8 else around the table, but certainly it was  
 9 raised from their perspective.  
 10 CHAYTOR, Q.C.:  
 11 Q. Okay, and did you understand that they had  
 12 received legal advice around the issue of how  
 13 to disclose and somehow the Labrador Grenfell  
 14 situation was discussed in that legal advice  
 15 they'd received?  
 16 MR. HYNES:  
 17 A. Yeah, no question that they had sought legal  
 18 advice about--because I remember there was a  
 19 discussion about if we were going to disclose,  
 20 and I guess, you know, that was the process,  
 21 how would you do it. What would be the  
 22 appropriate protocols, whether a registered  
 23 letter, public announcements first, then a  
 24 form letter to people, whether it should be  
 25 individual contact person by person with, you

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1 know, I guess, a live person calling them  
 2 individually.  
 3 CHAYTOR, Q.C.:  
 4 Q. So all of these options were being discussed  
 5 in the room?  
 6 MR. HYNES:  
 7 A. Yeah. Yeah, that's my recollection.  
 8 CHAYTOR, Q.C.:  
 9 Q. Yes, and so it was in that context that the  
 10 issue of what happened in Labrador, in the  
 11 Labrador Grenfell situation came up?  
 12 MR. HYNES:  
 13 A. Yeah, and clearly Eastern Health had sought  
 14 advice with their insurance company or lawyers  
 15 about how that could be done in an appropriate  
 16 way.  
 17 CHAYTOR, Q.C.:  
 18 Q. Okay, and was there concern then, because of  
 19 that, in sending letters to the patients?  
 20 MR. HYNES:  
 21 A. Well, I guess it was certainly--most of that  
 22 fall, it became our preference that people  
 23 would have been contacted, and I know that was  
 24 certainly the Minister's wish that, you know,  
 25 we should have individual patient contact

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1 first before a larger public disclosure. I  
 2 mean, we felt, you know, people individually  
 3 should be contacted. How that related at the  
 4 end of the day, you know, it's--I'm not sure  
 5 if I'm answering your question or I'm not sure  
 6 if you're understanding it. I apologize.  
 7 CHAYTOR, Q.C.:  
 8 Q. No, that's fine. It's probably my fault here.  
 9 I'm just wondering if, in terms of whether or  
 10 not to send a letter to the patients, whether  
 11 or not they were being cautious because of  
 12 what had happened in the Labrador Grenfell  
 13 situation, whether or not that was a factor in  
 14 the decision as to whether or not to now send  
 15 a letter in this situation.  
 16 MR. HYNES:  
 17 A. I would certainly say, from Eastern Health's  
 18 behalf, it would be. Because I mean, you  
 19 could tell that the legal advice they had been  
 20 given was, you know, was factoring into their  
 21 comments about disclosure and how they were  
 22 going to do this. They were quite open that  
 23 "we have talked to our legal people, our  
 24 lawyers, our insurance company" and I don't  
 25 remember exact names from the meeting, but

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1 they had engaged that process to make sure  
 2 that whatever they were going to do would be,  
 3 you know, checked or authorized by this third  
 4 party.  
 5 CHAYTOR, Q.C.:  
 6 Q. Do you know who or what is HIROC? Was that  
 7 word used?  
 8 MR. HYNES:  
 9 A. Yeah, I know now, and I believe that was in  
 10 the briefing note that was presented, but I  
 11 don't remember that specific name mentioned  
 12 during the meeting.  
 13 CHAYTOR, Q.C.:  
 14 Q. Okay, and in terms of the Department's  
 15 response to that, when the issue of Labrador  
 16 Grenfell is being discussed, did the  
 17 Department say anything about that or whether  
 18 or not legal issues should be at all  
 19 influencing the decision at this point?  
 20 MR. HYNES:  
 21 A. No, I think, you know, the Minister was quite  
 22 clear that his preference was to get out  
 23 individual patient notifications quickly as we  
 24 could, followed up by a public disclosure, and  
 25 in our own minds, that's--I think it was a

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1 given that given the large number of people  
 2 involved that, you know, Eastern Health were  
 3 going to be sued and their insurance company  
 4 was going to be sued and that, in my mind, was  
 5 a given.  
 6 CHAYTOR, Q.C.:  
 7 Q. And did you make comments to that effect?  
 8 MR. HYNES:  
 9 A. Yes, I did.  
 10 CHAYTOR, Q.C.:  
 11 Q. Okay, and what exactly did you say?  
 12 MR. HYNES:  
 13 A. I remember there was some reference among one  
 14 of my colleagues or Eastern Health talking  
 15 about how you could, you know, announce this  
 16 publicly, and my view was that once a public  
 17 announcement was made, that I mean, the legal  
 18 process--you know, there would be a Statement  
 19 of Claim filed by Mr. Crosbie in short order  
 20 on behalf of these people and that was--you  
 21 know, that was an accepted part of this. I  
 22 mean, I had no doubt that, you know, there  
 23 would be a legal issue filed.  
 24 CHAYTOR, Q.C.:  
 25 Q. Okay, and what was the Minister's position on

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1 that? Did the Minister speak as to that issue  
 2 and the issue of legal liability or any  
 3 potential legal liability entering into the  
 4 decision making, in terms of patient or public  
 5 notification?  
 6 MR. HYNES:  
 7 A. No, I mean, I think he--now he had a  
 8 different--I guess he had a perspective as a  
 9 lawyer as well, but I mean, clearly his only  
 10 issue was the notification of people and I  
 11 don't--I mean, in our discussions, even after  
 12 the meeting, you know, the legal aspect of it  
 13 never entered into our position or his  
 14 position in respect to getting a notice out to  
 15 people. I mean, his primary thing was let's  
 16 get the letter. Let's get the notification  
 17 out to individual patients first before we  
 18 could make a broader public statement.  
 19 CHAYTOR, Q.C.:  
 20 Q. Okay, and so when the meeting ended, in terms  
 21 of patient notification, what did you  
 22 understand was to happen?  
 23 MR. HYNES:  
 24 A. My understanding was Eastern Health were going  
 25 to go back and meet with their oncologist the

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1 following week, because I think this was late  
 2 in the week, and they were going to meet with  
 3 the oncologist the following week to bring  
 4 them on board to discuss, I guess, in a more  
 5 systematic way how we would go about or how  
 6 Eastern Health, sorry, would go about  
 7 notifying individual patients and what the  
 8 doctors' preference would be, whether that  
 9 would be, you know, letters, registered  
 10 letters, individual phone calls. I mean, you  
 11 know, whatever that process would be. They  
 12 wanted to get the oncologists to the table, so  
 13 to speak.  
 14 CHAYTOR, Q.C.:  
 15 Q. So it was how to contact the patients? They  
 16 were going to consult with the oncologists to  
 17 determine how best to do that?  
 18 MR. HYNES:  
 19 A. Yes, because I guess there was a certain sense  
 20 that the oncologists would be the one  
 21 ultimately dealing with people, because they  
 22 were their patients, I guess, to a large--  
 23 well, for most of it, I guess.  
 24 CHAYTOR, Q.C.:  
 25 Q. Yes, and I take it up to this point of the

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1 meeting on July 21st, the oncologists had not  
 2 been consulted?  
 3 MR. HYNES:  
 4 A. If they had--I mean, Eastern Health may have  
 5 internally, I believe, but I mean, I think  
 6 when we talked about it after, there was a  
 7 couple of things surprised us, you know,  
 8 looking back on it, and in the days, couple of  
 9 days following it, and that was one of them,  
 10 that I mean, if this was an oncology issue,  
 11 you would think they would have had them at  
 12 that table on the 21st.  
 13 CHAYTOR, Q.C.:  
 14 Q. So to your knowledge, as of July 21st, they  
 15 hadn't had that consultation with the  
 16 oncologists and they were going to meet with  
 17 them the following week?  
 18 MR. HYNES:  
 19 A. I vaguely remember Mr. Tilley making some  
 20 statement that they had--there had been some  
 21 discussions internally, but I don't know if  
 22 they had, you know, quantified, okay, here's  
 23 what we're going to do. Here's how many  
 24 people. Because again, they still had no--you  
 25 know, from my recollection, they still were

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1 working through how many people are involved,  
 2 what years are involved, how many patients  
 3 could potentially be impacted, and that  
 4 factored a lot into where they were going to  
 5 go next.  
 6 CHAYTOR, Q.C.:  
 7 Q. So the oncologists may have been involved in  
 8 that piece, but in terms of the oncologists  
 9 being involved in how to notify the patients,  
 10 they had not yet met with the oncologists to  
 11 discuss that?  
 12 MR. HYNES:  
 13 A. At least not that we were told.  
 14 CHAYTOR, Q.C.:  
 15 Q. Yes, okay, and in terms of what came up about  
 16 Dr. Ejeckam and 2003 period, what do you  
 17 recall having been discussed?  
 18 MR. HYNES:  
 19 A. I just remember a reference, and it might have  
 20 been, you know, Dr. Williams or it might have  
 21 been Mr. Cook, Dr. Cook, I apologize, because,  
 22 you know, when the whole issue came up about  
 23 it may be isolated to only one year, I believe  
 24 it was verbally floated, although it's not  
 25 reflected in my notes, that it could be, you

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1 know, 2002 or 2003, and I remember someone  
 2 making a statement "is that not the same time  
 3 the lab shut down for a period of time?" and  
 4 that's what made the correlation, I guess.  
 5 CHAYTOR, Q.C.:  
 6 Q. Yes, okay. Is there anything else then you  
 7 recall having been discussed in this meeting?  
 8 MR. HYNES:  
 9 A. I'm just trying to think.  
 10 CHAYTOR, Q.C.:  
 11 Q. Okay then, well perhaps we'll look at your  
 12 notes.  
 13 MR. HYNES:  
 14 A. Sure, that might -  
 15 CHAYTOR, Q.C.:  
 16 Q. And we'll see if there's something there  
 17 that'll jog your memory, and we have it on the  
 18 screen here, and this is, as you say, a typed  
 19 version. We also have your handwritten note.  
 20 It's on the following page, and you've got the  
 21 date and the time, nine a.m. "Interpretation  
 22 of data, i.e. what constituted a positive test  
 23 changed over years." What did you recall  
 24 being said around that?  
 25 MR. HYNES:

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1 A. I believe that was a comment Dr. Williams or  
 2 Dr. Cook said that what constituted a  
 3 positive, for instance, with ER/PR, the  
 4 process had changed over the years and, you  
 5 know, it might have--I'm trying to remember  
 6 now, might have been 30 percent at one point  
 7 in time, but now the accepted national  
 8 standard was 20 or 10 percent, and that had  
 9 changed. So that would obviously affect a  
 10 number of slides, I guess, or a number of  
 11 tests.  
 12 CHAYTOR, Q.C.:  
 13 Q. So that some now would be considered to be  
 14 negative--or sorry, positive, which may have  
 15 previously been negative?  
 16 MR. HYNES:  
 17 A. That's right.  
 18 CHAYTOR, Q.C.:  
 19 Q. And the retest, is this "retest negatives from  
 20 oncologists"?  
 21 MR. HYNES:  
 22 A. Yeah.  
 23 CHAYTOR, Q.C.:  
 24 Q. "Would it change treatment plan?" What did  
 25 you understand that to mean?

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1 MR. HYNES:  
 2 A. That obviously the retests, you know, the  
 3 negatives that they had for a period of time  
 4 were going to be retested and then the  
 5 oncologists, I guess, would determine or make  
 6 the determination if there was a change in the  
 7 treatment plan. I mean, this later became the  
 8 board that reviewed them all when they went  
 9 away and came back, but at that early stages,  
 10 you know, that was the discussion, that -  
 11 CHAYTOR, Q.C.:  
 12 Q. Okay, the next bullet says "120 a year for  
 13 five years, other centres did their own." So  
 14 120 a year for five years?  
 15 MR. HYNES:  
 16 A. That was my--well, I guess the numbers that  
 17 were being offered at the initial stage that  
 18 this could only be--at least, from my note, it  
 19 could only be approximately 120 people. So  
 20 you could be looking at, you know,  
 21 approximately 600 people for a five-year  
 22 period that they would be retesting.  
 23 CHAYTOR, Q.C.:  
 24 Q. Okay. So instead of the number that was said  
 25 two days prior which you had heard as being

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1 somewhere from 1,000 to 1500, it could be  
 2 people being retested?  
 3 MR. HYNES:  
 4 A. Yes.  
 5 CHAYTOR, Q.C.:  
 6 Q. Okay, and is that the change that took place  
 7 over that two-day period or on the 19th? Is  
 8 that what you recall it being, that the number  
 9 was down to around 600 having to be retested?  
 10 MR. HYNES:  
 11 A. That would certainly be part of it, but a  
 12 large part of it was, too, though, in the  
 13 verbal discussion there was a lot of we're  
 14 still going back through, we're still looking  
 15 at files, we're still talking to people. And  
 16 again, there was still a very strong message  
 17 that we're still going through an internal  
 18 process, you know, there could be more, there  
 19 could be less, we're still not really sure  
 20 what we're dealing with, and that's, excuse  
 21 me, that's where it was to.  
 22 CHAYTOR, Q.C.:  
 23 Q. Okay. And I take it then in terms of it being  
 24 on your radar screen, the fact that it's 600  
 25 people, that doesn't diminish the significance

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1 to you?  
 2 MR. HYNES:  
 3 A. No. I mean, it was less than originally  
 4 thought. But again, you know, I can't  
 5 overstate, you know, those are notes I'm  
 6 making based on a conversation but the  
 7 conversation is also using, you know, words  
 8 like, b'y, we're still not sure what we're  
 9 dealing with, we're still reviewing records  
 10 and going back through old files because I  
 11 also had the sense that, you know, there was  
 12 no easy process available in Eastern Health to  
 13 identify these people and readily make this  
 14 information available.  
 15 CHAYTOR, Q.C.:  
 16 Q. And you understood that on July 21st?  
 17 MR. HYNES:  
 18 A. Well, I certainly recognized that they were  
 19 struggling with it.  
 20 CHAYTOR, Q.C.:  
 21 Q. Yes. And the idea that it's 120 a year for  
 22 five years, then you have a period and then  
 23 "Other centres did their own." Was it that it  
 24 was 120 a year for five years, those are St.  
 25 John's numbers and then there were additional

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1 numbers from outside St. John's or outside the  
 2 Eastern Health region?  
 3 MR. HYNES:  
 4 A. That would have been my recollection of that  
 5 note, that the other health authorities even--  
 6 of course, now some would have been prior to  
 7 the current structure, that they would have  
 8 packaged up their own, I guess, and sent them  
 9 in or whatever.  
 10 CHAYTOR, Q.C.:  
 11 Q. So it's still 600 plus?  
 12 MR. HYNES:  
 13 A. Yeah.  
 14 CHAYTOR, Q.C.:  
 15 Q. 600 for Eastern Health, plus whatever for the  
 16 rest of the province?  
 17 MR. HYNES:  
 18 A. Potentially, yes.  
 19 CHAYTOR, Q.C.:  
 20 Q. Yes, okay. So we're still probably getting up  
 21 there close to the 1000 number?  
 22 MR. HYNES:  
 23 A. Well, again, but there was no--I don't  
 24 remember ever getting a number for the other  
 25 centres or what, because I don't even think at

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1 this point they've made contact with the other  
 2 centres, I don't remember anyone ever saying  
 3 that we have spoken to, but -  
 4 CHAYTOR, Q.C.:  
 5 Q. But even if we think about the population base  
 6 and the demographics of the province, and  
 7 you'd be aware of that in your position, you  
 8 could probably assume about as many again for  
 9 the rest of the province?  
 10 MR. HYNES:  
 11 A. Potentially, I guess, but, you know, where St.  
 12 John's is the tertiary centre, I don't know  
 13 how much other specialized testing would go on  
 14 around the island. I mean, most tertiary  
 15 third-level services are all in St. John's, so  
 16 if people were here and had their tests done,  
 17 then you would assume the lab work would be  
 18 here, but -  
 19 CHAYTOR, Q.C.:  
 20 Q. Okay.  
 21 MR. HYNES:  
 22 A. - I'm not a good one to speak to that.  
 23 CHAYTOR, Q.C.:  
 24 Q. Okay. And then it says, "Consultant to look  
 25 at lab." What did you understand that to be?

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1 MR. HYNES:  
 2 A. Eastern Health were going to engage a, I  
 3 guess, go through an internal process, but  
 4 also bring in some outside expertise to look  
 5 at the lab to try to determine, you know, what  
 6 their processes were, how the technology was  
 7 working. There was some discussion about the  
 8 system they were using, if the--you know, the  
 9 system would be double checked to see if it  
 10 was producing accurate results.  
 11 CHAYTOR, Q.C.:  
 12 Q. Okay. And "Notified 12 so far." What was  
 13 that in reference to?  
 14 MR. HYNES:  
 15 A. That 12 patients had, to this point, had their  
 16 results sent away and returned and had a  
 17 change, I guess, in their treatment plan and  
 18 they had been notified of that fact.  
 19 CHAYTOR, Q.C.:  
 20 Q. So they already knew about this issue?  
 21 MR. HYNES:  
 22 A. That's what I recall from making that note,  
 23 yeah.  
 24 CHAYTOR, Q.C.:  
 25 Q. And was there any discussion around that, Mr.

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1 Hynes, that, well, if 12 patients already know  
 2 this, it's only a matter of time that it's  
 3 going to become an issue of public discussion?  
 4 MR. HYNES:  
 5 A. Yes, that's safe to say, Ms. Chaytor, because,  
 6 of course, as St. John's is such a small town,  
 7 I mean, I believe there was conversation to  
 8 the effect that it was only a matter of time  
 9 before someone's son or brother happened to  
 10 get a call and be told this information, you  
 11 know, sorry, over the period of time your test  
 12 has changed and, you know, that that person  
 13 would go, you know, to the media, perhaps, or  
 14 call Open Line and discuss that, you know,  
 15 they've gotten a letter after so many years  
 16 and this is what it means to them. So, I  
 17 guess, you know, there was certainly a  
 18 recognition in my mind that this could go  
 19 public, you know, any time, really.  
 20 CHAYTOR, Q.C.:  
 21 Q. And did you discuss that in the group that  
 22 day?  
 23 MR. HYNES:  
 24 A. I mean, no question that there was discussion,  
 25 that once you had notified 12, I think it was



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1 a matter of time before it became a public  
 2 issue.  
 3 CHAYTOR, Q.C.:  
 4 Q. And that was discussed. And was the minister  
 5 concerned about that?  
 6 MR. HYNES:  
 7 A. Well, I think that's what, you know, certainly  
 8 impacted his concern for getting individual  
 9 patient notification out and that would become  
 10 the letters that we were looking for in the  
 11 fall. But I mean, the reality was, you know,  
 12 I guess, my own view or my recommendation to  
 13 him would certainly be you would like to make  
 14 contact with these individual people first to  
 15 tell them their situation versus hearing it on  
 16 the radio and having had an ER/PR test done  
 17 five or six years prior and not knowing if you  
 18 were affected. I mean, you know, I think the  
 19 minister was quite concerned that we needed to  
 20 get notification to these people, to these  
 21 patients as quickly as we could.  
 22 CHAYTOR, Q.C.:  
 23 Q. Okay. And then the next bullet says, "2000 to  
 24 2004 only 260 negatives." What was that  
 25 referencing?

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1 MR. HYNES:  
 2 A. I believe that Dr. Cook or Dr. Williams made  
 3 that note that for that four-year period there  
 4 were only 260 negatives that would be  
 5 retested. So we can assume then looking at  
 6 the number above, 120 for five years, that the  
 7 balance then would come from other years in  
 8 question.  
 9 CHAYTOR, Q.C.:  
 10 Q. Okay. And "Doctor or surgeon will make  
 11 notifications offered as an option to  
 12 patients." What is referencing?  
 13 MR. HYNES:  
 14 A. That once the information came back and the--  
 15 you know, your new test had been, you know,  
 16 reviewed, that if ER/PR could still be an  
 17 option for you, that, you know, you would be  
 18 contacted by the doctor or surgeon and they  
 19 would offer that to you as a treatment.  
 20 CHAYTOR, Q.C.:  
 21 Q. So if there were to be a treatment change,  
 22 then the option would come from the treating  
 23 physician?  
 24 MR. HYNES:  
 25 A. Yes. And I think that was important for the

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1 minister because, you know, to hear that  
 2 directly from the individual and being able to  
 3 talk about your personal private medical  
 4 information, you'd want to have that contact  
 5 directly with the surgeon about what the  
 6 possible options were for you at that  
 7 particular time.  
 8 CHAYTOR, Q.C.:  
 9 Q. Yes.  
 10 MR. HYNES:  
 11 A. Based on this new information, of course.  
 12 CHAYTOR, Q.C.:  
 13 Q. And, Mr. Hynes, the idea of a letter or  
 14 contact with the patients, did you understand  
 15 that to be contact to let patients know that  
 16 they were being retested, that they were part  
 17 of the group of people who needed to be  
 18 retested?  
 19 MR. HYNES:  
 20 A. I'm not sure if at the early stages if the  
 21 letter was talked about as just a we're doing  
 22 a batch retesting for a six or seven year  
 23 period or was it going to be a letter when,  
 24 you know, perhaps your information came back  
 25 and you were retested and there had been a

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1 change. I seem to think we were going to send  
 2 a letter to just let people know, look, we've  
 3 identified a problem, we're going to do some  
 4 retesting and we'll be in touch with you as  
 5 soon as we know more information. That's my  
 6 recollection.  
 7 CHAYTOR, Q.C.:  
 8 Q. And that's the message, I take it, that the  
 9 department wanted out there rather than the  
 10 people hearing it in the news and knowing that  
 11 they'd had an ER/PR test two or three years  
 12 before and wondering if they were part of that  
 13 group?  
 14 MR. HYNES:  
 15 A. No question. I mean, the minister wanted to  
 16 get as much information as we could at this  
 17 early stage, you know, to the people directly  
 18 and let them know what potentially was the  
 19 situation. Because again, I mean, I can't  
 20 over emphasize, you know, the information in  
 21 these early days was very much changing.  
 22 CHAYTOR, Q.C.:  
 23 Q. And that fact that you've written here in your  
 24 note, "Doctor or surgeon will make  
 25 notifications." If the doctor or surgeon is

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1 to make the notification, that would be after  
 2 the fact, after the retest is back and there's  
 3 potential for a change in treatment?  
 4 MR. HYNES:  
 5 A. That's right. Because I think it was  
 6 understood you may do retesting and it might  
 7 not affect anything at the end of the day.  
 8 CHAYTOR, Q.C.:  
 9 Q. So the purpose of the letter wouldn't be to  
 10 tell people that you've been retested and  
 11 there's a change or was it, was it  
 12 contemplated that people would--a letter would  
 13 go to tell people that you've been retested,  
 14 it's after the fact and there's been a change  
 15 in your treatment?  
 16 MR. HYNES:  
 17 A. No, I would -  
 18 CHAYTOR, Q.C.:  
 19 Q. Or there should be or -  
 20 MR. HYNES:  
 21 A. I would think at that point the letter would  
 22 be a preliminary thing. That kind of contact  
 23 to deliver that message, I mean, at that stage  
 24 was not to be delivered in a form letter or,  
 25 you know, a call from a call centre or

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1 something like that. I mean, I think the  
 2 minister was concerned, you know, you had to  
 3 be sensitive that for some of these people  
 4 this would be rather, you know, shocking  
 5 information to receive after so long,  
 6 irregardless of the letter.  
 7 CHAYTOR, Q.C.:  
 8 Q. Okay. So the context in which a letter was  
 9 being contemplated, that's what I'm wondering,  
 10 the timing for the letter would be to notify  
 11 people of what?  
 12 MR. HYNES:  
 13 A. Notify people that a problem, I guess, had  
 14 been identified and they potentially could  
 15 have been impacted and that their results were  
 16 being sent away, I guess, for additional  
 17 testing or clarification or review and that we  
 18 hoped to have more information as, you know,  
 19 well, in the early stages we were told they'd  
 20 probably all be done in a couple of weeks and  
 21 that turned out not to be true, but that it  
 22 could be done in fairly short order, I guess.  
 23 CHAYTOR, Q.C.:  
 24 Q. Okay. And did anyone in the room express any  
 25 reservation in sending that type of a letter?

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1 MR. HYNES:  
 2 A. At that stage I don't remember. I mean, I  
 3 think, you know, I think there was a  
 4 collective sense that we were--you know,  
 5 eventually we're going to disclose, but the  
 6 problem was is how could you do it and, you  
 7 know, what was the best approach. And that's  
 8 why, I think, the two oncologists at the  
 9 bottom there was the next note that, you know,  
 10 certainly government wanted to bring them or  
 11 the minister wanted to bring them to the table  
 12 to get their view and Eastern Health, of  
 13 course, needed that because Mr. Tilley, I  
 14 don't think, they weren't at the table that  
 15 day, so he needed to bring them to the table  
 16 to make sure they were comfortable and advised  
 17 that this was the way to go.  
 18 CHAYTOR, Q.C.:  
 19 Q. Okay. And so that's the last bullet, "Meet  
 20 with two oncologists Monday" and "Public  
 21 notice." Why did you make the note there of  
 22 public notice?  
 23 MR. HYNES:  
 24 A. Just that public notice was still very much in  
 25 play that, I mean, I guess after, depending

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1 what the oncologists said, there was going to  
 2 be, you know, a public disclosure. But, of  
 3 course, you know, based on the information we  
 4 were given at the time from Mr. Tilley and Dr.  
 5 Williams it was, you know, we got to hold off  
 6 until we can meet with the oncologists in a  
 7 couple of weeks and come back -  
 8 CHAYTOR, Q.C.:  
 9 Q. In a couple of weeks?  
 10 MR. HYNES:  
 11 A. Sorry, no. Meet with the oncologists the  
 12 following week, I apologize, come back and  
 13 meet with the minister in two weeks with an  
 14 update about what their situation was exactly,  
 15 because again, the information kept changing,  
 16 and what would be their plan forward.  
 17 CHAYTOR, Q.C.:  
 18 Q. Okay.  
 19 MR. HYNES:  
 20 A. And what the oncologists recommended.  
 21 CHAYTOR, Q.C.:  
 22 Q. And when you keep saying the information kept  
 23 changing, what had changed other than we've  
 24 talked about the number here and when we look  
 25 at the number which you've written down here

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1 and it appears that it says 600 for the  
 2 Eastern Health region, and then others  
 3 throughout the province, so what other  
 4 information was changing?  
 5 MR. HYNES:  
 6 A. I can only repeat, Ms. Chaytor, that in the  
 7 meetings, you know, George Tilley, who, at  
 8 this time, had a longer career in health than  
 9 my years of age and Dr. Bob Williams who had  
 10 been a distinguished deputy minister in the  
 11 Provincial Government and again, a very long  
 12 career, if they're telling us we're not sure  
 13 what we're dealing with yet, the information  
 14 is changing, and I think that's what they were  
 15 getting internally in their own organization,  
 16 that that carried significant weight with us  
 17 that, you know, this is still very much a  
 18 moving, a moving target. Because I remember  
 19 approximately July 25th Mr. Tilley, I'm sorry,  
 20 sending an e-mail to the deputy minister and  
 21 the deputy asking me to share it with the  
 22 minister. And I remember sharing it, and at  
 23 that time Mr. Tilley said at that point, July  
 24 25th, he wasn't even sure if he had a problem.  
 25 CHAYTOR, Q.C.:

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1 Q. Yes. So on the 21st the information that had  
 2 been changing, there was some indication it  
 3 may only be for that one year, 2002, 2003.  
 4 And in terms of the numbers, though, the  
 5 numbers aren't a whole lot different than they  
 6 had originally thought?  
 7 MR. HYNES:  
 8 A. Well the only thing is, I guess, though, if  
 9 you look at there, it's only 120 if -  
 10 CHAYTOR, Q.C.:  
 11 Q. A year.  
 12 MR. HYNES:  
 13 A. Well, that's right -  
 14 CHAYTOR, Q.C.:  
 15 Q. For five years.  
 16 MR. HYNES:  
 17 A. - but if you take what the potential mistakes  
 18 or error rate could be, you're talking about a  
 19 much, in my view, a much smaller number. I  
 20 mean, you know, if you said 20, 30 percent of  
 21 600, it's you know, significantly less, I  
 22 guess, versus, I mean, when we first -  
 23 CHAYTOR, Q.C.:  
 24 Q. Well, 600 plus some other number?  
 25 MR. HYNES:

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1 A. Right. No, no, fair enough. But I mean, if  
 2 you look at the other, if you look at the  
 3 information, if you said, I guess, you know,  
 4 the initial reaction could be if there was  
 5 1500 and those were the full amount affected,  
 6 but clearly, I mean, the numbers revised down  
 7 as they went through the process.  
 8 CHAYTOR, Q.C.:  
 9 Q. Yes.  
 10 MR. HYNES:  
 11 A. We ended up with, you know.  
 12 CHAYTOR, Q.C.:  
 13 Q. And ultimately the number 1000 that you first  
 14 remember hearing is really pretty well right  
 15 on for what ultimately ends up being the  
 16 number of people retested?  
 17 MR. HYNES:  
 18 A. Well, not--well, yeah, not all with changes,  
 19 certainly.  
 20 CHAYTOR, Q.C.:  
 21 Q. The number that ultimately were retested, we  
 22 understand, is a little bit over 1000?  
 23 MR. HYNES:  
 24 A. Yeah.  
 25 CHAYTOR, Q.C.:

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1 Q. So at this point in time, and I take it even  
 2 if it were the 100 at five years--120, sorry,  
 3 at five years, 120 a year for five years, I  
 4 take it that's still a very significant issue  
 5 in your mind and in the department's mind?  
 6 MR. HYNES:  
 7 A. Yes, absolutely.  
 8 CHAYTOR, Q.C.:  
 9 Q. Was there any concern expressed in the meeting  
 10 that perhaps it's not just this test, that  
 11 this might impact other tests and the concern,  
 12 any concern about what impact that would have  
 13 in terms of confidence in the lab and in the  
 14 health care system overall?  
 15 MR. HYNES:  
 16 A. No, because I remember Dr. Cook going through  
 17 some lengths to explain the process during the  
 18 meeting and, unfortunately, as a lay person, I  
 19 was lost in that conversation very quickly.  
 20 But I don't remember any other talk of other  
 21 tests or other potential problems, it was  
 22 entirely focused on the ER/PR receptor test.  
 23 CHAYTOR, Q.C.:  
 24 Q. And were any questions raised in that regard,  
 25 well, what, what is the process and is this

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1 process used for any other test?  
 2 MR. HYNES:  
 3 A. Not that I recall, Ms. Chaytor, no.  
 4 CHAYTOR, Q.C.:  
 5 Q. Okay. Was there any concern expressed that  
 6 notifying the patients beforehand would cause  
 7 a burden on oncologists and physicians having  
 8 to then take calls or field calls from those  
 9 patients?  
 10 MR. HYNES:  
 11 A. There was a general high-level discussion  
 12 because I guess Eastern Health's ability to  
 13 deal with a potential large situation may be a  
 14 problem. And I mean that by, I mean, if you  
 15 had five or six oncologists and they all have  
 16 a case load of, you know, 200 people and all  
 17 of a sudden you send out 1000 letters to  
 18 people saying we may have a problem, well, the  
 19 first thing they're going to do is call their  
 20 doctor and say what's all this about. So I  
 21 think there was some operational concerns and  
 22 they were perhaps more greatly expressed by  
 23 the oncologists on August 15th and by Eastern  
 24 Health in the succeeding time that, I mean,  
 25 there was, you know, there was a consideration

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1 that their system could become swamped and  
 2 their ability to, you know, manage it and deal  
 3 with it could be impacted.  
 4 CHAYTOR, Q.C.:  
 5 Q. Okay. And in that context did anyone suggest,  
 6 well, setting up a telephone line or the  
 7 patient relations officer could perhaps field  
 8 calls, anything like that suggested?  
 9 MR. HYNES:  
 10 A. No. But I know at least in the private  
 11 meeting beforehand the minister making a point  
 12 of was there any additional money or financial  
 13 or human resources or anything else that  
 14 Eastern Health felt they needed to, you know,  
 15 work through this process and the clear answer  
 16 was no.  
 17 CHAYTOR, Q.C.:  
 18 Q. Okay. And then in what context did the  
 19 \$500,000 come up that Mr. Tilley said that he,  
 20 with the stroke of a pen, I think were your  
 21 words this morning?  
 22 MR. HYNES:  
 23 A. Yeah, I think that was--that statement was  
 24 more that I guess if he needed to do  
 25 something, he wouldn't ask; that's the way I

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1 took it, because I mean, if he spent the  
 2 \$500,000 on his authority that he didn't feel  
 3 he needed to come to government for any  
 4 additional supports that he needed, despite  
 5 the Minister offering.  
 6 CHAYTOR, Q.C.:  
 7 Q. In the meeting was the question asked by the  
 8 Minister or by any of the officials from the  
 9 department what's wrong here? How could this  
 10 happen?  
 11 MR. HYNES:  
 12 A. I don't know if that was definitively--because  
 13 when Dr. Cook began to explain the ER/PR  
 14 process, you know, the most emphasis on any  
 15 explanation was on that this was a multi-step  
 16 complex process, subject to all manual  
 17 manipulation and analysis and that at any  
 18 point in the process there could be an error  
 19 or something could happen that there would be  
 20 an error. So I don't know if it was, you  
 21 know, openly asked in that way, but certainly  
 22 you know, when they walked us through how the  
 23 process worked, it was easy to see in my own  
 24 mind where they could be a problem.  
 25 CHAYTOR, Q.C.:

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1 Q. And was there any discussion and I think you  
 2 told us this morning, you were talking about  
 3 the DAKO machine, the 40 steps and anywhere  
 4 along the line there could be an error that it  
 5 required some manual manipulation.  
 6 MR. HYNES:  
 7 A. Yes.  
 8 CHAYTOR, Q.C.:  
 9 Q. So other than the discussion about the actual  
 10 technological side of things, was there any  
 11 discussion as to whether or not there was any  
 12 human error in this?  
 13 MR. HYNES:  
 14 A. No.  
 15 CHAYTOR, Q.C.:  
 16 Q. And in the entire time that you dealt with  
 17 this matter, did you ever hear that idea  
 18 expressed?  
 19 MR. HYNES:  
 20 A. No, I mean, there was discussion about one  
 21 system, the DAKO system verses Ventana because  
 22 Ventana was much more automated, much more, I  
 23 guess automated and, I guess, explains itself  
 24 and that that would be less subject, I guess,  
 25 to any kind of problems along the way, but I

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1 don't remember any talk of--that word "human  
 2 error" coming up or any discussion of that.  
 3 CHAYTOR, Q.C.:  
 4 Q. And when I say "human error" I mean error on  
 5 the part of either the technologists in what  
 6 they have to do in the lab or the pathologists  
 7 in how they interpret then the product that  
 8 comes out of the lab, or in terms of even  
 9 before it gets to the lab, the fixation and  
 10 the tissue samples and that process. Was  
 11 there ever any discussion of those factors?  
 12 MR. HYNES:  
 13 A. Not that I recall.  
 14 CHAYTOR, Q.C.:  
 15 Q. And around the issue of this technology change  
 16 going from the DAKO machine to the Ventana,  
 17 did anyone discuss that as a possible position  
 18 that could be put forward for the reason for  
 19 retesting or the need to retest?  
 20 MR. HYNES:  
 21 A. I mean, I remember some of the discussion  
 22 because there was discussion came up, well how  
 23 do you know what years to look at? And there  
 24 was discussion, well, you know, we used this  
 25 new crackerjack system now since the last

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1 number of years that's more sensitive or more  
 2 top of the line and I'm a terrible person to  
 3 explain the technology, I apologize, but there  
 4 was certainly great value put in the new  
 5 system and that--I don't remember that  
 6 specifically coming up at that early stage. I  
 7 mean, I remember, you know, it might have come  
 8 up from Eastern Health in that, you know, if  
 9 we're going to do a batch, we'll go back over  
 10 a decade, we'll put them through the new  
 11 system, but I don't remember that definitively  
 12 saying that that would be like in the form of  
 13 a letter or at least from anything that we  
 14 were aware of.  
 15 CHAYTOR, Q.C.:  
 16 Q. And if we could just take you to then a note  
 17 that we have here, these are Ms. Chaplin's  
 18 notes of the same meeting. It's P-0159  
 19 please? Now Ms. Chaplin, on the second page  
 20 of her notes, you can scroll down if you wish  
 21 to read more of it, the part I was going to  
 22 take you to is on the--is your mouse not  
 23 working? Okay, I'll scroll down for you.  
 24 MR. HYNES:  
 25 A. Okay.

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1 CHAYTOR, Q.C.:  
 2 Q. Here we go. You can read through, if you wish  
 3 the part I'm--you'll see here over in the  
 4 column she's told that these are the people in  
 5 attendance and she missed you, for some  
 6 reason. Were you there for the whole meeting?  
 7 MR. HYNES:  
 8 A. Yes.  
 9 CHAYTOR, Q.C.:  
 10 Q. And she said this was 2002 that there had been  
 11 25 tested and 16 had changed and then another  
 12 33 and 25 had changed. Do you recall a  
 13 discussion around that?  
 14 MR. HYNES:  
 15 A. Those numbers look familiar, yes.  
 16 CHAYTOR, Q.C.:  
 17 Q. Okay. And then the 2003 period, the six week  
 18 disruption in testing.  
 19 MR. HYNES:  
 20 A. Yes, I presume that might have been the Dr.  
 21 Ejeckam reference and the period of time when  
 22 testing was interrupted.  
 23 CHAYTOR, Q.C.:  
 24 Q. Yes, and "changing variables, newer technology  
 25 and national standards, somewhat moving

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1 target, i.e. percentage of cells used to  
 2 determine positive tests", so that's similar  
 3 to the note you made.  
 4 MR. HYNES:  
 5 A. Yes.  
 6 CHAYTOR, Q.C.:  
 7 Q. "We would look at 30 percent threshold,  
 8 other"--and I think this is meant to be Mayo  
 9 Clinic may look at lower threshold 'weak,  
 10 positive'" Do you remember any discussion  
 11 around the Mayo Clinic or thresholds -  
 12 MR. HYNES:  
 13 A. Not the Mayo Clinic, but I think my note that  
 14 what constituted a positive test change over  
 15 the years is--it flows from that discussion as  
 16 well.  
 17 CHAYTOR, Q.C.:  
 18 Q. And then "re: conversion rates within  
 19 reasonable range." Do you recall any  
 20 discussion around that, that the conversion  
 21 rates they were seeing was within reasonable  
 22 range?  
 23 MR. HYNES:  
 24 A. I don't remember that, no.  
 25 CHAYTOR, Q.C.:

1 Q. And then the patient notification, "newer  
 2 technology may provide other treatment  
 3 options." Any discussion around that?  
 4 MR. HYNES:  
 5 A. You know, again I vaguely remember perhaps  
 6 from Eastern Health's perspective how they  
 7 would communicate this to people, that that  
 8 may have played a part. Again, if you're  
 9 going to go back so many years, you go back  
 10 the full number of years that you have the  
 11 samples for and run it in the new technology  
 12 with the new system.  
 13 CHAYTOR, Q.C.:  
 14 Q. Okay, and the part I was actually going to  
 15 take you to is here she's written a note,  
 16 "Positioning: option for retesting, new  
 17 technology available, et cetera, instead of  
 18 'errors in testing'." So the idea of  
 19 positioning the message as being, it's an  
 20 option for retesting, new technology available  
 21 as opposed to it being errors in testing. Do  
 22 you recall any discussion around that?  
 23 MR. HYNES:  
 24 A. I can't be definitive, I mean it sounds, it's  
 25 not something I said and it's certainly not

1 the numbers that we see here are a little bit  
 2 different, I think you had 260 for 2000, 2004,  
 3 but I take it that's the same as the reference  
 4 you had being 260 negatives.  
 5 MR. HYNES:  
 6 A. And I guess the unknown part was they were  
 7 still again trying to identify these people  
 8 for those years in question, I guess.  
 9 CHAYTOR, Q.C.:  
 10 Q. For those two years, yes. And then she also  
 11 has the note about meeting with oncologists  
 12 Monday, she says, "Tuesday of next week,  
 13 continuing to retest and report to  
 14 oncologists." So at this point in time, Mr.  
 15 Hynes, did you understand the retesting was  
 16 taking place within Eastern Health?  
 17 MR. HYNES:  
 18 A. I believe so, I don't know if Mount Sinai were  
 19 engaged at this point.  
 20 CHAYTOR, Q.C.:  
 21 Q. And you indicated that you thought you thought  
 22 it was only going to be a matter of a couple  
 23 of weeks?  
 24 MR. HYNES:  
 25 A. And I apologize for using that, I mean, I

1 something I remember the Minister saying. But  
 2 obviously Ms. Chaplin's impression, she must  
 3 have got that information from some impression  
 4 but I only have a vague recollection of how  
 5 this will be communicated and again, my  
 6 recollection is more about we were going to  
 7 send away the full batch of samples that they  
 8 still had in the lab and run it against the  
 9 new system and, I mean, obviously if that was  
 10 going to be how it was communicated, I guess  
 11 that's -  
 12 CHAYTOR, Q.C.:  
 13 Q. Okay, so do you have any recollection at all  
 14 about how to communicate or position the  
 15 issue?  
 16 MR. HYNES:  
 17 A. No, because--I apologize, I don't.  
 18 CHAYTOR, Q.C.:  
 19 Q. And I'll just--I skipped ahead, so I'll take  
 20 you back here. The external technical  
 21 consultant coming in the fall to review lab  
 22 and you had a note, a similar note. And then  
 23 she has, "240 (2000 to '04) women who tested  
 24 negative, unknown how many through 1997 and  
 25 2000. Notification through specialists." And

1 certainly recall at the early meetings there  
 2 was a sense from Eastern Health that this  
 3 could be done fairly quickly once they engaged  
 4 Mount Sinai because of their expertise in this  
 5 area as a leading national lab and they had  
 6 the resources and the technology to be able to  
 7 turn this around fairly quickly.  
 8 CHAYTOR, Q.C.:  
 9 Q. And at the end then of the meeting, the  
 10 decision was made for Eastern Health to go  
 11 away, speak with the oncologists, get the  
 12 oncologists' position as to how to communicate  
 13 with the patients, that you would all meet  
 14 again in a couple of weeks and I take it by  
 15 then, you would have expected there would have  
 16 been a substantial number of other tests  
 17 already done in a couple of weeks?  
 18 MR. HYNES:  
 19 A. That's what we certainly were led to believe,  
 20 yes.  
 21 CHAYTOR, Q.C.:  
 22 Q. And after the meeting then, is there anything  
 23 else that you recall then about the meeting  
 24 itself?  
 25 MR. HYNES:

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1 A. No, I don't think, Ms. Chaytor.  
 2 CHAYTOR, Q.C.:  
 3 Q. Okay, so after the meeting was there a  
 4 discussion within the department?  
 5 MR. HYNES:  
 6 A. I know me and the Minister chatted about it  
 7 because we would often, after a meeting we  
 8 would go into his office and debrief or just  
 9 have a chat and I know he was, you know, still  
 10 very concerned with patient notification and  
 11 getting some information out to the  
 12 individuals affected.  
 13 CHAYTOR, Q.C.:  
 14 Q. So Minister Ottenheimer was feeling, how was  
 15 he feeling after the meeting?  
 16 MR. HYNES:  
 17 A. Still very concerned obviously, because even  
 18 with the, you know, the less numbers here  
 19 admittedly, but I mean, it was still a  
 20 significant public health issue and he was  
 21 very concerned that we needed to get out  
 22 notification to people and we were being  
 23 advised by Eastern Health to hold off.  
 24 CHAYTOR, Q.C.:  
 25 Q. And what was your comfort level with that

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1 decision?  
 2 MR. HYNES:  
 3 A. I remember being concerned and, you know, torn  
 4 because the reality was once you started  
 5 getting tests back and notifying people, you  
 6 know, it was inevitable it would come out and  
 7 the only hope was if you could get some subset  
 8 to let people know what was going on and get  
 9 notification letters out, but unfortunately,  
 10 you know, that didn't happen.  
 11 CHAYTOR, Q.C.:  
 12 Q. And that didn't happen up until sometime later  
 13 in October after the matter had already gone  
 14 public?  
 15 MR. HYNES:  
 16 A. That's right and we were asking about letters  
 17 from Eastern Health I believe in August and  
 18 September and it just never seemed to  
 19 materialize.  
 20 CHAYTOR, Q.C.:  
 21 Q. Do the department continued to ask, I mean,  
 22 the idea of a letter, this is July that we're  
 23 talking about here and there's no notification  
 24 to the patients until the issue actually comes  
 25 out in the media, the beginning of October and

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1 then the notification is again a couple of  
 2 weeks after that?  
 3 MR. HYNES:  
 4 A. Yes.  
 5 CHAYTOR, Q.C.:  
 6 Q. And you're saying the department followed up  
 7 and was asking Eastern Health about the status  
 8 of letters throughout August and September?  
 9 MR. HYNES:  
 10 A. That's certainly my recollection, I mean, it  
 11 was certainly discussed internally and I  
 12 believe Mr. Abbott or Ms. Hennessey or someone  
 13 was, because I know when we met with Eastern  
 14 Health periodically for briefings, I mean, the  
 15 Minister would raise, you know, what's the  
 16 latest with the letters, you know, and it just  
 17 never seemed to get done.  
 18 CHAYTOR, Q.C.:  
 19 Q. And was there ever any explanation given as to  
 20 why the letters hadn't gone?  
 21 MR. HYNES:  
 22 A. Not that I can be definitive about, no.  
 23 CHAYTOR, Q.C.:  
 24 Q. And were they challenged on that? Did you ask  
 25 questions, did the Minister ask well how could

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1 it take that long to get--how could it take  
 2 months to get a letter out?  
 3 MR. HYNES:  
 4 A. I mean, I remember we would push and we would  
 5 ask, but I don't remember--I don't recall  
 6 getting a, I don't recall an answer that would  
 7 stick in my mind.  
 8 CHAYTOR, Q.C.:  
 9 Q. So the department was never told that the  
 10 decision, a decision had been made not to send  
 11 the letter?  
 12 MR. HYNES:  
 13 A. Not that I can recall.  
 14 CHAYTOR, Q.C.:  
 15 Q. And is that something you think Mr. Hynes you  
 16 would recall?  
 17 MR. HYNES:  
 18 A. If I was privy to the conversation I would  
 19 remember because again, you know, I remember  
 20 being in meetings and discussions where, you  
 21 know, the issue of the letter was discussed.  
 22 CHAYTOR, Q.C.:  
 23 Q. And given how much you were kept in the loop  
 24 on issues, would you expect to know that?  
 25 MR. HYNES:

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1 A. I would certainly hope so in my role, yes.  
 2 CHAYTOR, Q.C.:  
 3 Q. After the meeting on July 21st, did you  
 4 contact anyone else within government to let  
 5 them know the status?  
 6 MR. HYNES:  
 7 A. No.  
 8 CHAYTOR, Q.C.:  
 9 Q. So you didn't contact Mr. Dinn, for example?  
 10 MR. HYNES:  
 11 A. No.  
 12 CHAYTOR, Q.C.:  
 13 Q. Do you know whether or not anyone else did?  
 14 MR. HYNES:  
 15 A. I have no idea.  
 16 CHAYTOR, Q.C.:  
 17 Q. Did Carolyn Chaplin discuss that with you,  
 18 whether she had made any further contact?  
 19 MR. HYNES:  
 20 A. Not that I can recall.  
 21 CHAYTOR, Q.C.:  
 22 Q. Do you remember being--did you take part in  
 23 any telephone calls either you're in the  
 24 office while Ms. Chaplin is on the phone to  
 25 anyone else, either Ms. Matthews, Brian

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1 Crawley, anyone else on this issue?  
 2 MR. HYNES:  
 3 A. No, not that I'm aware of.  
 4 CHAYTOR, Q.C.:  
 5 Q. And do you know whether or not such phone  
 6 calls took place?  
 7 MR. HYNES:  
 8 A. Only the original heads up when me and Carolyn  
 9 or me and Ms. Chaplin chatted about giving a  
 10 heads up to the Premier's office back, you  
 11 know, the 18th, 19th, that range.  
 12 CHAYTOR, Q.C.:  
 13 Q. Okay, and you weren't in on that telephone  
 14 call either, were you?  
 15 MR. HYNES:  
 16 A. No, no.  
 17 CHAYTOR, Q.C.:  
 18 Q. Did I understand when you said that this  
 19 morning you can Carolyn discussed whether you  
 20 would contact Mr. Dinn or she would contact  
 21 Ms. Matthews?  
 22 MR. HYNES:  
 23 A. Yes.  
 24 CHAYTOR, Q.C.:  
 25 Q. And the decision was made that she would

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1 contact Ms. Matthews.  
 2 MR. HYNES:  
 3 A. Correct.  
 4 CHAYTOR, Q.C.:  
 5 Q. So did you understand by her doing that then,  
 6 Mr. Dinn and everyone in the Premier's office  
 7 would be informed through that route, was that  
 8 the idea?  
 9 MR. HYNES:  
 10 A. I don't know if I made that assumption. I  
 11 mean, my assumption would be the Premier's  
 12 office was notified and Ms. Matthews is a  
 13 senior official, so she would, I guess, deal  
 14 with the information as she best viewed, I  
 15 guess.  
 16 CHAYTOR, Q.C.:  
 17 Q. But by Ms. Chaplin contacting Ms. Matthews,  
 18 you didn't think then it was necessary for you  
 19 to contact Mr. Dinn?  
 20 MR. HYNES:  
 21 A. No.  
 22 CHAYTOR, Q.C.:  
 23 Q. You assumed the issue would be or would be  
 24 passed along to Mr. Dinn?  
 25 MR. HYNES:

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1 A. Yes, and I mean, I'm aware as well that they  
 2 would have meetings in their office and  
 3 discuss information, so I assumed internally  
 4 if Ms. Matthews knew, she would have shared it  
 5 with whoever she felt was appropriate.  
 6 CHAYTOR, Q.C.:  
 7 Q. So you didn't have any concern that you would  
 8 also have to make that contact?  
 9 MR. HYNES:  
 10 A. No, and normally we wouldn't duplicate  
 11 efforts, it was just a waste of -  
 12 CHAYTOR, Q.C.:  
 13 Q. Time and energy.  
 14 MR. HYNES:  
 15 A. Well I mean, you know, sometimes if you--if  
 16 the communications director calls over and I  
 17 call over on an issue, the next thing you're  
 18 told, we don't need to hear from both of you.  
 19 CHAYTOR, Q.C.:  
 20 Q. Okay, fair enough. So what then happened on  
 21 this issue over the course then of the next  
 22 couple of weeks?  
 23 MR. HYNES:  
 24 A. Well I know I went on annual leave for the  
 25 first week in August and I know the



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1 oncologists--I know the oncologists were at  
 2 the subsequent meeting in August. But  
 3 unfortunately, Ms. Chaytor, I'm unsure of if I  
 4 was there because as I told you in April, the  
 5 two-hour block in the morning that the meeting  
 6 took place, I have no--I have nothing in my  
 7 log book that says I was anywhere else, so I'm  
 8 unsure if I may have drifted into the meeting  
 9 at some point, or if I was perhaps doing  
 10 another meeting on behalf of the Minister that  
 11 morning because I know prior to this period of  
 12 time I was meeting with an individual on  
 13 behalf of the Minister, so it's entirely  
 14 possible the meeting ran late and I may have  
 15 joined the August 15th meeting in progress.  
 16 But I don't have, unfortunately, any  
 17 definitive recollections which tells me I  
 18 wasn't there.  
 19 CHAYTOR, Q.C.:  
 20 Q. Okay. And that week immediately after July  
 21 21, you're still in the office that week  
 22 though.  
 23 MR. HYNES:  
 24 A. Yes.  
 25 CHAYTOR, Q.C.:

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1 Q. You don't go on vacation until the first week  
 2 of August, is it?  
 3 MR. HYNES:  
 4 A. That's correct, yeah.  
 5 CHAYTOR, Q.C.:  
 6 Q. Okay. And during that week, the week  
 7 immediately after the meeting with Eastern  
 8 Health, were you, in fact, travelling with the  
 9 minister in that week?  
 10 MR. HYNES:  
 11 A. Yeah, I know there was a trip we made, myself  
 12 and Minister Ottenheimer and Carolyn Chaplin,  
 13 we did some meetings on the west coast and up  
 14 the Great Northern Peninsula and over to  
 15 southern Labrador. And I know the minister,  
 16 of course, was still deeply worried that if we  
 17 had heard anything back from George, or Mr.  
 18 Tilley I apologize, for an update because I  
 19 remember he directed at one point, I believe  
 20 we were in the Plum Point Motel, he directed  
 21 Carolyn to see if she could get John Abbott on  
 22 the phone to see if there had been any update  
 23 from Eastern Health about what the situation  
 24 was.  
 25 CHAYTOR, Q.C.:

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1 Q. So, this issue was still the subject of  
 2 discussion amongst you and was still troubling  
 3 the minister?  
 4 MR. HYNES:  
 5 A. Oh, very much so.  
 6 CHAYTOR, Q.C.:  
 7 Q. Okay. And so did Ms. Chaplin try to get an  
 8 update?  
 9 MR. HYNES:  
 10 A. I believe she did because I was there. I  
 11 mean, I don't know who answered the other end  
 12 of the call now and the conversation on the  
 13 other end, but I'm not sure if she reached him  
 14 or not.  
 15 CHAYTOR, Q.C.:  
 16 Q. She tried to reach Mr. Abbott, was it?  
 17 MR. HYNES:  
 18 A. Yes, that's correct.  
 19 CHAYTOR, Q.C.:  
 20 Q. Okay. And if we could look at P-0801 please.  
 21 And I believe you already referenced this, Mr.  
 22 Hynes, this is an e-mail from Mr. Tilley to  
 23 Mr. Abbott and it's July 25, 2005 and he  
 24 writes that he had a meeting Sunday morning  
 25 with those involved including an oncologist

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1 and a surgeon. "We are clearly not at a point  
 2 yet where we can be confident that we have a  
 3 problem and, if so, the extent of it. The  
 4 physicians are feeling a little more  
 5 comfortable based on the recent information  
 6 provided, but more is needed to get to the  
 7 bottom of this. And the lab officials are  
 8 currently"--and then he gives some detail as  
 9 to what's going on and he says, "I'll keep you  
 10 posted as soon as we get more information.  
 11 George". And the points that he indicates  
 12 here is that they're making contact with the  
 13 manufacturer of the new system to see what  
 14 information they have on hand. And they're  
 15 getting information from more centres in the  
 16 country about their experiences. He learned  
 17 that "for the specimens that we recently  
 18 retested and reported as converting to  
 19 positive, we included in that sample, those  
 20 that originally reported as a weak positive".  
 21 And then he also says, "we have a lot of  
 22 people trying to get more information, will  
 23 have to wait for the results of the test on  
 24 the specimens that we will be sending out of  
 25 province, from the new manufacturer an the

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1 experiences from elsewhere. It will take at  
 2 least to the end of this week to get that  
 3 done, if not the week after. We are also  
 4 awaiting the return of the results of the  
 5 specimens from elsewhere in this province  
 6 where we did the reporting, but didn't have  
 7 the interpretation results in light of that  
 8 being done by their local pathologists". And  
 9 then that gets forwarded on to Mr. Abbott, to  
 10 Carolyn Chaplin, to Moira Hennessey and to  
 11 yourself. At 3:37 the same date an update is  
 12 provided by George Tilley, "Darrell, if you  
 13 are speaking with the minister, would you let  
 14 him know the status. Thanks".  
 15 So, I take it that's the e-mail you were  
 16 referring to?  
 17 MR. HYNES:  
 18 A. Yeah.  
 19 CHAYTOR, Q.C.:  
 20 Q. And I take it you passed along that  
 21 information to the minister during your  
 22 travels?  
 23 MR. HYNES:  
 24 A. Yes, I did. I'm not sure if we were on the  
 25 road by this point, but the minister did not

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1 carry a Blackberry. So, I would normally  
 2 relay this kind of information to him and I do  
 3 remember calling him with this information.  
 4 CHAYTOR, Q.C.:  
 5 Q. Okay, and what was the Minister's reaction to  
 6 this status report?  
 7 MR. HYNES:  
 8 A. I personally took it as a positive development  
 9 because it seemed that they weren't sure if  
 10 there was as bad a problem or if they were  
 11 even sure if they had a problem, so that  
 12 perhaps the information we had originally been  
 13 given was incorrect. That's the way I took  
 14 it, and I think the Minister was still very  
 15 much cautious, but was, you know, again taking  
 16 this that perhaps this may not have been as  
 17 bad as we were first told, you know, in July  
 18 18th, 19th, 21st period.  
 19 CHAYTOR, Q.C.:  
 20 Q. So is there anything else then you recall in  
 21 the next couple of days? You head out on your  
 22 vacation then the beginning of August. No  
 23 other developments or nothing else on the  
 24 issue?  
 25 MR. HYNES:

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1 A. Not that I can be definitive about, no.  
 2 CHAYTOR, Q.C.:  
 3 Q. And we know a meeting took place as well on  
 4 August 5th. I take it you were still on  
 5 vacation then, were you?  
 6 MR. HYNES:  
 7 A. Yeah.  
 8 CHAYTOR, Q.C.:  
 9 Q. And when you returned from your vacation, did  
 10 anybody fill you in on that meeting? Were you  
 11 told that it had taken place and what happened  
 12 in that meeting?  
 13 MR. HYNES:  
 14 A. Not that I can recall. I don't remember  
 15 anyone sharing that information with me.  
 16 CHAYTOR, Q.C.:  
 17 Q. And then the August 15th meeting, you're not  
 18 sure if you attended or not.  
 19 MR. HYNES:  
 20 A. Yeah.  
 21 CHAYTOR, Q.C.:  
 22 Q. Do you have any recollection about the meeting  
 23 at all?  
 24 MR. HYNES:  
 25 A. It's strange because when I met with Dr. Laing

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1 in early November of that year, I remember we  
 2 exchanged pleasantries like two people who had  
 3 met before, and I don't remember ever meeting  
 4 Dr. Laing prior, so I had thought maybe it was  
 5 some point I drifted into that meeting. All I  
 6 remember hearing about the meeting after was  
 7 that there was still very much internal  
 8 processes ongoing at Eastern Health, but you  
 9 know, the Minister, I remember sharing with  
 10 me, took some comfort in that the lab, by this  
 11 point was shut down. So that whatever the  
 12 problem may or may not have been, it wasn't  
 13 perpetuating itself and that the--you know,  
 14 certainly the oncologists were strongly  
 15 medically advising to hold off on, you know,  
 16 any kind of public disclosure and I believe  
 17 there was also--you know, the whole issue of  
 18 the letters was still being talked about. But  
 19 again, I don't -  
 20 CHAYTOR, Q.C.:  
 21 Q. And talked about in terms of what? When are  
 22 they going to be sent or are they going to be  
 23 sent?  
 24 MR. HYNES:  
 25 A. When are they going to be sent. I think the

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1 Minister was still pushing for patient  
 2 notification letters, is my view.  
 3 CHAYTOR, Q.C.:  
 4 Q. Okay, and the oncologists' concern was again  
 5 public disclosure?  
 6 MR. HYNES:  
 7 A. Yes, because I guess their position would have  
 8 been, we need--you know, that patient--their  
 9 patient doctor relationship, the patient  
 10 should hear it directly individually first,  
 11 versus a broader public.  
 12 CHAYTOR, Q.C.:  
 13 Q. Okay, and was there any information relayed to  
 14 you or that you remember from the meeting, if  
 15 you were in fact there, was there any  
 16 information that the oncologists themselves  
 17 were indicating to hold off on patient  
 18 notification, pending the results coming back,  
 19 the results of the retest coming back?  
 20 MR. HYNES:  
 21 A. I think, I mean, at the end of the day, that's  
 22 what ultimately was the position, I think,  
 23 that came forward from Eastern Health that  
 24 until we had something to tell people, we were  
 25 going to wait.

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1 CHAYTOR, Q.C.:  
 2 Q. And when did that position come forward?  
 3 MR. HYNES:  
 4 A. See, I went--and again, I apologize, I'm not  
 5 trying to be coy, but I was not at the  
 6 meeting, but that's certainly the viewpoint  
 7 that came forward, was my understanding of  
 8 what I was told after, when I was briefed  
 9 about the meeting, that the oncologists were  
 10 saying we got--you know, we hold off.  
 11 CHAYTOR, Q.C.:  
 12 Q. So that's after the August 15th meeting?  
 13 MR. HYNES:  
 14 A. Yes.  
 15 CHAYTOR, Q.C.:  
 16 Q. Okay, and the Minister was still pushing for a  
 17 letter?  
 18 MR. HYNES:  
 19 A. Yes, because he thought, again, you owed it to  
 20 individual patients, in light of the  
 21 seriousness and the circumstances that there  
 22 should be individual patient notifications.  
 23 CHAYTOR, Q.C.:  
 24 Q. Okay. So what was the status then as of the  
 25 middle of August, in terms of patient

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1 notification? What was going to happen?  
 2 MR. HYNES:  
 3 A. I think based on the expert legal--or expert  
 4 medical advice we were given, and the  
 5 professional advice of, you know, Dr. Williams  
 6 and George Tilley and them, it was that they  
 7 were holding off.  
 8 CHAYTOR, Q.C.:  
 9 Q. Holding off on any patient notification?  
 10 MR. HYNES:  
 11 A. That's correct.  
 12 CHAYTOR, Q.C.:  
 13 Q. Not just public notification, holding off on  
 14 patient notification as well?  
 15 MR. HYNES:  
 16 A. Well, I mean, we were still looking for that  
 17 letter to go to individual people. Now if  
 18 that became confused in that process, I'm not  
 19 entirely sure, but I mean, certainly, you  
 20 know, the feedback and the expert medical  
 21 advice and professional advice was, you know,  
 22 you hold off on patient notification.  
 23 CHAYTOR, Q.C.:  
 24 Q. Until after you have the retest results back.  
 25 Okay, so what would the letter be--what letter

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1 was the Minister still looking to have sent?  
 2 MR. HYNES:  
 3 A. I think he still--I think he was still, that  
 4 individual patients deserved and needed to  
 5 know what was going on. That was, at least,  
 6 my impression.  
 7 CHAYTOR, Q.C.:  
 8 Q. And what was your advice on the issue?  
 9 MR. HYNES:  
 10 A. Well, Ms. Chaytor, it's difficult, you know,  
 11 if you have people that got significantly long  
 12 careers in the medical profession and in  
 13 Eastern Health giving you advice, it's tough  
 14 to overrule that and go with your gut  
 15 instinct. Because, I mean, what I--you know,  
 16 your heard is telling you that you got to go  
 17 out and tell these people and broadcast it to  
 18 the world to let people know what's going on,  
 19 but I mean, if you're having people say this  
 20 is now how we properly do things, we need to  
 21 have a process. We need to have results to  
 22 tell them. We need to--you know, and again at  
 23 this point, I think they're still very much  
 24 trying to identify how many people are  
 25 involved which you have to remember, but I

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1 mean, that became a challenge.  
 2 CHAYTOR, Q.C.:  
 3 Q. So, I take it -  
 4 THE COMMISSIONER:  
 5 Q. (Inaudible).  
 6 MR. HYNES:  
 7 A. Pardon?  
 8 THE COMMISSIONER:  
 9 Q. Was that discussed in the early stages, the  
 10 challenge of just identifying who they were?  
 11 MR. HYNES:  
 12 A. I remember, Madam Commissioner, again in July  
 13 when there was certainly feedback that we're  
 14 not sure how many people are affected, we're  
 15 not sure how many patients are affected.  
 16 We're not sure how many years could  
 17 potentially could be involved and that's why  
 18 that became part of the problem. I mean, it  
 19 was tough to go out and make a public  
 20 disclosure when you didn't know what you were  
 21 saying and to whom. Because based on the  
 22 information from Eastern Health, I had not  
 23 comfort, we could go out and say to person X  
 24 that had a test done in year Y, what exactly  
 25 was the problem.

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1 CHAYTOR, Q.C.:  
 2 Q. The idea though of identifying who the  
 3 patients were who were tested in that time  
 4 period, was there any indication that Eastern  
 5 Health was having difficulty identifying that  
 6 subset as you referred to it.  
 7 MR. HYNES:  
 8 A. I'm sure it came up in the latter part of the  
 9 fall because as the weeks dragged on and we  
 10 realized that the batches were still going  
 11 away to Mount Sinai--well, that really became  
 12 the more paramount problem, that we were given  
 13 a re-indication of could we turn it around  
 14 fairly quickly and the problem became Mount  
 15 Sinai got significantly bogged down in their  
 16 own work -  
 17 CHAYTOR, Q.C.:  
 18 Q. Yes, and that comes down the road.  
 19 MR. HYNES:  
 20 A. Yes, and their ability to do that quickly and  
 21 turn it around became a problem.  
 22 CHAYTOR, Q.C.:  
 23 Q. Yes, I think the Commissioner's question  
 24 though is in this early stages, July/August,  
 25 was there indication that Eastern Health was

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1 having difficulty identifying the patients  
 2 involved.  
 3 MR. HYNES:  
 4 A. Well, clearly, they were having problems  
 5 breaking it down and drilling down to the  
 6 numbers. I'm not sure--I don't remember it  
 7 ever being an explanation that well, Darrell,  
 8 this is an old technology and we're going  
 9 through paper files or the computer systems  
 10 have crashed over the years and we don't know  
 11 where these people are. I don't ever remember  
 12 being given any explanation, but clearly, I  
 13 mean, you had some understanding that they  
 14 were going back a bunch of years, that there  
 15 could be a problem with trying to quantify and  
 16 identify these individual people because you  
 17 were going back over a fair period of time, I  
 18 guess.  
 19 CHAYTOR, Q.C.:  
 20 Q. Okay.  
 21 MR. HYNES:  
 22 A. But what exactly the problem was, I don't  
 23 remember ever being told it's because the  
 24 files are all over or we've amalgamated health  
 25 authorities or we've changed systems or

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1 anything like that.  
 2 CHAYTOR, Q.C.:  
 3 Q. None of those issues were identified, but you  
 4 got the sense -  
 5 THE COMMISSIONER:  
 6 Q. There was a point at which in the material  
 7 that we've just looked at, there was a number  
 8 pulled up for what you understood was to be  
 9 St. John's.  
 10 MR. HYNES:  
 11 A. Yes.  
 12 THE COMMISSIONER:  
 13 Q. So, did you have any understanding that that  
 14 number was a fairly firm number in the sense  
 15 that they had identified at least within their  
 16 own organization the number of people whose  
 17 tests would have to be redone.  
 18 MR. HYNES:  
 19 A. No, my impression was certainly that they were  
 20 still going back reviewing old patient records  
 21 -  
 22 THE COMMISSIONER:  
 23 Q. That would really be an estimate then they  
 24 were giving you -  
 25 MR. HYNES:

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1 A. I would say that's a -  
 2 THE COMMISSIONER:  
 3 Q. - as opposed to a calculation of here are the  
 4 numbers of negatives that we have had in this  
 5 year, this year, this year and this year and  
 6 they all add up to?  
 7 MR. HYNES:  
 8 A. No, no--that's an accurate statement, your  
 9 honour. I mean, I would say it's more of an  
 10 estimate based on, again, the information that  
 11 they were trying to glean from their own  
 12 systems.  
 13 THE COMMISSIONER:  
 14 Q. Okay, thank you.  
 15 CHAYTOR, Q.C.:  
 16 Q. And I take it, Mr. Hynes, from what you  
 17 indicated to me, that your gut instinct was to  
 18 tell people?  
 19 MR. HYNES:  
 20 A. Well, I mean, I guess people would, it's a  
 21 difficult issue and people should have the  
 22 information or at least--but again we were  
 23 swayed by the advice and the recommendations  
 24 that were coming from Eastern Health.  
 25 CHAYTOR, Q.C.:

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1 Q. And by mid August then, what was your comfort  
 2 level?  
 3 MR. HYNES:  
 4 A. I guess I still had somewhat a good comfort  
 5 level because by that point we were still  
 6 getting the impression that the information  
 7 would or the tests would go away, come back  
 8 fairly quickly in short order, people would be  
 9 notified that you're affected or not affected  
 10 and here's your situation. And again, there  
 11 was still the impression with me at least that  
 12 this was going to be done in fairly quick time  
 13 frame and fairly quickly done for people.  
 14 CHAYTOR, Q.C.:  
 15 Q. Mr. Hynes, a few minutes ago too in answering  
 16 my questions, you indicated that the minister  
 17 felt some comfort in that the lab had been  
 18 shut down. What did you understand had  
 19 happened? Did you understand the entire  
 20 immunohistochemistry lab was shut down?  
 21 MR. HYNES:  
 22 A. No, no, not at all. I mean, the ER/PR tests,  
 23 I understood, was a separate piece, separate  
 24 process and there were many other hundreds of  
 25 tests ongoing at the lab, but this particular

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1 issue was stopped or suspended, I guess, and  
 2 they were sending the testing away until they  
 3 determined what the problem was, what had  
 4 happened, how to fix it and go through all  
 5 these other internal processes.  
 6 CHAYTOR, Q.C.:  
 7 Q. So, I take it at that point in time for the  
 8 minister to be feeling some comfort that that  
 9 had happened, the thought had entered peoples'  
 10 minds that perhaps it's not just equipment.  
 11 MR. HYNES:  
 12 A. I don't know if that would have entered his  
 13 mind. Well, I guess we just didn't know. We  
 14 did know an easiest thing to do when you don't  
 15 know is stop whatever you're doing until you  
 16 do k now. That would be my -  
 17 CHAYTOR, Q.C.:  
 18 Q. Okay. If we could look at P-0570, please.  
 19 And this is not your handwriting, but -  
 20 MR. HYNES:  
 21 A. It's almost as bad.  
 22 CHAYTOR, Q.C.:  
 23 Q. - it's not much better.  
 24 MR. HYNES:  
 25 A. It's almost as bad, I apologize.

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1 CHAYTOR, Q.C.:  
 2 Q. That's okay. And Doctor Williams actually  
 3 made those notes and he's been kind enough to  
 4 have them transcribed for us. So, page three,  
 5 here is the typed version of his notes from  
 6 the August 15 meeting. And your name doesn't  
 7 appear in his list of who was in attendance.  
 8 And there's just a couple of points though to  
 9 refresh your memory. Because I take it that  
 10 whether you're in the meeting or not, the  
 11 minister discussed this issue with you after  
 12 the meeting. Is that fair, Mr. Hynes?  
 13 MR. HYNES:  
 14 A. Yes.  
 15 CHAYTOR, Q.C.:  
 16 Q. And the minister--you'll see coming down here,  
 17 Dr. Laing says a few things and Dr. Laing says  
 18 "first samples for retesting biased and also  
 19 retested on Ventana system. Therefore, our  
 20 problem, although undefined at present, may  
 21 not be as bad as thought. Can't really have a  
 22 value discussion until information available.  
 23 Will notify everyone who is retested. Doesn't  
 24 feel now is the time to write the letter.  
 25 Better to wait until we have more

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1 information". And the minister, this comment  
 2 is attributed to the minister. "If people  
 3 advised as soon as possible, then patients can  
 4 do what he/she wishes to deal with the  
 5 issues". And then Dr. Cook indicates that's a  
 6 problem with immunoperoxidase testing. "Dr.  
 7 Laing advised that Dr. McCarthy, Dr. Ganguly  
 8 agree with waiting to send to something out  
 9 until we have more information". The minister  
 10 is noted to state or, at least, put forward a  
 11 position, "will accept best advice for now,  
 12 wishes to meet again within the next two  
 13 weeks. Will develop what should go in a  
 14 letter in the meantime. So, while Dr. Laing  
 15 has expressed that she doesn't feel now is the  
 16 time to write the letter, we'll wait until we  
 17 have more information. In the meantime, it  
 18 appears the letter is to be developed or  
 19 drafted. How does that accord with what you  
 20 remember being discussed in the department at  
 21 the time?  
 22 MR. HYNES:  
 23 A. It's certainly significant because, or  
 24 consistent, I apologize, because again, it was  
 25 the oncologists, my understanding, were the

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1 ones urging to hold off, but again, Eastern  
 2 Health were still working on an internal  
 3 process to prepare a letter that could go out.  
 4 CHAYTOR, Q.C.:  
 5 Q. And the idea of the minister being of the mind  
 6 that if people advised as soon as possible,  
 7 then patients can do whatever he or she wishes  
 8 to deal with the issues. Is that a sentiment  
 9 that the minister expressed himself to you?  
 10 MR. HYNES:  
 11 A. I think he was always consistent, Ms. Chaytor,  
 12 that he wanted to get this out to people as  
 13 soon as he could. And I don't think he ever  
 14 changed or wavered in that position over the  
 15 months.  
 16 CHAYTOR, Q.C.:  
 17 Q. And as time went on, how was your comfort  
 18 level in terms of what was happening on  
 19 patient notification or not happening on  
 20 patient notification?  
 21 MR. HYNES:  
 22 A. Well, I guess, it was--you were relying on the  
 23 best advice that was coming forward from  
 24 Eastern Health and in the absence of that, I  
 25 mean, what could you do.

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1 CHAYTOR, Q.C.:  
 2 Q. And as this went on then into September and  
 3 there's still no letter sent, as you've said,  
 4 what was your comfort level at that point?  
 5 MR. HYNES:  
 6 A. I think based on the discusses, I begin to  
 7 wonder if Eastern Health ever wanted to send a  
 8 letter in the first place.  
 9 CHAYTOR, Q.C.:  
 10 Q. And what was being discussed in that regard?  
 11 MR. HYNES:  
 12 A. Well, it became, I mean, there was an  
 13 impression left a letter would be prepared at  
 14 some point and as the time went on, you had to  
 15 think that it got further and further on the  
 16 back burner from Eastern Health's perspective.  
 17 And then you had to wonder, is this, you now,  
 18 they still are prepared to do?  
 19 CHAYTOR, Q.C.:  
 20 Q. And was that something discussed with you and  
 21 the minister?  
 22 MR. HYNES:  
 23 A. I would say yes, and Ms. Chaplin perhaps.  
 24 CHAYTOR, Q.C.:  
 25 Q. Okay. Now, I understand Ms. Chaplin left the

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1 department shortly after this, by the end of  
 2 August she had left the department and gone to  
 3 Cabinet Secretariat. Did she keep in touch  
 4 with you on the issue after she went?  
 5 MR. HYNES:  
 6 A. No, I mean, I know, we did some university  
 7 courses together, so I know here outside of  
 8 work, so to speak, but I don't remember having  
 9 any contact with her on ER/PR after.  
 10 CHAYTOR, Q.C.:  
 11 Q. Okay, nothing officially, I take it?  
 12 MR. HYNES:  
 13 A. No.  
 14 CHAYTOR, Q.C.:  
 15 Q. What about informally? Was it an issue that  
 16 she would bring up with you when you would see  
 17 her informally or outside of work?  
 18 MR. HYNES:  
 19 A. No. just to--first she had some surprise that  
 20 I wasn't called as a witness. When I'd see  
 21 her occasionally now it would just be, do you  
 22 have a date yet? How do you feel? Chit-chat.  
 23 CHAYTOR, Q.C.:  
 24 Q. Okay. So, that's down the road in terms of -  
 25 MR. HYNES:

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1 A. Oh yes, much -  
 2 CHAYTOR, Q.C.:  
 3 Q. I'm just wondering -  
 4 MR. HYNES:  
 5 A. Certainly nothing--sorry, I apologize--  
 6 certainly nothing in the fall of '05 or -  
 7 CHAYTOR, Q.C.:  
 8 Q. Okay. So, no discussions with her into the  
 9 fall of '05 or throughout '06 on the issue?  
 10 MR. HYNES:  
 11 A. No.  
 12 CHAYTOR, Q.C.:  
 13 Q. Okay. So, from your point of view then, we  
 14 move on into September, is there--what's  
 15 happening in the department around the issue  
 16 or what discussions are taking place?  
 17 MR. HYNES:  
 18 A. I have no definitive recollections about any  
 19 meetings I attended or individual  
 20 conversations for that period. My next  
 21 recollection of ER/PR was in November actually  
 22 or after, sorry, you know, certainly when it  
 23 went public in early October.  
 24 CHAYTOR, Q.C.:  
 25 Q. Okay. And the minister, at this point in time

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1 was looking to meet again within two weeks,  
 2 August 15. So, that would take it up to the  
 3 beginning of September. Did that meeting take  
 4 place or did anyone follow up to try and get  
 5 that meeting to happen.  
 6 MR. HYNES:  
 7 A. I'm not sure if it took place or not.  
 8 CHAYTOR, Q.C.:  
 9 Q. Okay. So, the next thing you recall is that  
 10 it broke in the media and what do you recall  
 11 around that? Did you have any advanced  
 12 notice, by the way, did anyone tell you that  
 13 this is coming, that it's going to be  
 14 published in The Independent on the weekend?  
 15 MR. HYNES:  
 16 A. No. My first recollection would be, it was a  
 17 Monday morning and I got a call fairly early  
 18 in the morning asking me if I had seen The  
 19 Independent and I said no and I was told I  
 20 should go get a copy.  
 21 CHAYTOR, Q.C.:  
 22 Q. And who made that phone call to you?  
 23 MR. HYNES:  
 24 A. I honestly can't recall. I suspect it was  
 25 probably one of my colleagues because as a

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1 courtesy, we would often give heads up to  
 2 other EAS if there was something in the  
 3 newspaper, something on the media that felt  
 4 was important to a colleague, you'd call as a  
 5 courtesy and just say, you know, you should  
 6 look at page three, something that may affect  
 7 -  
 8 MR. HYNES:  
 9 A. So, you're already at work when you received  
 10 that call?  
 11 MR. HYNES:  
 12 A. Yes.  
 13 CHAYTOR, Q.C.:  
 14 Q. And so I take it, you got a copy of the  
 15 article?  
 16 MR. HYNES:  
 17 A. Yeah.  
 18 CHAYTOR, Q.C.:  
 19 Q. And did you then have any discussions in the  
 20 office on that?  
 21 MR. HYNES:  
 22 A. I remember going out to the minister's office  
 23 and I remember when I went in his office, he  
 24 had the paper spread out on his desk. And he  
 25 asked me if I had seen it and I said, yes,

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1 minister and he said, I'm relieved.  
 2 CHAYTOR, Q.C.:  
 3 Q. He said he's relieved.  
 4 MR. HYNES:  
 5 A. Yep.  
 6 CHAYTOR, Q.C.:  
 7 Q. And what did you understand him to mean by  
 8 that?  
 9 MR. HYNES:  
 10 A. He was clearly glad that the issue was out  
 11 there publicly.  
 12 CHAYTOR, Q.C.:  
 13 Q. And why?  
 14 MR. HYNES:  
 15 A. That I think he felt, I guess, it had weighed  
 16 on him that, you know, that this hadn't been  
 17 publicly disclosed or disclosed to patients  
 18 and the information was out there now and he  
 19 took some comfort in that.  
 20 CHAYTOR, Q.C.:  
 21 Q. And was he concerned as to whether or not the  
 22 letters had gone to the patients or whether  
 23 the patients had been notified? Did he  
 24 express any concern about that?  
 25 MR. HYNES:

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1 A. Not at that point, because I think at that  
 2 point, if you're reading it in a province wide  
 3 paper, it's out there now and, I mean, a  
 4 letter, at this point, might have looked like  
 5 a mute point to some degree. I mean, I don't  
 6 even remember the letter being discussed. It  
 7 was just like, have you seen it, he had it  
 8 spread out on his desk and he was relieved and  
 9 I could see the relief in his face that it's  
 10 out there now and that's it.

11 CHAYTOR, Q.C.:

12 Q. But was there any concern expressed that  
 13 perhaps there's also patients out there with  
 14 the newspaper spread out reading it and  
 15 learning of it for the first time in that  
 16 manner?

17 MR. HYNES:

18 A. I don't remember immediately having that  
 19 conversation, no.

20 CHAYTOR, Q.C.:

21 Q. And did that occur to you?

22 MR. HYNES:

23 A. Not that I can be--I don't have any conscious  
 24 awareness of it now, looking back.

25 CHAYTOR, Q.C.:

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1 Q. And was there a discussion then in the next  
 2 few days along those lines, well, did the  
 3 patients already know before this broke in the  
 4 news?

5 MR. HYNES:

6 A. Not that I can recall, Ms. Chaytor.

7 CHAYTOR, Q.C.:

8 Q. Okay. Did you then have any discussions with  
 9 anyone else within government on the issue on  
 10 that day, this is October 3rd, I take it?

11 MR. HYNES:

12 A. I'm sure I would have chatted with Ms.--our  
 13 communications director at the time about the  
 14 story, but other than that, I don't--my next  
 15 recollection now is the meeting with Dr. Laing  
 16 in November.

17 CHAYTOR, Q.C.:

18 Q. Okay. And did you make contact with Mr. Dinn  
 19 on October 3rd?

20 MR. HYNES:

21 A. No.

22 CHAYTOR, Q.C.:

23 Q. Okay. And why not?

24 MR. HYNES:

25 A. I guess I didn't see a need to.

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1 CHAYTOR, Q.C.:

2 Q. Okay. Wouldn't it--Ms. Chaplin is not there,  
 3 so I'm just thinking who's going to contact  
 4 the Premier's office and let them know that  
 5 this issue is now out in the media and it  
 6 affects a large number of people?

7 MR. HYNES:

8 A. If it was a media issue, it would have been up  
 9 to Ms. Mundon to contact the Premier's office.  
 10 I wouldn't normally just pick up the Premier's  
 11 office and phone just based on a newspaper  
 12 story.

13 CHAYTOR, Q.C.:

14 Q. Okay. So you know--I think what you told us  
 15 it would be because it's a significant issue  
 16 affecting a large number of people, that's  
 17 when you would make the contact. And  
 18 certainly that's what this issue still was, so  
 19 -

20 MR. HYNES:

21 A. Agreed, but where it was in the public domain  
 22 and it was part of a newspaper clipping, the  
 23 Premier's office would have got them normally  
 24 and the protocols would have been, you know,  
 25 the communications director would have called

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1 perhaps communications and consultation branch  
 2 and in then that information would have went  
 3 on to the Premier's office or the  
 4 communications director would have called the  
 5 Premier's office directly.

6 CHAYTOR, Q.C.:

7 Q. So who after Mr. Carolyn left the department  
 8 was keeping the Premier's office advised on  
 9 the issue?

10 MR. HYNES:

11 A. You know, the proper way would have been for  
 12 the deputy or assistant deputy minister.  
 13 Well, I mean, they would have prepared  
 14 information for Cabinet Secretariat that would  
 15 have been shared with the Premier's office  
 16 would have been my view how things worked.

17 CHAYTOR, Q.C.:

18 Q. And do you know whether or not that was  
 19 happening?

20 MR. HYNES:

21 A. I don't know.

22 CHAYTOR, Q.C.:

23 Q. Okay. And you weren't keeping Mr. Dinn  
 24 apprised of the issue?

25 MR. HYNES:



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1 A. No.  
 2 CHAYTOR, Q.C.:  
 3 Q. Okay. And why not, why would you not be  
 4 keeping Mr. Dinn advised of what's happening  
 5 on the issue throughout the end of August,  
 6 September, before it becomes a public issue?  
 7 MR. HYNES:  
 8 A. Any information about an issue such as this  
 9 that would go to the Premier's office would be  
 10 in the form of a briefing note and you  
 11 wouldn't, you wouldn't call just with little  
 12 snippets of information. Like, a formalized  
 13 briefing note would be done up, forwarded to  
 14 Cabinet Secretariat by officials in the  
 15 department, whether that be the deputy,  
 16 assistant deputy minister, director, whatever,  
 17 that would go to Cabinet Secretariat and then  
 18 if the Premier's office needed it, it was  
 19 forwarded. But Cabinet Secretariat were the  
 20 storing house of that information, and you  
 21 know, that way then you had consistency in  
 22 what information was being shared, how it was  
 23 prepared and how it was, you know, put  
 24 forward.  
 25 CHAYTOR, Q.C.:

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1 Q. Okay. So I understand, so it's after the  
 2 first contact has been made, which you  
 3 understood had happened back on July 19th, so  
 4 after that contact is made then any updates  
 5 are done formally through a briefing note  
 6 process?  
 7 MR. HYNES:  
 8 A. Yeah, that would be the process for any issue.  
 9 CHAYTOR, Q.C.:  
 10 Q. Okay. So you would pick up the phone and  
 11 phone Mr. Dinn if there were a new issue  
 12 happening not to provide an update on a  
 13 current issue?  
 14 MR. HYNES:  
 15 A. Or if, yeah, or if there was something I felt  
 16 was pressingly important that was not known or  
 17 something I had to offer that was not in the  
 18 briefing note or not public knowledge or  
 19 something.  
 20 CHAYTOR, Q.C.:  
 21 Q. And the fact that this had now become a public  
 22 issue and had changed in that respect, that  
 23 it's now out in the public, that would be  
 24 communicated through the directors of  
 25 communication?

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1 MR. HYNES:  
 2 A. I would think. I wouldn't normally pick up  
 3 the phone, no.  
 4 CHAYTOR, Q.C.:  
 5 Q. Okay. And if we could look, please, at P-  
 6 1606?  
 7 COMMISSIONER:  
 8 Q. Ms. Chaytor, whenever you can find a spot to  
 9 break, we'll take the afternoon break.  
 10 CHAYTOR, Q.C.:  
 11 Q. Thank you, Commissioner. This is an e-mail  
 12 from Ms. Mundon, who's now the director, at  
 13 this point in time, of communications, to  
 14 yourself. And it's October 3rd, so it's that  
 15 Monday, 8:12, sorry, in the morning.  
 16 "Darrell, here is a briefing note provided on  
 17 issue in The Independent. Moira is back in  
 18 the office today and I'll discuss with her.  
 19 I'll also check on the ambulance issue."  
 20 That's a different issue. And then she  
 21 provides you with a copy. And we understand  
 22 this is a briefing note which was provided on  
 23 the issue from Eastern Health on September  
 24 30th to Ms. Mundon. So did you go looking for  
 25 this from Ms. Mundon, do you recall having a

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1 discussion with her and asking about the  
 2 issue?  
 3 MR. HYNES:  
 4 A. I obviously must have if I have this  
 5 information. And it strikes me somewhat  
 6 unusual. I must have been out of the office  
 7 or maybe travelling because rather than  
 8 sending me a briefing note as an attachment in  
 9 a Word document, this was--looks like it was  
 10 cut and paste into the text of an e-mail, and  
 11 that would be an unusual way to receive  
 12 something. So I may have been out of the  
 13 office or otherwise engaged and asked her to  
 14 send me the briefing note in an actual body of  
 15 an e-mail.  
 16 CHAYTOR, Q.C.:  
 17 Q. But you recall being in the office on this  
 18 morning, because you recall going into the  
 19 minister's office and he was reading the  
 20 newspaper?  
 21 MR. HYNES:  
 22 A. Um. Well, unless--it's fairly early in the  
 23 morning. Unless I was out somewhere else  
 24 first thing and I wanted to get a copy of it  
 25 right away, perhaps.

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1 CHAYTOR, Q.C.:

2 Q. Okay. And what did you do when you received

3 this, what did you do with this information?

4 MR. HYNES:

5 A. Oh, I think this was just for my information

6 to get the most up-to-date information as we

7 knew it.

8 CHAYTOR, Q.C.:

9 Q. Okay. And if we could look, please, at 1607?

10 And later in the morning, 11:30, so about

11 three hours later, Ms. Mundon e-mails you

12 again and says, "Darrell, with respect to the

13 ER/PR issue, Eastern Health will be doing a

14 follow-up interview with NTV this afternoon.

15 John, Moira and I discussed this morning and I

16 have left a message for Susan B suggesting

17 that they now issue a news release with

18 frequently asked questions attached to

19 communicate to the public on this issue. An

20 isolated interview may leave people with

21 concerns and will result in inquiries forcing

22 a reactive response. Some of those inquiries

23 may be addressed with a news release that

24 provides further information about the process

25 and the small number of people that may be

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1 affected." First of all, why would Ms. Mundon

2 be sending this to you?

3 MR. HYNES:

4 A. Just to give me an update.

5 CHAYTOR, Q.C.:

6 Q. Okay. And so you would be kept in the loop, I

7 take it, then, on the issue. And would you be

8 expected, then, to pass this information along

9 to the minister?

10 MR. HYNES:

11 A. She didn't specifically ask me to do that in

12 this e-mail, but I guess this would be for my

13 information purposes and then if I felt it was

14 important enough to let him know the content

15 of the e-mail, I would, and if not, I

16 wouldn't.

17 CHAYTOR, Q.C.:

18 Q. Okay. And the fact that Ms. Mundon refers to

19 it being a small number of people that may be

20 affected, did that catch your attention?

21 MR. HYNES:

22 A. No, it did not at the time, no.

23 CHAYTOR, Q.C.:

24 Q. Why not?

25 MR. HYNES:

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1 A. I, you know, go a lot of e-mails from Ms.

2 Mundon in the run of a day and I don't, I

3 don't recall paying any particular attention

4 to that last part of that sentence.

5 CHAYTOR, Q.C.:

6 Q. Okay. And did you understand yourself with

7 the knowledge that you had on the issue that

8 this was only going to be a small number of

9 people affected? What was your understanding

10 of how many people might be affected by this

11 as of the beginning of October, 2005?

12 MR. HYNES:

13 A. I would still think they were still working

14 through sending away tests, getting them back,

15 the board that had been established within

16 Eastern Health to review them were still doing

17 their work, and I don't know if I'd have any

18 sense of how many people were impacted.

19 CHAYTOR, Q.C.:

20 Q. Well, back in July, the very first meeting

21 that you attended, July 21st, there was some

22 indication then at that time out of what

23 they'd done in house, 16 out of 25 had

24 converted, 25 out of 33 had converted, you

25 knew that there was at least 600 being sent

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1 away. So I take it you would not have

2 characterized this as a small number of people

3 may be affected?

4 MR. HYNES:

5 A. No, but this is not my e-mail, I mean, this is

6 her -

7 CHAYTOR, Q.C.:

8 Q. No, no.

9 MR. HYNES:

10 A. - sending this to me, so -

11 CHAYTOR, Q.C.:

12 Q. Yes, and I appreciate that.

13 MR. HYNES:

14 A. - obviously she must have formed that

15 impression based on some information, Ms.

16 Chaytor, but I don't know, it's not my

17 language.

18 CHAYTOR, Q.C.:

19 Q. And did she discuss that with you?

20 MR. HYNES:

21 A. Not that I recall, no.

22 CHAYTOR, Q.C.:

23 Q. Okay. And my question then was, was it your

24 impression that it was only going to be a

25 small number of people affected?

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1 MR. HYNES:  
 2 A. I think that was perhaps my hope, but my, you  
 3 know, my understanding and recognition was  
 4 they were going probably end up with a lot of  
 5 people affected at the end of the day.  
 6 CHAYTOR, Q.C.:  
 7 Q. Okay. Thank you. This is a good place to  
 8 take a break.  
 9 COMMISSIONER:  
 10 Q. All right, then, we'll take the afternoon  
 11 break.  
 12 (RECESS)  
 13 COMMISSIONER:  
 14 Q. Please be seated. Ms. Chaytor.  
 15 CHAYTOR, Q.C.:  
 16 Q. Thank you, Commissioner. If we could have,  
 17 please, P-0142? Mr. Hynes, this is an e-mail  
 18 from Ms. Mundon to yourself amongst others in  
 19 the department, including the minister. And  
 20 it's an update on ER/PR, October 3rd, 2005,  
 21 2:51 p.m., so it's shortly after the e-mail  
 22 that Ms. Mundon had sent just to you earlier  
 23 that day. And she says, "FYI, as mentioned  
 24 previously, Dr. Williams has done a follow-up  
 25 interview with Carolyn Stokes." And she goes

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1 on to explain other media interest in the  
 2 story. "John, I discussed with Susan the  
 3 merits of doing a news release. She advised  
 4 that the strategy in July was that that they  
 5 would notify patients before they went public  
 6 so they decided against a news release. She  
 7 indicated that she had the support of the  
 8 department with this approach. They now feel  
 9 the horse has left the barn and that the media  
 10 that were interested in the story have already  
 11 covered it." And I would just like to stop  
 12 there and ask you for your view on the idea  
 13 that "The strategy in July had been they would  
 14 notify the patients before they went public,  
 15 so they decided against a news release. She  
 16 indicated she had the support of the  
 17 department with this approach." Do you agree  
 18 with that statement?  
 19 MR. HYNES:  
 20 A. Well, I guess the minister ultimately was  
 21 decided to hold off on patient notification on  
 22 the basis of the expert medical, professional  
 23 advise he was given, so that would sound like  
 24 an accurate statement.  
 25 CHAYTOR, Q.C.:

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1 Q. Okay. And that came, I take it, in August?  
 2 MR. HYNES:  
 3 A. Yes.  
 4 CHAYTOR, Q.C.:  
 5 Q. And it goes on to say, "I requested for  
 6 frequently asked questions be posted to the  
 7 website so that people would have easy access  
 8 to information." And Ms. Mundon says she  
 9 tends to agree with Susan at this time about  
 10 the news release. Then she goes on to say at  
 11 the end here, "If we did issue a news release  
 12 at this point, it would be picked up by local  
 13 newspapers and will probably draw attention to  
 14 the issue unnecessarily." Do you recall  
 15 getting this e-mail from Ms. Mundon? And I  
 16 understand at this point in time Ms. Mundon is  
 17 relatively new to the department. Do you  
 18 recall getting this e-mail and reading it and  
 19 did you have any concerns about this e-mail?  
 20 MR. HYNES:  
 21 A. Oh, I mean, I vaguely remember it. It was, I  
 22 guess, just an information, a heads up in my  
 23 role as the executive assistant to the  
 24 minister to make sure I knew about some media  
 25 interest in this story and what Eastern Health

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1 were saying about it.  
 2 CHAYTOR, Q.C.:  
 3 Q. Okay. And the idea of not drawing attention  
 4 to the issue unnecessarily, is that a  
 5 sentiment that would cause you any concern or  
 6 would that catch your attention in any way?  
 7 MR. HYNES:  
 8 A. No, I guess I would have more read the fact, I  
 9 mean, Eastern Health says they feel it's no  
 10 point of or no sense issuing a news release a  
 11 this point. I mean, I wouldn't put any  
 12 additional weight on any other part of it.  
 13 That's what I would take away from it.  
 14 CHAYTOR, Q.C.:  
 15 Q. Mr. Hynes, was there ever any sentiment  
 16 expressed in the department to try and  
 17 minimize this issue or minimize the publicity,  
 18 not minimize the issue, but minimize the  
 19 publicity surrounding the issue?  
 20 MR. HYNES:  
 21 A. No.  
 22 CHAYTOR, Q.C.:  
 23 Q. Any sentiment to try and keep it from being as  
 24 high profile in the media?  
 25 MR. HYNES:

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1 A. No, because the reality is, Ms. Chaytor, you  
 2 have no control over what the media may decide  
 3 to take as a story or put emphasis on. I  
 4 mean, from day to day you have no control over  
 5 what the opposition or media may ask when the  
 6 house is open, so it's, you know, you can't  
 7 manage that in many ways.  
 8 CHAYTOR, Q.C.:  
 9 Q. And while you may not be able to manage it  
 10 from a political point of view, in your  
 11 experience, is there any effort from time to  
 12 time to trying to keep stories which may be  
 13 somewhat negative stories, to try and not have  
 14 them become high profile?  
 15 MR. HYNES:  
 16 A. I guess if we could manage an issue, I mean,  
 17 if we could manage an issue that would satisfy  
 18 someone's concerns without having a big public  
 19 issue, I mean, certainly we would have, I  
 20 guess. I mean, if I may, I'd give you a quick  
 21 example, I mean -  
 22 CHAYTOR, Q.C.:  
 23 Q. Sure.  
 24 MR. HYNES:  
 25 A. - from time to time someone would show up to

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1 the Department of Health and demand to meet  
 2 with the minister or a senior official or else  
 3 they were going to go to the media or call and  
 4 open line show or set up a tent in front of  
 5 the building, and I mean, often times you'd  
 6 just simply as a courtesy go out and meet with  
 7 them and hear their concerns and follow up as  
 8 best you could and that would, that would  
 9 usually be the end of the issue. I mean, not  
 10 very often would you see the, you know, the  
 11 follow up from the person's behalf, so, I  
 12 mean, that kind of stuff happened, I think,  
 13 fairly routinely, you try to respond to  
 14 people's concerns. But often times, of  
 15 course, people would always say that unless  
 16 you did this, you know, they were prepared to  
 17 do that, so you're always managing those kind  
 18 of expectations.  
 19 CHAYTOR, Q.C.:  
 20 Q. Okay. And I take it the ER/PR issue would be  
 21 no different?  
 22 MR. HYNES:  
 23 A. Well, I mean, this is, you know, obviously a  
 24 much more complex, broader issue.  
 25 CHAYTOR, Q.C.:

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1 Q. Yes.  
 2 MR. HYNES:  
 3 A. But, I mean, obviously if--I mean, that's why  
 4 I think thinking back to the minister's offer  
 5 to Eastern Health for additional resources and  
 6 all that, I mean, this got bogged down and  
 7 took a lot longer than it was supposed to. I  
 8 mean, that's why we offered if they needed any  
 9 additional financial resources, human  
 10 resources or anything else to try to speed up  
 11 the retesting, to get it done, you know.  
 12 CHAYTOR, Q.C.:  
 13 Q. Okay. If we could look at, please, P-0143?  
 14 And this is an e-mail again from Ms. Mundon to  
 15 yourself, amongst others, including the  
 16 minister. And it's now two days later, it's  
 17 October 5th at 4:41 p.m. And she's forwarding  
 18 an e-mail regarding a CBC on-line story,  
 19 "Newfoundland Cancer Lab Produces False  
 20 Results." And "The story was based on today's  
 21 Telegram story. I was speaking to Susan B.  
 22 this afternoon and she advises CBC did not do  
 23 an interview for the story." And she goes on  
 24 with "Eastern Health having had six calls  
 25 today and five calls yesterday. The nature of

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1 the calls were primarily around confusion  
 2 around mammography testing." Do you recall  
 3 that being discussed in the department around  
 4 this time, that there was confusion in the--  
 5 there appears to be confusion surrounding the  
 6 issue as to whether or not it's ER/PR testing  
 7 or something else?  
 8 MR. HYNES:  
 9 A. Yes, because there was a great amount of  
 10 concern that that would create greater mass  
 11 concern and confusion among women who were in  
 12 no way affected.  
 13 CHAYTOR, Q.C.:  
 14 Q. And that was discussed. And was there any  
 15 direction or advice given as to how to deal  
 16 with that issue?  
 17 MR. HYNES:  
 18 A. You know, I believe as part of the ongoing  
 19 discussions, because the communications people  
 20 in the department kept in fairly good touch  
 21 with Eastern Health that I'm sure Eastern  
 22 Health were going to clarify that with the  
 23 respective media outlets to make sure they  
 24 understood what exactly they were talking  
 25 about.

1 CHAYTOR, Q.C.:

2 Q. Okay. And if we could have, please, 1478?

3 And, Mr. Hynes, this is an Executive Committee

4 meeting within the department, October 7th,

5 2005. And you'll see that yourself, Mr.

6 Abbott, Ms. Hennessey, Ms. Mundon, amongst

7 others, are in attendance. And item 26 is

8 "Eastern RIHA, problem with breast screening

9 program." And it says, "Darrell Hynes noted

10 the media coverage on this issue, the

11 communications aspect of this issue was

12 discussed by the executive who has recognized

13 a protocol is needed. Tansy Mundon to discuss

14 from a lessons learned perspective with other

15 communications staff in government. Also to

16 contact George Tilley regarding development of

17 a protocol." And it indicates that you are

18 noting the media coverage on the issue. Do

19 you have any recollection about this meeting

20 and what was discussed on the issue?

21 MR. HYNES:

22 A. Not specifically. I think there was more a

23 broader conversation about the protocols with

24 respect to roles and responsibilities because,

25 I mean, the note I made to myself at the same

1 it that you were meaning by that?

2 MR. HYNES:

3 A. Well, just that I mean, how--you know, this

4 was a major health--adverse health event, and

5 I guess, you know, there was discussion around

6 the executive table about there would be a

7 need for the future, I guess, to try to make

8 sure there were, you know, roles and

9 responsibilities outlined with respect to how

10 we would interact with each other and whether

11 that be the Minister's office in the

12 Department vis-a-vis Eastern Health, how

13 information flow would come back and forth,

14 protocols for that, and just you know, the

15 operational flow of information and all that,

16 how--because I mean, again, this had all gone

17 public now and I guess there was a view that

18 there was perhaps lessons to be learned, and I

19 know in the communications thing, there was a

20 specific reference there to Ms. Mundon was

21 given some follow up there to do, I think.

22 CHAYTOR, Q.C.:

23 Q. And what did you understand, at this point in

24 time, this is early days of it becoming a

25 public issue, it's about five days into that.

1 meeting was that there was a need for

2 protocols to address situation, how the board

3 reacted versus our reaction, and I believe

4 I've shared that with the Commission. But I

5 think it was just that there was general

6 discussion about how the Department of Health

7 would respond versus Eastern Health, how we

8 would interact with each other and share

9 information, communicate and information flow

10 back and forth during this kind of thing

11 because although it was recognized it was an

12 operational issue for Eastern Health, that it

13 was certainly greater pan-provincial concerns

14 that, you know, would affect the minister and

15 he would be expected to be aware of and know.

16 So there was just, that's the kind of

17 conversation I recall.

18 CHAYTOR, Q.C.:

19 Q. Okay. And we do have your note, P-1477 and

20 page 6 of that exhibit. This is your

21 handwritten note of that meeting, October 7th,

22 2005 or a typed version of it. And it says,

23 "Breast Cancer Issue. Need for protocols to

24 address situation, how board reacts versus our

25 reaction." So just explain, please, what is

1 What did you understand to be the lessons

2 learned? What exactly was that referencing?

3 MR. HYNES:

4 A. Just that I guess could we share information

5 and work better together and have a more

6 streamlined structured approach, I guess, to

7 dealing with an issue like this, and again, I

8 talked about roles and responsibilities, you

9 know, what we're expected to do and what our

10 role is, as a department and a minister,

11 versus what Eastern Health's role and

12 responsibility is as the actual group that are

13 managing the file and notifications and

14 sending letters or sending samples away and

15 getting them back, notifying people, etcetera.

16 CHAYTOR, Q.C.:

17 Q. And do you recall any follow up on that

18 discussion?

19 MR. HYNES:

20 A. I mean, I'm aware of the issue of ER/PR was

21 discussed a number of times at the executive

22 table.

23 CHAYTOR, Q.C.:

24 Q. Yes. No, I'm sorry, follow up on the issue of

25 the need for protocols and clearly defining

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1 the roles, the Board versus the Department.  
 2 Do you recall whether or not, up to the time  
 3 you left the Department, there was an follow  
 4 up on the development of such protocols?  
 5 MR. HYNES:  
 6 A. Not that I'm aware of. I remember Mr. Abbott  
 7 making some comment at this executive meeting  
 8 that he identified it as a concern, but I'm  
 9 unaware, to the best of my knowledge, if the  
 10 followed up or did anything.  
 11 CHAYTOR, Q.C.:  
 12 Q. Okay, and we do have actually an e-mail where  
 13 he follows up, there was going to be a  
 14 communications retreat, but we understand that  
 15 didn't happen. But beyond that, you're not  
 16 aware of any development of such protocols or  
 17 any further contact with Eastern Health or the  
 18 other RIHAS on this?  
 19 MR. HYNES:  
 20 A. No, nothing that was shared with me anyway,  
 21 Ms. Chaytor.  
 22 CHAYTOR, Q.C.:  
 23 Q. Okay. If we could go back -  
 24 THE COMMISSIONER:  
 25 Q. You interpret this as a communications issue,

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1 do you? Is it wider than that?  
 2 MR. HYNES:  
 3 A. No, I would think it was certainly greater  
 4 communications, that's why I mentioned the  
 5 information flow, stuff coming back and forth,  
 6 whether that was briefing notes or how the  
 7 Minister would be updated and briefed and  
 8 information would flow to the Minister's  
 9 office, how that would be received in the  
 10 Department, how it would go back. Because, I  
 11 guess, if you look back at it, I mean, there  
 12 was a number of different players around the  
 13 tables at various times and it's--you know, I  
 14 think that operationally how we receive stuff  
 15 and how we processed information, that you  
 16 know, it was certainly an issue.  
 17 CHAYTOR, Q.C.:  
 18 Q. If we could go back, please, to 1478? And the  
 19 comment here in the minutes where it says  
 20 "Darrell Hynes noted the media coverage on  
 21 this issue," was there anything in particular  
 22 noteworthy in the media coverage or why is it  
 23 that at the executive meeting that you're  
 24 noting the media coverage on the ER/PR issue?  
 25 MR. HYNES:

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1 A. It may have been, you know, following up on  
 2 the fact that the media had it wrong. The  
 3 fact that they were confused about the  
 4 mammogram issue.  
 5 CHAYTOR, Q.C.:  
 6 Q. The issue being, yes, referred to as breast  
 7 screening.  
 8 MR. HYNES:  
 9 A. Right, and that's--you know, perhaps that's  
 10 why it was recorded in the minutes as an  
 11 agenda item that the media had gotten it wrong  
 12 and, you know, again, perhaps it was, you  
 13 know, maybe we didn't do a good enough job  
 14 making sure the media knew exactly what they  
 15 were talking about and the dynamics of the  
 16 test and how it worked and everything else.  
 17 CHAYTOR, Q.C.:  
 18 Q. Okay.  
 19 MR. HYNES:  
 20 A. Because clearly mammogram has--you know,  
 21 there's thousands of mammograms done across  
 22 Newfoundland and has a very different, you  
 23 know, it's a very different process obviously.  
 24 CHAYTOR, Q.C.:  
 25 Q. Yes. Okay, if we could have 1438, please?

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1 And this is another executive committee  
 2 meeting, and Mr. Hynes, I'm assuming as I go  
 3 here, this is another week later, if there's  
 4 anything else in between that's happening or  
 5 discussions in the Department that you have an  
 6 independent recollection of, by all means,  
 7 stop, stop me or just speak to whatever issue.  
 8 This is number 17, it appears, the issue on  
 9 the agenda that day, ER/PR retesting. "The  
 10 executive discussed the current status of the  
 11 ongoing issue," and that's all is written  
 12 about the issue, so I'm wondering--on October  
 13 14th then, two weeks after it has become a  
 14 public issue, what do you recall being  
 15 discussed at that stage?  
 16 MR. HYNES:  
 17 A. Nothing definitive, Ms. Chaytor, and I even  
 18 went back and checked my own notes for that  
 19 meeting and I have no reference to ER/PR in my  
 20 notes for that meeting. So I don't know why  
 21 the minute taker would have made that  
 22 reference or what was meant by it.  
 23 CHAYTOR, Q.C.:  
 24 Q. Okay.  
 25 MR. HYNES:

1 A. It's not in my notes, so I don't know.  
 2 CHAYTOR, Q.C.:  
 3 Q. And in terms of following up with Eastern  
 4 Health on the issue, any follow up on the  
 5 issue, I take it that wouldn't be done by you?  
 6 MR. HYNES:  
 7 A. Pardon me?  
 8 CHAYTOR, Q.C.:  
 9 Q. Any follow up on the issue, in terms of what  
 10 the status is from Eastern Health or the other  
 11 health authorities, you wouldn't be making  
 12 that contact?  
 13 MR. HYNES:  
 14 A. No, that would not be my role.  
 15 CHAYTOR, Q.C.:  
 16 Q. Okay, and if we could look at 0807, please?  
 17 These are the minutes then of the executive  
 18 committee, October 28th, and again, Mr.  
 19 Abbott, Ms. Hennessey, Ms. Mundon and yourself  
 20 and Dr. Hunt are present, and here it says  
 21 "ER/PR retesting. Tansy Mundon noted Eastern  
 22 region was not keeping her in the loop on  
 23 communications issues. She was unaware of the  
 24 interview Dr. Williams did on Out of the Fog.  
 25 Tansy Mundon to e-mail John Abbott regarding

1 that's why perhaps it escalated to the point  
 2 of the Deputy Minister meeting with the CEO,  
 3 because normally an issue like this, in my  
 4 mind, wouldn't necessitate the Deputy Minister  
 5 meeting with the CEO of a health authority.  
 6 CHAYTOR, Q.C.:  
 7 Q. Yes, and I was exploring that a bit with Ms.  
 8 Mundon yesterday in terms of it coming to the  
 9 point where this kind of action was going to  
 10 happen. So what is the background on that?  
 11 What do you know about issues in terms of  
 12 information not being forthcoming from Eastern  
 13 Health?  
 14 MR. HYNES:  
 15 A. I recall, Ms. Chaytor, when I first got to  
 16 Health, having a conversation with Ms. Chaplin  
 17 who indicated that they're--you know, and  
 18 again, this wasn't her number one item on the  
 19 agenda, so I appreciate this in context, but  
 20 she raised the issue that there had been an  
 21 issue in the past sometimes at Eastern Health,  
 22 and I'm not saying there was anything  
 23 malicious by it, but sometimes they would do  
 24 media information or send out press releases  
 25 and would not give us a heads up and then, you

1 this issue, and John Abbott to follow up with  
 2 George Tilley." And this is towards the end  
 3 of October 2005. Do you remember discussion  
 4 around that?  
 5 MR. HYNES:  
 6 A. I do. I remember Ms. Mundon was concerned  
 7 that she hadn't been given again a courtesy  
 8 heads up by Eastern Health because Dr.  
 9 Williams was doing a fairly lengthy interview  
 10 on Out of the Fog, because it's more of an in-  
 11 depth program, versus just a brief media  
 12 outlet, and again that's correct, I think it  
 13 was agreed that Ms. Mundon and Mr. Abbott and  
 14 George Tilley and Ms. Bonnell were going to  
 15 meet subsequent to this, to talk about the  
 16 issue.  
 17 CHAYTOR, Q.C.:  
 18 Q. And do you recall then any other follow up on  
 19 that or any further discussion afterwards on  
 20 the issue.  
 21 MR. HYNES:  
 22 A. Not that I was party to. I remember the issue  
 23 of getting information from Eastern Health was  
 24 a problem over the years, off and on, and this  
 25 issue, you know, was raised previously and

1 know, the Minister could be in a car and hear  
 2 that a major issue had happened and we were  
 3 hearing about it second and third hand from  
 4 media sources and clearly that was not perhaps  
 5 a good way to do things. So I remember she  
 6 said that she--but she, you know, had  
 7 developed a good relationship with Ms. Bonnell  
 8 and it seemed to get better, but I remember  
 9 from time to time, because I remember one  
 10 particular time, I believe with Minister  
 11 Osborne, and I don't recall the exact issue,  
 12 but I remember he expressed concern to me that  
 13 he was driving in in the morning and heard an  
 14 item on CBC Radio that he had no idea about,  
 15 and in his mind, it was a significant health  
 16 issue and when we checked into it, Eastern  
 17 Health hadn't provided any heads up or  
 18 courtesy phone call ahead of time.  
 19 CHAYTOR, Q.C.:  
 20 Q. Okay.  
 21 MR. HYNES:  
 22 A. But I don't remember the substance of the  
 23 issue. You know, it don't occur to me now.  
 24 CHAYTOR, Q.C.:  
 25 Q. And if that's Minister Osborne's time, that

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1 comes some time later.  
 2 MR. HYNES:  
 3 A. Yeah.  
 4 CHAYTOR, Q.C.:  
 5 Q. And so this issue of--so the fact that this  
 6 happened to Ms. Mundon, at this point in time,  
 7 while this was an isolated incident for Ms.  
 8 Mundon, it was something that the Department  
 9 was aware of and had had issue with in the  
 10 past?  
 11 MR. HYNES:  
 12 A. Yeah, it didn't surprise me, and that's why  
 13 again -  
 14 CHAYTOR, Q.C.:  
 15 Q. Didn't surprise you?  
 16 MR. HYNES:  
 17 A. No, it didn't surprise me, Ms. Chaytor, and  
 18 that's why, I think, because normally again,  
 19 the Deputy Minister does not meet with the CEO  
 20 about a--you know, what you could say was a  
 21 fairly minor matter, unless there was a more  
 22 systemic problem, right.  
 23 CHAYTOR, Q.C.:  
 24 Q. Yes, there'd have to be come context to this?  
 25 MR. HYNES:

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1 A. There'd have to be some context and recurring  
 2 issue for John Abbott to go over and call and  
 3 meet George Tilley on this issue, is my view,  
 4 absolutely.  
 5 CHAYTOR, Q.C.:  
 6 Q. And in terms of if we specifically could speak  
 7 of the ER/PR issue, throughout your time in  
 8 the Department, did you have any sense or did  
 9 you hear anything in the Department that there  
 10 was concern there wasn't information  
 11 forthcoming on that issue?  
 12 MR. HYNES:  
 13 A. Not that I can articulate a clear  
 14 understanding or remembrance of, no.  
 15 CHAYTOR, Q.C.:  
 16 Q. Okay. Is there--after this, after the end of  
 17 October 2005, did you ever hear Ms. Mundon  
 18 voice any similar concern?  
 19 MR. HYNES:  
 20 A. It's hard to be definitive. Again, I remember  
 21 this coming up recurring a couple of times,  
 22 but I can't be definitive if it was during Mr.  
 23 Ottenheimer's term or Minister Osborne, but I  
 24 do remember it being an issue.  
 25 CHAYTOR, Q.C.:

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1 Q. And the issue, now it's into the end of  
 2 October, where was the issue with respect to  
 3 letters to notify patients? Did you  
 4 understand was there anything going on with  
 5 patient notification at this point in time?  
 6 MR. HYNES:  
 7 A. I guess my only understanding would be is that  
 8 Eastern Health were still sending away  
 9 samples. I guess by this time were getting  
 10 samples back from Mount Sinai and were--I  
 11 guess their internal board were reviewing them  
 12 to see if there had actually been a change in  
 13 the person's recommended course of treatment,  
 14 and then they were notifying them individuals.  
 15 The issue of the letters seemed to just fall  
 16 off the radar that fall. I can't pinpoint  
 17 a particular e-mail or time, but it just  
 18 seemed to fall off the--fall by the wayside.  
 19 CHAYTOR, Q.C.:  
 20 Q. And were you aware of whether or not the  
 21 patients were otherwise being notified, for  
 22 example, through phone calls?  
 23 MR. HYNES:  
 24 A. I don't remember that, no.  
 25 CHAYTOR, Q.C.:

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1 Q. And was there any discussion in the Department  
 2 as to what is the status of patient  
 3 notification?  
 4 MR. HYNES:  
 5 A. I mean, I suspect we might have been getting  
 6 updates or briefing note updates, but I don't--  
 7 I mean, if you showed me something, it would  
 8 probably look familiar, but I don't--I mean,  
 9 again, operationally, it wasn't my weekly role  
 10 or day-to-day role to find out what the latest  
 11 was. It was only periodically if there was an  
 12 update to make--I would make sure the Minister  
 13 had whatever the most up-to-date information  
 14 was that the Department had.  
 15 CHAYTOR, Q.C.:  
 16 Q. Sure, and would you be on the distribution  
 17 list for briefing notes?  
 18 MR. HYNES:  
 19 A. I would get a copy of the House binder for the  
 20 House of Assembly and normally if there was  
 21 something prepared, I would. But now, having  
 22 said that, again there was issues internally  
 23 in the Department too that that became an  
 24 issue, that there was stuff went out without  
 25 the Minister seeing it.



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1 CHAYTOR, Q.C.:

2 Q. Yes, okay, and I think there's at least one

3 example of that that we've heard about

4 regarding the ER/PR issue. And other than

5 that -

6 MR. HYNES:

7 A. There were several others, yeah.

8 CHAYTOR, Q.C.:

9 Q. And several others before that? Before--the

10 one we're aware of is August 18th 2006.

11 MR. HYNES:

12 A. Yeah.

13 CHAYTOR, Q.C.:

14 Q. There were incidents before that?

15 MR. HYNES:

16 A. Yeah.

17 CHAYTOR, Q.C.:

18 Q. Okay, and while we're on it then, I guess,

19 that August 18th 2006, were you aware that

20 that briefing note had been drafted and had

21 gone without the Minister seeing it?

22 MR. HYNES:

23 A. No.

24 CHAYTOR, Q.C.:

25 Q. And when did you become aware of that?

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1 MR. HYNES:

2 A. I became aware of that in May 2007.

3 CHAYTOR, Q.C.:

4 Q. And how did you become aware of it then?

5 MR. HYNES:

6 A. Minister Osborne called me first and then

7 visited me in my office.

8 CHAYTOR, Q.C.:

9 Q. Okay, and what did he tell you about that?

10 MR. HYNES:

11 A. He was very upset and asked me if I had seen

12 this information prior to--during our time in

13 Health, because of course, we had both moved

14 on by this point, as you can appreciate, but

15 he was very upset and asked me if I'd ever

16 seen this information, and did I know if it

17 was deliberately withheld with him or what the

18 context of it was, and I--you know, at first,

19 again, he had called me and I had no

20 information--because I didn't know what he was

21 talking about, to be honest, and then he came

22 to my office with a copy of the note and I

23 read it for the first time.

24 CHAYTOR, Q.C.:

25 Q. And that's the first time you had seen it

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1 either?

2 MR. HYNES:

3 A. Yeah.

4 CHAYTOR, Q.C.:

5 Q. Okay. So I take it it was never in any

6 briefing book for the Minister?

7 MR. HYNES:

8 A. Not that I can recall, no. I don't remember

9 ever seeing it before May '07.

10 CHAYTOR, Q.C.:

11 Q. And are notes which go to Cabinet Secretariat,

12 are they also--are those notes also included

13 in the Minister's briefing book?

14 MR. HYNES:

15 A. Not necessarily, and you know, again, I don't-

16 -I'm not a good one to speak to the

17 standardization of how briefing notes are

18 prepared, but I know there's House briefing

19 notes, there's issue briefing notes, and not

20 all the same information. I mean, I believe

21 after--what I heard after was that note was

22 prepared specifically for Cabinet Secretariat

23 and had input directly from Eastern Health and

24 our Department, but I mean, I don't remember--

25 it was never shown to me, which was unusual,

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1 and certainly the Minister would have signed

2 off on it.

3 CHAYTOR, Q.C.:

4 Q. Okay, and it would be unusual for you not to

5 see that note as well?

6 MR. HYNES:

7 A. Well normally, yes, but I think this is why--

8 it had happened a couple of times, and that's

9 why there was some point in the fall of--there

10 was a point in the fall of--in November 3rd

11 '06, at the Minister's request, I raised this

12 at an executive meeting, that after that

13 point, there would be no more briefing notes

14 go over without him signing it, and that was

15 in follow up to an e-mail I was instructed by

16 the Minister at the time to send to all ADMS,

17 that there be no more briefing notes leave the

18 Department, because it had happened a couple

19 of times, and this was outside of him knowing

20 about the August note.

21 CHAYTOR, Q.C.:

22 Q. Yes. Well, we could look at that. That's, I

23 think, P-1450, and this is the meeting I think

24 you're referencing, Mr. Hynes, and Mr. Abbott

25 is present at the meeting and Dr. Hunt and Ms.

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1 Mundon and Ms. Hennessey, and yourself of  
 2 course, amongst others. "Briefing note  
 3 circulation protocol" and DH, I take it, means  
 4 Darrell Hynes?  
 5 MR. HYNES:  
 6 A. That was me, yeah.  
 7 CHAYTOR, Q.C.:  
 8 Q. "Briefing notes for central agencies must be  
 9 signed off by DM and Minister prior to being  
 10 sent." And now this is November 3rd, 2006.  
 11 So that's after the August 18th, 2006. But  
 12 it's not in relation, you're saying -  
 13 MR. HYNES:  
 14 A. Absolutely not, no.  
 15 CHAYTOR, Q.C.:  
 16 Q. - to the August 18th.  
 17 MR. HYNES:  
 18 A. I believe, Ms. Chaytor, it had happened at  
 19 least twice. I can't recall right now what  
 20 the context of the two notes were, but I  
 21 remember the Minister coming to my office,  
 22 being very upset that information had gone to  
 23 central agency--now I'm not sure if that's  
 24 Cabinet Secretariat or the Premier's office,  
 25 but he was very upset that information had

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1 gone over that he hadn't seen, and on his  
 2 instruction, I asked Ms. Betty Donahue, the  
 3 Deputy Minister's secretary, to add this to an  
 4 agenda item, because normally I wouldn't. It  
 5 was very unusual, because I remember she even  
 6 asked, because it's unusual for me to come out  
 7 and say "I want to put this on the agenda,"  
 8 and I also sent around an e-mail to all the  
 9 Deputy and ADMs on the same issue, because the  
 10 Minister felt very strongly about it.  
 11 CHAYTOR, Q.C.:  
 12 Q. Okay, and was there any discussion then in the  
 13 meeting around that? Did anyone offer an  
 14 explanation as to how that was happening?  
 15 MR. HYNES:  
 16 A. You know, I think there was some discussion  
 17 that unfortunately sometimes if Cabinet  
 18 Secretariat would call over, they would ask  
 19 for a note and just say it's 9:30 in the  
 20 morning and they'd say "we need a note for the  
 21 Premier by 11," and because of short time  
 22 frames and pressures or if the House could be  
 23 opening or other circumstances, there was  
 24 expectations to get a note turned around in  
 25 short order, but you know, subsequent to all

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1 that, and there was no fingerpointing at the  
 2 meeting or anything like that, it was just  
 3 that this was the Minister's direction and  
 4 this was the way it was going to be  
 5 henceforth.  
 6 CHAYTOR, Q.C.:  
 7 Q. And so those other notes, had they gone over  
 8 without him reviewing first, but then he saw  
 9 the note, or had he not seen those notes  
 10 either and they only subsequently came to his  
 11 attention?  
 12 MR. HYNES:  
 13 A. I don't think he had seen the notes.  
 14 CHAYTOR, Q.C.:  
 15 Q. So it's not even a matter that somebody was  
 16 rushing to get something over and then after  
 17 the fact gave it to the Minister, he hadn't  
 18 been given a copy?  
 19 MR. HYNES:  
 20 A. Now again, it might have been it was rushed  
 21 and sent over, it might have appeared at a  
 22 Cabinet meeting or some other meeting he went  
 23 to, perhaps Treasury Board and the next day he  
 24 said, "I haven't signed off on this and I'm  
 25 seeing this for the first time", that may have

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1 been it, but I remember there was two examples  
 2 and he was very upset.  
 3 CHAYTOR, Q.C.:  
 4 Q. And it was your understanding that the  
 5 Minister became aware of the notes outside of  
 6 the department bringing those to his  
 7 attention?  
 8 MR. HYNES:  
 9 A. Yes, absolutely, absolutely, yes.  
 10 CHAYTOR, Q.C.:  
 11 Q. And did you have any sense as to who had been  
 12 responsible for the distribution of those  
 13 notes to Cabinet Secretariat?  
 14 MR. HYNES:  
 15 A. I would, you know, I would believe they would  
 16 either come directly from the Deputy Minister  
 17 or Assistant Deputy Minister who would get  
 18 calls from Cabinet Secretariat asking for a  
 19 note about a particular issue.  
 20 CHAYTOR, Q.C.:  
 21 Q. Okay, if we could just go back then, I take it  
 22 in terms then of the August 18th, that didn't  
 23 come to your attention or the Minister's  
 24 attention until the spring of 2007?  
 25 MR. HYNES:

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1 A. That's right.  
 2 CHAYTOR, Q.C.:  
 3 Q. The other two examples that you mentioned,  
 4 were you aware of those briefing notes?  
 5 MR. HYNES:  
 6 A. That's a good question, Ms. Chaytor. I  
 7 believe--yes, I believe it's something I had  
 8 seen and that's why when he questioned me on  
 9 it, I said, what do you mean Minister you  
 10 hadn't seen it. I believe I was aware of it  
 11 and that's why I hadn't given it another  
 12 thought.  
 13 CHAYTOR, Q.C.:  
 14 Q. You were aware of it but the Minister wasn't.  
 15 MR. HYNES:  
 16 A. Right, and he had only seen it externally to  
 17 his, you know, the department and he became  
 18 quite concerned.  
 19 CHAYTOR, Q.C.:  
 20 Q. And I take it you weren't aware that he wasn't  
 21 aware or you would have -  
 22 MR. HYNES:  
 23 A. No.  
 24 CHAYTOR, Q.C.:  
 25 Q. - brought it to his attention?

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1 MR. HYNES:  
 2 A. That's correct, I just assumed he would have  
 3 seen it because, I mean, stuff should not  
 4 leave the department without the Minister  
 5 being aware of it.  
 6 CHAYTOR, Q.C.:  
 7 Q. Had there been any similar instances while  
 8 Minister Ottenheimer was in the position?  
 9 MR. HYNES:  
 10 A. Not that I can be as definitive about, I mean,  
 11 I know the whole issue of briefing notes was  
 12 an issue because, again, there was sometimes  
 13 expectations that stuff could be turned around  
 14 for Cabinet Secretariat in very short order  
 15 and that would put very onerous pressure on  
 16 the department to provide it. And at times if  
 17 the Minister wasn't around, officials would  
 18 have great concern sending something out that  
 19 the Minister was not aware of.  
 20 CHAYTOR, Q.C.:  
 21 Q. And this November 3rd, 2006 meeting, I take it  
 22 nobody either remembered the August 18th  
 23 briefing note at that point in time or spoke  
 24 up about it or realized that the Minister had  
 25 not been included in the distribution list of

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1 that note?  
 2 MR. HYNES:  
 3 A. No, they wouldn't have been aware, I don't  
 4 think.  
 5 CHAYTOR, Q.C.:  
 6 Q. The people who are in this meeting?  
 7 MR. HYNES:  
 8 A. No.  
 9 CHAYTOR, Q.C.:  
 10 Q. Weren't aware that the Minister hadn't  
 11 received it.  
 12 MR. HYNES:  
 13 A. No, because that would have been, although it  
 14 was a very significant note, back in August  
 15 that would have been one note of countless  
 16 others that were probably going over to  
 17 Cabinet Secretariat or moving around  
 18 government, you know, for that period of time  
 19 on various issues.  
 20 CHAYTOR, Q.C.:  
 21 Q. The people who would be responsible though for  
 22 making sure the Minister did have a copy,  
 23 those people were in the room on November 3rd?  
 24 MR. HYNES:  
 25 A. Oh yes.

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1 CHAYTOR, Q.C.:  
 2 Q. I take it what you're saying is that they may  
 3 not have been thinking of that or it may not  
 4 have been coming to their mind at the time  
 5 because of the number of briefing notes that  
 6 had -  
 7 CHAYTOR, Q.C.:  
 8 Q. No, that's right, they would have no way to  
 9 know or they wouldn't probably remember that  
 10 the Minister hadn't seen the August 18th  
 11 briefing note and even when I raised it as an  
 12 agenda item, I had no way to know that a note  
 13 had gone over.  
 14 CHAYTOR, Q.C.:  
 15 Q. You didn't know yourself?  
 16 MR. HYNES:  
 17 A. No, I certainly didn't.  
 18 CHAYTOR, Q.C.:  
 19 Q. If we could go back then and try and think  
 20 back to the fall of 2005, instead of the fall  
 21 of 2006, was there anything else happening  
 22 around the issue of ER/PR after we had looked  
 23 at the end of October, October 28th, 2005 the  
 24 executive committee meeting. That was the  
 25 meeting in which Ms. Mundon said she wasn't

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1 being kept in the loop. Anything else about  
 2 the issue then as the fall wore on that you  
 3 can remember?  
 4 MR. HYNES:  
 5 A. Not that I can recall specifically about, Ms.  
 6 Chaytor.  
 7 CHAYTOR, Q.C.:  
 8 Q. We've heard in other evidence that in early  
 9 November 2005, Ms. Hennessey had asked for the  
 10 findings from the external reviews which were  
 11 carried out of the laboratory and the  
 12 laboratory services. Were you aware that Ms.  
 13 Hennessey had asked for those findings?  
 14 MR. HYNES:  
 15 A. No.  
 16 CHAYTOR, Q.C.:  
 17 Q. So that's not anything she discussed with you?  
 18 MR. HYNES:  
 19 A. No.  
 20 CHAYTOR, Q.C.:  
 21 Q. While you were with the department, to your  
 22 knowledge did anyone ask Eastern Health for  
 23 either a copy of the external review reports  
 24 or the outcome of the reviews?  
 25 MR. HYNES:

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1 A. Not that I can confirm, no.  
 2 CHAYTOR, Q.C.:  
 3 Q. Not that you can confirm?  
 4 MR. HYNES:  
 5 A. Yeah, I mean, if someone did, I'm not aware of  
 6 it, okay.  
 7 CHAYTOR, Q.C.:  
 8 Q. Okay.  
 9 MR. HYNES:  
 10 A. Sorry, I didn't mean to be -  
 11 CHAYTOR, Q.C.:  
 12 Q. Well that's a different answer, that's all, I  
 13 just wasn't sure what you meant.  
 14 MR. HYNES:  
 15 A. I want to be clear with you, Ms. Chaytor.  
 16 CHAYTOR, Q.C.:  
 17 Q. Thank you very much, I appreciate that. So if  
 18 Mr. Abbott asked for the reports at some  
 19 point, you weren't aware of that?  
 20 MR. HYNES:  
 21 A. No.  
 22 CHAYTOR, Q.C.:  
 23 Q. And that may have come actually after you had  
 24 left the department. And Ms. Hennessey's  
 25 query for information, you weren't aware of

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1 that either?  
 2 MR. HYNES:  
 3 A. No, because you know, that would have been  
 4 part of her normal, I guess, day to day stuff,  
 5 her normal duties and within her scope of  
 6 responsibilities, so that wouldn't have  
 7 necessarily involved me.  
 8 CHAYTOR, Q.C.:  
 9 Q. Did you ever think about that? Did you ever  
 10 think about well they were going to be having  
 11 these external reviews done, did that shed any  
 12 light on the issue, I wonder what the outcome  
 13 was?  
 14 MR. HYNES:  
 15 A. I'm sure at some point in the meetings, you  
 16 know, I'm sure we must have wondered. I mean,  
 17 you'd have to be honest, you must have  
 18 wondered what they were going to find and what  
 19 was going to come out, but the reality is I  
 20 don't remember ever seeing that information.  
 21 CHAYTOR, Q.C.:  
 22 Q. Okay, and do you recall being a part of any  
 23 discussion surrounding that? Anybody in the  
 24 department, the Minister question you on it or  
 25 raise it as a query?

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1 MR. HYNES:  
 2 A. No, I remember, I mean again ahead to '06 when  
 3 Minister Osborne was asking me, you know, what  
 4 was the root cause and we had that  
 5 conversation, I mean, at that point I had no  
 6 clear definitive answer to give him.  
 7 CHAYTOR, Q.C.:  
 8 Q. And did you go looking for the answer?  
 9 MR. HYNES:  
 10 A. I remember I directed at that time, well  
 11 actually at that time I was getting ready to  
 12 go on holidays and I remember asking John  
 13 Abbott, saying Mr. Abbott, do you know if the  
 14 Minister wants to set up a briefing with  
 15 Eastern Health to get an answer to what was  
 16 the root cause, the underlying problem with  
 17 the ER/PR issue.  
 18 CHAYTOR, Q.C.:  
 19 Q. And so you passed that on to Mr. Abbott?  
 20 MR. HYNES:  
 21 A. Yes.  
 22 CHAYTOR, Q.C.:  
 23 Q. And did that meeting get arranged?  
 24 MR. HYNES:  
 25 A. You know, the next meeting was obviously

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1 November 23rd, '06, so I don't know if it was  
 2 a scheduling problem or it was just  
 3 unspecified problems, but that's the next time  
 4 something got pieced together.  
 5 CHAYTOR, Q.C.:  
 6 Q. But there was a period of months in between  
 7 before -  
 8 MR. HYNES:  
 9 A. Now I do recall, at least in my presence once  
 10 or twice, Minister Osborne asking the Deputy  
 11 Minister, you know, to get some answers or get  
 12 some information or set up a briefing, but it  
 13 just never seemed to occur, but I do remember  
 14 him asking.  
 15 CHAYTOR, Q.C.:  
 16 Q. And he's specifically asked what was the cause  
 17 and you went looking through Mr. Abbott to set  
 18 up a meeting to discuss that?  
 19 MR. HYNES:  
 20 A. Yeah, and like I say, before or after or  
 21 during, I certainly remember at least twice  
 22 Minister Osborne saying, you know, John, what  
 23 is the story, can we, you know, I need  
 24 something. I remember him using the  
 25 expression "I need something, I don't

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1 understand this".  
 2 CHAYTOR, Q.C.:  
 3 Q. Okay, and what was Mr. Abbott's answers?  
 4 MR. HYNES:  
 5 A. Yes, Minister, I'll get something set up and,  
 6 you know, he would endeavour to have something  
 7 co-ordinated.  
 8 CHAYTOR, Q.C.:  
 9 Q. Has it been your experience that when an  
 10 external agency or a health authority has a  
 11 report prepared that there's an executive  
 12 summary given to the department?  
 13 MR. HYNES:  
 14 A. Yes, I mean, oftentimes there's a, you know,  
 15 of the full copy of the report may be sent to  
 16 the Minister, FYI, but the executive summary  
 17 would be sent in and/or the department would  
 18 usually its own analysis to prepare a briefing  
 19 note on a particular issue, so that the  
 20 Minister could be aware of, you know, in a  
 21 broad way what the contents were and what the  
 22 issues were contained in that document  
 23 because, again, a lot of times you get  
 24 national reports by advocacy groups and think  
 25 tanks, that were fairly massive complex

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1 documents and you couldn't expect the Minister  
 2 to sit down and read it all, so I mean,  
 3 everything would be boiled down to a  
 4 manageable briefing note or package that he  
 5 could, you know, get his mind around.  
 6 CHAYTOR, Q.C.:  
 7 Q. And I take it that didn't happen in this case  
 8 with respect to the ER/PR issue? There was no  
 9 executive summary of any report provided to  
 10 the Minister?  
 11 MR. HYNES:  
 12 A. No.  
 13 CHAYTOR, Q.C.:  
 14 Q. So I appreciate that and we'll come to  
 15 Minister Osborne looking for the answers to  
 16 the question what's the root cause. And I'm  
 17 just thinking what was being told within the  
 18 department? Was any answer ever forthcoming  
 19 and if so, what did you understand was the  
 20 cause of the problem?  
 21 MR. HYNES:  
 22 A. I don't remember ever having a clear  
 23 understanding or idea in my mind what was the  
 24 root cause and I think that's why when the  
 25 Minister pressed me in, I believe it was

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1 August of '06, you know, I was sitting here as  
 2 his senior policy advisor and I didn't have an  
 3 answer to give him.  
 4 CHAYTOR, Q.C.:  
 5 Q. And what had been told to you in the early  
 6 days that you talked to earlier today about  
 7 the DAKO and about the complicated procedure,  
 8 the 40 steps and all that, was anything--was  
 9 at any time did anyone tell you that it is  
 10 this or it's not that?  
 11 MR. HYNES:  
 12 A. No, I remember it would normally be  
 13 discussions around, you know, you would hear  
 14 about the investments they had made in the  
 15 lab, the centre of excellence they were going  
 16 to establish for pathology, they were going to  
 17 have dedicated staff, they were going to make  
 18 investments and specific training. That all  
 19 seemed to be solutions or investments or  
 20 solutions to the problem, but I don't remember  
 21 anyone ever saying, Darrell, here is exactly  
 22 what happened.  
 23 CHAYTOR, Q.C.:  
 24 Q. And if we could look at P-0046 please? And  
 25 I'm not sure if you've seen this, Mr. Hynes,

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1 but this is one of the reports that came from  
 2 Dr. Banerjee in October, October 17th, 2005,  
 3 and he was the pathologist from B.C. who did a  
 4 review of the laboratory services. And I take  
 5 it you have never seen this while you were  
 6 with the Department of Health?  
 7 MR. HYNES:  
 8 A. No.  
 9 CHAYTOR, Q.C.:  
 10 Q. And he did a review of cases, "I reviewed a  
 11 number of cases from the retrospective testing  
 12 set with Dr. Donald Cook, all of the cases  
 13 that had converted from negative to positive  
 14 by switching platforms had one or more of the  
 15 following characteristics: one, poor  
 16 fixation; two, negative internal controls,  
 17 normal ductal epithelium"--and we understand  
 18 that to mean tissue--"when present was  
 19 completely negative; three, absent internal  
 20 controls, no normal ductal epithelium present  
 21 to evaluate. It is apparent that too much  
 22 reliance is being placed on external causative  
 23 controls with no attention paid to internal  
 24 controls." And then he gives the list of  
 25 conclusions about the reasons for test

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1 failure. "Is the DAKO system faulty? This is  
 2 unlikely as there are many laboratories using  
 3 the DAKO system successfully. The reason for  
 4 test failure is most likely due to a lack of  
 5 test optimization, including antigen retrieval  
 6 method and antibody detection system,  
 7 titration, as positive controls showed weak  
 8 staining in general and internal controls  
 9 failed in all of the false negative cases. Is  
 10 the Ventana system too sensitive? There's no  
 11 evidence of that. Is there a problem with  
 12 tissue fixation? There appears to be  
 13 inadequate attention paid by the grossing  
 14 pathologists to the thickness of tissue  
 15 slices, quality and adequacy of fixation and  
 16 there's no standardized fixation protocol that  
 17 everyone adheres to. Fourthly, inadequate or  
 18 no attention is being paid by the reporting  
 19 pathologist to the status of internal controls  
 20 within appropriately exclusive reliance on  
 21 external positive controls." And then he goes  
 22 on with more about that and this should be  
 23 number five, "Inappropriate choice of blocks  
 24 with no representative normal tissue." And  
 25 seven, "Better education required for

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1 technologists, pathologists and clinicians  
 2 about the pitfalls of immunohistochemistry and  
 3 the importance of quality control and  
 4 interpretation of IHC results." And then he  
 5 notes other system flaws that he observed.  
 6 Any of those conclusions about the reasons for  
 7 test failure, was any of that shared with you  
 8 while you were with the department?  
 9 MR. HYNES:  
 10 A. No, the only thing that looks familiar is  
 11 number two, "Is the Ventana system too  
 12 sensitive?" I remember now based on seeing  
 13 that sentence that that was discussed as a  
 14 possible issue in July 21st of 2005, that it  
 15 may have been a problem, the new technology  
 16 was more sensitive and it was picking up, you  
 17 know, that the technology was much better and  
 18 this is why we were picking up all these new  
 19 cases. I remember that being discussed.  
 20 CHAYTOR, Q.C.:  
 21 Q. And did anyone ever come back to you and tell  
 22 you that's not the case?  
 23 MR. HYNES:  
 24 A. No.  
 25 CHAYTOR, Q.C.:

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1 Q. And looking at that, is that the type of  
 2 information when you're looking for answers  
 3 about what was the cause, is that the type of  
 4 answers that you would have been seeking?  
 5 MR. HYNES:  
 6 A. It's fairly clear.  
 7 CHAYTOR, Q.C.:  
 8 Q. Now, Mr. Hynes, I believe on November 17th,  
 9 there was a briefing of the Minister, November  
 10 17th, 2005. Do you recall, did you attend  
 11 that briefing?  
 12 MR. HYNES:  
 13 A. I believe I did because I remember one of the  
 14 issues discussed and I believe at the  
 15 Minister's urging, at that time I believe  
 16 Eastern Health were, had ads in the local  
 17 papers and across the province to notify  
 18 people, and I remember specifically it sticks  
 19 with me that at the Minister's urging the ads  
 20 were to be repeated for subsequent weeks  
 21 because I guess he was not satisfied that they  
 22 had done everything they could to try to reach  
 23 people and get the information out to  
 24 individuals.  
 25 CHAYTOR, Q.C.:

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1 Q. So the Minister asked Eastern Health to repeat  
 2 the ads?  
 3 MR. HYNES:  
 4 A. Yes, and their view was that they had ran them  
 5 so many times and so many weekends and, you  
 6 know, the circulation of a Saturday paper was  
 7 quite good, we don't need to do this again.  
 8 And the Minister said, no, redo it and run it  
 9 again in the Telegram, I believe and all the  
 10 Robinson Blackmore papers.  
 11 CHAYTOR, Q.C.:  
 12 Q. And that came out in the November 17th  
 13 meeting?  
 14 MR. HYNES:  
 15 A. I think so.  
 16 CHAYTOR, Q.C.:  
 17 Q. That's when that was discussed, okay.  
 18 MR. HYNES:  
 19 A. I think so.  
 20 CHAYTOR, Q.C.:  
 21 Q. And what was the Minister's concern? Had he  
 22 heard that people weren't aware of the issue  
 23 or why was he concerned that it all be ran  
 24 again?  
 25 MR. HYNES:

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1 A. I can't be--I mean, I can't--you know, I don't  
 2 know what his mindset was. I don't remember  
 3 him expressing a particular concern. It's  
 4 just that he wanted them reran again.  
 5 CHAYTOR, Q.C.:  
 6 Q. And was the Minister receiving any calls or  
 7 were there any calls coming in to the  
 8 Department on the issue?  
 9 MR. HYNES:  
 10 A. Not that I'm aware, Ms. Chaytor, because  
 11 normally if there were e-mails or letters or  
 12 phone calls that the Minister wanted me to  
 13 handle on this behalf, he would give them to  
 14 me, and I don't remember ever getting any  
 15 messages on behalf of the Minister to return  
 16 on the ER/PR issue.  
 17 CHAYTOR, Q.C.:  
 18 Q. Okay.  
 19 MR. HYNES:  
 20 A. Now I'm not--you know, that's--that might not  
 21 be exhaustive list either, but at least the  
 22 Minister never gave me anything, to the best  
 23 of my recollection.  
 24 CHAYTOR, Q.C.:  
 25 Q. And is there anything else about the November

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1 17th meeting then that you recall? Who was in  
 2 attendance? Do you remember who was there?  
 3 MR. HYNES:  
 4 A. Obviously I believe the Minister was there. I  
 5 believe Ms. Bonnell was there. I believe Mr.  
 6 Tilley was there. I believe Ms. Mundon was  
 7 there, and for some reason, I recall, I  
 8 believe Deborah Thomas was there from Eastern  
 9 Health, but I'm not sure.  
 10 CHAYTOR, Q.C.:  
 11 Q. Okay, and who is it that was expressing that  
 12 they've already ran it and Saturday's  
 13 circulation is good and they felt that was  
 14 sufficient? Who was saying those things?  
 15 MR. HYNES:  
 16 A. I think that would have been the  
 17 communications folks, you know, Susan Bonnell  
 18 or Deborah, whoever happened to be there, just  
 19 saying that, you know, we've done this.  
 20 CHAYTOR, Q.C.:  
 21 Q. Okay, and I believe you also attended another  
 22 meeting in November 2005. Was that regarding  
 23 the Herceptin issue? You said that you  
 24 attended a meeting in the fall of 2005 in  
 25 which Dr. Laing was present, and you had the--

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1 you felt you had already met her at some other  
 2 point.  
 3 MR. HYNES:  
 4 A. Yes, that's correct.  
 5 CHAYTOR, Q.C.:  
 6 Q. And what do you recall about that meeting?  
 7 MR. HYNES:  
 8 A. I remember Government--sorry, Cabinet had  
 9 approved adding the drug Herceptin to the  
 10 provincial drug formulary, I believe, and it  
 11 was a fairly new drug with significant cost, I  
 12 believe it was approximately two billion  
 13 dollars and would be used for 30 or 40  
 14 patients a year, approximately, and it had  
 15 been reviewed for use in Canada and approved  
 16 and I think because of the savings we had in  
 17 the drug program, Cabinet had approved its  
 18 use, and I believe Dr. Laing was involved in  
 19 that program, that would actually be the one  
 20 administering it, okay. And I remember she  
 21 was in the Minister's office. It was myself  
 22 and the Minister and her and she was in, I'd  
 23 say it was lunch time, because I think the  
 24 press release went out mid afternoon, and that  
 25 would have been the 8th or 9th of November

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1 '05, the Herceptin press release, and she was  
 2 offering a comment in it which was like a  
 3 third party, you know, comment saying that  
 4 this drug is good and it's a good benefit and  
 5 as, you know, chief clinical person, I  
 6 appreciate it's effectiveness, etcetera. So  
 7 she was in to read whatever comments had been  
 8 prepared for her, I guess, by her  
 9 communications folks and she was in the  
 10 process of reading, I guess, her comments and  
 11 I asked her just a couple of questions.  
 12 CHAYTOR, Q.C.:  
 13 Q. And were those questions about the Herceptin  
 14 or were those questions about the ER/PR issue?  
 15 MR. HYNES:  
 16 A. No, I mean, I asked about ER/PR. I just asked  
 17 in a broad way "how are things going?" and I  
 18 remember she said, you know, "relatively well,  
 19 I guess." She said "the results are coming  
 20 back and we're notifying people and we're  
 21 working through it." I mean, you could, you  
 22 know, it was a fairly big challenge, I guess.  
 23 And as well, I remember asking if there were  
 24 any individuals who were deceased who could  
 25 have been helped if they had gotten Tamoxifen,

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1 based on, I guess, the work up to date.  
 2 CHAYTOR, Q.C.:  
 3 Q. And what was her response?  
 4 MR. HYNES:  
 5 A. Yes.  
 6 CHAYTOR, Q.C.:  
 7 Q. So there were people who--you were asking her  
 8 if people who had died could have been helped?  
 9 MR. HYNES:  
 10 A. Yes, that's what she indicated.  
 11 CHAYTOR, Q.C.:  
 12 Q. Was there any other discussion around the  
 13 ER/PR issue?  
 14 MR. HYNES:  
 15 A. No, because I don't know if I could have asked  
 16 any more questions after hearing that.  
 17 CHAYTOR, Q.C.:  
 18 Q. So I take it that stood out?  
 19 MR. HYNES:  
 20 A. Yes, very much so. I remember I looked at the  
 21 Minister and Minister Ottenheimer's expression  
 22 just drained away and I'm sure he--he looked  
 23 as bad as I looked because I think it was--you  
 24 know, it was just something you'll never  
 25 forget. It was a startling revelation in my

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1 mind.  
 2 CHAYTOR, Q.C.:  
 3 Q. If we could look at P-0128, please? It's page  
 4 16. And you're good on dates. This is the  
 5 news release, November 9th, 2005, and  
 6 "improving access to treatment therapies for  
 7 breast cancer patients" and this is the news  
 8 release, we understand, which deals with the  
 9 Herceptin and Dr. Kara Laing is quoted in this  
 10 news release. So this is the release, I take  
 11 it, that you're speaking of, Mr. Hynes?  
 12 MR. HYNES:  
 13 A. Yeah, and again, she was in just to read, I  
 14 guess, the comments that were provided by  
 15 Eastern Health to make sure she was okay with  
 16 them and we just began chatting about, you  
 17 know, the ER/PR issue.  
 18 CHAYTOR, Q.C.:  
 19 Q. If we could have P-0310, please? And Mr.  
 20 Hynes, this is up to December, and again, is  
 21 there anything in between, then anything else  
 22 in November that sticks out in your mind or  
 23 anything else that you have recollection of?  
 24 MR. HYNES:  
 25 A. No.

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1 CHAYTOR, Q.C.:  
 2 Q. Okay. So this is an e-mail then from Ms.--  
 3 well, it originates actually as an e-mail from  
 4 Ms. Deborah Thomas-Pennell to Ms. Mundon, and  
 5 this is Ms. Mundon writing December--I'm  
 6 sorry, Ms. Thomas-Pennell writing, December  
 7 1st 2005, and just "FYI, Mark Quinn is doing a  
 8 news story on the fact that the ER/PR testing  
 9 is taking longer than we thought. He has  
 10 talked to Peter Dawe and a cancer survivor,  
 11 and Dr. Williams has also done a quick  
 12 telephone interview," and she just goes on to  
 13 say, "just wanted to keep you in the loop. I  
 14 managed to hold him off until today. That  
 15 way, the issue should be dead again by the  
 16 time the House opens again next week." And  
 17 then Ms. Mundon passes that along to you and  
 18 others saying "heads up, please make sure the  
 19 Minister knows." And then your response is  
 20 "he is with CBC Radio, right?" and I take it  
 21 you mean the he being Mr. Quinn?  
 22 MR. HYNES:  
 23 A. Yes, absolutely.  
 24 CHAYTOR, Q.C.:  
 25 Q. Okay. Why would Ms. Mundon be sending this to



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1 you to suggest that you alert the Minister to  
 2 this?  
 3 MR. HYNES:  
 4 A. Well, Minister Ottenheimer did not carry a  
 5 Blackberry, so he would have no way to pick up  
 6 information perhaps such as this, and I don't  
 7 know what the time of day was of the--see the  
 8 top there?  
 9 CHAYTOR, Q.C.:  
 10 Q. Up here.  
 11 MR. HYNES:  
 12 A. Okay, it was only 3:00 in the afternoon.  
 13 CHAYTOR, Q.C.:  
 14 Q. Yes.  
 15 MR. HYNES:  
 16 A. But I guess because I would have frequent  
 17 contact with the Minister, it was just more to  
 18 let me know that there had been media interest  
 19 from CBC Radio, and my question was simply  
 20 whether it was radio or TV. I couldn't  
 21 remember who he worked with.  
 22 CHAYTOR, Q.C.:  
 23 Q. Yes. And this idea of--and I appreciate this  
 24 is not a Department employee saying this, but  
 25 the idea of holding off the reporter and the

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1 issue being dead again by the time the House  
 2 opens. The idea again, and I reflect back to  
 3 the other e-mail that I showed you and the  
 4 wording that Ms. Mundon had used of not  
 5 drawing attention to the issue, is that a  
 6 common sentiment or uncommon? How common is  
 7 that, the idea--and I understand what you  
 8 answered to me before about trying to manage  
 9 an issue and keep it from becoming any more  
 10 public than it has to be, and I understand  
 11 what your answer to that, but the idea of  
 12 trying to lessen the interest of the media in  
 13 this story and lower its public profile, had  
 14 you heard of that idea before in your  
 15 political career?  
 16 MR. HYNES:  
 17 A. I mean, you know, this is another individual's  
 18 use of language. But I mean, sometimes, I  
 19 guess, there's strategic considerations when  
 20 you're announcing information. I mean, for  
 21 instance, if the Department of Health was  
 22 going to announce bad news, for instance, we  
 23 were closing a hospital and the House of  
 24 Assembly was open and I knew it was closing on  
 25 a Friday, my recommendation to the Minister

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1 would be, "well, wait until Monday to announce  
 2 we're going to close the hospital." I mean,  
 3 that's just a strategic consideration because  
 4 why would you announce it when the focus of  
 5 the province is on the House of Assembly. But  
 6 it's not--I mean, you know, that's different.  
 7 That's, I mean, I guess, a greater strategic  
 8 consideration. That's certainly different  
 9 from trying to be coy or holding off someone  
 10 or otherwise manipulating the media to try to  
 11 downplay. I mean, you know, that's a very  
 12 different, I think--my example is very  
 13 different from what you're talking about or  
 14 what you're trying to talk about or insinuate.  
 15 CHAYTOR, Q.C.:  
 16 Q. And it's not me that was trying to insinuate.  
 17 MR. HYNES:  
 18 A. No, no, no, and -  
 19 CHAYTOR, Q.C.:  
 20 Q. The way it's worded here for it to be dead  
 21 again by the time the House opens again next  
 22 week, to hold--so the holding a reporter off  
 23 with bearing in mind so that the issue is dead  
 24 again before the House opens again, that's not  
 25 the kind of thing that you've heard of before.

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1 You may make a strategic decision in terms of  
 2 when you're going to release bad news.  
 3 MR. HYNES:  
 4 A. Certainly, that's right, or good news.  
 5 CHAYTOR, Q.C.:  
 6 Q. Or good news  
 7 MR. HYNES:  
 8 A. That's right.  
 9 CHAYTOR, Q.C.:  
 10 Q. Depending if the House is open or not?  
 11 MR. HYNES:  
 12 A. Absolutely.  
 13 CHAYTOR, Q.C.:  
 14 Q. Okay. But the idea of holding a reporter off-  
 15 -though isn't that sort of the same thing  
 16 though when I think that through?  
 17 MR. HYNES:  
 18 A. No, but I don't know why--well, I mean, again,  
 19 you'd have to ask Ms. -  
 20 CHAYTOR, Q.C.:  
 21 Q. By holding the reporter off, you're holding  
 22 off the story, aren't you?  
 23 MR. HYNES:  
 24 A. But I mean, the reality is, I mean especially  
 25 a keen reporter like Mr. Quinn, I mean, if he

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1 wants to go with a story, a reporter has a  
 2 deadline and whether you're going to respond  
 3 to his phone call or inquiry by his deadline  
 4 of 4:00 that afternoon, the story is going to  
 5 be on by that evening, no matter what you say.  
 6 So I don't know how you can just try to hold-  
 7 -I mean, I don't know how that would even be  
 8 possible in many ways. It's just not  
 9 practical.  
 10 CHAYTOR, Q.C.:  
 11 Q. With or without you, the story goes. This is  
 12 not your story. That's what you're saying.  
 13 So he's got a story. He's going with his  
 14 story?  
 15 MR. HYNES:  
 16 A. That's right. So whether you want to comment  
 17 or not, but I don't know how you could hold  
 18 him off, because unless you're somehow again  
 19 giving him false information or somehow, you  
 20 know, but I don't know how you could  
 21 realistically do that, because again, the  
 22 media has very specific deadlines and time  
 23 frames and they're going to go forward with  
 24 them irregardless.  
 25 CHAYTOR, Q.C.:

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1 Q. Is there ever any concern expressed within the  
 2 Department of this idea of trying to keep the  
 3 ER/PR issue out of the media or lower its  
 4 profile? Was there ever any concern expressed  
 5 around that kind of a sentiment?  
 6 MR. HYNES:  
 7 A. No.  
 8 CHAYTOR, Q.C.:  
 9 Q. And if we could look, please, at P-0100? And  
 10 we're still into--it's just the next day  
 11 actually. It's December the 2nd, and it's an  
 12 e-mail again from Ms. Thomas-Pennell to Ms.  
 13 Mundon re: ER/PR. "Just talked to Dr.  
 14 Williams. We have approximately 175"--I'm  
 15 sorry, I'm not at the beginning of it. Take  
 16 you to the second page. It originates from  
 17 Ms. Mundon to Ms. Deborah Thomas-Pennell and  
 18 she's thanking her for the heads up yesterday,  
 19 presumably on Mr. Quinn's story, we  
 20 understand, and she heard the story and she's  
 21 wondering about "is it accurate to say that  
 22 only a quarter of the samples have been  
 23 tested?" And Ms. Deborah Thomas-Pennell is  
 24 going back to check the numbers. Ms. Mundon  
 25 says that they're low to the numbers given to

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1 the Minister. Are you aware of any numbers  
 2 given to the Minister at this point in time,  
 3 in November of 2005?  
 4 MR. HYNES:  
 5 A. You know, I must have been, because I'm copied  
 6 on some of these e-mails, but it don't appear  
 7 to jog anything with my memory right now.  
 8 CHAYTOR, Q.C.:  
 9 Q. Okay, and then ultimately the issue, Ms.  
 10 Mundon does copy this e-mail exchange to  
 11 yourself, along with others, including Ms.  
 12 Hennessey and Mr. Abbott, and Ms. Hennessey  
 13 replies that she's "surprised only 25 percent  
 14 of the test results are back. It's been  
 15 ongoing since the summer, and I thought Mount  
 16 Sinai was using extra staff. From a patient's  
 17 perspective, this is becoming less and less  
 18 acceptable and it's likely the Minister will  
 19 be subject to some hard questioning on why  
 20 things went wrong and why it is taking so long  
 21 to get the results from Mount Sinai." And  
 22 then she asks Mr. Rumboldt to update the  
 23 briefing note, and Ms. Mundon agrees that  
 24 "this is one that can definitely come up in  
 25 the House this week."

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1 So it appears that throughout the fall of  
 2 2005, the two pressing issues that Ms.  
 3 Hennessey identifies here as to "the Minister  
 4 potentially getting hard questioning on why  
 5 things went wrong and why it's taking so long  
 6 to get the results from Mount Sinai."  
 7 Obviously those issues were contemplated  
 8 within the Department. I'm wondering, at this  
 9 point in time, what inquiries were made to get  
 10 those answers for the Minister before he goes  
 11 back into the House?  
 12 MR. HYNES:  
 13 A. What do you mean, from Eastern Health's  
 14 perspective to Mount Sinai or just from our  
 15 perspective wondering of Eastern Health?  
 16 CHAYTOR, Q.C.:  
 17 Q. Yes, in terms of what did the Department do?  
 18 This is an e-mail exchange amongst now the  
 19 senior people in the Department, including  
 20 yourself, and there's concern being expressed  
 21 that your Minister is going to be asked hard  
 22 questions about this. These are issues that  
 23 are out there being spoken about, and why  
 24 things went wrong and why is it taking so long  
 25 to get the results back. So what efforts were

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1 undertaken to find the answers to those  
 2 questions?  
 3 MR. HYNES:  
 4 A. I mean, I would not be involved in that  
 5 process, it would be up to, I guess, Mr.  
 6 Rumboldt who is director of board services  
 7 and/or Ms. Hennessey to inquire of Eastern  
 8 Health to find answers to these questions  
 9 about the amount, the results back and the  
 10 amount of time it's taken to get information  
 11 back from Mount Sinai.  
 12 CHAYTOR, Q.C.:  
 13 Q. And in terms of your support role to the  
 14 Minister in going into the House of Assembly,  
 15 were you concerned?  
 16 MR. HYNES:  
 17 A. I would have been, having read this, yes. And  
 18 this is why, I think, you know, during the  
 19 fall of '05, Ms. Chaytor, I mean the Minister  
 20 had ongoing concerns about is there any way to  
 21 speed this up. I remember even at one point  
 22 the Minister, you know, can we use another lab  
 23 besides Mount Sinai, because when it became  
 24 apparent that Mount Sinai were only doing this  
 25 evenings and weekends, aside from their normal

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1 work which is understandable, I mean, I  
 2 remember the Minister even asking could we use  
 3 another lab? Is there some other expertise we  
 4 can avail of in the country and government  
 5 would pay for and fund, to try and get this  
 6 sped up, but you know, by this time, just  
 7 about everything had been batched up and sent  
 8 to Mount Sinai and I don't think, I think the  
 9 answer came back was we couldn't do it. But,  
 10 I mean, it certainly was a topic of ongoing  
 11 discussion.  
 12 CHAYTOR, Q.C.:  
 13 Q. So it was your understanding Mount Sinai was  
 14 going doing the test evenings and weekends and  
 15 everything had been batched and sent to Mount  
 16 Sinai so that using another lab at that point  
 17 would be impractical?  
 18 MR. HYNES:  
 19 A. Yes.  
 20 CHAYTOR, Q.C.:  
 21 Q. And who gave that understanding to the  
 22 Minister?  
 23 MR. HYNES:  
 24 A. I would have certainly gotten that from  
 25 departmental officials and/or Eastern Health

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1 at one of the briefings we had that fall,  
 2 because I believe and I don't know when he  
 3 made the call, but I believe at some point Mr.  
 4 Tilley was going to make contact with Mount  
 5 Sinai to see if they could do anything to  
 6 speed it up. But again, I remember the  
 7 information that came back was they had their  
 8 own workload to do and complete and that could  
 9 not be jeopardized for a special project, I  
 10 guess you could say they were taking on, on  
 11 behalf of the province or on behalf of Eastern  
 12 Health.  
 13 CHAYTOR, Q.C.:  
 14 Q. And if we could look, please, at P-0395? And  
 15 this is the media story that ran on December  
 16 2nd, so this is the story that, CBC story that  
 17 ran and was the subject, I believe, of the e-  
 18 mail that I just referred you to. "Cancer  
 19 patients frustrated with test wait times,  
 20 breast cancer patients say it is taking too  
 21 long to get the results of a test that may  
 22 affect their treatment and possibly improve  
 23 their chances of beating the disease. On  
 24 August, authorities discovered that tests had  
 25 been done in St. John's and had produced false

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1 results. Eastern Health authorities sent  
 2 samples to Mount Sinai Hospital in Toronto for  
 3 retesting but hundreds of women are still  
 4 awaiting their results." And that's just a  
 5 summary actually of that story that was ran.  
 6 So this is what was being discussed at this  
 7 point in time, December, in the media, the  
 8 fact that patients were still waiting and it's  
 9 been since July that the department is aware  
 10 of the issue. And so what you're saying is  
 11 that the Minister was aware of this issue, was  
 12 keenly in tune to the issue, I take it?  
 13 MR. HYNES:  
 14 A. Well, again, I mean the Minister was anxious  
 15 and offered whatever assistance, financially  
 16 or otherwise, government could to try and  
 17 speed up the process and I think at some point  
 18 this is why Mr. Tilley called, I believe some  
 19 senior official at Mount Sinai and made almost  
 20 a direct appeal to see, you know, there was  
 21 anyway to get this sped up some how.  
 22 CHAYTOR, Q.C.:  
 23 Q. Okay. And if we could look, please, at P-  
 24 0311? And this is another story, "Cancer  
 25 Society says wait for results could have been

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1 shorter." And this is an e-mail from yourself  
 2 to Ross Wiseman on December 6th, 2005 and you  
 3 just write "FYI...transcript" and the full  
 4 story then is here and it's between Jeff  
 5 Gilhooly and Peter Dawe on December 5th. So  
 6 the day after or the day before, sorry, you  
 7 send the e-mail to Mr. Wiseman, this story had  
 8 run and Mr. Dawe is participating in the  
 9 story. And again the subject is about the  
 10 long wait for the results. And if you want  
 11 you can skim through it, but my only question  
 12 to you on this, Mr. Hynes, is we know that at  
 13 this point Mr. Wiseman is the parliamentary  
 14 secretary in the department. He's not--  
 15 otherwise it doesn't appear, he doesn't show  
 16 up in this issue at this point in time, he's  
 17 not involved from what we can see from the  
 18 paper until he becomes the Minister. And I'm  
 19 wondering why would you be sending this story  
 20 to Mr. Wiseman at this point in time?  
 21 MR. HYNES:  
 22 A. Mr. Wiseman's office was right next to mine  
 23 and I must say we had a good relationship and  
 24 I believe this related--Mr. Wiseman as a  
 25 parliamentary secretary had the lead for

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1 certain files under Minister Ottenheimer, such  
 2 as the seniors and aging and a host of other  
 3 things, but he would also do a number of  
 4 speaking engagements and whether that was  
 5 going to fundraising dinners, hosting meetings  
 6 on behalf of the Minister, going to press  
 7 conferences on behalf of the Minister, you  
 8 know, we used him a fair bit to do those kind  
 9 of things because the Minister just couldn't  
 10 physically do everything himself. And I seem  
 11 to recall that around this period the Cancer  
 12 Society maybe might have had their, you know,  
 13 AGM or perhaps a fundraising dinner in  
 14 December and he was invited to speak or  
 15 represent government and I think we might have  
 16 chatted about it and just, I thought it was  
 17 important, you know, because he was  
 18 representing the Minister that he had the most  
 19 up-to-date information in case it was raised  
 20 at the table or one of the cancer people  
 21 raised it with him, that he could know that  
 22 this issue was, you know, here's something  
 23 that was on the go that day and just a heads  
 24 up, more or less.  
 25 CHAYTOR, Q.C.:

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1 Q. Okay, and did you ever speak to, you know, Mr.  
 2 Wiseman having his office next to yours, did  
 3 you ever speak to him about the ER/PR issue?  
 4 MR. HYNES:  
 5 A. No, because as a rural MHA, he spent a lot of  
 6 time out of town, out of his district, so to  
 7 be honest, his door was probably closed more  
 8 than it was open, so it was only if he wanted  
 9 to chat with me about his role and his seniors  
 10 and aging file or if he needed something from  
 11 the Minister, he'd come to me and we'd chat  
 12 about it, or like I say, if he was doing a  
 13 speaking engagement, he might say, look, I'm  
 14 speaking to the Lung Association this weekend,  
 15 is there any issue with the department, with  
 16 the Minister now that's under review, and I'd  
 17 check into it and give him a little heads up,  
 18 just to let him know what the story was.  
 19 CHAYTOR, Q.C.:  
 20 Q. And are you aware of whether or not Mr.  
 21 Wiseman around this time period or shortly  
 22 thereafter, within a month or so, spoke to Mr.  
 23 Dawe about the ER/PR issue or about Mr. Dawe's  
 24 comments in the media around the issue?  
 25 MR. HYNES:

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1 A. Not that I'm aware of, no. I mean, I assume  
 2 if he was going to a speaking engagement and  
 3 Mr. Dawe was there, they might have sat at the  
 4 same head table and chatted about it, so I  
 5 don't know if that's what it--you could mean.  
 6 CHAYTOR, Q.C.:  
 7 Q. So you didn't hear anything about that within  
 8 the department?  
 9 MR. HYNES:  
 10 A. No, no.  
 11 CHAYTOR, Q.C.:  
 12 Q. And then as the year closed, 2005 and the new  
 13 year came in, do you recall anything then  
 14 about the ER/PR issue going into 2006?  
 15 MR. HYNES:  
 16 A. Not that sticks out in my mind.  
 17 CHAYTOR, Q.C.:  
 18 Q. And then shortly into the new year, you move  
 19 briefly from your position and then came back  
 20 in April as the policy advisor for Minister  
 21 Osborne, and how is your relationship then  
 22 with Mr. Osborne?  
 23 MR. HYNES:  
 24 A. Good, I mean, I must say, he was good to work  
 25 with and I enjoyed my time with him. We had a

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1 good cordial relationship, became good  
 2 friends, I guess.  
 3 CHAYTOR, Q.C.:  
 4 Q. And did you also have a lot of interaction  
 5 with him?  
 6 MR. HYNES:  
 7 A. Yes, with Minister Ottenheimer I was an EA, so  
 8 again, I would support him in his other roles  
 9 perhaps dealing with the political arm of the  
 10 party and dealing with some of his  
 11 constituency issues. With Minister Osborne, I  
 12 took on roles of a policy analyst, so I would  
 13 just be accompanying him to various things,  
 14 but to support him in his role as running the  
 15 department and being a minister in the House  
 16 of Assembly and more on the government end, to  
 17 support him and help him and assist him and  
 18 provide whatever advice and guidance and  
 19 direction I could.  
 20 CHAYTOR, Q.C.:  
 21 Q. And did you also feel that you were included  
 22 in, included most issues that Mr. Osborne was  
 23 dealing with?  
 24 MR. HYNES:  
 25 A. Yes, he came from, you know, a smaller

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1 department and I think in some ways he  
 2 respected my position and I think I learned  
 3 after the fact he specifically asked for me to  
 4 be returned to the department, so he must have  
 5 had some view that I could be of benefit. So  
 6 I think that he relied on my advice and  
 7 assistance probably even more than Minister  
 8 Ottenheimer to a degree.  
 9 CHAYTOR, Q.C.:  
 10 Q. Okay. And I take it it was a good flow of  
 11 information back and forth between the two of  
 12 you?  
 13 MR. HYNES:  
 14 A. Yes, he carried a Blackberry and tended to  
 15 send e-mails at all hours of the night, so we,  
 16 you know -  
 17 CHAYTOR, Q.C.:  
 18 Q. So a very good flow?  
 19 MR. HYNES:  
 20 A. Very good flow, yes, ma'am.  
 21 THE COMMISSIONER:  
 22 Q. Ms. Chaytor, wherever you can find a time,  
 23 we'll break for the day.  
 24 CHAYTOR, Q.C.:  
 25 Q. Okay, well then just one more question, when

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1 Minister Osborne came to the department, do  
 2 you recall how he was briefed on the ER/PR  
 3 issue?  
 4 MR. HYNES:  
 5 A. I would have, you know, I understand because I  
 6 was there when he was given his first briefing  
 7 books and they would have had 80 or 90 notes  
 8 in it, perhaps as many as 94 I think back in  
 9 those days, of all the key issues of the  
 10 department and I think he took that and would  
 11 have read it and made notes and then asked  
 12 questions subsequent if there was something he  
 13 was unclear of.  
 14 CHAYTOR, Q.C.:  
 15 Q. And did he come back to you and ask you for  
 16 any more information on the ER/PR issue?  
 17 MR. HYNES:  
 18 A. Not at that time as such, Ms. Chaytor. What I  
 19 recall is, you know, we had some discussions  
 20 about it during the, I'd say late spring and  
 21 summer, early summer and again there was some  
 22 times when I was there and he would ask Mr.  
 23 Abbott, you know, "John, I need some  
 24 information on this, I need you to set up  
 25 something." And this is what culminated in

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1 the August note when I was in a meeting with  
 2 him, when he asked that, you know, "I want to  
 3 get something set up because I don't know what  
 4 the root cause is" and I couldn't definitively  
 5 answered for him either.  
 6 CHAYTOR, Q.C.:  
 7 Q. Okay, perhaps that's a good place to break  
 8 then, please.  
 9 THE COMMISSIONER:  
 10 Q. All right then, we'll meet again at 9:30 in  
 11 the morning.  
 12 (Adjourned)

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 18th day of June, A.D., 2008 before  
6 the 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 18th day of June, A.D., 2008  
13 Judy Moss

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