COMMISSION OF INQUIRY
ON HORMONE RECEPTOR TESTING

BEFORE THE HONOURABLE JUSTICE CAMERON - COMMISSIONER

June 5, 2008

Appearances:

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Stacey O'Dea. . . . . Central, Western and Labrador-Grenfell
Regional Integrated Health Authorities

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Q. Please be seated. Ms. Crosbie.

DR. GERSHON EJECKAM, CROSS-EXAMINATION BY CHESLEY CROSBIE, Q.C. (CONTINUED)

CROSBIE, Q.C.:

Q. Thank you, Commissioner. Good morning, Doctor.

DR. EJECKAM:

A. Good morning.

CROSBIE, Q.C.:

Q. Before I finish up the last few questions that I have, it may be of interest to you and gratifying, as well, if I were to give you the statistics that show the impact of your intervention in 2003 on the positivity rates. These, Commissioner, are derived from information we were given through the agency of the litigation by Ms. Predham on behalf of Eastern Health. And I can undertake to put in the material that substantiates the calculations as we go along further.

COMMISSIONER:

Q. Fine.

CROSBIE, Q.C.:

Q. So in 2002, Doctor, by the information given

to us and our calculation the positivity rate for the year 2002 at the lab here was 58 percent. For the entire year 2003, which would include the period of time prior to your intervention in April as well as after, the positivity rate was 76 percent. For the period January to April 11, 2004 and I say April 11 because the DAKO system was discontinued in favour of Ventana on April 12th, Ventana began operation, so for that early period of 2004 the positivity rate was 83 percent showing, one would infer, the impact of your intervention the prior year. And under Ventana for April, 2004 to December 31st the positivity rate was 90 percent. That receded a bit in the following time periods, but those are the statistics before and after. So it was 58 percent before you got involved and went up to 83 percent afterwards, we can say. Is there any comment you would offer on that?

DR. EJECKAM:

A. I cannot comment on this because I'm not--I'm just hearing about these figures right now. But it's possible that if you look at the

literature, that the range, some will go from 60 percent. That figure of 58 percent is not abnormal when you look at the--all the laboratories doing their immunohistochemistry. So that may be on the low side of positivity, but you can go from 55, 60 percent to 80, 85 percent, so--but that's the only comment I can make on that data.

CROSBIE, Q.C.:

Q. When you say when you look at laboratories doing this, it's true to say that laboratories are of various--how shall I put it? In our case here and say in the case in Mount Sinai, we're concerned with the university affiliated lab at Eastern Health, right, and it's affiliated with a medical school, with a school of pharmacy, with a school of nursing, it's housed in a health sciences complex. In many ways it's of a class of lab that you'd expect to be on a par with the better or the best, even, university affiliated labs, would you agree?

DR. EJECKAM:

A. Laboratories, yes. But remember that each of the laboratories will start a new system, they

will start some tests. You may have university laboratories doesn't mean that all do the same kind of tests at the same time. If a new process is introduced, it's going to be at the level of, beginner's level, doesn't matter how--whether the laboratories are affiliated to university or not. So, it depends on when that test, when--how far it's been gone in the system. That should be the driving force, not just that it's affiliated to university or not, because not all university laboratories do the same kind of tests.

CROSBIE, Q.C.:

Q. So you would expect growing pains in the initial stages, is that -

DR. EJECKAM:

A. Yes.
CROSBIE, Q.C.:
Q. - what I understand? This IHC technique, in particular, with its Ventana affiliation we're understanding started here in 1997. Is that what you understand?
DR. EJECKAM:
A. I don't know that, but I know that the period,

they extended the other testing was 1997. But whether it started then or not, I don't know that information.
CROSBIE, Q.C.:
Q. If that's so, would you expect it to be over its growing pains by 2002?
DR. EJECKAM:
A. Not necessarily. Depends on the amount of resources and both financial and the effort that was put into it. If it was, I mean, if it was started with the director of

immunohistochemistry with a lot of--with money and staff, over five years you might be coming to something you'll expect to have an average of--for within the group. But if it was started as--you know, depends on whatever that was put into it, that's the way I feel. I mean, the time factor alone should not be a determining factor for it to be a good laboratory or not, depends on other factors.

CROSBIE, Q.C.:

Q. Depends on the resources that you put into it, financial, expertise, training?

DR. EJECKAM:

A. Yes.

CROSBIE, Q.C.:

Q. And all that?

DR. EJECKAM:

A. Yes, I agree with that.

CROSBIE, Q.C.:

Q. And it would be rational health care decision

making to decide what the resources are that are needed and decide whether you can allocate them to achieve a services up to the desired standard before you implement that service, isn't it?

DR. EJECKAM:

A. Not all the time. See, if you do that, then you probably will not start a lot of tests. What I look at is that is it possible for you to, with the resources that are available to introduce a test system and then improve on it as you go along. Most laboratories will not sit back and make sure that all the money is there or the staff is there or the space for the staff. They will start and then learn of the problem and then improve on the problem and then cure the problem. That's where most of them will start, that's the way we started elsewhere.

CROSBIE, Q.C.:

Q. But I take from what you're saying that are various critical junctures a decision needs to be made as to whether the resources can or will be made available to have a service which is up to the desired standard, is that about right?

DR. EJECKAM:

A. The way I look at it is this, when you say desired standard, you have to--what I'm saying is that a laboratory can decide let's start doing a particular test, now what volume, because if you go and put all your resources and the volume of the test you are getting may be getting two tests a week and then you poured in hundreds of thousands into it, it doesn't make sense. But you can start a test with two tests a week, and as you increase the requests for the tests, then that's when you start increasing the facilities for it. What I'm saying is someone has to keep an eye on it to ensure that the requests doesn't outstrip the resources you have. But you may not have to wait until you have all the resources before you introduce the test.

CROSBIE, Q.C.:

Q. But you may want to evaluate at certain junctures or stages of growth of the use of the test?

DR. EJECKAM:

A. Yes.

CROSBIE, Q.C.:

Q. What resources are needed?

DR. EJECKAM:

A. Yes.

CROSBIE, Q.C.:

Q. And whether the institution can and will make them available?

DR. EJECKAM:

A. Oh, yes, because that's part of the what you have to do, evaluating the test, evaluating the requests. I mean, I give example of the Her2/neu when we started that, because the requests, first of all, the cost is high and not too many requests come in as ER/PR, therefore it cannot be done on a daily basis, it has to be batched and then, you know, it has to be, you know, spread out. So that kind

of thing needs to be done. So you want to introduce a test, fine, you introduce it based

on that you have minimum requirement, minimum requirement. You have to have somebody who knows how to carry it out and then you watch the difficulties as you go. You get a request (unintelligible), you don't have money to buy antibodies, then that's when you have to now sit back and say can we continue this test and now what is required for us to continue in terms of money, in terms of staff, in terms of space, then that decision will be made by the administration, whoever is responsible for that kind of a process.

CROSBIE, Q.C.:

Q. Yes, it's part or the budgetary decision?

DR. EJECKAM:

A. Part of it, yeah. A good deal of it is budgetary. But of course, other things will come into the laboratory administrative where

arrangements will be part of. I mean, if you don't have space where to do that, if you don't have structural arrangement for it, that may be a problem. You have may have everything, but you need to make sure that even if you want to start at a minimum requirement and that minimum requirement for

me will be that at least you have a place to do it and you have someone who is willing to do it and prepared to learn and improve on the tests.

CROSBIE, Q.C.:

Q. Thank you, Doctor. Can we bring up 0067, please? This is at letter to Dr. Williams from Dr. Cook, May 24, 2005. I'm interested in the second paragraph on the page. And you see in the middle of that paragraph the statement "It is estimated that approximately." Can you see that?

DR. EJECKAM:

A. Yeah, yeah.

CROSBIE, Q.C.:

Q. "Fifty to 85 percent of all breast cancers exhibit estrogen receptors." Is that, broadly speaking, a true statement?

DR. EJECKAM:

A. I think that's what you'll find in literature. Again, it's not--in the literature have different figures. But that will cover the broad range of what's in the literature.

CROSBIE, Q.C.:

Q. That's a very broad range -

DR. EJECKAM:

A. Yes.

CROSBIE, Q.C.:

Q. - Dr. Cook has stated there?

DR. EJECKAM:

A. Yeah, it's broad, yeah.

CROSBIE, Q.C.:

Q. Wouldn't there be a consensus that the positivity rate for breast cancers would be higher than 50 percent and probably considerably higher?

DR. EJECKAM:

A. Can you repeat the question, please?

CROSBIE, Q.C.:

Q. Is there an consensus even in 2005 that the positivity rate for breast cancers is higher than 50 percent?

DR. EJECKAM:

A. I don't know about consensus. What I know about this figure, that if you look at results coming out from laboratories and those who do inter-laboratory evaluation, looking at the breast cancers in different parts of the world, there's a wide range, and this what I believe they've come up with, that 50 to 85

percent of infiltrating ductal carcinoma and

lobular carcinomas will give you this. And now the person, the tumor you are dealing with, you should take out lobular carcinoma, you may have to go up maybe, you expect that to be much higher. If you take infiltrating ductal carcinoma, which is a more aggressive tumor, you may tend to have less figures there. So this probably is the range that one expects to have.

CROSBIE, Q.C.:

Q. Even in this part of the world with breast cancers overall, not looking at specific types?

DR. EJECKAM:

A. I believe it to be the same everywhere, because breast cancer is breast cancer apart from the initiation of this break (phonetic) and say well, we talk about genetic influence. When the disease becomes breast cancer, it's the same breast cancer intra ductal or lobular in Newfoundland, in Washington, in Nigeria, the same tumor in terms of a malignancy.

CROSBIE, Q.C.:

Q. So that statement of range 50 to 85 percent is

unremarkable to you?

DR. EJECKAM:

A. It's reasonable to me.

CROSBIE, Q.C.:

Q. You commented earlier in your evidence that whether DCIS or CIS, generally, that's carcinoma in situ is tested for hormone receptor status, it's a matter of the school of thought of the institution doing the testing?

DR. EJECKAM:

A. Yes. I know there is a controversy here. Some people would like to test that, someone else say there's no need because DCIS you don't-- most centres would not treat them with hormone manipulation. Surgery will be probably, depends on if it's a low-grade DCIS or high-grade DCIS. If you have a low or you have a comedo type high grade, it may be wide excision may cure that. They may have local radiation. So some people will say no, since I'm not going to treat this patient with hormone manipulation, why go and do this. Others say no, do it, you know, let's have a

baseline, so it's a question of school of

thought here.

CROSBIE, Q.C.:

Q. Very well. And you're aware that there are schools of thought or schools of oncologists who would discuss with a patient and would offer, depending on circumstances, anti-hormone therapy on a diagnosis of DCIS where there are positive receptors?

DR. EJECKAM:

A. I don't know what they do. All we do as pathologists is to report that. If they want to--see, if they have a group, a breast group, the oncologists and the pathologists and other surgeons will come together and decide the protocol to use. I'm testifying to the file in the literature and the practice all over the world, some group of people will do these tests. I don't know whether they treat them or not, I'm not an oncologist, but when you

look at the biology of the disease, it's an in situ lesion, it is still above the base membrane, it has not infiltrated. These lesions do very well when you remove them with a good margin, even if they are high grade. The high grade you may do a new wide section,

because it may be multifocal. Now, some of these are treated and followed. But if an oncologist decides he's going to give Tamoxifen then, that his decision to make and he has to convince himself what he's treating because the tumor has been removed, so what are you giving anti-estrogen for?

CROSBIE, Q.C.:

Q. There are the chances of a metastases or a spread are lower than -

DR. EJECKAM:

A. Very low.

CROSBIE, Q.C.:

Q. - other, in forms of cancer that have infiltrated, yes. I think we understand that. But presumably labs don't do these tests because a large number of labs do tests on CIS, correct? A large number of labs do test for hormone status on CIS, right?

DR. EJECKAM:

A. DCIS?

CROSBIE, Q.C.:

Q. DCIS, LCIS, yes.

DR. EJECKAM:

A. This is a choice the laboratory needs to make,

between them and the oncologists. And if it is infiltrating, it is infiltrating tumor, even if it is micro invasion, then you need to do that. But if you are 100 percent sure after looking at several sections and this is purely DCIS, then what you do after that is what the oncologists and surgeons agree on. Pathologists have no input or should have no

input there any more after they reported the case. Now, if they now come together and tell you what they would like to have you to estrogen receptor on all these cases in our centre and they agree on it, then that's the protocol for them to do.

CROSBIE, Q.C.:

Q. Okay. Now, you're aware, are you, that DCIS or I'll just say CIS because there's a subset of that lobular carcinoma in situ, correct?

DR. EJECKAM:

A. Yeah.

CROSBIE, Q.C.:

Q. We're mainly concerned with DCIS, I suppose, yes? In terms of the CISs, they would be the most common?

DR. EJECKAM:

A. Well, CIS is what, carcinoma in situ, right?

CROSBIE, Q.C.:

Q. Yes.

DR. EJECKAM:

A. Carcinoma in situ with DCIS and now I'm trying to classify that tumor, LICIS, lobular in situ carcinoma or ductal carcinoma in situ. So this is really is the classification. Just saying CIS, you're now lumping the whole thing together. So either you are dealing with ductal carcinoma or you're dealing with lobular carcinoma.

CROSBIE, Q.C.:

Q. Okay, let's stick to ductal then.

DR. EJECKAM:

A. Yeah, ductal carcinoma in situ is a limited disease and if it's found and completely excised, that is treatment of choice in many centres. Some other centres may add radiation, double insurance, to make sure that if there's anything elsewhere, it will be gotten. Some centres will not do that. So this is something that treatment modalities that I cannot go--it's a question of what the group wants to do in their centre.

Biologically, as a pathologist, DCIS is a limited disease. The tumor, by definition, has not invaded beyond--it has gone beyond the basal membrane. It's limited and it's a good disease, if you want to describe any kind of good disease in breast cancer. That's a good disease to have, if one has to have any breast cancer at all.

CROSBIE, Q.C.:

Q. Up until testing was suspended here in 2005, are you aware that this institution had a policy of testing DCIS for hormone receptor status?

DR. EJECKAM:

A. I'm not aware of that.

CROSBIE, Q.C.:

Q. So it would appear, Doctor. You can--I'd ask you to assume that, okay, and if someone thinks that that's wrong, they'll tell you, but I think that's demonstrated on the documentation. However, when this institution went to Mount Sinai and asked for their specimens to be retested, Mount Sinai, it appears, declined to retest DCIS specimens. You with me so far?

DR. EJECKAM:

A. I'm not aware of that, but if they refused then -

CROSBIE, Q.C.:

Q. Okay. Take that to be the case for now. I guess we can assume from that that Mount Sinai is one of those institutions that had a policy that was not in favour of testing DCIS for hormone receptor status -

DR. EJECKAM:

A. Possibly.

CROSBIE, Q.C.:

Q. - because there are institutions like that.

DR. EJECKAM:

A. Yeah. Well, if they refuse to do it, that means they are within the group that don't think it's necessary to do.

CROSBIE, Q.C.:

Q. Yes, but our institution, up until then, had a policy in favour of testing. Let's assume

that.

DR. EJECKAM:

A. Well, there's nothing wrong with it.

CROSBIE, Q.C.:

Q. No, I'm not suggesting at all. It appears to

be a matter of discussion, controversy, between the various experts in the field. However, what I'm getting around to is this: if there's going to be a change in policy on something like that, would you expect it to be documented with the reasons for that by the institution which is now changing its policy from being in favour of testing for DCIS to now having a policy of not doing it?

DR. EJECKAM:

A. I'm not aware that what has happened is a change in policy. If they're sending their specimen out to Mount Sinai to do and the receiving centre said "no, we can't do all of

it, this is what we do here," it's not a change in policy. Is they are now getting the services offered by the referral centre. Now, you know, that's the way I look at it, and so, if they had a policy that DCIS would be tested and they've sent it to be tested and where the people have the right to say "no, we don't do this" but I don't consider that a change of policy by the sending institution.

CROSBIE, Q.C.:

Q. What if the policy now has changed, not just

in not retest for hormone receptor status specimens which were DCIS before and they're now proposed to be retested, but also to discontinue the original testing of DCIS specimens.

DR. EJECKAM:

A. I expect that if they do that, the same body that met to agree to do it and they are meeting, meeting of the oncologists and the

pathologists, if that's what was arrived at, in that same meeting, I expect that they would take a decision saying there's no need to do that, and they may have done that in their rounds, their tumor rounds.

CROSBIE, Q.C.:

Q. And you'd expect some form of documentation of the thinking, would you?

DR. EJECKAM:

A. Well, the meetings, I believe, have minutes. So I think it should be in the minutes of that meeting.

CROSBIE, Q.C.:

Q. Just to clear up one point, techs don't read the controls, the pathologists do?

DR. EJECKAM:

A. Techs don't interpret the controls, but they should read it. What I tried to do with them that they should look at it because if they

don't look at it, they will not know when what they have done is right or wrong. But in terms of interpretation, then that's the job of the pathologists.

CROSBIE, Q.C.:

Q. Sir, to go back to your intervention in early 2003, your role, I think you said, was to be a resource person, and I think you also agreed that you were a troubleshooter or could be viewed as a troubleshooter?

DR. EJECKAM:

A. I regarded myself as a resource person, trying to help to ensure that the results of the immunohistochemistry coming out of our laboratory is adequate or was adequate.

CROSBIE, Q.C.:

Q. And you had no official position, you know, no title, no--you weren't called director of this or that. You were, in a sense, a volunteer and as you described it, a resource.

DR. EJECKAM:

A. Yes, that's what I looked at myself as.

CROSBIE, Q.C.:

Q. Was it, to be explicit about this, part of your mandate to consider and make any recommendation as to the possibility of retesting of previously read ER/PR slides on the ground that the readings might be unreliable?

DR. EJECKAM:

A. No, it wasn't for me to do that. What we are doing at that point--at that point actually, there was no indication that what was done before was inadequate.

CROSBIE, Q.C.:

Q. By way of an index -

DR. EJECKAM:

A. I wasn't aware of that. I mean, there's no -

CROSBIE, Q.C.:

Q. By way of an index case, you said?

DR. EJECKAM:

A. I didn't know about in this case, and it wasn't brought to my attention at the time I was doing this. What we were trying to do then is to ensure that the stains, at that particular time, were okay, and there was nobody, no pathologist, no oncologist had come

up with any case to us saying this test has converted to something or that it was wrong, it was repeated or that it was repeated and given a different result. So at the time, we were working, as far as I know, there was no danger to anybody because we didn't have any information about anything that was in the past, and there was no way of my assuming that immunohistochemistry done since 1997 or six months before I arrived or one year before I arrived would have been all wrong or justly the people who interpreted them would have been comfortable with the result before they send them out. So at the time I was doing this, there was no indication whatsoever to start retesting.

CROSBIE, Q.C.:

Q. If a result was erratic and unreliable on a given test, words that you used in your memo -

DR. EJECKAM:

A. Yeah.

CROSBIE, Q.C.:

Q. - and if it was accompanied by the appropriate controls then, you would expect that the result, the unreliable result, would not get

past the reading pathologist? Is that so?

DR. EJECKAM:

A. Yes.

CROSBIE, Q.C.:

Q. Did you, in the course of reading slides in the period before you went in and intervened in the lab in 2003, were you presented with slides to read that did not have the appropriate controls on them?

DR. EJECKAM:

A. The slides, they have controls. They had external controls. The system was there was external control for each batch and the controls were kept in the reporting room and pathologists were encouraged to go and look at

it. Then I had introduced the method of putting control on the test slide, so that people don't have to go and look at one control in the reporting room and that the control slide goes through the system as a test slide. So there was a control slide.

CROSBIE, Q.C.:

Q. So there's a side-by-side comparison?

DR. EJECKAM:

A. Yes, on the same slide.

CROSBIE, Q.C.:

Q. Okay. We may have--or at least I may have missed that point. Prior to that innovation of yours, people had to go somewhere else and look up the control?

DR. EJECKAM:

A. Well, it's within the Department. It's not where it looks like some distance away. Within the Department, you go to the reporting room, just maybe from here to the next room.

Then you look at the control and then-- because, I mean, the way it is, four or five pathologists would have asked for ER/PR and order immunohistochemistry. Now in the thinking of the technologist then would have been that if they put one control for each pathologist, that's going to be four different controls because now he has to pass the slide on with the control. What we did, those out of St. John's hospital, the controls have to be sent with their cases. But within the St. John's area, this was a practice. But now we change it, saying we have the control test, external control, on the same slide and the test control, so that when you pick up your

slide, you have both of them there. You don't have to go anywhere, and then apart from-- going anywhere is not even a big deal. What is important to me then, the test tissue and

the control tissue has passed through the same condition.

THE COMMISSIONER:

Q. Just to make sure that I'm crystal clear, because I think I, somewhere along the way, picked up the understanding that there was a point at which the external control was not on the same slide.

DR. EJECKAM:

A. Yes.

THE COMMISSIONER:

Q. And as I understand it, the placement of it on the same slide was something that you -

DR. EJECKAM:

A. Yes, I -

THE COMMISSIONER:

Q. - introduced?

DR. EJECKAM:

A. Yes, Commissioner.

THE COMMISSIONER:

Q. Were you saying in response to the question

from Mr. Crosbie that there was a different procedure for slides going to places outside of St. John's? Did they have their external controls on the same slide or did you send them a slide?

DR. EJECKAM:

A. No, before -

THE COMMISSIONER:

Q. Before you changed it?

DR. EJECKAM:

A. Before the change, slides going to out of St. John's had to go with controls.

THE COMMISSIONER:

Q. Okay.

DR. EJECKAM:

A. On a different slide.

THE COMMISSIONER:

Q. Oh, it was on a different slide though?

DR. EJECKAM:

A. Yeah, so that was the practice.

THE COMMISSIONER:

Q. Okay, all right.

DR. EJECKAM:

A. Because they wouldn't come down from Corner Brook or from Clarenville here, but the people

who were around here had the advantage that where the control was kept, they could access it very easily. But for the others who are removed, when we started putting the control slide and the test slide on the same--sorry, control tissue and then test tissue on the same slide, so everybody got the same thing, whether out of hospital, out of St. John's hospital or within St. John's.

CROSBIE, Q.C.:

Q. So I take it that you personally, in your capacity as a pathologist, before your intervention in 2003, that you read a certain number of ER/PR slides?

DR. EJECKAM:

A. Yes.

CROSBIE, Q.C.:

Q. And reported on them?

DR. EJECKAM:

A. Yeah.

CROSBIE, Q.C.:

Q. And it would have been necessary for you to

crosscheck what was on--the materials on your slide with controls that were kept not on those slides but somewhere else in the lab?

Is that right?

DR. EJECKAM:

A. Yes.

CROSBIE, Q.C.:

Q. And you would do that every time?

DR. EJECKAM:

A. Yes, I mean, that's the only way to do it. I mean, you have no other choice.

CROSBIE, Q.C.:

Q. And if you came across a slide which was, to use your language, erratic and unreliable, you would reject it and ask for a redo?

DR. EJECKAM:

A. Yes.

CROSBIE, Q.C.:

Q. And you expected that other pathologists would

be doing the same thing?
DR. EJECKAM:
A. I expect that too.
CROSBIE, Q.C.:
Q. Yes, and on the basis of that assumption, you had no reason to believe that there is any danger to patient health or treatment?
DR. EJECKAM:
A. No, no, because I mean, if any pathologist

wasn't happy with the repeat as an option, option is to send the tissue out, either to Halifax or to Toronto. Going to Mount Sinai to test was something that came up with the problem case, but we have always sent out cases to other institutions to help us if we could not either get a consensus in diagnosis or if we're not very happy with the stain.
CROSBIE, Q.C.:
Q. And you would expect other pathologists to share your attitude on that matter?

DR. EJECKAM:

A. No, it's a general thing. That's no--I don't expect the pathologists to make a diagnosis if he doesn't have the material to do that, and this is where discussion let's say in our Tuesday conference, we would look at the tissue, look at the diagnosis and we--everybody there, the pathologists would say this is no good, and if we done it twice or so and we can't then, send it out. That's what you do then. It was send out and they would get the other centre to give us their result. Now we are assuming that the result is going to be better than ours, but at least we've

consulted another centre to help to do the test when we are not happy with what we have, and that is general practice.

CROSBIE, Q.C.:

Q. And as long as other pathologists are reading

the controls in comparison with the material they're interpreting, then you shouldn't get into trouble, right?

DR. EJECKAM:

A. I cannot testify to what other pathologists do, but I am telling you the normal practice and I believe they do that. The techs would say the control is in the reporting room and if I ask for a stain and when I get my test tissue and there's no control on my slide and I know and that's been information passed out to everybody that a control is sitting in the control room, you are obligated to go and look at it, and I believe, in my sincerity, that my fellow pathologists would be doing that.

CROSBIE, Q.C.:

Q. However, you're not in a position to say, from personal knowledge, from having looked over their shoulder, that this is exactly what they did on every occasion, are you?

DR. EJECKAM:

A. That wasn't necessary. Nobody should look over any pathologist's shoulder.

CROSBIE, Q.C.:

Q. They're colleagues and can be left to do their job properly.

DR. EJECKAM:

A. They're qualified. They're hired. They're qualified and they do their job and from the evaluation or from any audit information I have, I have not been aware of any pathologist that I didn't think that he's not doing his job or our job.

CROSBIE, Q.C.:

Q. Thank you, Doctor. That's all I have.

THE COMMISSIONER:

Q. Thank you, Mr. Crosbie. Mr. Browne?

DR. GERSHON EJECKAM, EXAMINATION BY MR. PETER BROWNE

MR. BROWNE:

Q. Good morning, Dr. Ejeckam.

DR. EJECKAM:

A. Good morning, Peter.

MR. BROWNE:

Q. I hope you're glad to see my face up at the lectern. I just want to go over a couple of

questions and before I do, there is an exhibit, I'd like to enter.

THE COMMISSIONER:

Q. I've been handed 1563--68, I'm sorry.

MR. BROWNE:

Q. Yes, 1568, and I'll let the Registrar return to her desk.

THE COMMISSIONER:

Q. Yes, I think the Registrar has provided a copy to other folk.

MR. BROWNE:

Q. Yes.

THE COMMISSIONER:

Q. All right, we'll enter that.

EXHIBIT ENTERED AND MARKED EXHIBIT P-1568.

MR. BROWNE:

Q. Thank you. I'll come back to that, Doctor, in a minute. I just want to pursue a couple of lines of questions with you before we deal with that particular exhibit. And I want to begin with reviewing your background in Doha. Mr. Coffey, I think took you through your curriculum vitae on Tuesday afternoon, and I

don't propose to actually run through your curriculum vitae as an exhibit, but I do want

to just confirm with you, before coming to St. John's in 2002, you spent 13 years in Doha?

DR. EJECKAM:

A. Yes.

MR. BROWNE:

Q. That's correct. And during that timeframe, I just want to confirm this with you, you were, you held several positions and one of those positions was the consultant in charge of histopathology?

DR. EJECKAM:

A. Yes.

MR. BROWNE:

Q. Now, consultant, that's a British term and just for--which is not customarily used here in Canada, is that a recognition of the seniority and experience within the British

terminology, medical terminology?

DR. EJECKAM:

A. Well in the U.K. the word "consultant" connotes seniority and experience. In Doha, that's what it meant, but we have grace, we have consultant C, consultant B and consultant A, and I was consultant A, that was the highest level of the consultant you could get

to.

MR. BROWNE:

Q. Okay.

DR. EJECKAM:

A. And you wouldn't be appointed consultant A unless you had the minimum of ten years of practice.

MR. BROWNE:

Q. And the system in Qatar, was that modeled on the British system?

DR. EJECKAM:

A. Yes, well, almost, kind of some are American,

but it can be British.

MR. BROWNE:

Q. So a hybrid model, okay.

DR. EJECKAM:

A. Yes.

MR. BROWNE:

Q. And in addition to being the consultant in charge of histopathology, you were also the division head of anatomic pathology?

DR. EJECKAM:

A. Yes, anatomic pathology comprises of pathology, autopsy, cytopathology.

MR. BROWNE:

Q. Okay, so all those areas and that included as well, immunohistochemistry?

DR. EJECKAM:

A. Yes.

MR. BROWNE:

Q. Okay, and thirdly you were a consultant in

charge of continuing medical education?

DR. EJECKAM:

A. Yes.

MR. BROWNE:

Q. Okay, so you would oversee the needs of, I guess, staff within your department?

DR. EJECKAM:

A. Mainly technologists because the staff had a standard with CME grants, in Doha we had yearly conferences, sometimes twice a year paid by the institution. We go to anywhere in the world, they will pay for registration, hotel and everything and they get a per diem, so that's, but mainly for the technologists to improve their, you know, I have to registrar them with the teleconferences with American Society of Clinical Pathologists and encourage them to send them out to conferences at either Europe, somewhere in U.K. or, that's

admission, and they send some of them to the

United States for training.

MR. BROWNE:

Q. And I think as well I noted on occasions you were the acting chair of the Department of Lab Medicine and Pathology?

DR. EJECKAM:

A. Yeah, on occasions our chairman went on holidays, I acted for him.

MR. BROWNE:

Q. Now in addition to those sort of, those positions, there were a number of committees that you were either a member of or chaired and again, in your curriculum vitae, I noted that you were chair of the Tumor Board?

DR. EJECKAM:

A. Yes.

MR. BROWNE:

Q. And the Tissue Committee?

DR. EJECKAM:

A. Yes.

MR. BROWNE:

Q. And also this was a third committee, I'm not sure if it's cited in your C.V., the Equipment Committee. Can you explain to the

Commissioner what the Equipment Committee was please?

DR. EJECKAM:

A. Commissioner, the Equipment Committee was set up especially when we had a crunch in Doha or during the Kuwait war, money dried up and budget was tight, so a number of things were looked at and it was necessary then to set up an equipment committee in the laboratory and I was chairperson for that committee. What we did was, all the divisions were asked or wants new equipment and it started off right away because in this committee, I know there were about five of us, then each of the heads of the division will be required to come and justify the required equipment and then some of the questions would have to find out why they wanted new equipment, what is your the alternative for tests that the new equipment will do? And if you didn't have that and those tests were critical, then you had priority over somebody else who may back up, but can manage. So that way, we apportion the priority and then we now say in chemistry, you

have equipment for now, we're going to give

money to microbiology to protest this because it's absolutely important and that way everybody knew what was going to be done and that will eliminate the idea of unilaterally somebody just buying equipment and they bringing it into the department without nobody knowing about it, so this committee worked very well for us. That was a priority and then a signature of information.

MR. BROWNE:

Q. And the composition of this committee, who sat on this committee in particular?

DR. EJECKAM:

A. The heads of the units. I as the anatomy pathology was the chairman, the heads of chemistry, hematology, the supervisors, technical supervisors were in the committee. So what we did was each time, let's say my

supervisor asked for microtome then she will now bring her file and justify, tell us how many microtome she has, why do she want a new one, what is the problem with the one she has, and then can she wait for six months or three months so that we can give the money to another department if that department has

urgent need. So that's the way it worked out.

MR. BROWNE:

Q. Now, Doctor, we've heard your evidence with regard to your efforts in St. John's in April and May of 2003 to deal with the difficulties you observed with particular stains at the Health Sciences. Did you have any experience with any difficulties with IHC staining while you were in Doha?

DR. EJECKAM:

A. Yes.

MR. BROWNE:

Q. Would you explain to the Commissioner those

problems?

DR. EJECKAM:

A. The problem was, you see the IHC, anywhere that you want to start it, you're going to experience some problem because you don't start it with everything in. You use something desirable, then you have to think of the staff, so what we were doing the physical structure was like here, it wasn't an open laboratory and other things were being done there, so we found it was not convenient, it wasn't giving us what we needed. Then

sometimes we find that the procedure, when we finished, we don't get an expected result, we keep repeating, we keep titrating until we--so we had to work on it, I mean, a certain, any laboratory saying that it doesn't have teaching problem will be probably not saying the truth, so we had teaching problem. But

when we moved to new room, nicely equipped and then dedicated three technologists onto it, most of this problem got--disappeared.

MR. BROWNE:

Q. So, Doctor, is that something you would expect any lab, any IHC lab around the world would have, at some point in time, run into problems and troubleshoot problems -

DR. EJECKAM:

A. Oh yes, oh yes, you have to have that, there's no way you can start from day one and come to the level of excellence that you expect to run in.

MR. BROWNE:

Q. Now, Doctor, over those 13 years, is it fair to say that you developed a keen interest in immunohistochemistry?

DR. EJECKAM:

A. Amongst other things, yes.

MR. BROWNE:

Q. As well as quality assurance?

DR. EJECKAM:

A. Yes. That was my position as an anatomic pathology head, the head of each unit automatically becomes responsible for quality assurance in his department, in his division.

MR. BROWNE:

Q. So in the fall of 2002 when you came to St. John's, is it fair to say that Dr. Cook, the clinical chief, recognized your keenness in these areas and that's why he asked you to be the pointman for IHC and as well the Chair for the Surgical Pathology Review Committee?

DR. EJECKAM:

A. I think so, yes.

MR. BROWNE:

Q. And in terms of your first memo in April, just to sort of encapsulate or capture what you were saying is that at the Tuesdays and Wednesdays sessions, it was sort of general discussion that some days the stains were good and some days, not so good, is that the expression that was around the table?

DR. EJECKAM:

A. Yes.

MR. BROWNE:

Q. And as a result, people recognized your interest and experience in IHC and asked you to sort of troubleshoot the problem?

DR. EJECKAM:

A. Yes.

MR. BROWNE:

Q. Now, in terms of interpretation of ER/PR, you had mentioned, I believe, from your perspective as an IHC pathologist examining internal controls is critical, is that a fair description?

DR. EJECKAM:

A. Yes, I think it would help to maintain accuracy and good efficient practice.

MR. BROWNE:

Q. And are there occasions where that may not be possible? And I'm thinking in particular core biopsies, are there any particular unique difficulty surrounding core biopsies, and if so, could you explain those to the Commissioner?

DR. EJECKAM:

A. Commissioner, a core biopsy is, like little biopsies, less than one millimetre, about that size. Sometimes when you put a needle into the tumor, no problem, you get a large tumor of volume and that tumor volume, let's remember that this tumor is a heterogenous, so you can have an area of estrogen receptor negative and some positive, not every tumor will stain positive; therefore, if you now take the biopsy and the volume of the tumor is small and maybe find an area of fibrous tissue or necrotic tissue, you will not get enough tumor volume, so you may get a negative result and then you may now not get enough normal tissue in that core biopsy. Apart from not getting enough volume of tissue to include normal tissue, you also have heterogeneity of the tumor, so what you may be getting will be just area that shows negative tumor. And some

centres will have the policy that if they do core biopsy and it's negative, they will repeat it, they will not consider it as final, they will repeat that test on excised nodule. When the tumor is existed or when there's mastectomy, they will repeat the ER/PR.

THE COMMISSIONER:

Q. Was that the case here, do you recall if--it seems to me that we have seen some files where the reports on the biopsy was different than the report, once the mastectomy had taken place?

DR. EJECKAM:

A. Yes, if we are not happy with it, when you get a mastectomy, have a bigger tumor tissue there.

THE COMMISSIONER:

Q. Uh-hm.

DR. EJECKAM:

A. Then you then do a repeat.

THE COMMISSIONER:

Q. So is it, I think that's perhaps my question, would it be normal to repeat when you did the mastectomy or would you repeat when you had some uncertainty because of the nature of the tissue taken on the biopsy?

DR. EJECKAM:

A. If the first test is a core biopsy and is negative -

THE COMMISSIONER:

Q. Uh-hm.

DR. EJECKAM:

A. The proper thing to do is, you now get a bigger tumor volume either by excision of the lump because sometimes they won't do mastectomy, they do a lumpectomy or quadrantectomy, depending on segmentectomy, depending on what they want to do.

THE COMMISSIONER:

Q. Okay.

DR. EJECKAM:

A. Then you have now a bigger tumor tissue and it has to be repeated.

THE COMMISSIONER:

Q. Is that a decision made by the pathologist or is that a decision made by the referring surgeon?

DR. EJECKAM:

A. No, no, the pathologist.

THE COMMISSIONER:

Q. The pathologist makes that decision.

DR. EJECKAM:

A. Yes.

MR. BROWNE:

Q. Thank you, Commissioner. Now, when you were, just to go back for a moment, Dr. Ejeckam, in

2003 when you were put in place as the point person for IHC and the chair of the Surgical Pathology Review Committee, did you have your

own administrative assistant to assist you with any of your work?

DR. EJECKAM:

A. No.

MR. BROWNE:

Q. Now, moving beyond the period when, in particular May of 2003, when you felt the difficulties with the stains were resolved, did you continue to liaise with the technical staff to ensure that the quality of the slides was adequate?

DR. EJECKAM:

A. Yes, would continue to work closely to ensure that whatever immunohistochemistry result that went out of that laboratory was good result.

MR. BROWNE:

Q. Okay, and were Mr. Gulliver and Mr. Dyer aware that you were doing this on a regular basis?

DR. EJECKAM:

A. Yes.

MR. BROWNE:

Q. We've heard mention of the purchase of the

Ventana, I think it happened in late 2003 and then it was up and running by March of 2004 and you were involved with the validation of that machine, is that correct?

DR. EJECKAM:

A. Yes.

MR. BROWNE:

Q. Were you involved, in any way, in the lead up to the purchase, in terms of consulting with Ventana, going to -

DR. EJECKAM:

A. No, no, no.

MR. BROWNE:

Q. Prior to your May 2003 memo where you list a number of educational points for you colleagues, do you recall any discussion within your department at the Health Sciences, whether or not the Health Care Corporation was using commercial formalin or in house preparation?

DR. EJECKAM:

A. I wasn't sure, but I assumed they were using commercial.

MR. BROWNE:

Q. Okay. And you've testified that following

your June 2003 memo you mentioned to Mr. Gulliver or you spoke to Mr. Gulliver, subsequently he mentioned he was going to send you a reply.

DR. EJECKAM:

A. Yes.

MR. BROWNE:

Q. And you spoke to Dr. Robb and he said he was going to attempt to organize a meeting.

DR. EJECKAM:

A. Yes.

MR. BROWNE:

Q. Do you recall whether or not you had any discussion, not necessarily a formal meeting per se, but any discussion with Dr. Cook where he said, you know, the things in that memo, he had read the memo and the things that you had recommended, he had no control over to change.

DR. EJECKAM:

A. He may have. I don't remember the exact

dates, but we may--he drops in at Health Sciences and we will chat about things. We have discussed that and I think, if I remember, he did show concern that some of the issue that were raised there, he could not so

much about it because he wasn't controlling the budget and he wasn't controlling the staff, as such.

MR. BROWNE:

Q. Now, in 2005 and this has been reviewed with you extensively, when the difficulties with the estrogen and progesterone results were noted, you were still in that position as the point person for IHC and monitoring the quality of the stains that was coming out of the lab.

DR. EJECKAM:

A. Yes.

MR. BROWNE:

Q. Now, can we just look at, Registrar please, P-

0542. Doctor, you've already seen this exhibit previously. And if we can scroll down there, all this does, Doctor, is confirm that you're the resource person, that's your understanding from back in 2003 in your discussions with Dr. Cook.

DR. EJECKAM:

A. Yes.

MR. BROWNE:

Q. Okay. Now, if we go to, Registrar please, P-

0637. Now, Doctor, this is October of 2005 and I believe it's likely some time after the visit of Dr. Banerjee. And you'll see in the first paragraph, third line toward the end, "as agreed you will oversee all aspects of the immunoperoxidase operation and have direct supervision over the technologists involved in this service". Is that a change in terms of your role? Did you view that as a change in

your role up to this point?

DR. EJECKAM:

A. No.

MR. BROWNE:

Q. No. Now, if we can go to, Registrar please, P-0351. And Doctor, I'm just going to take you through this document. You've seen this already. I just want to quickly scan through this. You'll see this is a--we'll start here--it's a review of the immunohistochemistry lab for Eastern Health and it's prepared for Dr. Williams by Mr. Gulliver and Dr. Cook and there's background and so on. We'll just go through a number of recommendations. You'll see there, let me just go through, Item No. (f). You'll see prior to that a number of

things, costing and so on. Was there any budget item there or is there any budget item there for remuneration for your services?

DR. EJECKAM:

A. I don't see any.

MR. BROWNE:

Q. Okay. Lastly, Doctor, just in terms of this line of questioning, Registrar, if we could go to exhibit P-0944. Doctor, this is--it may be difficult for you to read, but this is notes, I believe from Dr. Williams of Dr. Banerjee's second or return visit to Health Sciences in review of the program. And you'll see down here, just below, after Dr. Banerjee's comments, your name and the comment, I believe, it says, "need to appoint a director for IH"--should be immunohistochemistry.

DR. EJECKAM:

A. Yes.

MR. BROWNE:

Q. Let's assume that that's the case. Do you recall that meeting and to you recall what you said concerning this -

DR. EJECKAM:

A. That was a meeting where a number of us sat in

and we were reviewing Banerjee's (unintelligible) evaluation of his visit. And along the line I did indicate that it would be nice to be proper, to appoint a director of immunohistochemistry and create a structure and create a remuneration to that post and then give the person enough authority and enough responsibility.

MR. BROWNE:

Q. And do you recall, was there any reaction from Dr. Banerjee or others in the room concerning that recommendation?

DR. EJECKAM:

A. Oh, Banerjee supported it because that's the way it goes in most places.

MR. BROWNE:

Q. So, he was supportive of that?

DR. EJECKAM:

A. Yes.

MR. BROWNE:

Q. Okay, Doctor, at the outset of my questioning of you, we entered Exhibit 1568, do you have a copy of that in front of you there?

DR. EJECKAM:

A. Yes.

MR. BROWNE:

Q. Now, Doctor, can you just explain to the Commissioner why you wanted to enter--and this is just for purposes here, this is a copy from diagnostic immunohistochemistry, Dabbs, textbook. I think it's the same copy that Mr. Crosbie referenced you to yesterday in his questioning. And there are a number of additional pages which you wish to have entered. And can I ask you to indicate to the Commissioner why you wish to enter these particular pages?

DR. EJECKAM:

A. Commissioner, yesterday, by the time we were leaving, there was an impression based on the questioning from counsel Crosbie, unfortunately, he's not here, that temperatures above 99 degrees centigrade would destroy the tissue. I think that's the impression I got from his questioning, but that's not true. And I thought, I mean, I

haven't done immunohistochemistry, go into third year now, so a little bit fuzzy on it, but I remember that that's not so. The literature, the same textbook that he showed

me, on page 21 of it, under "heating conditions", if I will read there, the second paragraph, "we demonstrated -

MR. BROWNE:

Q. Okay, I'll just put the cursor there.

DR. EJECKAM:

A. Okay, here. "We demonstrated that the use of conventional heating at 100 degrees centigrade may achieve results similar to those observed by a microwave heating and also that distilled water could be used as the AR solution, albeit with slightly less effect". That's talking about distilled water. "Subsequently, several publications reported similar results by using conventional heating".

The point I'm trying to make here, that

the temperature of 100 degrees will not destroy the tissue. Then if we go down -

MR. BROWNE:

Q. Okay, Doctor, you can use your own mouse and find the -

DR. EJECKAM:

A. Now down here, the cursor here, what would destroy the tissue is if the tissue is unfixed, and I read, "They also noted that

significant denaturation of unfixed purified proteins occurred at temperature ranges from 70 to 90 degrees, whereas similar temperature had virtually no adverse effect on formalin-fixed proteins". Formalin-fixed proteins are more heat stable. And the tissue we use for immunohistochemistry are fixed already. So, the idea that they were boiling and the cartilage in the tissue doesn't really arise, but that temperature doesn't affect the

process. And it's documented in the literature and most laboratories do that and also it is within, in textbooks worldwide.

And then, on the next page--okay, I think I better go down.

MR. BROWNE:

Q. Okay, I'll do that for you, Doctor. This is at page 23, you want to -

DR. EJECKAM:

A. Yeah, yeah, I think so.

MR. BROWNE:

Q. Just take a moment to find it.

THE COMMISSIONER:

Q. On my copy, there's a part highlighted a little further down.

DR. EJECKAM:

A. Yeah, farther down. Now this highlight shows also that we're not talking about only 100 degrees. "Super high, 120 degrees centigrade" just emphasize that high temperatures could be

used. Most microwave ovens that's used for antigen retrieval come at a higher temperature. So important here that the tissue is already fixed and if you use that high temperature, 10 minutes, 15 minutes, that what we are now, when we try to titrate, use different times to find out the best timing to have the best result.

MR. BROWNE:

Q. So this is the antigen retrieval process you've spoken about previously?

DR. EJECKAM:

A. Yes, yeah, and then we talked--he mentioned about the consensus opinion.

MR. BROWNE:

Q. Okay. Now is this the next page now?

DR. EJECKAM:

A. Next page.

MR. BROWNE:

Q. Okay, I'll just take that for you, Doctor,

referring now, this is page five of the Exhibit. Okay.

DR. EJECKAM:

A. Let me go here first, here. Now the discussion was there that if there was a consensus to treat anybody with one percent and over, why did the clinical chief decide that ten percent would be the cutoff line. Now let me read the consensus before I refer to why they did that. "All the controversy regarding the interpretation of what constitutes positive -

MR. BROWNE:

Q. You're reading on the right-hand side there now?

DR. EJECKAM:

A. Yeah, here.

MR. BROWNE:

Q. Okay, that line, okay, thank you.

DR. EJECKAM:

A. Yes. "All the controversy regarding the interpretation of what constitutes positive ER by IHC has been laid to rest by a statement issued in the November 1-3, 2000 National Institutes of Health Consensus Statement on

Adjuvant Therapy for Breast Cancer," what is United States, and it doesn't have to apply here, but that's in the textbook, and it says "any positive nuclear ER immunostaining" any, not even one percent, "is considered to be a positive result and should be a definitive reason for instituting antiestrogen therapy for a patient."

Now why ten percent is if we go on the left side, over here, "Quantitation of results of the ICA is an issue of some controversy. A survey of the literature reveals that some authors set a positive ER result at a greater than or equal to five percent nuclear staining, whereas others set a positive result at a minimum of ten percent nuclear staining. Still others rely on H score, which includes measures of percentage positive nuclei with intensity of nuclear staining.

Pertschuk and colleagues and Taylor and associates argued that using a percentage of nuclear staining of ten percent as a minimum

for positive result were reproducible and correlated well clinically." This is very important word here, it was reproducible and

correlated clinically. "Ferno and associates also found correlation with clinical response with the value of ten percent nuclear staining, finding no additional value in the nuclear staining intensity."

So I thought it was necessary to bring this up, so someone can say if one could be positive, why do you cut off at ten? That's evidence that ten percent has clinical--showed the best clinical response, and that's, I believe, why the clinical chief had that cut off. So it wasn't just from the blue.

THE COMMISSIONER:

Q. All right.

MR. BROWNE:

Q. Is there anything else in this document, Doctor, you wish to refer the Commissioner to?

DR. EJECKAM:

A. Not in this document.

MR. BROWNE:

Q. Okay. Now, Doctor, ordinarily the Commissioner or Commission counsel have asked witnesses whether they wish to make any recommendations or observations or comments. Do you have any that you wish to share with

the Commissioner?

DR. EJECKAM:

A. I will start by thanking the Commissioner, the attorneys, Coffey, Chaytor and staff for bringing me over from Nigeria to participate in this process, the first time I have testified in this kind of situation. I appreciate that and I thank you, Commissioner. I thank my attorneys, Peter, Paul, Kelly and Jane and their staff, Tracey. They have made my journey fairly very good and very easy for

me.

Now my recommendations, based on what we've been discussing: One, I have found that what works somewhere else, the way the lab was set up, where we had lab manager who controlled the staff, technologists and clerical staff, doesn't report to the site chief. The site chief does only time table for the pathologists to rotate to do surgical. So he has no authority in the laboratory. The manager ignores him and does whatever he likes, buys the new equipment, whatever he likes, he does. Then the program manager doesn't report to the clinical chief, doesn't

report to the chairman of department, reports straight to the vice president of the hospital. I think that is a disaster arrangement because you cannot be in charge of a place and have no authority. If you are in charge, then you should have authority over

your staff, over the budget, and then take responsibility for whatever happens there. Because the way it looks like, the clinical chief, he has the title of clinical chief but he had no authority to either hire staff, remedy any problem that was coming up from these issues and he had to go back in with the program director, you know, whether he need something or not.

And again, it's important to have a medically qualified person to head this unit. It's a clinical department. Most managers, they are good, but they're going to look at units and budget and money. There's an aspect of it that a medically qualified person is more attuned to looking at, that is patient care, patient responsibility. Managers may think they have responsible for patient care. He doesn't--they don't quite get it because

they are looking at a broader budgetary problem, where a doctor knows that his primary objective is the patient, and therefore, he should be the one to take final decision about that.

Then coming to immunohistochemistry, there has to be a director of immunohistochemistry, not just point man or resource man, and the person has to have budget, has to have salary, has to have office and a secretary and then he would be empowered to improve the process, go for conferences, purchase books, enter into teleconferences for the staff, and then of course, the entire staff should be encouraged--funds should be provided for them to go out for training to continue medical education.

Newfoundland is unfortunately isolated in a way that you have to fly to mainland or to United States for conference. Those who live in the mainland, if there's something happening in Toronto and you're in Kingston, you can drive down very easily. But it's going to cost money for somebody to fly from here to anywhere on the mainland or to the

States. But it needs to be provided at least twice a year, because there's nothing like going to see what other people are doing. Either it reenforces what you are doing or you learn something from them. I think that's very, very important.

There again, sub-specialization. I look at Health Sciences, the same impression I had in Doha, Doha had one hospital for the whole country. Now there are more now there. The Health Sciences, Memorial, I look at that, the Harvard of Newfoundland or the Mayo of Newfoundland. Now we're not going to be counting units here. If you want to provide a service for people of Newfoundland, you have to provide budget to create certain position that if you want to count, you need to say "oh, we don't have the need to sustain that." But people cannot go from their villages to Toronto or Halifax where they have no--they don't know anybody there, and for treatment because you can't establish that here.

I'm not saying you should over-expand.

You have to look at the program and see what services that you can, you know, put across,

especially in the laboratory.

Now in big hospitals, all the specialties in the clinical aspect are reflected in the laboratory. You go to Mayo or Harvard or Massachusetts, you find a bone surgeon, there's a bone pathologist. You find a pulmonary person, there's a pulmonary respiratory pathologist. You find a kidney chap, there's a renal pathologist. Now we're not saying you should establish all that here, because you may not have enough volume and may not have all the money, but being the main hospital for the province, there has to be an allowance to create certain specialties, especially major ones in the clinical aspect to reflect in the laboratory, and then that will allow the pathologist time to spend more time on the particular area, become expert.

For the experts of the world we are talking about, most of them are not taught by anybody beyond after their training, they took interest in the subject, looked at a large volume of material, went to conferences and became more confident and then started writing their own observation and became authorities

in those areas. So I think that this needs to be looked at.

Then of course, the quality assurance, quality control, the hospital, the Corporation should have director of quality assurance. They should have office with secretaries and then coordinate the quality assurance in the hospital. I think it's--and then each department should have quality assurance, which is going to be coordinated by the hospital director of quality assurance. They should have regular meetings. Reports should

come from the departments to the hospital quality assurance committee. They should meet as often as they want to meet, maybe quarterly, and then look at a problem.

So that when there's a problem, it goes to quality assurance. Quality assurance would then be reporting straight to the president of the hospital and if there is need to provide equipment or the services are suffering because of certain things, the quality assurance will be gunning for it. Members of the department will be gunning for it. So there would be efforts from different sides to

ensure that these things are taken care of.

And I think finally, pathologists are endangered species and so we are not that many, but it would be nice to encourage students from Newfoundland to go into pathology. Most of them come into the program and go into family practice or go to surgery

or medicine or whatever other divisions. There's need to encourage them, not just on the money. There are other ways to induce them to stay, do pathology and stay here. So that way, you may have enough number, you know, to take up the job, because if you have to look at too many slides in a day, you get a headache and you might get blurry and then your concentration is impaired and there's a possibility of much error in that kind of situation.

But I think, I'm glad to understand that some of these issues have already been looked at or been taken care of, but this is just a few things I thought I'd bring to the Commission, since I've been given the opportunity to be here. Thank you, Commissioner.

THE COMMISSIONER:

Q. Thank you.

MR. BROWNE:

Q. That's all the questions I have, Commissioner. Thank you.

THE COMMISSIONER:

Q. Thank you, Mr. Browne. Ms. Chaytor, is there anything arising?

DR. GERSHON EJECKAM, RE-EXAMINATION BY SANDRA CHAYTOR, Q.C.

CHAYTOR, Q.C.:

Q. Thank you, just quickly. Doctor, you said that you did run into a problem in Doha with your IHC testing. How was that problem discovered?

DR. EJECKAM:

A. The same way, that when they bring slides for us to look at, when we look at the control, look at the test case, we find that if it's supposed to be a membranous stain, sometimes we find it's not just membrane that's staining. You may have stains in the cytoplasm. You may have nuclear staining. This may be either problem of delayed fixation where the antigen have been diluted and then

the background--so by looking at a section that they send, we are able to pick up some difficulties.

CHAYTOR, Q.C.:

Q. Yes. So same way you discovered the problem in 2003 in Newfoundland?

DR. EJECKAM:

A. Yes, the same process.

CHAYTOR, Q.C.:

Q. And how long had that problem persisted in Doha before you detected it?

DR. EJECKAM:

A. It wasn't too--well, it's been around for quite a while, maybe anywhere from three to six months.

CHAYTOR, Q.C.:

Q. Thank you. Those are my questions.

THE COMMISSIONER:

Q. All right, thank you, Ms. Chaytor.

CHAYTOR, Q.C.:

Q. Thank you, Doctor. We appreciate that you came all this way. Thank you.

DR. EJECKAM:

A. Thank you. I appreciate bringing me over.

25 CHAYTOR, Q.C.:

1 Q. Thank you.
2 THE COMMISSIONER:
3 Q. Yes, I believe that at least so far you hold
4 the prize for the person coming the longest
5 distance to assist us and I very much
6 appreciate your having done so. Thank you.
7 Ms. Chaytor, would you like to take the
8 morning break early, so that we can arrange
9 for the next witness?
10 CHAYTOR, Q.C.:
11 Q. Yes, thank you.
12 THE COMMISSIONER:
13 Q. All right. We'll take our morning break then.
14 (RECESS)
15 COMMISSIONER:
16 Q. Ms. Chaytor?
17 CHAYTOR, Q.C.:
18 Q. Thank you, Commissioner. The next witness is
19 Carolyn Chaplin. I'd ask, please, if Ms.

Chaplin could be sworn or affirmed?

MS. CAROLYN CHAPLIN (SWORN) EXAMINATION-IN-CHIEF BY MS. SANDRA CHAYTOR

REGISTRAR:

Q. And would you please state and spell your complete name for the Commission?

MS. CHAPLIN:

A. Carolyn Heather Chaplin, C-A-R-O-L-Y-N, Chaplin, C-H-A-P-L-I-N.

REGISTRAR:

Q. Thank you.

MS. CHAPLIN:

A. Thank you.

CHAYTOR, Q.C.:

Q. Thank you. Good morning, Ms. Chaplin.

MS. CHAPLIN:

A. Good morning.

CHAYTOR, Q.C.:

Q. We have, exhibits will come up on the screen

in front of you. And there are a few new exhibits this morning, Commissioner. I would ask, please, to have entered P-1498, P-1499, P-1507, P-1509, P-1530 through P-1534, inclusive, and P-1566?

COMMISSIONER:

Q. Entered.

EXHIBIT P-1498 ENTERED INTO EVIDENCE.

EXHIBIT P-1499 ENTERED INTO EVIDENCE.

EXHIBIT P-1507 ENTERED INTO EVIDENCE.

EXHIBIT P-1509 ENTERED INTO EVIDENCE.

EXHIBITS P-1530 THROUGH P-1534, INCLUSIVE, ENTERED INTO

EVIDENCE.

EXHIBIT P-1566 ENTERED INTO EVIDENCE.

CHAYTOR, Q.C.:

Q. Thank you. Ms. Chaplin, if we could begin, please, with you telling the Commissioner your educational and professional background?

MS. CHAPLIN:

A. Certainly. I have two university degrees.

The first was a degree in political science and english obtained from Memorial University in 1993. My second degree is a bachelor of public relations with distinction obtained from Mount St. Vincent University, one of the very few schools across the country offering a degree program in PR at that time, obtained in 1997. I was a member of the dean's list and a scholarship recipient. I'm also a member of the International Association for Business Communicators. And of course, learning is a live-long process and I participate in ongoing professional development communications activities whenever I can.

CHAYTOR, Q.C.:

Q. Okay. And what's the International Association for Business Communicators?

MS. CHAPLIN:

A. It's a professional communications association

that's internationally recognized and we have a very active local chapter here.

CHAYTOR, Q.C.:

Q. Okay. And what does it mean to belong to that association? You pay a due, I would take it. And then do you have meetings?

MS. CHAPLIN:

A. You have a membership fee. They have a really good website that offers case studies, webinares, get together, there's national and international conferences that you can avail of. Locally here the chapter probably meets or has opportunities to meet on a monthly basis.

CHAYTOR, Q.C.:

Q. And do you have to have certain credentials to belong to that association?

MS. CHAPLIN:

A. You don't have to have a degree.

CHAYTOR, Q.C.:

Q. But you have to be involved in the communications -

MS. CHAPLIN:

A. In the communications sector.

CHAYTOR, Q.C.:

Q. Okay. And your professional background then?

MS. CHAPLIN:

A. I've spent most of my career in Ontario. I was born and raised here. In 1995 and 1996 I was a marketing communications assistant with Campbell Soup Company in Etobicoke, Ontario. And I should state up front that I have a split or dual background in both marketing and the public relations field. The focus of that particular job was more in corporate communications and external event management, marketing PR such as product launches, those sorts of activities, corporate partnership activity.

In May, 1997 I graduated, at that time I accepted a position as the director of marketing and communications with an expansion Ontario hockey league franchise owned by one of the inventors of Trivial Pursuit, Mr. Scott Abbott. The focus of that particular employment opportunity was split between communications, media relations, community relations activities, game day presentations,

marketing everything from branding from name the team to creating a visual identity for the team, a brand to present to the marketplace.

In September of 1999 I accepted a position originally as a senior strategic communications advisor to a cabinet minister at Queen's Park, the Government of Ontario. Eight months into that opportunity I was promoted to a chief of staff to that particular minister and we served through a number of portfolios, including tourism, citizenship and immigration and seniors and then back to tourism, culture and recreation. The responsibilities of that particular job included managing a staff of ten to 12 and leading the strategic direction on all communications, marketing, policy and issues management on behalf of the minister. Some of the chief responsibilities included building effective stakeholder relations with other

levels of government, industry associations, private sector partners and, of course, the media. I also had oversight for issues management, some crisis communications and development of a corporate image for the

ministry. We prepared policy analysis and briefed the minister prior to cabinet. The minister that I worked for, in particular, also served on a number of cabinet committees which I would accompany him to and brief him in advance, including social policy committee of cabinet and a cabinet committee on privatization and super/build, which was infrastructure issues.

Some of the key accomplishments I'm really proud of during that tenure was working on the development of Canada's first comprehensive disabilities legislation, The Ontarians With Disabilities Act. We also

during that time launched Canada's first elder abuse strategy and presented to the Federal Senate Committee on Bill C-11 pertaining to immigration. We lead the strategic direction on development and positioning of Ontario tourism brands a the time and as a result I was also a member of the Ontario Tourism Marketing Partnership Board, which is a private/public sector board governing the investments that Ontario made in marketing activities. At certain points during my

tenure with the minister I was a primary spokesperson who lead media relations and I also, of course, prepared communications materials including speeches, news releases, news conferences.

Of course, in Ontario governments changed in 2003 and I returned home and accepted the position as communications director to the minister of health, who was Beth Marshall at

that time. I served in the Department of Health from December 29th, 2003 until the end of August, 2005. During my tenure there my primary responsibilities for the minister included media relations, communications advice, issues management, preparation for the House of Assembly, communications representation on Federal, Provincial committees. I accompanied the minister to most events, travelled with him extensively and developed communications materials including communication strategies, news releases, other media activities and speech writing, as well.

During the--or towards the end of August, 2005 I accepted a promotion as the senior

director of communications for executive council within government. I served there until August, 2006, but I would like to note

that I actually resigned that position May 23rd, 2006, but was asked to stay until August 4th, 2006 as we were right in the middle of planning for the Council of Federation Conference. So between the time period of May 23rd to August 4th my exclusive responsibilities were on the Council of Federation Conference, so I actually moved-- relocated my office down to the Council of Federation Conference Secretariat and was no longer involved in the day-to-day communications activities for executive council.

CHAYTOR, Q.C.:

Q. And when did you leave in August, 2006?

MS. CHAPLIN:

A. August 4th.

CHAYTOR, Q.C.:

Q. August.

MS. CHAPLIN:

A. Was my last day worked in government.

CHAYTOR, Q.C.:

Q. Okay. And where did you go then?

MS. CHAPLIN:

A. I accepted an opportunity in the private sector and an offer from Bristol Communications to serve as their senior public relations, public affairs counsel. And I began that role, I took a holiday in between leaving government and starting that new role, and began that in September, 2006 and remained at Bristol until another opportunity presented itself that I couldn't refuse, just this past December, 2007. And I'm currently the vice president of marketing, public relations and account planning with another local marketing communications agency, The Idea Factory.

CHAYTOR, Q.C.:

Q. Okay. Thank you. Now, if we could look then please at P-1499? And this is a document that I'll take you to later, Ms. Chaplin, it's dated February 9th, 2007, "A Proposal for a Crisis Communication Plan" which was submitted to Eastern Health by the Bristol Group during your tenure with Bristol Group. And right now for our purposes at page 3 there's somewhat of a bio presented to you in this proposal that

was being made to Eastern Health. And included in your bio, if we come down the bottom of page 3, you referred to your position there as senior public relations counsel.

MS. CHAPLIN:

A. Um-hm.

CHAYTOR, Q.C.:

Q. And it refers here to the fact that you have a decade of national and provincial public affairs and marketing communications savvy. It refers to your private, or your term in the private industry. And then you move to government and served as chief of staff to the Ontario cabinet minister. And you moved with that minister through four social and economic portfolios. And the next page it says during your tenure in Queen's Park "Carolyn provided strategic advice to the minister for cabinet and cabinet committees, including social policy." And you've told us about that or

you've highlighted that. "Super/build privatization, statutory business where she gained insight into health policy and the drug formulary. Known for her ability to navigate

through tough situations and fix problems," I guess that should be.

MS. CHAPLIN:

A. It's a typo.

CHAYTOR, Q.C.:

Q. Yes. "She was named a member of the premier's crisis communications team for Walkerton." What was that about? I take it that's the Walkerton Inquiry?

MS. CHAPLIN:

A. No, that was the Walkerton water issue.

CHAYTOR, Q.C.:

Q. Yes.

MS. CHAPLIN:

A. Prior to the inquiry.

CHAYTOR, Q.C.:

Q. Okay.

MS. CHAPLIN:

A. Although I was serving as the chief of staff in tourism at the time, not in the ministry of environment, the way Premier Harris operated at Queen's Park is they approached, I guess, response to crisis situations in teams. And I was actually out of the Province of Ontario, out of the country, actually, when Walkerton

first emerged and broke and initially the response team was just the ministry of environment and a few people and I actually was called back to the province as the crisis communications team expanded and we accompanied our minister up to, actually, it's a--funny how certain experiences in live shape you and this is one that certainly has stayed with me. It's not easy to forget the image of going with your minister to the Town of

Walkerton in the days following this outbreak and seeing that caution yellow police tape across every water fountain, every sink, everywhere in town and looking face to face with the people that were directly impacted by the issue. So what this refers to is really in the months that evolved after the initial situation is at Queen's Park every morning and every evening there was constant updates and there was a team of us providing response and advice.

CHAYTOR, Q.C.:

Q. Okay. So the premier's crisis communications team was pulled together when that issue, the Walkerton water crisis emerged?

MS. CHAPLIN:

A. Um-hm, that's correct.

CHAYTOR, Q.C.:

Q. And so what would you do to--what would a

crisis communications team do?

MS. CHAPLIN:

A. They would provide immediate response and advice on communications activities that needed to occur, so it could be in a morning conference call that here's the latest update of information, today, perhaps, we need to get Minister X to contact Mayor Y, those types of activities.

CHAYTOR, Q.C.:

Q. Um-hm. But what was the overall purpose of having a crisis communications team?

MS. CHAPLIN:

A. It was for rapid response as issues emerged that had to be addressed on a day-to-day basis following this.

CHAYTOR, Q.C.:

Q. Okay.

MS. CHAPLIN:

A. Everything from--it could be not necessarily exclusive to communications. It became

obvious in the weeks following Walkerton that there was an economic recovery that needed to occur that impacted particularly our department because it was a tourism area. So we'd step in and say here are the action steps that we need to take or this ministry has to take to respond.

CHAYTOR, Q.C.:

Q. Okay. Then the next paragraph it refers to your job here in Newfoundland and coming back in December of 2003 to work as senior communications advisor to the Minister of Health and Community Services. Now, when you came back, did you--we've heard the term "director of communications", was that your title?

MS. CHAPLIN:

A. That's correct.

CHAYTOR, Q.C.:

Q. Okay. So this says senior communications advisor, but you were, in fact, the director of communications for the department?

MS. CHAPLIN:

A. That's right. These are just bios that we put in proposals from time to time. Generally

speaking, in the private sector you could have multiple bios that you cut and paste from. Because I actually noticed another typo in line 4 in this.

CHAYTOR, Q.C.:

Q. Yes, okay.

MS. CHAPLIN:

A. Where -

CHAYTOR, Q.C.:

Q. That's fine.

MS. CHAPLIN:

A. Okay.

CHAYTOR, Q.C.:

Q. So while in health then you managed stakeholder relations, issues management, media relations, provided policy advice to the minister and developed communication strategies?

MS. CHAPLIN:

A. Well that actually was the typo I was referring to -

CHAYTOR, Q.C.:

Q. Okay.
MS. CHAPLIN:
A. On line 4, "Provided policy advice."

CHAYTOR, Q.C.:
Q. Yes.
MS. CHAPLIN:
A. That obviously looks like an incorrect cut and paste, because I provided policy advice to the minister at Queen's Park, not here.
CHAYTOR, Q.C.:
Q. Okay.
MS. CHAPLIN:
A. In the Government of Newfoundland and Labrador.
CHAYTOR, Q.C.:
Q. That was going to be one of my questions. So you didn't, in fact, provide any policy advice to the ministers of health?
MS. CHAPLIN:

A. No.
CHAYTOR, Q.C.:
Q. And you did, however, develop communication strategies to manage the province's challenges with Oxycontin, cancer clinics, health board restructuring, review of health services and budgetary issues during an era of fiscal restraint. Is the rest of that accurate?
MS. CHAPLIN:

A. That is accurate.
CHAYTOR, Q.C.:
Q. Okay. And then in the next paragraph, prior to joining Bristol you held the position of senior director of communications for the executive council with communications oversight of all social policy portfolios and finance, is that correct?
MS. CHAPLIN:
A. That was the way we divided up the duties at executive council. And I should state that

the communications oversight may not be what it seems. So the way it was divided up was as cabinet submissions came in and part of my role at executive council was to provide communications analysis to cabinet submissions that anything pertaining to social policy portfolio or finance that came forward, I would generally--those analysis would be directed my way. And Ms. Cheeseman, who was the assistant secretary to cabinet for communications at that time had another series of portfolios that she managed.

CHAYTOR, Q.C.:

Q. Okay. It also says then "She also lead

government's issues management response."

MS. CHAPLIN:

A. That's from an issues management response from issues that impacted generally a multiple of departments. So, for example, it might be

like the, I think there was an issue with the crab fishery at the time might be one example or home heating or something that's spread across a number of departments.

CHAYTOR, Q.C.:

Q. More than one department?

MS. CHAPLIN:

A. It wasn't, this is not intended to state that you were leading issues management that each director in the respective departments would be managing on a day-to-day basis.

CHAYTOR, Q.C.:

Q. Right. So, for example, on the issue that we're concerned with, the ER/PR issue, were you responsible while you were at cabinet secretariat for leading government's response on that issue?

MS. CHAPLIN:

A. No. That would be held within the department. But, of course, in this case I think at that

time frame it's fair to say that it was Eastern Health's management on a day-to-day basis.

CHAYTOR, Q.C.:

Q. But in terms of any -

MS. CHAPLIN:

A. But certainly the director -

CHAYTOR, Q.C.:

Q. Yes.

MS. CHAPLIN:

A. Certainly the director of communications within the Department of Health and Community Services at that time would have held responsibility for the daily management of that particular issue.

CHAYTOR, Q.C.:

Q. Okay. So, any response that would have been required by government, that would still rest with the director of communications in the department?

MS. CHAPLIN:

A. That's correct.

CHAYTOR, Q.C.:

Q. Okay. And it also says that you developed communication strategies for budget, auditor

generals' reports and all access to information issues. And what does that mean, that you developed communication strategy for all access to information issues?

MS. CHAPLIN:

A. We used to look at the list that was generated in the Cabinet Secretariat on the policy floor, on the 9th floor, that had a centralized list of all access to information requests that were coming in to government. So, my responsibility from a communications perspective was to review the list and to follow up with each individual communications director within departments, to identify whether they had been included in the loop by their department, to ensure that they knew there was an access to information request occurring. And then, you know, basically to have a discussion with those directors to see whether they were going to be providing any material or whether they felt they needed a communication strategy in response.

CHAYTOR, Q.C.:

Q. Okay. And would the actual package that was anticipated to be sent out in response to the

request, would that come through you?

MS. CHAPLIN:

A. Not necessarily.

CHAYTOR, Q.C.:

Q. And what times would it?

MS. CHAPLIN:

A. Excuse me. Generally, I'm not even sure if the Cabinet Secretariat on the policy level actually saw every request that came in. It may be that I would see packages that related to access to information requests that came in pertaining to executive council, for example, as opposed to a specific department.

CHAYTOR, Q.C.:

Q. And if there were requests which included briefing notes, Q and A's, that type of thing, would you expect to see those?

MS. CHAPLIN:

A. Not necessarily, unless they were pertaining to executive council requests.

CHAYTOR, Q.C.:

Q. Okay, or Cabinet Secretariat?

MS. CHAPLIN:

A. That's right.

CHAYTOR, Q.C.:

Q. Okay. Ms. Chaplin, you've been interviewed by us twice. Thank you. January 5 was the first time we met and then April 3 you were one of the people that we re-interviewed after receiving certain government documentation. Other than Mr. Pritchard, obviously, have you had any discussions about this matter with any current or former employee of the government since leaving government in August of 2006?

MS. CHAPLIN:

A. I'm not sure what your question is.

CHAYTOR, Q.C.:

Q. I'm wondering if you've had any discussions or even since, let's just start with the interview time periods. Have you have any discussions with any former or current employee of government, other than Mr. Pritchard, since coming to speak with me and Mr. Coffey on January 5, 2008?

MS. CHAPLIN:

A. Not relating to my specific testimony here today, no.

CHAYTOR, Q.C.:

Q. Anything at all in terms of this issue, either whether it's the Inquiry or the subject matter

of the Inquiry?

MS. CHAPLIN:

A. I think because a lot of my former colleagues that were still friends, you know, we might have just--I've had conversations with some, just generally that, we're going to appear at

the Inquiry, but not about specific testimony.

CHAYTOR, Q.C.:

Q. Okay. And who would those people be, who are still your friends?

MS. CHAPLIN:

A. Mr. Darrell Hynes would be one.

CHAYTOR, Q.C.:

Q. Anyone else?

MS. CHAPLIN:

A. I can't think off the top of my head.

CHAYTOR, Q.C.:

Q. Okay. And the nature of your discussion with Mr. Hynes being just that we're going to have to go testify?

MS. CHAPLIN:

A. Yes.

CHAYTOR, Q.C.:

Q. And nothing more than that?

MS. CHAPLIN:

A. No specific details.

CHAYTOR, Q.C.:

Q. Okay. And how about Mr. Thompson, Robert Thompson, any discussions with him?

MS. CHAPLIN:

A. Oh, yes, Robert has attended meetings when Mr. Pritchard and I have met.

CHAYTOR, Q.C.:

Q. Okay. So, always in the presence of Mr. Pritchard?

MS. CHAPLIN:

A. That's correct.

CHAYTOR, Q.C.:

Q. No other discussions outside of that?

MS. CHAPLIN:

A. No.

CHAYTOR, Q.C.:

Q. Okay. And how about Elizabeth Matthews?

MS. CHAPLIN:

A. No, I have not spoken to Elizabeth.

CHAYTOR, Q.C.:

Q. And what about Brian Crawley?

MS. CHAPLIN:

A. I have not spoken with Mr. Crawley other than seeing him in passing when we were both

scheduled at the same time in April.

CHAYTOR, Q.C.:

Q. And the same question in terms of any current or former employees of Eastern Health, since coming to speak with myself and Mr. Coffey, have you had any discussions with any current or former employees of Eastern Health?

MS. CHAPLIN:

A. Since coming to speak with -

CHAYTOR, Q.C.:

Q. Yes.

MS. CHAPLIN:

A. No.

CHAYTOR, Q.C.:

Q. Okay. And not Mr. Tilley?

MS. CHAPLIN:

A. No.

CHAYTOR, Q.C.:

Q. And not Susan Bonnell?

MS. CHAPLIN:

A. No.

CHAYTOR, Q.C.:

Q. Okay. If we could have please, P-1534. Ms. Chaplin, this is a letter that we received

from Mr. Pritchard and it's responses to

certain questions that we posed. And included attached to this exhibit, at page 3, there's issues in terms of additional e-mails that were disclosed and this is notes from, we understand, Mr. Thompson--April 2, 2008. And I bring this up with you because there is a section here which deals with your e-mails in particular. So, on page four, the first full bullet, "the Department of Health employs an automatic 180 day archiving procedure. Executive council relies on the manual archiving activities of each employee. This situation combined with the varying habits of employees in the way they maintain or delete current e-mails means that the extent of e-mail from each employee can differ. Examples of some of the problems encountered are as follows, the Carolyn Chaplin records from the

Department of Health do not include the 180 days before she transferred to executive council in 2005. OCIO suspects that those 180 days did not meet the automatic archiving rule and potentially could only be accessed through executive council. However, her executive council records start in August/September 2005

and do not contain the previous 180 days in Health". And it goes on to say "it's possible they were deleted in an effort to make space from the executive council server". And then it also goes on to refer to John Abbott's records, a significant archive was available for search covering the whole period, but no match could be found for the e-mail copied to him by Carolyn Chaplin on July 18, 2005.

MS. CHAPLIN:

A. That actually should say July 19, I believe.

CHAYTOR, Q.C.:

Q. So, you didn't have an e-mail on this matter

on July 18?

MS. CHAPLIN:

A. No.

CHAYTOR, Q.C.:

Q. Okay, so that's a mistake.

MS. CHAPLIN:

A. um-hm.

CHAYTOR, Q.C.:

Q. This issue though about your e-mail for that six month period being missing, did you know that at the time, after you moved to executive council, did you have any trouble at that time

accessing your e-mail from the Department of Health?

MS. CHAPLIN:

A. I don't remember actually--when I moved to executive council, my belief is that I started with a fresh e-mail account, that there would have been no carried over e-mails from the

Department of Health. And I just presumed that those were saved on archives because my system was backed up and, in fact, I handed my successor, like, a CD of all my files, just in case there was something lost electronically in the transfer.

CHAYTOR, Q.C.:

Q. Okay. And you would have had the same e-mail address,I would take it--all of government--your e-mail address didn't change?

MS. CHAPLIN:

A. No, unless there's--I'm not technologically savvy in terms of e-mail management, but I don't know if there's some technology behind the scenes that changes the e-mail address, but it certainly--I didn't have to change my business card.

CHAYTOR, Q.C.:

Q. Right.

MS. CHAPLIN:

A. It's the same e-mail address.

CHAYTOR, Q.C.:

Q. Same e-mail, yes. And I'm just wondering though, so then what do you mean by you think you started a new account when you went with executive council?

MS. CHAPLIN:

A. Well, I recall on my first week on the job having a clean e-mail box, starting the first day you call up your inbox and there's nothing in it.

CHAYTOR, Q.C.:

Q. Okay. And were they in your archives or where were they?

MS. CHAPLIN:

A. They would have been left behind. From my view, they would have been left in the Department of Health.

CHAYTOR, Q.C.:

Q. Okay. And you had no occasion to go looking for any of your e-mails from the department?

MS. CHAPLIN:

A. No, I did not.

CHAYTOR, Q.C.:

Q. And did you raise any question at the time about, well, is this what happens, I start off and I have no inbox, I don't have my prior e-mails?

MS. CHAPLIN:

A. No, I don't think that I would have raised that question at the time because I would have presumed, I'm moving into a new role, starting over, I would have no need to go back and look at my e-mail records from the Department of Health. And from time to time when you're using you computer within government, certainly you get those pop-ups that appear that say, would you like to auto-archive now? I always clicked yes. So, it would be my assumption that there would be a backup tape.

CHAYTOR, Q.C.:

Q. Okay. And when was it brought to your attention that that apparently was not the case?

MS. CHAPLIN:

A. I had no knowledge of this until the day that I heard the media reports that new e-mails had surfaced. I didn't even get advanced notice

that the e-mails that were turned over to the Commission even pertained to me. And in a follow-up conversation I had with Mr. Pritchard and Mr. Thompson, I asked how it was possible that these were missed the first time. Because, in fact, I believe I said to you in the first interview to you and Mr. Coffey that I always thought I had a vague recollection of contacting cabinet secretariat in those early days, but I didn't have any e-mail or print record to accept that knowledge as a true memory.

CHAYTOR, Q.C.:

Q. We had no print record from you actually.

MS. CHAPLIN:

A. No.

CHAYTOR, Q.C.:

Q. Yes. So, you didn't realize when you were at cabinet secretariat that that was an issue.

You always used your auto-archiving whenever that was requested in the system.

MS. CHAPLIN:

A. And the way that I would manage e-mails would be to open file folders that appear in your inbox, so you can sort through as they come

in.

CHAYTOR, Q.C.:

Q. Yes.

MS. CHAPLIN:

A. I would delete on a daily basis e-mail records that I thought I would not need on a go forward basis. For example, we would receive upwards of 30, 40 just headline flashes, so you'd get an e-mail just showing you the hourly news headlines, so there's no need to keep that sort of information. So, you were constantly deleting because there were space issues. And I did notice in executive council not having as much memory as I did in Health,

in terms of how many e-mails could sit in your inbox at one particular time.

CHAYTOR, Q.C.:

Q. Okay. And so you would put any e-mails on a given issue into a file folder on your system and -

MS. CHAPLIN:

A. If I needed them.

CHAYTOR, Q.C.:

Q. Yes.

MS. CHAPLIN:

A. If somebody was just sending me, like, FYI, here is an attached note, I would save that record on my hard drive in a particular file folder and then just delete the e-mail. And anything with an ongoing issue such as the ER/PR issue and it hadn't been resolved when you left Health, you would not have deleted, I take it, those e-mails, other than if someone

sent you an FYI with a media article maybe.

MS. CHAPLIN:

A. That's correct, or if we have confirmed a briefing, I don't know if I'd even keep that type of e-mail.

CHAYTOR, Q.C.:

Q. But anything other than that, you would expect would still exist?

MS. CHAPLIN:

A. That's correct.

CHAYTOR, Q.C.:

Q. And, in fact, those e-mails that you did engage in with cabinet secretariat, of course, have now been produced and we do have those. So, you, in fact did not delete them. Do I understand though, you said for your successor that you would have given her a CD. So, would

you have given her a CD with everything that was in your file folder on whatever issues you were dealing with?

MS. CHAPLIN:

A. That CD contained a folder by folder basis of every House note that would have been produced, every communication strategy, news releases, speeches, those sorts of information.

CHAYTOR, Q.C.:

Q. Did it include your e-mail?

MS. CHAPLIN:

A. No, it did not.

CHAYTOR, Q.C.:

Q. Okay. And if those e-mail were pertinent though to the issue, you didn't give her any e-mail?

MS. CHAPLIN:

A. She would not have had access to whatever was sitting in my inbox.

CHAYTOR, Q.C.:

Q. So, you didn't print off what's on your system in terms of your e-mails? You didn't print that off or you didn't put that onto a CD for her?

MS. CHAPLIN:

A. No.

CHAYTOR, Q.C.:

Q. Okay. So, the files that you had set up on your system for your e-mail and transferring e-mails into the appropriate files, what happened to those files?

MS. CHAPLIN:

A. I would have no idea. That would be an IT question that I couldn't answer.

CHAYTOR, Q.C.:

Q. And you didn't see that though as an important part to have the continuity of the communication flow to also pass that onto--I take it, it's Ms. Mundon that you're referring to?

MS. CHAPLIN:

A. That's right. Well, Ms. Chaytor, I briefed my successor as she was coming in and we had two to three days of transition where she was in the department and I introduced her to all the key contacts within the department. I itemized every file that I had and I used a system. I had a black, pink, red and blue file folders. Each file folder that was on my

desk or within my filing cabinets that was an active file, I put an 8 1/2 by 11 sheet, paper clipped to the file folder with a status update, here's the key go to person for this.

CHAYTOR, Q.C.:

Q. And when you left cabinet secretariat, what did you do with your e-mail account then?

MS. CHAPLIN:

A. I'm not sure because I tendered my resignation in May and then was asked to stay, but I moved to another floor. I'm not sure if I took the same computer with me. And I'm not sure if there's a different protocol within government when an employees leaves the employer, whether they just wipe the system clean. I have no knowledge of that.

CHAYTOR, Q.C.:

Q. Okay. At the department--so this whole issue of your e-mail, the first you learned of this was, I take it, April 3 or the beginning of

April.

MS. CHAPLIN:

A. That's correct.

CHAYTOR, Q.C.:

Q. When you came to see us on April 3. And so

you had no idea that there was anything missing from your e-mail account. And I take it you can't offer the Commissioner any other explanation than what's been put forward here?

MS. CHAPLIN:

A. I'm sorry, but I can't.

CHAYTOR, Q.C.:

Q. And you haven't heard anything articulated other that what's put forward here?

MS. CHAPLIN:

A. No.

CHAYTOR, Q.C.:

Q. In terms of trying to explain this. Did you also use a Blackberry during your time with the department?

MS. CHAPLIN:

A. I did.

CHAYTOR, Q.C.:

Q. And also with Cabinet Secretariat?

MS. CHAPLIN:

A. I did.

CHAYTOR, Q.C.:

Q. And was that the same Blackberry or did you have a new Blackberry given to you -

MS. CHAPLIN:

A. No, I had about three different Blackberries in government. The first one broke.

CHAYTOR, Q.C.:

Q. No, but from going from the Department of Health to Cabinet Secretariat, were you issued a new Blackberry?

MS. CHAPLIN:

A. Maybe, I can't remember.

CHAYTOR, Q.C.:

Q. Okay. And did you use pin messaging?
MS. CHAPLIN:
A. I did from time to time, but very limited. In most cases we used to actually a lot with the media because we tended to be away from our phones for a fair degree of the day, you'd be in briefings meetings and if they really needed to get a hold of you, they'd say, hey, what time do you expect to be wrapped up? It was more real time conversation would be the cases that you would use it. Pin messaging back in 2005 in government was fairly limited.
CHAYTOR, Q.C.:
Q. And the ER/PR issue, did you ever have reason to pin message regarding that issue?
MS. CHAPLIN:

A. I don't think so.
CHAYTOR, Q.C.:
Q. Okay. And so you know that for a fact or do you have some -

MS. CHAPLIN:

A. As far as my memory will take me, I didn't use pinning for this issue. You generally didn't use it for significant issues. It was more if you needed to get someone fairly quickly, more conversational in approach. I also preferred voice mail.

CHAYTOR, Q.C.:

Q. And when you were given your Blackberry and were you given any guidance as to when you were permitted or could best us pin messaging?

MS. CHAPLIN:

A. I didn't even know how to sue pin messaging for, I would say, the first year that I had a Blackberry.

CHAYTOR, Q.C.:

Q. So, at that point who told you about pin messaging and were you given any guidelines as to when it would be appropriate to use pin messaging?

MS. CHAPLIN:

A. I don't remember who specifically told me about pinning and it would be more in the context of hey, check out this feature. And no, as far as I'm aware, there were no specific guidelines around pinning within government.

CHAYTOR, Q.C.:

Q. Your duties then on the department and you've told us a bit about that already in terms of what would be expected dealing with media. Did you have anyone else work with you at the department or did anybody report to you?

MS. CHAPLIN:

A. I did, I had one direct report.

CHAYTOR, Q.C.:

Q. And who was?

MS. CHAPLIN:

A. Stephanie Power.

CHAYTOR, Q.C.:

Q. Okay. And at some point did Deborah Thomas also work in the department?

MS. CHAPLIN:

A. She was seconded over for, I believe, a four-month period while Stephanie went back to Mount St. Vincent University for one final

semester to complete her degree.

CHAYTOR, Q.C.:

Q. And do you recall when that was? It's while you were there, I take it? She worked for you or reported to you, Deborah.

MS. CHAPLIN:

A. She did. I'm just trying to remember if it was the winter of '05 because she was there for a budget time. I believe it was--maybe I'm getting my dates wrong now. I think January until April of 2005.

CHAYTOR, Q.C.:

Q. So I take it Deborah wasn't there during the ER/PR issue first being brought to the department's attention?

MS. CHAPLIN:

A. No, she was not within the department at that time.

CHAYTOR, Q.C.:

Q. And that would be Stephanie was back at that point, I take it?

MS. CHAPLIN:

A. That's correct.

CHAYTOR, Q.C.:

Q. Okay, and who did you report to?

MS. CHAPLIN:

A. We had multiple reporting relationships. On paper we reported directly to the Deputy Minister. There was also a dotted line relationship with the Minister of the department, a dotted line over to the assistant secretary of Cabinet for communications, and I guess informally we also had a lot of contact with the Premier's office.

CHAYTOR, Q.C.:

Q. Okay, and who would be your contacts, the assistant secretary to Cabinet, who would that be?

MS. CHAPLIN:

A. There would have been three individuals during

my tenure, initially Karen McCarthy, then it was Denis Abbott, followed by Josephine Cheeseman.

CHAYTOR, Q.C.:

Q. And who would be your contact with the Premier's office?

MS. CHAPLIN:

A. Elizabeth Matthews and she also had an assistant--actually, Stephanie Power was an

assistant initially over in the Premier's office, so I did deal with Stephanie while she was there and she was, I think her successor was Ken Morrissey.

CHAYTOR, Q.C.:

Q. And what circumstances would require you to have contact with Ms. Matthews?

MS. CHAPLIN:

A. Well Ms. Matthews was copied on press releases before they went out and distributed to the

media, that was the protocol within communications that whenever any department was sending out a news release, for example, it would be sent to the assistant secretary of Cabinet, communications, maybe copied to the senior director at the time, as well as a copy to the Premier's office. Also in the Department of Health, in particular, during my tenure there was a lot of Federal, Provincial discussions. Certainly during that timeframe there was the First Minister's Accord when Premier Williams and his counterparts met with the Honourable Prime Minister Paul Martin, I believe, so there were a lot of joint announcements that we had a lot of dealings on

a frequent basis. And certainly at budget time, we also had a lot of dealings with the Premier's office.

CHAYTOR, Q.C.:

Q. Were there meetings regularly of directors of

communication?

MS. CHAPLIN:

A. No, not frequently.

CHAYTOR, Q.C.:

Q. So no regularly, weekly or monthly meeting?

MS. CHAPLIN:

A. No, in the first year I believe I was there, I remember I started December 29th, 2003 and on the first day I think there was an orientation session with all directors. These were fairly new in government, and then the next time I think we had an official meeting, might have been around budget time or maybe just prior to the House opening and generally the group met more frequently when the House was in session. We used to meet on a weekly basis with the government House leader to discuss upcoming legislation, timelines for the House, ministerial statements, those sorts of housekeeping items.

CHAYTOR, Q.C.:

Q. Okay, and I take it then all the directors of communication throughout government would attend those meetings, and would the communications and consultation branch, director of communication there, the job that you ultimately held, would that person also attend?

MS. CHAPLIN:

A. Yes.

CHAYTOR, Q.C.:

Q. And would Elizabeth Matthews also attend?

MS. CHAPLIN:

A. Whenever her schedule would permit.

CHAYTOR, Q.C.:

Q. Okay, and those were to deal with, you said upcoming legislation. Would it also have anything to do with any other issues that may be percolating within the government which were thought could become a public issue?

MS. CHAPLIN:

A. No, those meetings during the House sessions of the government House leader were pertaining to House of Assembly business.

CHAYTOR, Q.C.:

Q. Okay, and were there agendas sent out as to what would be discussed?

MS. CHAPLIN:

A. No.

CHAYTOR, Q.C.:

Q. Any minutes kept of those meetings?

MS. CHAPLIN:

A. No.

CHAYTOR, Q.C.:

Q. And do you know whether or not the ER/PR issue ever got discussed in that forum?

MS. CHAPLIN:

A. No, it was suggested, because certainly when I first moved to executive council in--I'm getting my dates mixed up here--the fall of 2005.

CHAYTOR, Q.C.:

Q. September 1, I guess.

MS. CHAPLIN:

A. Yeah, the fall of '05, I remember sitting down with Ms. Cheeseman shortly after that, that time period, maybe two, three weeks into the

job and we discussed the idea of doing a communications retreat and actually it sticks out in my mind because I made the suggestion

that often times when we held them in the conference centre downstairs, people got pulled away, there was always an excuse why people couldn't get together. It was too easy for people to slip away, so why don't we book at a site off site and it was suggested that we meet at the Rooms and we discuss possible agenda items and I did suggest a discussion around ER/PR.

CHAYTOR, Q.C.:

Q. Okay, so that was your suggestion, around ER/PR. And what did--what was Ms. Cheeseman's response to that?

MS. CHAPLIN:

A. I don't recall a specific response, I mean, certainly it was a welcomed suggestion and it was one of many issues that we were going to

put on the agenda.

CHAYTOR, Q.C.:

Q. And do you know when that discussion took place?

MS. CHAPLIN:

A. That would have been, I'm not sure when we had scheduled that retreat, to be honest. I don't know if it was something that we were

discussing in early October for a later meeting in October. I can't recall the dates.

CHAYTOR, Q.C.:

Q. Was it after the issue, we understand the issue became a matter of public discussion on October 2nd?

MS. CHAPLIN:

A. Yes, I think so.

CHAYTOR, Q.C.:

Q. So it was after that?

MS. CHAPLIN:

A. It was after that timeframe.

CHAYTOR, Q.C.:

Q. And had you had any discussion with Ms. Cheeseman or anyone else at Cabinet Secretariat about the ER/PR issue after you went there on September 1st--up until it broke in the public?

MS. CHAPLIN:

A. I can't say for certain, but what seems to stick out in my mind is a couple of weeks into the job just talking, sitting down in her office and talking about all the issues that were occurring within the Department of Health at that time, but I'm not sure, in fairness,

that would have even--I know ER/PR was one of those issues, but in fairness to Ms. Cheeseman, I'm not sure if that would have registered with her. I think that a lot of people knew that I was very passionate about health care communications, I really enjoyed

my tenure with Health and Community Services and this was a great opportunity for me to go to executive council certainly, but I did miss the department and I think they may have viewed those types of conversations as just me being in transition and letting go of the department and trying to adjust to my new role.

CHAYTOR, Q.C.:

Q. And did you have discussions with anyone else other than Ms. Cheeseman on the ER/PR issue when you first went there? In the first month.

MS. CHAPLIN:

A. I believe I had a conversation with Minister Ottenheimer after I left, just about the status.

CHAYTOR, Q.C.:

Q. And what do you recall about that discussion?

MS. CHAPLIN:

A. I know we're kind of jumping ahead in sequence.

CHAYTOR, Q.C.:

Q. Well we can come back to it, if you wish.

MS. CHAPLIN:

A. I think it would be better to do it in the context.

CHAYTOR, Q.C.:

Q. Okay, sure and you can think about it.

MS. CHAPLIN:

A. Yes.

CHAYTOR, Q.C.:

Q. Okay, no trouble. And you were telling me then how you reported and technically you reported to the Deputy Minister with a dotted line to the Minister. So I take it that if you need to go directly to the Minister, you were welcomed to do that?

MS. CHAPLIN:

A. Not only was I welcomed to do that, I think it's fair to say that I spent more time with the Minister on a daily basis than I did the Deputy Minister and that was certainly--I worked with, I'd like to back up for a second,

if I could.

CHAYTOR, Q.C.:

Q. Sure.

MS. CHAPLIN:

A. I had two deputy minsters in the Department of Health that I worked with during my tenure; the first being Ms. Debbie Fry. We had an extremely close working relationship and I think at that time my time would have been split equally between the Deputy and the Minister. Mr. Abbott arrived in December of 2004 and I remember in the initial round of meetings he did with his direct reports, so all the ADMs and then myself, that we talked about the nature of the role and the types of--how we wanted to work things, I guess, and it certainly, from my perception, was his view that you do your thing with the Minister as long as, you know, we touch base and be kept in the loop.

CHAYTOR, Q.C.:

Q. Okay.

MS. CHAPLIN:

24 A. And certainly, I think this might be helpful
25 for Madam Commissioner, if I could just

1 explain what a day was like in the role of a
2 director of communications, just so you'd get
3 a sense of why you would spend more time with
4 the Minister verses a Deputy Minister.
5 CHAYTOR, Q.C.:
6 Q. Sure.
7 MS. CHAPLIN:
8 A. Certainly when you would arrive in the
9 department every morning, the first thing that
10 I would do is sit down with Stephanie and we'd
11 do a little bit of a media analysis in terms
12 of what type of coverage was held the day
13 before, what issues might be coming up on a
14 daily basis, what issues were carried over
15 from the previous day. Then when the Minister
16 arrived, the Minister, myself and his
17 executive assistant, Mr. Hynes, would sit down
18 and we would go through the same sort of

exercise, what types of issues might emerg, what's on tap for the day. It might be that the Minister had a speaking event that afternoon, so we'd review a speech. It might be that Cabinet was the following day and we would have to go through a communication strategy that would be presented to Cabinet.

Certainly when the House was in session, we would set aside the timeframe between 12 and 1:30 to prepare for anticipated questions in the House. I would ask all the ADMs to be on standby so that if the Minister needed to be briefed on a particular issue, they could join me in those meetings. We would on a daily basis have upwards of 20 to 25 media requests that would be coming into the department because health care was a very focal point at that point in time, and we would receive a lot of calls, from not only community papers here,

as well as local media, but certainly national media as well and we would have to schedule in interviews throughout the Minister's day. I would accompany the Minister to the House of Assembly and sit there during question period to see what came up, you'd hang around because media, nine times out of ten wanted to speak to the Minister in a scrum following the question period. So we would do that and I would get back to my desk, usually around 3:30, quarter to 4 in the afternoon and then begin the rest of my work.

And then my role with the Deputy would be

in the morning I would usually link in with him if he was around and say, these are the issues that are coming up today. Minister FYI are doing the following media interviews, or we've got this briefing, so we tried to keep each other in the loop as much as possible.

CHAYTOR, Q.C.:

Q. Okay, and what was your relationship like with Mr. Abbott?

MS. CHAPLIN:

A. I had a good relationship with him and it was very collegial.

CHAYTOR, Q.C.:

Q. Okay, and also for your Minister Ottenheimer?

MS. CHAPLIN:

A. We had a really good working relationship.

CHAYTOR, Q.C.:

Q. And obviously you had frequent contact with both of them daily?

MS. CHAPLIN:

A. Yes, I did.

CHAYTOR, Q.C.:

Q. And if not hourly contact with the Minister on most days, a typical day that you've just described. And when you indicated others that

you would report to being the assistant

secretary to Cabinet, what would necessitate contact with Josephine Cheeseman or her predecessors?

MS. CHAPLIN:

A. It was for housekeeping things or scheduling things, like executive council maintained responsibility for a communication's calendar that looked at short-term and long-term communication's activities, so they would be given a heads up that you were making an announcement on one day or sending out a press release on another. We would send over calendar items to them that included when the Minister was speaking in the community or when he was travelling to a Federal or Provincial territorial meeting. Sometimes they would bring things to our attention that we had to be aware of or gather the group. But I remember when I first came to Government of Newfoundland being surprised at, I guess the infrequent interaction with executive council, if you will, compared to my experience at Queen's Park. But in fairness, I also worked in a different environment at Queen's Park

because I was considered a political staff at Queen's Park and a civil servant within government here.

CHAYTOR, Q.C.:

Q. And obviously we're aware that in July you do make contact with executive council or with Cabinet Secretariat and with the Premier's officer regarding the ER/PR issue.

MS. CHAPLIN:

A. So what circumstances would necessitate you making that kind of contact, so other than what you've described if you're going to have a press release or--when else would you have made contact with either the Premier's office or with Cabinet Secretariat?

MS. CHAPLIN:

A. When there was an issue that was emerging that was about to become a public issue, if it was a significant issue. Sometimes myself, I would go direct to the Premier's office, it depends on what the issue was and how quickly you needed to get information to somebody.

CHAYTOR, Q.C.:

Q. And was that a common occurrence in your time

at the Department of Health that such an issue

would arise?

MS. CHAPLIN:

A. I would say fairly frequently.

CHAYTOR, Q.C.:

Q. And within the department itself, were you considered part of the executive team?

MS. CHAPLIN:

A. I attended executive meetings.

CHAYTOR, Q.C.:

Q. And is that different attending the meeting, is that different than being part of the executive team?

MS. CHAPLIN:

A. I would say yes.

CHAYTOR, Q.C.:

Q. And so what was your role at those meetings?

MS. CHAPLIN:

A. Really that was just a weekly opportunity where you could be informed of what was going

on in the respective divisions within the department. It was a fairly large department and in fact, not all the staff was on site. For example, our medical services division, led by Dr. Ed Hunt, was actually located at Belvedere, so we didn't see a lot of people on

a daily basis. So it was a good opportunity to catch up. We would discuss a range of things, including it might be that we were in the middle of a business planning exercise or there was something required for the central agency. Often times you were asked for updates on certain policy initiatives or like I said, annual business plan. We'd have fairly lengthy executive meetings during the budget deliberations. I would usually give me, walk them through a communication's calendar, here's what the Minister is doing over the next week or so. And certainly that

was my forum when we were planning for House of Assembly sessions to sit down with each of the ADMs and identify what issues we anticipated would come up during a particular session. I would inform them that I would be sending out a note asking them and their staff to complete briefing notes.

CHAYTOR, Q.C.:

Q. So I take it the Minister would attend, the Deputy Minister, the ADMS -

MS. CHAPLIN:

A. The Minister did not attend.

CHAYTOR, Q.C.:

Q. The Minister did not attend those meetings.

MS. CHAPLIN:

A. No.

CHAYTOR, Q.C.:

Q. Okay, so the Deputy Minister, the ADMs -

MS. CHAPLIN:

A. Myself and the Minister's executive assistant.

CHAYTOR, Q.C.:

Q. So Mr. Hynes.

MS. CHAPLIN:

A. That's correct.

CHAYTOR, Q.C.:

Q. And what about any contact with the health authorities while you were at the Department of Health, did you have contact?

MS. CHAPLIN:

A. I did, that relationship evolved. First I'd like to state that there was no formal reporting relationship between the health authorities and the department from a communication's perspective. When I first arrived at the department, we had 14 health boards across the province, so I called each of my counterparts and introduced myself and

just asked what the communication flow was like with the department, if they have regular

calls, I would like to participate and be included so that I could kind of be kept in the loop of what was going on across various regions in the province.

CHAYTOR, Q.C.:

Q. So you'd phone the senior communications person or director of communications in the 14 boards?

MS. CHAPLIN:

A. That's correct.

CHAYTOR, Q.C.:

Q. Did they all have a director of communications or a similar position?

MS. CHAPLIN:

A. I'm not--I don't think Labrador Health Authority had a director of communications at that time.

CHAYTOR, Q.C.:

Q. But most of them.

MS. CHAPLIN:

A. But most of them did.

CHAYTOR, Q.C.:

Q. And so you made contact with them and then did

you ultimately take part in any regular conference calls or meetings?

MS. CHAPLIN:

A. They weren't regular, I would say initially once every couple of months.

CHAYTOR, Q.C.:

Q. And what was the purpose of those calls?

MS. CHAPLIN:

A. Just so everybody could update each other about what was going on in their regions and sometimes you had, like health promotion issues that might be consistent across the board. It was just information sharing, really.

CHAYTOR, Q.C.:

Q. Did the issue of ER/PR ever come up on those calls or meetings?

MS. CHAPLIN:

A. No, those types of calls predated--I'm still talking about the group as 14 directors that was prior to the board integration and that was well before the ER/PR issue.

CHAYTOR, Q.C.:

Q. So did those calls not continue when the boards were down to four? Did you not then

continue to have contact?

MS. CHAPLIN:

A. Well then it was a more management number and we tended to communicate on a one-to-one basis. Sometimes we had calls.

CHAYTOR, Q.C.:

Q. So you would still sometimes have conference calls, but you had less frequent conference calls when it came down to four people or five people?

MS. CHAPLIN:

A. I think that's fair to say.

CHAYTOR, Q.C.:

Q. And the reason for that being?

MS. CHAPLIN:

A. As I just stated because you had the ability with a smaller number to communicate on a one-to-one basis.

CHAYTOR, Q.C.:

Q. And you continued to do that?

MS. CHAPLIN:

A. Continued to do that.

CHAYTOR, Q.C.:

Q. And so I take it you would have discussions with Susan Bonnell at Eastern Health from time

to time?

MS. CHAPLIN:

A. That's correct.

CHAYTOR, Q.C.:

Q. But no set formal period for meeting or discussing.

MS. CHAPLIN:

A. No.

CHAYTOR, Q.C.:

Q. And you would also have discussions then with her counterpart in the other three health boards?

MS. CHAPLIN:

A. That's correct.

CHAYTOR, Q.C.:

Q. And there were still some occasions when all five or whatever of you would get on the line together and have discussions?

MS. CHAPLIN:

A. That's correct and just to give you an example, the types of calls that would necessitate four or five directors being on a call might be that all of us were discussing pandemic flu planning, for example, so it was an initiative that was going on across the

province that we were dealing with Federal counterparts, verses one particular health authority might have an issue in their area that would necessitate a one-to-one call and one example that comes to mind is when we were releasing the Hay report for Western Health, so the director of communications at that time and I would have exchanged conversations.

CHAYTOR, Q.C.:

Q. Okay, so you would have liaised with her or him then.

MS. CHAPLIN:

A. That's correct.

CHAYTOR, Q.C.:

Q. And what about the ER/PR issue then, did that ever come up in any of the--you said it didn't come up when it was 14 because it was before that, obviously, but when it's down to four or five of you in your group calls, did the ER/PR issue ever get discussed?

MS. CHAPLIN:

A. Not during my tenure. I think it's important to note here, I was only in the department once ER/PR came to the department's attention.

CHAYTOR, Q.C.:

Q. Five or six weeks.

MS. CHAPLIN:

A. I was only there for about five and a half

weeks and two weeks of which I was actually on vacation.

CHAYTOR, Q.C.:

Q. So it didn't come up. You don't even know, I guess, if you had a phone call in that period of time.

MS. CHAPLIN:

A. No, that's fair to say.

CHAYTOR, Q.C.:

Q. And in terms of, what was your relationship with Susan Bonnell, how did you get along with Susan?

MS. CHAPLIN:

A. Oh we had a very collegial relationship.

CHAYTOR, Q.C.:

Q. Okay, and did you know her prior to?

MS. CHAPLIN:

A. No, I did not.

CHAYTOR, Q.C.:

Q. Okay, so you only met her through making contact once you took your job at the Department of Health? Okay.

MS. CHAPLIN:

A. That's correct.

CHAYTOR, Q.C.:

Q. If I could look, please, at P-0060? We have a number of press releases in this exhibit which you -

MS. CHAPLIN:

A. These are not in my book.

CHAYTOR, Q.C.:

Q. No, but if you wish -

MS. CHAPLIN:

A. They're previous exhibits, okay.

CHAYTOR, Q.C.:

Q. They are previous exhibits and if you wish, you can scroll down but I'll take you to the parts and these are a number that you would have been involved in, you're usually the contact person. You see here "Media Contact, Carolyn Chaplin". And this one on the first page is March 30th, 2004, budget 2004, outlines health blueprint for reform, and of course, Ms. Marshall is the Minister at the time. And the four key initiatives included "creation of regional and integrated health authorities, board integration, and so it's

going to be integrated on smaller corporate structures to better reflect the population base of our province and to adopt the best practices, culture to continually evaluate the programs and services we currently deliver and build upon the achievements in other jurisdictions." Now, Ms. Chaplin, would you have drafted this press release?

MS. CHAPLIN:

A. I believe that one, yes.

CHAYTOR, Q.C.:

Q. And this, I take it, was the announcement of the integration of services down from the 14 to the four?

MS. CHAPLIN:

A. No, it was not.

CHAYTOR, Q.C.:

Q. No? What's this about?

MS. CHAPLIN:

A. The structure--no, this is, can you go to the beginning?

CHAYTOR, Q.C.:

Q. Sure.

MS. CHAPLIN:

A. I'm sorry, I might be mistaken. This is March

30th, 2004, that looks like budget days, so this would have been a budget news release that outlined we were heading in the policy direction, but it's not actually the news release that announces the structure.

CHAYTOR, Q.C.:

Q. No, and there is another one that, one that actually comes into effect in January 2005, it's announced. But this one was certainly setting out the plan, if you look under integrated government structures, "Our health and community service system needs to evolve to ensure it is in step with the most progressive practices across the country. The government will create new regional integrated

health authorities to provide safe quality and focus services." So this seems to be the announcement coming out of the budgetary process, is that right?

MS. CHAPLIN:

A. It is, but the more detailed announcement about the restructuring of health boards actually occurred in September.

CHAYTOR, Q.C.:

Q. Okay, of '04?

MS. CHAPLIN:

A. Of '04.

CHAYTOR, Q.C.:

Q. "Community health services will be combined with institutional nursing home services to create a single accountable authority to ensure people within the boundaries have access to the care they need." And then there's some talk about what's happened in other jurisdictions. Also included in here

was the best practice review and it says "Our health and community services organizations must constantly demonstrate their ability to improve quality control costs and demonstrate positive health outcomes. The government will conduct periodic assessments of our current practices to benchmark itself against the best practices of other organizations in jurisdictions. The best practice reviews will include examination of clinical practice guidelines, workplace injuries, indicators for health outcomes and bed utilization rates." And do you know during your time in the department, now this is March of 2004, do you know if that best practice's review -

MS. CHAPLIN:

A. I'm not really sure, to be honest, because I should explain to you the way that--that's why I asked to go back and see if it was a budget

release because the way that budget releases generally worked, and this would have been in my first four months in the department, while you were holding the drafting pen, a lot of these individual components, some of the information came from the relevant policy divisions within the department. So in the case of best practices review, that would have come--that information would have come from Ms. Loretta Chard, who is the ADM at the time.

CHAYTOR, Q.C.:

Q. If we could look at page 5 of the same exhibit, it's another news release and this one is the announcement of the board representation for the new four regional integrated health authorities, January 7th, 2005. And again, I believe your name is associated with them, media contact person. So would you have also been involved in drafting this?

MS. CHAPLIN:

A. Yes, I would.

CHAYTOR, Q.C.:

Q. And this refers to "Minister Ottenheimer today naming the new representation for all four RIHA's and there is going to be 18 members for Eastern Health." And this paragraph here says, "It is expected that the incoming boards will meet this month to begin their strategic planning." And again this is January 2005. "Develop budget proposals and continue with the implementation of the transition. The department will continue to provide leadership to the regional health authorities. Existing boards will remain in place to continue with day-to-day operations until midnight of March 31st, 2005 when the new regional integrated health authorities assume legal responsibility and the transfer of duties is complete. In the interim, all significant operational decisions will be made in consultation with and with the concurrence of the incoming chairs and board members." So I take it that's from the date of this announcement, January 7th until March 31st, 2005, when legally the transfer is made to the new

authority.

MS. CHAPLIN:

A. That's correct.

CHAYTOR, Q.C.:

Q. So all significant operational decisions are to be made in consultation with the new incoming chair and board members. So I take it from that that the old board--and the old board is going to consult with the new people who are coming in on any operational decisions, is that what that meant?

MS. CHAPLIN:

A. I just want to reread it, if I might?

CHAYTOR, Q.C.:

Q. Sure, absolutely.

MS. CHAPLIN:

A. Because I think this was the transition period and I'm not sure of the sequence of events, if we've already named members to the new boards or not.

CHAYTOR, Q.C.:

Q. Okay, this is the announcement that does that,

I'm sorry, if you just continue on then, "here's the meeting of the people"?

MS. CHAPLIN:

A. Oh, sorry, yes, so what this is suggesting is in the next couple of months there has to be a good knowledge transfer between the former boards and the incoming boards.

CHAYTOR, Q.C.:

Q. Okay, and it was your understanding that the boards would be involved in significant operational decisions, the boards, the incoming chairs and the board members.

MS. CHAPLIN:

A. I think we're starting to steer into a direction of more policy related questions, I'm not sure if I can answer all of your specific questions.

CHAYTOR, Q.C.:

Q. Okay, so who would have drafted this?

MS. CHAPLIN:

A. I would have drafted it based on the information provided me from the relevant policy experts within the department.

CHAYTOR, Q.C.:

Q. So you would have received that information from the relevant policy expert within the department?

MS. CHAPLIN:

A. That's correct.

CHAYTOR, Q.C.:

Q. And if we look at the new board members, the E, I understand, if we scroll to the end, E means that they are existing board members?

MS. CHAPLIN:

A. Yes.

CHAYTOR, Q.C.:

Q. And in Eastern Health we have 18 and when I count those up, six of them were existing from the previous board and the remaining 12 were

new people. Central, two people remain, Western, two people were from the old board and Labrador Grenfell, one existing member continued on. And again, you would have received that information, I take it, from someone else in the department?

MS. CHAPLIN:

A. That's correct.

CHAYTOR, Q.C.:

Q. And your job then being to put it into a format -

MS. CHAPLIN:

A. To communicate it.

CHAYTOR, Q.C.:

Q. Yes, to communicate it in the appropriate format. Now there is one other, page nine then, is the news release where Mr. Tilley is named as the CEO and that's January 21st, 2005. And again, I take it you would have

received the information from others within the department, the appropriate people, and then you would put it into an appropriate format to be released?

MS. CHAPLIN:

A. That's correct.

CHAYTOR, Q.C.:

Q. And this has a similar paragraph that I directed you to in the last one, it says, "Existing CEOs will remain in place to continue with day-to-day operations until midnight on March 31st, 2005 when the new regional integrated health authorities assume legal responsibility and the transfer of duties is complete. In the interim all significant operational decisions will be made in consultation with the concurrence of the new CEO." So I take it there was also a transitional period for the CEOs as well?

MS. CHAPLIN:

A. That's correct.

CHAYTOR, Q.C.:

Q. Mr. Tilley, in this case, because this only pertained to Eastern Health, the CEO of Eastern Health.

MS. CHAPLIN:

A. It would have been Mr. Tilley in transition with all of the other former -

CHAYTOR, Q.C.:

Q. CEOs of the other -

MS. CHAPLIN:

A. Yes, that's correct.

CHAYTOR, Q.C.:

Q. The other organizations which were being merged to form Eastern Health? And if we continue on then, it says, "As government continues to complete the transition, the department will engage the CEOs in beginning the strategic planning with the new health authorities and finalizing the mandates of the regional authorities. Incoming CEOs in consultation with their boards will focus on shaping senior teams and the administrative structure. On September 10th, government announced"--so that's the September 10th

reference that you were referring to, 2004, I take it--"government announced the transformation of 14 provincial health authorities to four regional health authorities as a necessary step in renewing our health and community services system and meeting clients needs. The new administrative structure will provide better co-ordination and planning for the health needs of regions and reduce duplications of services.

MS. CHAPLIN:

A. That announcement actually occurred September 10th, 2005.

CHAYTOR, Q.C.:

Q. 2005, no it must have been '04.

MS. CHAPLIN:

A. No, sorry, the reference at the bottom -

CHAYTOR, Q.C.:

Q. Yes.

MS. CHAPLIN:

A. - to the September 10th, "on September 10th, Government announced," that's September 10th -

CHAYTOR, Q.C.:

Q. It has to be 2004.
MS. CHAPLIN:

A. Sorry, you're correct.
CHAYTOR, Q.C.:
Q. Because this -
MS. CHAPLIN:
A. Yeah.
CHAYTOR, Q.C.:
Q. Okay.
MS. CHAPLIN:
A. Sorry about that.
CHAYTOR, Q.C.:
Q. That's fine, okay. So Ms. Chaplin, tell us when did you first hear about the ER/PR issue?
MS. CHAPLIN:
A. From my best recollection, my initial involvement with the ER/PR issue came from notification through a phone call with Ms. Susan Bonnell on what I now believe to be the

afternoon of July 18th.

CHAYTOR, Q.C.:

Q. Okay, and why is it that you believe it's--now that you believe that it's the afternoon of July 18th?

MS. CHAPLIN:

A. Well, when we first met in--when I met with you and Mr. Coffey in January and then in

April, I always maintained that I wasn't sure whether that phone call first came in on the afternoon of the 18th or early morning on the 19th. But what has always been clear in my mind has been relatively the sequence of events that occurred after that phone call, and just looking at all the documentation in front of me, in terms of the time, it would have had to have been the afternoon of the 18th.

CHAYTOR, Q.C.:

Q. Okay. So do I take it that the documentation,

the e-mails that were produced ultimately in April of this year, reviewing those, that's been able to refresh your memory that the time must have been the afternoon of the 18th?

MS. CHAPLIN:

A. That would be correct.

CHAYTOR, Q.C.:

Q. Okay, all right, and what do you recall having been discussed between yourself and Ms. Bonnell on the afternoon of the 18th?

MS. CHAPLIN:

A. Well, I remember the phone call actually took me a little by surprise, in the sense that the

initial call was phrased to me in the context of "Carolyn, I'd like to pick your brain on something." So using that opening phrase, I think what unfolded throughout the call kind of surprised me, because I might have been expecting something else. So during that

call, Ms. Bonnell certainly identified that they had--they thought that they had an issue occurring in their lab services. She indicated at that time that they had a patient, she explained, who had initially had an ER/PR test done in the lab and then had sought a second opinion in the United States that led to a different result, and that that had prompted oncologists to look at a small sample around--I'm not sure if it was around that time frame, but they certainly picked another handful of patients and retested that group, and they saw some conversion rates, and -

CHAYTOR, Q.C.:

Q. So you have a clear--I notice that you're looking at your notes. Do you have a clear recollection of that call? Do you recall what was said?

MS. CHAPLIN:

A. No, I do. I'm giving you the gist of that conversation.

CHAYTOR, Q.C.:

Q. Yes, I'm just trying to--just wondering how much you recall independently.

MS. CHAPLIN:

A. So she went through -

CHAYTOR, Q.C.:

Q. And it's not a problem if you need to look at your notes, but I'm just wondering -

MS. CHAPLIN:

A. Yeah, I'm just using it to make sure that I hit the highlights. I mean, I have a fair understanding and recollection of what occurred in that call and I realize that I'm under oath, so I'm just giving you the best recollection that I can.

She went through certainly that they were going through the retesting and that they were potentially looking at--they were having a discussion internally about disclosure and they were looking potentially at doing an announcement as early as that Thursday, and potentially the following Monday.

CHAYTOR, Q.C.:

Q. And you remember her telling you that or was that something that you recollect having seen the e-mail?

MS. CHAPLIN:

A. No, I remember her having the discussion about "we're looking at disclosing" and I think I might have asked the question of "how quickly? How soon are we going to be in a position to notify the public?" and she said "potentially this Thursday, maybe the following Monday."

CHAYTOR, Q.C.:

Q. Okay, so the actual days, Thursday and Monday, you recollect that?

MS. CHAPLIN:

A. That sticks out in my mind.

CHAYTOR, Q.C.:

Q. Okay, and so what else did she say?

MS. CHAPLIN:

A. We did talk about--and I said "well, certainly, from my communications perspective, open and timely disclosure is the preferred approach. But in this case, given the number of patients"--and she did say to me that we

were potentially looking at retesting a time

period between 1997 and 2004, although it wasn't confirmed, and that potentially there was--I asked how many patients would be impacted by this, and the number that was replied to me was between 1200 and 1500 initially.

CHAYTOR, Q.C.:

Q. Okay. So that number came from Ms. Bonnell, 1200 to 1500?

MS. CHAPLIN:

A. It did.

CHAYTOR, Q.C.:

Q. Those numbers, okay. Anything else?

MS. CHAPLIN:

A. Yes, I asked, at some point in the conversation, whether there had been notification to the Department, because it would surprise me for that to be an official

notification to the Department. Certainly I perceived the call to be a heads up with a blend of obviously she's picking my brain.

CHAYTOR, Q.C.:

Q. Yes, what was she trying to pick your brain about? What was it? What advice did she seek?

MS. CHAPLIN:

A. Certainly my impression on that call, as I recall, my memory is that I was left with the impression, right or wrong, that there was an internal debate going on within Eastern Health.

CHAYTOR, Q.C.:

Q. And what was the debate about?

MS. CHAPLIN:

A. About the timing of--or I don't know if she-- I'm not sure if it was the timing at that point or the way in which they were going to disclose, and I said "well, of course you have

to take this to a full press conference." We talked about a technical briefing for media, and we did say "well, what about the patients?" and in responsible disclosure, patients being notified first. So I remember us having that debate, and how quickly could patients be notified.

CHAYTOR, Q.C.:

Q. Okay, and when you say you remember us having that debate, so you were saying to her she needed to do a full press conference and the results, so a discussion about the patients.

So what was the debate around the patients?

MS. CHAPLIN:

A. It wasn't necessarily a debate about the patients, but with a full blown press conference, because I do remember the issue of confidence in the lab system coming up, in the sense of this was not the only type of

immunohistostaining procedure that they did, and I could be getting my medical terminology wrong, and I apologize for that, but it's not my area of expertise, but -

CHAYTOR, Q.C.:

Q. You can say IHC. That's what most of us use.

MS. CHAPLIN:

A. IHC. That's good. Thank you very much.

CHAYTOR, Q.C.:

Q. Okay. So there was confidence in the lab mentioned between--who brought that up? Was that you or Ms. Bonnell mentioned that?

MS. CHAPLIN:

A. That was Ms. Bonnell mentioned that.

CHAYTOR, Q.C.:

Q. And what was the issue about the confidence or loss or potential loss of confidence in the lab?

MS. CHAPLIN:

A. I'm not really sure, to be honest, at that

point. I think I have an appreciation for it by the time later in the week rolled around, but this is initial call and trying to digest what she's telling me, have an accurate recollection that I can go and pass it on.

CHAYTOR, Q.C.:

Q. Okay. So that was a factor that was being brought up in terms of the debate as to whether or not to publicly disclose the issue, I take it?

MS. CHAPLIN:

A. It was a factor that came up in that conversation and we did talk about the types of patient notification or how we might notify patients, and I did suggest--what came to my mind first and foremost as an initial notification to patients was a registered letter.

CHAYTOR, Q.C.:

Q. So you suggested that?

MS. CHAPLIN:

A. I did.

CHAYTOR, Q.C.:

Q. Okay, and was there any feedback from Ms. Bonnell on that suggestion?

MS. CHAPLIN:

A. I think, and this is a vague recollection, but I think this is where I became aware that their lawyers were engaged, in a sense there was some discussion in that call that their lawyers didn't view that as a good idea.

CHAYTOR, Q.C.:

Q. And why not?

MS. CHAPLIN:

A. That I can't say.

CHAYTOR, Q.C.:

Q. She didn't offer that, as to why?

MS. CHAPLIN:

A. I can't remember that specific level of detail.

CHAYTOR, Q.C.:

Q. Okay.

MS. CHAPLIN:

A. But I do remember that we did talk about--I said "have you gone and looked at Labrador Grenfell, in terms of a health authority who has recently been through a disclosure issue?"

CHAYTOR, Q.C.:

Q. So you offered that to her? You mentioned that to her?

MS. CHAPLIN:

A. Yeah, just to see "have you chatted with your colleagues?"

CHAYTOR, Q.C.:

Q. And did she seem to know about that?

MS. CHAPLIN:

A. She would have been aware of Labrador Grenfell as an issue, but I don't think that she had a knowledge of specific details.

CHAYTOR, Q.C.:

Q. So you were suggesting that she should probably talk to the director of communications at Labrador Grenfell, because they'd been through a mass disclosure issue recently themselves?

MS. CHAPLIN:

A. Well, not necessarily her, but someone in the

organization because I'm not even sure if Labrador Grenfell had a director of communications in place at that time. So it might have been a suggestion that "someone in your organization should follow up with Mr. Rowe," who is the CEO of the Labrador Grenfell

Health Authority.

CHAYTOR, Q.C.:

Q. And why did Labrador Grenfell come to your mind? What did you know about Labrador Grenfell's situation?

MS. CHAPLIN:

A. Labrador Grenfell was actually something that popped up in my first phone call before I even arrived to the province. In my introductory call with my former deputy minister, we were just chatting about the types of issues that were ongoing in the Department, because I wanted to get a sense of what I was moving into. That was one of the examples that came

up in that conversation. So certainly, I had an awareness that there was--they had had an issue or an adverse event that had occurred.

CHAYTOR, Q.C.:

Q. Okay, and after you then came to the Department, were you--did you have any involvement in that issue?

MS. CHAPLIN:

A. No, I did not.

CHAYTOR, Q.C.:

Q. Okay, and did you hear the issue discussed

around the Department as being an issue that had some learnings from it?

MS. CHAPLIN:

A. I can't say for certain, but I think I must have, because I was able to recall, the next morning in a call with her, some details around what issues they ran into, in terms of--because they did have a subsequent class

action lawsuit.

CHAYTOR, Q.C.:

Q. Yes.

MS. CHAPLIN:

A. But in that case, and we were discussing the idea of the registered letter -

CHAYTOR, Q.C.:

Q. Okay. So that comes up, you call Ms. Bonnell again, or you and Ms. Bonnell have a discussion again the morning of the 19th?

MS. CHAPLIN:

A. We do, we have a follow-up call on the 19th.

CHAYTOR, Q.C.:

Q. Follow-up call, okay, and then you discuss Labrador?

MS. CHAPLIN:

A. But that wasn't the sole purpose of the call

on the 19th.

CHAYTOR, Q.C.:

Q. Okay.

MS. CHAPLIN:

A. The call was just a follow-up to see had things--how had things progressed, because oftentimes when an issue first emerges or it's first brought to your attention, it's very fluid and there's a lot of changing information.

CHAYTOR, Q.C.:

Q. Okay. So the issue though of Labrador Grenfell that you mentioned to Susan on the afternoon of the 18th, or Ms. Bonnell, I should say, on the afternoon of the 18th as being a suggestion to follow up with Labrador Grenfell to see if they might have some information on that?

MS. CHAPLIN:

A. Or I might have asked "has anyone in your organization spoke to them?"

CHAYTOR, Q.C.:

Q. Yes, okay.

MS. CHAPLIN:

A. That sort of thing.

CHAYTOR, Q.C.:

Q. And then you discussed that again the next morning?

MS. CHAPLIN:

A. I did.

CHAYTOR, Q.C.:

Q. Okay, and we'll come to that. I just want to see -

MS. CHAPLIN:

A. I did interject.

CHAYTOR, Q.C.:

Q. Okay, I'm sorry.

MS. CHAPLIN:

A. I'm going on with my recollections of the conversation.

CHAYTOR, Q.C.:

Q. Yes.

MS. CHAPLIN:

A. I did interject with the question of had anyone in the Department been notified, ie. had Mr. Tilley advised our deputy minister that this issue had come to light. I can't remember if she said yes or no.

CHAYTOR, Q.C.:

Q. What was your sense though? Was it your sense

that this was new information coming to the Department?

MS. CHAPLIN:

A. It was certainly new to me.

CHAYTOR, Q.C.:

Q. Yes.

MS. CHAPLIN:

A. And in that call, I don't think I had a definitive answer, and I only say that because I remember interjecting asking the question and I remember the response being "well, you can't--I called you as a colleague," and--because I basically said, I have a duty and an obligation to advise the Minister now that this information has come to my attention. I can't sit on it.

CHAYTOR, Q.C.:

Q. Okay, and you got the impression from Ms. Bonnell that she was asking you to sit on it?

MS. CHAPLIN:

A. To keep it--not to sit on it, but to keep it confidential.

CHAYTOR, Q.C.:

Q. Yes, because she was phoning you to get advice, okay, and you had told her that you

couldn't do that, that you had to speak to your deputy?

MS. CHAPLIN:

A. That's right. While I would perceive the call to be a heads up, I'm not sure if she did.

CHAYTOR, Q.C.:

Q. Okay, and so you didn't know whether or not anyone in the Department at that point in time knew, based on your conversation with Ms. Bonnell?

MS. CHAPLIN:

A. No, I did not.

CHAYTOR, Q.C.:

Q. Okay, and so then was there anything else then discussed? That's basically the gist of your

conversation with her?

MS. CHAPLIN:

A. I think so.

CHAYTOR, Q.C.:

Q. That's it, okay. So what did you do after you hung up the phone from Ms. Bonnell?

MS. CHAPLIN:

A. I would have followed my normal protocol when an issue comes to my attention, and I would have sought out the Minister, Minister's

executive assistant, the Deputy Minister and potentially the ADM of the relevant division. So in this particular case, I remember being a couple hour delayed before I was able to actually locate the Minister, the Deputy Minister. I remember going to look for the Minister and he was not in the Department at that time. I remember calling him. He had an external line, a home office, and leaving an

urgent message for him on that line. I remember going to find the Deputy Minister who was not available at that time, and I should point out that neither the Minister nor the Deputy Minister carried a cell phone or a Blackberry, so there was no other way to reach them. I basically had to put in an urgent message and in the Deputy's case, advise his administrative assistant that I was looking for him and just wait.

CHAYTOR, Q.C.:

Q. Ms. Chaplin, why is it an urgent call?

MS. CHAPLIN:

A. Well, in my view, it was significant issue that was being brought to my attention, so I would put that in a relatively more important

category than something that you dealt with on a day-to-day basis.

CHAYTOR, Q.C.:

Q. To the point that you left--you felt it

necessitated you leaving an urgent message at home for Minister Ottenheimer?

MS. CHAPLIN:

A. Yes.

CHAYTOR, Q.C.:

Q. Yes, okay, and so what happened next?

MS. CHAPLIN:

A. I did speak with Mr. Hynes in the Department. He was there that afternoon and debriefed him on my phone call with Ms. Bonnell and advised him that I'd left a message for the Minister. So we were waiting for the Minister's response. I can't say right now whether it was the Minister who called me back first, and I was able to tell him, or whether I tracked down the Deputy first. I really don't know.

CHAYTOR, Q.C.:

Q. Okay, but you spoke to Mr. Hynes, and when you spoke to Mr. Hynes, did he seem to already know about the issue?

MS. CHAPLIN:

A. No, he did not.

CHAYTOR, Q.C.:

Q. He did not, okay, and did Mr. Hynes have any advice to you?

MS. CHAPLIN:

A. No, we were basically waiting to hear back from the Minister.

CHAYTOR, Q.C.:

Q. Okay, and then you either heard from the Deputy or the Minister?

MS. CHAPLIN:

A. Well, I remember going to seek out again the Deputy and found him in his office. He may have called me down. I'm not sure what actually transpired, but anyway, I found myself in his office in front of him reiterating the conversation or debriefing him on the phone call I'd had from Eastern Health and asked him "did you know about this? Have you received a phone call?"

CHAYTOR, Q.C.:

Q. And what was his response?

MS. CHAPLIN:

A. I think that he had had a call from Mr. Tilley, but I can't say for sure, but

something keeps nagging at me in my mind that what Mr. Tilley had shared with him and what Ms. Bonnell had shared with me may have not been totally in sync.

CHAYTOR, Q.C.:

Q. Okay. Why do you think that Mr. Abbott had had a call with Mr. Tilley? Did he then share back--you're telling him what Ms. Bonnell has said. Did he then say "well, yes, I know about an issue, and here's what I've understood from Mr. Tilley"?

MS. CHAPLIN:

A. I seem to remember him saying "well, you know, I was talking to George, but that was not my sense of the extent of the issue" or something of that nature. I really can't recall specifically the sentence or the phrase, but it was something along those lines.

CHAYTOR, Q.C.:

Q. Was there any confusion as to whether or not you were speaking of the same issue?

MS. CHAPLIN:

A. There could have been.

CHAYTOR, Q.C.:

Q. So your sense in speaking with Mr. Abbott that

day was was that he did have information regarding this issue or a similar issue?

MS. CHAPLIN:

A. I would think that's a fair statement. But I want to point out that that information would have been--I don't think it was something he had for days. It might have occurred--we might have been on parallel tracks.

CHAYTOR, Q.C.:

Q. What was your sense on that point in talking to Ms. Bonnell, how long did you understand that had--that Eastern Health had known about the issue or had been dealing with the issue?

MS. CHAPLIN:

A. I asked that question in the call and she told me that the health authority had, this had

been percolating since May, 2005. So I was doing the mental math in my head noting that this was now two months later. And I believe I asked her how long she had known.

CHAYTOR, Q.C.:

Q. Yes. And what was her response?

MS. CHAPLIN:

A. My memory suggests that I was told in the call that it had only been--certainly the

impression that I left with was that she'd only known maybe a couple of weeks. And I was actually surprised to hear in her testimony last week that she had known since May.

CHAYTOR, Q.C.:

Q. And your sense in talking to Mr. Abbott, how long had he known or known of a similar issue?

MS. CHAPLIN:

A. I think that same day.

CHAYTOR, Q.C.:

Q. You think it was that same day. What time is in the day, you said it was afternoon, do you know what time in the day on the afternoon on the 18th you took that call from Susan Bonnell?

MS. CHAPLIN:

A. I can't say exactly what time. I seem to think that it was sometime just after the lunch period.

CHAYTOR, Q.C.:

Q. Okay. And after speaking then with Mr. Abbott and relaying to him what had been told to you by Ms. Bonnell, did he have any instructions or advice for you?

MS. CHAPLIN:

A. I told him that I had already left a message for the minister and I was waiting to hear back, but I was confident that the minister would want a briefing as soon as possible, but we would confirm once we had spoken to the

minister.

CHAYTOR, Q.C.:

Q. And did you ultimately then speak with the minister?

MS. CHAPLIN:

A. I did.

CHAYTOR, Q.C.:

Q. And was that a face-to-face meeting or was that over the phone?

MS. CHAPLIN:

A. No, I think it was over the phone. I think it was late in the day and we had decided we would regroup first thing in the morning.

CHAYTOR, Q.C.:

Q. Okay. And what did you tell the minister?

MS. CHAPLIN:

A. I told him the details of the phone call I had had with Ms. Bonnell.

CHAYTOR, Q.C.:

Q. Okay. And was anyone other than yourself on

that call?

MS. CHAPLIN:

A. There may--if there was, it would have been Mr. Hynes, but I honestly can't say.

CHAYTOR, Q.C.:

Q. Okay. So you basically relayed to him the same information that you'd received from Ms. Bonnell. And did the minister already know about the issue?

MS. CHAPLIN:

A. Not to my knowledge.

CHAYTOR, Q.C.:

Q. He didn't indicate to you that he did?

MS. CHAPLIN:

A. No, he did not.

CHAYTOR, Q.C.:

Q. Okay. And do you know whether--so this is on the afternoon then of the 18th?

MS. CHAPLIN:

A. This is late in the day on the 18th.

CHAYTOR, Q.C.:

Q. Okay. And you're confident that that's when you had your discussion with Minister Ottenheimer?

MS. CHAPLIN:

A. Yes, I am.

CHAYTOR, Q.C.:

Q. Okay. And did the minister then have any instructions or advice to you?

MS. CHAPLIN:

A. He said that he would like a briefing as soon as possible and that we would regroup first thing in the morning. And I can't tell you whether it was during that phone call or the next morning, but he did ask the question, have we notified the premier's office.

CHAYTOR, Q.C.:

Q. Okay. And that was either on the 18th or on the morning of the 19th?

MS. CHAPLIN:

A. Morning of the 19th.

CHAYTOR, Q.C.:

Q. Okay. And up to that point in time, I take it, you had not?

MS. CHAPLIN:

A. No, I had not.

CHAYTOR, Q.C.:

Q. Okay. So that came on the suggestion of Minister Ottenheimer?

MS. CHAPLIN:

A. That's right.

CHAYTOR, Q.C.:

Q. In looking for Mr. Abbott that day did you send him an e-mail?

MS. CHAPLIN:

A. No, I didn't because he was out of the department, he didn't carry a Blackberry.

CHAYTOR, Q.C.:

Q. Okay. So you checked with his assistant to know that he was not within the department?

MS. CHAPLIN:

A. That's correct.

CHAYTOR, Q.C.:

Q. Okay. Did you send an e-mail to anyone else on the 18th?

MS. CHAPLIN:

A. Not on the 18th, no.

CHAYTOR, Q.C.:

Q. Okay. So after speaking then to the deputy and speaking to the minister and Mr. Hynes did you speak to anyone else in the department on the 18th about the issue?

MS. CHAPLIN:

A. I don't think so.

CHAYTOR, Q.C.:

Q. Okay. And what about Ms. Hennessey?

MS. CHAPLIN:

A. No, because it was summertime and a lot of-- that was a popular vacation time and I'm not sure if she was actually in the department or in and out.

CHAYTOR, Q.C.:

Q. Was she one of the people -

MS. CHAPLIN:

A. That day.

CHAYTOR, Q.C.:

Q. - that you looked for that day?
MS. CHAPLIN:
A. She may have been.
CHAYTOR, Q.C.:
Q. But you didn't speak to her on the 18th?
MS. CHAPLIN:
A. I don't think so.
CHAYTOR, Q.C.:
Q. Okay. Is there anything else then on the 18th that happened with respect to this issue?
MS. CHAPLIN:
A. Not that I can remember.
CHAYTOR, Q.C.:
Q. If we could look at P-0300, please? Ms.

Chaplin, this is an e-mail from Heather Predham and it's to Dr. Williams and it's July 18th, 2005 and it's at 12:29 p.m. And it's copied to a number of people including Dr. Cook and Terry Gulliver, and it's regarding the ER/PR receptor letter. And there's an

attachment which I won't take you through, because that's not the purpose of me bringing you to this e-mail. But it does say here, "Hi, Dr. Williams," and the middle paragraph, "I was speaking to Deborah Thomas today and the Department of Health has been notified and is now involved. They would like a letter sent to each woman outlining the problem and the steps we are taking to address it, and that draft letter will have to be seen by our lawyer first, of course." So this is midday on the 18th and it's indicating Ms. Predham-- do you know Ms. Predham?

MS. CHAPLIN:

A. No, I've never met her.

CHAYTOR, Q.C.:

Q. Okay. She's, we understand, is with the quality risk management department. You probably know that much about her. She's at

Eastern Health. And she's writing to Dr. Williams, who we understand was managing this issue at Eastern Health at this point in time. And she's indicating that the department has already been notified. And Deborah who, of course, you would know Deborah Thomas?

MS. CHAPLIN:

A. Yes, I would.

CHAYTOR, Q.C.:

Q. Yes, okay. So Deborah Thomas at this point in time, we understand, is with Eastern Health communications?

MS. CHAPLIN:

A. That's correct.

CHAYTOR, Q.C.:

Q. And so Heather has been speaking with Ms. Thomas and the department has been notified and is now involved. Do you think that is referring to your notification through Ms. Bonnell?

MS. CHAPLIN:

A. I can't even speculate on it because I've never seen this e-mail other than in the exhibit.

CHAYTOR, Q.C.:

Q. Yes. Other than through this process?
MS. CHAPLIN:
A. That's right.
CHAYTOR, Q.C.:
Q. And so, but in terms of the timing, this is 12:29 in the day. Do you think your discussion with Ms. Bonnell would have taken place earlier than 12:29?
MS. CHAPLIN:
A. I can't confirm the time we spoke, but I always thought in my mind that that call happened a little later, like about an hour later.
CHAYTOR, Q.C.:
Q. Okay.
MS. CHAPLIN:
A. Between, like, one to two.
CHAYTOR, Q.C.:
Q. Okay.
MS. CHAPLIN:
A. Around that time frame.
CHAYTOR, Q.C.:
Q. And the idea that the department would like a

letter sent to each woman outlining the problem and the steps we are taking to address

it, did that idea come from you?

MS. CHAPLIN:

A. No. In my initial phone call with Ms. Bonnell we discussed the potential of them looking at or we discussed the tactic of a registered letter. But, (a), I would not have the authority to direct a letter written, and (b), I never did that.

CHAYTOR, Q.C.:

Q. Okay. So that wouldn't have been at your direction?

MS. CHAPLIN:

A. No.

CHAYTOR, Q.C.:

Q. So if Eastern Health understood that from the department, that came from someone other than you?

MS. CHAPLIN:

A. It would have to.
CHAYTOR, Q.C.:
Q. Okay. And if this is, in fact, accurate, then it came from someone in the department prior to 12:29 on July 18th?
MS. CHAPLIN:
A. I would presume so.

CHAYTOR, Q.C.:
Q. Okay. When you spoke to Mr. Abbott about the issue, did Mr. Abbott indicate to you that he had given any direction with respect to sending letter?
MS. CHAPLIN:
A. No, he did not.
CHAYTOR, Q.C.:
Q. Okay. When you spoke to the minister, did he indicate that?
MS. CHAPLIN:
A. No, he did not.

CHAYTOR, Q.C.:

Q. And I take it neither Darrell Hynes, Darrell Hynes would not have had any contact -

MS. CHAPLIN:

A. No.

CHAYTOR, Q.C.:

Q. - on this issue with Eastern Health?

MS. CHAPLIN:

A. No.

CHAYTOR, Q.C.:

Q. Okay. so the best you can tell us is that if that happened and that direction was given, it didn't come from you?

MS. CHAPLIN:

A. That's correct.

CHAYTOR, Q.C.:

Q. And you had no discussion with Mr. Abbott on it to indicate that it came from him?

MS. CHAPLIN:

A. No.

CHAYTOR, Q.C.:

Q. Does it surprise you--you say you were surprised to hear Ms. Bonnell's evidence yesterday that she, in fact, knew of the issue back in May and you had understood from your discussion with her it was only a matter of a couple of weeks that she had been brought into the loop on the issue. Does it also surprise you that knowing now that she had known back in May that it was two months before she contacted you? Based on your relationship and dealings with her up to that point in time, does that surprise you, that you didn't have any prior contact from her?

MS. CHAPLIN:

A. It does surprise me. However, looking at the chronology that has been outlined through a lot of the exhibits throughout the Inquiry

process, given in May, 2005 they were looking

at such a small sample, I don't think I would have presumed with that limited information they were working with that we would have, as a department, received notification back in May. But that's something I know now. At the time I remember being surprised that this had been percolating for two months before the department was brought in the loop.

CHAYTOR, Q.C.:

Q. Okay. And if they had already in June then contacted the other regions and asked for samples to come in, would you have expected that you would have had a contact from Ms. Bonnell around that period of time?

MS. CHAPLIN:

A. Well, I would have presumed that--I don't know if I necessarily would have presumed that from Ms. Bonnell, but, you know, would Mr. Tilley have advised the deputy, I don't know.

CHAYTOR, Q.C.:

Q. Did you ever contact your--the director of communications in the other regions regarding this issue?

MS. CHAPLIN:

A. No.

CHAYTOR, Q.C.:

Q. Okay. And why not, why would you not do that?

MS. CHAPLIN:

A. Because this was a day-to-day operational issue occuring within Eastern Health as an organization, and that would be their lead to communicate with the other regions on something going on in their health system, not the department's role.

CHAYTOR, Q.C.:

Q. And in terms of the department, other than just yourself, but in terms of the department only now being notified, because you indicate that if Mr. Abbott knew, it was your sense that he had only learned that day, as well, does that surprise you, that the department was only being notified two months after Eastern Health had been dealing with this issue?

MS. CHAPLIN:

A. It surprises me, but I want to put--this is going to sound strange, but I want to put the context around my surprise. And I think that

I would generally be more surprised given my

background and where I came from because certainly when I entered the department, I was coming from an experience at Queen's Park where things and systems worked differently than they did within government. So my surprise at that might be related to the fact that the way things worked when I was in Ontario.

CHAYTOR, Q.C.:

Q. Okay. And so in Ontario there was more contact between the health authorities, is that -

MS. CHAPLIN:

A. Well, just on general issues management within government and agencies, there just seemed to be, it would just be the way the system worked there.

CHAYTOR, Q.C.:

Q. Okay. And in your discussion then with Mr.

Abbott, you indicated that you can't recall specifically what he said, but the sense you're getting or sense that you're telling to me today is that he already knew about the issue, although it didn't seem to be necessarily in sync with the information you'd

received from Ms. Bonnell?

MS. CHAPLIN:

A. I think that's a fair assessment.

CHAYTOR, Q.C.:

Q. Fair, okay. So what exactly was it that Mr. Abbott said?

MS. CHAPLIN:

A. I think it was something along the lines of he had spoken with Mr. Tilley and certainly he got a sense there was an issue. But when I was going to him saying that, you know, here's the phone call I received and they were looking at a potential impact of 1200 to 1500

patients, I think that was the element of surprise.

CHAYTOR, Q.C.:

Q. So did Mr. Abbott indicate to you then that he felt he should make further contact with Mr. Tilley?

MS. CHAPLIN:

A. My memory says that he said to me that I need to get George on the phone.

CHAYTOR, Q.C.:

Q. Okay. And were you present when he called and spoke to Mr. Tilley?

MS. CHAPLIN:

A. No, I was not.

CHAYTOR, Q.C.:

Q. Okay. And you weren't at all, I take it, on that day, you weren't privy to any conversation with Mr. Tilley?

MS. CHAPLIN:

A. No, I was not.

CHAYTOR, Q.C.:

Q. And Mr. Abbott didn't come back to tell you whether or not he had spoken, in fact, with Mr. Tilley?

MS. CHAPLIN:

A. No, I don't think so.

COMMISSIONER:

Q. No, you don't think so he spoke with him or no, you don't think so he spoke to you?

MS. CHAPLIN:

A. Now I'm confused.

COMMISSIONER:

Q. Yeah. When you said "No, I don't think so," were you talking about your belief that Mr. Abbott may have talked to Mr. Tilley or your belief that Mr. Abbott never reported back to you?

MS. CHAPLIN:

A. No. Sorry. The belief that Mr. Abbott never

reported the details of that call to me.

COMMISSIONER:

Q. Okay. Thank you.

CHAYTOR, Q.C.:

Q. So you don't know if the call actually took place or not?

MS. CHAPLIN:

A. I can't verify that.

CHAYTOR, Q.C.:

Q. No, okay. If we could have P-0509, please? And, Ms. Chaplin, did you always have a clear recollection on that, on your discussion with Mr. Abbott that day in terms of him already knowing about the issue or knowing about an issue?

MS. CHAPLIN:

A. I think I've been fairly consistent in that recollection.

CHAYTOR, Q.C.:

Q. So that haven't wavered, you feel that you've always recalled that?

MS. CHAPLIN:

A. No.

CHAYTOR, Q.C.:

Q. Okay. But whether or not it appeared to be new information to Mr. Abbott, I take it then the new information would be the magnitude of the issue?

MS. CHAPLIN:

A. That's correct.

CHAYTOR, Q.C.:

Q. And the detail around the issue, that was new information to Mr. Abbott, was it? The idea of it being 12 to 15 hundred patients -

MS. CHAPLIN:

A. Yeah, I think that's a fair statement.

CHAYTOR, Q.C.:

Q. Okay. The idea that the testing period could be from 1997 to 2004, was that new information for Mr. Abbott?

MS. CHAPLIN:

A. I don't know to that level of detail. I just generally have a recollection that the magnitude of the situation that was presented to him and to me may have been different.

CHAYTOR, Q.C.:

Q. Okay. And the magnitude meaning the numbers of patients?

MS. CHAPLIN:

A. The numbers of patients impacted.

CHAYTOR, Q.C.:

Q. But the time period, was that new information to Mr. Abbott, to your knowledge?

MS. CHAPLIN:

A. I can't say for certain.

CHAYTOR, Q.C.:

Q. If we look at 0509? And this is an e-mail from Ms. Bonnell and it's Tuesday, July 19th, 2005 at 8:59 a.m., and it's sent to Ms. Predham, Dr. Williams, Dr. Cook, Mr. Gulliver and Ms. Thomas and cc'ed to Ms. Dunn and Ms. Pilgrim and it's "RE: Information From HIROC." Ms. Chaplin, would you have known at this point in time who or what HIROC is?

MS. CHAPLIN:

A. No, I would not.

CHAYTOR, Q.C.:

Q. Okay. Do you know now?

MS. CHAPLIN:

A. Well, I know now.

CHAYTOR, Q.C.:

Q. All right. And this says--this is, and I won't take you through the whole summary here

of the e-mails. But "This is fine for us. I've got a couple of calls out re getting the initial Labrador reaction." So it appears Ms. Bonnell took your advice and she's making some calls on the Labrador situation. "In speaking with Carolyn Chaplin of the department" or "at the department, she seems to recall that one of the main issues in Labrador," "in Lab, was that the women were sent registered letters which destroyed their anonymity in small communities. Secondary to that, key medical spokes people were not out front and had to be coaxed into speaking. The organization simply sent out a press release and then sort of

refused to talk about it. Obviously this is not the approach we would take." she says. So it appears from this that she's had a discussion with you. She's sending her e-mail before 9 a.m.

MS. CHAPLIN:

A. I believe we spoke around 8:00 that morning.

CHAYTOR, Q.C.:

Q. Okay. And what do you recall then of your discussion with Ms. Bonnell?

MS. CHAPLIN:

A. Just that she was, I think, further picking my brain in terms of what the issues were around Labrador Grenfell from the class action lawsuit perspective.

CHAYTOR, Q.C.:

Q. Okay. So -

MS. CHAPLIN:

A. And I remember just recapping exactly what's here in terms of, well, one of the other

issues that I think I cited that is not present in this e-mail was the timeliness of disclosure with Labrador Grenfell Health.

CHAYTOR, Q.C.:

Q. So you tell us what--so you recall you got a phone call, I take it, from Ms. Bonnell?

MS. CHAPLIN:

A. Um-hm.

CHAYTOR, Q.C.:

Q. The next morning, bright and early?

MS. CHAPLIN:

A. Right.

CHAYTOR, Q.C.:

Q. Sometime around 8:00, okay. And what was the purpose of her call then in the morning?

MS. CHAPLIN:

A. I think we were just touching base in terms of had any information changed, because at this time I'm sitting there thinking I've been

notified yesterday afternoon that this is an new issue that she has been dealing with because my impression after that initial call was this was new on her plate.

CHAYTOR, Q.C.:

Q. Um-hm.

MS. CHAPLIN:

A. In the last couple of weeks. And that we were going to have a call again to discuss Labrador Grenfell and had any information changed, essentially.

CHAYTOR, Q.C.:

Q. Okay. So your understanding when you hung up the phone from her the day before was that you would be speaking again to her?

MS. CHAPLIN:

A. That's correct. And I could have been asked-- she could have asked me in the afternoon call to go and see what I could find out about the Labrador Grenfell situation.

CHAYTOR, Q.C.:

Q. So when you hung up the phone that day then on

the 18th from Susan, was there a plan of action that here's what I had understood that you were concerned that you talk to the people within the department to make sure that they knew about the issue, but had you also agreed that you would go look for more information for her? Was there a plan of action discussed between you -

MS. CHAPLIN:

A. I probably did, but I can't say 100 percent certainty.

CHAYTOR, Q.C.:

Q. Okay. And so then on the 18th did you go look for more information on the Labrador situation?

MS. CHAPLIN:

A. I may have and that might have been--I might have just done a search of, I don't know, any media clippings or see what I could find out. I really can't tell you exactly how I would have approached that.

CHAYTOR, Q.C.:

Q. Okay. So you don't recall if you spoke to anyone or if you went looking for documentation, that part of this whole piece

is not clear?
MS. CHAPLIN:
A. No, it's not clear.
CHAYTOR, Q.C.:
Q. All right. And so what do you recall then of your discussion on the morning of the 19th with Ms. Bonnell, she called you, I take it?
MS. CHAPLIN:
A. She called me. And I think this is when I really became aware that their lawyers, in this case HIROC, had concerns over sending out a registered letter or letter. And my point in the conversation was it was not the method--it wasn't so much the fact that a registered letter was sent, but it was the loss of anonymity for these patients because the letter was sent in such small communities that everybody knew who these patients were.
CHAYTOR, Q.C.:
Q. So your sense is that you learned that from Ms. Bonnell as opposed to you giving that

information to Ms. Bonnell?

MS. CHAPLIN:

A. No, I think I provided her with the information of from my recollection or from my

whatever due diligence I did, these were the main issues.

CHAYTOR, Q.C.:

Q. Okay. Yeah, because that's what this e-mail suggests, that she's able--she's spoken to you and you seem to recall that one of the main issues being the registered letters in small communities and then the issue, of course, about medical spokes people not being out there. So you learned, though, in this conversation, you said, that HIROC and the lawyers had a concern about the registered letter. What do you recall about that?

MS. CHAPLIN:

A. I seem to think that there was something came

up in the conversation that I was lead to believe that their lawyers were not in favour of patient notification by registered letters. So it prompted the question, of course, well, if you're going to notify patients and it's not a registered letter, what other method are you considering.

CHAYTOR, Q.C.:

Q. So what was your concern about it not being a registered letter? You were, I take it,

thinking that at registered letter would be a good thing?

MS. CHAPLIN:

A. Well, I was thinking a registered letter would be a good thing on a number of fronts. One being you can track the letter so you can confirm whether a patient has been notified. And I'm not suggesting that that would have been the only notification or the only means to do that. Secondly, I thought that would

expedite the process, because in my mind from a timely disclosure perspective, given that you want to notify patients first, how quickly could we get this going, a letter would seem to me to be quicker than calling the number of patients that I thought were affected at that time.

CHAYTOR, Q.C.:

Q. But did you have any concern about the issue that had arisen in Labrador that patients in small communities, their loss of anonymity by getting letters on this issue?

MS. CHAPLIN:

A. I didn't see a similarity in this case.

CHAYTOR, Q.C.:

Q. Okay. And so tell us about that, how did you see this as being different?

MS. CHAPLIN:

A. Well -

CHAYTOR, Q.C.:

Q. So you weren't telling this to Susan as being, like, cautious, like, heads up because here's what went wrong -

MS. CHAPLIN:

A. Oh, no, no.

CHAYTOR, Q.C.:

Q. - in that case?

MS. CHAPLIN:

A. Not at all.

CHAYTOR, Q.C.:

Q. Okay.

MS. CHAPLIN:

A. My practice, from a personal communications perspective, as would most senior communications professionals would be open and timely disclosure.

CHAYTOR, Q.C.:

Q. Yes. No, I'm just thinking about the issue of the letter -

MS. CHAPLIN:

A. In my mind -

CHAYTOR, Q.C.:

Q. - that wasn't an issue to you?

MS. CHAPLIN:

A. no.

CHAYTOR, Q.C.:

Q. You differentiated the ER/PR situation and -

MS. CHAPLIN:

A. Yeah.

CHAYTOR, Q.C.:

Q. So tell the Commissioner about that?

MS. CHAPLIN:

A. I guess in my mind, right or wrong, I was thinking that this broad a patients that, at that particular point I might have been thinking this is a more urban centre as opposed to small communities in Labrador that might have had 70, 80 people when it was very obvious as to what or who would have been impacted in that case.

CHAYTOR, Q.C.:

Q. And the nature of the issue, I take it, as well?

MS. CHAPLIN:

A. And the nature of the issue. Because I think

the other issue that arose in Labrador Grenfell, and I'm not sure if I knew it at the time or it's something that I've now learned, is just that it's the weight of the loss of anonymity and the notification piece against the seriousness of the impact to the individual patients.

CHAYTOR, Q.C.:

Q. Okay. All right, so you weren't telling that to, and in relaying any of that information to Susan Bonnell it wasn't to discourage a registered letter, and, in fact, you were thinking a registered letter would be a good method of dealing -

MS. CHAPLIN:

A. It would be a good first step.

CHAYTOR, Q.C.:

Q. Good first step, okay. All right. And what did you understand where was the hesitation, then, in sending the letter, where was that coming from?

MS. CHAPLIN:

A. I understood the hesitation in sending a letter was coming from the lawyers.

CHAYTOR, Q.C.:

Q. Okay. Was there anything else then discussed with you on that phone call with Ms. Bonnell the early morning of the 19th?

MS. CHAPLIN:

A. No, just that we would touch base a little later.

COMMISSIONER:

Q. Ms. Chaytor, it's getting near the luncheon break, so wherever there's a appropriate spot, we'll break.

CHAYTOR, Q.C.:

Q. Okay. Do you know, before I leave the Labrador issue, do you know--and I appreciate that that happened prior to you coming to the department, but it's certainly the class action was certainly ongoing and initiated, I

believe, July of that year, 2005 or around then. Do you know when the department was first notified that there was an issue in Labrador? For example, had the patients already been notified or did the department have input into the notification process?

MS. CHAPLIN:

A. I would have no idea since it did predate my tenure there.

CHAYTOR, Q.C.:

Q. And that wasn't part of the information that you were able to gather when you went looking for information?

MS. CHAPLIN:

A. No, because it wasn't a file or an issue that I had any involvement in.

CHAYTOR, Q.C.:

Q. Okay. And the conversation then with Ms. Bonnell, I take it, I take it it was a fairly brief conversation that morning?

MS. CHAPLIN:

A. Yes, it was.

CHAYTOR, Q.C.:

Q. Okay. And nothing else that stands out, nothing else you can recall being discussed?

MS. CHAPLIN:

A. Not about that call, no.

CHAYTOR, Q.C.:

Q. So the primary purpose of the call was to discuss further information the labrador situation?

MS. CHAPLIN:

A. And to see whether any information that was incoming from the health authority had changed

in the last 12 hours.

CHAYTOR, Q.C.:

Q. And was there any indication of that?

MS. CHAPLIN:

A. No, not at that time.

CHAYTOR, Q.C.:

Q. Okay. Did you tell Ms. Bonnell that--did you question her about the details of what she had given you and the fact that that didn't seem to be in sync with what Mr. Tilley had relayed to Mr. Abbott?

MS. CHAPLIN:

A. I can't remember.

CHAYTOR, Q.C.:

Q. Okay. Do you think it would be likely that you would have pointed that out to her, the next time you speak to her on the issue, to say, you know, Susan, you know, what's this all about, I spoke to John and it doesn't appear to be what he was understanding from George?

MS. CHAPLIN:

A. It would have been likely.

CHAYTOR, Q.C.:

Q. And do you recall any discussion then around

that?

MS. CHAPLIN:

A. I have no knowledge of anything that transpired in that phone call around that, so I wouldn't even want to speculate because it's not an accurate reflection.

CHAYTOR, Q.C.:

Q. So the only thing you recall is this issue of Labrador being discussed?

MS. CHAPLIN:

A. Yes.

CHAYTOR, Q.C.:

Q. And would you have any recollection even of that without having this e-mail to assist?

MS. CHAPLIN:

A. I think I would have a recollection of that.

CHAYTOR, Q.C.:

Q. But any discussion as to any inconsistency in the information that you were given as opposed to what Mr. Abbott may have had, you have no recollection of that discussion?

MS. CHAPLIN:

A. No, I don't.

CHAYTOR, Q.C.:

Q. This is a good place, Commissioner.

COMMISSIONER:

Q. Luncheon break, all right, then. 2:05.

CHAYTOR, Q.C.:

Q. Thank you.

(LUNCH BREAK)

THE COMMISSIONER:

Q. Please be seated. Ms. Chaytor.

CHAYTOR, Q.C.:

Q. Thank you, Commissioner. Good afternoon, Ms. Chaplin.

MS. CHAPLIN:

A. Good afternoon.

CHAYTOR, Q.C.:

Q. Ms. Chaplin, when we broke, you were telling me about the early morning conversation you had with Ms. Bonnell on July 19th. After getting off that call, did you discuss your call with anyone else?

MS. CHAPLIN:

A. That was the call on the 19th?

CHAYTOR, Q.C.:

Q. Yes, early morning, you said it was around 8:00 in the morning.

MS. CHAPLIN:

A. Right. Well, the next course of events would

have been a regroup with the Minister, because as you may recall from this morning, I didn't actually see him the day before.

CHAYTOR, Q.C.:

Q. So your discussion then face to face with the Minister took place after your discussion with Ms. Bonnell?

MS. CHAPLIN:

A. That's correct.

CHAYTOR, Q.C.:

Q. Okay, and so what happened then? Who was in that meeting with the Minister on the morning of the 19th?

MS. CHAPLIN:

A. I just remember myself in the room along with the Minister, but it could have been possible and likely that Mr. Hynes also joined us.

CHAYTOR, Q.C.:

Q. Okay, and how about Mr. Abbott?

MS. CHAPLIN:

A. Not to my knowledge.

CHAYTOR, Q.C.:

Q. Okay, and so what was discussed then?

MS. CHAPLIN:

A. We basically went over again the details of

the conversation from the day before and he would have expressed again that we needed to get a briefing arranged with Eastern Health. He also would have asked or did ask rather whether notification had been given to the Premier's office.

CHAYTOR, Q.C.:

Q. Okay, and you think that happened on the morning of the 19th?

MS. CHAPLIN:

A. The morning of the 19th.

CHAYTOR, Q.C.:

Q. Okay. When you spoke to Ms. Bonnell that morning, did you indicate to her that the Minister would be looking for a briefing?

MS. CHAPLIN:

A. It is likely. Like I can't say for certain that that took place on the call, but it's absolutely likely that I would have said, we're going to be looking for a briefing.

CHAYTOR, Q.C.:

Q. And when you spoke to the Minister face to face on the issue, did the Minister appear concerned?

MS. CHAPLIN:

A. He expressed the appropriate reaction, which was concern over the situation, wanting to be briefed as quickly as possible.

CHAYTOR, Q.C.:

Q. And did he express any particular concerns in terms of disclosure of the issue?

MS. CHAPLIN:

A. We really didn't have, I don't think, sufficient information to even get into that level of detail, other than it was always his preference right from that initial moment that we need to get out--or the organization rather, being Eastern Health, needed to get out and disclose this publicly as quickly as possible.

CHAYTOR, Q.C.:

Q. And did he indicate whether or not he had any meetings coming up that day with representatives from Eastern Health?

MS. CHAPLIN:

A. No, he didn't, but I believe it was referenced that he was at least going to have a phone call conversation with Mr. Tilley.

CHAYTOR, Q.C.:

Q. Okay, and so after the meeting then, and I

take it that was early morning as well, your

meeting with the Minister?

MS. CHAPLIN:

A. Around 9:00 ish.

CHAYTOR, Q.C.:

Q. Okay, and he asked whether or not the Premier's office had been notified?

MS. CHAPLIN:

A. That's right.

CHAYTOR, Q.C.:

Q. And I take it up to that point, you had not made such notification?

MS. CHAPLIN:

A. No, I did not.

CHAYTOR, Q.C.:

Q. And to your knowledge, nobody else had?

MS. CHAPLIN:

A. That's correct.

CHAYTOR, Q.C.:

Q. So did you do anything about that?

MS. CHAPLIN:

A. Yes, I did. I remember having the discussion with Mr. Hynes about who would be the appropriate person to notify the Premier's office. Normally from the Department's

perspective, that notification would either occur through Mr. Hynes or myself. In this case, because we were looking at a potential public announcement within the next 48 hours to 72 hours, it was decided that I'd be the most appropriate person, because that would follow our normal protocol in the dealings that I had with Ms. Matthews on an ongoing basis.

CHAYTOR, Q.C.:

Q. Okay, and so you contacted Ms. Matthews, I take it?

MS. CHAPLIN:

A. I believe initially I left her a voice mail, a fairly detailed voice mail. I don't know if within that next hour I actually physically spoke with her, but I did leave a voice mail for her to call me as soon as possible.

CHAYTOR, Q.C.:

Q. Okay, and I take it the information that you left on the voice mail would have been the information that had been relayed to you by Ms. Bonnell?

MS. CHAPLIN:

25 A. It would have been an abbreviated version.

1 CHAYTOR, Q.C.:
2 Q. Did you also indicate to her your second
3 discussion with Ms. Bonnell about the Labrador
4 situation?
5 MS. CHAPLIN:
6 A. That would not have been in the initial voice
7 mail.
8 CHAYTOR, Q.C.:
9 Q. Okay.
10 MS. CHAPLIN:
11 A. The purpose of that call would have been a
12 heads up notice that we have been contacted by
13 Eastern Health, that there was a potential of
14 a public announcement occurring within the
15 next 48 hours to 72 hours.
16 CHAYTOR, Q.C.:
17 Q. Okay, and you believe you left that on a voice
18 mail?

MS. CHAPLIN:

A. I did.

CHAYTOR, Q.C.:

Q. And you have some recollection that there may have been a subsequent discussion with Ms. Matthews as well?

MS. CHAPLIN:

A. There definitely was. She called back and said "I got your message" and I can't say for certain, but I do believe that she also wanted to include Mr. Brian Crawley in the conversation that would occur.

CHAYTOR, Q.C.:

Q. Okay, and so do you know if he was involved in the discussion then as well?

MS. CHAPLIN:

A. I'm I'd say over 90 percent confident that Mr. Crawley participated in that call as well.

CHAYTOR, Q.C.:

Q. Okay, and what further information then was

discussed at that point in time?

MS. CHAPLIN:

A. At that point, it would have been, again, reiterating the details from the call I had with Ms. Bonnell and that the Minister had been advised, the Deputy was in the loop, and that we were requesting a briefing of Eastern Health.

CHAYTOR, Q.C.:

Q. Okay, and did you receive any instructions or advice from either Mr. Crawley or Ms. Matthews?

MS. CHAPLIN:

A. No, I did not, because again, the context of the call really was for me to provide them, on behalf of the Department, a heads up that we had this issue that had been brought to our attention and that there was a possibility it would go public within the next 48 to 72

hours.

CHAYTOR, Q.C.:

Q. Okay, and that discussion took place, I take it, before the e-mails that we'll refer to in a minute, the e-mails that went--the e-mail to Gary Cake.

MS. CHAPLIN:

A. Well definitely the voice mail occurred because I realize that the exhibit that we're probably going to look at next suggests to--in the phone call I had with Mr. Cake that I advised him that I had alerted Elizabeth to this matter. So at that point, I'm confident it was at least a voice mail. It may or may not have been the live conversation at that point.

CHAYTOR, Q.C.:

Q. And the live conversation, did that take place

in the morning though or the afternoon of the 19th?

MS. CHAPLIN:

A. It took place in the morning, at some point throughout the morning.

CHAYTOR, Q.C.:

Q. Okay, and your purpose in, I guess, speaking to Ms. Matthews and Mr. Crawley, you expected them then to relay the information to the Premier?

MS. CHAPLIN:

A. The purpose of the call was the Minister had advised me that his expectations were to notify the Premier's office. It was my normal protocol in dealing with Ms. Matthews on an ongoing basis that I would give her a heads up to communications issue, and I really can't speculate beyond that.

CHAYTOR, Q.C.:

Q. Okay, and whether or not they relayed the information any further to any other individuals within the Premier's office, you don't know?

MS. CHAPLIN:

A. That I would not be aware of.

CHAYTOR, Q.C.:

Q. You don't know, and that you have not become aware of subsequently?

MS. CHAPLIN:

A. No, I have not.

CHAYTOR, Q.C.:

Q. And other than Mr. Crawley then and Ms. Matthews, did you have any discussions with anyone else in the Premier's office that morning?

MS. CHAPLIN:

A. No, I did not.

CHAYTOR, Q.C.:

Q. Okay, and how was it left with Ms. Matthews and Mr. Crawley? Were you asked to get back to them after the briefing?

MS. CHAPLIN:

A. I said to them that we were expecting more information forthcoming from Eastern Health, that we hadn't finalized a time for a briefing, but we were looking at a briefing within the next day to two days. Actually at that point, I don't think we'd even settled on a day. We were probably looking at being briefed either later that day or the next day,

which would have been the 20th, and I said that I would provide them with an update when we had more information on the briefing.

CHAYTOR, Q.C.:

Q. So there must have already been discussion with Eastern Health about requiring a briefing?

MS. CHAPLIN:

A. I believe that to be true.

CHAYTOR, Q.C.:

Q. Okay, but you don't know if you had that discussion?

MS. CHAPLIN:

A. I can't say for certain.

CHAYTOR, Q.C.:

Q. You don't know if you discussed that with Susan. But you understood -

MS. CHAPLIN:

A. I likely would have raised it, given that the

Minister and I had discussed about the need for a briefing. It is entirely likely that I raised that with her, but I can't say that was the exclusive source of a request for a briefing. I'm not aware if Mr. Abbott had a conversation at that point with Mr. Tilley

about a briefing.

CHAYTOR, Q.C.:

Q. But by this point in time, in the morning of the 19th, you understood that a briefing was in the works?

MS. CHAPLIN:

A. That's correct.

CHAYTOR, Q.C.:

Q. It was being arranged?

MS. CHAPLIN:

A. Um-hm.

CHAYTOR, Q.C.:

Q. Okay, and more information forthcoming from Eastern Health, did you expect--did you mean

that day or forthcoming at the briefing, there would be more information? What were you expecting and where did you get that idea?

MS. CHAPLIN:

A. I think I'm drawing that from the conclusion that the Minister was going to have a conversation with Mr. Tilley that day. So we would be updated on the latest information.

CHAYTOR, Q.C.:

Q. So there was nothing in your discussions with Susan or in your discussions with people in

the Department to lead you to believe that there was something else going to be coming that day? Did you understand there was anything going on that might lead to further information?

MS. CHAPLIN:

A. I'm not sure if it's something I now--like I now know or I knew then that we were expecting

more testing results.

CHAYTOR, Q.C.:

Q. So you understand that at some point in time, during the day of the 19th, more testing results were forthcoming?

MS. CHAPLIN:

A. Yes, they had certainly revised their position.

CHAYTOR, Q.C.:

Q. Okay. Well, we'll come to that then. So after speaking then to Ms. Matthews or leaving her a voice mail message, you then went on to send an e-mail?

MS. CHAPLIN:

A. That's right. So what happened after that was we would have indicated to the Deputy Minister that notification had been provided to the

Premier's office. I was asked by Mr. Abbott if I could contact what we would call the ninth floor, but somebody over in Cabinet

Secretariat, in the policy floor, to give them the heads up as well, since we had already gone to the Premier's office and I think he probably expected that that information would come full circle. But I would note that traditionally, that is not a role that communications directors would play. We would not normally deal with the policy floor of Cabinet Secretariat.

CHAYTOR, Q.C.:

Q. Okay. So that normally wouldn't be a line of communication for you?

MS. CHAPLIN:

A. Not for me. It would be appropriate for an ADM or someone else, but in this case, Mr. Abbott asked me to do it, and I followed his instructions.

CHAYTOR, Q.C.:

Q. Okay, and who did you contact?

MS. CHAPLIN:

A. I called over and I probably would have asked for Sheri McDonald who I believe was the

assistant secretary to Cabinet for social policy issues at that time, and I'm just surmising, given that I now know, it was Mr. Cake I spoke with, that she may not have been available. So they might have passed me over to him.

CHAYTOR, Q.C.:

Q. And do you recall speaking to Mr. Cake?

MS. CHAPLIN:

A. No, I don't actually. When we first met in January, I always said that I had a vague recollection that I had been asked to contact someone over there, but I think in my head, I probably thought it was an e-mail and when there was not one forthcoming at that point in January, assumed that I must have been thinking about a different issue. But then later, that proved not to be the case. I was correct in my initial recollection.

CHAYTOR, Q.C.:

Q. Yes, okay, and your recollection is though that you had sent an e-mail and it wasn't a phone discussion with Mr. Cake?

MS. CHAPLIN:

A. That's right, but it's obvious now by the

records that are here, that the initial contact was through phone.

CHAYTOR, Q.C.:

Q. Yes, he says--certainly Mr. Cake says that you had just called in his e-mail.

MS. CHAPLIN:

A. Yes.

CHAYTOR, Q.C.:

Q. Yes, okay. All right, and what do you recall discussing with Mr. Cake?

MS. CHAPLIN:

A. Again, I would have reiterated to him or debriefed him on the call that we had from--I had from Ms. Bonnell that Eastern Health was dealing with this potential lab issue, that it was potentially impacting patients from 1997 to 2004 with regards to the specific test, and that we were looking at an initial number what they had provided as an estimate to me that it was between 1200 and 1500 patients, and at

that point in time, Eastern Health, as an organization, was considering a public announcement with 48 to 72 hours and obviously by the e-mail that has been tabled with the Inquiry, I must have noted that they had

engaged legal advice as well.

CHAYTOR, Q.C.:

Q. Okay, and we'll have a look at that e-mail in just a second here. Is this the first time you would have spoken with Mr. Cake?

MS. CHAPLIN:

A. Probably.

CHAYTOR, Q.C.:

Q. You didn't know him?

MS. CHAPLIN:

A. I don't think so. I think at that point in time, the only involvement I would have had with Cabinet Secretariat was one at a Cabinet meeting that I was invited to participate in with the former deputy minister, Ms. Debbie

Fry, on a particular matter and I had met at that point--that was my first introduction to Mr. Thompson, as well I met with Mr. Murphy, who is the previous Deputy Clerk of Cabinet, and I think the only other issue that I ever remember having a dealing with Cabinet Secretariat, while I was in the Department of Health, was the issue of Chancellor Park, and that was at the request of an assistant deputy minister.

CHAYTOR, Q.C.:

Q. Okay, so what did Mr.--what was Mr. Cake's response to you?

MS. CHAPLIN:

A. I don't really remember.

CHAYTOR, Q.C.:

Q. You don't recall what he said, okay. And when you spoke with Ms. Matthews and possibly Mr. Crawley and Mr. Cake, did any of them seem to

have had any prior knowledge of this issue?

MS. CHAPLIN:

A. No, they did not.

CHAYTOR, Q.C.:

Q. Okay. No, they did not or you got the impression that they didn't? They didn't indicate one way or the other?

MS. CHAPLIN:

A. My recollection is it was surprise across the board, that they would not have had any prior knowledge of this.

CHAYTOR, Q.C.:

Q. Okay. If we could look at P-0312, please? Okay, and this is the first of the series of these e-mails, Ms. Chaplin, and this is the one that Gary Cake sends to Mr. Thompson and

that's at 10:32 in the morning on Tuesday, July 19th, and he's indicating that you just called from the Department "to provide a heads up that a major story will break from the

Eastern Health Board as early as this Thursday, but more likely next Monday. The Eastern Health Board has recently discovered errors in its breast cancer testing program. This matter affects clients who were subject to breast cancer testing from 1997 to April 2004. I understand that an estimated 1200 to 1500 clients will need to be retested. The Eastern Health Board is currently working on a strategy for communicating this news to affected clients and the public at large. Legal advice has been engaged in this process."

And I'll just stop there for a moment. The idea that it was 1200 to 1500 clients, is that a word you would have used, clients?

MS. CHAPLIN:

A. No, I would have said patients.

CHAYTOR, Q.C.:

Q. Patients, okay, and the 1200 to 1500 you've indicated that's--those -

MS. CHAPLIN:

A. That was a number -

CHAYTOR, Q.C.:

Q. - that's the range given to you by Ms. Bonnell?

MS. CHAPLIN:

A. That's correct.

CHAYTOR, Q.C.:

Q. Okay. Now Mr. Abbott had indicated in his subsequent discussion with you that he wasn't aware of it being in that range?

MS. CHAPLIN:

A. That is my memory.

CHAYTOR, Q.C.:

Q. Okay. You didn't convey that to Mr. Cake though, did you?

MS. CHAPLIN:

A. No, I don't think so.

CHAYTOR, Q.C.:

Q. That there was some question as to whether or not that would be the range of people affected?

MS. CHAPLIN:

A. No, I don't think so.

CHAYTOR, Q.C.:

Q. Okay, and the wording here, "breast cancer testing program," would that have been the wording used by you? At this point in time, had you heard ER/PR hormone receptor testing? Had you heard this?

MS. CHAPLIN:

A. Yes, I had heard ER/PR. That was the--through the initial phone call, and I likely used that language in my first call to Mr. Cake, and I might have explained exactly what that was and he summarized it.

CHAYTOR, Q.C.:

Q. Okay, so this is his language to say "breast cancer testing program," okay. All right, and the conversation that you had with Susan, your subsequent conversation now earlier on the morning of July 19th, so it would be a couple of hours before this e-mail is now being sent by Mr. Cake, about the Labrador situation, did you relay that to Mr. Cake as well?

MS. CHAPLIN:

A. I can't say for certain.
CHAYTOR, Q.C.:
Q. And is there any reason why you wouldn't have included that piece?

MS. CHAPLIN:
A. No, there'd be no reason to exclude it and I can't say with certainty that I did or did not include that in the conversation.
CHAYTOR, Q.C.:
Q. And did you indicate to Mr. Cake that you were expecting further information?
MS. CHAPLIN:
A. I don't have a specific memory to this, but I likely would have said that we're still receiving information from Eastern Health.
CHAYTOR, Q.C.:
Q. Okay. This also indicates that Eastern Health is currently working on a strategy for communicating this news. Would you have told that to Mr. Cake?

MS. CHAPLIN:

A. Yes, I would have.

CHAYTOR, Q.C.:

Q. And what is that referencing?

MS. CHAPLIN:

A. That Eastern Health would be working on a communications strategy.

CHAYTOR, Q.C.:

Q. And Susan Bonnell would have told you that?

MS. CHAPLIN:

A. It would have been something that we discussed, yes.

CHAYTOR, Q.C.:

Q. So what do you mean in terms of a communications strategy? What does that mean to somebody in your profession?

MS. CHAPLIN:

A. It means a plan of how you're going to deal with a particular issue and the components of

a communications plan would include: you would begin with an analysis of the issue, kind of an environmental scan, if you will. You would include the background of the information and what had occurred to date. You would move into communications goals and objectives, what you're trying to achieve throughout the issue and the communications audiences. You would list, in our world, a target audience, or in this case, like any group or any group that would have to be informed about this.

CHAYTOR, Q.C.:

Q. So any stakeholders?

MS. CHAPLIN:

A. Any stakeholders.

CHAYTOR, Q.C.:

Q. Apart from the patients, for example, Cancer Society, anyone else?

MS. CHAPLIN:

A. That's true. Normally you would break it down

into a discussion of target audiences, both internally and externally.

CHAYTOR, Q.C.:

Q. Other health care boards, would they -

MS. CHAPLIN:

A. They would be a potential audience, for sure. The media would be an audience, that's a given, and the public at large would be an audience you would note as well, after you had gone through like the specified groups. You would include an approach and what I would call a roll-out strategy. So looking at where your end goal is and then working back of all the steps that have to occur in between that point. And then I can't speak to how other communication professionals write their plans, but from my perspective, when I look at something of similar significance, for example, the health board restructuring, I know that in my communications plans, I

generally had not only a detailed roll out a week, and what was to occur in the communications deliverables for each, but I would also have a spreadsheet, for lack of a better word, of all the deliverables noted, who would be responsible for what, and whether that task--what the status of that task was.

CHAYTOR, Q.C.:

Q. Okay.

MS. CHAPLIN:

A. And an evaluation component as well.

CHAYTOR, Q.C.:

Q. So in your discussion with Ms. Bonnell, you understood that she or her communications department was working on such a strategy?

MS. CHAPLIN:

A. Yes, I did.

CHAYTOR, Q.C.:

Q. Okay. And this indicates that the Department was going to be advised of the communications strategy, so I take it Ms. Bonnell told you that she was going to let you know when they came up with their strategy?

MS. CHAPLIN:

A. It probably was that, but it was also likely

us, in this case, asking to be advised of it.

CHAYTOR, Q.C.:

Q. Okay, and "a briefing note is currently being prepared," so at this point in time, had a briefing note been requested from Eastern Health, and if so, were you the person who requested it?

MS. CHAPLIN:

A. I'm not sure if it was--we would have said to them that "we need a briefing note" and I'm not sure, in the sequence of things, if that request had officially been made in writing, but it would have been provided to them by phone, at bare minimum.

CHAYTOR, Q.C.:

Q. Okay, and it also notes, of course, that "Carolyn has alerted Elizabeth to this matter," and we understand that's Elizabeth Matthews.

MS. CHAPLIN:

A. Yes.

CHAYTOR, Q.C.:

Q. At the end here, it says "legal advice has been engaged in this process." What did you understand that to mean?

MS. CHAPLIN:

A. Well, this is his summary of the phone call with me. So obviously, I would have noted some sort of discussion around their lawyers are in this process, and I don't know now, looking at this, what the context of that was, whether it was a specific reference to the Labrador Grenfell issue, whether it was me restating the fact that we had discussed different sorts of tactics to notify patients and a discussion around the registered letter. I really can't say, looking at that right now.

CHAYTOR, Q.C.:

Q. In your discussions with Ms. Bonnell, what did you understand legal counsel were involved in?

MS. CHAPLIN:

A. I understood that legal counsel was giving--I

don't know if the word--I guess advice on the approach that they would take for notification.

CHAYTOR, Q.C.:

Q. So overall, in reading--and I appreciate what Mr. Cake has done here is summarize the information you've given to him. Overall, is this relatively accurate?

MS. CHAPLIN:

A. I think so.

CHAYTOR, Q.C.:

Q. Okay. Nothing there that you would point out as being different than what you would have conveyed to him?

MS. CHAPLIN:

A. No, I don't think so.

CHAYTOR, Q.C.:

Q. And is it consistent with the information that was given to you by Ms. Bonnell?

MS. CHAPLIN:

A. Yes, it is.

CHAYTOR, Q.C.:

Q. Okay, and there's nothing omitted? There's no other key piece of information that you passed on or nothing else? I'm not suggesting there is.

MS. CHAPLIN:

A. No, I don't think so.

CHAYTOR, Q.C.:

Q. I want to make sure that it's -

MS. CHAPLIN:

A. Yeah.

CHAYTOR, Q.C.:

Q. Yes, okay, and this again was at 10:32 in the morning on the 19th, and this is one of the e-mails that came up and we spoke with you about in your subsequent interview. This morning, in terms of answering my questions around the existence of the e-mails, you indicated that

you would auto archive your e-mail whenever it came up to request you to do that.

MS. CHAPLIN:

A. Um-hm.

CHAYTOR, Q.C.:

Q. Do you know if that saves your--is it archived to your hard drive or is it archived to the network when you do that?

MS. CHAPLIN:

A. Now I feel completely out of my realm in terms of -

CHAYTOR, Q.C.:

Q. If you don't know, that's fine.

MS. CHAPLIN:

A. - the technology background.

CHAYTOR, Q.C.:

Q. Okay, that's fine. You don't know the answer to that?

MS. CHAPLIN:

A. No, I don't.

CHAYTOR, Q.C.:

Q. Okay, and when you finished your discussion with Mr. Cake, did he indicate to you whether or not there was anything else that he wanted you to do or anyone else that he wanted you to speak to on this?

MS. CHAPLIN:

A. No.

CHAYTOR, Q.C.:

Q. Okay, and did you report back to Mr. Abbott that you had in fact made contact with Mr. Cake?

MS. CHAPLIN:

A. I feel confident that I did.

CHAYTOR, Q.C.:

Q. Page two then of this exhibit, we see that Mr. Thompson then--we see that this is Mr. Cake sending it to Mr. Thompson and then Mr. Thompson forwards it on to Mr. Crawley and Mr. Thompson describes this as being major, and "once the solution is set into motion, we will expect the Department and the Board to undertake appropriate evaluation to determine why this has happened."

Ms. Chaplin, while you were at the Department, were you ever told that there was an expectation that an appropriate evaluation would take place to determine why this situation had happened?

MS. CHAPLIN:

A. No, I was not.

CHAYTOR, Q.C.:

Q. And I take it you weren't aware of this communication?

MS. CHAPLIN:

A. No, the first that I've seen of this has been through the Inquiry.

CHAYTOR, Q.C.:

Q. Okay, and while you were at--still with the Government, did you ever become aware as to whether such an evaluation had in fact happened?

MS. CHAPLIN:

A. No, I did not.

CHAYTOR, Q.C.:

Q. And I take it that it wasn't something ever discussed in the Department while you were

there -

MS. CHAPLIN:

A. No.

CHAYTOR, Q.C.:

Q. - the idea of undertaking an evaluation of this nature?

MS. CHAPLIN:

A. No.

CHAYTOR, Q.C.:

Q. And then page three, we see where Mr. Thompson forwards on the e-mail to Mr. Cake at 10:51. So we're still on the morning of the 19th, and Mr. Thompson is thanking Mr. Cake and saying "please ensure the Department and the Board include in their com plan the assurance that once the solution is set into motion that an evaluation will be done to determine the specific or systemic reasons why this occurred so the matter will be properly addressed in the long term," and he would like to see that

aspect, he says, before it goes out.

Do you know if that information was ever relayed to the Department?

MS. CHAPLIN:

A. I know it wasn't relayed to me, but I can't say for certain if it was or wasn't to the Department.

CHAYTOR, Q.C.:

Q. Okay, and if it's to--if it's regarding a com plan, I take it that means a communications plan?

MS. CHAPLIN:

A. That's correct.

CHAYTOR, Q.C.:

Q. Would you expect that to have been brought to your attention if the Department was aware of it?

MS. CHAPLIN:

A. I would.

CHAYTOR, Q.C.:

Q. You would be the person responsible, I take it, for putting together a communications plan?

MS. CHAPLIN:

A. But in this case, the communications plan was to be drafted by Eastern Health.

CHAYTOR, Q.C.:

Q. Okay. This says "please ensure the Department and the Board include in their com plan," so it appears to be that it's being asked of the Department and the health board?

MS. CHAPLIN:

A. That would be very unusual in this case, given it was an operational issue that the health authority was dealing with. It would have been unprecedented for, I think, the department to participate in a separate communications plan.

CHAYTOR, Q.C.:

Q. When did you come -

MS. CHAPLIN:

A. Or a joint plan.

CHAYTOR, Q.C.:

Q. When did you--only July 19th had you come to the conclusion that this was an operational issue?

MS. CHAPLIN:

A. Certainly on the 19th I would have seen that as a--well, it was an issue that was within their purview. I would not necessarily have viewed this as one that would be lead by the department, rather it would be lead by Eastern Health.

CHAYTOR, Q.C.:

Q. Were you expecting to have to do a communications plan at all for the department on this issue?

MS. CHAPLIN:

A. No, not initially because in this case it would have been Eastern Health's responsibility to develop a communication strategy. And, in fact, when this issue was to be made public, Eastern Health would have been the first responder or the organization responding initially to media.

CHAYTOR, Q.C.:

Q. At any point in time while you were still at the department did anybody instruct you to prepare a communications plan on the ER/PR issue?

MS. CHAPLIN:

A. No, they did not.

CHAYTOR, Q.C.:

Q. And to your knowledge did the department ever do so?

MS. CHAPLIN:

A. Well, obviously not during my tenure.

CHAYTOR, Q.C.:

Q. Okay. And are you aware of whether they did subsequently?

MS. CHAPLIN:

A. I'm not aware.

CHAYTOR, Q.C.:

Q. Okay. And this e-mail, of course, is from Mr. Thompson to thanking Mr. Cake. Did you have any discussion in this time period with Mr. Thompson directly?

MS. CHAPLIN:

A. No, I did not.

CHAYTOR, Q.C.:

Q. And these are, I think, the next one chronologically is actually page 5. And before we get to that, if I could just ask you, Ms. Chaplin, what--after you spoke then to Mr. Cake, what else happened that morning regarding this issue?

MS. CHAPLIN:

A. We did have more information forthcoming to the department and I believe, as I had stated before when I met with you and Mr. Coffey, I'm not certain--there were a number of phone calls and conversations taking place, so I can't say for certain who was the point of contact for the information. It was either from Mr. Tilley to Mr. Abbott, Mr. Tilley to the minister, it could have been, although I

have no specific recollection of a phone call

between Ms. Bonnell and myself.

CHAYTOR, Q.C.:

Q. Okay. So after the 8:00 in the morning phone call you have no recollection of speaking to Ms. Bonnell the rest of that day?

MS. CHAPLIN:

A. I'm sure I did, but I can't, I can't say, yes, we had a call at this time and this is exactly what was discussed. All I know that in a couple of hours later I was privy to new information forthcoming to the department either from Mr. Tilley to the deputy, Mr. Tilley through the minister, or it could have been through Ms. Bonnell to me, but the information suggested that Eastern Health was saying to the department, we have new information, our numbers may be skewed, we're not sure if we even have a problem at this particular point in time.

CHAYTOR, Q.C.:

Q. Okay. So let's just think about that for a minute. If you had been given new information directly from Ms. Bonnell, you have fairly good recollection regarding the discussion around the Labrador Grenfell situation?

MS. CHAPLIN:

A. Um-hm.

CHAYTOR, Q.C.:

Q. And the initial discussion with the numbers. If you had had another conversation then which was telling you that the numbers may be skewed, that we don't even know now if we have a problem and that was relayed to you directly, do you think you would recall it?

MS. CHAPLIN:

A. I think that would stand out in my mind.

CHAYTOR, Q.C.:

Q. Think it would?

MS. CHAPLIN:

A. I think it would.

CHAYTOR, Q.C.:

Q. Okay. So somewhere, though, on that day, you learned that?

MS. CHAPLIN:

A. Yes.

CHAYTOR, Q.C.:

Q. Unlikely to have been a direct conversation you had with Ms. Bonnell, is that fair?

MS. CHAPLIN:

A. I think that's fair. Like I said, we may have

had a conversation, it may have been the second way I learned about that information.

CHAYTOR, Q.C.:

Q. Yes.

MS. CHAPLIN:

A. So that may be why it doesn't stick out particularly in my mind.

CHAYTOR, Q.C.:

Q. It may be that you spoke to her again after having learned that information?

MS. CHAPLIN:

A. That's correct.

CHAYTOR, Q.C.:

Q. Okay. So the other two possible sources of information to you on that would be through Mr. Abbott or -

MS. CHAPLIN:

A. Or the minister.

CHAYTOR, Q.C.:

Q. The minister?

MS. CHAPLIN:

A. That's correct.

CHAYTOR, Q.C.:

Q. and I take it is Ms. Hennessey not involved in the picture at this point?

MS. CHAPLIN:

A. I don't think I had specific dealings with Ms.

Hennessey at this point.

CHAYTOR, Q.C.:

Q. Okay.

MS. CHAPLIN:

A. Now, whether--I would expect that since the deputy was in the loop, that he may have had a conversation with her.

CHAYTOR, Q.C.:

Q. Okay. So do you know whether or not or do you know whether or not the minister actually spoke to Mr. Tilley that day? We understand he was suppose to have lunch and there was either a luncheon meeting or there was a phone call.

MS. CHAPLIN:

A. I don't think he had lunch with Mr. Tilley. I -

CHAYTOR, Q.C.:

Q. Why not?

MS. CHAPLIN:

A. I don't remember Mr. Tilley coming to the department that day. I remember that they had had a lunch meeting scheduled maybe a month in

advance that kept moving and it had been rescheduled a number of times. But I don't remember the minister going for several hours that day, which normally if he was having lunch with Mr. Tilley would be.

CHAYTOR, Q.C.:

Q. So your recollection is that the minister was around -

MS. CHAPLIN:

A. Was around.

CHAYTOR, Q.C.:

Q. - the department that day?

MS. CHAPLIN:

A. Yeah.

CHAYTOR, Q.C.:

Q. Okay. And whether or not Mr. Tilley came to the department, could that have happened, though, and you not know it?

MS. CHAPLIN:

A. It could have.

CHAYTOR, Q.C.:

Q. Okay.

MS. CHAPLIN:

A. But it's unlikely.

CHAYTOR, Q.C.:

Q. So whichever way you understand there was a discussion between them that day?

MS. CHAPLIN:

A. Yes.

CHAYTOR, Q.C.:

Q. Okay. And did the minister tell you what was discussed between himself and Mr. Tilley?

MS. CHAPLIN:

A. I think he recapped part of the conversation, which would have included that Mr. Tilley had some concern, he understood that the minister wanted to disclose, to do a full-blown public disclosure as quickly as possible, but he had indicated that they had new information or new testing results that suggested that their numbers may be skewed, they may not even have an issue after all or certainly one that was significantly less than what they originally anticipated. He would have also--I do remember the minister saying that Mr. Tilley

had said that some of the physician groups within Eastern Health also had concerns about taking it publicly immediately, given their relationship with patients.

CHAYTOR, Q.C.:

Q. Okay. So that's what was relayed to you from Mr., by Mr. Ottenheimer?

MS. CHAPLIN:

A. By the minister, yes.

CHAYTOR, Q.C.:

Q. Okay. And in terms of any information from Mr. Abbott, do you recall him giving you any information that he had received from Eastern Health that day?

MS. CHAPLIN:

A. Just that Eastern Health was not going to be in a position to make a public announcement as we originally were told, and that we would have a briefing schedule and be briefed at

that point in time.

CHAYTOR, Q.C.:

Q. Okay. So other than your discussion then with Mr. Abbott and your discussion with Mr. Ottenheimer giving the information that you've just said that he received from Mr. Tilley, did anything else happen on this issue that morning or that, up to early afternoon?

MS. CHAPLIN:

A. Well, I remember at some point early afternoon that Mr. Cake, I believe, called for the

deputy minister and I don't believe the deputy minister was available at that point in time. I remember Mr. Abbott coming to me and saying he had to run to a meeting or something outside the department and was wondering whether I could respond to Mr. Cake's message, which was inquiring of the deputy whether any action was required of cabinet secretariat at that point in time.

CHAYTOR, Q.C.:

Q. Okay. So after having spoken with you Mr. Cake then called to Mr. Abbott and left a message for him or did they actually have a discussion?

MS. CHAPLIN:

A. I don't believe they had a discussion, no. I believe it was a message.

CHAYTOR, Q.C.:

Q. Okay. And the message was whether or not cabinet secretariat needed to take any action? What did that mean?

MS. CHAPLIN:

A. At that time. I can't -

CHAYTOR, Q.C.:

Q. I guess what action would cabinet secretariat

take?

MS. CHAPLIN:

A. I can't say for sure because normally that's

not an interaction that I would have in my role. And -

CHAYTOR, Q.C.:

Q. But you -

MS. CHAPLIN:

A. - the terminology of "no action is required" that is very much a policy given term and it's not something that normally would be in communications phraseology.

CHAYTOR, Q.C.:

Q. Okay. And based, though, now on your knowledge and you ultimately move on to executive council, what kind of action would cabinet secretariat take on the issue?

MS. CHAPLIN:

A. Likely in advance of a public announcement of that nature they might want specific briefings. I can't really speculate beyond that.

CHAYTOR, Q.C.:

Q. Okay. But that would be them getting more information as opposed to them taking action

on the issue. I'm just wondering what it would mean, why would he be inquiring as to whether or not they need to take action?

MS. CHAPLIN:

A. I think that's a question you're going to have to put to Mr. Cake, because I didn't have a lot of interactions with the policy cabinet secretariat, that policy floor, I really couldn't say beyond that.

CHAYTOR, Q.C.:

Q. Yes. So you don't know, you--and that's the wording that ultimately gets used in your e-mail?

MS. CHAPLIN:

A. That's correct.

CHAYTOR, Q.C.:

Q. And that was wording given to you -

MS. CHAPLIN:

A. By the deputy minister.

CHAYTOR, Q.C.:

Q. By Mr. Abbott?

MS. CHAPLIN:

A. Yes.

CHAYTOR, Q.C.:

Q. Okay. And what action they may or may not

take on this issue, you can't give us any insight into that?

MS. CHAPLIN:

A. No, I'm sorry, I cannot.

CHAYTOR, Q.C.:

Q. Okay. If we just look, then, at your e-mail. So anything else then, so a phone call came from Mr. Cake to Mr. Abbott. Anything else, any other discussions then in the department that day on the issue before you send your e-mail to Mr. Cake?

MS. CHAPLIN:

A. I don't think so.

CHAYTOR, Q.C.:

Q. And no other communications that you were involved in with Eastern Health?

MS. CHAPLIN:

A. No, not to my knowledge.

CHAYTOR, Q.C.:

Q. Okay. So then at 2:37, and you say Mr. Abbott asked you to send this, so he's copied on the

e-mail, you write, "Gary, Further to this morning and incoming information this afternoon no action is required at this time. We have arranged a briefing with the health

authority for the latter part of this week and will be in a better position to forward relevant briefing materials at that time. No public announcement will be forthcoming this week and there is a possibility that the significance of any announcement will be minimized." And, Ms. Chaplin, the idea that-- well, your briefing, I guess, has now been arranged, according to this, you now know that it's going to be the latter part of the week?

MS. CHAPLIN:

A. Well, it's still probably a bit of a moving target. It's either going to be Wednesday or Thursday, but we knew we were going to have one the latter part of the week.

CHAYTOR, Q.C.:

Q. Okay. And you indicated that originally the minister had asked you to make contact with the premier's office?

MS. CHAPLIN:

A. That's correct.

CHAYTOR, Q.C.:

Q. It was the minister who asked you to do that. Did you let the minister know that you would be sending this e-mail to cabinet secretariat?

MS. CHAPLIN:

A. I likely would have informed him, I don't know if it was before it was sent or after it was sent that the deputy had asked me to follow up with cabinet secretariat or that cabinet secretariat was now in the loop, as well.

CHAYTOR, Q.C.:

Q. Okay. And would you have also then contacted the premier's office with similar information, having already talked to Ms. Matthews and

possibly Mr. Crawley?

MS. CHAPLIN:

A. The premier's office through the first call would have been aware that we were arranging a briefing with the health authority. And I think it may have been a presumption that this e-mail being sent to cabinet secretariat would make its way back up to the floor.

CHAYTOR, Q.C.:

Q. Okay. So you have no recollection of having called back to Ms. Matthews or Mr. Crawley on the 19th?

MS. CHAPLIN:

A. I can't say with certainty. I know I spoke to them again, but I believe I spoke to them

again following our briefing on the 21st.

CHAYTOR, Q.C.:

Q. Do you also believe that you spoke to them on the 20th?

MS. CHAPLIN:

A. On the 20th?

CHAYTOR, Q.C.:

Q. Yes.

MS. CHAPLIN:

A. No, I don't think so.

CHAYTOR, Q.C.:

Q. Okay. This, so this e-mail was sent at 2:37. You indicated, you've told us, that "and the incoming information this afternoon," so I take it it was something that happened after the morning, this discussion, not the information between you and Susan in the morning?

MS. CHAPLIN:

A. Um-hm.

CHAYTOR, Q.C.:

Q. You and Ms. Bonnell, I should say. Okay. "No action is required at this time", you're not sure what that means, but that's what -

MS. CHAPLIN:

A. The language that was given to me.

CHAYTOR, Q.C.:

Q. Right.

MS. CHAPLIN:

A. To state to Mr. Cake.

CHAYTOR, Q.C.:

Q. Okay. "We have arranged a briefing with the health authority for the latter part of the week." And that's pretty self explanatory. And you say you "will be in a better position to forward relevant briefing materials at that time." So the understanding being that if there were briefing materials provided, that they would then be provided to cabinet secretariat?

MS. CHAPLIN:

A. Following the meeting, yes.

CHAYTOR, Q.C.:

Q. Okay. And "No public announcement will be forthcoming this week, and there is a possibility the significance of any announcement will be minimized." And whose language is that, "there is a possibility the significance of any announcement will be minimized"?

MS. CHAPLIN:

A. Well, obviously it's written from me, so I can't say--I guess it is mine. The intent was to reflect--I know a lot has been said about this, but really, just to be clear, the intent on that statement really is a reflection of the conversations that were had with Eastern Health to suggest that the problem was no where near the magnitude they originally thought and, in fact, they may not have an issue at all. And what I really meant to say here is the scope has changed.

CHAYTOR, Q.C.:

Q. The scope of the problem itself?

MS. CHAPLIN:

A. The scope of the problem.

CHAYTOR, Q.C.:

Q. As opposed to -

MS. CHAPLIN:

A. Could I have used better or clearer language looking at this? Absolutely, but -

CHAYTOR, Q.C.:

Q. In your understanding the scope of the problem that Eastern Health somehow on the 19th had more test results which indicated that there

weren't as many, going to be as many changed results, is that it, or as many people that would have changed results, is that what -

MS. CHAPLIN:

A. That they may not even have to go back and retest the full scope of the 1997 to 2004.

CHAYTOR, Q.C.:

Q. That's what you understood?

MS. CHAPLIN:

A. Um-hm.

CHAYTOR, Q.C.:

Q. And that information came from the minister?

MS. CHAPLIN:

A. Through the channels I've already identified.

CHAYTOR, Q.C.:

Q. Through Mr. Tilley?

MS. CHAPLIN:

A. Yes.

CHAYTOR, Q.C.:

Q. and that was new information on the 19th?

MS. CHAPLIN:

A. Yes, it was.

CHAYTOR, Q.C.:

Q. Yes. And so you have heard a little bit about this sentence that you wrote. And you weren't

meaning that the significance of any announcement would be minimized, you're saying that the significance of the problem itself -

MS. CHAPLIN:

A. Of the problem was far less than we originally--or that Eastern Health originally anticipated.

CHAYTOR, Q.C.:

Q. And that was only, again, information that you received -

MS. CHAPLIN:

A. From Eastern Health, that's all I was doing here was providing -

CHAYTOR, Q.C.:

Q. But not directly from Eastern Health?

MS. CHAPLIN:

A. Um?

CHAYTOR, Q.C.:

Q. That's not information you received directly -

MS. CHAPLIN:

A. It was my understanding that the information was forthcoming from Eastern Health.

CHAYTOR, Q.C.:

Q. Okay. And the idea of the significance of any announcement being minimized, and you're a

director of communications, obviously, or you were at that time and still involved in the communications business, is there any particular reason why you would focus on the announcement itself?

MS. CHAPLIN:

A. No, I think really what was in my head was the scope of the problem has changed, that it is far--we've been told that it may be far less serious than originally anticipated, that they may be looking with a much small scope, and so therefore any public announcement forthcoming would not have the same, I guess, magnitude of a systemic problem that was impacting the lab and a possible 1200 to 1500 patients.

CHAYTOR, Q.C.:

Q. Okay. And the idea that you had already given Mr. Cake the numbers, 1200 to 1500, it didn't occur to you to tell him that, well, look, we're not going to be looking at these numbers? You'd given him the dates, 1997 to 2004. It didn't occur to you to say, look, there are not--they're thinking now it may not be that time period and the numbers may be substantially less?

MS. CHAPLIN:

A. No, it didn't.

CHAYTOR, Q.C.:

Q. Okay. Did you have the sense that the concern, that there was any concern about the announcement itself, the announcement to the public on this issue?

MS. CHAPLIN:

A. From government's perspective there was no specific concern of an announcement. We always viewed that as a given, that there would be a public disclosure.

CHAYTOR, Q.C.:

Q. So was there concern then that an announcement of the magnitude that you had told to Mr. Cake, 1200 to 1500 people over a seven-year period, that that could cause significant loss of confidence in, certainly the lab, if not the health authority itself?

MS. CHAPLIN:

A. Well certainly if you're looking at announcing something of the magnitude of what was originally thought and you're looking at going back and retesting over a significant period of time with that type of patient impact, yes,

there would be some potential confidence issues.

CHAYTOR, Q.C.:

Q. And was that issue discussed in the department that day, the 19th?

MS. CHAPLIN:

A. No.

CHAYTOR, Q.C.:

Q. Did people use terms along the lines of that potential of such an announcement could cripple the system?

MS. CHAPLIN:

A. I've heard that phrase before and I can't say if it was on the 19th or it came up during the briefing on the 21st.

CHAYTOR, Q.C.:

Q. And terms such as "mass panic"?

MS. CHAPLIN:

A. Sounds familiar.

THE COMMISSIONER:

Q. Ms. Chaplin, can you be a little more specific or perhaps you can't, but when you got this information that led you to communicate in

this way, did you get any detail about what had changed over that very short period of

time?

MS. CHAPLIN:

A. Just that there was concern from Eastern Health that the numbers originally presented had skewed somewhat, that they were still getting more testing results coming back, that they were more comfortable with the conversion rates that were within an acceptable range across the industry standards.

THE COMMISSIONER:

Q. So were you led to believe there was no--there might be no problem at all?

MS. CHAPLIN:

A. That it may be--yes, it may be that there was no problem at all or if they did, it was an isolated particular point in one year.

THE COMMISSIONER:

Q. And did you know what year that might be?
MS. CHAPLIN:
A. Didn't know at that day, but it came up, we had a discussion on the July 21st meeting about a concern over a particular year, which was 2002.
CHAYTOR, Q.C.:
Q. So it wasn't a situation where you are, it

wasn't a situation where it's 1200 to 1500, no, it's 300 to 400? It wasn't that sort of a situation, it was there might be no problem here whatsoever?
MS. CHAPLIN:
A. That's correct.
CHAYTOR, Q.C.:
Q. Or if there is a problem, it's one year?
MS. CHAPLIN:
A. That's correct.
CHAYTOR, Q.C.:
Q. And how many did you understand might be one

year? How many patients?

MS. CHAPLIN:

A. I don't know if I knew at that point, I may have, but I can't say.

CHAYTOR, Q.C.:

Q. Do you recall whether or not there was any issue as to whether or not the information, whether or not the information was about positivity rates in a particular year being more within range?

MS. CHAPLIN:

A. No.

CHAYTOR, Q.C.:

Q. There was no discussion of that, that the number of people who were positive for a given year may have been in range and that that was the information that was being relayed to the department, does that -

MS. CHAPLIN:

A. That doesn't resonate with me, no.

CHAYTOR, Q.C.:

Q. It doesn't resonate at all.

CHAYTOR, Q.C.:

Q. And if it were that, is that something you think you would recall?

MS. CHAPLIN:

A. I think so.

CHAYTOR, Q.C.:

Q. Ms. Chaplin, the idea of the impact that this problem of the significance that's detailed in Mr. Cake's e-mail, which is a summary of what you told to Mr. Cake, the idea of what effect that could have on the system and in the wake of the Labrador Grenfell situation, which we understand the class action was around this period of time now underway as well and what impact those two events combined could have on the overall confidence in the system, was that

an issue that was discussed?

MS. CHAPLIN:

A. No, certainly there was no discussion about the combined impact of the two events. They were not linked at that particular point in time. It was, the only linkage was that Labrador Grenfell had gone through an adverse event experience and how they addressed disclosure.

CHAYTOR, Q.C.:

Q. So the discussion about the loss of confidence in the system or in the lab centered around specifically the ER/PR issue?

MS. CHAPLIN:

A. That's right.

CHAYTOR, Q.C.:

Q. And this certainly was a concern, that a problem of the magnitude that we are articulated here would be of concern, that it could cause loss of confidence in the lab and you heard those concerns articulated. And was that a key factor in the delay in the public announcement at this point in time?

MS. CHAPLIN:

A. I think the only link with that, the loss of

confidence in the system with the initial disclosure idea was that during that briefing on July 21st, Eastern Health basically was saying to us, look, we--this is premature, we're not even sure that we even have a problem, what the extent of it is, we can't go out and do a mass public disclosure and cause a loss of confidence in the system when we're not even convinced that we have a wide-spread problem.

CHAYTOR, Q.C.:

Q. Well it would make sense that you not put out information if it's, you know, not accurate information, but my question is whether or not the problem of the magnitude which is described here and the original information which was given to you, which I would suggest didn't end up being too far off the mark, whether or not there was concern expressed about that causing loss of confidence and whether or not the thinking behind when and how to make this announcement was influenced by concern that it would cause loss of confidence in the system?

MS. CHAPLIN:

A. I think that was one of the factors, but I think the most compelling factor that was discussed in the July 21st meeting was the notion of responsible disclosure and that is patients deserve the right to know first.

CHAYTOR, Q.C.:

Q. And was there any discussion about patients deserving to know before they are retested?

MS. CHAPLIN:

A. Sorry, can you repeat that?

CHAYTOR, Q.C.:

Q. Was there any discussion around patients deserving to know or having the right to know before they're ever even retested that this process is underway?

MS. CHAPLIN:

A. That was the discussion that was held in the briefing on July 21st because I remember

distinctly thinking there but for the Grace of God go I, that it could have been me, it could have been my mother that was being discussed and if it was me, I would want to know.

CHAYTOR, Q.C.:

Q. And who do you remember discussing that--we may be jumping ahead a bit here, but who do

you remember bringing forward that idea, that patients should be told before they're retested?

MS. CHAPLIN:

A. That was certainly the department's view, so it would have been expressed by the Minister.

CHAYTOR, Q.C.:

Q. And was that opposed by anyone in the room?

MS. CHAPLIN:

A. And by us and also, I think in fairness that Eastern Health was saying to us--if I could just back up a little bit going into that meeting on the 21st, in terms of who is

sitting around the table even and talking about the tone of the meeting because I think that might be helpful for context, but so you had Mr. Abbott at the head of the table, the Minister to the right, Mr. Hynes, myself, Stephanie Power, Susan Bonnell, Dr. Cook, Dr. Williams and Mr. Tilley was essentially the room. And I think I would describe that meeting as intense and certainly there were two, I guess, divided or two camps, if you will. The Minister really advocating public disclosure as soon as possible; Eastern Health

saying to us, look, we're not even sure what the extent of this problem is, if we have a wide spread problem, this is too soon, we can't go out and our oncologists certainly are coming to the table and telling us that they want to be able to notify patients first.

CHAYTOR, Q.C.:

Q. Right, well the idea of notifying the patients first, that was in fact canvassed between you and Susan in the early conversations because -

MS. CHAPLIN:

A. Yes, it was.

CHAYTOR, Q.C.:

Q. - because they were talking about sending letters at that point in time?

MS. CHAPLIN:

A. That's right.

CHAYTOR, Q.C.:

Q. At that point in time. So in terms of--when did that idea come off, out of the discussion, by the way? Was that still being discussed on the 19th, the idea of sending letters to the patients? Whether it's a smaller number of patients now or not, did -

MS. CHAPLIN:

A. I think we left that discussion until the 21st.

CHAYTOR, Q.C.:

Q. So that's being shelved on the 19th -

MS. CHAPLIN:

A. Until we had the briefing and we can sit down with a wider audience and have that discussion.

CHAYTOR, Q.C.:

Q. The idea of the department needing a fuller briefing before any further action took place on the file, whose idea was that?

MS. CHAPLIN:

A. That's a normal protocol with any issue that comes up in government, normally the Minister would like an opportunity to be briefed.

CHAYTOR, Q.C.:

Q. And that doesn't happen, of course, until two days later. I'm just wondering though the idea -

MS. CHAPLIN:

A. But it wasn't precluding action on the issue, I just want to be clear because Eastern Health was still doing their own work behind the scenes, they were getting more tests back.

I'm sure they were having meetings inside. I don't really want to get in and speculate, but it's not--it's not like the organization just ceased doing anything until we could arrange a schedule and have a briefing.

CHAYTOR, Q.C.:

Q. So if Eastern Health wanted to go ahead and send out the letters to whatever patients they were able to ascertain needed to be notified in whatever time period, they could have done that in the next--before the Minister was ever briefed?

MS. CHAPLIN:

A. They could have done that.

CHAYTOR, Q.C.:

Q. That wouldn't have -

MS. CHAPLIN:

A. We probably--as the department, the department probably would have asked to see a copy of that letter.

CHAYTOR, Q.C.:

Q. I take it that's most of what happened on the 19th, is it Ms. Chaplin?

MS. CHAPLIN:

A. I think that's fairly accurate, other than I

believe on the 19th there was a formal request in writing at some point about the briefing note.

CHAYTOR, Q.C.:

Q. And we'll come to that. I just want to take you back to the idea of "the postponement of the public announcement not forthcoming this week". So whose decision was that?

MS. CHAPLIN:

A. That was Eastern Health.

CHAYTOR, Q.C.:

Q. If we could look at P-0329 please? I don't expect you to be able read all of that, but we understand that this is a handwritten note of July 19th, 2005 and it's from Mr. Tilley and he says, "Susan B."--and we understand he's indicated that's Susan Bonnell and I'm not really sure, "today"--something -

MR. SIMMONS:

Q. Today's meeting revealed.
CHAYTOR, Q.C.:
Q. "Today's meeting revealed the potential that people scope of problem restricted to" --
MR. SIMMONS:
Q. "On the basis".

CHAYTOR, Q.C.:
Q. "On the basis of" -
THE COMMISSIONER:
Q. Why don't you translate, Mr. Simmons.
MR. SIMMONS:
Q. "Today's meeting revealed the potential the scope of problem restricted on the basis of a review of percent of positive results for 2003 being 75 percent, which is consistent with national benchmarks."
CHAYTOR, Q.C.:
Q. There you go, thank you, Mr. Simmons. The only part I was going to really refer you to was the next part which I had managed to

decipher, but anyhow, this part here about the idea of Susan Bonnell is relaying this, apparently, to Mr. Tilley that there had been a meeting within Eastern Health that day and there's an issue of the positivity rate for the year 2003 being 75 percent, which was in the national benchmarks. Does that resonate with you?

MS. CHAPLIN:

A. Just that, not that specific number, but just that numbers were coming back which they were

more comfortable were within benchmarks, I called it industry standards earlier, but same premise.

CHAYTOR, Q.C.:

Q. But whether it was positivity rates that was expressed, you understood it to mean numbers of patients or years that might need to be retested, is that right? This is with respect

to one year, we understand it's the year 2003.

MS. CHAPLIN:

A. Well the conversion rate, that would make sense, the conversion rate to positivity.

CHAYTOR, Q.C.:

Q. Oh you understand this to be a conversion rate. This is a positivity rate and what we understand this to mean is that 75 percent of people, or sorry, in the year 2003, 75 percent tested positive, which would be within the benchmarks.

MS. CHAPLIN:

A. Okay, I see what you're saying, uh-hm.

CHAYTOR, Q.C.:

Q. Is that consistent with what information you received that day?

MS. CHAPLIN:

A. I can't remember the specific numbers, like they're not jumping out at me, but it seems consistent with what I've described.

CHAYTOR, Q.C.:

Q. This seems consistent with what you've described.

MS. CHAPLIN:

A. I think so.

CHAYTOR, Q.C.:

Q. That in a given year, one year -

MS. CHAPLIN:

A. Oh no, not the one year, I'm sorry.

CHAYTOR, Q.C.:

Q. In one year there was a positivity rate which was consistent with national benchmarks.

MS. CHAPLIN:

A. No, not the one-year piece.

CHAYTOR, Q.C.:

Q. Discussion with Carolyn re--and we understand this is continuing on information given by Susan Bonnell to Mr. Tilley, "Discussion with Carolyn re: announcement and concerns of Minister." Do you recall any discussion with Susan Bonnell regarding the announcement and concerns the Minister may have?

MS. CHAPLIN:

A. Well the concerns the Minister had was getting it out to the public as soon as possible, that's all I can speak to in terms of his concerns.

CHAYTOR, Q.C.:

Q. And was that discussed with Ms. Bonnell on the 19th?

MS. CHAPLIN:

A. Likely, but I can't say with a hundred percent confidence.

CHAYTOR, Q.C.:

Q. If we can look at P-0134 please? Now, Ms. Chaplin, this is the e-mail regarding sending the briefing material, it's an e-mail from Carolyn Chaplin to Deborah Thomas, July 19th, 2005 at 4:05. "Can you forward this to Susan as well, I can't seem to find her address on my system. I have spoken with the Minister and everyone else in here and all are fine with proceeding with the briefing on Thursday a.m. I will be coming in for that one and then assessing where we are. As you can see, John has asked for briefing materials in advance of the meeting, but these will not go

beyond the department for now." And if we look at page 2, you're referring, I take it, to John Abbott's e-mail to George Tilley, copied to you, where he has written directly to Mr. Tilley asking him and his appropriate staff to brief the Minister on Thursday at 9:00 respecting the issue. And it would be appreciated it you could forward a briefing note to me on Wednesday prior to the briefing. Thank you." And then you forward that on to Ms. Thomas--or you forward that on, I take it that must be the e-mail from Mr. Abbott.

MS. CHAPLIN:

A. Mr. Abbott.

CHAYTOR, Q.C.:

Q. And what would be your point--and I take it Deborah Thomas at this point in time works for Susan Bonnell?

MS. CHAPLIN:

A. That's correct.

CHAYTOR, Q.C.:

Q. And you're asking her to pass this on to Susan. So why would you be sending along Mr. Abbott's e-mail to Mr. Tilley, sending that on to Deborah Thomas?

MS. CHAPLIN:

A. I think we were copied on the e-mail from Mr. Abbott.

CHAYTOR, Q.C.:

Q. Okay. You were.

MS. CHAPLIN:

A. Yes.

CHAYTOR, Q.C.:

Q. Yes, you were.

MS. CHAPLIN:

A. Just to know that we were expecting a briefing note.

CHAYTOR, Q.C.:

Q. Yes, okay. And so you passed that on, though, to Ms. Thomas?

MS. CHAPLIN:

A. That's correct. Just so Susan, she was coming to the meeting, would be aware that the department had requested a briefing note.

CHAYTOR, Q.C.:

Q. So this is your way of letting Susan know that there's going to be a briefing note requested?

MS. CHAPLIN:

A. There was also some concern raised in a conversation with Eastern Health and I can't

say for certain with whom I had the conversation, it could have been Deborah Thomas, it might have been Ms. Bonnell, over getting a briefing note from them. It was a little bit of a struggle and we certainly or the deputy had indicated he wanted one in advance of the meeting. And all I can say about it is that they were hesitant in providing one and getting it widely circulated

across government while they were still in the process of gathering information, as information kept changing. So I sought direction from the deputy as to what we should do because we really just wanted the materials in advance of the meeting and he said to me that I could respond and say that it was okay to send the note, that we would just keep it here for now until the briefing that was to occur on the 21st.

CHAYTOR, Q.C.:

Q. Okay. So this indicates that Mr. Abbott had written to Mr. Tilley and unfortunately we don't have the date and time here, but it's probably in another copy, but obviously it's before you get back to Ms. Thomas at 4:00 on

that day.

MS. CHAPLIN:

A. That e-mail was actually sent at 1:57 p.m. by the copy that I have.

CHAYTOR, Q.C.:

Q. Okay. So, this one from Mr. Abbott to Mr. Tilley, I'm sorry, is what time?

MS. CHAPLIN:

A. 1:57 p.m.

CHAYTOR, Q.C.:

Q. 1:57, okay. So, that's before your e-mail even to Mr. Cake?

MS. CHAPLIN:

A. Yep.

CHAYTOR, Q.C.:

Q. And Mr. Abbott is asking Mr. Tilley, confirming the briefing and asking that there be a briefing note sent and then you send that on to Ms. Thomas along with the caveat, but we will not ask him for the briefing materials in advance, but these will not go beyond the department for now. Now, there was no such caveat in the e-mail to Mr. Tilley by Mr. Abbott, he didn't indicate that there was any assurance -

MS. CHAPLIN:

A. No, but it was a phone call that, I believe, I received. So you received a phone call then some time after Mr. Abbott's e-mail had been forwarded?

MS. CHAPLIN:

A. That's correct.

CHAYTOR, Q.C.:

Q. And who did you receive a phone call from?

MS. CHAPLIN:

A. As I just stated before, I believe it was either from Deborah or Susan, but I can't say it for certain who it would have been.

CHAYTOR, Q.C.:

Q. And they were concerned that -

MS. CHAPLIN:

A. They were just passing on concerns from their organization that, you know, what are you guys going to do with the briefing note; we're still gathering information and I think really when I went to see Mr. Abbott and said, we just need these materials. We were struggling to get the information in advance of the meeting, wanted to ensure that we did. And he suggested that I could tell them that it was

fine, that we would just keep it in the department for now until that meeting.

CHAYTOR, Q.C.:

Q. So, Mr. Abbott gave you the authorization to say that?

MS. CHAPLIN:

A. Yes, he did.

CHAYTOR, Q.C.:

Q. Okay. And what was the concern with whether or not anyone else in the government would receive the briefing note. If the briefing note is being prepared with the information that they have up to that point in time and it's satisfactory for it to be given to the department -

MS. CHAPLIN:

A. That's a question I think you're going to have to put them. All my memory suggests is that there was concern that information was so fluid that they didn't want to a widely circulated note because they were still in the

process of gathering information and wanting to ensure it was the most current.

CHAYTOR, Q.C.:

Q. Well, that's what I'm asking you. What was

given to you to make you be able to then discuss the issue with Mr. Abbott as to what the concern was and then feel comfortable enough going back and giving them that assurance? Because I mean, an hour and a half before that you had told Mr. Cake at Cabinet Secretariat that he -

MS. CHAPLIN:

A. That we, in the department would forward a relevant briefing note -

CHAYTOR, Q.C.:

Q. Later.

MS. CHAPLIN:

A. - later -

CHAYTOR, Q.C.:

Q. Yes.

MS. CHAPLIN:

A. - meaning after the meeting.

CHAYTOR, Q.C.:

Q. Yes.

MS. CHAPLIN:

A. That's correct.

CHAYTOR, Q.C.:

Q. So, I'm just wondering, what reason was given to you, knowing that you had had that

communication with Mr. Cake only an hour and a half before, that briefing materials would be forwarded later on after you had your briefing.

MS. CHAPLIN:

A. Had the briefing, yes.

CHAYTOR, Q.C.:

Q. Yes. So, -

MS. CHAPLIN:

A. And this is consistent because what this is

saying is -

CHAYTOR, Q.C.:

Q. No, I'm not saying it's not consistent. What I'm saying what--there would have had to have been a valid reason given to you not to distribute it further on the 19th and I'm wondering what reason that was?

MS. CHAPLIN:

A. I really think that--all I can say is, as I've stated before, that my memory suggests they had concern with a wide circulation of the briefing note because they were still gathering information; it was fluid, we just really wanted a note. And sometimes it is difficult and I can appreciate when people are

dealing with issues and to set aside the time to actually develop briefing notes, it's not anyone's favourite task. So, I don't know if that's a factor and I don't really want to speculate on that. I think that's a question

you probably have to ask them.

CHAYTOR, Q.C.:

Q. So, in saying they will not go beyond the department for now -

MS. CHAPLIN:

A. For now meant until that briefing.

CHAYTOR, Q.C.:

Q. Until the briefing and that's what they clearly understood you to mean?

MS. CHAPLIN:

A. I think so.

CHAYTOR, Q.C.:

Q. Okay, but if things are still fluid after the briefing, can the briefing note go beyond -

MS. CHAPLIN:

A. The briefing not can go, that's at the deputy's discretion. And then as information gets updated, you just keep updating the notes.

CHAYTOR, Q.C.:

Q. So, in ensuring Eastern Health that the briefing note would not go beyond the department for now, you meant until after the briefing because you had already told Mr. Cake that any briefing materials you received -

MS. CHAPLIN:

A. That's right.

CHAYTOR, Q.C.:

Q. - at that point would go on.

MS. CHAPLIN:

A. Yep.

CHAYTOR, Q.C.:

Q. Okay. So, I'm just trying to--if this is going to be the briefing note that's used at the briefing and you've told Mr. Cake that you're going to forward it on to him -

MS. CHAPLIN:

A. Later in the week after that meeting -

CHAYTOR, Q.C.:

Q. - does that put you in a predicament?

MS. CHAPLIN:

A. Well, looking at it now, three years later, I would suggest probably, but I'm not sure if that resinated with me at that particular point in time.

CHAYTOR, Q.C.:

Q. And do you know whether or not that briefing note got forwarded onto Mr. Cake or anyone else in Cabinet Secretariat?

MS. CHAPLIN:

A. I always presumed that that deputy had forwarded that note, I was alerted that it wasn't was when during the interview I had with you and Mr. Coffey in April.

CHAYTOR, Q.C.:

Q. And you didn't forward the briefing materials on though to Mr. Cake yourself?

MS. CHAPLIN:

A. That's not typically the role a communications director would play. Usually the circulation of briefing notes would occur at the deputy level or the ADM. In this case, in particular, given that--I would probably wait for instruction from the deputy or presume that he had done it. And in this particular case, later in that afternoon, I actually left the department on annual leave as my brother

was getting married the next day, for two weeks.

CHAYTOR, Q.C.:

Q. Not this day, 18.

MS. CHAPLIN:

A. Sorry, the 21.

CHAYTOR, Q.C.:

Q. 21, okay. Okay. And do you know whether or not you, in fact, received the briefing document or any briefing materials from Eastern Health prior to the meeting of July 21?

MS. CHAPLIN:

A. My memory, as I stated to you and Mr. Coffey back in April is that we didn't--that I just remember getting handed the briefing note as I went into the meeting, but I believe I subsequently seen an e-mail that would suggest that a number of us did have it electronically, but received it after the end

of day on the Wednesday evening when I would have already gone because I know I had a family commitment that night and the next morning I would have gone directly from in the department right into the board rooms. It's likely that somebody handed me the note.

CHAYTOR, Q.C.:

Q. Okay. And you're in discussion with, you

believe it was Ms. Thomas about the concern about circulating the briefing note, did you indicate to her that, well Cabinet Secretariat and the premier's office already know about this issue and I have to provide them briefing material and an update on this issue after our meeting?

MS. CHAPLIN:

A. I probably would have stated that Cabinet Secretariat was engaged or in the loop and that the department would be expected to

provide a briefing note at some point after the meeting.

CHAYTOR, Q.C.:

Q. Okay. So, was the concern expressed about circulating it beyond the department, was that a concern because they were now aware that, in fact, the premier's office and Cabinet Secretariat have been told of this issue?

MS. CHAPLIN:

A. I have no idea.

THE COMMISSIONER:

Q. Ms. Chaytor, wherever you can find a convenient spot, we'll take the afternoon break.

CHAYTOR, Q.C.:

Q. Okay. If we could look at P-0303 please. And by the way, Ms. Chaplin, before we leave that, was the assurance that was given to Eastern Health about not circulating the material at that point in time beyond the department, did

you let the minister know that?

MS. CHAPLIN:

A. I'm not sure.

CHAYTOR, Q.C.:

Q. Okay. You don't know if you had any discussion with the minister on that?

MS. CHAPLIN:

A. No.

CHAYTOR, Q.C.:

Q. Okay, P-0303, this is e-mail from Ms. Thomas to Mr. Abbott and Mr. Tilley and you are copied as is Ms. Bonnell and it's July 20th, 2005 8:23 a.m.. And I take it before we leave the 19th, there was nothing else then that happened on that day, was there, Ms. Chaplin that you can recall?

MS. CHAPLIN:

A. No, I don't think so.

CHAYTOR, Q.C.:

Q. Okay. And this e-mail at 8:23 in the morning, Ms. Thomas is indicating, she's saying, good morning, and that we will be fully briefed and updated on this--they're not going to be in a position basically to get a briefing note to you because they're going to be meeting at 5:00 p.m. that day, sorry, 4:00 p.m. that day with lab officials to obtain the latest information. So, it's going to be some time after five before they can get a briefing note to you. Okay.

And then if we could look, please, at 1530 and this is an e-mail then of Ms. Bonnell, July 20, 2005 at 5:27 p.m. to yourself and a number of other people and it's background notes, ER/PR issue and if we look at what's attached here, briefing note, so is this what I understand you say that you were left the department before 5:27 on that day.

MS. CHAPLIN:

A. That's correct.

CHAYTOR, Q.C.:

Q. Okay. And so I take it you would have received this on your Blackberry that evening?

MS. CHAPLIN:

A. Right.

CHAYTOR, Q.C.:

Q. So, you, in fact, did receive this electronically, a copy of the briefing -

MS. CHAPLIN:

A. First time I read it I know was at the meeting because that night was the rehearsal for the wedding and -

CHAYTOR, Q.C.:

Q. Okay.

MS. CHAPLIN:

A. - a family commitment. So, I wouldn't have had the chance to read that.

CHAYTOR, Q.C.:

Q. Okay. But that is the copy of what you received on the 20?

MS. CHAPLIN:

A. Yeah, and it's copied to the others in the department would include Stephanie Power, my assistant, as well as Mr. Abbott's home e-mail address.

CHAYTOR, Q.C.:

Q. Okay. So, that's what the abbhan (phonetic)

MS. CHAPLIN:

A. Abbhan, yes.

CHAYTOR, Q.C.:

Q. Okay, thank you. This is a good place, thank you, Commissioner.

THE COMMISSIONER:

Q. All right, we'll take the afternoon break.

(RECESS)

THE COMMISSIONER:

Q. Please be seated. Ms. Chaytor.

CHAYTOR, Q.C.:

Q. Thank you, Commissioner. Ms. Chaplin, we're getting there. The first phone call that you had with Susan Bonnell, until the meeting on July 21st, and we've now canvassed those two or three days in some detail, is there anything else that you can think of in terms of what was being discussed, any other meetings in the Department or any other discussions with Eastern Health or have we now

covered everything that you can recall?
MS. CHAPLIN:
A. I think we've covered the majority of it. Certainly if something else comes to mind throughout my time here, I will raise it.
CHAYTOR, Q.C.:
Q. Okay, sure, and in terms of the information

that was changing, and we've looked at that and what you understood that information to be, did anyone ever suggest that this could, in fact, just be, in terms of there not being a problem, that it could be the fact that there was new technology now being used in the laboratory?
MS. CHAPLIN:
A. Absolutely.
CHAYTOR, Q.C.:
Q. Okay, and who suggested that?
MS. CHAPLIN:

A. That was raised by Eastern Health during our briefing on July 21st.

CHAYTOR, Q.C.:

Q. Okay.

MS. CHAPLIN:

A. And it could have been raised even prior to that in phone conversations that were had between the Department and Eastern Health.

CHAYTOR, Q.C.:

Q. Okay. So it may have been something that was floated in that time period from July 18th through to -

MS. CHAPLIN:

A. Oh, there's no question that it was.

CHAYTOR, Q.C.:

Q. - from the 18th, 19th, 20th, it may have been raised in that time period as well?

MS. CHAPLIN:

A. That's correct.

CHAYTOR, Q.C.:

Q. Okay. Do you recall whether or not on the 20th you had any discussion with either Brian Crawley or Elizabeth Matthews to give them an update on where things stood?

MS. CHAPLIN:

A. I don't think so. I think the second conversation with certainly Elizabeth, I'm not sure if Mr. Crawley was part of that, was after the briefing on the 21st.

CHAYTOR, Q.C.:

Q. If we could just look back for a second, please, to, I believe it's 0303? Yes, this is the e-mail from Deborah Thomas at 8:23 in the morning on the 20th, and she's indicating that "we will not be fully briefed and updated on the situation until after five p.m. today. We have a four p.m. meeting today with the lab officials to obtain the latest information, so

any briefing materials which will be sent over

today will not be up to date, as we expect new information at this meeting." So this is again July 20th at 8:23 a.m., and then, as I showed you before we went to break, there is, at 5:27, the briefing note is sent over to you -

MS. CHAPLIN:

A. Right.

CHAYTOR, Q.C.:

Q. - and Mr. Abbott and others, okay. So I take it then the briefing occurs on July 21st and perhaps you can tell us what you remember about that?

MS. CHAPLIN:

A. If you don't mind, I'm just going to look to my own notes.

CHAYTOR, Q.C.:

Q. Sure.

MS. CHAPLIN:

A. Which I believe were entered as an exhibit as well, as a guide. So as I said before the break, I think I gave you a sense of who was in the room, to the best of my knowledge.

CHAYTOR, Q.C.:

Q. And you were going to look at your notes. It's P-0159, please. Yes, you've already indicated who you remember being in the room.

MS. CHAPLIN:

A. And I know in the left-hand column of my notes here, I note officials from Eastern Health and then further down the page, I note Dr. McCarthy and Dr. Laing.

CHAYTOR, Q.C.:

Q. Yes.

MS. CHAPLIN:

A. But I don't know--I definitely know that Dr. McCarthy wasn't in the room. I'm unsure of whether Dr. Laing was in the room. I think they may be noted in the left-hand column because we were talking about the test case at that point.

CHAYTOR, Q.C.:

Q. Okay.

MS. CHAPLIN:

A. So the meeting started at 9:00 in the morning and it was held in the executive boardroom of the Department, in the Minister's suite, and it began with either Dr. Williams or Mr.

Tilley giving--walking us through some of the

information in the briefing note that was provided.

CHAYTOR, Q.C.:

Q. So the briefing note was passed out, I take it, at the meeting?

MS. CHAPLIN:

A. That's right. So we're reading through then and kind of using that as a guide to walk through the information.

CHAYTOR, Q.C.:

Q. And was it the same briefing note that you had received electronically the evening before?

MS. CHAPLIN:

A. I think so.

CHAYTOR, Q.C.:

Q. Okay. If we could bring up, please, P-0075 for a moment, and this is what we understand was the briefing note that was handed out, and I'll just scroll down it for you.

MS. CHAPLIN:

A. Right. So they began by--the starting point was in January '04, they made the decision to purchase the new automated technology, the Ventana system, for testing.

CHAYTOR, Q.C.:

Q. Okay.

MS. CHAPLIN:

A. Then they explained to the Minister that in May, exactly what's noted here, that there was an issue with a patient who had had a retest done in the States or had sought a second opinion rather in the United States, and there were different results and that the oncologist had gone back and looked at a small group of patients and retested those samples. They found some conversions. They noted that they were looking at particular year, 2002, and I believe these are in my own notes that you

just had up.

CHAYTOR, Q.C.:

Q. Yes, okay, that's P-0159, Registrar.

MS. CHAPLIN:

A. So the first sample group that we were talking about here, 25 patients were retested, 16 of which had a conversion, and then another group, 25 out of 33. That night I do remember somebody asking in the meeting if that meant, like, why was 2002 the starting point, was there a particular concern over that year, and did it have anything to do with the six week

disruption in testing that the lab experienced in 2003.

CHAYTOR, Q.C.:

Q. Okay, sorry, say that again?

MS. CHAPLIN:

A. I do remember as they were walking through the information, somebody asking whether there was concern over -- like, what prompted them to

look at the sample base in 2002, was there a particular concern with that year; if so, was there correlation between that year and the six week disruption in testing for 2003.

CHAYTOR, Q.C.:

Q. And do you recall if there was an answer to that question during the meeting?

MS. CHAPLIN:

A. I don't think we got a specific response. I believe that they did note that there had been some quality issues raised in 2003 that had led to the six week disruption, but then there was some satisfaction and the lab resumed testing, but I don't think we ever got a specific answer. Then they discussed -- Eastern Health discussed some of the things that could account for changing variables, and

this is why they didn't really know the full extent of the problem. One being newer

technology, and that the national standards on conversion rates were somewhat of a moving target, and that there were different thresholds.

CHAYTOR, Q.C.:

Q. What was being suggested with the reference to the newer technology, what did you understand that to be?

MS. CHAPLIN:

A. At that point in the meeting, the discussion around newer technology centred around the new system -- given the previous DAKO system was a 40 step process where there was some manual, I think, boiling of samples and that sort of thing, that obviously with the newer technology and the technological advances that had been made, that maybe that new technology had a finer sensitivity and was picking up more sensitivities than the previous system. That's the best way I can describe it in layman's terms.

CHAYTOR, Q.C.:

Q. And that would account for the difference in

the results on the new Ventana versus what had originally been obtained on the DAKO?

MS. CHAPLIN:

A. That's right, and I believe the note below that when I say "re; conversion", it should probably be "retest conversion rates" are within reasonable range, I believe that they were discussing more results that were coming in, and that the latest information they had seen with the conversion rates suggest that they're still within a reasonable range, and that was one of the factors why they weren't even sure if they had a problem or the extent of the problem.

CHAYTOR, Q.C.:

Q. So they are suggesting that up here in 2002, they had done two batches at this point in time; 16 out of 25 converted, is that what you understood that to be?

MS. CHAPLIN:

A. Yes, I did.

CHAYTOR, Q.C.:

Q. And 25 out of 33 converted?

MS. CHAPLIN:

A. Yes, I did.

CHAYTOR, Q.C.:

Q. And did you understand then down here where you're saying "re; conversion rates" --

MS. CHAPLIN:

A. That they were still within an acceptable reasonable range. That they couldn't confirm essentially that there was an error.

CHAYTOR, Q.C.:

Q. That the conversion rates of 16 out of 25, and 25 out of 33 were within a reasonable range. Is that what you understood them to be saying?

MS. CHAPLIN:

A. I believe that to be true.

CHAYTOR, Q.C.:

Q. Okay. Did we cover off this part of your note here where you say, "The percentage of cells used to determine positive tests, we would look at 30 percent threshold". Brackets, is that Mayo Clinic?

MS. CHAPLIN:

A. That's the Mayo Clinic, and I think the point that they were trying to make was they're not necessarily comparing apples to apples with the labs, that while, I think now in the latest learnings with this particular type of

cancer that even 1 percent positivity rate in the ER/PR testing can benefit treatment for the patient, but at this particular point in time what one lab might consider to be 30 percent would be the baseline ER/PR positivity rate that they would require and consider a positive result, some may look at lower thresholds, so less than 30 percent of an ER/PR positivity rate and consider it a weak positive. That's the best way I can explain it.

CHAYTOR, Q.C.:

Q. Okay, and who was suggesting that the conversion rates were within a reasonable

range?

MS. CHAPLIN:

A. Well, that would have come from either Dr. Cook, Dr. Williams, or Mr. Tilley. I can't say for certain.

CHAYTOR, Q.C.:

Q. And was there one or more people who would have been doing most of the talking on this issue?

MS. CHAPLIN:

A. I think it's fair to say most of the

conversation in the room came from either Dr. Williams or Mr. Tilley.

CHAYTOR, Q.C.:

Q. Okay, thank you, and then patient notification, you've written, "Newer technology may provide other treatment options". What did that mean, what was being said there, and again is this your note of what's being said in the room?

MS. CHAPLIN:

A. I'm recording what's being said in the room. I'm not sure exactly what that would mean at that point in the conversation because I know later in the meeting, we did get to a discussion around the reasons why Eastern Health did not want to take this to a broad public disclosure at that point in time, and it did lead to a conversation about patient notification. They certainly advised in that particular meeting that at that point any patient that they previously had tested, if you look up the 2002 numbers that experienced a conversion, that the oncologists were sitting down with the patients and notifying them as soon as those test results became

available. So there was some patient notification occurring even at that particular point in time.

CHAYTOR, Q.C.:

Q. So out of those who had changed results?

MS. CHAPLIN:

A. That's correct.

CHAYTOR, Q.C.:

Q. Were being told. This idea of patient notification and "newer technology may provide other treatment options", was it being suggested that in notifying patients, they could be told that it's because of new technology that there may be now another treatment option available to them due to the new technology? Is that what was being suggested as a possible reason to be given to patients?

MS. CHAPLIN:

A. They certainly -- there certainly was discussion in the room around that in terms of -- it was more in the context of a conversation around, "we felt that, okay, if you aren't going to broadly disclose this to the public, and the compelling reason is that

patients deserve to receive that information first, then why can't we notify all patients that are possibly being retested at this particular point in time", and the conversation back from Eastern Health's side of the room, and I can't say for certain who said it, was, "Well, what can we possibly say to patients at this point in time, we don't know the extent of the problem", and that's when I remember, as I said before the break, thinking, well, if it was me that was in this group, I would want to know.

CHAYTOR, Q.C.:

Q. And you voiced that in the room that day?

MS. CHAPLIN:

A. I voiced that in the room that day, and certainly even though the draft materials that I now know were available at that time that were never shared with us, certainly one of the positioning in one of the news releases would suggest that to be the case.

CHAYTOR, Q.C.:

Q. Yes, okay. I will bring you to those in a moment. You're talking about the draft news releases that were prepared by Eastern Health?

MS. CHAPLIN:

A. Yes.

CHAYTOR, Q.C.:

Q. And that this idea of telling people or suggesting that it's due to newer technology that there's a treatment option appears in their materials?

MS. CHAPLIN:

A. I believe so.

CHAYTOR, Q.C.:

Q. Their draft materials, okay. I just want to fast forward you on your notes here for a moment because towards the end, and again tell me if this is just you taking notes in the room or whose idea this might be, but on your second page towards the end it's "positioning; option for retesting, new tech available, etc, instead of "errors and testing". Ms. Chaplin, do you know what that's referring to?

MS. CHAPLIN:

A. Yes, I heard Ms. Bonnell's testimony last week

where she described this as my wishful thinking, and I wish to clarify that it's certainly not the case. I don't wishful think when dealing with issues, and this is

something that I recorded that was said at the meeting and certainly the draft press materials that they had at the time that were not shared --

CHAYTOR, Q.C.:

Q. With the department?

MS. CHAPLIN:

A. With the department, certainly would suggest that was an option that was being considered.

CHAYTOR, Q.C.:

Q. By whom?

MS. CHAPLIN:

A. By Eastern Health.

CHAYTOR, Q.C.:

Q. And the idea being to position this in terms

of a public release was that the option for retesting was due to new technology now being available as opposed to any errors in the prior testing? That's what you understood this to mean?

MS. CHAPLIN:

A. Maybe -- in fairness, maybe Eastern Health did actually believe that at that time because it would be unethical to go out and communicate anything that would be inaccurate.

CHAYTOR, Q.C.:

Q. But that's what you understood, this was coming from Eastern Health, and this is what you understood was --

MS. CHAPLIN:

A. That that was a possibility of what they could tell patients at that particular point in time because the Minister was pushing for some element of disclosure.

CHAYTOR, Q.C.:

Q. Okay. Who in the room do you recall saying that?

MS. CHAPLIN:

A. I really don't know.

CHAYTOR, Q.C.:

Q. In terms of positioning a message, who would you expect from Eastern Health to be putting that forward?

MS. CHAPLIN:

A. I really can't speculate on who actually said it because I honestly don't remember.

CHAYTOR, Q.C.:

Q. That's fair enough. If we could just continue on then with your notes.

MS. CHAPLIN:

A. Part of the briefing as well was to advise the Minister of the actions that the organization were taking. One being, and I'm not sure if this was the meeting where it was discussed or

if that was a later point in time in August, about shutting down the machinery, and that they were having external technical consultant -- well, they were having somebody who repaired Ventana Systems to come and verify the accuracy of the Ventana System, and it was also noted that an external technical consultant was coming in the fall to review the lab.

CHAYTOR, Q.C.:

Q. Okay, and then you have a number here, 240. Do I take it that's number of patients?

MS. CHAPLIN:

A. Yeah, number of patients between 2000 and 2004 who tested ER/PR negative.

CHAYTOR, Q.C.:

Q. And unknown how many through 1997 and 2000?

MS. CHAPLIN:

A. Uh-hm.

CHAYTOR, Q.C.:

Q. So it was unknown how many patients had tested

negative from '97 and 2000?

MS. CHAPLIN:

A. Yes, I think I must have noted that because we would have asked the question, and obviously there was no specific number provided.

CHAYTOR, Q.C.:

Q. Okay.

MS. CHAPLIN:

A. I'd also like to note because in looking at the briefing note material, even though it confirmed in the briefing materials that we were given, that they were testing between 1997 and 2004, and my recollection of this meeting was that that -- given that they now weren't sure of the extent of the problem, we're looking at a particular year, that they hadn't fully decided that, yes, definitively they were going back as far as 1997 to retest. That's my recollection.

CHAYTOR, Q.C.:

Q. And did you also understand in your note that you have written here that they didn't know how many patients through '97 and 2000, those two years they weren't sure how many patients there were or they weren't sure how many

tested negative?

MS. CHAPLIN:

A. I don't know, unless I had a specific notation, and it could be that they knew and didn't want to give a specific number because they didn't have it there to verify. It might have been a case of "I'll provide that information to you later".

CHAYTOR, Q.C.:

Q. But for some reason there was -- in 1997 and 2000, they seemed to have incomplete information on those two years at that point in time in terms of numbers?

MS. CHAPLIN:

A. In terms of what they brought to the meeting, but as I said, they could have had that information, but not had it with them.

CHAYTOR, Q.C.:

Q. Okay. If we could just look again then at P-075, and this is the briefing note that would have been passed out at the meeting, and we see on the second page there was a chronology

done. It's about a page and a half of the chronology, and it's indicating on July 20th, 2005, "Upon review of the statistical data",

and I think that should be, "it has now been concluded that the positivity rates are while on the low end of the scale, within acceptable range", and there's certainly a positivity number given for the year 2000, numbers for 2000, 2001, 2002, 2003, and 2004. I just bring that up in the context of the idea that somehow they're missing numbers for the year 2000. Maybe that should be '97. Are you sure it was 2000? If we just go back then to 159 -- otherwise, they've been able to do calculations for the year 2000, it appears, and if you look up here, you see your note says 2002 and 2004.

MS. CHAPLIN:

A. Uh-hm.

CHAYTOR, Q.C.:

Q. That doesn't help with your recollection, does it?

MS. CHAPLIN:

A. No, I'm sorry, it doesn't.

CHAYTOR, Q.C.:

Q. As to which year they may be struggling with or not have all the data for, okay. All right, and notification through specialist,

what did you understand that to mean?

MS. CHAPLIN:

A. That eventually when they would provide notification to patients, that the initial notification would be made through a specialist.

CHAYTOR, Q.C.:

Q. Okay. You've written, "Messaging, public message, individual message", and we've already talked about the positioning. The 1997 time frame, what is your reference to

there?

MS. CHAPLIN:

A. My recollection on that is that that was the out year of how far back they could potentially go for resting.

CHAYTOR, Q.C.:

Q. Okay, and, "Meeting with oncologist Monday or Tuesday next week, Monday/Tuesday, continuing to retest and report to oncologist". I take it, Ms. Chaplin, basically, this is your recollection of the meetings as reflected in your notes. Is there anything else that you recall that isn't in your notes?

MS. CHAPLIN:

A. Basically the outcome for next steps in terms of, you know, the minister's comfort level is he understood certainly the advice that was being presented to him by Eastern Health and did certainly believe that patients, always

advocated that patients needed to know and understood that responsible disclosure would include notifying patients first and foremost before taking it public. He understood that Eastern Health was still struggling in terms to confirm the extent of the problem, if they had one, and that Mr. Tilley would be meeting with the oncologists as early as--I believe, actually, Mr. Tilley did meet with them on the weekend, but Monday, Tuesday of next week, that they were continuing to retest and report to the oncologists. The minister indicated he wanted a briefing again in two weeks. Certainly it was brought up at the meeting that Eastern Health should, in the interim, continue on to develop a communication strategy and a plan for how this would be disclosed because even though they weren't going to be in a position to disclose within the next 72 hours, certainly it wasn't off the

minister's radar. It wasn't a question of if there would be a public disclosure and notification but a question around timing and when. The other notable that I remember in that meeting is the minister asking Mr. Tilley if there are any additional resources he required either from a human resources perspective or from a capital perspective to expedite the process, if there was anything he needed, essentially, and Mr. Tilley's response was, no, not at that time.

CHAYTOR, Q.C.:

Q. So the meeting ended. And what was the understanding in terms of whether or not patients were now going to be notified?

MS. CHAPLIN:

A. It's my understanding that we were under the impression that Eastern Health would continue to notify the patients as results came in, that anyone who had converted in the samples they were looking at, that those patients would be notified immediately if a course of treatment was required, a change in course of treatment was required. And that while a broad public disclosure was on hold at this

point and even the broader patient notification at that point -

CHAYTOR, Q.C.:

Q. So the other patients who weren't having any change in their treatment, they were not going to be notified at that point?

MS. CHAPLIN:

A. At this point. It was until we saw what occurred with the results based on Mr. Tilley's meeting again with the oncologists. And the context, I think, at that time, for that decision was that we were under the impression that this information would be would be incoming to the department on a very timely basis.

CHAYTOR, Q.C.:

Q. And what did you understand that time frame to be?

MS. CHAPLIN:

A. Within a couple of weeks. And the only reason I really say that is, as you know, I left shortly after this meeting to begin annual leave for two weeks because my brother was

getting married the following day. And I had a conversation with the minister upon

completion of that meeting to see whether he would prefer that I stay and remain in the department. I didn't mind pushing off my vacation as long as I could attend the wedding. So I fully expected when I left that afternoon to be called back.

CHAYTOR, Q.C.:

Q. You thought that's how eminent things were unfolding?

MS. CHAPLIN:

A. I did, I thought within the next two weeks we might be in a position where we had the information, that Eastern Health could then be in a position to begin the notification process.

CHAYTOR, Q.C.:

Q. And did you, in fact, abbreviate your vacation

that year, did you come back earlier?
MS. CHAPLIN:
A. I didn't come back early, but I checked in with the department frequently, so I would consider it an interrupted vacation, not that I minded, given the significance of what we were dealing with.
CHAYTOR, Q.C.:

Q. Okay. So you certainly, when it concluded on July 21st, understood that this was a significant issue? The idea that this was somehow no issue or not a significant issue, that was no longer what was being discussed?
MS. CHAPLIN:
A. Sorry, I'm going to have to ask you to repeat that?
CHAYTOR, Q.C.:
Q. No trouble. When you finished the meeting by the end of July 21st, the idea that this was no longer an issue or not a significant issue,

that was no longer what was being discussed, you saw this as a significant issue and that you, in fact, thought you may be called back from your vacation early?

MS. CHAPLIN:

A. Well, I think I would categorize it saying it was still in a risk situation from an issues perspective, but certainly we were unclear as to whether--what the extent of the problem was, whether they even, in fact, had a systemic problem. So while, you know, I was preparing for, yes, I may be called back, I think it's fair to say we really didn't know

what we were dealing with at that point.

CHAYTOR, Q.C.:

Q. Ms. Chaplin, the patients who had already been notified and I believe the briefing note elaborates on that and says 12 had been told at that point, 12 out of the original 16 here

out of the 16 out of 25 that converted in the first batch, was there any discussion in the room as to, well, if 12 patients know this, this is a very short period of time before this is going to become a public issue?

MS. CHAPLIN:

A. Yes, and I know that for a fact because I stated it.

CHAYTOR, Q.C.:

Q. You stated that, okay. And what was your concern around that?

MS. CHAPLIN:

A. My concern, certainly from the communications background I come from is timely disclosure. And I didn't think this was a question of if this broke to the media, it was a question of when and how quickly we could be in a position where Eastern Health had the appropriate information that they could really begin a

broader patient notification piece.

CHAYTOR, Q.C.:

Q. And when you articulated that concern, what response was received in terms of alleviating your concern that they be ready and prepared as quickly as possible with a method to get this message out there to all the patients?

MS. CHAPLIN:

A. I don't know if my concern was ever alleviated, but certainly, you know, from their perspective I did feel that they were going to go away and put together a communications plan. And no one from Eastern Health was suggesting that they were never going to be in a position, that they wouldn't disclose or that they weren't going to disclose, it was a question of timing.

CHAYTOR, Q.C.:

Q. Okay. And I take it from what you said earlier it wasn't shared with you that there already existed drafts of letter to patient and drafts of news releases or potential releases, that wasn't talked about when you raised that in the meeting?

MS. CHAPLIN:

A. I do recall them saying, and I'm not sure, I think even Mr. Tilley might have said that they were preparing draft communications materials. But we certainly weren't left with the impression that there were already four or five sets developed. And that's something that I only learned in my meeting with you in April.

CHAYTOR, Q.C.:

Q. So I just want to understand then, at the end of this meeting, the plan was that -

MS. CHAPLIN:

A. We would regroup in two weeks.

CHAYTOR, Q.C.:

Q. Regroup in two weeks. That they would continue to do testing. Any patients that converted would be notified immediately?

MS. CHAPLIN:

A. That's right.

CHAYTOR, Q.C.:

Q. In the meantime, there'd be no other patient contact, so no notification to the patients that this was ongoing and they were likely to be retested. And there would be no public

25 disclosure at that point in time?

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1 MS. CHAPLIN:
2 A. Until they could get a better handle, they
3 wanted to see more results coming in to see if
4 they had a problem and to what extent the
5 problem existed.
6 CHAYTOR, Q.C.:
7 Q. Okay. And you were expecting them to have a
8 better handle on that within two weeks?
9 MS. CHAPLIN:
10 A. That's correct.
11 CHAYTOR, Q.C.:
12 Q. Okay. And at the end of that meeting how
13 would you assess the minister's--how was the
14 minister feeling, what was his comfort level
15 on the plan of action?
16 MS. CHAPLIN:
17 A. I think he was comfortable with the advice
18 that was provided to him and certainly the

notion of patient notification and public disclosure did not drop from his radar screen. He was prepared to give Mr. Tilley and the organization more time to confirm the extent of the problem.

CHAYTOR, Q.C.:

Q. Okay. And if we could look, please, at P-

0071? And, Ms. Chaplin, these are the draft documents that we believe were--that these are the drafts that Eastern Health had prepared. And you can see draft through them. So these are the documents that you're referring to. And did you want to just scroll down and find the reference that you were referring to? And this, I understand, is the reference that you say is similar to the positioning that's noted in your notes of July 21st?

MS. CHAPLIN:

A. Just bear with me one minute.

CHAYTOR, Q.C.:

Q. Sure.

MS. CHAPLIN:

A. I think it was this line, "The retesting due to improved technology."

CHAYTOR, Q.C.:

Q. Okay.

MS. CHAPLIN:

A. I just want to scroll further to see if that was it. Yeah, I think that was it. Yeah. Sorry.

CHAYTOR, Q.C.:

Q. Okay.

COMMISSIONER:

Q. Can we go back to your notes for the previous exhibit, I lost the number.

CHAYTOR, Q.C.:

Q. It's 0159.

COMMISSIONER:

Q. Thank you. You said earlier that in your

recollections of what was happening in the meeting that you--there was a reference to the shutdown?

MS. CHAPLIN:

A. Yes.

COMMISSIONER:

Q. Which had occurred in 2003. And somebody had asked whether or not there was any correlation between them?

MS. CHAPLIN:

A. Um-hm.

COMMISSIONER:

Q. Do you remember who made that inquiry?

MS. CHAPLIN:

A. I think it may have been the minister, but I'm not certain.

COMMISSIONER:

Q. And do you remember who raised the matter of

the shutdown?

MS. CHAPLIN:

A. That would have come from either Dr. Williams or Mr. Tilley who was walking us through some of the background.

COMMISSIONER:

Q. Okay. And do you remember what you were told about the shutdown?

MS. CHAPLIN:

A. Just that there had been some quality issues raised by a doctor in the lab and that was really--there wasn't a lot of time spent on it.

COMMISSIONER:

Q. All right, thank you.

CHAYTOR, Q.C.:

Q. And the reference also in the briefing note that would have been handed out on July--well, the briefing note is dated July 20th, that has a paragraph referencing that shutdown of the lab at that time, as well. So you would have had that material available to you. So if we just look at that then, it's the exhibit would be P-0075. And the third page of that there's reference to Eastern Health vice president.

MS. CHAPLIN:

A. Um-hm.

CHAYTOR, Q.C.:

Q. "Dr. Williams has also been asked for an investigation be conducted into the" well, it says "five-week stoppage of IHC staining for ER/PR receptors in 2003 by Dr. Ejeckam." Okay. So that also would have been in the written material that was passed out?

MS. CHAPLIN:

A. That's correct.

CHAYTOR, Q.C.:

Q. By the way, did you ever, while you were with the government, ever see the memos, Dr. Ejeckam's memos or any of them?

MS. CHAPLIN:

A. No, I didn't.

CHAYTOR, Q.C.:

Q. Okay. And if we could go back now then, please, to P-0071? And this is the media release, I believe, Ms. Chaplin, that you were referring to saying "Retesting Due to Improved Technology" being the heading?

MS. CHAPLIN:

A. Um-hm.

CHAYTOR, Q.C.:

Q. Okay.

MS. CHAPLIN:

A. There's also something else, I can't find it right now, but I did find another reference to the same sort of messaging.

CHAYTOR, Q.C.:

Q. Okay. That's fine because well maybe what you can do is if we don't finish up, if you want to have a look at it overnight and you can bring it to our attention.

MS. CHAPLIN:

A. Sure.

CHAYTOR, Q.C.:

Q. Tomorrow.

MS. CHAPLIN:

A. Yeah.

CHAYTOR, Q.C.:

Q. Okay. In the July 20th meeting was there any

discussion at that point in time of the Labrador Grenfell case?

MS. CHAPLIN:

A. There was some reference to legal issues, and I don't know if it was specifically Labrador Grenfell. And I know that because a colleague

of mine who was in the room, there was some concern about--maybe concern is not the right word, but there was a reference to potential class action suit.

CHAYTOR, Q.C.:

Q. Yeah.

MS. CHAPLIN:

A. Which from where were sitting, we would consider that a given and it wouldn't be a overriding thought into the decision making process.

CHAYTOR, Q.C.:

Q. Okay, so somebody referenced that the ER/PR issue could give rise to a class action?

MS. CHAPLIN:

A. No, that reference came from Eastern Health and what my colleague stated was that is a given, that potentially Mr. Crosbie would have that class action lawsuit filed in short order.

CHAYTOR, Q.C.:

Q. Okay, and your colleague was who?

MS. CHAPLIN:

A. Mr. Hynes.

CHAYTOR, Q.C.:

Q. So you recall Mr. Hynes making that statement in response to something Eastern Health said about the potential for litigation arising out of the ER/PR issue?

MS. CHAPLIN:

A. Yes, I do.

CHAYTOR, Q.C.:

Q. And was there anything else--why was Eastern

Health bringing up the potential for litigation, in what context was that comment made?

MS. CHAPLIN:

A. Again, I can't say for certain, but I think it was in reference to going back to the patient notification piece of the issue around registered letters, because we likely had a conversation as part of the notification in that meeting about the how that might translate. There's a lot of focus in the department at the time, I think, looking back on it, on you know, we had those meetings early on in July and August. We were very focused on the when and the timing and we were on the how from a communications tactical perspective. But I think upon reflection it's

fair to say there weren't a lot of questions raised about the operational how, if you know what I'm suggesting in terms of the database

and how they would actually operationalize themselves and what kind of agility the organization had to respond and why that would be important, if you look back on some crisis communication case studies and certainly Tylenol comes to mind in terms of when that brand experienced a crisis with the potential of tampering of its product with the cyanide pills? Those types of situations can make or break an organization and certainly a brand, and in Tylenol's case, what made them rise above it was their agility as a company to respond and within 72 hours they were able to pull ever skewed product off the shelves within, like all across North America and it allowed the public confidence to rebuild in its product and it didn't suffer irreparable harm.

CHAYTOR, Q.C.:

Q. So what you're saying was there was a lot of, in this particular case, the macro probably wasn't really viewed as much as the micro, in

terms of trying to figure out what they really had in place to deal with the issue itself, the communication piece, but the detail of how that communication would happen, those things were concentrated on.

MS. CHAPLIN:

A. Yeah, I think the operations and the organization's agility in its response, I think, that's a reflection I have no sitting here three years later.

CHAYTOR, Q.C.:

Q. Looking back at it. And later on I will ask you if there are other reflections that you may have or any recommendations or advice in having considered the issue. So was there anything else discussed in terms of any legal issues during the meeting of July 21st, was there any indication as to whether or not legal advice had been obtained at that point, whether or not legal advice was cautioning either when to make disclosures or how to make disclosures?

MS. CHAPLIN:

A. I don't remember any discussion around legal advice talking about when to disclose in the

timing, but certainly I do recall some, a passing reference in the meeting about, you know, legal advice on the how.

CHAYTOR, Q.C.:

Q. Okay, and I take it Mr. Hynes' comment that you referred to on the litigation, I take it he wasn't too concerned or basically was a given from his point of view, well, you know, this kind of an issue is going to give rise to litigation?

MS. CHAPLIN:

A. Basically what he was--I'm not trying to put words in his mouth -

CHAYTOR, Q.C.:

Q. No, no, but how you interpreted.

MS. CHAPLIN:

A. How I interpreted was, you know, his point was simply that shouldn't be a guiding factor in the decision making because consider that a given and now move on from here.

CHAYTOR, Q.C.:

Q. Okay. And the notions that I or the phrases that I put to you earlier, the whole idea of crippling the system with a disclosure of this magnitude or causing some kind of mass panic,

were those kinds of phrases used in the meeting that day?

MS. CHAPLIN:

A. Yes, they were.

CHAYTOR, Q.C.:

Q. And who did you hear articulate that?

MS. CHAPLIN:

A. Mr. Tilley.

CHAYTOR, Q.C.:

Q. And what exactly was Mr. Tilley saying?

MS. CHAPLIN:

A. In his provision of advice to the Minister, he was basically suggesting that, you know, a broad public disclosure at this point when the organization did not have a good handle on the

extent of the problem or if they even had errors, to go out you ran the risk of causing some credibility issues for the lab that could potentially cripple the health care system.

CHAYTOR, Q.C.:

Q. So he wasn't suggesting that well, if this is our issue and this is the magnitude of it, then we have to go out regardless and whatever may be the fall out of that, he was saying that it's because we don't have enough

information, is that what he was saying?

MS. CHAPLIN:

A. I think that's fair.

CHAYTOR, Q.C.:

Q. It wasn't so much that he wasn't going to go out once the scope was known?

MS. CHAPLIN:

A. No, not at all. I mean, certainly I think the one thing I will say about the meeting and the

collective view is everybody had patient safety first and foremost and certainly that was a concern we thought reflected from Eastern Health as well?

CHAYTOR, Q.C.:

Q. Okay, and tell us then about those kinds of comments that reassured you in that respect, that patient safety was first and foremost?

MS. CHAPLIN:

A. I think it's fair to say that Eastern Health from its perspective in those days were taking a lot of actions and steps and working hard to get to the bottom of the problem in those early days.

CHAYTOR, Q.C.:

Q. And so the concern of any loss of any

confidence in the system or the lab, once the issue was determined, whatever its magnitude would be, there was no debating then whether or not there would be public disclosure?

MS. CHAPLIN:

A. No, nobody--to my recollection nobody in the room was suggesting that we would never have disclosure.

CHAYTOR, Q.C.:

Q. No, no, that's not what I'm suggesting.

MS. CHAPLIN:

A. Oh, I'm sorry.

CHAYTOR, Q.C.:

Q. But the comment of being concerned about going out with an issue of the magnitude that it is and, you know, if you have this huge issue and it could cripple the system or cause mass panic, those--that idea if ultimately if that is your issue and that is the magnitude of it, was there anything being expressed then in terms of well, that's what we're left with and that's what we're going to have to tell?

MS. CHAPLIN:

A. No, I don't think we were focused on the "what if's" at that point. We were focused on let's

get to the bottom of the information.

CHAYTOR, Q.C.:

Q. So at the end of the day if it's a small issue or if it's a big issue, whatever it is, that's what was told and it's a matter of determining what it is -

MS. CHAPLIN:

A. Yes.

CHAYTOR, Q.C.:

Q. - so we can portray that accurately to the public.

MS. CHAPLIN:

A. I think that's a correct--that's a fair assessment.

CHAYTOR, Q.C.:

Q. Is there anything else then about that meeting that stands out in your mind or anything else that you haven't already shared with us?

MS. CHAPLIN:

A. I don't think so. If something comes to mind, I'll certainly bring it up.

CHAYTOR, Q.C.:

Q. Okay, if we could just go back then to P-0075? And this is the briefing note which would have been circulated and I would suggest to you

based on my quick review of it, I believe it's the same as what was given to you or e-mailed electronically to you the evening before. I just bring you down to July 18th, 2005 and July 20th, 2005. So this is a chronology with what has been happening in Eastern Health and on July 18th it says that "laboratory managers in St. John's began reviewing the statistical data for 2000 to 2004 to see if there were any inconsistencies in the findings of positive conversions or if this could just be a matter of the sensitivity of the Ventana system being more accurate with its findings." And then July 20th, 2005, "Upon review of the statistical data, it has been concluded the positivity rates are, while on the low end of the scale, within acceptable range." And then it goes on from there. I think to give you the range for each year, 2000 being 62 percent; 2001, 77; 2002, 68; 2003, 83; and 2004/'05, after a full year with the Ventana

system, 90 percent. And there is other evidence that that's somewhat lower after certain adjustments were made, slightly lower. Ms. Chaplin, I'm just wondering, there's no

reference to any new information on July 19th on this and you recall back in the e-mail that was sent from Debbie Thomas that they were expecting there would be new information, that the briefing note wouldn't be coming to you until after the meeting at 4 p.m. because they were expecting new information. And I'm just wondering was there any discussion what is the new information that was received on July 19th?

MS. CHAPLIN:

A. I'm not sure if it was reflected in the numbers that we were jotting down in notes, I'm not really certain, that's probably a question you would have to ask the organization.

CHAYTOR, Q.C.:

Q. It's not something that came up for discussion in the meeting?

MS. CHAPLIN:

A. It doesn't stick out in my mind.

CHAYTOR, Q.C.:

Q. Okay, and in terms of concern with any particular year and if we look at positivity rates here, we have the year 2000, is at 62

percent, and the year 2002, is at 68 percent; the year 2003 is 83 percent and 2001, 77. So 2000 appears to be slightly lower than 2002 in fact. You don't recall any discussion at all around those figures, do you?

MS. CHAPLIN:

A. No, I don't.

CHAYTOR, Q.C.:

Q. And no discussion at all in terms of what may have led to your understanding the day before

that the numbers would be lower, that it was no longer a 1200, 1500 patients who they might be looking at?

MS. CHAPLIN:

A. No, I simply can't remember that level of detail, other than what I have already shared with you.

CHAYTOR, Q.C.:

Q. And nobody, I take it, picked up on that in the meeting to ask the question?

MS. CHAPLIN:

A. They may have and I just may not be remembering.

CHAYTOR, Q.C.:

Q. Okay, as to what the new incoming information

was that caused you to send your e-mail on the afternoon -

MS. CHAPLIN:

A. I've given you everything that I can remember about that meeting.

CHAYTOR, Q.C.:

Q. Yes. Well what about after the meeting? Any discussions take place within your own group after the meeting?

MS. CHAPLIN:

A. I'm sure we regrouped for five or ten minutes, it wouldn't have been a long point in time. The only other things that stand out in that day is I know I followed up with a conversation with Ms. Matthews just to let her know we had had the briefing, that they weren't really sure, Eastern Health wasn't really sure what the problem was, if they had a problem, certainly they weren't in a position to make a public announcement at this point in time and that the Minister would be kept apprised in a couple of weeks. And then I followed up that statement with reminding them that I was leaving the office for a two-week period of time and that -

CHAYTOR, Q.C.:

Q. I'm sorry, you reminded who?

MS. CHAPLIN:

A. Elizabeth.

CHAYTOR, Q.C.:

Q. Okay.

MS. CHAPLIN:

A. And that certainly Stephanie Power would be acting in my absence, but I was on standby should anything occur, anything pop up, that I was only about a half an hour away.

CHAYTOR, Q.C.:

Q. Okay, and did you tell them that you had received a briefing note or briefing materials that could be sent along so they could have more detail on the issue?

MS. CHAPLIN:

A. I don't know. I just remember sharing with them the status update of the briefing.

CHAYTOR, Q.C.:

Q. Okay. And what about Mr. Cake, did you have any discussions with Mr. Cake following the meeting?

MS. CHAPLIN:

A. No, I would have left that to the deputy

minister.

CHAYTOR, Q.C.:

Q. You didn't have a note of and you didn't mention Ms. Hennessey being in the July 20th meeting. Do you know whether or not she was there?

MS. CHAPLIN:

A. I originally said with you back in January, if you recall, that I was quite confident that she was there.

CHAYTOR, Q.C.:

Q. Yes.

MS. CHAPLIN:

A. I can't--when I picture the people sitting around the room, I don't see her there in my mind. I know that sounds strange. I think in January I was certain of that because I can't think of a reason why she wouldn't be in the room. Normally, when issues that were under her purview arose, certainly she was included in meetings, but that would be at the discretion of the deputy to send the

invitation.

CHAYTOR, Q.C.:

Q. Yes. And we understand from her that she

wasn't in the room and from others who were there, it doesn't appear that she was. But my question in asking that was that you also had thought, I believe, when we met that she would be the person who would forward the briefing note on. And I'm just wondering if you're now of the understanding that she wasn't in the room and the fact that you had indicated to Mr. Cake -

MS. CHAPLIN:

A. That we, the collective department, I would presume that the deputy would send that note as per the normal protocol or delegate it to an ADM or somebody else.

CHAYTOR, Q.C.:

Q. Okay. Did you have any discussions with Mr. Abbott along those lines to say, well, are you

18 going to send along the briefing note? Should
19 I do that in Moira's absence? What should
20 happen here? To remind him that you had told
21 Gary that would be -
22 MS. CHAPLIN:
23 A. I don't know if I did, to be honest.
24 CHAYTOR, Q.C.:
25 Q. Okay. And you always assumed that the

1 briefing note got sent?
2 MS. CHAPLIN:
3 A. I did. I didn't realize that it hadn't until
4 April of this year.
5 CHAYTOR, Q.C.:
6 Q. If we could look back at P-0134. So, in your
7 discussion with Ms. Matthews, following the
8 meeting, did you indicate to her that you
9 would be back in touch after there were
10 further developments on the issue. I know you
11 said you indicated you were indicated you were

leaving and that Ms. Power's -

MS. CHAPLIN:

A. The normal protocol and the way that we interacted with the premier's office would suggest that you would only be back in touch if we were on the eve of a public announcement.

CHAYTOR, Q.C.:

Q. Okay. And did you have discussion anyone at Cabinet Secretariat?

MS. CHAPLIN:

A. No, because really the only reason I was involved in that was at the request of the deputy and that communications flow would have

shifted back to either the deputy or the ADM. I wouldn't receive a follow up.

CHAYTOR, Q.C.:

Q. Did you have any discussion Josephine Cheeseman?

MS. CHAPLIN:

A. I'm sure I gave her a heads up at some point in those couple of days and probably would have touched base with her again to say that I was going to be out of the office for a couple of weeks and that Stephanie would be there in my absence. That's the normal way that we would interact, but to be honest, I'm not even sure if Josephine was in the office that day. She was the senior director of communications at that time. Mr. Denis Abbott was the assistant secretary to Cabinet, but it was likely that I would have even called Josephine at home because we had that type of relationship.

CHAYTOR, Q.C.:

Q. Okay. And on 0134, this was your e-mail to Ms. Thomas and you had indicated to her on July 19 at 4:00 that you would be coming in for the meeting on the Thursday which you did,

on the 21st, "and then assessing where we are". What did you do to assess where you were after the meeting on July 21?

MS. CHAPLIN:

A. That's not--I don't mean that as I am assessing; I mean the collective group, like we're briefing the minister and seeing where we are with a particular issue. That is not a statement that I am personally going to assess the situation.

CHAYTOR, Q.C.:

Q. Okay. And did any assessment of the situation take place with the group after the meeting on July 21?

MS. CHAPLIN:

A. Well, just to reiterate the outcome that the minister wanted to be apprised of the situation again within two weeks; that we were awaiting notification from Mr. Tilley on the outcome of his meeting with the oncologists which I believe that we received on July 25.

CHAYTOR, Q.C.:

Q. Okay. If we could look at P-1488, please? And this is a document, Ms. Chaplin, that if you were following Ms. Bonnell's evidence, as

you've said, you've heard about, whether or not you've seen it before, I don't know, but this is a memo that Ms. Bonnell wrote and it was following the meeting of July 21 and it's her memo, July 22, 2005 to Mr. Tilley. And I just bring this up to ask you whether or not you--I take it you've never seen this document? Have you ever seen this document?

MS. CHAPLIN:

A. Not until in the exhibits.

CHAYTOR, Q.C.:

Q. Okay. And did Ms. Bonnell have any follow-up conversations with you on the 21st to seek any more advice from you or as she originally indicated "pick your brain"? Did she -

MS. CHAPLIN:

A. Not that I recall on the 21st, no.

CHAYTOR, Q.C.:

Q. Okay, nothing at all on the 21st. And did you have any input or provide any advice to her in drafting this document?

MS. CHAPLIN:

A. No, I did not.

CHAYTOR, Q.C.:

Q. Okay. And after that initial phone call where

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she was seeking advice from you, up until the time that you left the department, did she ever again contact you to ask for any advice on how to communicate this issue or otherwise on the issue?

MS. CHAPLIN:

A. Not to my knowledge, but I'm sure we would have spoken in August and I would have followed up with here because I know that I offered my assistance if she wanted, to help draft a communications strategy or to be a sounding board or what have you. And I would have had -

CHAYTOR, Q.C.:

Q. And did she ever take you up on that?

MS. CHAPLIN:

A. No, she didn't.

CHAYTOR, Q.C.:

Q. Okay.

MS. CHAPLIN:

A. And I would have had subsequent phone calls with her in August asking, can I see your communications plan? Do you have patient letters? Those sorts of details that I'm sure we'll get to when we look at the August

meeting.

CHAYTOR, Q.C.:

Q. Yes, okay. And if we could look at P-0801 and this is the e-mail, I believe, Ms. Chaplin that you were just referring to that came in on July 25th from Mr. Tilley giving an update on the situation. And you would have been on holidays.

MS. CHAPLIN:

A. Yes, but I do remember reading that on the Blackberry.

CHAYTOR, Q.C.:

Q. Okay. So, other than you received this update, copy of it from Mr. Tilley, what is your next involvement in the issue?

MS. CHAPLIN:

A. I did, as I referenced earlier, I did touch base with the department over the course of the time I was absent, in that two-week time frame and I remember because Ms. Power had been contacted by Central Health and short listed for an interview for the position that she now holds because she was interested in moving back to her home town. She was getting married. And I remember that we had multiply

conversations throughout the course of the two weeks. And I know that I spoke with minister probably--I know initially in the first week and then probably touch base with him later in the second because I was aware that the department had scheduled a briefing for August 5. And I asked him whether he'd like me to

return for that? And he said, no, it's necessary; he'd get Stephanie to sit in on it.

CHAYTOR, Q.C.:

Q. Okay. And so you did touch base with him and ask him about the ER/PR issue?

MS. CHAPLIN:

A. I did.

CHAYTOR, Q.C.:

Q. Okay And did he have any additional information other that what we see here in the e-mail from Mr. Tilley of July 25th?

MS. CHAPLIN:

A. No, I don't believe so. Okay. So, the minister hadn't had any discussions himself with anyone on the issue?

MS. CHAPLIN:

A. Not to my knowledge.

CHAYTOR, Q.C.:

Q. Not according to what he told to you?

MS. CHAPLIN:

A. That's correct.

CHAYTOR, Q.C.:

Q. Okay. And so the August 5th meeting then takes place, so were you back in touch to find out how it went or what happened?

MS. CHAPLIN:

A. I would have touched base with Stephanie, however August 5 was a Friday. I went into the department on Sunday, August 7 to collect some files because the minister, Mr. Hynes and I were leaving for a ministerial tour on the northern peninsula and the south coast of Labrador between August 8 through August 10. So, I actually wasn't physically back in the department on a day-to-day basis until August 11.

CHAYTOR, Q.C.:

Q. Okay. So, you went into the office on August 7?

MS. CHAPLIN:

A. Right.

CHAYTOR, Q.C.:

Q. And when was it that you had any discussion

about what had transpired in the August 5 meeting?

MS. CHAPLIN:

A. I probably contacted Stephanie around August 8, on the Monday when she was back in.

CHAYTOR, Q.C.:

Q. And what did you understand then that the status was?

MS. CHAPLIN:

A. It's hard to remember when you weren't sitting in the meeting, but I know there was more discussion around patient notification piece. I believe the Minister asked of Eastern Health to provide a draft letter that he could see.

CHAYTOR, Q.C.:

Q. The Minister asked Eastern Health?

MS. CHAPLIN:

A. That's correct.

CHAYTOR, Q.C.:

Q. And do you know if that happened?

MS. CHAPLIN:

A. Well, I don't believe that we saw one before because that was the subject of again another meeting on August 15th.

25 CHAYTOR, Q.C.:

Q. And who did you understand the Minister asked that of?

MS. CHAPLIN:

A. That I couldn't say because I wasn't in the meeting.

CHAYTOR, Q.C.:

Q. And then on August 15th, you were at the meeting. While you're travelling with the Minister and the Deputy Minister --

MS. CHAPLIN:

A. It wasn't the Deputy Minister -- the Deputy Minister was not --

CHAYTOR, Q.C.:

Q. Okay, it was Mr. Hynes, was it?

MS. CHAPLIN:

A. It was Mr. Hynes and the Minister.

CHAYTOR, Q.C.:

Q. Okay, and while you were travelling in that time period, was there any discussions around

the ER/PR issue?

MS. CHAPLIN:

A. Yes, there was. As we were driving up the Northern Peninsula, obviously you have a lot of time, so there was a conversation in the car where we were just chatting and I raised

with him, I guess, concern that time was passing on. We were now three and a half weeks beyond, when are we going to have more information that we can begin disclosure because from a communications perspective, I was concerned about the timeliness. I was also concerned for him in the sense that he had been briefed on this issue the week of the 18th to the 22nd of July, and once it did become public, the obvious question is how long would you have known.

CHAYTOR, Q.C.:

Q. Uh-hm. So you, as a communications

specialist, had concerns?
MS. CHAPLIN:
A. I think that's fair to say.
CHAYTOR, Q.C.:
Q. And when you came back from Ontario, back from Ontario and your vacation, I mean, the --
MS. CHAPLIN:
A. Oh, sorry, back from Ontario to work or just - -
CHAYTOR, Q.C.:
Q. No, from your vacation. You're back the beginning of August or thereabouts.

MS. CHAPLIN:
A. Uh-hm.
CHAYTOR, Q.C.:
Q. Were you surprised that there hadn't been more progress on the issue?
MS. CHAPLIN:
A. It's really hard to say looking back now.
CHAYTOR, Q.C.:

Q. Okay, and what was the Minister's response when you voiced your concerns during your trip up the Great Northern Peninsula?

MS. CHAPLIN:

A. I think he shared those concerns and I always thought that was one of the reasons it prompted the briefing on August 15th.

CHAYTOR, Q.C.:

Q. And what happened in the meeting on August 15th; who attended that and where did that meeting take place?

MS. CHAPLIN:

A. Can we move to that exhibit?

CHAYTOR, Q.C.:

Q. Sure. I think it's P-0160. Your notes are briefer on that day. Is that an indication of the length of the meeting?

MS. CHAPLIN:

A. It could be.

CHAYTOR, Q.C.:

Q. How long did the July 21st meeting last?

MS. CHAPLIN:

A. That would be about two and a half hours.

CHAYTOR, Q.C.:

Q. Two and a half hour meeting, okay, and how long did this meeting take place, August 15th meeting?

MS. CHAPLIN:

A. I really can't say. I wish I had noted the time.

CHAYTOR, Q.C.:

Q. Do you -- and we have those two notes from you, thank you for that. What about your phone discussions along the way? Did you take notes of your phone discussions?

MS. CHAPLIN:

A. I kept a separate media log to log all those calls and the details, but I simply wouldn't have time in the run of a day to note every single phone call and what transpired. I did keep -- obviously, I kept a book which these notes came from and a proper media long. I

would have kept my daily diary, but I don't -- once I left the employer, I didn't keep those personally, so I have no way of going back and checking my phone call discussions. I did find at home one of those voice mail books, one of those message pads, but I can't read anything on it because all I have left is a carbon copy that has worn away.

CHAYTOR, Q.C.:

Q. Okay. I was wondering, in particular, your discussions early on with -- on the 18th and 19th with Ms. Bonnell, and whether or not you would have taken notes in terms of the numbers that were being relayed to you. Do you expect that you would have taken notes of those discussions?

MS. CHAPLIN:

A. I might have, but I have a fairly good day to day memory, so a lot of times my notes are briefer than some people because I retain detail. Unfortunately, that doesn't always extend to three years out.

CHAYTOR, Q.C.:

Q. And any notes you would have had in terms of telephone discussions, those were left with

the government, your daily log that you're referring to?

MS. CHAPLIN:

A. The daily logs, yes.

CHAYTOR, Q.C.:

Q. All right. August 15th then, we have your notes here, and it appears that Dr. Laing was present at this meeting?

MS. CHAPLIN:

A. That's correct.

CHAYTOR, Q.C.:

Q. Dr. Williams, Dr. Fleming, Mr. Tilley, Dr. Cook, and Ms. Hennessey in this meeting and yourself. Anyone else? Mr. Hynes is not there or Mr. Abbott?

MS. CHAPLIN:

A. I don't believe -- I think Mr. Abbott might have been on vacation at that point, and I'm not sure why Mr. Hynes wasn't in the room. He obviously had an engagement outside the

department or he would have ben there.

CHAYTOR, Q.C.:

Q. Okay. And you've written here, "Patient notification. Those who had previously been ER/PR negative".

MS. CHAPLIN:

A. That's correct.

CHAYTOR, Q.C.:

Q. Do you recall what discussion took place around that because obviously that was the key question, wasn't it, and that was the thing that the Minister was concerned about, the patients being notified? So what discussion took place around where they were in that process?

MS. CHAPLIN:

A. I think that was the whole purpose and the intent behind the briefing is that the Minister wanted to be informed of what their

plan was in terms of notifying the broader patient base in terms of anyone who could potentially -- their samples would be retested.

CHAYTOR, Q.C.:

Q. And what were you able to determine from the meeting, what was the status?

MS. CHAPLIN:

A. At that particular point in time, I don't recall a draft letter being brought to the meeting or discussed, but Eastern Health was

continuing as patients converted in their tests to notify those individual patients who were -- sorry, were requiring a treatment change.

CHAYTOR, Q.C.:

Q. Is this the first time you would have learned that it's now Mount Sinai who is going to be doing the retesting? The briefing you were in would have been -- the contemplation at that

point in time was that it was being done in-house.

MS. CHAPLIN:

A. That's right. Initially in that first meeting, we were told that they may actually have the results as soon as two weeks. It was a much shorter time frame in terms of the time between a sample being sent away and the results back.

CHAYTOR, Q.C.:

Q. And this is indicating that it's now being done at Mount Sinai. So were you learning that for the first time?

MS. CHAPLIN:

A. I believe so.

CHAYTOR, Q.C.:

Q. And it's going to be six to eight weeks further. Did you have any --

MS. CHAPLIN:

A. Well, I'm not sure if it was six to eight weeks further, or whether they were already in progress, but we were looking at a six to eight week time frame. Whether that predated that meeting, I'm not sure.

CHAYTOR, Q.C.:

Q. And approximately 400 patients. Did you understand that to be St. John's region or the entire province?

MS. CHAPLIN:

A. No, I think I would have understood that to be 400 patients total.

CHAYTOR, Q.C.:

Q. And concern about a particular year, 2002, what was the discussion around that?

MS. CHAPLIN:

A. I have no idea why I noted that, other than they may have said -- expressed that they still had a concern about a particular year.

CHAYTOR, Q.C.:

Q. And who in the room would be giving this information?

MS. CHAPLIN:

A. Likely Dr. Williams.

CHAYTOR, Q.C.:

Q. And Ventana System shut down until assurance it's accurate, and then it says -- arrow, it looks like, "Inconsistent with Ventana in Montreal. Standardization of test". What did you understand any of that to mean?

MS. CHAPLIN:

A. That Eastern Health had taken the action to shut down its testing system, the Ventana, until they could assure they had somebody in to look at it to verify the accuracy of it, that right now the results of the benchmarks were inconsistent with or maybe it was the machinery that was inconsistent with the Ventana that was used in Montreal. And I remember at that time I believe Eastern Health had stated that there were very few hospitals or health authorities in the country using the Ventana system, so they didn't have a lot of benchmarks or places to go to to check and that there was a challenge with this particular test in terms of standardization across the board.

CHAYTOR, Q.C.:

Q. Okay.

MS. CHAPLIN:

A. I also remember in terms of patient notification it's not necessarily noted here, but there was a lengthy discussion again about the minister was concerned that time was going on, that more and more patients were being notified, that this is going to break in the media and if we want to hold true to our principle of responsible disclosure in letting patients know first, that that must take place in an expedited fashion.

CHAYTOR, Q.C.:

Q. Okay. And did you understand up until now, August 15th, that more patients than the original 12 had now been notified?

MS. CHAPLIN:

A. We may have.

CHAYTOR, Q.C.:

Q. And in terms of then you're saying there was

some discussion about, you know, it's only a matter of time it becomes public if people know about it, what ultimately was the decision in terms of patient notification?

MS. CHAPLIN:

A. Dr. Laing -

CHAYTOR, Q.C.:

Q. Following this meeting?

MS. CHAPLIN:

A. Dr. Laing in that meeting expressed concern on behalf of the oncologists that now is not the appropriate time to send the message because we still weren't clear on--they still weren't clear on the extent of the problem or why it was occuring and that to simply tell their patients that the test was--that their samples were being retested and having a delay until when the results were available, that this would cause undue stress and anxiety on

patients.

CHAYTOR, Q.C.:

Q. What was it that they weren't clear on? The decision has now been made that they've retained Mount Sinai and the samples are going to be sent to Mount Sinai. What is it that they weren't clear on?

MS. CHAPLIN:

A. My understanding from this is they still weren't clear on the extent of the problem or

what exactly the problem was. I think this is another reflection in terms of looking back now three years later, that sometimes we say in the communications field people or organizations fall into the trap of having to know everything before they can say anything. And I think now looking back, it may have been one of those cases.

CHAYTOR, Q.C.:

Q. So I take it the decision that came out of

this, you said that Dr. Laing spoke about causing anxiety to the patients as it's going to be a lengthy wait, the decision that came out of this was what?

MS. CHAPLIN:

A. I think it's fair to say the minister was swayed by or certainly took to heart the advice that was provided to him by the health professionals in the room. I don't know if that necessarily made him more comfortable, but he certainly did weight their advice and consider it carefully. But in the interim, he still wanted to see a draft letter.

CHAYTOR, Q.C.:

Q. Yes, okay. And did anyone express a contrary

view to what was being expressed by Dr. Laing, was there any reservation as to the decision to continue to wait to notify patients?

MS. CHAPLIN:

A. I'm sure that I would have said something because I was having a tough time reconciling at this point that it's the middle of August, known for a month, now you're looking at potentially a situation where there's another four to six weeks, even if we are to say that that six to eight week time frame was in process, but let's for argument sake say that there was another four to six weeks, that I was becoming--I can speak from my own personal perspective, increasingly uncomfortable in terms of the timeliness and the fact that ultimately in the end that patients may end up hearing about this through the media because it was just a matter of time.

CHAYTOR, Q.C.:

Q. And certainly from Eastern Health's point of view it's really, it's three months since, at least three months since they have been dealing with the issue. And was there a concern expressed then by the minister or

anyone else from the department that there seemed to be little progress in terms of even having the retesting completed at this point in time let alone notifying anyone?

MS. CHAPLIN:

A. I think it's fair--I'm not trying to put words in his mouth, but I think the minister did, you know, express a view that originally it was the--the time frame around the test results was becoming too much of a moving target.

CHAYTOR, Q.C.:

Q. You haven't noted that Ms. Bonnell was in the room on this day. Was Ms. Bonnell there, to your recollection?

MS. CHAPLIN:

A. I'm not sure if she was.

CHAYTOR, Q.C.:

Q. And it is, you're telling us that your comfort level, I take it, at this point in time is not high?

MS. CHAPLIN:

A. I think that's a fair statement because at the same time that we're having this discussion I still haven't seen a communication strategy

that Eastern Health is putting forward.

CHAYTOR, Q.C.:

Q. And did you go back to Ms. Bonnell, if she wasn't in the room, did you go back to her and make any inquiries in that regard of her or offer her any advice?

MS. CHAPLIN:

A. I know I spoke to her many times, I can't give you the specific dates, throughout the process to assess where they were from a communications perspective in the sense of is there anything I can look at. I just wanted something that would give me a sense of comfort and also be able to provide advice, given that, you know, I had a fair bit of communications experience.

CHAYTOR, Q.C.:

Q. Had you had any prior experience in dealing with the management or communication management of an adverse event involving multiple or numerous people?

MS. CHAPLIN:

A. Not specifically a health adverse event, no.
CHAYTOR, Q.C.:
Q. Okay. Did you at any point in time make any

inquiries of your colleagues across the country as to whether or not they had had a similar experience?
MS. CHAPLIN:
A. No, I don't think I did.
CHAYTOR, Q.C.:
Q. Or did you otherwise research how to best manage a situation such as this?
MS. CHAPLIN:
A. I felt through the experiences that certainly I had in Ontario on a range of issues that I felt comfortable or confident in a communications approach which is, you know, ethical communications practice suggest open, transparent and timely communication. And given the complexity of this issue, it was

always my preferred approach when it became public, after notifying patients, that certainly there would be a technical briefing for the media and it would be done through a press conference where you could have everybody in the room and exchange of information as opposed to just sending out a news release and leaving it to chance.

CHAYTOR, Q.C.:

Q. Okay. And we'll talk about that some more when it actually goes public. So your approach, though, would have been patient notification, timely, time--and done in a timely manner, and then public notification, followed by a technical briefing?

MS. CHAPLIN:

A. Well, the technical briefing would be part of the public notification.

CHAYTOR, Q.C.:

Q. Okay.

MS. CHAPLIN:

A. And certainly there were other--there were actions that they did take from a communications perspective such as posting information on the website, that would have been incorporated into communications strategy, but--and they had a 1-800 number for patients, I believe, set up later. But you could have utilized a system where you had almost like a patient support group to manage the anxiety or potential anguish that this may cause patients while waiting for test results to unfold and the staff for such a support group could have been similar to the way

health advice is provided on the health line system.

CHAYTOR, Q.C.:

Q. Following the meeting on August 15th was there any further discussion within the department

on where the matter now stood?

MS. CHAPLIN:

A. I think just they were anxious, the department was anxious to see a draft letter and to see movement.

CHAYTOR, Q.C.:

Q. And following that meeting did you contact anyone at the premier's office or cabinet secretariat to give a further update?

MS. CHAPLIN:

A. I would have not been responsible for a follow up to cabinet secretariat. That would have fallen with the deputy minister or the ADM that would have been working on the file. From a premier's office perspective the next phone call that I received was either, I have the date somewhere, August--between August 17th and 18th, around that time frame, and it was a call that I received from Ms. Matthews offering me essentially--stating that the

premier wished to offer me a promotion to executive council.

CHAYTOR, Q.C.:

Q. Okay. And I'll talk to you about that then next day. The leaving the meeting, though, August 15th, did you feel that you should contact Elizabeth Matthews again to give her a further update given your prior conversations with her on the issue?

MS. CHAPLIN:

A. No, because as I stated earlier, the protocol would be that the interaction with the premier's office would come when you're on the eve of something becoming public and we were clearly not at that stage.

CHAYTOR, Q.C.:

Q. Okay. But you did follow up with her following the July 21st?

MS. CHAPLIN:

A. I did because I said to them at the time that I would provide an initial update after that briefing.

CHAYTOR, Q.C.:

Q. And she wasn't expecting you to keep her advised on the issue?

MS. CHAPLIN:

A. No, I don't think so.

CHAYTOR, Q.C.:

Q. Commissioner, this is a good place then to end for the day.

COMMISSIONER:

Q. For the day, all right. We'll meet again at 9:30 in the morning. Thank you.

Upon conclusion at 4:52 p.m.

CERTIFICATE

I, Judy Moss, hereby certify that the foregoing is a true and correct transcript in the matter of the Commission of Inquiry on Hormone Receptor Testing, heard on the 5th day of June, A.D., 2008 before the Honourable Justice Margaret A. Cameron, Commissioner, at the Commission of Inquiry, St. John's, Newfoundland and Labrador and was transcribed by me to the best of my ability by means of a sound apparatus.

Dated at St. John's, Newfoundland and Labrador this 5th day of June, A.D., 2008

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