

COMMISSION OF INQUIRY  
ON HORMONE RECEPTOR TESTING

BEFORE THE HONOURABLE JUSTICE CAMERON - COMMISSIONER

APRIL 18, 2008

Appearances:

Bernard Coffey, Q.C. . . . . Commission Co-counsel

Sandra Chaytor, Q.C. . . . . Commission Co-counsel

Rolf Pritchard/Jenny Chai . . . . . Her Majesty in Right of NL

Peter Browne/Jane Hennebury . . . . . Doctors Kara Laing et al

Daniel Simmons/Beth Whalen . . . . . Eastern Regional Integrated  
. . . . . Health Authority

Chesley Crosbie. . . . . Members of the Breast Cancer  
. . . . . Testing Class Action

Mark Pike . . . . . NL Medical Association

Jennifer Newbury . . . . . Canadian Cancer Society (NL Division)

David Eaton . . . . . Central, Western and Labrador-Grenfell  
Regional Integrated Health Authorities

1 THE COMMISSIONER:

2 Q. Please be seated. Mr. Coffey.

3 MR. GEORGE TILLEY, EXAMINATION-IN-CHIEF BY BERNARD

4 COFFEY, Q.C. (CONTINUED)

5 COFFEY, Q.C.:

6 Q. Good morning, Commissioner. Good morning, Mr.  
7 Tilley.

8 MR. TILLEY:

9 A. Good morning, sir.

10 COFFEY, Q.C.:

11 Q. Exhibit P-0308, please? Mr. Tilley, if I just  
12 could, we looked at this briefly yesterday,  
13 this is an e-mail October 18th from Heather  
14 Predham to various individuals involved in  
15 this matter. And the second-last paragraph  
16 I'm going to--begins, "I'm going to send this  
17 on." Ms. Predham says, "I'm not sure how  
18 HIROC will feel about notifying people at this  
19 point in time," okay, "and the media attention  
20 will make any difference." Now, I'd asked you  
21 about, you know, your view of whether or not  
22 HIROC or how HIROC felt about it and you've  
23 indicated, I believe, that you'd listen to  
24 them but it would not decide the issue, from  
25 your perspective?

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MR. GEORGE TILLEY - RESUMES THE STAND

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Certificate

1 MR. TILLEY:

2 A. It was just one more factor in the equation.

3 COFFEY, Q.C.:

4 Q. One more factor.

5 MR. TILLEY:

6 A. That's correct.

7 COFFEY, Q.C.:

8 Q. And is about sending a letter to patients,  
9 individual patients?

10 MR. TILLEY:

11 A. Um-hm.

12 COFFEY, Q.C.:

13 Q. But she also goes on to say, "Whether the  
14 media attention will make any difference." In  
15 this context and looking back on it, this is  
16 October of 2005, was that, at the time, and I  
17 appreciate you're not Heather Predham, but she  
18 was working directly for you, okay.

19 MR. TILLEY:

20 A. Well, not directly, a couple of levels -

21 COFFEY, Q.C.:

22 Q. A couple of levels down -

23 MR. TILLEY:

24 A. - down in the organization, yeah.

25 COFFEY, Q.C.:

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1 Q. - although in practice you had a lot of  
 2 dealings with her?  
 3 MR. TILLEY:  
 4 A. Well, she certainly would have been in the  
 5 meetings that I had been attending, yes.  
 6 COFFEY, Q.C.:  
 7 Q. Yes. So this media attention, was that media  
 8 attention would make any difference to Eastern  
 9 Health as to whether or not they sent the  
 10 letter or media attention would make any  
 11 differences to HIROC as to their position on  
 12 the letter or do you know?  
 13 MR. TILLEY:  
 14 A. I have no way of speculating, sir.  
 15 COFFEY, Q.C.:  
 16 Q. Okay. Now, sir, I'm sorry, Registrar, Exhibit  
 17 P-0354? Now this is an e-mail, an exchange  
 18 between Susan Bonnell and Deborah Thomas  
 19 Pennell on October 18th, 2005. And I take it  
 20 that at this point in time, this is an  
 21 exchange between your communications staff  
 22 about, you know, the price of and relative  
 23 effectiveness, from their perspective, of  
 24 buying certain advertising time?  
 25 MR. TILLEY:

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1 A. Yes.  
 2 COFFEY, Q.C.:  
 3 Q. At that point in time, this is the middle of  
 4 October, 2005, what was going on in terms of  
 5 that? Because up to this point I take it  
 6 there'd been no advertising by Eastern Health  
 7 about this?  
 8 MR. TILLEY:  
 9 A. Up until that point my recollection is the web  
 10 site and the information that was available on  
 11 that. There were certainly discussions about  
 12 an advertisement to be placed in the media,  
 13 and I think that eventually occurred around  
 14 the time that the patients were being  
 15 contacted.  
 16 COFFEY, Q.C.:  
 17 Q. And this is--okay, I'll get to that in a  
 18 moment. And it's around that time, certainly  
 19 it's that month.  
 20 MR. TILLEY:  
 21 A. Okay.  
 22 COFFEY, Q.C.:  
 23 Q. Okay. If we could look, please, at Exhibit P-  
 24 0358? In particular, now this is an e-mail  
 25 from yourself at 12:18. This is page 1 of

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1 that exhibit, from yourself to Joyce Penney  
 2 that day and cancelling your Calgary trip,  
 3 "I'm expecting a call from Phil Hassen on the  
 4 ER/PR issue. Track me down." So--and this  
 5 was sent from your wireless hand held?  
 6 MR. TILLEY:  
 7 A. Um-hm.  
 8 COFFEY, Q.C.:  
 9 Q. Now, sir, this is the Phil Hassen of CPSI?  
 10 MR. TILLEY:  
 11 A. That's correct.  
 12 COFFEY, Q.C.:  
 13 Q. That you had spoken of earlier, told the  
 14 Commissioner about. So this around the time  
 15 that you were contacting Mr. Hassen at CPSI  
 16 about the ER/PR issue?  
 17 MR. TILLEY:  
 18 A. Yes.  
 19 COFFEY, Q.C.:  
 20 Q. Okay. This is October. Did the cancellation  
 21 of your trip have anything to do with the  
 22 ER/PR issue?  
 23 MR. TILLEY:  
 24 A. I can't say specifically.  
 25 COFFEY, Q.C.:

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1 Q. Okay. If we could look, please, at, see, page  
 2 2 of this exhibit is an e-mail from yourself--  
 3 actually, the one at the bottom of the page  
 4 from Deborah Thomas Pennell on October 18th,  
 5 2005 at 2:03 p.m. to yourself, Dr. Williams,  
 6 Denise Dunn and Heather Predham. The subject  
 7 is "Ad scenarios." And importance is high.  
 8 Just while I'm on that topic, in various of  
 9 these e-mails we see an indication, there's a  
 10 categorization, importances, high, you'll  
 11 notice at time?  
 12 MR. TILLEY:  
 13 A. Yes.  
 14 COFFEY, Q.C.:  
 15 Q. Is that somehow, does that have any  
 16 significance within Eastern Health?  
 17 MR. TILLEY:  
 18 A. Not to my knowledge and it's not an issue that  
 19 I don't recall ever using myself.  
 20 COFFEY, Q.C.:  
 21 Q. Okay. Does it kind of flash up on the screen  
 22 in any way, do you recall, or is it just -  
 23 MR. TILLEY:  
 24 A. I honestly don't know.  
 25 COFFEY, Q.C.:

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1 Q. Okay. And on that point, I had neglected to  
 2 ask you, I will now, do you type your own e-  
 3 mails?  
 4 MR. TILLEY:  
 5 A. Yes.  
 6 COFFEY, Q.C.:  
 7 Q. And in terms, while we're on the topic of e-  
 8 mails and text massaging and so on, blind  
 9 copying people, are you familiar with the  
 10 ability -  
 11 MR. TILLEY:  
 12 A. Yes.  
 13 COFFEY, Q.C.:  
 14 Q. To do that?  
 15 MR. TILLEY:  
 16 A. Yes.  
 17 COFFEY, Q.C.:  
 18 Q. Do you know in respect of the ER/PR issue,  
 19 were you ever involved in receiving blind  
 20 copies or sending blind copies?  
 21 MR. TILLEY:  
 22 A. I know that I have used blind copy process  
 23 over the years, but I can't say in relation to  
 24 this particular issue.  
 25 COFFEY, Q.C.:

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1 Q. And while I'm on the topic, hand held  
 2 wirelasses, are you familiar with the idea of  
 3 pinning, do you know any -  
 4 MR. TILLEY:  
 5 A. No, I'm afraid not.  
 6 COFFEY, Q.C.:  
 7 Q. Okay.  
 8 MR. TILLEY:  
 9 A. If you could explain it to me, what it means,  
 10 I might be able to -  
 11 COFFEY, Q.C.:  
 12 Q. Okay. It's text massaging that doesn't, I  
 13 gather, go--I gather it goes from one phone to  
 14 another, one hand held device to another and  
 15 it's not recorded permanently or it's thought  
 16 not to be recorded permanently in the e-mail  
 17 systems, but you have to use a certain code or  
 18 whatever.  
 19 MR. TILLEY:  
 20 A. Oh, yeah. No. My familiarity with that is  
 21 more through my kids.  
 22 COFFEY, Q.C.:  
 23 Q. Okay. But you, yourself, certainly have not  
 24 used pinning?  
 25 MR. TILLEY:

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1 A. In the past year I have set up one with a  
 2 particular friend of mine to call, I don't  
 3 know if it's a chat or something.  
 4 COFFEY, Q.C.:  
 5 Q. Okay. But in terms of, in relation to this  
 6 ER/PR, you were not involved in any pinning?  
 7 MR. TILLEY:  
 8 A. No.  
 9 COFFEY, Q.C.:  
 10 Q. Okay. You know, I'm not suggesting you were,  
 11 I just--while it was on my mind, I thought I'd  
 12 ask because it's come up before and will come  
 13 up again.  
 14 MR. TILLEY:  
 15 A. I understand.  
 16 COFFEY, Q.C.:  
 17 Q. As well now, in this e-mail from Ms. Pennell  
 18 to yourself and others that afternoon she's  
 19 laid out the three scenarios and the  
 20 advantages and disadvantages from her  
 21 perspective. You then, look toward the top of  
 22 the page, you responded to her saying,  
 23 "Deborah, I favour scenario 2, as well, if we  
 24 kept the department in the loop on the plan."  
 25 Signed, "George." My questions on this are as

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1 follows: One, why would you be involved or  
 2 drawn into this?  
 3 MR. TILLEY:  
 4 A. I can't speak for the individuals other than  
 5 the fact that I'm sure they would have known  
 6 my interest in getting this information out.  
 7 In addition to myself, obviously Dr. Williams  
 8 would have been contacted and Heather Predham.  
 9 It's normally not the type of issue I get  
 10 involved in -  
 11 COFFEY, Q.C.:  
 12 Q. And that's -  
 13 MR. TILLEY:  
 14 A. - but if somebody asks, I would, you know.  
 15 COFFEY, Q.C.:  
 16 Q. So that's why I was asking, because is that I  
 17 gather from your earlier evidence that going  
 18 down to this level you would not normally get  
 19 involved.  
 20 MR. TILLEY:  
 21 A. Um-hm.  
 22 COFFEY, Q.C.:  
 23 Q. And yet, you here to get added to the list.  
 24 MR. TILLEY:  
 25 A. Yes.

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1 COFFEY, Q.C.:

2 Q. Of people that afternoon in terms of which ad

3 scenario would be chosen. So if you're added

4 in that context, you know, when you responded,

5 you know, at 2:21 p.m. when you say, "I favour

6 scenario 2, as well."

7 MR. TILLEY:

8 A. Yes.

9 COFFEY, Q.C.:

10 Q. Does that decide the issue for the

11 corporation, or, I'm sorry, for the health

12 authority?

13 MR. TILLEY:

14 A. No. That's just my opinion with regards to

15 the e-mail that was sent to me.

16 COFFEY, Q.C.:

17 Q. Well, who was making the decision then in this

18 regard?

19 MR. TILLEY:

20 A. I suspect what would be happening here is that

21 if they've asked the opinion, they would get

22 the opinion from the people that they've

23 circulated the original to, they would get the

24 opinions from there, and if there's any

25 disagreement, then obviously it would have to

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1 be dealt with, but if there's not, they'll

2 just move on.

3 COFFEY, Q.C.:

4 Q. And if there was disagreement, whose final

5 decision would it be?

6 MR. TILLEY:

7 A. Well, I guess it depends on where the

8 disagreement might have occurred. If it was

9 at a senior level -

10 COFFEY, Q.C.:

11 Q. Well, here in this context it's, let me see,

12 it's Ms. Pennell, yourself, Dr. Robert

13 Williams, Denise Dunn and Heather Predham.

14 MR. TILLEY:

15 A. Um-hm.

16 COFFEY, Q.C.:

17 Q. So -

18 MR. TILLEY:

19 A. I guess if there was a disagreement, it would

20 have elevated to me.

21 COFFEY, Q.C.:

22 Q. And then you asked in that e-mail at 2:21 p.m.

23 "Have we kept the department in the loop on

24 the plan?" What was that about?

25 MR. TILLEY:

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1 A. Well, other than making sure that the

2 department have been kept apprised, because I

3 recall that they were calling during this

4 process looking for updates -

5 COFFEY, Q.C.:

6 Q. As to what?

7 MR. TILLEY:

8 A. What the status of the retesting was and I

9 know there were questions about the patient

10 notification process. So the intention would

11 be just to keep them informed on where we are.

12 COFFEY, Q.C.:

13 Q. What's the plan here?

14 MR. TILLEY:

15 A. I'm not sure.

16 COFFEY, Q.C.:

17 Q. Well, this--so you just can't recall what -

18 MR. TILLEY:

19 A. No. I can only assume it had to refer to the

20 print media intentions.

21 COFFEY, Q.C.:

22 Q. Because earlier in the month, apparently, the

23 e-mails we looked at yesterday, some of them,

24 anyway, there was some thought or view

25 expressed that there was not much point in

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1 issuing a press release or it was undesirable,

2 in fact, not so much no point in doing it, it

3 was undesirable from certain people's

4 perspective in early October to issue a press

5 release. Now you're considering which

6 advertising scenario to buy and, you know,

7 you're asking have we, you're asking Deborah

8 Thomas Pennell "Have we kept the department in

9 the loop on the plan?"

10 MR. TILLEY:

11 A. Um-hm.

12 COFFEY, Q.C.:

13 Q. So can you tell the Commissioner, what was the

14 thought process then as we go into October?

15 MR. TILLEY:

16 A. Well, we know by the--around that time the

17 intention to start calling the patients was

18 being activated. There would have been a

19 number of inquires directly from the patients

20 that we would have received when the issue was

21 spoken to in the media and the intent would be

22 to start putting in more extensive information

23 that the public could get appreciation for

24 what the issue is all about. So I guess it

25 was a part of the overall strategy to get out

Page 17

1 on this issue.

2 THE COMMISSIONER:

3 Q. Was this directed to the public in the broader

4 sense or did you believe that by communicating

5 in this way you would answer some of the

6 typical questions that came from patients

7 about why you were calling them?

8 MR. TILLEY:

9 A. I suspect it was intended for both, but

10 certainly it was really geared towards the

11 patients, it's my recollection. But obviously

12 by this time the public were raising questions

13 as to what this was. I'm not sure if it was

14 that day or certainly around that time, maybe

15 it was before that, that we actually commenced

16 the process to be calling people directly

17 about the testing process.

18 COFFEY, Q.C.:

19 Q. If we could look, please, at Exhibit P-0355?

20 Now, while you were responding to Ms. Bonnell

21 on October 18th indicating you favoured

22 scenario 2--I'm sorry, responding to Ms.

23 Pennell, Ms. Bonnell apparently at the same

24 time was sending an e-mail to Dr. Williams,

25 Denise Dunn, Patricia Pilgrim, Heather

Page 18

1 Hanrahan, Dr. Donald Cook, Deborah Thomas

2 Pennell and yourself about this matter and, in

3 fact, was keeping track, because it's tracking

4 here indicating whether or not the e-mails

5 went through, apparently, and whether or not

6 they were opened. Interestingly, there's no

7 reference to what happened to the e-mails to

8 yourself or Dr. Williams. But, attached are--

9 she goes on, she says here, "Attached are

10 recommendations re advertising as well a

11 drafted newspaper advert. I think we need to

12 go with at least one week of TV. The numbers

13 are amazing. And as to the paper, it's up to

14 you. It's a financial call. For your

15 information, the Provincial Government always

16 advertises in the local papers. For the TV

17 spot we would use a text message and a voiced

18 over reading with the following information"

19 and in brackets, "(no time for any more)."

20 And then there's the text she's suggesting is

21 "Eastern Health is retesting breast cancer

22 tissue samples that were ER and PR negative.

23 This summer our lab discovered inconsistent

24 results in a patient sample which lead us to

25 retest all negative results. We want to

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1 insure that all patients have every treatment

2 opportunity that may be available to them.

3 Any one who's being retested will be

4 contacted. If you had breast cancer and would

5 like more information about this process,

6 please call our patient relations officer at

7 777-6500." And then Ms. Bonnell goes on to

8 say, "We will put the web address on the

9 bottom of the screen throughout the

10 advertisement and we will post the newspaper

11 ad on the web site."

12 MR. TILLEY:

13 A. Um-hm.

14 COFFEY, Q.C.:

15 Q. So this goes off to the various people. If we

16 could look, please, Registrar, at page 2? And

17 as you recall, Ms. Bonnell had said that there

18 was a suggested newspaper, or drafted

19 newspaper advert. And this is entitled,

20 "Retesting For ER and PR, What's It All About?

21 A Message to Breast Cancer Patients." And

22 then here's the text. A couple of questions

23 that are posed here underlined are, "What are

24 ER and PR receptors?" and "What is happening

25 now?" And it's a one-page long advertisement,

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1 or one-page, at least, in eight and a half by

2 eleven text. Now, sir, do you know whether or

3 not, or what was actually done then with

4 respect to electronic advertising and the

5 newspaper?

6 MR. TILLEY:

7 A. No, I don't.

8 COFFEY, Q.C.:

9 Q. If we look, please, at Exhibit 0357, please?

10 Now, this is the e-mail that you had sent to

11 Deborah Thomas Pennell at 2:22 p.m., as noted

12 here, indicating you favoured scenario 2 and

13 asked about the department being kept in the

14 loop.

15 MR. TILLEY:

16 A. Um-hm.

17 COFFEY, Q.C.:

18 Q. Deborah Thomas-Pennell then, 3:49 that day,

19 sent an e-mail to Ms. Bonnell about ad

20 scenario saying "you can respond to him, re:

21 department"--which presumably is respond to

22 George Tilley about the Department of Health.

23 MR. TILLEY:

24 A. Uh-hm.

25 COFFEY, Q.C.:

Page 21

1 Q. And whether they're kept in the loop. Do you  
 2 know if Ms. Bonnell ever did so?  
 3 MR. TILLEY:  
 4 A. Not off the top of my head.  
 5 COFFEY, Q.C.:  
 6 Q. So that suggests that Ms. Bonnell was kind of  
 7 in charge of ensuring that if the department  
 8 was going to be kept in the loop, she'd know  
 9 about it, what the status was?  
 10 MR. TILLEY:  
 11 A. Well I know that there were both individuals  
 12 involved in linking with the department,  
 13 whether she was sort of a designate between  
 14 the two, I'm not aware of.  
 15 COFFEY, Q.C.:  
 16 Q. If we could look, please, at Exhibit P-0092,  
 17 now, sir, this exhibit covers two e-mails.  
 18 The first in time is from Dan Boone sent  
 19 Tuesday, October 18th, 2005 at 2:05 p.m. It's  
 20 to Heather Predham and it's copied to  
 21 DHawkins@hiroc.com and a MBoyce@hiroc.com and  
 22 the subject is re: "Forwarding patient  
 23 letter". So this is going on, apparently this  
 24 e-mail was sent on October 18th when yourself,  
 25 you're involved in deciding what advertising

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1 scenario to adopt. This is an e-mail from Mr.  
 2 Boone to Ms. Predham and he writes, "My  
 3 initial reaction is that I do not agree with  
 4 sending this letter at this time. There are a  
 5 significant number of people whose results  
 6 will not be changed. Notifying these people  
 7 may be seen as raising their hopes for  
 8 treatment possibilities in most cases. These  
 9 expectations or hopes will not be satisfied.  
 10 There's a possibility that we could be sued in  
 11 a class action by those people who received  
 12 this proposed correspondence whose test  
 13 results do not change; otherwise, these people  
 14 would not have a cause of action, so sending  
 15 the letter actually exposes us to a liability  
 16 which does not now exist. I have not given  
 17 significant thought to the issue from the  
 18 perspective as to whether it is appropriate to  
 19 test these specimens without advising the  
 20 patients; however, again my initial thought is  
 21 that the original consent would be broad  
 22 enough to cover retesting. With the media  
 23 coverage and the information already  
 24 disseminated by you, I would think that most  
 25 of the people who have tested negative would

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1 have enough information to consider if they  
 2 would like to be retested if they have not and  
 3 to inquire whether they have been retested.  
 4 Therefore, I do not see how the letter  
 5 advances the health care of the affected  
 6 patients and it increases our exposure to  
 7 claims for damages. I would recommend against  
 8 sending it." Signed Daniel M. Boone. Now,  
 9 Mr. Boone is the solicitor for HIROC. Was  
 10 this--the information contained in this e-mail  
 11 brought to your attention?  
 12 MR. TILLEY:  
 13 A. I have no reason to think it was, nor do I  
 14 recall it being.  
 15 COFFEY, Q.C.:  
 16 Q. Well if we look toward the top of the page,  
 17 apparently Heather Predham, the next day on  
 18 Wednesday, October 19th, 2005 at 8:28 a.m.  
 19 sent an e-mail to Patricia Pilgrim, Dr. Robert  
 20 Williams and Susan Bonnell. The subject is  
 21 "Forwarding the Patient Letter".  
 22 MR. TILLEY:  
 23 A. Uh-hm.  
 24 COFFEY, Q.C.:  
 25 Q. And she writes to them "Hi, here's Dan's view

Page 24

1 on the feedback." Signed Heather. So patient  
 2 letters never did get sent?  
 3 MR. TILLEY:  
 4 A. No, it did not.  
 5 COFFEY, Q.C.:  
 6 Q. And this apparently, Mr. Boone's view is  
 7 expressed here on, at least the day before on  
 8 the 18th to Ms. Predham in his e-mail. It did  
 9 get forwarded early the next morning to Ms.  
 10 Pilgrim who was a COO.  
 11 MR. TILLEY:  
 12 A. COO, chief operating officer.  
 13 COFFEY, Q.C.:  
 14 Q. And she was responsible for?  
 15 MR. TILLEY:  
 16 A. Cancer care.  
 17 COFFEY, Q.C.:  
 18 Q. Sent to Dr. Robert Williams your VP medical,  
 19 who was, from your view, responsible for the  
 20 whole of the ER/PR matter really from an  
 21 operational sense.  
 22 MR. TILLEY:  
 23 A. Uh-hm.  
 24 COFFEY, Q.C.:  
 25 Q. That's correct?

Page 25

1 MR. TILLEY:  
 2 A. Yes.  
 3 COFFEY, Q.C.:  
 4 Q. And Susan Bonnell, your director of  
 5 communications who worked in the same building  
 6 you did?  
 7 MR. TILLEY:  
 8 A. Yes.  
 9 COFFEY, Q.C.:  
 10 Q. And where did Ms. Pilgrim work?  
 11 MR. TILLEY:  
 12 A. At the Health Sciences Centre.  
 13 COFFEY, Q.C.:  
 14 Q. And as best as you can recall, HIROC's  
 15 position or Dan Boone's position on this was  
 16 never brought to your attention?  
 17 MR. TILLEY:  
 18 A. I don't recall that letter at all.  
 19 COFFEY, Q.C.:  
 20 Q. Not so much the e-mail, but the information  
 21 contained in it or some of it.  
 22 MR. TILLEY:  
 23 A. No, because I can't imagine that somewhere  
 24 along the way somebody might have mentioned to  
 25 me with regards to a legal opinion on this,

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1 but having said that -  
 2 COFFEY, Q.C.:  
 3 Q. On "this", being sending a letter to  
 4 individual patients, on that topic?  
 5 MR. TILLEY:  
 6 A. Well we were having discussions about  
 7 contacting patients. Now my preference from a  
 8 very early stage was the inappropriateness of  
 9 a letter being sent to a patient and what--how  
 10 that might impact a person who is opening that  
 11 letter and was having to deal with that  
 12 disease as it is. So as a consequence here,  
 13 for me the issue was not an issue of the  
 14 letter for any legal reasons, but the letter  
 15 in terms of the appropriateness of it.  
 16 COFFEY, Q.C.:  
 17 Q. So you favoured what?  
 18 MR. TILLEY:  
 19 A. I favoured personal contact with the patient.  
 20 COFFEY, Q.C.:  
 21 Q. And how was that to be accomplished?  
 22 MR. TILLEY:  
 23 A. Well there was realistically only one  
 24 alternative and that was to make telephone  
 25 calls.

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1 COFFEY, Q.C.:  
 2 Q. Did you ever consider making phone calls and  
 3 then sending a letter as well?  
 4 MR. TILLEY:  
 5 A. Much further down the road -  
 6 COFFEY, Q.C.:  
 7 Q. At that time.  
 8 MR. TILLEY:  
 9 A. At that time?  
 10 COFFEY, Q.C.:  
 11 Q. Yes.  
 12 MR. TILLEY:  
 13 A. I don't recall that issue being discussed.  
 14 COFFEY, Q.C.:  
 15 Q. What would have been wrong, if anything, with  
 16 phoning somebody and then following it up with  
 17 a letter, telling them you're going to send  
 18 them a letter as well?  
 19 MR. TILLEY:  
 20 A. Generally there's nothing wrong that I can see  
 21 with doing that, other than the workload that  
 22 it would take to have a group managing both  
 23 processes.  
 24 COFFEY, Q.C.:  
 25 Q. How much of a workload is it to send a form

Page 28

1 letter?  
 2 MR. TILLEY:  
 3 A. Well I think we're dealing with nearly a  
 4 thousand patients and, you know, just having a  
 5 team who are constantly on the telephones, I  
 6 guess, you know, it obviously would be a  
 7 significant amount of work. Whether it's  
 8 unbearable work, I couldn't tell you.  
 9 COFFEY, Q.C.:  
 10 Q. Well with the phone calls would take time,  
 11 yes, but at least a letter had already been  
 12 drafted -  
 13 MR. TILLEY:  
 14 A. Right.  
 15 COFFEY, Q.C.:  
 16 Q. So if a form letter exists "Dear Patient" and  
 17 if you have a mailing list, you just merge the  
 18 two, don't you?  
 19 MR. TILLEY:  
 20 A. Yes.  
 21 COFFEY, Q.C.:  
 22 Q. You impose the addresses on each individual  
 23 letter and then have people put them in an  
 24 envelope, seal the envelope and bring it to  
 25 the post office. I mean, is that -

Page 29

1 THE COMMISSIONER:  
 2 Q. Don't you have machines that put things in  
 3 envelopes and seal them now? Or maybe you  
 4 don't in Eastern Health.  
 5 MR. TILLEY:  
 6 A. I'm not sure what we had access to, Madam  
 7 Commissioner, but what I was going to refer to  
 8 earlier about later, I remember somebody  
 9 saying that they wished that we had sent the  
 10 letters afterwards, just to close the loop  
 11 because there were some patients that had been  
 12 calling to say they hadn't received or felt  
 13 they hadn't received any information, but when  
 14 they had--or sorry, when they did the follow-  
 15 up conversation, the information clicked from  
 16 the patient's perspective, but there was no  
 17 confirmation that the actual telephone call  
 18 had been confirmed.  
 19 COFFEY, Q.C.:  
 20 Q. Yes, but what I'm going to focus on right at  
 21 the moment is, you know, you're referred to it  
 22 with the extra work, I don't doubt it would be  
 23 a little extra work, but if the letter already  
 24 existed, the form letter -  
 25 MR. TILLEY:

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1 A. Yes.  
 2 COFFEY, Q.C.:  
 3 Q. And if you were going to phone patients, you  
 4 had to find their phone numbers.  
 5 MR. TILLEY:  
 6 A. Uh-hm.  
 7 COFFEY, Q.C.:  
 8 Q. And you probably found already their addresses  
 9 or could ask them what their address was,  
 10 current one was.  
 11 MR. TILLEY:  
 12 A. Yes.  
 13 COFFEY, Q.C.:  
 14 Q. And that would just simply be put into a data,  
 15 a very simple database, really, and mail  
 16 merged and way we go. So did you ever even  
 17 ask anyone how much work it would be to send a  
 18 letter?  
 19 MR. TILLEY:  
 20 A. No, sir, I didn't.  
 21 COFFEY, Q.C.:  
 22 Q. And did anyone ever tell you at the time that  
 23 it's going to be a significant amount of work?  
 24 MR. TILLEY:  
 25 A. No, they did not. But I can say that when you

Page 31

1 sit down and look at a process, from beginning  
 2 to end as we are doing today, things are  
 3 obviously more evident than they were at the  
 4 time we were going through this. Things were  
 5 happening as we were moving, so sometimes what  
 6 appears obvious, when you look back two years  
 7 later, were not things that certainly were  
 8 entering my mind as we were moving through.  
 9 COFFEY, Q.C.:  
 10 Q. See, sir, the point of having drafted a form  
 11 letter to the patients, I take it, was to  
 12 provide them with something to read, like  
 13 actual clarity. You can kind of sit and read  
 14 it and you can go back to it, that's more -  
 15 MR. TILLEY:  
 16 A. Well that could be an option, plus the fact  
 17 you confirm you've made the contact.  
 18 COFFEY, Q.C.:  
 19 Q. But I'm thinking, leaving aside confirming  
 20 from your end, the patient would have the  
 21 advantage of being able to read something.  
 22 MR. TILLEY:  
 23 A. That's true and of course the -  
 24 COFFEY, Q.C.:  
 25 Q. Having had the phone call, right.

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1 MR. TILLEY:  
 2 A. And the newspaper articles were to supplement  
 3 that.  
 4 COFFEY, Q.C.:  
 5 Q. The newspaper ads.  
 6 MR. TILLEY:  
 7 A. Ads, yes, I'm sorry.  
 8 COFFEY, Q.C.:  
 9 Q. Such as at P-0355, page two, that sort of an  
 10 ad would be to, the point of a written  
 11 advertisement is to provide clarity, isn't it?  
 12 MR. TILLEY:  
 13 A. That's correct.  
 14 COFFEY, Q.C.:  
 15 Q. So in terms then of sending--the decision not  
 16 to send the letters in October of 2005, can  
 17 you tell the Commissioner then, because the  
 18 letters did not get sent then, so can you tell  
 19 the Commissioner why they didn't get sent?  
 20 MR. TILLEY:  
 21 A. Well the position that I was very comfortable  
 22 with was to make it personal, a telephone  
 23 conversation between a health provider and the  
 24 individual patient. It was felt to be more  
 25 appropriate in that at least those individuals



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1 will be able to respond in a personal one-on-

2 one way with questions with regards to the

3 nature of this and surely it was a complicated

4 issue.

5 COFFEY, Q.C.:

6 Q. And you knew, though, all along going back to

7 July that the Minister of Health and the

8 people around him, certainly the people around

9 him, because it extended out to August and you

10 had to have a meeting with Dr. Laing to

11 explain to the Minister why patient letters

12 shouldn't go out then.

13 MR. TILLEY:

14 A. Yes.

15 COFFEY, Q.C.:

16 Q. So you knew, from your perspective, the

17 Department of Health was fairly intent on

18 having letters sent, from their perspective?

19 MR. TILLEY:

20 A. Yes.

21 COFFEY, Q.C.:

22 Q. You knew it had come up again in October,

23 correct? You would have been aware in October

24 that there was talk about whether or not the

25 letters should go out?

Page 34

1 MR. TILLEY:

2 A. With the Department of Health?

3 COFFEY, Q.C.:

4 Q. With the Department of Health, with HIROC,

5 with whomever?

6 MR. TILLEY:

7 A. Well certainly -

8 COFFEY, Q.C.:

9 Q. And internally.

10 MR. TILLEY:

11 A. Yes.

12 COFFEY, Q.C.:

13 Q. And you knew by the time October ended that

14 the letter still hadn't gone.

15 MR. TILLEY:

16 A. Yes.

17 COFFEY, Q.C.:

18 Q. Is there anything that you can see, other than

19 Dan Boone's e-mail here, anything that you're

20 aware of where there's any other rationale

21 given as to why letters should not go out? Is

22 it written down anywhere?

23 MR. TILLEY:

24 A. Well there's a--I noticed minutes of the board

25 meeting around that time that refers to

Page 35

1 contact with the patients.

2 COFFEY, Q.C.:

3 Q. Uh-hm.

4 MR. TILLEY:

5 A. And the preference to go towards personal

6 contact in light of the patients having a

7 better understanding of what the issues were,

8 so that was the rationale that we had used.

9 COFFEY, Q.C.:

10 Q. And you have no recollection of anybody making

11 you aware of HIROC's or Mr. Boone's position.

12 So if that factored into it, it wasn't brought

13 to your attention as a CEO, that's what you're

14 telling us?

15 MR. TILLEY:

16 A. Well if it factored into it, it wasn't the

17 factor that would have influenced the overall

18 outcome of the direction.

19 COFFEY, Q.C.:

20 Q. Well were you aware of it then?

21 MR. TILLEY:

22 A. Aware of the letter?

23 COFFEY, Q.C.:

24 Q. No, aware of the sentiments expressed in his

25 e-mail, the fact that you could be getting

Page 36

1 yourselves sued by sending one.

2 MR. TILLEY:

3 A. Again, with all due respect, the legal input

4 is valuable, but we have to try to balance off

5 the multiple issues here.

6 THE COMMISSIONER:

7 Q. Mr. Tilley, on this choice that you were

8 making, did you anticipate that the one call

9 was therefore going to do it, in the sense of

10 it would seem to me that it might be said to

11 be possible that a person who gets a call from

12 Eastern Health to say what, I presume would

13 have said "we have reason to retest, we're

14 going to retest to see if this goes from

15 negative to positive. We will let you know

16 when." Some people, on getting a call like

17 that, I suspect, would be very cool, calm and

18 collected and say, what does this mean and ask

19 a whole lot of questions. Other people might

20 take a longer period of time to absorb what's

21 going on and then sort of two hours later

22 would be, why is this happening and why didn't

23 they know it before and what does this mean

24 for me? So, it wouldn't seem strange that a

25 number of those people would be calling you

Page 37

1 back?

2 MR. TILLEY:

3 A. Yes, that's correct, Madam Commissioner.

4 THE COMMISSIONER:

5 Q. So that you, in your thinking, were you

6 anticipating that this could be done with one

7 call or were you anticipating that if you were

8 going to do the personal contact, there would

9 be a lot of personal contact with patients.

10 MR. TILLEY:

11 A. Yes. And my recollection is that people would

12 have been directed towards our patients'

13 relations line and that would be a first

14 attempt to try and clarify the issues and if

15 the issues were still felt to be unanswered,

16 the patient relation officer would connect the

17 patient and/or family with the appropriate

18 provider to address the question.

19 THE COMMISSIONER:

20 Q. So the first call was from whom?

21 MR. TILLEY:

22 A. There was a team that had been pulled together

23 in the Quality Initiates Department.

24 THE COMMISSIONER:

25 Q. Okay, so they were other than patients

Page 38

1 relation officer?

2 MR. TILLEY:

3 A. They were quality facilitators, similar

4 background to the patient relation officer,

5 but there was a designated patient relations

6 officer in that department.

7 THE COMMISSIONER:

8 Q. Okay, well is call number one and call number

9 two answered effectively by the same people?

10 MR. TILLEY:

11 A. There might have been some overlap, I can't

12 speak to the issue, but the people--the person

13 that was a patient relations officer was

14 specifically established to respond to

15 inquiries from patients and I believe in the

16 advertisements that went out and also in the

17 website there was a reference to that number.

18 Whether the patient/relations officer sat down

19 and took on some of the follow-up calls or

20 calls to the patients herself to help with the

21 process, I'm not able to say.

22 COFFEY, Q.C.:

23 Q. See, Mr. Tilley, what did you understand was

24 actually happening here now? This is really

25 what I think the Commissioner is interested

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1 in, what--you're the CEO, you've chosen not to

2 go public in July. You've chosen not to send

3 letters in August. You've chosen not to make

4 phone calls in August. It's gone public,

5 October 2.

6 MR. TILLEY:

7 A. Yes.

8 COFFEY, Q.C.:

9 Q. It's now the middle of October. Some of your

10 subordinates are getting legal advice from

11 your insurance company about the manner of

12 communicating with individual patients.

13 MR. TILLEY:

14 A. Uh-hm.

15 COFFEY, Q.C.:

16 Q. You've told the Commissioner that the decision

17 finally was made, and presumably with your

18 concurrence or agreement or your approval to

19 make phone calls.

20 MR. TILLEY:

21 A. Yes.

22 COFFEY, Q.C.:

23 Q. So what did you actually think was happening?

24 MR. TILLEY:

25 A. That the team had been pulled together.

Page 40

1 COFFEY, Q.C.:

2 Q. Now what kind of a team are we talking about

3 here?

4 MR. TILLEY:

5 A. Within the Quality Initiatives Department

6 which is a team of health providers, the

7 majority of them, I suspect, would have been

8 nurses by background but there may have been

9 one or two in that department that were health

10 trained, but not necessarily nurses, and that

11 they were actually then taking each of the

12 individuals who had been retested and

13 following through with a telephone call to

14 tell them that that was happening.

15 THE COMMISSIONER:

16 Q. Had been retested or was going to be retested?

17 MR. TILLEY:

18 A. Well, at that point in time it was going to be

19 retested.

20 THE COMMISSIONER:

21 Q. Okay.

22 MR. TILLEY:

23 A. Now, of course, there may have been some

24 others that were already retested by that

25 time.

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1 COFFEY, Q.C.:

2 Q. The first results came back the end of

3 September from Mount Sinai.

4 MR. TILLEY:

5 A. Right.

6 COFFEY, Q.C.:

7 Q. What were they doing? They got a list of

8 names, phone numbers. What was your

9 understanding of what actually was happening?

10 MR. TILLEY:

11 A. Well, I don't have any specific recollection

12 of the actual conversations other than the

13 plan was that they would be calling people to

14 advise them.

15 COFFEY, Q.C.:

16 Q. Advise them how, and using what?

17 MR. TILLEY:

18 A. On the telephone.

19 COFFEY, Q.C.:

20 Q. Yes.

21 MR. TILLEY:

22 A. To advise them that their tests are being

23 repeated.

24 COFFEY, Q.C.:

25 Q. Using a prepared script?

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1 MR. TILLEY:

2 A. I can't speak to that.

3 COFFEY, Q.C.:

4 Q. So you didn't even ask to see --

5 MR. TILLEY:

6 A. No, I didn't.

7 COFFEY, Q.C.:

8 Q. As a practical matter, and you referred to the

9 idea that, well, opening a letter might be

10 disquieting.

11 MR. TILLEY:

12 A. Uh-hm.

13 COFFEY, Q.C.:

14 Q. Do you think getting a phone call and, you

15 know, there's no -- there's not kind of an

16 agreed approach as to how the phone calls

17 would be made, do you think that could be

18 disquieting?

19 MR. TILLEY:

20 A. I'm not saying there wasn't an agreed

21 approach. It's just that I'm not aware of it,

22 and, you know, with regards to the decision to

23 use a phone call as opposed to a letter,

24 clearly it was a judgment call that we felt

25 was the best way to make contact.

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1 COFFEY, Q.C.:

2 Q. Now with respect to this --

3 THE COMMISSIONER:

4 Q. Sorry, but the thought is just in my head.

5 Mr. Tilley, at that stage, as Mr. Coffey has

6 pointed out, some of the results were back.

7 MR. TILLEY:

8 A. Yes.

9 THE COMMISSIONER:

10 Q. So were they being contacted in the same way

11 or were they being contacted depending on

12 whether or not there had been a change in the

13 plan you outlined yesterday about some people

14 who were negative were contacted.

15 MR. TILLEY:

16 A. Right.

17 THE COMMISSIONER:

18 Q. And remained negative were contacted in one

19 way.

20 MR. TILLEY:

21 A. Right.

22 THE COMMISSIONER:

23 Q. Some people whose results had changed were

24 contacted in another way --

25 MR. TILLEY:

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1 A. Right.

2 THE COMMISSIONER:

3 Q. Through other persons. Was that plan being

4 followed at that stage?

5 MR. TILLEY:

6 A. Well, the overall intent was that people would

7 be notified that the change was -- sorry, the

8 retest was happening.

9 THE COMMISSIONER:

10 Q. Yes.

11 MR. TILLEY:

12 A. There was another group that when the retest

13 came back, if there was no change in the

14 outcome, they would be advised by this group

15 about that.

16 THE COMMISSIONER:

17 Q. The same group, or are we talking about the

18 patient's relations officer now?

19 MR. TILLEY:

20 A. No, it would be still this group.

21 THE COMMISSIONER:

22 Q. Okay.

23 MR. TILLEY:

24 A. The third group would be those that come back

25 who actually had a change in results and they

Page 45

1 were going to be forwarded to the most  
 2 appropriate attending physician. That  
 3 subsequently changed as we discussed yesterday  
 4 with the establishment of this tumor panel.  
 5 THE COMMISSIONER:  
 6 Q. Okay.  
 7 MR. TILLEY:  
 8 A. I understand that there were some people when  
 9 they first contacted, because the results had  
 10 been back, that had not actually been in  
 11 receipt of the first call to say that your  
 12 results had been sent off because the timing  
 13 was overlapping.  
 14 THE COMMISSIONER:  
 15 Q. All right. You may not be the best person to  
 16 answer this, but there are it seems to me a  
 17 large number of possibilities here. Now at  
 18 that stage, for example, when it first broke  
 19 and people starting thinking "am I in that  
 20 group, maybe I have or haven't gotten a  
 21 telephone call; if I call up and my results  
 22 are back, does the person respond the results  
 23 are back and they've changed", or are those  
 24 people then told you'll get a call from  
 25 somebody else? What are they told?

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1 MR. TILLEY:  
 2 A. I can just speak to my understanding of it.  
 3 THE COMMISSIONER:  
 4 Q. Uh-hm.  
 5 MR. TILLEY:  
 6 A. If people had their results changed and they  
 7 happen to call in --  
 8 THE COMMISSIONER:  
 9 Q. Yes.  
 10 MR. TILLEY:  
 11 A. What they would likely say is that your  
 12 information has been referred on to your  
 13 attending physician or at a later state the  
 14 tumor panel.  
 15 THE COMMISSIONER:  
 16 Q. Okay, refresh my memory, when did the tumor  
 17 panel come in existence?  
 18 COFFEY, Q.C.:  
 19 Q. October 11th/12th, around that time.  
 20 THE COMMISSIONER:  
 21 Q. So we're only talking about a week when that  
 22 would have been set.  
 23 COFFEY, Q.C.:  
 24 Q. Right.  
 25 THE COMMISSIONER:

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1 Q. It seems to me it was a very complicated  
 2 process in the sense of you would have those  
 3 persons whose samples had not even been sent  
 4 off.  
 5 MR. TILLEY:  
 6 A. Yes.  
 7 THE COMMISSIONER:  
 8 Q. You would have people whose samples were sent  
 9 off and not back. You would have people whose  
 10 samples were off and back, some of whom would  
 11 have had negative results so their results  
 12 would not have changed at all; others of whom  
 13 would have had changes in results. So the  
 14 persons doing the calling or receiving the  
 15 calling had to figure out in which category  
 16 all of these people would be found to discover  
 17 the appropriate response presumably.  
 18 MR. TILLEY:  
 19 A. Yes.  
 20 COFFEY, Q.C.:  
 21 Q. And from your perspective, you've indicated  
 22 the nitty-gritty of that you weren't familiar  
 23 with as to how that was being handled by the  
 24 group tasked with doing it?  
 25 MR. TILLEY:

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1 A. That's correct.  
 2 COFFEY, Q.C.:  
 3 Q. From your perspective, who would be the  
 4 appropriate person to ask about that?  
 5 MR. TILLEY:  
 6 A. Well, it would be the Quality Initiatives  
 7 Department, so the Director, I suspect, would  
 8 be the appropriate one.  
 9 COFFEY, Q.C.:  
 10 Q. Now, sir, a phone call, there can be  
 11 reasonable differences of opinion about how  
 12 one might view that, but if someone was to  
 13 call you and identify themselves as being from  
 14 a hospital that you had dealt with, how would  
 15 you have any way of knowing, in fact, that the  
 16 person is legitimate?  
 17 MR. TILLEY:  
 18 A. Well, I presume that they would be able to say  
 19 that you had had a test which would, I guess,  
 20 strengthen the possibility or likelihood that  
 21 it was a contact person, that they might have  
 22 had some detailed information about you which  
 23 would be specific.  
 24 COFFEY, Q.C.:  
 25 Q. So, in effect, have to convince the person

Page 49

1 who's receiving the phone call of their own  
 2 legitimacy?  
 3 MR. TILLEY:  
 4 A. Possibly. I don't know how much of that was  
 5 an issue, but it's certainly possible.  
 6 COFFEY, Q.C.:  
 7 Q. And do you think that perhaps some patients  
 8 who received such calls might be, in fact,  
 9 inherently reluctant to discuss their health  
 10 matters with a person they didn't know from  
 11 Adam or Eve phoning them? Do you think that -  
 12 - like the Commissioner was getting at in  
 13 terms of what people think about afterwards to  
 14 questions and, in fact, even just a natural  
 15 inhibition perhaps.  
 16 MR. TILLEY:  
 17 A. Uh-hm. Certainly that's a plausible  
 18 conclusion. It's not one that I'm aware as to  
 19 the degree to which they experienced.  
 20 THE COMMISSIONER:  
 21 Q. Refresh my memory again, please, Mr. Tilley,  
 22 when did the mailings go out to the  
 23 physicians?  
 24 MR. TILLEY:  
 25 A. Madam Commissioner, I can't give you a date,

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1 but there was a point in time, I don't think  
 2 it was much earlier than this, when the NCTRF  
 3 had sent out letters to --  
 4 THE COMMISSIONER:  
 5 Q. Actually, my point was, was it before the  
 6 telephone calls or during the telephone calls  
 7 or after?  
 8 MR. TILLEY:  
 9 A. Oh, sorry, yes, that's a good point. My  
 10 recollection is it went out before the  
 11 telephone calls.  
 12 THE COMMISSIONER:  
 13 Q. So that if a physician, general physician had  
 14 gotten an inquiry from a patient who had been  
 15 a cancer patient, that person already would  
 16 have received the information, would they?  
 17 MR. TILLEY:  
 18 A. That's my recollection.  
 19 COFFEY, Q.C.:  
 20 Q. The notification to physicians occurred after  
 21 October 2, after it went public, within about  
 22 a week of that. There will be evidence. It  
 23 was around October 6th or 7th, Commissioner,  
 24 the letter is dated from Paul Gardiner, but it  
 25 wasn't seen fit to let the NLMA members know

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1 before it went public. That wasn't done -- in  
 2 a letter, I mean, there was no mailing of  
 3 letters.  
 4 MR. TILLEY:  
 5 A. No.  
 6 COFFEY, Q.C.:  
 7 Q. You're aware of that in terms of stakeholders?  
 8 MR. TILLEY:  
 9 A. We covered that yesterday when the NLMA put it  
 10 out, yes.  
 11 COFFEY, Q.C.:  
 12 Q. So that was -- in a formal way, individual  
 13 doctors were never communicated with until  
 14 after it went public.  
 15 MR. TILLEY:  
 16 A. Uh-hm.  
 17 COFFEY, Q.C.:  
 18 Q. Is there any reason why that's so? Why  
 19 wouldn't you tell the physicians this is going  
 20 on?  
 21 MR. TILLEY:  
 22 A. There's really no reason that I can come up to  
 23 -- up with, other than there seemed to be a  
 24 lot of things happening at that point in time.  
 25 Whether there had been earlier discussions

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1 with the NLMA on that issue, I'm not aware of  
 2 them.  
 3 COFFEY, Q.C.:  
 4 Q. Sir, on this point, because you've told the  
 5 Commissioner that you understand that when  
 6 Mount Sinai -- eventually as time went on, the  
 7 Mount Sinai retest results came back and if  
 8 people were confirmed negative, it was 00, the  
 9 readings from Mount Sinai, okay, you  
 10 understand that they were contacted then about  
 11 that by?  
 12 MR. TILLEY:  
 13 A. The team that had been put in place to make  
 14 that call.  
 15 COFFEY, Q.C.:  
 16 Q. And that consisted of?  
 17 MR. TILLEY:  
 18 A. Well, the team would have been officials or  
 19 health care providers within the Department of  
 20 Quality Initiatives. I can't tell you whether  
 21 they would have seconded some other people in.  
 22 I also recall, though, that there were some  
 23 patients who had made contact with physicians  
 24 and may have gotten the results that way. So  
 25 there's a lot of information flow.

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1 COFFEY, Q.C.:

2 Q. Yeah, but somebody who didn't call their own

3 physician about it, like, the results came

4 back, I don't know, late September, and a

5 patient was in the group that was still 00, or

6 was -- classified by Mount Sinai as 00, okay -

7 -

8 MR. TILLEY:

9 A. Okay.

10 COFFEY, Q.C.:

11 Q. Your understanding that that patient,

12 generally the plan was to have that patient

13 contacted by a patient relations officer?

14 MR. TILLEY:

15 A. Well, a quality initiatives team member.

16 COFFEY, Q.C.:

17 Q. Which would be, as likely as not, somebody

18 with a nursing background?

19 MR. TILLEY:

20 A. Yes.

21 COFFEY, Q.C.:

22 Q. Okay. Sir, do you know if there was any

23 thought given to any kind of scripted scenario

24 to deal with those patients? In other words,

25 a script the call would have to explain you're

Page 54

1 00 and the significance?

2 MR. TILLEY:

3 A. I'm not familiar if there was.

4 COFFEY, Q.C.:

5 Q. On that point, if we could look at, please,

6 Exhibit P-092, which we have here. When you

7 read Mr. Boone's e-mail, read it carefully, he

8 expresses his view that he doesn't agree with

9 sending a letter at this time. "There are a

10 significant number of people whose results

11 will not be changed. Notifying these people

12 may be seen as raising their hopes for

13 treatment possibilities". Now this in this

14 context would be notifying the people whose

15 results ultimately will not change?

16 MR. TILLEY:

17 A. Right.

18 COFFEY, Q.C.:

19 Q. And he says, "May be seen" from his

20 perspective, "as raising their hopes for

21 treatment possibilities".

22 MR. TILLEY:

23 A. Uh-hm.

24 COFFEY, Q.C.:

25 Q. Now what does that suggest to you about Mr.

Page 55

1 Boone's own view as to whether the retest

2 results coming back as 00? Mr. Boone suggests

3 here when you read it that that is not good

4 news for a patient because their hopes for

5 treatment possibilities will not be met.

6 MR. TILLEY:

7 A. I'm reading it as there's a number of people

8 whose results are not going to change, but --

9 COFFEY, Q.C.:

10 Q. Yes, notifying those people.

11 MR. TILLEY:

12 A. Yes, but going on to say notifying those

13 people, you may be creating false expectations

14 that there's something more that can be done.

15 COFFEY, Q.C.:

16 Q. Yes.

17 MR. TILLEY:

18 A. Even though your results haven't changed.

19 COFFEY, Q.C.:

20 Q. Even though your results haven't changed. Is

21 that what you're --

22 MR. TILLEY:

23 A. That's how I'm reading it, "Significant number

24 of people whose results will not be changed".

25 COFFEY, Q.C.:

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1 Q. What was your understanding then of retest

2 results coming back confirming the original

3 ones? As a practical matter, what did that

4 mean in most cases?

5 MR. TILLEY:

6 A. That there would be no change in treatment.

7 COFFEY, Q.C.:

8 Q. I take it, no further possible treatment? A

9 change in treatment usually means more

10 treatment in this context.

11 MR. TILLEY:

12 A. Yes.

13 COFFEY, Q.C.:

14 Q. So retests resulting in a confirmation of 00,

15 okay, your understanding was what? If a

16 patient was to be so advised of that, that

17 meant there was no further treatment option

18 available based upon hormone status. Is that

19 your understanding?

20 MR. TILLEY:

21 A. I can't say that with confidence.

22 COFFEY, Q.C.:

23 Q. Okay. I'm trying to get some sense for the

24 Commissioner how much you, yourself, really

25 knew about this.

1 MR. TILLEY:  
 2 A. Yeah. I mean, I was working on the basis that  
 3 if there was no change in the result, the  
 4 patient would be advised that there's no  
 5 change in the result.  
 6 COFFEY, Q.C.:  
 7 Q. And your understanding was that was good news  
 8 from the patient's perspective or not good  
 9 news, or did you have any view?  
 10 MR. TILLEY:  
 11 A. Well, my sense was that the information that  
 12 had been provided on which their physicians  
 13 had made their original decision was still  
 14 holding, so there was simply from my  
 15 perspective on this, no change to be expected  
 16 in the treatment.  
 17 COFFEY, Q.C.:  
 18 Q. And putting -- did you ever, yourself, try to  
 19 put yourself in the patient's shoes?  
 20 MR. TILLEY:  
 21 A. I put myself in a patient's shoes every day  
 22 that I was in that organization, so to say  
 23 that I understood this issue and the  
 24 intricacies of it would be a major  
 25 overstatement.

1 MR. TILLEY:  
 2 A. That's correct.  
 3 THE COMMISSIONER:  
 4 Q. Now, was there ever any discussion about not  
 5 telling the patients whose tests were  
 6 negative?  
 7 MR. TILLEY:  
 8 A. No.  
 9 THE COMMISSIONER:  
 10 Q. Okay. So, when the decision was made that  
 11 there would be no revelation until the results  
 12 were back -  
 13 MR. TILLEY:  
 14 A. Yes.  
 15 THE COMMISSIONER:  
 16 Q. - am I safe in assuming that meant until  
 17 everybody's results were back?  
 18 MR. TILLEY:  
 19 A. No.  
 20 THE COMMISSIONER:  
 21 Q. Okay.  
 22 MR. TILLEY:  
 23 A. I was working on the assumption that as  
 24 results came back, we would be making efforts  
 25 to communicate with the patients.

1 COFFEY, Q.C.:  
 2 Q. See what --  
 3 THE COMMISSIONER:  
 4 Q. I'm sorry, Mr. Coffey --  
 5 COFFEY, Q.C.:  
 6 Q. Go ahead.  
 7 THE COMMISSIONER:  
 8 Q. But I just want to make sure that I'm not  
 9 confusing things here because I had a view of  
 10 what I thought had been happening, and I just  
 11 want to make sure. From the beginning, let's  
 12 go back a step, when you first decided that  
 13 you -- I mean the organization, not  
 14 necessarily you personally.  
 15 MR. TILLEY:  
 16 A. Yes.  
 17 THE COMMISSIONER:  
 18 Q. When you first decided that it was necessary  
 19 to retest a large number of patients over that  
 20 period of time from 1997 on up, my  
 21 understanding is that when that was discussed,  
 22 whatever the pros and cons were or advising  
 23 patients that this was in progress, at some  
 24 point, a decision was made that there would be  
 25 no contact until the results were back.

1 THE COMMISSIONER:  
 2 Q. Okay, but you must have known that with a  
 3 thousand patients or even if you thought there  
 4 were 900, you wouldn't have made very many  
 5 contacts without the whole world knowing. As  
 6 you pointed out yesterday, Newfoundland is a  
 7 small place.  
 8 MR. TILLEY:  
 9 A. That's very true, Madam Commissioner. And  
 10 you'll note in some of the correspondence that  
 11 it was felt to be likely that this was going  
 12 to become known. In our thinking, we were  
 13 being--on the understanding that the results  
 14 were going to be back a lot sooner.  
 15 THE COMMISSIONER:  
 16 Q. Yes, I understood that from your -  
 17 MR. TILLEY:  
 18 A. And it was the delay that became just another  
 19 one of the issues that we ran into to  
 20 frustrate our overall original objectives.  
 21 THE COMMISSIONER:  
 22 Q. Okay. So, when you decided not to tell the  
 23 patients that the retesting the process was  
 24 ongoing, to delay at least until the  
 25 commencement of the return of numbers.

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1 MR. TILLEY:  
 2 A. Yes.  
 3 COFFEY, Q.C.:  
 4 Q. So, in September, when the first of these came  
 5 back -  
 6 MR. TILLEY:  
 7 A. Uh-hm.  
 8 THE COMMISSIONER:  
 9 Q. - which would have been prior to the story  
 10 actually breaking, would it not?  
 11 MR. TILLEY:  
 12 A. Yes.  
 13 THE COMMISSIONER:  
 14 Q. But by the time the story broke, you had not  
 15 had this plan in operation for the purpose of  
 16 telling everybody?  
 17 MR. TILLEY:  
 18 A. What changed after early October was that we  
 19 would actually go out and call patients in  
 20 advance to say that your results are being  
 21 tested. The original plan had been to wait  
 22 until we had something to tell the patient  
 23 about their results.  
 24 THE COMMISSIONER:  
 25 Q. Yes. No. I understand that, but I'm just

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1 trying to follow the sequence through. As you  
 2 point out, you thought that the results, in  
 3 fact, would be back in the space of six to  
 4 eight weeks.  
 5 MR. TILLEY:  
 6 A. Yes.  
 7 THE COMMISSIONER:  
 8 Q. And therefore, you would be in a position to  
 9 contact everyone within that timeframe.  
 10 MR. TILLEY:  
 11 A. Yes.  
 12 THE COMMISSIONER:  
 13 Q. So, if you believed the results would be back  
 14 between six and eight weeks, I assume that  
 15 there was a great deal of planning which would  
 16 have taken place during the six to eight weeks  
 17 about the communication process, given your  
 18 own plan.  
 19 MR. TILLEY:  
 20 A. Uh-hm.  
 21 THE COMMISSIONER:  
 22 Q. Which was to notify only when results came  
 23 back.  
 24 MR. TILLEY:  
 25 A. Uh-hm.

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1 THE COMMISSIONER:  
 2 Q. So, you knew that you were going to get 900  
 3 plus results back. You knew that that was  
 4 going to be a lot of communication to a lot of  
 5 people. So, my natural instinct, I suppose  
 6 would be to say that during that six to eight  
 7 weeks, there would have been a lot of  
 8 scrambling within the quality initiatives  
 9 division for the planning process of talking  
 10 or sending information to these people.  
 11 MR. TILLEY:  
 12 A. Yes.  
 13 THE COMMISSIONER:  
 14 Q. Now, at least in the information that I have  
 15 so far seen and there may be other information  
 16 out there that I have not yet seen, so not to  
 17 pre-judge this kind of thing, but from what I  
 18 have so far seen, there's not a lot of  
 19 indication that that was happening. Now, tell  
 20 me if I'm wrong and what was happening.  
 21 MR. TILLEY:  
 22 A. Commissioner, what I can speak to were the  
 23 parameters that we were using in terms of the  
 24 intent of the communications. The actual  
 25 mechanics as to how that was going to be done

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1 in the quality initiatives department, I'm  
 2 really not in a position to speak to.  
 3 THE COMMISSIONER:  
 4 Q. Okay. So you knew the overall scheme, but the  
 5 nitty-gritty of how that was going to work or  
 6 who was working on gathering the information  
 7 and all that sort of thing, you can't speak  
 8 to?  
 9 MR. TILLEY:  
 10 A. No, Ma'am.  
 11 THE COMMISSIONER:  
 12 Q. Okay. So, I should look to Ms. Pilgrim for  
 13 that?  
 14 MR. TILLEY:  
 15 A. Well, she would be more familiar with it and  
 16 then, of course, the director that reported to  
 17 her.  
 18 THE COMMISSIONER:  
 19 Q. Okay, thank you. Sorry, Mr. Coffey, I done it  
 20 again.  
 21 COFFEY, Q.C.:  
 22 Q. No, no, Commissioner. Now, Mr. Tilley, on the  
 23 point, you have told us, in fact, the first  
 24 day you testified, that afternoon, you told  
 25 the Commissioner that it was your view that if



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1 we can help even one patient, we will conduct  
 2 the retesting.  
 3 MR. TILLEY:  
 4 A. Right.  
 5 COFFEY, Q.C.:  
 6 Q. And you understood at the time, large scale  
 7 retesting would be involved? Like hundreds?  
 8 MR. TILLEY:  
 9 A. Hundreds.  
 10 COFFEY, Q.C.:  
 11 Q. Yes. The idea being, I take it, if you  
 12 retest--if even on person's results were to  
 13 change, you would be able to help them?  
 14 MR. TILLEY:  
 15 A. Yes.  
 16 COFFEY, Q.C.:  
 17 Q. Suggesting that if the person's--by offering  
 18 further treatment.  
 19 MR. TILLEY:  
 20 A. Yes.  
 21 COFFEY, Q.C.:  
 22 Q. Suggesting that if a person's results did not  
 23 change, you would not be in a position to help  
 24 them.  
 25 MR. TILLEY:

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1 A. Well, if the results had changed and that  
 2 information was the basis on which the  
 3 clinician had made the decision, then my  
 4 assumption would be that wouldn't result in a  
 5 change in treatment.  
 6 COFFEY, Q.C.:  
 7 Q. You wouldn't be able to help them further,  
 8 right? For all the patients whose results  
 9 didn't change--you see, when you phrase  
 10 something, if we can help even one patient,  
 11 we'll do the retest.  
 12 MR. TILLEY:  
 13 A. And that was clearly how we spoke about this.  
 14 COFFEY, Q.C.:  
 15 Q. What I'm getting at is this, is that that  
 16 suggests, doesn't it, that if a test result or  
 17 more than one test result changes, we will be  
 18 able to help, we think we may be able to  
 19 further help patients whose results do change.  
 20 That's correct, isn't it?  
 21 MR. TILLEY:  
 22 A. Yes.  
 23 COFFEY, Q.C.:  
 24 Q. Suggesting that for the patients whose results  
 25 do not change, we will not be in a position to

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1 help them any further than we already have in  
 2 the past.  
 3 MR. TILLEY:  
 4 A. Not through this retesting process. That's  
 5 correct.  
 6 COFFEY, Q.C.:  
 7 Q. If we could back then to P-0092. Yes, it's on  
 8 the screen there now. And the third sentence  
 9 of Mr. Boone's e-mail. "Notifying these  
 10 people may be seen as raising their hopes for  
 11 treatment possibilities". Notifying them that  
 12 their results may, in future, change depending  
 13 on what the retest says, he suggests that that  
 14 may be raising their hopes which is  
 15 consistent with your suggestion that if we can  
 16 help even one patient, we'll do the retesting.  
 17 MR. TILLEY:  
 18 A. Uh-hm.  
 19 COFFEY, Q.C.:  
 20 Q. And where I'm going with this is this, did you  
 21 have any understanding, having espoused the  
 22 view that if we can help even one, we'll do  
 23 all the retesting, as to what position that  
 24 put the patients whose results didn't change?  
 25 MR. TILLEY:

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1 A. No, I didn't know that issue.  
 2 COFFEY, Q.C.:  
 3 Q. The fact that an informed patient or patient  
 4 who was actually clinically aware of the fact  
 5 the retest results not changing, the  
 6 significance of being told that there are no  
 7 further treatment options we can offer you in  
 8 this regard, did that factor into the choice  
 9 to use a patient relations offer to contact  
 10 those patients as opposed to a physician to  
 11 contact the patients?  
 12 MR. TILLEY:  
 13 A. No, I think that was more an issue of reality.  
 14 The fact that we would be able to get enough  
 15 physicians to start taking on this process, I  
 16 suspect, would be fairly close to impossible.  
 17 COFFEY, Q.C.:  
 18 Q. Now, if we could, please, Exhibit P-0359  
 19 please.  
 20 REGISTRAR:  
 21 Q. I'm sorry, what was that number?  
 22 COFFEY, Q.C.:  
 23 Q. P-0359. I apologize, Registrar. Now, sir,  
 24 This is--on page 2 in the first of this e-mail  
 25 exchange from Carolyn Chaplin who is indicated

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1 to have an e-mail address for the government  
 2 of Newfoundland and Labrador at the time, to  
 3 yourself. Wednesday, October 19 at 2101  
 4 hours, 2005, one minute after 9:00 p.m.  
 5 "Subject, checking in. George, just checking  
 6 in to see how you're making out with the  
 7 breast cancer retesting issue. It seems to be  
 8 really be sticking in the media. The media  
 9 seems to be losing the message that work was  
 10 ongoing behind the scenes while awaiting test  
 11 results. Unfortunate it played out this way.  
 12 Hope all is well". And she goes on to talk  
 13 about the budget process. If I could, Ms.  
 14 Chaplin at that point, you would have  
 15 understood, was working where?  
 16 MR. TILLEY:  
 17 A. I'm assuming she's moved on from the  
 18 Department of Health and I see budget, so I'm  
 19 just assuming she may be over in the  
 20 Department of Finance.  
 21 COFFEY, Q.C.:  
 22 Q. Well, she's in the Confederation Building  
 23 anyway.  
 24 MR. TILLEY:  
 25 A. Yes.

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1 THE COMMISSIONER:  
 2 Q. Well, there's a reference there to the point I  
 3 was raising with you earlier which is the work  
 4 going on behind the scenes. But once again,  
 5 what she's referring to, I should ask somebody  
 6 else.  
 7 MR. TILLEY:  
 8 A. I guess that would be related to pulling out  
 9 the slides and the retesting that's been going  
 10 on, external reviews that had been initiated.  
 11 Those are the sort of things that pop to my  
 12 mind.  
 13 THE COMMISSIONER:  
 14 Q. Right, thank you.  
 15 COFFEY, Q.C.:  
 16 Q. Now, of course, to be fair to the media, at  
 17 the time time other than the initial week,  
 18 during the week of October 2, 3 and 4, we had  
 19 seen e-mail yesterday where, at least, some  
 20 people within your own organization,  
 21 communications people and the Department of  
 22 Health didn't seem all that interested, did  
 23 they, in keeping the matter before the media.  
 24 MR. TILLEY:  
 25 A. Yes.

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1 COFFEY, Q.C.:  
 2 Q. You'd agree with that. So, if the message was  
 3 being lost, I take it, that might be simply  
 4 because people consciously chose not to get  
 5 the message out. That's entirely possible.  
 6 MR. TILLEY:  
 7 A. Well, there could be a partial explanation.  
 8 Though it could also be that some of the  
 9 points that were being raised during those  
 10 interviews weren't always covered.  
 11 COFFEY, Q.C.:  
 12 Q. And sir, if you look back here, your response  
 13 to her later on that evening, you said in the  
 14 second paragraph, "The lab issue was certainly  
 15 hanging on. We have had multiple discussions  
 16 about the path we took on this, still believe  
 17 it was in the best interest of the patient.  
 18 Having said that, I think it is safe to say  
 19 that it was a catch 22, not everyone would  
 20 agree in the end. I am somewhat disappointed  
 21 with the Cancer Society comments. We have been  
 22 briefing Peter Dawe, but it seems to have been  
 23 of little benefit, at least from the media  
 24 perspective. Obviously, we are oversensitive  
 25 and I recognize that everyone has a job to do.

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1 Unfortunately, the usual editing of the  
 2 interviews that Bob Williams has done always  
 3 seems to cut some of the key messages short,  
 4 so this weekend we will be putting ads in the  
 5 various newspapers across the province  
 6 explaining what this is all about. Tomorrow  
 7 we will start calling patients to advise where  
 8 their specimen is in terms of the expected  
 9 availability of the retest results, and in  
 10 some cases provide results where we have them.  
 11 I have talked to the CEO of Mount Sinai to see  
 12 if we can expedite the retesting process.  
 13 I've also started investigating where we can  
 14 put this issue nationally since this appears  
 15 to be more than a local problem. One of my  
 16 CEO colleagues in Ontario, who is also an  
 17 oncologist, told me earlier tonight it is a  
 18 grey test. On the budget issue, I'm feeling  
 19 we are heading in the wrong direction. The  
 20 restructuring savings put forward by treasury  
 21 board are proving to be unrealistic, the  
 22 devolving of services from the department  
 23 costly, and the typical annual growth in  
 24 health care costs are clearly out of reach.  
 25 Getting savings from staff reductions seem

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1 impossible, particularly in the rural. I have  
 2 a growing concern that the expectations for  
 3 this organization are beyond reach. In any  
 4 event, we will continue to do our best." So  
 5 when you responded to Ms. Chaplin that  
 6 evening, they're frank comments, aren't they?  
 7 MR. TILLEY:  
 8 A. Yes.  
 9 COFFEY, Q.C.:  
 10 Q. And I'm going to suggest to you at the time  
 11 they were honest comments? They were your  
 12 honest views at the time?  
 13 MR. TILLEY:  
 14 A. Yes.  
 15 COFFEY, Q.C.:  
 16 Q. Now, you had mentioned the conversation with  
 17 the CEO of Eastern Health, you had mentioned  
 18 the oncologist colleague, this Dr. Bell, isn't  
 19 it, I believe?  
 20 MR. TILLEY:  
 21 A. Yes.  
 22 MR. SIMMONS:  
 23 Q. - the CEO of Mount Sinai?  
 24 COFFEY, Q.C.:  
 25 Q. No. The CEO of Mount Sinai is there, but as

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1 well, the oncologist as well that Mr. Simmons  
 2 is referencing in the same paragraph?  
 3 MR. TILLEY:  
 4 A. I think you had said CEO of Eastern Health.  
 5 COFFEY, Q.C.:  
 6 Q. I apologize, I apologize. CEO of Mount Sinai  
 7 and the CEO--you'd hardly have a conversation  
 8 with yourself.  
 9 MR. TILLEY:  
 10 A. I've had many of those.  
 11 COFFEY, Q.C.:  
 12 Q. Although, perhaps you have. Perhaps you've  
 13 certainly felt like it.  
 14 MR. TILLEY:  
 15 A. More than I'd like to acknowledge.  
 16 COFFEY, Q.C.:  
 17 Q. Yes. And the colleague, though, in Ontario,  
 18 Dr. Bell, the oncologist is referred to there.  
 19 And again, this will help the Commissioner put  
 20 this in some kind of temporal context.  
 21 MR. TILLEY:  
 22 A. Yes.  
 23 COFFEY, Q.C.:  
 24 Q. Okay. In terms of the budgetary issues, now  
 25 being CEO of Eastern Health is behind you now,

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1 you've made these comments in October, you're  
 2 about six months into the job, I suppose, as  
 3 CEO?  
 4 MR. TILLEY:  
 5 A. Well, I wouldn't say it's behind me.  
 6 COFFEY, Q.C.:  
 7 Q. Behind you, well, I suppose you -  
 8 MR. TILLEY:  
 9 A. (Unintelligible) but -  
 10 COFFEY, Q.C.:  
 11 Q. But behind you in the sense of, you know,  
 12 you've moved out of the position, you've moved  
 13 on.  
 14 MR. TILLEY:  
 15 A. I'm sorry. Moved from -  
 16 COFFEY, Q.C.:  
 17 Q. No, the CEO of Eastern Health -  
 18 MR. TILLEY:  
 19 A. - the Health Care Corporation.  
 20 COFFEY, Q.C.:  
 21 Q. No, the Health Care--no, not so much at this  
 22 time, is you were six months--I'm talking now  
 23 as we sit here now, as you sit here now.  
 24 MR. TILLEY:  
 25 A. You mean today?

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1 COFFEY, Q.C.:  
 2 Q. I'm asking the question in this context.  
 3 MR. TILLEY:  
 4 A. Okay.  
 5 COFFEY, Q.C.:  
 6 Q. Looking back at your comment then -  
 7 MR. TILLEY:  
 8 A. Oh, yes.  
 9 COFFEY, Q.C.:  
 10 Q. - in the fall of October, '05, did really  
 11 while you were there, did anything--your views  
 12 there change at all?  
 13 THE COMMISSIONER:  
 14 Q. Mr. Coffey, I'm not sure what you're asking  
 15 the witness.  
 16 COFFEY, Q.C.:  
 17 Q. Okay, I apologize. Here's what I'm getting  
 18 at, I'm sorry, Commissioner.  
 19 THE COMMISSIONER:  
 20 Q. Views about what?  
 21 COFFEY, Q.C.:  
 22 Q. About finance.  
 23 THE COMMISSIONER:  
 24 Q. Okay.  
 25 COFFEY, Q.C.:

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1 Q. Finance, the financing. Because you're  
 2 telling Carolyn Chaplin, they're asking for  
 3 money that we can't--savings we can't provide?  
 4 MR. TILLEY:  
 5 A. Yes. This could take another two weeks on the  
 6 Inquiry.  
 7 COFFEY, Q.C.:  
 8 Q. Okay. But -  
 9 MR. TILLEY:  
 10 A. Let me give you my opinion.  
 11 COFFEY, Q.C.:  
 12 Q. Sure.  
 13 MR. TILLEY:  
 14 A. When I was first appointed and the other chief  
 15 executive officers of the other three health  
 16 authorities were appointed, there were a  
 17 number of conversations that we had with both  
 18 the deputy minister and the secretary of  
 19 treasury board, and those discussions were  
 20 around the savings that each of the four  
 21 organizations were expected to deliver on.  
 22 COFFEY, Q.C.:  
 23 Q. Um-hm.  
 24 MR. TILLEY:  
 25 A. At that point in time having five years in the

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1 capacity of chief executive officer of the  
 2 Health Care Corporation of St. John's during  
 3 which time we had gone through several reviews  
 4 and what I felt was an admirable effort on the  
 5 part of the Health Care Corporation of St.  
 6 John's team to identify savings, a lot of  
 7 which were along the lines of improving  
 8 clinical efficiency, which means reducing the  
 9 number of days that a patient may need to stay  
 10 in an in-patient bed, shifting services away  
 11 from the in-patient population to an  
 12 outpatient setting which allows you  
 13 effectively to reduce the number of our beds  
 14 and associated staff. We had trimmed down the  
 15 number of managers beyond which I was really  
 16 feeling comfortable about. So to have to go  
 17 into a situation now where there was a whole  
 18 new expectation that this had to be shrunk  
 19 even further.  
 20 COFFEY, Q.C.:  
 21 Q. And this is in context, the situation you're  
 22 talking about is Eastern Health?  
 23 MR. TILLEY:  
 24 A. That's correct.  
 25 COFFEY, Q.C.:

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1 Q. And the collapsing of--okay.  
 2 MR. TILLEY:  
 3 A. So with the budget exceeding \$900 million and  
 4 having the Health Care Corporation comprised  
 5 approximately half, give or take a few tens of  
 6 millions, then the question was where am I  
 7 going to find the savings. There was an  
 8 expectation even before, well, maybe it was in  
 9 January, before we officially became  
 10 appointed, that work had been done, I'm  
 11 thinking it was in the treasury board. They  
 12 would have access to all of the positions that  
 13 each of these organizations had in place. So  
 14 they were making decisions as to what  
 15 positions could be cut out and so on,  
 16 particularly in the administrative area. So I  
 17 looked at it, I knew very little about the  
 18 other half of this organization, which really  
 19 spread over six other entities. And I  
 20 remember saying to the deputy that, "Look, I  
 21 can't say if this expectation that you have to  
 22 be able to cut," can't remember the exact  
 23 figure, but eight to ten million dollars sort  
 24 of sticks in my mind, "is an easy one or an  
 25 impossible one. I just don't have the

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1 information on which to base that." Clearly  
 2 there is a evolution that happens when you  
 3 restructure organizations, and part of that  
 4 evolution is upfront if there was a need to  
 5 make change happen, you needed to have a lot  
 6 of resources at your disposal to make that  
 7 happen. Because it was not simply bringing  
 8 five or seven identical organizations  
 9 together. While they were all in the health  
 10 care system, they were all very different, not  
 11 particularly so or just only so in terms of  
 12 their mandates, but all of the systems issues,  
 13 all of the policies, how they do their  
 14 accounting, you know, it was a massive  
 15 process. So I guess by this time, which is  
 16 six months into the role, I still hadn't seen  
 17 a way to achieve the original targets that  
 18 were being put on me.  
 19 COFFEY, Q.C.:  
 20 Q. Did you ever--my question really was did you  
 21 ever see a way?  
 22 MR. TILLEY:  
 23 A. After having gone through the Health Care  
 24 Corporation we started feeling in year seven  
 25 or eight the organization starting to feel

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1 like it was coming together and that we were  
 2 talking the same language. So I would often  
 3 think about that experience in terms of  
 4 whether it would be equated here. This one  
 5 was even more complex because we were dealing  
 6 more than just hospitals, we were taking on a  
 7 much larger continuum of care, plus we had a  
 8 rural element that I certainly had not had any  
 9 exposure to up until that point in time.  
 10 COFFEY, Q.C.:  
 11 Q. So what I'm asking you is you stayed until the  
 12 summer of '07, okay. You had said to Ms.  
 13 Chaplin that evening, "We are heading in the  
 14 wrong direction", at least in your view. Did  
 15 you continue to head in the wrong direction,  
 16 from your perspective now, in terms of what  
 17 you're talking about here?  
 18 MR. TILLEY:  
 19 A. Well, I don't think anything has changed.  
 20 There are a few larger organizations in this  
 21 country, so the size can be said to be  
 22 manageable, but there's a lot of support  
 23 systems that would need to be in place to  
 24 really insure that that works appropriately.  
 25 I think there was a particular challenge when

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1 you have an organization that has both  
 2 tertiary responsibilities and rural  
 3 responsibilities because of having the  
 4 responsibility to be making decisions as to  
 5 how much do you invest in a service that's  
 6 needed for the whole province versus having to  
 7 make a decision as to whether the weight of a  
 8 particular service in a smaller community  
 9 would outweigh the provincial issues.  
 10 COFFEY, Q.C.:  
 11 Q. Yeah.  
 12 MR. TILLEY:  
 13 A. And once you get into the rural areas, there's  
 14 another element that enters into your decision  
 15 making, and that can be the fact that some of  
 16 these facilities become your or are your only  
 17 employer. So there's one element of the  
 18 health care and there's another element of  
 19 employment.  
 20 COFFEY, Q.C.:  
 21 Q. So with respect to here you've referred to the  
 22 typical annual growth in health care costs,  
 23 bearing that in mind, and the devolving of  
 24 services from the department is costly. "The  
 25 restructuring savings put forward by treasure

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1 board are proving to be unrealistic." Did you  
 2 ever actually meet them, those restructuring  
 3 savings?  
 4 MR. TILLEY:  
 5 A. The actual specific cost reduction factors  
 6 that they had, my recollection is, no, we did  
 7 not.  
 8 COFFEY, Q.C.:  
 9 Q. Okay.  
 10 MR. TILLEY:  
 11 A. Certainly not within the time parameters that  
 12 they had been looking for.  
 13 COFFEY, Q.C.:  
 14 Q. Okay.  
 15 MR. TILLEY:  
 16 A. Now, it's been nearly a year since I've been  
 17 out of the organization -  
 18 COFFEY, Q.C.:  
 19 Q. Sure.  
 20 MR. TILLEY:  
 21 A. - so maybe they've pulled some miracles off  
 22 since then.  
 23 COFFEY, Q.C.:  
 24 Q. But from the perspective at the time, and this  
 25 is what I'm getting at, Mr. Tilley, is is

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1 this, is is that you're getting pressure,  
 2 financial pressure or pressure to keep costs  
 3 down or to lower costs in certain areas,  
 4 you've told the Commissioner that. In terms  
 5 of that, I mean, did you push back with  
 6 treasury board and tell them, "Look, it's just  
 7 not doable."  
 8 MR. TILLEY:  
 9 A. We had that ongoing conversation particularly  
 10 with officials in the Department of Health.  
 11 COFFEY, Q.C.:  
 12 Q. Okay. And I take it then that this wasn't a  
 13 new experience, this had been going on for  
 14 years, this kind of pressure to reduce costs  
 15 and the resistance from people such as  
 16 yourself saying, "No, you know, there's only  
 17 so far we can go." Is that -  
 18 MR. TILLEY:  
 19 A. That would be a very accurate statement.  
 20 COFFEY, Q.C.:  
 21 Q. Sure. If we could, please, Exhibit P-093?  
 22 Actually, I apologize, could we just go back  
 23 to P-0144, please? I apologize, Commissioner.  
 24 P-0144. Just on this--scroll down the page a  
 25 bit here. Thank you. Mr. Tilley, two other

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1 things I wanted to ask you about here. You've  
 2 written back to Ms. Chaplin saying,  
 3 "Unfortunately, the usual editing of the  
 4 interviews."  
 5 MR. TILLEY:  
 6 A. Um-hm.  
 7 COFFEY, Q.C.:  
 8 Q. "Bob Williams has done always seem to cut  
 9 short some"--I'm sorry, "to cut some of the  
 10 key messages short." So I take it you were  
 11 acutely aware long before ER/PR came up that  
 12 media editing of interviews can cut key  
 13 messages short?  
 14 MR. TILLEY:  
 15 A. Yes.  
 16 COFFEY, Q.C.:  
 17 Q. And you've point out, "So this weekend," which  
 18 would be presumably the weekend following  
 19 October 19th, be the weekend probably of the  
 20 22nd of October, you're going to run  
 21 advertisements. Can you tell the  
 22 Commissioner, you know, looking back on it,  
 23 how it was that you didn't have the ads ready  
 24 to go on October 2?  
 25 MR. TILLEY:

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1 A. I assume that they weren't available at the  
 2 time.  
 3 COFFEY, Q.C.:  
 4 Q. Because we've seen e-mails this morning about  
 5 buying advertising and these e-mails are the  
 6 middle of October -  
 7 MR. TILLEY:  
 8 A. Yes, right.  
 9 COFFEY, Q.C.:  
 10 Q. - so it's left until then.  
 11 MR. TILLEY:  
 12 A. Right. No, I don't have an answer for that.  
 13 COFFEY, Q.C.:  
 14 Q. And you also refer to, "I am somewhat  
 15 disappointed with the Cancer Society comments.  
 16 We've been briefing Peter Dawe, but it seems  
 17 to be of little benefit, at least from the  
 18 media perspective. Obviously we are over  
 19 sensitive and I recognize that everyone has a  
 20 job to do." Now, do you recall what it was  
 21 that disappointed you about Mr. Dawe's  
 22 comments at the time and did you ever contact  
 23 him about it at that point?  
 24 MR. TILLEY:  
 25 A. I recall Mr. Dawe e-mailing me about--didn't

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1 we talk about that yesterday?  
 2 COFFEY, Q.C.:  
 3 Q. Yes, well he e-mailed you at various times,  
 4 yes.  
 5 MR. TILLEY:  
 6 A. Yes. So, you know, Peter Dawe was well known  
 7 to me and you referenced yesterday or reminded  
 8 me that he was actually on the board of  
 9 directors of the Health Care Corporation of  
 10 St. John's, so having a telephone conversation  
 11 with him would not be unrealistic or  
 12 unexpected. Dr. Williams, I'm not sure at  
 13 what point in time, had started to have some  
 14 dialogue with Mr. Dawe so that we could keep  
 15 him informed with regards to things that were  
 16 happening. So my assumption by that time is  
 17 that perhaps Mr. Dawe was making some comments  
 18 and that, you know, maybe the briefings were  
 19 not as valuable as we thought they were going  
 20 to be. But I just went on to say that, you  
 21 know, we were sensitive, overly sensitive  
 22 because this is an issue that's important to  
 23 us and it really would be unrealistic to think  
 24 that Mr. Dawe, as an advocacy group, is going  
 25 to come out and say, "Well, look, I'm

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1 comfortable with what Eastern Health is  
 2 doing," that was unrealistic to be thinking.  
 3 COFFEY, Q.C.:  
 4 Q. Do you recall what it was that, you know, you  
 5 were disappointed about, though?  
 6 MR. TILLEY:  
 7 A. Other than the fact that there were -  
 8 COFFEY, Q.C.:  
 9 Q. That he was being critical?  
 10 MR. TILLEY:  
 11 A. No. I think it was implying that there was  
 12 nothing happening or no information, I'm not  
 13 sure exactly what it was, but I thought there  
 14 was an element there that -  
 15 COFFEY, Q.C.:  
 16 Q. Well, if I could, Mr. Tilley, this is the  
 17 middle of October, right, you still haven't  
 18 published your advertisements, correct?  
 19 MR. TILLEY:  
 20 A. That's right.  
 21 COFFEY, Q.C.:  
 22 Q. Other than the initial interviews, October,  
 23 you know, the October 2nd story and the  
 24 initial interviews afterward. I'm not  
 25 suggesting Dr. Williams wasn't interviewed at

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1 some points after a couple of times. But your  
 2 communications people were certainly not  
 3 interested in drawing attention to the issue,  
 4 were they, based upon the e-mails we looked  
 5 at?  
 6 MR. TILLEY:  
 7 A. Based upon the e-mails, that's correct.  
 8 COFFEY, Q.C.:  
 9 Q. Yes. So, for an advocate on behalf of the  
 10 Canadian Cancer Society to be complaining in  
 11 the middle of October publicly that there's a  
 12 lack of information forthcoming from Eastern  
 13 Health about this issue, that's not surprising  
 14 at all, is it?  
 15 MR. TILLEY:  
 16 A. No. And I think you can read that into my e-  
 17 mail.  
 18 COFFEY, Q.C.:  
 19 Q. Yes. What was the point of having Mr. Dawe  
 20 briefed?  
 21 MR. TILLEY:  
 22 A. Well, because he had e-mailed me about looking  
 23 for some more information at one point in time  
 24 and I had asked or referred, I may have even  
 25 met with him with Dr. Williams at one point in

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1 time, and it was felt to have a good  
 2 discussion--it was felt that that was a good  
 3 discussion with him and I think Dr. Williams  
 4 was keeping him in the loop. There was  
 5 certainly no expectation on his part to be  
 6 taking any position other than that of the  
 7 Canadian Cancer Society.  
 8 COFFEY, Q.C.:  
 9 Q. Now, sir, in terms of, if we could, I'm sorry,  
 10 Commissioner, please, Exhibit P-0093? This is  
 11 an e-mail from yourself on October 20th, 2005,  
 12 9:29 a.m. This, I take it, is to the board of  
 13 directors?  
 14 MR. TILLEY:  
 15 A. Yes.  
 16 COFFEY, Q.C.:  
 17 Q. Or board of trustees, I apologize. It is a  
 18 board of trustees. And you're forwarding them  
 19 a CBC National transcript, refer to it  
 20 becoming a national issue and your discussions  
 21 with CPSI and your CEO colleagues in Toronto,  
 22 Mr. Bell, or Dr. Bell. And you are telling  
 23 them about your advertisement campaign which  
 24 is about to begin. Now, you do say, "As well  
 25 today," that would be Thursday, October 20th,

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1 "we will start" -  
 2 MR. TILLEY:  
 3 A. Excuse me, what -  
 4 COFFEY, Q.C.:  
 5 Q. I'm sorry, it's at the very bottom, I  
 6 apologize.  
 7 MR. TILLEY:  
 8 A. Okay, sorry.  
 9 COFFEY, Q.C.:  
 10 Q. No, that's my fault.  
 11 MR. TILLEY:  
 12 A. Okay.  
 13 COFFEY, Q.C.:  
 14 Q. You say, "As well," this is the second  
 15 sentence in the last paragraph, "As well today  
 16 we will start calling all patients who are  
 17 being retested to advise them of when their  
 18 results can be expected. We are hoping we can  
 19 conclude that next week." Okay?  
 20 MR. TILLEY:  
 21 A. Yes.  
 22 COFFEY, Q.C.:  
 23 Q. So why was the decision made at this point in  
 24 time to call the patients or to actually  
 25 contact the individual patients? Because

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1 there'd been all that resistance before about  
 2 contacting individual patients from the  
 3 oncologists.  
 4 MR. TILLEY:  
 5 A. Well, I think -  
 6 COFFEY, Q.C.:  
 7 Q. And we looked at an e-mail yesterday that you  
 8 were about to--and "I'll have to talk to Kara  
 9 Laing," I think, in one of your notes,  
 10 reconsider the idea of not contacting the  
 11 patients before the results are back.  
 12 MR. TILLEY:  
 13 A. Yes.  
 14 COFFEY, Q.C.:  
 15 Q. What happened between the board of trustees or  
 16 the--the board of trustees briefing on  
 17 September 21 or your CEO tele-conference on  
 18 October 4th, because that's the two sets of  
 19 notes we looked at. Something happened  
 20 between those dates and now about this issue.  
 21 MR. TILLEY:  
 22 A. Well, the issue that I--the only issue I can  
 23 recall is just a general discussion about  
 24 whether the public or the patients who were  
 25 directly impacted here were felt to need to

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1 have direct contact to say that they are  
 2 involved in this and therefore given a  
 3 specific heads up.  
 4 COFFEY, Q.C.:  
 5 Q. Do you know if Dr. Laing was talked to about  
 6 this or other oncologists?  
 7 MR. TILLEY:  
 8 A. I can't specifically say that, no.  
 9 COFFEY, Q.C.:  
 10 Q. So the decision to go ahead and contact the  
 11 individual patients to tell them about the  
 12 retesting, as far as you know, could have been  
 13 done without asking the oncologists about it?  
 14 MR. TILLEY:  
 15 A. I can't recall whether that discussion went on  
 16 unless there's something in my notes that  
 17 might help me with the discussion.  
 18 COFFEY, Q.C.:  
 19 Q. If we could, please, look at Exhibit P-0361?  
 20 Now, this is an e-mail, sir, from Susan  
 21 Bonnell, October 20th, 2005 at 11:50 a.m. to  
 22 Joan Dawe and to yourself, it's copied to Dr.  
 23 Williams. The subject is, "Re: CBC Tomorrow,  
 24 Radio Noon Call-In Show." And it says, "Anne  
 25 Kearney will be appearing on Crosstalk this

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1 afternoon. She has been assured by Anne  
 2 Budgell that the focus will be her breast  
 3 cancer research and breast screening, not ER  
 4 and PR. We have prepared a few messages in  
 5 the event that she gets calls regarding this  
 6 issue. She will not be speaking as a  
 7 spokesperson for this organization. Also, she  
 8 will be talking with Peter, they are driving  
 9 to the studio together, about her desire to  
 10 stay away from this issue. We talked about  
 11 the possibility of pulling out of the  
 12 interview but I fell that if we do that, Peter  
 13 and Anne Budgell will have no motivation to  
 14 stay away from the issue. I think it's better  
 15 that Anne Kearney is there redirecting the  
 16 topic back to breast screening." And when we  
 17 look below that, the predecessor e-mail to  
 18 that was a message from Susan Bonnell at 9:17  
 19 a.m. that morning to yourself and Ms. Dawe on  
 20 the same subject saying, "Ms. Dawe, we are  
 21 dealing with this now. If this about ER and  
 22 PR Anne will not be going." Presumably that's  
 23 Anne Kearney. "I'll send you an update." And  
 24 I just read you the update. And a predecessor  
 25 message, finally. Her response to Ms. Dawe

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1 had been occasioned by Ms. Dawe at 5:55 p.m.  
 2 the day before, October, 19th, having sent you  
 3 and her, you and Susan Bonnell an e-mail, same  
 4 subject. And it says, "Hi," that's Ms. Dawe,  
 5 "I just heard on CBC that Peter Dawe and Anne  
 6 Kearney are on the Call-In Radio Noon tomorrow  
 7 regarding the breast cancer issue." Now, sir,  
 8 looking at that exchange of e-mails involving  
 9 your director of communications, the chair of  
 10 the board of trustees and yourself, you know,  
 11 that certainly seems to suggest that there was  
 12 a desire on the part of Eastern Health to  
 13 avoid speaking publicly in the media about ER  
 14 and PR, doesn't it?  
 15 MR. TILLEY:  
 16 A. Well, the way I read that one, Anne Kearney is  
 17 not a person who had been involved in this  
 18 particular laboratory issue. Her issue is  
 19 more focused, I believe, on the screening  
 20 side. And so the issue would be that we  
 21 certainly wouldn't be expecting her -  
 22 COFFEY, Q.C.:  
 23 Q. Sure.  
 24 MR. TILLEY:  
 25 A. - to be speaking about that issue.

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1 COFFEY, Q.C.:  
 2 Q. But there were a lot of people in your  
 3 organization who were apparently quite capable  
 4 of speaking about it, so why not send one of  
 5 them along, as well?  
 6 MR. TILLEY:  
 7 A. Well, then it was going to change the whole  
 8 nature of the topic.  
 9 COFFEY, Q.C.:  
 10 Q. And we look at Ms. Bonnell's e-mail to Ms.  
 11 Dawe, she says, "If this is about ER and PR,  
 12 Anne will not be going." I'm going to suggest  
 13 to you at the time the attitude within Eastern  
 14 Health was if it's about ER and PR, no one  
 15 will be going?  
 16 MR. TILLEY:  
 17 A. No.  
 18 COFFEY, Q.C.:  
 19 Q. Is that -  
 20 MR. TILLEY:  
 21 A. No, I can't say that because I seem to  
 22 remember discussions about having physicians  
 23 on Crosstalk or something. I can't remember  
 24 exactly, but I suspect that Anne herself would  
 25 have been very uncomfortable if that was the



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1 issue.

2 COFFEY, Q.C.:

3 Q. Yeah. How about at that point in time, what

4 was the organization's attitude overall, from

5 your perspective, to being involved in media

6 discussions about it?

7 MR. TILLEY:

8 A. Well, generally speaking the whole concept of

9 approaching the patients was where we were

10 putting a lot of the energy, one-on-one

11 contact, follow-up with the individual

12 patients. The idea of thinking about what the

13 organization's role was vis-a-vis the media

14 was that that was a secondary issue and the

15 primary issue was a direct contact.

16 COFFEY, Q.C.:

17 Q. Sir, now you're running public advertisements

18 now.

19 MR. TILLEY:

20 A. Yes.

21 COFFEY, Q.C.:

22 Q. You're about to buy, you're buying them?

23 MR. TILLEY:

24 A. Right.

25 COFFEY, Q.C.:

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1 Q. So certainly contact through the media with

2 patients -

3 MR. TILLEY:

4 A. Right. I didn't say -

5 COFFEY, Q.C.:

6 Q. And complaining -

7 MR. TILLEY:

8 A. - it was a non-issue, I was saying it was a

9 secondary issue.

10 COFFEY, Q.C.:

11 Q. Okay. And you're complaining about the fact

12 the media are cutting off the key messages

13 that Dr. Williams was trying to get out?

14 MR. TILLEY:

15 A. Yes.

16 COFFEY, Q.C.:

17 Q. So wouldn't it have made more sense to

18 actually be more engaged with the media at the

19 time?

20 MR. TILLEY:

21 A. Looking back, Mr. Coffey, I can't disagree.

22 COFFEY, Q.C.:

23 Q. Um-hm.

24 THE COMMISSIONER:

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

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1 place, we'll take the morning break.

2 COFFEY, Q.C.:

3 Q. If I could, please--yes, please, Commissioner,

4 we'll break now. Thank you.

5 THE COMMISSIONER:

6 Q. Fifteen minutes.

7 (RECESS)

8 THE COMMISSIONER:

9 Q. Mr. Coffey.

10 COFFEY, Q.C.:

11 Q. Thank you, Commissioner. If I could, Exhibit

12 P-0363, please? Now, Mr. Tilley, this is an

13 e-mail from Peter Dawe, October 20th, 2005 at

14 3:58 p.m., it's to Susan Bonnell, but it's

15 copied to yourself and Dr. Robert Williams and

16 the subject is "Media Coverage". And he says,

17 after greeting Susan he says, "Just to let you

18 know that the interview with me that ran on

19 The National last night was taped on Monday

20 morning." And I point out this is Thursday,

21 this e-mail is. "I understand that there is

22 some--there was," sorry, "some concern about

23 my call for more direct information. After

24 speaking with Bob Williams late yesterday

25 afternoon I am pleased to hear that Eastern

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1 Health will be having direct contact with all

2 the women who are being retested. Any

3 prospectus put forward by me on this topic

4 have been reflective of the feedback CCS is

5 receiving from the public. I believe that is

6 the role of this organization." So, Mr.

7 Tilley, I take it that e-mail, in fact,

8 reflects what I was suggesting to you before

9 the break, which was is that it wasn't

10 surprising that as up to this point individual

11 women had not been contacted about this?

12 MR. TILLEY:

13 A. No, that's correct, sir.

14 COFFEY, Q.C.:

15 Q. It's not surprising that he was complaining

16 about it. And he was now thanking you -

17 MR. TILLEY:

18 A. Um-hm.

19 COFFEY, Q.C.:

20 Q. Or thanking Susan and yourself and Dr.

21 Williams for having taken that step to have

22 direct contact.

23 If we could, please, Exhibit P-0364 and

24 this, I'm sorry, I identify this now,

25 Commissioner, because Mr. Tilley has referred

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1 to this series of conversations earlier. Now  
 2 this is an e-mail from yourself, Thursday,  
 3 October 20th, 2005 at 4:08 p.m. to Robert  
 4 Bell. You've copied it to Bob Williams and  
 5 this evidences or thanks him for the  
 6 opportunity he took to speak with you about  
 7 the matter. And you've already described for  
 8 us what went on, I take it, in that  
 9 conversation. This is this oncologist?  
 10 MR. TILLEY:  
 11 A. Yes.  
 12 COFFEY, Q.C.:  
 13 Q. He does say or you do say there, "Our  
 14 laboratory clinical chief"--and I'll just  
 15 scroll down a tiny bit, it's the second last  
 16 paragraph, Commissioner--"will be contacting  
 17 the two individuals you've referenced to also  
 18 see what insight they can offer in terms of  
 19 national follow. It appears that there's a  
 20 gap in terms of a national entity that can  
 21 take the lead with this issue, so we will  
 22 likely have to take a shotgun approach to the  
 23 follow up and hope that there is someone who  
 24 can keep it moving. In the meantime, we will  
 25 write the Canadian Association of Pathologists

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1 and others that we may subsequently identify.  
 2 I will also seek Phil's help at the CPSI."  
 3 And that's Phil Hassen?  
 4 MR. TILLEY:  
 5 A. Yes.  
 6 COFFEY, Q.C.:  
 7 Q. The clinical laboratory--I'm sorry, laboratory  
 8 clinical chief would be Dr. Cook?  
 9 MR. TILLEY:  
 10 A. Yes. Sorry, I thought you were reading them  
 11 all.  
 12 COFFEY, Q.C.:  
 13 Q. No, and Dr. Bell had in fact given you the  
 14 names of two individuals, two doctors, in  
 15 fact.  
 16 MR. TILLEY:  
 17 A. He had, yes.  
 18 COFFEY, Q.C.:  
 19 Q. And you passed those on. This--your reference  
 20 to "there's a gap in terms of a national  
 21 entity that can take the lead with this  
 22 issue", what were you talking about there?  
 23 MR. TILLEY:  
 24 A. The whole issue with regards to standards for  
 25 the processing of this particular test. As I

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1 was starting to learn and I have to refer back  
 2 to the literature.  
 3 COFFEY, Q.C.:  
 4 Q. Yes.  
 5 MR. TILLEY:  
 6 A. That was setting a context for me and trying  
 7 to understand how was it that the research  
 8 from the Europeans and the Americans had not  
 9 seen to be widespread in the Canadian context.  
 10 So here I was trying to figure out, well who  
 11 would be responsible for putting in the types  
 12 of standards or the accreditation process that  
 13 would appropriately address this process? So  
 14 I was calling people that I had known in the  
 15 past -  
 16 COFFEY, Q.C.:  
 17 Q. Go ahead, sir. I am certainly listening, you  
 18 go right ahead.  
 19 MR. TILLEY:  
 20 A. I have no doubt of that. The Canadian  
 21 Pathologists Association comes to mind. I  
 22 think I might have even referenced the  
 23 Canadian Oncologists Association at one point  
 24 in time, now I don't know if they would have  
 25 been intricately involved in the standards for

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1 lab process, but I'm sure they would have an  
 2 interest in the outcome, recognizing the  
 3 importance with which they attribute the  
 4 accuracy of those tests.  
 5 COFFEY, Q.C.:  
 6 Q. See, on that point, Mr. Tilley, as you've  
 7 pointed out here in your e-mail to Dr. Bell  
 8 that, you know, as a member of the board of  
 9 the Canadian Patient Safety Institute and you  
 10 refer to that, your board membership before.  
 11 MR. TILLEY:  
 12 A. Yes.  
 13 COFFEY, Q.C.:  
 14 Q. Then went back to 2003 or so and it continued  
 15 on beyond this point, you were on the board  
 16 for quite awhile.  
 17 MR. TILLEY:  
 18 A. Three to four years.  
 19 COFFEY, Q.C.:  
 20 Q. Three to four years, yes, but in '05 you've  
 21 been on the board for about a couple of years  
 22 and as a board member, I take it, that you  
 23 were surprised, bearing in mind the kind of  
 24 exposure that would give you to the idea of  
 25 patient safety and standards, presumably, is

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1 it fair to say that you were surprised in the  
 2 summer and fall of '05 as to the fact that you  
 3 couldn't find any standards?  
 4 MR. TILLEY:  
 5 A. Yes, I was surprised.  
 6 COFFEY, Q.C.:  
 7 Q. Yeah.  
 8 THE COMMISSIONER:  
 9 Q. I'm sorry, Mr. Tilley, was the implication of  
 10 what you said that you believed that there  
 11 were standards in Europe and in elsewhere, but  
 12 they were not here because that's not what I  
 13 understood from what you were saying  
 14 yesterday.  
 15 MR. TILLEY:  
 16 A. No, the issue in Europe was about the  
 17 literature, about the problems of these tests  
 18 and -  
 19 THE COMMISSIONER:  
 20 Q. Yes, that's what you said yesterday.  
 21 MR. TILLEY:  
 22 A. And there was similar research that I was--  
 23 that I had heard about that was suggesting  
 24 similar findings, but there was nothing that  
 25 was being brought to my attention to say that

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1 this actually was getting the same amount of  
 2 attention in Canada. And I kept hearing these  
 3 words about no national standards here.  
 4 Ontario was the only place, I learned that  
 5 subsequent or in the middle of all this, that  
 6 seemed to have moved itself out of the  
 7 national scene and gone on its own with  
 8 regards to putting in an accreditation  
 9 program, but other than that, there was  
 10 nothing that was suggesting that this would be  
 11 the appropriate way to perform this particular  
 12 test.  
 13 THE COMMISSIONER:  
 14 Q. Just once again, just for the purpose of  
 15 making sure that I am clear. When I was  
 16 listening to your commentary yesterday about  
 17 the research, you referred specifically to  
 18 Europe and the problems with the test. I  
 19 thought you were in effect saying there were  
 20 questions in Europe about the validity of the  
 21 test as an indicator of the presence of ER and  
 22 PR. Did I misunderstand you? Were you saying  
 23 something else?  
 24 MR. TILLEY:  
 25 A. Madam Commissioner, I apologize if -

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1 THE COMMISSIONER:  
 2 Q. No, it may have been my take on it.  
 3 MR. TILLEY:  
 4 A. Because I'm not one that can easily interpret  
 5 a clinical issue, but a lot of the things that  
 6 I took away from what was in the research is  
 7 the inability of a lot of organizations who  
 8 are actually doing these tests to feel  
 9 confident that they're doing it accurately;  
 10 and secondly, because of that, the value or  
 11 the appropriateness or the weight that you  
 12 would put in that particular test, in terms of  
 13 making the overall decision about a treatment  
 14 plan.  
 15 THE COMMISSIONER:  
 16 Q. Okay, so the problem that you were referring  
 17 to that they at least were discussing in  
 18 Europe, by the fact that it turned up in the  
 19 literature, was the problem of standards, a  
 20 standard approach to doing the test?  
 21 MR. TILLEY:  
 22 A. Well, just one step before that, was just  
 23 talking about the variations that were  
 24 occurring across Canada in the labs to  
 25 actually be able to consistently deliver or to

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1 deliver a consistent outcome on these tests.  
 2 There were references that I have a vague  
 3 recollection about, suggesting that one third  
 4 of the labs weren't able to accurately come up  
 5 with tests that were supposed to be in a  
 6 certain range or another case, 62 percent of  
 7 the labs couldn't accurately identify a result  
 8 that fell into another particular range, so it  
 9 seemed to me that there was a lot more  
 10 attention being paid to the limitations of the  
 11 labs in the European context. I can't speak  
 12 with confidence with regard to whether the  
 13 next step for them was that they put in all  
 14 the standards. What I can do is jump to the  
 15 Canadian scene and then the reality that I was  
 16 being told is that there's no standards in the  
 17 Canadian scene that applies to this particular  
 18 test and how it should be managed or  
 19 processed.  
 20 COFFEY, Q.C.:  
 21 Q. Okay. Exhibit P-0365 please? Now this, Mr.  
 22 Tilley, is an e-mail, October 20th, 2005 at  
 23 4:10 p.m. to Kenneth Pritzker who was at Mount  
 24 Sinai and it's Dr. Pritzker, actually, and  
 25 it's copied to Bob Williams. The subject is

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1 ER/PR testing and again you wanted to thank  
 2 him for having talked with you that morning.  
 3 and to have thanked him for being able to get  
 4 some advice from him. You did, you conclude  
 5 the e-mail by saying in the second sentence of  
 6 the last paragraph, "There appears that there  
 7 is a gap in terms of a national entity who can  
 8 take the lead on this issue." And this is  
 9 again, you're repeating to Dr. Pritzker the  
 10 same comment in effect you had made to Dr.  
 11 Bell.  
 12 MR. TILLEY:  
 13 A. Right.  
 14 COFFEY, Q.C.:  
 15 Q. Now Dr. Pritzker you had spoken to why?  
 16 MR. TILLEY:  
 17 A. Dr. Pritzker was the lead pathologist in Mount  
 18 Sinai. I had called him earlier and I believe  
 19 my telephone log would be able to help us with  
 20 that.  
 21 COFFEY, Q.C.:  
 22 Q. Sure, that was back in the summer, in fact, as  
 23 it back in the summer or--I apologize, I  
 24 shouldn't have said -  
 25 MR. TILLEY:

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1 A. I'm thinking it was more in the fall.  
 2 COFFEY, Q.C.:  
 3 Q. The fall, I apologize, yes. Same day,  
 4 actually--yes, Mr. Simmons is saying it's  
 5 actually, you had phoned him the same day.  
 6 There's a phone call referenced here that you  
 7 told both of them that morning.  
 8 MR. TILLEY:  
 9 A. Okay, thank you, Mr. Simmons. He had said to  
 10 me -  
 11 COFFEY, Q.C.:  
 12 Q. If I could, just so you're not confused, I do  
 13 know that, not so much you had contacted him,  
 14 but his name did come up as a representative  
 15 of Mount Sinai much earlier when the retest  
 16 was being talked about.  
 17 MR. TILLEY:  
 18 A. Okay, yes.  
 19 COFFEY, Q.C.:  
 20 Q. So you may have heard his name before you ever  
 21 phoned him here in October.  
 22 MR. TILLEY:  
 23 A. That's possible. And now that I see the first  
 24 sentence about talking to me this morning,  
 25 it's obvious that that would have been the

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1 point of time. I'm just trying to reflect on  
 2 my discussion with him. One of the reasons  
 3 for calling him was to do whatever I could to  
 4 stress the importance of an earlier turnaround  
 5 on this issue and he gave me assurances that  
 6 he understood the situation that we faced and  
 7 that they were doing as much as they could to  
 8 help us. The second part of that conversation  
 9 we got into was with regards to what I was  
 10 learning about this test in particular.  
 11 Again, all the literature and he sort of just  
 12 continued, acquiesced, I suppose, to the fact  
 13 that yeah, that's well known. This has been  
 14 an issue for awhile in this country, that he  
 15 had been particularly involved in -  
 16 THE COMMISSIONER:  
 17 Q. Would this be in the absence of standards?  
 18 MR. TILLEY:  
 19 A. Yes, attention being paid to these test in  
 20 particular. And something to the effect  
 21 saying it's to Newfoundland's credit that this  
 22 issue was being investigated or followed up, I  
 23 can't remember exactly how he said it. So  
 24 again, thinking I was doing the right thing  
 25 and I still believe it was the right thing, of

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1 saying that, you know, we have quite a number  
 2 of patients here that's impacted by this. If  
 3 Ontario is the only one with standards today,  
 4 then how many more patients in this country  
 5 could in fact be impacted by this? So I was  
 6 getting the indication from him that this  
 7 issue needed attention and I'm not sure if he  
 8 had actually referred names to me, Mr. Coffey,  
 9 or not. I'd have to look at my note to see if  
 10 he had.  
 11 COFFEY, Q.C.:  
 12 Q. If he had, sorry?  
 13 MR. TILLEY:  
 14 A. If he had actually sent names of individuals  
 15 to me or whether it was Mr. Bell that had sent  
 16 me names, but whichever it was, I had sent the  
 17 names on to Dr. Cook.  
 18 COFFEY, Q.C.:  
 19 Q. Yes, and we in fact see that in a little bit.  
 20 MR. TILLEY:  
 21 A. Okay.  
 22 COFFEY, Q.C.:  
 23 Q. It was Dr. Bell, actually, you were thanking,  
 24 I believe, for the names.  
 25 MR. TILLEY:

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1 A. Okay.  
 2 COFFEY, Q.C.:  
 3 Q. As it turns out, the name or one of the names  
 4 is of an individual who worked in the  
 5 institution that Dr. Pritzker worked in as  
 6 well.  
 7 MR. TILLEY:  
 8 A. Oh, okay.  
 9 COFFEY, Q.C.:  
 10 Q. And that would be a Dr. O'Malley. If we could  
 11 please, Exhibit P-0366, this is an e-mail from  
 12 yourself to Philip Hassen who is with CPSI,  
 13 you've told us, October 20th, 2005, 4:17 p.m.  
 14 It's copied to Bob Williams and you say, "Hi,  
 15 Phil, sorry I wasn't able to connect with you  
 16 earlier" and you talk about your connecting or  
 17 communication with Bob Bell and other matters  
 18 reported in the media. And you conclude with,  
 19 "In the meantime, the only plan we have at  
 20 this time is to write the Canadian Association  
 21 of Pathologists. Other suggestions would be  
 22 welcomed. I have attached my e-mail to Bob  
 23 Bell", you were forwarding that to Phil  
 24 Hassen.  
 25 MR. TILLEY:

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1 A. Okay.  
 2 COFFEY, Q.C.:  
 3 Q. So from your perspective, I take it that you  
 4 had contacted whom you could and was setting  
 5 in step or setting in motion steps to have the  
 6 Canadian Association of Pathologists get  
 7 involved.  
 8 MR. TILLEY:  
 9 A. I mean, that was becoming the most common  
 10 spoken about organization that could  
 11 potentially take leadership here.  
 12 COFFEY, Q.C.:  
 13 Q. Sir, if we could please, Exhibit P-0367, now  
 14 you will recall that in looking at exhibit P-  
 15 0361 there was the exchange between yourself,  
 16 Susan Bonnell and Ms. Joan Dawe about whether  
 17 or not Anne Kearney would participate in a  
 18 crosstalk show. If we could just bring up,  
 19 please, P-0361 again, I apologize. The  
 20 expression by Susan Bonnell there in the 11:50  
 21 a.m. e-mail, "We talked about the possibility  
 22 of pulling out of the interview, but I feel  
 23 that if we do that, Peter and Anne Budgell  
 24 will have no motivation to stay away from the  
 25 issue"--which is the ER/PR issue. "And I

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1 think it's better that Anne Kearney is there  
 2 re-directing the topic back to breast  
 3 screening." I appreciated your comment that  
 4 ER/PR is not Anne Kearney's area of expertise,  
 5 okay.  
 6 MR. TILLEY:  
 7 A. Uh-hm.  
 8 COFFEY, Q.C.:  
 9 Q. But this is not so much saying that as is it  
 10 says it's better to have her there because she  
 11 can keep Peter Dawe and Anne Budgell off the  
 12 topic as much as possible. That's what that  
 13 says, doesn't it?  
 14 MR. TILLEY:  
 15 A. Yes, but I'm not sure that that's the way I  
 16 would have expected it to unfold. Anne  
 17 Kearney is there as an expert in breast  
 18 screening and -  
 19 COFFEY, Q.C.:  
 20 Q. But this says, doesn't it, look, if we don't  
 21 send her, Anne Kearney, Peter Dawe and Anne  
 22 Budgell will be on period about ER/PR, I mean,  
 23 that's what that says, that last paragraph.  
 24 MR. TILLEY:  
 25 A. Well I guess their ability to talk about the

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1 breast screening issue is going to be  
 2 significantly limited and if the issue were to  
 3 still go ahead, then it's only issues that Mr.  
 4 Dawe would be able to bring forward.  
 5 COFFEY, Q.C.:  
 6 Q. Would be the ER and PR. And which he had been  
 7 in the media very recently then talking about,  
 8 correct?  
 9 MR. TILLEY:  
 10 A. Uh-hm. Yes, sir.  
 11 COFFEY, Q.C.:  
 12 Q. Now as it turns out, exhibit P-0367, you did  
 13 on October 20th at 4:26 p.m. send Mr. Dawe an  
 14 e-mail, copied it to Bob Williams and Susan  
 15 Bonnell. Subject was media coverage and you  
 16 said, "Peter, I did pick up pieces of the  
 17 Crosstalk Show, I was certainly appreciative  
 18 of how you balanced the issue and stressed the  
 19 message that we were all looking out for the  
 20 best interest of the patients." Signed  
 21 George. So I take it that ER/PR was discussed  
 22 on that Crosstalk Show?  
 23 MR. TILLEY:  
 24 A. I have no recollection, but I'm thinking that  
 25 that message would imply that it had been

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1 referenced.

2 COFFEY, Q.C.:

3 Q. And your statement here that you were

4 certainly appreciative of how Peter had

5 balanced the issue and stressed the message

6 that "we" were all looking out for the best

7 interest of the patients, was your expression

8 there, was that sincere?

9 MR. TILLEY:

10 A. Yes, I wouldn't have recorded it if it wasn't.

11 COFFEY, Q.C.:

12 Q. And with respect to Ms. Bonnell, as we've seen

13 certain e-mails already and some of them are

14 in fact directed to you or copied to you

15 involving Ms. Bonnell during this timeframe.

16 Did you ever take up with her the issue of,

17 look, Susan, why are you trying to minimize

18 this, keep us out of the media on this issue?

19 MR. TILLEY:

20 A. We would have had several discussions about

21 media attention for this. I can't imagine

22 that I wouldn't have had a discussion about

23 what would be the best media approach. I

24 think at that point in time there was clearly

25 a lot of things happening. We had done

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1 interviews, we had put out advertisements.

2 COFFEY, Q.C.:

3 Q. Well the advertisement was just going here at

4 this point.

5 MR. TILLEY:

6 A. Yes, I'm sorry, advertisement going out, so

7 again, trying to place together a major issue

8 here was a challenge.

9 COFFEY, Q.C.:

10 Q. Was it your view at the time, as CEO, that you

11 wanted, if it could, to kind of fade from the

12 public eye?

13 MR. TILLEY:

14 A. I took a position when we were into late '96

15 sometime when there was -

16 COFFEY, Q.C.:

17 Q. I'm sorry, late?

18 MR. TILLEY:

19 A. Sorry, 2006.

20 COFFEY, Q.C.:

21 Q. This is '05 now, this is in October of '05.

22 MR. TILLEY:

23 A. But in 2006 when we were getting close to

24 certification process, we were clearly not

25 active in the media on this issue in light of

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1 that pending court process. But at this point

2 in time, you know, if there were people there

3 that would speak to the issue, that would feel

4 confident speaking to the issue, then that

5 wouldn't have been prohibited.

6 COFFEY, Q.C.:

7 Q. But you did not, I take it, encourage anybody

8 to speak to the media?

9 MR. TILLEY:

10 A. I can't say with confidence that I did.

11 COFFEY, Q.C.:

12 Q. So you, in effect, acquiesced in Susan's

13 approach?

14 MR. TILLEY:

15 A. That could be the case.

16 THE COMMISSIONER:

17 Q. And when you speak about a certification

18 process, you're talking about the class

19 action, are you?

20 MR. TILLEY:

21 A. Yes.

22 COFFEY, Q.C.:

23 Q. If we could, please, Exhibit P-0368 and Mr.

24 Tilley, just to, for the Commissioner's

25 benefit, in the middle of that page, this is a

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1 series of e-mails involving yourself, but

2 there's on there in the middle of the page

3 from Dr. Robert Bell to you, it's copied to

4 Dr. Bruce Youngston and Dr. Frances O'Malley.

5 You'll note that, I think Dr. Youngston is the

6 university health network and Dr. O'Malley at

7 Mount Sinai. The e-mail is October 23rd,

8 2005, 9:43 p.m. or 2143 hours. He writes to

9 you, "Thanks George, the two individuals with

10 the most expertise around ER testing in

11 Toronto are Drs. Frances O'Malley and Dr.

12 Bruce Youngson. Bruce and Frances"--I presume

13 this is because it's being copied to them,

14 these comments are directed to them--"Bruce

15 and Frances, you have probably heard about the

16 issue of retesting breast cancer specimens in

17 Newfoundland. Some ER negative specimens have

18 been reinterpreted as positive. The chief of

19 pathology from Newfoundland may contact you as

20 to any advice regarding reliability of ER

21 testing. Thanks, Bob." So this is the two

22 individuals that -

23 MR. TILLEY:

24 A. Okay, uh-hm.

25 COFFEY, Q.C.:

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1 Q. Is this the two that -  
 2 MR. TILLEY:  
 3 A. Yes.  
 4 COFFEY, Q.C.:  
 5 Q. In terms of the clinical chief. Because--and  
 6 I take it you would have left it to your  
 7 clinical chief to follow up with, as he saw  
 8 fit with -  
 9 MR. TILLEY:  
 10 A. Yes.  
 11 COFFEY, Q.C.:  
 12 Q. If we could please, Exhibit P-0374. Mr.  
 13 Tilley, this is a series of e-mails, I think  
 14 there are three of them but the final one at  
 15 the top of the page ends up on your e-mail  
 16 system, includes the other two, and this is an  
 17 e-mail from Denise Dunn, October 24th, 2005,  
 18 12:42 p.m. to yourself. Possible agenda item  
 19 for CAP meeting in November and she writes,  
 20 "Mr. Tilley, please see Dr. Cook's message  
 21 below." Signed Denise. And we look down at  
 22 the message at the bottom of the page, it's an  
 23 e-mail from Donald Cook, October 23rd, 2005,  
 24 12:37 p.m. to Dr. Banerjee, the B.C. Cancer  
 25 Agency, I believe. And the message that you

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1 have--Dr. Cook's message that was being  
 2 forwarded to you was "Mr. George Tilley, CEO  
 3 of Eastern Health and Dr. Bob Williams, VP  
 4 Quality Medical Services, have asked me if we  
 5 could discuss the issue of national standards  
 6 for immunohistochemistry at the Canadian  
 7 Association of Pathologists. Maybe we can put  
 8 it on the agenda for the November meeting as  
 9 an item we can bring to the Federal Minister  
 10 of Health. This could be part of a much  
 11 larger issue, such as the national standards  
 12 of practice for laboratory medicine in Canada.  
 13 I would appreciate your thoughts. Regards,  
 14 Don." So you were being kept apprised of  
 15 this?  
 16 MR. TILLEY:  
 17 A. Yes, uh-hm.  
 18 COFFEY, Q.C.:  
 19 Q. Mr. Tilley, if we could look at, please  
 20 Registrar, Exhibit P-0376, and this is a  
 21 series of e-mails but the one in particular  
 22 I'm going to ask you to look at is the one at  
 23 the top of page one. It's an e-mail from  
 24 yourself, October 24th, 2005 at 3:09 p.m. to  
 25 Philip Hassen, copied to Bob Williams. And

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1 you said, "Phil, the media associated with  
 2 this seems to have levelled off, but needless  
 3 to say individual patients are anxious to  
 4 reaffirm their results." And you were  
 5 advising him about having asked the Canadian  
 6 Association of Pathologists to put this on  
 7 their agenda for their November board meeting  
 8 and your chief of lab medicine is contacting  
 9 the individuals that Bob Bell had referenced  
 10 and you are into a wait and see approach.  
 11 What did you mean by "a wait and see"  
 12 approach?  
 13 MR. TILLEY:  
 14 A. Well I really didn't have any idea as to what  
 15 I could do with it next on the national scene.  
 16 It was clear to me that no one particular  
 17 health organization was going to take this  
 18 issue on, though I suspected that there were  
 19 organizations that must have been thinking  
 20 about it, but it really was a national issue  
 21 and I just simply had no other thoughts and  
 22 nobody had given me any other thoughts in  
 23 terms of where to place it, so it was really -  
 24 COFFEY, Q.C.:  
 25 Q. Now why would you be telling Phil Hassen the

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1 media associated with this seems to have  
 2 levelled off?  
 3 MR. TILLEY:  
 4 A. I'm not sure, I mean at that point in time I  
 5 wouldn't have had much contact with him, it  
 6 would just be a way of introducing the subject  
 7 matter. I didn't want--because of the level  
 8 off to be implied as this issue not being  
 9 important.  
 10 COFFEY, Q.C.:  
 11 Q. And I mean, in context, to put it in context  
 12 and to be entirely fair, in fact you were  
 13 telling him that we want this pursued on a  
 14 national level.  
 15 MR. TILLEY:  
 16 A. Uh-hm. The Canadian Patient Safety Institute  
 17 was really not the organization that was set  
 18 up to really take this issue on, however,  
 19 while I was a member of the Board, we did  
 20 implement a program known as Safer Health Care  
 21 Now, which took specific health care  
 22 initiatives and promoted them throughout the  
 23 country. Those initiatives were actually  
 24 borrowed, if I can use the term politely, from  
 25 a similar program in the United States called

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1 Save 100,000 Lives Campaign, and the  
 2 particular initiatives were known to have  
 3 major opportunities for minimizing adverse  
 4 events if they were referred to. So I was  
 5 thinking that at some point in time, obviously  
 6 this issue was nowhere ready to take on that  
 7 level of magnitude because the other  
 8 initiatives in the Safer Health Care Now  
 9 Campaign were well documented, well  
 10 researched, well proven in many concerns, but  
 11 potentially in the long run it could be  
 12 something that the Canadian Patient Safety  
 13 Institute could take on and promote.  
 14 COFFEY, Q.C.:  
 15 Q. So if we could look, please, to Exhibit P-  
 16 0378, and this is a portion of an e-mail --  
 17 well, it's a series of e-mails, but the one  
 18 that we have here is from Denise Dunn,  
 19 Tuesday, October 25th, 2005, 11:08 a.m. to  
 20 yourself, and Denise Dunn is, remind me --  
 21 MR. TILLEY:  
 22 A. The Executive Assistant for the Vice President  
 23 of Medical Services Office.  
 24 COFFEY, Q.C.:  
 25 Q. Okay, and would be Bob Williams at this time?

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1 MR. TILLEY:  
 2 A. Yes.  
 3 COFFEY, Q.C.:  
 4 Q. The subject is "Risk exposures of providing  
 5 health services to non-residents of Canada",  
 6 and she writes, "Yes, re; ER/PR, residents of  
 7 St. Pierre being notified. Will implement  
 8 their document. Bob". Now what was this  
 9 about?  
 10 MR. TILLEY:  
 11 A. I guess the part below has been redacted, is  
 12 it?  
 13 COFFEY, Q.C.:  
 14 Q. I gather.  
 15 MR. TILLEY:  
 16 A. I remember a flyer or something that had been  
 17 forwarded through the Health Insurance  
 18 Reciprocal of Canada, HIROC, which suggests  
 19 that organizations that respond to the needs  
 20 of non-Canadians may not have liability  
 21 coverage, so that for us raised a question  
 22 about St Pierre & Miquelon.  
 23 COFFEY, Q.C.:  
 24 Q. Actually, to be -- if we could just look,  
 25 please, at Exhibit P-0382, and this will help,

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1 I apologize.  
 2 MR. TILLEY:  
 3 A. Okay, thank you.  
 4 COFFEY, Q.C.:  
 5 Q. This is the full document, okay. I gather it  
 6 wasn't so much redacted as it was just covered  
 7 over in one of the copies we originally  
 8 received. We just looked at that e-mail from  
 9 -- signed by Bob, from Denise Dunn, "Residents  
 10 of St. Pierre being notified. Will implement  
 11 their document", and when you look down at the  
 12 e-mails below it, there's one from yourself,  
 13 Sunday, October 23rd, 2005, to Bob Williams  
 14 dealing with the risk exposures of providing  
 15 health services to non-residents of Canada,  
 16 and you write, "Bob, did we have any  
 17 discussion internally in relation to St.  
 18 Pierre patients", signed George, and then you  
 19 had forwarded him as well an e-mail from a  
 20 person named --  
 21 MR. TILLEY:  
 22 A. Eleanor Morton.  
 23 COFFEY, Q.C.:  
 24 Q. Pardon me?  
 25 MR. TILLEY:

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1 A. Eleanor Morton.  
 2 COFFEY, Q.C.:  
 3 Q. No, this is a --  
 4 MR. TILLEY:  
 5 A. I'm sorry.  
 6 COFFEY, Q.C.:  
 7 Q. Anyway, it's somebody named Nathan, and I  
 8 won't try to pronounce the first name.  
 9 MR. TILLEY:  
 10 A. Kopiha.  
 11 COFFEY, Q.C.:  
 12 Q. Okay, thank you.  
 13 MR. TILLEY:  
 14 A. That's my guess.  
 15 COFFEY, Q.C.:  
 16 Q. Sent Wednesday, October 19th, 2005, 11:57 a.m.,  
 17 to the same individual. Subject is "Risk  
 18 exposures of providing health services to non-  
 19 residents of Canada". This is dated the 18th  
 20 of October, it's to HIROC subscribers, and  
 21 it's dated October 18th, 2005. The subject is  
 22 "Risk Exposures of providing health services  
 23 to non-residents of Canada", and it goes on at  
 24 some length, beginning with, "Further to a  
 25 memo of 12 October, 2005".



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1 MR. TILLEY:  
 2 A. Yes.  
 3 COFFEY, Q.C.:  
 4 Q. So this might assist you, I'm sorry.  
 5 MR. TILLEY:  
 6 A. Yes. Well, this flyer had come out and I'm  
 7 not sure if it was because at that time I was  
 8 a member of the Board of that organization, or  
 9 whether they would have sent that memo to all  
 10 CEO's -- bear with me, subscribers, so  
 11 possibly I was on their subscriber list. I  
 12 suspect there were a few people in the  
 13 organization that would have been included.  
 14 So that was the issue of that Board -- sorry,  
 15 of that memo. We had assumed a responsibility  
 16 to provide support for residents of St. Pierre  
 17 for health services that they could not offer  
 18 in St. Pierre, but wanted to avail of in  
 19 Canada, i.e. St. John's, or could be anywhere  
 20 else in the province for that matter. It's not  
 21 to say that they wouldn't avail of services in  
 22 France, and I understand that some of them  
 23 did, but the Health Care Corporation of St.  
 24 John's and the equivalent organization in St.  
 25 Pierre, or organizations, actually had entered

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1 into a MOU which outlined what services would  
 2 be provided, and we just took that as a matter  
 3 of fact. They were treated as non-residents,  
 4 they would be invoiced as if they were non-  
 5 Canadian, there were rates that were  
 6 established for that. So now this particular  
 7 issue was raising the question about, well, if  
 8 an event were to happen in the treatment of  
 9 one of those individuals, then it's possible  
 10 that the liability coverage that the  
 11 organization had would not address it.  
 12 COFFEY, Q.C.:  
 13 Q. And this, though, when we look at P-0382  
 14 further up the page, this is -- the very top  
 15 of the page, Denise Dunn on behalf of Bob  
 16 Williams has written to you, "George, yes, re;  
 17 ER/PR, residents of St. Pierre are being  
 18 notified. Will implement their document",  
 19 that is, I take it, some residents of St.  
 20 Pierre were some of the patients?  
 21 MR. TILLEY:  
 22 A. Yes.  
 23 COFFEY, Q.C.:  
 24 Q. ER/PR patients, and this, though, is --  
 25 MR. TILLEY:

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1 A. It's a crossover, two issues.  
 2 COFFEY, Q.C.:  
 3 Q. Yes, did this e-mail relate to whether or not  
 4 HIROC's insurance would cover any claim by St.  
 5 Pierre residents in relation to ER/PR,  
 6 because, I mean, they're in the same series of  
 7 e-mails here?  
 8 MR. TILLEY:  
 9 A. Right. I can't remember the discussion in  
 10 that context, but you raise a good point.  
 11 COFFEY, Q.C.:  
 12 Q. Why else would this be? October 19th, at the  
 13 bottom of the page, that e-mail, which is as  
 14 you look on the next page is from this lady,  
 15 Eleanor Morton, VP Risk Management at HIROC.  
 16 MR. TILLEY:  
 17 A. So that was on the 18th.  
 18 COFFEY, Q.C.:  
 19 Q. Actually, that is -- this is dated the 18th,  
 20 yes, when we look up through the page here.  
 21 MR. TILLEY:  
 22 A. Then on the following Sunday, I'm writing a  
 23 note to Bob Williams, "Did we have any  
 24 discussion internally in relation to St.  
 25 Pierre patients". That would be in relation

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1 to that --  
 2 COFFEY, Q.C.:  
 3 Q. Contacting individual patients?  
 4 MR. TILLEY:  
 5 A. No, no, at that point in time, my thought  
 6 would have been referring up to that letter  
 7 and saying, well, we do a major service to the  
 8 population of St. Pierre.  
 9 COFFEY, Q.C.:  
 10 Q. Okay.  
 11 MR. TILLEY:  
 12 A. And what's the impact of that particular  
 13 service now that that memo has been received.  
 14 COFFEY, Q.C.:  
 15 Q. Okay. So when you said, "Did we have any  
 16 discussion internally in relation to St.  
 17 Pierre patients", the first part of his  
 18 response to that direct question is, "yes", I  
 19 take it?  
 20 MR. TILLEY:  
 21 A. Right.  
 22 COFFEY, Q.C.:  
 23 Q. The word "yes" is there.  
 24 MR. TILLEY:  
 25 A. Right, and then he goes on to say, "Re;

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1 ER/PR", and I'm not sure if he's replying to  
 2 another note I had sent him or all or --  
 3 COFFEY, Q.C.:  
 4 Q. Okay. So what I'm asking about is do you  
 5 recall whether or not insurance coverage for  
 6 HIROC, you know, in relation to any claim by  
 7 St. Pierre --  
 8 MR. TILLEY:  
 9 A. No, I have no ability to pull that out of my  
 10 head here.  
 11 COFFEY, Q.C.:  
 12 Q. I'm not suggesting there was. It's just -- I  
 13 know you can see the --  
 14 MR. TILLEY:  
 15 A. Yes, I can see a connection, but I have no  
 16 recollection of that issue being talked about.  
 17 COFFEY, Q.C.:  
 18 Q. Okay. And in terms of the St. Pierre  
 19 residents here, though, at the top of the  
 20 page, that re; ER/PR, them being notified is  
 21 about ER/PR?  
 22 MR. TILLEY:  
 23 A. Yes.  
 24 COFFEY, Q.C.:  
 25 Q. Okay. He says, "Will implement their

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1 document". What is that?  
 2 MR. TILLEY:  
 3 A. I'm not sure what that refers to, whether it  
 4 refers to the memo below or whether it refers  
 5 to the MOU that the organization had with St.  
 6 Pierre & Miquelon.  
 7 COFFEY, Q.C.:  
 8 Q. But about them being notified, and he goes on  
 9 to say, "Will implement their document". So  
 10 what about them being notified about ER/PR  
 11 status, the retesting process, what would that  
 12 involve in terms of implementation,  
 13 "implementing a document", or do you know?  
 14 MR. TILLEY:  
 15 A. I can't connect the two, sorry.  
 16 COFFEY, Q.C.:  
 17 Q. I'll have to ask Dr. Williams about it. If we  
 18 could look, please, at Exhibit P-0383. Now  
 19 there's an e-mail below from Heather Predham,  
 20 October 25th, 2005, at 1:04 p.m, to Dr.  
 21 Williams, Patricia Pilgrim, and Dr. Cook, and  
 22 it's "Breast, June, 2004", and it's a  
 23 reference to an article apparently she's found  
 24 and is forwarding in a pdf format, but when we  
 25 look at the top of the page, October 25th,

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1 2005, 4:57 p.m, Denise Dunn is sending that e-  
 2 mail on to Dr. Donald Cook, George Tilley,  
 3 Terry Gulliver, and Kara Laing. The same  
 4 thing, "Breast, June, 2004", and it says, "Dr.  
 5 D. Cook, Don, should we retest all negative  
 6 specimens in the future as part of our normal  
 7 operating procedures, signed Bob", and he's  
 8 copied this to G. Tilley, Kara Laing, and T.  
 9 Gulliver. Do you recall what this was about?  
 10 MR. TILLEY:  
 11 A. I'd really like to see the pdf, but based upon  
 12 the way that e-mail is written, I wonder if  
 13 there's some suggestion there that these  
 14 tests, because of their variability or  
 15 unreliability, maybe should be repeated to  
 16 confirm the results. I think Dr. Williams  
 17 seems to be asking that question.  
 18 COFFEY, Q.C.:  
 19 Q. Of Donald Cook?  
 20 MR. TILLEY:  
 21 A. Yeah, should we retest just as a normal course  
 22 of follow up, or in the normal course of doing  
 23 that test.  
 24 COFFEY, Q.C.:  
 25 Q. Now, sir, if we could look at, please, Exhibit

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1 P-0379. This is an e-mail at the top of the  
 2 page from yourself, October 25th, 2005, at  
 3 9:40 a.m. to David Dymond, Susan Gillam, Boyd  
 4 Rowe, and George Tilley. It's copied to John  
 5 Peddle, John Abbott, Bob Williams, and Joyce  
 6 Penney. It's "Re; delivery of gynecologic  
 7 cytology services", and there's an attachment,  
 8 but your text you've written, "I am attaching  
 9 a letter from Dr. Dan Fontaine, who is  
 10 Director of Cytopathology Laboratory. With  
 11 the issues that we have been dealing with  
 12 relating to ER and PR, I felt it was important  
 13 to bring his views forward for discussion. I  
 14 appreciate if we could table this at an  
 15 upcoming CEO meeting with the potential of  
 16 asking Medical Services to give us their  
 17 views. I know that Western and Central have  
 18 already received his comments". Could you  
 19 tell us, please, what this was about? Now not  
 20 to much -- I don't want to go down the path of  
 21 cytopathology laboratory, but you did say  
 22 "with the issues we have been dealing with  
 23 relating to ER and PR". What was arising  
 24 there and you're now referring to your fellow  
 25 CEOs.

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1 MR. TILLEY:  
 2 A. What I recall is a recommendation about  
 3 centralizing that service in the province.  
 4 I'd have to see the attachment to confirm  
 5 that, but that's what speaks to me.  
 6 COFFEY, Q.C.:  
 7 Q. Okay, Dan Fontaine may have been recommending  
 8 a certain -  
 9 MR. TILLEY:  
 10 A. Approach to how those tests should be  
 11 performed.  
 12 COFFEY, Q.C.:  
 13 Q. And he's involved, in fact, isn't he, in  
 14 cytopathology?  
 15 MR. TILLEY:  
 16 A. Yes, he's the Director.  
 17 COFFEY, Q.C.:  
 18 Q. He's the Director of it, so --  
 19 MR. TILLEY:  
 20 A. Uh-hm.  
 21 COFFEY, Q.C.:  
 22 Q. And so this centralization proposal, that's at  
 23 least as best you can recall?  
 24 MR. TILLEY:  
 25 A. Right.

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1 COFFEY, Q.C.:  
 2 Q. And the idea of ER/PR being centralized it,  
 3 the reading of it, the interpretation of the  
 4 slides, that had come up before?  
 5 MR. TILLEY:  
 6 A. Yes.  
 7 COFFEY, Q.C.:  
 8 Q. Now, sir, there is -- if we could look at  
 9 Exhibit P-0381. Thank you, Registrar. Sir,  
 10 this is a series of e-mails. The one at the  
 11 bottom of the page is from Ross Reid, Tuesday,  
 12 October 18th, 2005, at 3:32 p.m. to Dr. Robert  
 13 Williams. It's copied to John Abbott, Moira  
 14 Hennessey, and it's "breast cancer screening"  
 15 is the subject, and you can see, Commissioner,  
 16 there's certain redactions here of an  
 17 individual's name. He says, "Recently I met  
 18 with", and the name is redacted, "who has been  
 19 a breast cancer patient in the health care  
 20 system in St. John's. The recent  
 21 announcements concerning errors in the testing  
 22 procedures have caused her a great deal of  
 23 stress, even though her initial negative test  
 24 for receptors was confirmed even before she  
 25 inquired of her oncologist earlier this month.

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1 I wrote John Abbott, and it was suggested that  
 2 that individual sit down with you and discuss  
 3 these issues with you as the most  
 4 knowledgeable person involved in this  
 5 difficult situation. I spoke to her today and  
 6 she's agreed to call you. I hope you can meet  
 7 with her. Thanks very much in advance", signed  
 8 Ross Reid, who was the Deputy Minister to the  
 9 Premier at the time. There is then -- of  
 10 course, you're not involved in the initial e-  
 11 mails, but there's another e-mail on October  
 12 24th, 2005, at 2:41 p.m. from Denise Dunn to  
 13 Ross Reid, and it's to indicate -- she tells  
 14 Mr. Reid, "I just want to let you know that on  
 15 Friday, October 21, Patricia Pilgrim, Chief  
 16 Operating Officer responsible for the Cancer  
 17 Care Program, and myself", that would be Bob  
 18 Williams, "met with the individual to review  
 19 her concerns. I feel we had a good discussion  
 20 and appreciation of her concerns and I ensured  
 21 her that her concerns would be shared with  
 22 other individuals involved", and then the  
 23 final e-mail in this series is one where  
 24 Denise Dunn on October 25th, 2005, at 10:50  
 25 a.m. forwards an e-mail to yourself, which is

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1 this series of e-mails that I just referred to  
 2 and saying, "George, FYI, for your  
 3 information, Bob". So, Mr. Tilley, my  
 4 question is this, what was this about? Why  
 5 were you being sent an e-mail in relation to  
 6 this individual, or a series of e-mails being  
 7 finally forwarded to you involving one  
 8 individual patient?  
 9 MR. TILLEY:  
 10 A. Well, I guess Bob Williams would be able to  
 11 speak to that.  
 12 COFFEY, Q.C.:  
 13 Q. What did you understand? I'll ask Dr.  
 14 Williams, but at the time you received this --  
 15 MR. TILLEY:  
 16 A. Well, I suspect that it was sent to me maybe  
 17 more because Mr. Reid had sent it because  
 18 normally I wouldn't have any interest or  
 19 knowledge, nor would I want to be involved in  
 20 direct patients.  
 21 COFFEY, Q.C.:  
 22 Q. So you weren't surprised to receive it because  
 23 Ross Reid was involved in it?  
 24 MR. TILLEY:  
 25 A. Well --

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1 COFFEY, Q.C.:

2 Q. But you wouldn't have asked to see it?

3 MR. TILLEY:

4 A. I'm beginning to think over the last couple of

5 days, if there's a computer program that can

6 prevent any e-mails that are cc'd to you from

7 a cc, I would love it, but people "cc" me on

8 things and I really --

9 COFFEY, Q.C.:

10 Q. This particular one was being sent to you.

11 It's not -- I appreciate the e-mails exchanges

12 that occurred.

13 MR. TILLEY:

14 A. Yes, I know, yes, sorry.

15 COFFEY, Q.C.:

16 Q. But what I'm getting at is this, you had not -

17 - was there an understanding between you and

18 Bob Williams, for example, that if somebody in

19 the Premier's Office is involved in this

20 ER/PR, you'd forward e-mails to me, that's

21 what I'm --

22 MR. TILLEY:

23 A. Oh, I'm sorry, then no, that's very clearly

24 not the case.

25 COFFEY, Q.C.:

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1 Q. So he may have taken it upon himself?

2 MR. TILLEY:

3 A. Uh-hm.

4 COFFEY, Q.C.:

5 Q. It wasn't as a result of anything you had

6 requested or any understanding you had with

7 him?

8 MR. TILLEY:

9 A. No, that was certainly --

10 COFFEY, Q.C.:

11 Q. Okay. If we could look, please, at Exhibit P-

12 0385. Now this is an e-mail from Deborah-

13 Thomas Pennell, October 26th, 2005, at 3:23

14 p.m, to Denise Dunn, Susan Bonnell, Elizabeth-

15 Strange Hollett, Joyce Penney, and yourself,

16 and the subject is "Out of the Fog",

17 presumably that should be -- well, it's INVU,

18 whatever that means, and Ms. Pennell writes,

19 "Dr. Williams is tentatively scheduled to do a

20 one-on-one interview with Out of the Fog at

21 Dr. Williams Office at 12:15ish tomorrow.

22 They will bring the camera to him, and he will

23 do a similar interview that he has already

24 done with NTV and CBC, etc. Dr. Williams

25 will", and then "not" is in caps, "be going to

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1 the studio and sitting down with [blank] and

2 Peter Dawe. The producer is going to confirm

3 the time with me later tonight or in the a.m,

4 but that is 99 percent certain as of now,

5 Deborah", and the name that's redacted there

6 is a patient's name.

7 MR. TILLEY:

8 A. Uh-hm.

9 COFFEY, Q.C.:

10 Q. At the end of -- we're getting on toward the

11 end of October, 2005. What was the concern

12 about Dr. Williams sitting down with Peter

13 Dawe and a patient to discuss ER/PR?

14 MR. TILLEY:

15 A. I have -- there's nothing that comes to mind

16 that would be able to elaborate on that.

17 COFFEY, Q.C.:

18 Q. If we could, please, Registrar, look at

19 Exhibit P-0146. Now this is an e-mail

20 exchange about the briefing for the Minister

21 of the day being organized. Mr. Tilley,

22 before I get into the run up to that,

23 throughout October of 2005, did the ER/PR

24 subject remain in the media, do you recall?

25 MR. TILLEY:

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1 A. Dr. Williams had done some interviews, we had

2 put an ad in the paper, the Out of the Fog

3 story has been referenced -- nothing else

4 jumping to my mind.

5 COFFEY, Q.C.:

6 Q. Was there still -- were there still people,

7 like, patients, for example, being interviewed

8 by the media and expressing concerns about the

9 amount of time the retesting was taking, a

10 lack of information being forthcoming from

11 Eastern Health? They were complaining about

12 that. Do you recall that?

13 MR. TILLEY:

14 A. That does ring a bell, and if it's in that

15 timeline, that's certainly possible.

16 COFFEY, Q.C.:

17 Q. And as you've indicated, I believe already,

18 Susan Bonnell expressed in writing the view

19 that she espoused the approach we should stay

20 out of the media as much as we can after a

21 certain point in time in October, and you've

22 agreed that you acquiesced in it, anyway.

23 MR. TILLEY:

24 A. Yes.

25 COFFEY, Q.C.:

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1 Q. What was the -- what's the advantage from your  
 2 perspective, from the organization's  
 3 perspective about staying out of the media?  
 4 MR. TILLEY:  
 5 A. Well, all I can think about is that by this  
 6 time we had the ad in the paper which would  
 7 speak to the issue. It's very tough for an  
 8 organization to be speaking and be seen as  
 9 debating against patients. That wouldn't  
 10 certainly be my interest. Very complex issue,  
 11 in my mind, trying to see where the national  
 12 issue fitted into the local issue.  
 13 COFFEY, Q.C.:  
 14 Q. If we could, please, Exhibit P-0146, and this  
 15 is just in terms of the timing, Mr. Tilley.  
 16 This is a series of e-mail exchanges, but it  
 17 says in the middle of the page -- this is an  
 18 e-mail, I'm sorry, from Joyce Penney, I  
 19 believe, to John Abbott, "Good morning, John".  
 20 This is November 2nd, 2005, 10:21 a.m., "I'm  
 21 following up on behalf of George Tilley  
 22 regarding the proposed date to brief the  
 23 minister on the ER/PR issues prior to the  
 24 opening of the House [November 21st]. It has  
 25 been suggested that a meeting on Friday, 18

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1 November, 2005, would provide more current up-  
 2 to-date information. Dr. Williams and George  
 3 Tilley are both available at 3 p.m. on Friday.  
 4 I look forward to hearing from you regarding  
 5 the Minister's availability". So by the  
 6 beginning of November, people within your  
 7 organization are aware they're going to have  
 8 to -- you're aware that you're going to have  
 9 to brief the Minister, John Ottenheimer,  
 10 before the House opens later that month.  
 11 MR. TILLEY:  
 12 A. Uh-hm, yes.  
 13 COFFEY, Q.C.:  
 14 Q. And you have to arrange the schedules.  
 15 MR. TILLEY:  
 16 A. Yeah.  
 17 COFFEY, Q.C.:  
 18 Q. Now, sir, if we could go, please, to P-0148.  
 19 This is an e-mail from Joyce Penney to a  
 20 number of individuals, including yourself,  
 21 John Abbott, Dr. Bob Williams, and so on,  
 22 November 3rd, 2005, 3:03 p.m. The subject is,  
 23 "Briefing with the Minister, ER/PR issue, new  
 24 date", and she writes, "As a follow up to the  
 25 e-mail below, please be advised that the

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1 meeting to brief Minister Ottenheimer, re;  
 2 ER/PR, has now been confirmed for Thursday, 17  
 3 November, 2005, at 3:30 p.m. in the executive  
 4 boardroom of the Department of Health". I  
 5 take it then that this briefing was to be on  
 6 ER/PR that was scheduled then, November 17th?  
 7 MR. TILLEY:  
 8 A. Yes, that's my assumption.  
 9 COFFEY, Q.C.:  
 10 Q. Now in your experience, what was the -- the  
 11 House would be opening. As the CEO of the  
 12 Health Care Corporation of St. John's or  
 13 Eastern Health, as it now was, what if any  
 14 involvement would you have in relation to any  
 15 preparations? What was your experience?  
 16 MR. TILLEY:  
 17 A. Well, the little bit of exposure that I would  
 18 have had in my dealings with government  
 19 officials is that prior to the House, they  
 20 identify issues that potentially could be  
 21 raised in the House, that there would be  
 22 individuals who would be giving some attention  
 23 to what some of the questions might be that  
 24 would come up in the House, and then they  
 25 would look to see whether there were replies

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1 that could be recommended to the Minister.  
 2 COFFEY, Q.C.:  
 3 Q. Okay, you'd be asked for -- I'm sorry, I --  
 4 MR. TILLEY:  
 5 A. And the organization would be to the extent  
 6 that it had information that could help the  
 7 answer, we would be discussing or providing  
 8 input.  
 9 COFFEY, Q.C.:  
 10 Q. Factual information, I take it?  
 11 MR. TILLEY:  
 12 A. Yes.  
 13 COFFEY, Q.C.:  
 14 Q. Okay. Generally, had it been your experience  
 15 that your personnel would be involved in  
 16 actually drafting responses for a Minister?  
 17 MR. TILLEY:  
 18 A. Not directly for a Minister. I assume that  
 19 they would exchange information in writing,  
 20 but I assume that it would have gone to  
 21 whoever was responsible for doing that amongst  
 22 the government officials.  
 23 COFFEY, Q.C.:  
 24 Q. So up until this point, this is November of  
 25 2005, can you ever recall you, as the CEO or

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1 somebody that you were aware of within your  
 2 organization, the Health Care Corporation or  
 3 Eastern Health, being asked to actually, in  
 4 effect, draft the responses that the Minister  
 5 might give?  
 6 MR. TILLEY:  
 7 A. I don't recall one way or the other.  
 8 COFFEY, Q.C.:  
 9 Q. It certainly doesn't jump out that it was a  
 10 routine matter, you weren't routinely doing  
 11 it, and I ask that because of something that  
 12 happened that month and I'll be getting to  
 13 that.  
 14 MR. TILLEY:  
 15 A. Routinely doesn't seem to be sticking in my  
 16 mind. I mean, I can't imagine that there  
 17 wouldn't have been issues at some point in  
 18 time that we would have contributed to.  
 19 COFFEY, Q.C.:  
 20 Q. If we could look, please, at Exhibit P-096.  
 21 Now this is an e-mail, sir -- well, it's  
 22 actually two e-mails. At the bottom of the  
 23 page is one from Moira Hennessey to yourself,  
 24 George Tilley, Thursday, November 3rd at 1407  
 25 hours, the subject is "ER/PR", and says, "Hi,

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1 George, can you give me an update on the  
 2 contacting of patients; where are we, and when  
 3 will all patients be contacted. We need to  
 4 ensure that the Minister can state all  
 5 patients have been contacted when the House  
 6 opens later this month. Also have you  
 7 received the report from the Chief Pathologist  
 8 at the BC Cancer Institute, and the Chief  
 9 Technologist at Mount Sinai. If yes, can you  
 10 give me a quick update to reflect in the  
 11 Minister's HOA", which is House of Assembly  
 12 note, "thanks. Moira". At the top of the page  
 13 there's an e-mail from yourself, Thursday,  
 14 November 3rd, 2005, at 2:15 p.m. It's sent  
 15 via your wireless handheld, and it says --  
 16 it's to Moira Hennessey and it's to Dr.  
 17 Williams, the subject is ER/PR, "Moira, I am  
 18 in Ottawa. I know a briefing meeting has been  
 19 set with the Minister on November 17th for  
 20 briefing for the House. In the meantime, if  
 21 there is some immediate need you have in the  
 22 interim, I ask that you touch base with Bob  
 23 Williams", signed George. So, Mr. Tilley, in  
 24 terms of what Moira had asked -- first of all,  
 25 she had asked for an update on the contacting

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1 of patients; where are we and when will all  
 2 patients be contacted, and I appreciate you  
 3 sitting in Ottawa with your Blackberry would  
 4 have been perhaps not the best position to  
 5 give details on that, but she says, "We need  
 6 to ensure that the Minister can state all  
 7 patients have been contacted when the House  
 8 opens later this month.  
 9 MR. TILLEY:  
 10 A. Yes.  
 11 COFFEY, Q.C.:  
 12 Q. Now had that subject come up before, the idea  
 13 that the Minister of the day would be able to  
 14 state categorically that all patients have  
 15 been contacted?  
 16 MR. TILLEY:  
 17 A. This is November?  
 18 COFFEY, Q.C.:  
 19 Q. This is November 3rd.  
 20 MR. TILLEY:  
 21 A. Well, the issue after that is certainly burned  
 22 in my head, but the issue of all patients  
 23 being contacted, certainly the issue that was  
 24 referenced very early in the game about  
 25 letters going out to people, I guess in some

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1 says that could be an indication it was being  
 2 talked about.  
 3 COFFEY, Q.C.:  
 4 Q. But in terms of the Minister, though -- what  
 5 I'm getting at is more of the notion that the  
 6 -- there was some concern in the Confederation  
 7 Building apparently that the Minister, by the  
 8 time the House opened which was then  
 9 scheduled, I believe, November 24th or so, I  
 10 think we saw that in the e-mail -- like, late  
 11 in November the House was opening, okay, and  
 12 now Moira Hennessey, the ADM, is telling you  
 13 "we need to ensure". Now who's the "we" here,  
 14 do you know, who did you interpret the "we" to  
 15 be?  
 16 MR. TILLEY:  
 17 A. I couldn't say.  
 18 COFFEY, Q.C.:  
 19 Q. Would you have seen yourself as being part of  
 20 the "we"?  
 21 MR. TILLEY:  
 22 A. I didn't see it, no.  
 23 COFFEY, Q.C.:  
 24 Q. I'm not suggesting you were, I'm just --  
 25 MR. TILLEY:

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1 A. No. I mean, you know, Moira Hennessey is a  
 2 very solid individual and I wouldn't have read  
 3 behind her words.  
 4 COFFEY, Q.C.:  
 5 Q. Was this an instruction? Would you have  
 6 interpreted this as an instruction to you, "to  
 7 ensure that all patients have been contacted  
 8 by the time the House opens later this month  
 9 so the Minister can stand up and say that"?  
 10 MR. TILLEY:  
 11 A. I don't recall it being looked at that way.  
 12 Again looking at a subject on a Blackberry,  
 13 it's -- no, I can't say.  
 14 COFFEY, Q.C.:  
 15 Q. And the reason I raise that with you, Mr.  
 16 Tilley, because I want you to help you put it  
 17 in context. If we could look, please, at  
 18 Exhibit P-095. That was November 3rd, a  
 19 Thursday. Now this is an e-mail, October  
 20 26th, 2005, Wednesday, which is the week  
 21 before or a week and a day before, at 8:41  
 22 p.m. It's from Heather Predham to Dr. Robert  
 23 Williams, Patricia Pilgrim, copied to Denise  
 24 Dunn and Dianne Smith, and the subject is  
 25 "Current tally for ER/PR". I appreciate your

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1 name is not here, but I'm going to read some  
 2 of it and ask you about what, if anything, you  
 3 knew about this or were advised about it.  
 4 "Here are the latest numbers from the ER/PR  
 5 contacting. I just want you to know that  
 6 Nancy Parsons, Janet Laidley, and Deanne  
 7 Emberley have done a tremendous job with this  
 8 task. It is extremely draining and they have  
 9 done all this notification in the day and in  
 10 the evenings with the upmost of compassion and  
 11 professionalism", and then there's bold print  
 12 and underlining, "confirmed negative total 41  
 13 patients; contacted 35, no answer after many  
 14 tries five, other region, one. Results not  
 15 received, 292 patients; contacted 126, no  
 16 answer 35, deceased 12 [despite all our  
 17 efforts. These were discovered after we  
 18 called the family]; moved, eight [we are  
 19 exploring ways to contact them]. Already  
 20 called us, 12; other regions, 75. Not on  
 21 Terry's list, 24 [these appear to be other  
 22 region or people we already tested over the  
 23 summer, so right now it looks like we won't  
 24 need to call them]. She goes on, "So overall,  
 25 we have spoken to 173 patients, and have 40

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1 left to get in touch with. We have eight that  
 2 we have to figure out how to get in touch.  
 3 Sharon Dominic is speaking with Dr. Malluret  
 4 re; the St. Pierre patients, eight of them,  
 5 and we have to set up something for those in  
 6 nursing homes, 12. The numbers for those who  
 7 have converted have not changed from my last  
 8 update" and she says, "There have been letters  
 9 written on 18 patients. The letters have been  
 10 sent over to Kara for signing. There are 45  
 11 patients left to be reviewed. 25 have been  
 12 selected for this Thursday's meeting. I still  
 13 haven't been able to make contact with  
 14 Western. I reviewed Larry Alteen's data and  
 15 provided feedback, but I have not heard from  
 16 him regarding who's going to contact his  
 17 patients. Almost all the 76 patients noted  
 18 above from the central region were on his  
 19 list. If you have any questions, don't  
 20 hesitate to call me", signed Heather. Now,  
 21 Mr. Tilley, and as I pointed out when I  
 22 started to read this, you're not on the list  
 23 of recipients here, but this sort of -- this  
 24 is fairly detailed, isn't it?  
 25 MR. TILLEY:

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1 A. Yes.  
 2 COFFEY, Q.C.:  
 3 Q. I mean, this is actual numbers and pointing  
 4 out who -- the only thing that's not here is  
 5 the actual patient's names, in effect, and  
 6 their phone numbers. I mean, this is very  
 7 detailed, the numbers who fall into different  
 8 categories --  
 9 MR. TILLEY:  
 10 A. And the challenges they're having with it.  
 11 COFFEY, Q.C.:  
 12 Q. Sure. Were you being made aware the latter  
 13 part of October, the beginning of November of  
 14 '05, of this sort of information? At what  
 15 level were you being informed as to what was  
 16 going on?  
 17 MR. TILLEY:  
 18 A. Well, I don't recall seeing this letter, but I  
 19 do recall hearing about difficulties accessing  
 20 people because they had moved or they weren't  
 21 answering their telephone.  
 22 COFFEY, Q.C.:  
 23 Q. Sure.  
 24 MR. TILLEY:  
 25 A. So it's possible that that type of information

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1 came from something like this.  
 2 COFFEY, Q.C.:  
 3 Q. Okay. And again, I will point out, just  
 4 because we don't have an e-mail necessarily  
 5 doesn't mean that someone like Bob Williams  
 6 wouldn't have forwarded one to you and it just  
 7 hasn't been picked up in the information  
 8 gathering. So, to say that, as you point out,  
 9 you could have actually seen this at some  
 10 point or something like it that would have  
 11 apprised you of it.  
 12 THE COMMISSIONER:  
 13 Q. I think the witness said he didn't recall the  
 14 letter.  
 15 COFFEY, Q.C.:  
 16 Q. You don't recall seeing it?  
 17 MR. TILLEY:  
 18 A. No, that's what I -  
 19 COFFEY, Q.C.:  
 20 Q. Oh okay. You don't recall getting this kind  
 21 of detail.  
 22 MR. TILLEY:  
 23 A. I don't recall that particular information,  
 24 but I do recall information that seems to be  
 25 contained in it -

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1 COFFEY, Q.C.:  
 2 Q. Okay, that's what I was -  
 3 MR. TILLEY:  
 4 A. - about that's why I was being contacted.  
 5 COFFEY, Q.C.:  
 6 Q. Okay.  
 7 MR. TILLEY:  
 8 A. Or having difficulty contacting people.  
 9 COFFEY, Q.C.:  
 10 Q. So you might have been getting kind of a  
 11 precise of -  
 12 MR. TILLEY:  
 13 A. That's possible.  
 14 COFFEY, Q.C.:  
 15 Q. Okay. Now, when we go back then to P-0096, on  
 16 that day, November 3, Moira says to you, "we  
 17 need to ensure that the Minister can state all  
 18 patients have been contacted when the House  
 19 opens later this month", I mean, would that  
 20 have caused you, in the beginning of November,  
 21 some concern about, well look, are we going to  
 22 be in a position to do that, to be able to  
 23 actually make such contacts and tell the  
 24 minister that, that we've done so?  
 25 MR. TILLEY:

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1 A. Because of the delays from results getting  
 2 back from Mt. Sinai and the like -  
 3 COFFEY, Q.C.:  
 4 Q. And just the difficulty in locating -  
 5 MR. TILLEY:  
 6 A. Yes.  
 7 COFFEY, Q.C.:  
 8 Q. - some patients.  
 9 MR. TILLEY:  
 10 A. Yes, I mean, that would certainly be an issue  
 11 that was obviously being talked about and I  
 12 certainly knew of the issue about Mt. Sinai  
 13 and its difficulties.  
 14 COFFEY, Q.C.:  
 15 Q. There is, as well--would you have interpreted-  
 16 -so, you would not have interpreted this  
 17 insertion, "that we need to ensure the  
 18 minister can say that all patients have been  
 19 contacted when the House opens later this  
 20 month", as a directive to you?  
 21 MR. TILLEY:  
 22 A. I hadn't seen it as a directive.  
 23 COFFEY, Q.C.:  
 24 Q. Okay.  
 25 MR. TILLEY:

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1 A. I wouldn't have seen it as a directive. I  
 2 would--no.  
 3 COFFEY, Q.C.:  
 4 Q. Now, she also asks about the report from the  
 5 chief pathologists and the B.C. Cancer  
 6 Institute and the chief technologist. Now as  
 7 of November 3rd, Ms. Wegrynowski's report  
 8 hadn't been issued, the written report. But  
 9 that October 17th report from Dr. Banerjee did  
 10 exist.  
 11 MR. TILLEY:  
 12 A. Uh-hm.  
 13 COFFEY, Q.C.:  
 14 Q. And would have been in St. John's for some  
 15 period of time before November 3rd.  
 16 MR. TILLEY:  
 17 A. Uh-hm.  
 18 COFFEY, Q.C.:  
 19 Q. By November 3rd, would you have seen Dr.  
 20 Banerjee's report?  
 21 MR. TILLEY:  
 22 A. I don't know of the actual date that I did  
 23 that.  
 24 COFFEY, Q.C.:  
 25 Q. So in referring Ms. Hennessey to Dr. Williams



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1 and advising Dr. Williams that you were doing  
 2 so, top of the page there, did you anticipate  
 3 that Dr. Williams would inform her or give her  
 4 information about the status of those reports?  
 5 MR. TILLEY:  
 6 A. Yes, because I'm thinking that it came in at  
 7 4:20--sorry, 1407.  
 8 COFFEY, Q.C.:  
 9 Q. 2:07 p.m., yes.  
 10 MR. TILLEY:  
 11 A. And went out at 2:15, so 8 minutes later, I'm  
 12 just trying to do the math in the time zones,  
 13 so that puts it at 12:45 thereabouts in  
 14 Ontario, so I'm likely close to lunch or just  
 15 broke for lunch and started to read my e-mails  
 16 that might have come in.  
 17 COFFEY, Q.C.:  
 18 Q. Sure. And you're just saying, look, I'm  
 19 almost 1500 miles away, contact Bob.  
 20 MR. TILLEY:  
 21 A. Right.  
 22 COFFEY, Q.C.:  
 23 Q. And you would have anticipated or expected  
 24 that he let her know what the status of those  
 25 reports was?

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1 MR. TILLEY:  
 2 A. Uh-hm.  
 3 COFFEY, Q.C.:  
 4 Q. If we could, please, look at Exhibit P-0097.  
 5 Now, Mr. Tilley, the e-mail lower down on the  
 6 page is from--the original message is from  
 7 Moira Hennessey to Dr. Robert Williams, sent  
 8 Thursday, November 3rd, 2005 at 2:56 p.m.  
 9 Suggesting that's not too long after you send  
 10 your e-mail to Ms. Hennessey, she wrote this  
 11 to Dr. Williams. The subject is ER/PR and she  
 12 says, "Hi Bob, can you please give me an  
 13 update on where we are with the contacting of  
 14 patients. I understand the process is ongoing  
 15 and there have been some problems. Also have  
 16 you received the report from the B.C.  
 17 pathologists and the Mount Sinai  
 18 technologists? If yes, what is the general  
 19 finding (s). While I know you are briefing  
 20 the minister later this month, we have to  
 21 complete the first draft of the House of  
 22 Assembly briefing notes by tomorrow. I will  
 23 then update it after the meeting with the  
 24 minister. Thanks, Moira." And this is sent  
 25 via her Blackberry. And then apparently Ms.

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1 Dunn, Denise Dunn who is Bob Williams'  
 2 executive assistance on Friday, November 4th  
 3 at 2:05 p.m., which would be the next day--I'm  
 4 sorry, 2005 at 1:15 p.m. forwarded that to  
 5 Heather Predham. So when you came back to St.  
 6 John's, November 3rd or 4th or 5th or 6th,  
 7 whenever you came back, did you ever discuss  
 8 this with Dr. Williams about Moira and the  
 9 department are looking for these reports or at  
 10 least the status? Did you ever discuss that  
 11 with Bob Williams?  
 12 MR. TILLEY:  
 13 A. I have no recollection.  
 14 COFFEY, Q.C.:  
 15 Q. Would you have followed up with Bob Williams  
 16 to ensure that Moira at least got some answer?  
 17 MR. TILLEY:  
 18 A. Well, just restate the environment in which  
 19 we're here, if the message had been redirected  
 20 accordingly, I would be on to one of many  
 21 other things by that time.  
 22 COFFEY, Q.C.:  
 23 Q. Now yourself, though, in terms of that  
 24 Banerjee report, you did, at some point, and  
 25 you indicated it was relatively earlier on

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1 after the report came in, you don't remember  
 2 the exact date.  
 3 MR. TILLEY:  
 4 A. It certainly wasn't in 2006.  
 5 COFFEY, Q.C.:  
 6 Q. It was '05.  
 7 MR. TILLEY:  
 8 A. Yes, that's what I'm recalling.  
 9 COFFEY, Q.C.:  
 10 Q. The year in which the report was done, you  
 11 would have seen it that year. You went to Bob  
 12 Williams' office to look at it, so it was  
 13 certainly of interest to you.  
 14 MR. TILLEY:  
 15 A. Yes.  
 16 COFFEY, Q.C.:  
 17 Q. What caused you to go to Bob's office?  
 18 MR. TILLEY:  
 19 A. Well, I would periodically try to be visible  
 20 in the sights throughout the organization and  
 21 if I happened to go to the Health Science  
 22 Centre, I would have certainly made an attempt  
 23 to connect with the vice-presidents that would  
 24 be working there.  
 25 COFFEY, Q.C.:

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1 Q. And if you go in, I mean, presumably you would  
 2 have been in Bob Williams' office a number of  
 3 times, was this trip to see this report?  
 4 MR. TILLEY:  
 5 A. I can't say specifically.  
 6 COFFEY, Q.C.:  
 7 Q. So do you recall whether yourself and Bob  
 8 Williams ever discussed the issue of whether  
 9 the department should see this report or  
 10 should see a summary of it--or be given a  
 11 summary of what was in it?  
 12 MR. TILLEY:  
 13 A. I can't imagine that we wouldn't have. There  
 14 was obviously an interest on their part,  
 15 Moira's e-mail refers to general findings. I  
 16 don't recall having said that we would not  
 17 provide it to the department and as you know,  
 18 much later that was at least acknowledged to  
 19 be done.  
 20 COFFEY, Q.C.:  
 21 Q. You were prepared to provide it, it wasn't  
 22 actually provided, I gather, because it didn't  
 23 make it out of your office.  
 24 MR. TILLEY:  
 25 A. Right, right, which is another day, another

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1 story.  
 2 COFFEY, Q.C.:  
 3 Q. Yes, but you were prepared to in May of '07  
 4 provide it to the department.  
 5 MR. TILLEY:  
 6 A. Uh-hm.  
 7 COFFEY, Q.C.:  
 8 Q. So in October, November, December of '05, at  
 9 that time, do you think you would have been  
 10 prepared to provide it to the department? In  
 11 fact, why not just send it over to them?  
 12 MR. TILLEY:  
 13 A. Yeah, well if the department had indicated and  
 14 the way our organizations were working  
 15 together, trying to balance off the issue that  
 16 we had always worked with with regards to peer  
 17 review processes, we would have certainly  
 18 provided it on the assumption that they would  
 19 protect that the same way we would. The  
 20 health system depends so much on peer review  
 21 processes and it may not be as important for  
 22 that particular case, but in subsequent cases,  
 23 it really is one of the few tools that we have  
 24 to encourage openness and evaluation amongst  
 25 peer groups.

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1 COFFEY, Q.C.:  
 2 Q. So without being--without the department  
 3 receiving either a summary of what was in it  
 4 or the actual reports, the department couldn't  
 5 find out what the conclusions had been?  
 6 MR. TILLEY:  
 7 A. Well, there were briefing sessions given  
 8 directly by Dr. Williams in which he talked  
 9 about the recommendations coming out of the  
 10 reports.  
 11 COFFEY, Q.C.:  
 12 Q. I appreciate the recommendations, I'm talking  
 13 about the reasons about why you needed  
 14 recommendations in the first place.  
 15 MR. TILLEY:  
 16 A. Right. I can't speak to it specifically, but  
 17 Dr. Williams was very open with his  
 18 conversation, so I can't imagine him being  
 19 inhibited in that way.  
 20 COFFEY, Q.C.:  
 21 Q. So if you would have thought that or expected  
 22 that the deputy minister would treat these  
 23 sorts of reports in the same way, in terms of  
 24 confidentiality as they were within your  
 25 organization, why wouldn't they just be

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1 shipped over when the ADM is asking about the  
 2 general findings?  
 3 MR. TILLEY:  
 4 A. I guess the decision was that we would use it  
 5 the same way that we were treating other parts  
 6 of the organization and that we'd be (sic.)  
 7 verbal briefings.  
 8 THE COMMISSIONER:  
 9 Q. When you're ready, Mr. Coffey.  
 10 COFFEY, Q.C.:  
 11 Q. Yes, thank you. So I take it there's really  
 12 no real answer to that, it's just we didn't  
 13 think to do it?  
 14 MR. TILLEY:  
 15 A. Yeah. Like a hundred things happening at the  
 16 same time -  
 17 COFFEY, Q.C.:  
 18 Q. Yes, but bear in mind this is the most  
 19 important, biggest clinical matter you're  
 20 dealing with -  
 21 MR. TILLEY:  
 22 A. Yes.  
 23 COFFEY, Q.C.:  
 24 Q. And you're right in the midst of it at this  
 25 point.

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1 MR. TILLEY:  
 2 A. Right and restructuring the biggest  
 3 organization that I had ever been involve in  
 4 and trying to manage that at the same time,  
 5 you know, I can speak to the peer review  
 6 process and the general rules around that. I  
 7 can speak to the fact that the department and  
 8 ourselves were--worked very closely together.  
 9 COFFEY, Q.C.:  
 10 Q. So are you telling us, when you say "closely  
 11 together" are you telling the Commissioner  
 12 look, in effect, John Abbott knew what was in  
 13 those reports in a practical way?  
 14 MR. TILLEY:  
 15 A. No, it was just our ongoing working  
 16 relationship, I wouldn't see John or his staff  
 17 as being immediate outsiders.  
 18 COFFEY, Q.C.:  
 19 Q. Yes, I understand that, which explains -  
 20 THE COMMISSIONER:  
 21 Q. Would or wouldn't?  
 22 MR. TILLEY:  
 23 A. Would not.  
 24 COFFEY, Q.C.:  
 25 Q. Which explains your willingness to provide it

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1 in May of '07. I'm just asking back in '05  
 2 why you wouldn't have sent it on, bearing in  
 3 mind the public profile of this matter.  
 4 MR. TILLEY:  
 5 A. Yes, well right from the very beginning we had  
 6 restricted the publication or the printing of  
 7 these reports and it was distributed to a few  
 8 individuals who were seen as being important  
 9 in terms of following up or monitoring the  
 10 progress.  
 11 COFFEY, Q.C.:  
 12 Q. I mean, John Abbott now is not just somebody--  
 13 he occupied a position, he's the deputy  
 14 minister of Health and you didn't think it  
 15 would be important for somebody at his level  
 16 to understand what it was Dr. Banerjee had  
 17 concluded?  
 18 MR. TILLEY:  
 19 A. Not that I didn't think it was important.  
 20 COFFEY, Q.C.:  
 21 Q. Well wouldn't it have been important for the  
 22 deputy minister to fully appreciate what this  
 23 outsider had found?  
 24 MR. TILLEY:  
 25 A. Looking back at it, Mr. Coffey, I can see that

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1 being a desirable opportunity to send it on.  
 2 COFFEY, Q.C.:  
 3 Q. So that he could understand, you know, the  
 4 position you were in, and your organization?  
 5 MR. TILLEY:  
 6 A. Yes, yes.  
 7 COFFEY, Q.C.:  
 8 Q. Thank you, Commissioner.  
 9 THE COMMISSIONER:  
 10 Q. All right. Let's make it 2:05.  
 11 (ADJOURNED FOR LUNCH)  
 12 THE COMMISSIONER:  
 13 Q. Please be seated.  
 14 COFFEY, Q.C.:  
 15 Q. Commissioner, I believe before we begin you  
 16 have an administrative matter?  
 17 THE COMMISSIONER:  
 18 Q. I do have a couple of administrative matters,  
 19 actually. I just want to remind those with  
 20 standing, as well as anybody else who is  
 21 interested that next week is the week of the  
 22 seminar, which will be held on Tuesday and  
 23 Wednesday morning in the Inco Innovation  
 24 Centre. Unless I date myself, I reckon that  
 25 is the old student union building at Memorial

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1 University and I should add, as I confessed  
 2 when we were on our way to visit it at  
 3 lunchtime, that it wasn't even built when I  
 4 was a student at MUN. And the other thing is  
 5 that if you are also interested in scheduling,  
 6 our schedule for the next three weeks has been  
 7 updated this morning and you will notice that  
 8 it includes a scheduled return visit by Mr.  
 9 Tilley--I hate to say that to you, Mr. Tilley,  
 10 on Thursday of next week, but I think you knew  
 11 about it.  
 12 MR. TILLEY:  
 13 A. Yes.  
 14 THE COMMISSIONER:  
 15 Q. All right, Mr. Coffey.  
 16 COFFEY, Q.C.:  
 17 Q. Thank you, Commissioner. If we could look,  
 18 please, at Exhibit P-0387. Now, Mr. Tilley,  
 19 before we get to your meeting of November 17th  
 20 with John Ottenheimer, this is an e-mail or a  
 21 series of e-mails, November 14th, 2005 and the  
 22 first of them is 2:39 p.m. that day. It's to  
 23 George Tilley--I'm sorry, I apologize, it's  
 24 from Peter Dawe, November 14th, 2005 at 11:58  
 25 a.m. on the bottom of the page there, to Dr.

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1 Williams and yourself and the subject is  
 2 priority for retesting of breast cancer  
 3 patients. And Mr. Dawe has written, "Good day  
 4 Bob and George. I understand Bob is not  
 5 available this week, so I am including George  
 6 in the message. George, you may want to put  
 7 me on to someone else, which is fine. I spoke  
 8 to a person this morning who is concerned  
 9 about her retesting and when it will be done.  
 10 She was told the testing is being done in  
 11 alphabetical order and is worried that it  
 12 hasn't been prioritized. She is also  
 13 concerned with the general lack of information  
 14 from the frontline staff at the cancer clinic.  
 15 She will be talking to the media on this to  
 16 let you know. Can you tell me if there is any  
 17 priority procedure in place for the retesting.  
 18 I have left a message for George to phone me  
 19 on this also"--and he has a cell number.  
 20 Signed Peter. And then at 2:39 the same day,  
 21 Denise Dunn, on behalf of Dr. Robert Williams  
 22 sent an e-mail to yourself, the same subject  
 23 matter, and it says "Mr. Tilley, do you want  
 24 me to forward this to Terry Gulliver for  
 25 follow up?" Signed Denise. And then you, on

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1 the same day at 2:44 p.m. sent an e-mail to  
 2 Dr. Robert Williams on the same subject matter  
 3 saying, "Denise, I sent this to Pat Pilgrim  
 4 earlier today for follow up. Thanks." Signed  
 5 George Tilley. Now can you tell us, please,  
 6 Mr. Tilley, what this was about in the middle  
 7 of November in terms of priority of testing or  
 8 retesting and how that was originally  
 9 envisaged to be addressed and in fact was  
 10 addressed?  
 11 MR. TILLEY:  
 12 A. In terms of how the tests were going to be  
 13 sent off or coming back?  
 14 COFFEY, Q.C.:  
 15 Q. And prioritized because this talks about  
 16 prioritizing and this patient, apparently had  
 17 thought it was alphabetically and what can you  
 18 tell us about -  
 19 MR. TILLEY:  
 20 A. I really have no knowledge in terms of how it  
 21 was handled or prioritized, other than what  
 22 was coming back was being dealt with. Beyond  
 23 that, I really can't speak to it.  
 24 COFFEY, Q.C.:  
 25 Q. The reference here at the bottom of the page

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1 in Mr. Dawe's e-mail to you, because bear in  
 2 mind this is the middle of November of 2005,  
 3 at that point did you have any reason to  
 4 believe that in fact patient retesting was  
 5 being done in alphabetical order?  
 6 MR. TILLEY:  
 7 A. No reason to believe yes or no.  
 8 COFFEY, Q.C.:  
 9 Q. You didn't know on what basis it was being -  
 10 MR. TILLEY:  
 11 A. No, sir.  
 12 COFFEY, Q.C.:  
 13 Q. - prioritized or even if it was being at all,  
 14 in the sense of -  
 15 MR. TILLEY:  
 16 A. That's correct.  
 17 COFFEY, Q.C.:  
 18 Q. Some sent before others. "She's also  
 19 concerned with the general lack of information  
 20 from the frontline staff at the cancer  
 21 clinic." Now did that give you any pause for  
 22 concern?  
 23 MR. TILLEY:  
 24 A. Well looking at it, clearly the people that  
 25 were talking to the public were the team that

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1 were in the Quality Initiatives Department and  
 2 not it the cancer clinic. I see to recall a  
 3 directive going out to multiple parts of the  
 4 organization to have any inquiries of this  
 5 nature referred to the patient relations  
 6 officer.  
 7 COFFEY, Q.C.:  
 8 Q. And you're correct, there is such a -  
 9 MR. TILLEY:  
 10 A. Okay, so I guess it would be understandable  
 11 to, now that I know the questions were going  
 12 to be directed in that area, that was going to  
 13 be the resolution.  
 14 COFFEY, Q.C.:  
 15 Q. Do you know if--so from your perspective, you  
 16 were telling Dr. Williams that I've tasked Pat  
 17 Pilgrim with dealing with this?  
 18 MR. TILLEY:  
 19 A. Yes. Pat would have been the cancer care  
 20 executive lead, so would have been the logical  
 21 person, particularly in Dr. Williams' absence,  
 22 but also because of her connection with the  
 23 cancer program.  
 24 COFFEY, Q.C.:  
 25 Q. Did you ever check afterward to find out what

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1 the priority was, if any?  
 2 MR. TILLEY:  
 3 A. No, I didn't.  
 4 COFFEY, Q.C.:  
 5 Q. Any reason why not?  
 6 MR. TILLEY:  
 7 A. Other than I just physically wasn't able to  
 8 commit the time to that issue and I felt it  
 9 was in good hands when I referred it on.  
 10 COFFEY, Q.C.:  
 11 Q. Okay. And certainly by sending this e-mail,  
 12 well Dr. Williams would have gotten the  
 13 original one as well, he would have been  
 14 cognizant of the issue of prioritizing being  
 15 raised. You didn't have to tell him that  
 16 because he got the same e-mail you did at the  
 17 bottom of the page?  
 18 MR. TILLEY:  
 19 A. That's correct.  
 20 COFFEY, Q.C.:  
 21 Q. Did he ever bring to you any concerns that he  
 22 had in that regard?  
 23 MR. TILLEY:  
 24 A. About the sequencing of testing or  
 25 prioritization?

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1 COFFEY, Q.C.:  
 2 Q. Yes.  
 3 MR. TILLEY:  
 4 A. No, I have no recollection of that discussion.  
 5 COFFEY, Q.C.:  
 6 Q. And again, I'm not suggesting he did, I'm just  
 7 asking in case it comes up.  
 8 MR. TILLEY:  
 9 A. Uh-hm.  
 10 COFFEY, Q.C.:  
 11 Q. Now, Mr. Tilley, there was a meeting on  
 12 November 17th, 2005, I gather, with the  
 13 Minister of Health. If we could see, please,  
 14 Exhibit P-0390? And this is a briefing note  
 15 to the Minister of Health, November 17th,  
 16 2005. It's an update on estrogen and  
 17 progesterone receptor testing and "The  
 18 estrogen and progesterone investigation and  
 19 retesting today is affecting 835 individuals,  
 20 total of 898 samples. There are instances  
 21 where individuals have had more than one  
 22 sample taken, having logged and sent to Mount  
 23 Sinai Hospital in Toronto, Ontario. In  
 24 summary, activity to date is as follows"--and  
 25 there's a long very detailed list of the

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1 status. The three headings are: "Patients  
 2 whose results have been reported by Mount  
 3 Sinai but require review; patients whose  
 4 results have been reported by Mount Sinai and  
 5 have been confirmed negative; and patients  
 6 whose results have not been reported by Mount  
 7 Sinai." And the bulk, in terms of numbers,  
 8 fall into the last category, don't they that's  
 9 -  
 10 MR. TILLEY:  
 11 A. Yes.  
 12 COFFEY, Q.C.:  
 13 Q. In fact, there's--now just looking at the top  
 14 two classifications, the total under patients  
 15 whose results have been reported by Mount  
 16 Sinai, but require review, see that?  
 17 MR. TILLEY:  
 18 A. That's the 83.  
 19 COFFEY, Q.C.:  
 20 Q. That's this one. The total is 83 and patients  
 21 whose results have been reported by Mount  
 22 Sinai and have been confirmed negative, which  
 23 is 89.  
 24 MR. TILLEY:  
 25 A. Uh-hm.

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1 COFFEY, Q.C.:  
 2 Q. So that's a total of 172 between 83 and 89 add  
 3 up to about 172.  
 4 MR. TILLEY:  
 5 A. Yes.  
 6 COFFEY, Q.C.:  
 7 Q. That had retest results reported. So at the  
 8 time I take it there was just under half of  
 9 the retests reporting as, well I'll address it  
 10 this way, just over half of the retests had  
 11 reported has being confirmed negative?  
 12 MR. TILLEY:  
 13 A. Yes.  
 14 COFFEY, Q.C.:  
 15 Q. Suggesting that just under half, just under  
 16 fifty percent had been reported as other -  
 17 MR. TILLEY:  
 18 A. Yes.  
 19 COFFEY, Q.C.:  
 20 Q. In other words, positive, presumably?  
 21 MR. TILLEY:  
 22 A. Yes.  
 23 COFFEY, Q.C.:  
 24 Q. Which is a conversion rate at that point of  
 25 probably around 45 percent or so, give or take

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1 a bit, if you do the arithmetic, that would be  
 2 about right, wouldn't it?  
 3 MR. SIMMONS:  
 4 Q. The briefing note says require review, it  
 5 doesn't say positive, assume require this  
 6 review for some reason but I don't want to  
 7 draw the conclusion that you conclude that all  
 8 of them in turn is positive.  
 9 THE COMMISSIONER:  
 10 Q. I had understood the only ones that were  
 11 reviewed are the ones that were not confirmed  
 12 negative, but maybe I'm wrong on that.  
 13 MR. SIMMONS:  
 14 Q. There are--I think you'll hear eventually that  
 15 there were some cases where the panel had to  
 16 be involved in determining whether it would be  
 17 considered a negative or a positive.  
 18 COFFEY, Q.C.:  
 19 Q. Yes, and that's the whole thing about whether  
 20 they're one to nine verses ten, verses others.  
 21 But the point being they didn't get reviewed  
 22 by the panel unless Mount Sinai said it's  
 23 something more than zero. I think we'd agree  
 24 on that, Mr. Simmons.  
 25 MR. SIMMONS:

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1 Q. Uh-hm.  
 2 THE COMMISSIONER:  
 3 Q. All right.  
 4 COFFEY, Q.C.:  
 5 Q. So just about 45 percent of the tests coming  
 6 back, approximately, Mount Sinai was reporting  
 7 as other than zeros. Was that your  
 8 understanding at the time?  
 9 MR. TILLEY:  
 10 A. Yes, yes.  
 11 COFFEY, Q.C.:  
 12 Q. So you went to see the minister and I presume  
 13 he was provided with this, a copy of this.  
 14 What do you recall about that meeting?  
 15 MR. TILLEY:  
 16 A. Well I've learned that there are no  
 17 handwritten notes that I have, unfortunately,  
 18 to refer to it. I only have the fact that we  
 19 talked about this document to give me an  
 20 indication as to the subject matter and a  
 21 reference to a request for information about  
 22 questions that the Department of Health had  
 23 posed in anticipation of the House of  
 24 Assembly.  
 25 COFFEY, Q.C.:

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1 Q. And if we could assist Mr. Tilley in that  
 2 regard then, Exhibit P-0388 and this is an e-  
 3 mail written by yourself, Mr. Tilley, that  
 4 day, November 17th at 5:41 p.m. to Susan  
 5 Bonnell and Heather Predham and you write,  
 6 "Dr. Williams and I met with the minister this  
 7 afternoon to bring him the latest information  
 8 on the ER/PR issue. Thanks, Heather, for the  
 9 information that you prepared. The minister's  
 10 communication's director will be e-mailing a  
 11 few questions to Susan that they would like  
 12 for us to put responses to by the end of the  
 13 day tomorrow, anticipation of the House  
 14 opening tomorrow. We will undoubtedly need  
 15 everyone's help in ensuring key messages are  
 16 getting across." Signed George. So does that  
 17 assist you--and as well, while I'm at it Mr.  
 18 Tilley, if I could please, if we could bring  
 19 up too Exhibit P-0153 please? This is an e-  
 20 mail from Tansy Mundon, Friday, November 18th,  
 21 2005 at 9:13 a.m., which is the next morning,  
 22 to Deborah Thomas-Pennell, Susan Bonnell,  
 23 copied to yourself, Darrell Hynes and John  
 24 Abbott. Subject is ER/PR questions. And she  
 25 writes, "Susan, Deborah, further to our

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1 briefing yesterday with George and Dr.  
 2 Williams, I attach the following questions  
 3 that the minister would like answered in  
 4 advance of the House of Assembly opening on  
 5 Monday, if at all possible. Many thanks,  
 6 Tansy". And then, Mr. Tilley, just again to  
 7 assist you, on page two of this exhibit, there  
 8 are ER/PR questions and there are seven  
 9 bullets and some of them contain more than one  
 10 question.  
 11 MR. TILLEY:  
 12 A. Yes.  
 13 COFFEY, Q.C.:  
 14 Q. And that's the questions you were just  
 15 speaking of, I believe.  
 16 MR. TILLEY:  
 17 A. Yes.  
 18 COFFEY, Q.C.:  
 19 Q. Okay, could you, you know, whatever you need  
 20 to help you -  
 21 MR. TILLEY:  
 22 A. Well, other than the fact that those existed,  
 23 I don't have anything other than the fact that  
 24 we must have talked about the information  
 25 provided and there must have been a discussion

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1 -

2 COFFEY, Q.C.:

3 Q. Yes, that's all those numbers.

4 MR. TILLEY:

5 A. Those numbers. And then a discussion with

6 respect to anticipating questions that the

7 officials in the department would like to have

8 some information about as they were to prepare

9 their minister for potential discussions in

10 the House of Assembly.

11 COFFEY, Q.C.:

12 Q. And these questions that are listed on page

13 two of Exhibit P-0153, the first one is when

14 did the HSC minister find out about the

15 inaccurate cancer test results and what

16 direction did he give to Eastern Health on how

17 to handle this situation?

18 MR. TILLEY:

19 A. Yes.

20 COFFEY, Q.C.:

21 Q. Now, Mr. Tilley, yourself, when you received

22 that, I presume on the 18th of November, how

23 did you feel at the time as a CEO about being

24 asked to answer that sort of a question?

25 MR. TILLEY:

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1 A. Well I just felt that what we had received was

2 a complete list of questions that somebody had

3 prepared for the minister without giving much

4 thought to it being edited to send over to my

5 staff to provide input.

6 COFFEY, Q.C.:

7 Q. Because it was, in fact, in terms of when he

8 found out, unless it was you might have been

9 able to answer it yourself by looking at your

10 diary and so on at the time, but presumably he

11 would have known when he found out.

12 MR. TILLEY:

13 A. Yes, so that's why I'm assuming that it was

14 their list of questions and we were

15 contributing and whatever we were replying

16 with, they were going to be using that to

17 build the information for the minister.

18 COFFEY, Q.C.:

19 Q. And if we could, please, could we open Exhibit

20 P-0154? Now this, Mr. Tilley, is an e-mail

21 from Deborah Thomas-Pennell, November 21st,

22 2005, 9:21 a.m. to Tansy Mundon, copied to

23 Susan Bonnell. The subject is ER/PR

24 questions. The attachment are questions

25 ER/PR.1 final.doc. She says "As requested,

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1 Tansy." Signed Deborah. And so Deborah

2 Pennell apparently, from inside your

3 organization, as a member of your organization

4 when you see the next page of this exhibit,

5 page two, well we actually see a document that

6 goes on for another full two pages with the

7 questions that we just looked at retyped out

8 and then in bold print, the answers.

9 MR. TILLEY:

10 A. Yes.

11 COFFEY, Q.C.:

12 Q. Do you recall whether or not you were involved

13 in providing the information for these

14 answers?

15 MR. TILLEY:

16 A. No, I don't recall. There would be people

17 that would certainly have access to that

18 information at a more detailed level than I

19 would. I suspect that Deborah Thomas would

20 have co-ordinated with those individuals.

21 COFFEY, Q.C.:

22 Q. She'd go to the people who knew the most about

23 it.

24 MR. TILLEY:

25 A. That would be my thought.

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1 COFFEY, Q.C.:

2 Q. And your expectation, I take it, as well.

3 MR. TILLEY:

4 A. Yes.

5 COFFEY, Q.C.:

6 Q. Mr. Tilley, as a CEO of Eastern Health, having

7 met with John Ottenheimer on November 17th,

8 the idea that your organization might, you

9 know, be tasked with and fulfil the task of

10 answering questions such as these, how did

11 that stand--why were you--what I'm trying to

12 say to you, I suppose, is why are you people

13 who are otherwise busy, dealing with this?

14 MR. TILLEY:

15 A. Well it certainly wasn't our primary

16 responsibility any time in the past to be

17 doing this for the minister, but normally what

18 I had been familiar with is that there would

19 be an information process by the officials in

20 government and then the actual information

21 translated into answers by their staff. I'm

22 not sure if there was anything specific

23 intended with this, other than maybe the turn

24 around time would seem to be short, therefore

25 they were putting the questions forward to

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1 minimize the amount of afterwork.  
 2 COFFEY, Q.C.:  
 3 Q. And do you know whether or not you ever saw  
 4 the answers before they went?  
 5 MR. TILLEY:  
 6 A. It's tough to pick one document out in the  
 7 middle of--and I at the time was I ever copied  
 8 on it or -  
 9 COFFEY, Q.C.:  
 10 Q. Well actually if we could open, please,  
 11 Exhibit P-0153, thank you, Registrar. This is  
 12 the one with the actual list of questions on  
 13 it. That had been sent to you apparently or  
 14 you were copied on it on the morning of  
 15 November 18th. The response went out Monday  
 16 morning, November 21st and I'm not saying you  
 17 were or weren't. I don't have the documents  
 18 here, I'm not saying they don't exist, but  
 19 what I'm asking you is do you have any memory  
 20 really of kind of having to vet this before it  
 21 went?  
 22 MR. TILLEY:  
 23 A. I didn't have it as a rule to vet documents  
 24 that were going from the Department of Health.  
 25 COFFEY, Q.C.:

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1 Q. And that's really what I was asking.  
 2 MR. TILLEY:  
 3 A. Again, this is a moving train here and, you  
 4 know, I do have to rely upon people to be able  
 5 to do that work and if I had to vet things  
 6 that would be going through in the  
 7 organization, there simply wouldn't be enough  
 8 seconds in the day to make that possible.  
 9 COFFEY, Q.C.:  
 10 Q. And so do you have any policy in place as to  
 11 what sort of things, if any, you would have to  
 12 vet?  
 13 MR. TILLEY:  
 14 A. No, sir, no.  
 15 COFFEY, Q.C.:  
 16 Q. Okay.  
 17 MR. TILLEY:  
 18 A. There were probably policies in the  
 19 organization on a financial nature that would  
 20 say that I had to sign or something, but not  
 21 in terms of information flow.  
 22 COFFEY, Q.C.:  
 23 Q. No, okay. Now, Mr. Tilley, when we look at  
 24 Exhibit P-0154, this is the questions and  
 25 answers.

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1 MR. TILLEY:  
 2 A. Uh-hm.  
 3 COFFEY, Q.C.:  
 4 Q. And other than perhaps the first question and  
 5 answer, the information contained in the  
 6 answers there, are spelled out here in these  
 7 two pages.  
 8 MR. TILLEY:  
 9 A. Yes.  
 10 COFFEY, Q.C.:  
 11 Q. Pages two and three of the exhibit. At this  
 12 point in time which is just past the middle of  
 13 November, what was the state of communication  
 14 of Eastern Health with the public at that  
 15 point? You had run your ad back in October,  
 16 remember that newspaper advertisement.  
 17 MR. TILLEY:  
 18 A. Yes, I do, yes, middle of October.  
 19 COFFEY, Q.C.:  
 20 Q. Middle toward the end of October, we looked at  
 21 that. And this is now getting toward the  
 22 second--we're into the second half of  
 23 November.  
 24 MR. TILLEY:  
 25 A. Yes.

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1 COFFEY, Q.C.:  
 2 Q. But in the intervening time, what had been  
 3 going on with respect to public communication,  
 4 if anything?  
 5 MR. TILLEY:  
 6 A. In terms of public communications, nothing  
 7 comes to mind other than the ongoing contact  
 8 with the patient follow up.  
 9 COFFEY, Q.C.:  
 10 Q. Individual patients.  
 11 MR. TILLEY:  
 12 A. Right.  
 13 COFFEY, Q.C.:  
 14 Q. But in terms of like publicity campaign or  
 15 educational campaign.  
 16 MR. TILLEY:  
 17 A. The only recollection that I can draw at the  
 18 moment is the newspaper advertisement.  
 19 COFFEY, Q.C.:  
 20 Q. Yes. Sir, if and you would have understood  
 21 that these answers were being provided to the  
 22 Minister of Health for his possible usage in  
 23 the House of Assembly in a public forum, the  
 24 answers to these questions.  
 25 MR. TILLEY:



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1 A. Yes.

2 COFFEY, Q.C.:

3 Q. At the time and would there have been anything

4 to prevent Eastern Health, for example, other

5 than the first question and answer putting the

6 rest of these up on your website explaining

7 your, you know, as to anybody who is inquiring

8 from the public, you know, these are questions

9 that might occur to you and this is our

10 position currently on it, the number of

11 patients and--and if you're telling the

12 minister information that -

13 MR. TILLEY:

14 A. He was prepared to say publicly.

15 COFFEY, Q.C.:

16 Q. Yes.

17 MR. TILLEY:

18 A. I'm sorry, am I doing this?

19 COFFEY, Q.C.:

20 Q. You are, you're in control.

21 MR. TILLEY:

22 A. My apologies.

23 COFFEY, Q.C.:

24 Q. No, no, not at all.

25 MR. TILLEY:

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1 A. You know, there's nothing obviously that I can

2 recall that would, based upon my scan, be not

3 information that we wouldn't share with

4 anybody and certainly if the minister was

5 going to speak to it in the House, then -

6 COFFEY, Q.C.:

7 Q. And if it was information that you were

8 prepared to have the minister, there'd

9 probably have been no reason in principle why

10 -

11 MR. TILLEY:

12 A. That's what I mean.

13 COFFEY, Q.C.:

14 Q. Okay, do you know if any thought was given at

15 the time to--in the interest of opency and

16 transparency which is a phrase, an answer

17 being used later of putting that sort of

18 information up on your website, which doesn't

19 have any costs associated with it.

20 MR. TILLEY:

21 A. No, absolutely not. I can't recall any

22 discussion that I was involved in about that

23 specifically.

24 COFFEY, Q.C.:

25 Q. Sir, is there anything else about that

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1 November meeting that you can recall? You

2 understood there were going to be a list of

3 questions and your people would do what they

4 could to answer them. Mr. Ottenheimer's

5 overall level of satisfaction or otherwise

6 with the state of affairs reported to him, was

7 he content?

8 MR. TILLEY:

9 A. There's nothing that sort of stands out for

10 me.

11 COFFEY, Q.C.:

12 Q. I take it, from your -- you have no memory of

13 him expressing any dissatisfaction. I'm not

14 suggesting he did, I'm just --

15 MR. TILLEY:

16 A. No, sir, I don't.

17 COFFEY, Q.C.:

18 Q. And at that time -- and there are e-mails, a

19 number of them where, you know, people from

20 your organization are continuously contacting

21 Mount Sinai to see when the next retest

22 results would be back, there was certainly an

23 interest in -- you understood that?

24 MR. TILLEY:

25 A. I knew there was a lot of discussions to try -

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1 - around trying to expedite the retreatment or

2 retesting process.

3 COFFEY, Q.C.:

4 Q. Thank you. Sir, if we could look, please, at

5 Exhibit P-0310. Now this is a series of e-

6 mails. The top ones are between Darrell Hynes

7 and Tansy Mundon, but when we get down to the

8 one at the bottom of the page, it's an e-mail

9 from Deborah Thomas-Pennell, Thursday,

10 December 1st, 2005, at 1357 hours. It's to

11 Tansy Mundon on her Blackberry, and the

12 subject is "FYI", for your information, and

13 Ms. Pennell you will note here was still with

14 the Health Care Corporation of St. John's --

15 MR. TILLEY:

16 A. Uh-hm.

17 COFFEY, Q.C.:

18 Q. At the time, and she writes, "Hi Tansy, just

19 FYI, Mark Quinn is doing a news story on the

20 fact that the ER/PR testing is taking longer

21 than we thought. He talked to Peter Dawe and

22 cancer survivor, the name is redacted, and Dr.

23 Williams also did a quick telephone interview.

24 Basically, all he said is that we are getting

25 the results back as fast as we can. We have

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1 issued a plea to Mount Sinai that they do what  
 2 they can to hurry the procedure along, and  
 3 that as soon as we get the results back, we  
 4 are letting people know. There's not much more  
 5 we can say. Just wanted to keep you in the  
 6 loop. I managed to hold him off until today",  
 7 in the context to be Mark Quinn, "That way the  
 8 issue should be dead again by the time the  
 9 House opens again next week". There's a "J"  
 10 there, I don't know if that means anything,  
 11 and she signs, Deborah. Now with respect to  
 12 this, Ms. Pennell's remark that "she had  
 13 managed to hold off Mr. Quinn until that day",  
 14 and with a view, she suggests, "thereby the  
 15 issue should be dead again by the time the  
 16 House opens again next week", were you aware  
 17 that that sort of an attitude existed within  
 18 your organization, this Communications  
 19 Department?  
 20 MR. TILLEY:  
 21 A. No.  
 22 COFFEY, Q.C.:  
 23 Q. With respect to communications involving ER/PR  
 24 within your organization, it's Susan Bonnell  
 25 and Deborah Thomas Pennell, they are the two

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1 main -- what we've seen in these  
 2 communications.  
 3 MR. TILLEY:  
 4 A. Yes.  
 5 COFFEY, Q.C.:  
 6 Q. That would be the two people who would be  
 7 dealing with it?  
 8 MR. TILLEY:  
 9 A. Yes, and they were certainly very active in  
 10 this, and I felt did very good work in terms  
 11 of their advice to me, and essentially I can  
 12 say that they worked many, many hours long  
 13 beyond a lot of people.  
 14 COFFEY, Q.C.:  
 15 Q. And in terms of their advice to you, did their  
 16 advice ever involve the notion of trying to  
 17 ensure the issue is dead again or minimizing  
 18 the issue, to keep it out of the House of  
 19 Assembly in this instance, or otherwise just  
 20 keep it out of the public eye? Did their  
 21 advice involve that?  
 22 MR. TILLEY:  
 23 A. I'm not sure what it does to try to have  
 24 something avoided for the House, but that's  
 25 how it reads. I really can't speak to it.

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1 COFFEY, Q.C.:  
 2 Q. How about in terms of their communicating  
 3 their advice to you generally, because you've  
 4 indicated that generally you had advice from  
 5 them in respect of the ER/PR issue?  
 6 MR. TILLEY:  
 7 A. I did. As you have seen up to date, I had  
 8 gotten letters from Susan with respect to her  
 9 recommendations for patient follow-up, had  
 10 gotten a memo from her with respect to the  
 11 pros and cons of various issues. I certainly  
 12 saw that as being information that was very  
 13 insightful and realistic under the  
 14 circumstance. The issue with regards to the  
 15 House and the communications between them and  
 16 the communications in the Department of  
 17 Health, it's not something I'm able to speak  
 18 to.  
 19 COFFEY, Q.C.:  
 20 Q. And the idea of trying to keep it out of the  
 21 public eye, can you speak to that?  
 22 MR. TILLEY:  
 23 A. Well, we were obviously going through a lot of  
 24 evolving issues at that point in time; the  
 25 reviews, the patients coming back -- the

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1 results coming back, the retesting. Clearly  
 2 our focus was on the individual patient and  
 3 that's what we felt, always felt to be the  
 4 most important factor. The issue of public  
 5 discussion was, as I had indicated earlier,  
 6 not the primary issue. We kept reinforcing  
 7 the fact that we were doing the right thing by  
 8 focusing in on the patient.  
 9 COFFEY, Q.C.:  
 10 Q. How about the idea of trying to avoid the  
 11 public eye entirely?  
 12 MR. TILLEY:  
 13 A. I don't know how we could avoid being -- this  
 14 issue being from the public eye entirely. It  
 15 was obviously an important issue to a lot of  
 16 people.  
 17 COFFEY, Q.C.:  
 18 Q. If you could look, please, at Exhibit P-0311.  
 19 Now this is -- thank you. Page two of it is  
 20 an e-mail from Tansy Mundon to a number of  
 21 individuals, senior individuals -- well, John  
 22 Abbott, to Moira Hennessey, Darrell Hynes,  
 23 John Ottenheimer, John Rumbolt, Tara Furlong,  
 24 but as well as Susan Bonnell and Deborah  
 25 Thomas in your organization. It's December 5,

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1 2005, 11:39 a.m, and she's forwarding a  
 2 transcript of a December 5th, 2005, interview  
 3 by Jeff Gilhooly -- of Peter Dawe by Jeff  
 4 Gilhooly, and the caption is, "Cancer Society  
 5 says wait for results could have been  
 6 shorter". Were you aware, as the CEO of  
 7 Eastern Health, that two of your  
 8 communications people were apparently on a  
 9 mailing list of some sort that Tansy Mundon  
 10 had here concerning ER/PR?  
 11 MR. TILLEY:  
 12 A. Specifically in terms of being on a mailing  
 13 list in government --  
 14 COFFEY, Q.C.:  
 15 Q. Or was identified to send this to. I mean,  
 16 were you aware that there was that kind of  
 17 close apparent relationship between the  
 18 communications in the Department of Health and  
 19 your own communications people?  
 20 MR. TILLEY:  
 21 A. Well, as we'll find out I suspect in due  
 22 course, my sense on an evolving basis is that  
 23 the communications department of both  
 24 organizations were working very closely  
 25 together.

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1 COFFEY, Q.C.:  
 2 Q. Were you aware early --  
 3 THE COMMISSIONER:  
 4 Q. Were you aware of it at the time?  
 5 MR. TILLEY:  
 6 A. No, ma'am, other than I know that Tansy Mundon  
 7 would be representing communications issues  
 8 for the department, and I think she was the  
 9 one that sent the questions over to get  
 10 answers to.  
 11 COFFEY, Q.C.:  
 12 Q. Sure.  
 13 MR. TILLEY:  
 14 A. So there was an ongoing dialogue.  
 15 COFFEY, Q.C.:  
 16 Q. Any idea that one or the other might be  
 17 keeping the other posted of --  
 18 MR. TILLEY:  
 19 A. I'm not sure if that was unique -- isolated  
 20 case or a bigger issue.  
 21 COFFEY, Q.C.:  
 22 Q. And if we could look, please, at Exhibit P-  
 23 0101. Now, Mr. Tilley, this is a letter of  
 24 December 7th, 2005, to Dr. Robert Williams,  
 25 and look at the third page, it's written by

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1 Dr. Beverley Carter, copied to Dr. Cook, Terry  
 2 Gulliver, and Dr. Ejeckam. This is the letter  
 3 where Dr. Carter is communicating with Dr.  
 4 Williams about a suggestion by Barry Dyer  
 5 concerning the Ventana testing or  
 6 reinstating Ventana testing or estrogen  
 7 receptor, progesterone receptor, and HER2/neu,  
 8 being able to be started at any time, and you  
 9 would have -- I take it, you were already  
 10 aware that Dr. Carter referred to the reports  
 11 of Dr. Banerjee and Trish Wegrynowski as two  
 12 fairly damning reports?  
 13 MR. TILLEY:  
 14 A. Yes, I heard that.  
 15 COFFEY, Q.C.:  
 16 Q. You heard that before.  
 17 MR. TILLEY:  
 18 A. In earlier testimony, yes.  
 19 COFFEY, Q.C.:  
 20 Q. And in terms of that, Dr. Williams is the  
 21 person you've -- in your view, is in charge of  
 22 responding to this, this entire matter.  
 23 MR. TILLEY:  
 24 A. Uh-hm.  
 25 COFFEY, Q.C.:

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1 Q. Do you recall whether or not he ever brought  
 2 that assessment -- his receipt of that  
 3 assessment from Dr. Carter to your attention?  
 4 I mean, the guy you've got in charge of this,  
 5 Dr. Williams, at the beginning of December --  
 6 MR. TILLEY:  
 7 A. There are -- I'm not sure what the actual  
 8 dates, are, but I do remember my telephone log  
 9 some references to speaking to Dr. Williams  
 10 with reference to Dr. Carter.  
 11 COFFEY, Q.C.:  
 12 Q. Yes.  
 13 MR. TILLEY:  
 14 A. I don't know if that is of any help to us  
 15 here.  
 16 COFFEY, Q.C.:  
 17 Q. Okay. Just a moment, please.  
 18 THE COMMISSIONER:  
 19 Q. Your telephone log, is it, sir?  
 20 MR. TILLEY:  
 21 A. Yes, ma'am.  
 22 REGISTRAR:  
 23 Q. Would that be 326?  
 24 THE COMMISSIONER:  
 25 Q. 326, the particular page.

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1 REGISTRAR:  
 2 Q. 326.  
 3 COFFEY, Q.C.:  
 4 Q. This is --  
 5 THE COMMISSIONER:  
 6 Q. That would be earlier. Presumably you're  
 7 looking for a telephone log after December  
 8 7th.  
 9 COFFEY, Q.C.:  
 10 Q. Actually, these particular telephone logs go  
 11 into January of '06, Commissioner, so it  
 12 doesn't actually cover that. It's not in that  
 13 part of it. You think there may be an entry  
 14 for around that date. I do know that there's  
 15 one for August 2nd.  
 16 MR. TILLEY:  
 17 A. Okay, it might be that's the one I'm getting  
 18 linked up with because I'm not seeing it here  
 19 in and around that time.  
 20 COFFEY, Q.C.:  
 21 Q. Yes.  
 22 MR. TILLEY:  
 23 A. There's -- what's the date of this one?  
 24 There's one in February of '06.  
 25 COFFEY, Q.C.:

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1 Q. Yes.  
 2 MR. TILLEY:  
 3 A. So we're well beyond that date. Anyway,  
 4 sorry, Mr. Coffey, back to your original  
 5 point.  
 6 COFFEY, Q.C.:  
 7 Q. Not at all --  
 8 MR. TILLEY:  
 9 A. Which was did Dr. Williams make me aware --  
 10 COFFEY, Q.C.:  
 11 Q. That your breast pathologist, she's the only  
 12 one in the organization --  
 13 MR. TILLEY:  
 14 A. Yes.  
 15 COFFEY, Q.C.:  
 16 Q. Has a classification or specification of being  
 17 a specialist in that area --  
 18 MR. TILLEY:  
 19 A. Right.  
 20 COFFEY, Q.C.:  
 21 Q. That this was the view that she had expressed  
 22 in writing to Dr. Williams, and I appreciate  
 23 she's goes on at some length about why she  
 24 feels that way, but --  
 25 MR. TILLEY:

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1 A. And unfortunately there's so much going on at  
 2 one time -- that letter itself is not speaking  
 3 to me to remind me, but I certainly do have a  
 4 recollection of some conversation with Dr.  
 5 Williams concerning Dr. Carter, but at this  
 6 point in time I can't recall if it  
 7 specifically related to that letter or not.  
 8 COFFEY, Q.C.:  
 9 Q. Because with this, in fact, that letter  
 10 involves the issue of restarting testing,  
 11 ER/PR testing. I mean, that's really what it  
 12 - it involves other things, but that's  
 13 certainly Dr. Carter's --  
 14 MR. TILLEY:  
 15 A. Right.  
 16 COFFEY, Q.C.:  
 17 Q. The reason she says she's writing it is Dr.  
 18 Cook asked her about the idea.  
 19 MR. TILLEY:  
 20 A. Uh-hm.  
 21 COFFEY, Q.C.:  
 22 Q. And she's -- that having occurred, she's  
 23 advising Dr. Williams of her views on it and  
 24 why.  
 25 MR. TILLEY:

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1 A. Yes.  
 2 COFFEY, Q.C.:  
 3 Q. Would I -- I'm just -- again for the  
 4 Commissioner's perspective at the time, this  
 5 is, I think, really one of the first times  
 6 that we've seen in a document any idea of  
 7 actually restarting testing locally?  
 8 MR. TILLEY:  
 9 A. Yes, other than we would have had information  
 10 back from Ventana that suggests that the  
 11 equipment was operating favourably.  
 12 COFFEY, Q.C.:  
 13 Q. Yes, that actually went back to August of '05.  
 14 MR. TILLEY:  
 15 A. Okay.  
 16 COFFEY, Q.C.:  
 17 Q. So what I'm getting at here is that apparently  
 18 that letter suggests that recently then Barry  
 19 Dyer had raised the idea of restarting  
 20 testing, okay, and I'm asking you do you have  
 21 any recollection of the person who you had  
 22 tasked with handling this matter, Dr.  
 23 Williams, raised with you the fact that the  
 24 only breast pathologist in the province  
 25 expressed these sorts of views and concerns?

1 MR. TILLEY:  
 2 A. Well, as I look just at the first three lines,  
 3 Mr. Dyer was obviously taking a position that  
 4 this could be started, and that Dr. Cook had  
 5 recently asked Dr. Carter for her opinion, and  
 6 I assume, without reading the rest, that he's  
 7 now referring that dialogue to Dr. Williams.  
 8 One of the things I do recall all along about  
 9 this issue as to restarting the Ventana, which  
 10 I said to Dr. Williams that he and his  
 11 colleagues have to be satisfied that that  
 12 equipment is okay to activate for this  
 13 purpose, and I repeated that with Dr. Howell,  
 14 and that's my recollection in terms of  
 15 starting up the Ventana test again.  
 16 COFFEY, Q.C.:  
 17 Q. This letter not only refers to the machinery,  
 18 it also refers to personnel being trained?  
 19 MR. TILLEY:  
 20 A. Yes, I understand that.  
 21 COFFEY, Q.C.:  
 22 Q. Pathologists and so on, and technologists, and  
 23 it goes on at quite some detailed length?  
 24 MR. TILLEY:  
 25 A. Right, and i was just speaking to your point

1 THE COMMISSIONER:  
 2 Q. Do you even recall a conversation with Dr.  
 3 Williams to the effect of it's being suggested  
 4 that we start up ER/PR testing again using the  
 5 Ventana and there's anybody against it or  
 6 anything of that nature?  
 7 MR. TILLEY:  
 8 A. Well, the fact that it wasn't started, Madam  
 9 Commissioner, I'm working on the assumption  
 10 that it wasn't a unanimous opinion, and I used  
 11 to always indicate to him that he had to be  
 12 satisfied that everybody was comfortable  
 13 moving forward. So I take it in the absence  
 14 thereof --  
 15 THE COMMISSIONER:  
 16 Q. Okay, so -- but does the indication -- were  
 17 you saying I want everybody to be on side  
 18 about going back to doing this test before you  
 19 proceed?  
 20 MR. TILLEY:  
 21 A. I was certainly saying to him that I need for  
 22 him to feel comfortable before we move forward  
 23 with reactivating this test, so I guess to the  
 24 extent that he's going to feel satisfied is  
 25 when he's got a common agreement to go.

1 about the letter focusing in on the Ventana.  
 2 COFFEY, Q.C.:  
 3 Q. So the idea, though, that -- so you have no  
 4 recollection of Dr. Williams bringing these  
 5 sorts of concerns having been expressed at the  
 6 beginning of December of '05 by the breast  
 7 pathologist in Newfoundland to Dr. Williams  
 8 attention directly, the letter is to him --  
 9 MR. TILLEY:  
 10 A. Yes.  
 11 COFFEY, Q.C.:  
 12 Q. And he's the person who's in charge of, from  
 13 your perspective, dealing with the whole ER/PR  
 14 matter.  
 15 MR. TILLEY:  
 16 A. Uh-hm.  
 17 COFFEY, Q.C.:  
 18 Q. He did not bring that to your attention, like,  
 19 in the sense of any kind of detailed way that  
 20 you can recall?  
 21 MR. TILLEY:  
 22 A. Unfortunately, the best that I can offer is to  
 23 say that I don't recall specifically that  
 24 amount of detail specifically being attributed  
 25 to Dr. Carter.

1 COFFEY, Q.C.:  
 2 Q. And did he ever bring to you the apparent  
 3 significant disagreement and opinion that Dr.  
 4 Carter's letter suggest exists between, at  
 5 least her view, and the technologist end of  
 6 it? I mean, did the fact that this exists and  
 7 he's trying to deal with it, did he bring that  
 8 to your attention in December, because you had  
 9 witnessed this back in August?  
 10 MR. TILLEY:  
 11 A. I certainly did on August 1st.  
 12 COFFEY, Q.C.:  
 13 Q. Yes, so I'm asking you --  
 14 MR. TILLEY:  
 15 A. And there's a couple of telephone logs that  
 16 I'm thinking of, but it may have been back in  
 17 that same point in time. It wouldn't surprise  
 18 me to know that that issue is still there with  
 19 technologists and pathologists, because I was  
 20 certainly aware of some of the issues that  
 21 were going on between them in terms of their  
 22 interaction. I can't say that -- I don't feel  
 23 confident in saying that we talked about that  
 24 letter specifically, but, you know, nor can I  
 25 say Dr. Williams wouldn't have shared that

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1 level or the nature of that issue with me.  
 2 COFFEY, Q.C.:  
 3 Q. Okay. Could we go, please, to Exhibit P-0398.  
 4 Now this is an e-mail from Susan Bonnell,  
 5 Monday, January 30th, 2006, at 3:40 p.m. to  
 6 Dr. Williams, Heather Predham, yourself, and  
 7 Dr. Laing. The subject is "ER/PR", and then  
 8 it's key messages for potential media  
 9 inquiries following Independent story, January  
 10 29th, and there are a number of bullets.  
 11 MR. TILLEY:  
 12 A. Sorry, what was the date of this one again,  
 13 Mr. Coffey?  
 14 COFFEY, Q.C.:  
 15 Q. I apologize, January 30th, 2006.  
 16 MR. TILLEY:  
 17 A. Okay.  
 18 COFFEY, Q.C.:  
 19 Q. We're into the new year.  
 20 MR. TILLEY:  
 21 A. So there was an Independent story on the 29th?  
 22 COFFEY, Q.C.:  
 23 Q. The 29th, apparently.  
 24 MR. TILLEY:  
 25 A. Okay.

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1 COFFEY, Q.C.:  
 2 Q. And that story occasioned Ms. Bonnell  
 3 apparently to write this document that's  
 4 almost a page long, and she concludes it by  
 5 saying, "We have had only one inquiry from CBC  
 6 Radio, Mark Quinn. No follow up to date. I  
 7 can certainly give him a call, but I'm  
 8 wondering if I'm an appropriate spokesperson",  
 9 and it's from herself. Now the idea of key  
 10 messages for potential media inquiries  
 11 following Independent story, January 29th,  
 12 what was Eastern Health's position vis a vis  
 13 whether you'd even comment at that point?  
 14 MR. TILLEY:  
 15 A. I don't think we were into any position which  
 16 would say we wouldn't comment on inquiries  
 17 coming through at that point.  
 18 COFFEY, Q.C.:  
 19 Q. If we could look, please, at Exhibit P-0400.  
 20 Now here at the bottom of the page is, in  
 21 fact, Susan Bonnell's e-mail we just looked  
 22 at.  
 23 MR. TILLEY:  
 24 A. Uh-hm.  
 25 COFFEY, Q.C.:

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1 Q. And apparently Heather Predham on the same day  
 2 wrote to all of the individuals involved in  
 3 the earlier e-mail and said, "Nancy and I have  
 4 had a look. Our comments are below", and if  
 5 you'll look down below in the text, she's  
 6 inserted comments in it.  
 7 MR. TILLEY:  
 8 A. Okay.  
 9 COFFEY, Q.C.:  
 10 Q. But you that day at 5:32 p.m. at the top of  
 11 the page sent an e-mail to Susan Bonnell. You  
 12 said, "Will the term "panelling" be  
 13 understood". I take it you had read the key  
 14 messages and expressed concern about the idea  
 15 of the usage of the word "panelling"?  
 16 MR. TILLEY:  
 17 A. Yes, I guess so.  
 18 COFFEY, Q.C.:  
 19 Q. Which had to do with the physician review  
 20 panel.  
 21 MR. TILLEY:  
 22 A. Okay.  
 23 COFFEY, Q.C.:  
 24 Q. I presume. Is that what it would be, you  
 25 think?

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1 MR. TILLEY:  
 2 A. I'm thinking, yes.  
 3 COFFEY, Q.C.:  
 4 Q. And with respect to this, these key messages  
 5 for potential media inquiries, I take it then  
 6 that all the individuals involved here,  
 7 yourself, Dr. Williams, Heather Predham, Dr.  
 8 Laing and Susan Bonnell, all understood that  
 9 there might be media interest in this.  
 10 MR. TILLEY:  
 11 A. Yes.  
 12 COFFEY, Q.C.:  
 13 Q. And if there's media interest, then presumably  
 14 there might be public interest at large. And  
 15 you're nodding "yes".  
 16 MR. TILLEY:  
 17 A. Uh-hm.  
 18 COFFEY, Q.C.:  
 19 Q. Thank you. And Ms. Bonnell has gone through  
 20 the trouble of typing all this out and  
 21 gathering peoples input and you're looking for  
 22 clarity in it, "panelling".  
 23 MR. TILLEY:  
 24 A. Uh-hm.  
 25 COFFEY, Q.C.:

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1 Q. Again, the same topic arises at the end of  
 2 January of '06, why not just simply put it up  
 3 on your website, satisfy yourself as to what's  
 4 there and send it around to all the media and  
 5 put it up.  
 6 MR. TILLEY:  
 7 A. Well, looking back at it from now and focusing  
 8 solely in on it, it's a good question. I can  
 9 say to you, at the time I'm not sure anybody  
 10 had thought about that as an option, not  
 11 intentionally, just hadn't thought about it.  
 12 COFFEY, Q.C.:  
 13 Q. And if we could, when we look at the bottom of  
 14 that exhibit, because if you recall, I said to  
 15 you that, pointed out to you that Ms. Predham  
 16 had pointed out, "our comments are below".  
 17 And if you actually read the text carefully,  
 18 there are certain comments added by her. But  
 19 here at the very end, it's been inserted,  
 20 "Susan, is this something for you to say to  
 21 the media or to hand out? If it's something  
 22 for you to use, it's fine, but if it's a  
 23 handout, it starts of a bit abruptly, I  
 24 think". So, suggesting that, in fact, at  
 25 least it had crossed Ms. Predham's mind that

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1 Ms. Bonnell might not only--it might not only  
 2 be used to speak, but could, in fact, be  
 3 handed out as a -  
 4 MR. TILLEY:  
 5 A. Yes.  
 6 COFFEY, Q.C.:  
 7 Q. - hand out. So, someone at least thought  
 8 that--were you aware--so, obviously you  
 9 weren't aware or you don't recall anyway.  
 10 MR. TILLEY:  
 11 A. That we would hand it -  
 12 COFFEY, Q.C.:  
 13 Q. Yes.  
 14 MR. TILLEY:  
 15 A. - out to the media. The question you asked  
 16 earlier is why didn't we put it in the  
 17 website.  
 18 COFFEY, Q.C.:  
 19 Q. Yes, or pass it out. I prefaced it by saying  
 20 pass -  
 21 MR. TILLEY:  
 22 A. To my knowledge that hadn't been suggested,  
 23 but I guess, it's sort of a reflection of  
 24 having the benefit of hindsight.  
 25 COFFEY, Q.C.:

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1 Q. If we could bring up, please, Exhibit P-0165.  
 2 Now again, I just use this as a reference  
 3 point really, Mr. Tilley, as I appreciate it  
 4 was neither sent to you, nor originated from  
 5 you, but--the second page of it--this is a  
 6 letter, page two of this, Mr. Tilley, is a  
 7 letter dated February 1, 2006 from Dr.  
 8 Banerjee to John Ottenheimer, as Minister.  
 9 And it's "Re: Laboratory Medicine Specialist,  
 10 Pathologists in Newfoundland". And Dr.  
 11 Banerjee makes the case for improving the  
 12 working conditions. And from his perspective,  
 13 the acute need to improve the employment  
 14 conditions for pathologists. You can take  
 15 your time and have a look at it, but -  
 16 MR. TILLEY:  
 17 A. Okay, if you don't mind.  
 18 COFFEY, Q.C.:  
 19 Q. You go right ahead. And Commissioner, you, of  
 20 course, we've seen this here before.  
 21 MR. TILLEY:  
 22 A. Okay.  
 23 COFFEY, Q.C.:  
 24 Q. So, Mr. Tilley, in terms of--and Dr. Banerjee  
 25 here is writing on letterhead of the Canadian

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1 Association of Pathologists.  
 2 MR. TILLEY:  
 3 A. Uh-hm.  
 4 COFFEY, Q.C.:  
 5 Q. Okay. Let me just scroll up the page so you  
 6 can see it here. There you are. Now, in  
 7 terms of this whole issue about recruiting of  
 8 pathologists, their pay levels and so on, this  
 9 is February of '06. As the CEO of Eastern  
 10 Health and you had been the CEO of the Health  
 11 Care Corporation, what, if anything, did you  
 12 know about that whole issue? How aware were  
 13 you of it? The issue of getting better pay  
 14 for these individuals.  
 15 MR. TILLEY:  
 16 A. Yes. Well, I was certainly aware of it. I'm  
 17 not sure I was as acutely aware of it during  
 18 Mr. Ottenheimer's day, but I certainly  
 19 remember it in Mr. Osborne's day. I have it  
 20 referenced in a number of issues that I had  
 21 spoken to the deputy minister about in a  
 22 meeting. I'm not sure exactly what date that  
 23 was. Also in the summer of 2005 one of the  
 24 things that I noted was the issue of  
 25 pathologist turnover.

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1 COFFEY, Q.C.:

2 Q. When the ER/PR matter came up -

3 MR. TILLEY:

4 A. That's correct.

5 COFFEY, Q.C.:

6 Q. - that's one of the -

7 MR. TILLEY:

8 A. Right.

9 COFFEY, Q.C.:

10 Q. One aspect of this was the turnover issue.

11 MR. TILLEY:

12 A. It had been referenced that the organization

13 had experienced a lot of turnover amongst both

14 oncologists and pathologists. There was a

15 situation that we were dealing with at the

16 time. I think it had to do with our

17 pharmacists and the private sector had

18 increased the salaries for pharmacists to such

19 an extent that it was hard for a pharmacist to

20 turn it down, despite the fact that many of

21 these pharmacists were trained in hospital

22 environments and that's where they preferred

23 to work. I was taking some criticism from

24 some treasury board officials about the fact

25 that we kept bringing up different

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1 professional groups problems. And

2 unfortunately when that happens, it's usually

3 something that we can't anticipate.

4 Pharmacists is one of them, our pathologists

5 were another one where we only had less than

6 half a dozen and Ontario were looking--I'm

7 sorry, New Brunswick had just recruited two of

8 ours. So, we were making some of these

9 decisions on the fly. Anyway, the point of my

10 setting that context is that I remember

11 somebody asking me, like, when is this going

12 to stop? And I remember saying, it may have

13 been to the minister, that, you know, I have

14 another issue out there with pathologists.

15 COFFEY, Q.C.:

16 Q. "When is this going to stop" was said in the

17 context of the pharmacists?

18 MR. TILLEY:

19 A. Well, bringing specific disciplines to -

20 COFFEY, Q.C.:

21 Q. Okay.

22 MR. TILLEY:

23 A. Because we had, over the years, had nurses

24 that we had to put in some interim steps to

25 try to balance off this compensation that was

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1 available elsewhere in the country to avoid an

2 exit. So, you know, I certainly -

3 COFFEY, Q.C.:

4 Q. Sorry, I interrupted you, you said, he asked,

5 somebody, the minister perhaps at the time

6 said, when is this going to stop?

7 MR. TILLEY:

8 A. Yes, in terms of, you know, when are you going

9 to stop bringing these issues forward. I

10 mean, you got to start planning for these

11 issues more in advance. And the reality in

12 many of the situations that we faced, some we

13 could see it coming and others because of the

14 few numbers that we had, resignation or an

15 exodus, just even a few numbers could have a

16 major impact. It really was not able to be

17 predicted. Now, the issue of compensation for

18 physicians were not issues that the Health

19 Authorities had direct influence over.

20 COFFEY, Q.C.:

21 Q. Perhaps you could explain that to the

22 Commissioner because that may, for somebody on

23 the outside, that may not be readily apparent.

24 MR. TILLEY:

25 A. Okay. Well, all of the compensation for staff

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1 and physicians were led by the Provincial

2 Treasury Board. In the collective bargaining

3 process for staff, they would always look to

4 have a representative from the system as a

5 part of the bargaining team, but that was more

6 to help avoid any pitfalls in what might be

7 negotiated in the language in a collective

8 agreement that might not be actually able to

9 be operationalized. Still with the bargaining

10 unit people, when it got time to talk about

11 salaries, those that were representing the

12 Regional Health Authorities very rarely, if at

13 all, were involved in discussions about

14 compensation. Over to the physician side, the

15 physicians, most of the physicians in the

16 province were fee for service. There were

17 some that were salaried and pathologists were

18 amongst those, but their compensation, as

19 well, was decided and set by the province.

20 When we were speaking to the pathology issue

21 and talking about the importance of getting

22 that issue addressed, I recall the decision at

23 the time was made, let's do a study of the

24 need for pathologists in the province as a

25 whole. You know that was a process of getting



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1 more information which was bona fide. You  
 2 know, that was a process of getting more  
 3 information which was bona fide, but  
 4 unfortunately it lent itself to the issue  
 5 still being outstanding and therefore, the  
 6 risk that our pathologists were going to be  
 7 attracted by other parts of the country where  
 8 these positions were clearly in demand.  
 9 THE COMMISSIONER:  
 10 Q. When you say that the--when you talk about the  
 11 government negotiating, I presume that's  
 12 Treasury Board.  
 13 MR. TILLEY:  
 14 A. Yes.  
 15 THE COMMISSIONER:  
 16 Q. Treasury Board would negotiate in terms of the  
 17 physicians. Would they, at the same time as  
 18 they're negotiating with the physicians who  
 19 are fee for service physician, negotiate in  
 20 respect of the salary for those who weren't or  
 21 were they separate bargaining processes?  
 22 MR. TILLEY:  
 23 A. Well, my understanding is they're together and  
 24 I should say--I shouldn't exclude the fact  
 25 that there are physicians that work within the

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1 Department of Health that oversee the  
 2 physician salary budget. And I'd be very  
 3 surprised if they weren't involved with  
 4 Treasury Board in these deliberations.  
 5 COFFEY, Q.C.:  
 6 Q. The Treasury Board would have their own  
 7 physicians, own staff physicians, as it were,  
 8 in the Department of Health along -  
 9 MR. TILLEY:  
 10 A. Correct.  
 11 COFFEY, Q.C.:  
 12 Q. - to assist.  
 13 MR. TILLEY:  
 14 A. Yes, that would administrative positions  
 15 within government that would support the  
 16 compensation process.  
 17 COFFEY, Q.C.:  
 18 Q. In terms of the Commissioner's question about,  
 19 well, the bargaining unit or bargaining  
 20 organization on behalf of the physicians,  
 21 salaried or fee for service, was the NLMA?  
 22 MR. TILLEY:  
 23 A. Right. Yes, my understanding is that they  
 24 both go together. I mean, they may split them  
 25 out in terms of bargaining strategy, but the

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1 Newfoundland and Labrador Medical Association  
 2 would be the body that would be representing  
 3 the physicians in those discussions.  
 4 COFFEY, Q.C.:  
 5 Q. From your perspective then as CEO, okay, how  
 6 much influence, if any, did you have--you got--  
 7 you're employing the actual pathologists who  
 8 feel and voice the opinion and views that  
 9 they're underpaid and, in fact, overworked  
 10 because the positions are not--all positions  
 11 are not filled. And yet, you're not able to  
 12 respond financially to them.  
 13 MR. TILLEY:  
 14 A. Uh-hm.  
 15 COFFEY, Q.C.:  
 16 Q. And as well, if I could, do you know if Dr.  
 17 Williams ever got involved in lobbying for or  
 18 organizing on behalf of the pathologists in  
 19 the sense of putting forward or trying to  
 20 advance their position?  
 21 MR. TILLEY:  
 22 A. Dr. Williams, I recall, did have discussions  
 23 with the Department of Health. I'm not sure  
 24 in what manner, to stress the need to have  
 25 this issue resolved. As I was skimming

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1 through my notes in the past couple of weeks,  
 2 again I reference the meeting that I had with  
 3 Mr. Abbott and stress the importance of  
 4 getting that issue resolved quickly.  
 5 COFFEY, Q.C.:  
 6 Q. So, despite the fact that your organization  
 7 actually employed these salaried physicians,  
 8 the pathologists, you know, that worked for  
 9 Eastern Health or the Health Care Corporation  
 10 for that matter before it, you had no  
 11 influence or control over the amount of money  
 12 that you could pay them?  
 13 MR. TILLEY:  
 14 A. That's correct. And even if I were to refer  
 15 back to the two cases I alluded to earlier,  
 16 being the pharmacists, there was an occasion  
 17 with nurses and there was another with cardio  
 18 perfusionists. We took some action, but we  
 19 did so with the blessing of government. The  
 20 Department of Health--because our greatest  
 21 concern is that we would do something to solve  
 22 our issue, but in the end, all we'd be doing  
 23 is transferring our problem to one of the  
 24 regional health authorities or if anything,  
 25 making their problem worse because they would

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1 see a migration from one to the other. So,  
 2 that's why we would try to do more on a  
 3 provincial strategy.  
 4 COFFEY, Q.C.:  
 5 Q. In terms, then, of addressing the pathologists  
 6 voiced concerns, other than urging Treasury  
 7 Board and the deputy minister of health and  
 8 the minister of health to do something about  
 9 it, you yourself couldn't do, I take it, much  
 10 more?  
 11 MR. TILLEY:  
 12 A. No, but I seem to recall that we had the  
 13 support of the deputy minister.  
 14 COFFEY, Q.C.:  
 15 Q. Yes. That would be fair. And I think that  
 16 will come out before the Commissioner.  
 17 MR. TILLEY:  
 18 A. Okay.  
 19 COFFEY, Q.C.:  
 20 Q. So, the resistance such as it was wasn't from  
 21 the Department of Health dealing with the  
 22 pathologists concerns. It was with whom?  
 23 MR. TILLEY:  
 24 A. It would have been within the Treasury Board.  
 25 COFFEY, Q.C.:

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1 Q. And if we could please, Exhibit P-0403. Now,  
 2 this is an e-mail from Heather Predham,  
 3 Wednesday, March 15, 2006, 3:42 p.m. to Dr.  
 4 Williams, Susan Bonnell, Pam Elliott, Patricia  
 5 Pilgrim, Terry Gulliver, Donald Cook. I'll  
 6 refer to him as Nash Denic, Sharon Smith and  
 7 George Tilley and it's carboned to some  
 8 others. The subject and "ATIPP Request". And  
 9 it says, "hello everyone, I've just received  
 10 the ATIPP request from Mark Quinn at CBC for  
 11 'all reports, memos, letters, briefing notes,  
 12 and e-mails at the Eastern Regional Health  
 13 Authority between May 1, 2005 and the present  
 14 regarding hormone receptor tests for people  
 15 with breast cancer". And she goes to say a  
 16 couple of things, "(1), I can't handle this  
 17 request. Pam and I had chatted about this  
 18 already. Since I've been so involved, we  
 19 certainly don't want any perception of bias in  
 20 completing the request. I'm not sure who will  
 21 co-ordinate the request and we'll have to  
 22 determine that tomorrow, but we will let you  
 23 know. And (2) the clock has started to tick,  
 24 we have 30 calendar days to complete the  
 25 request" and it goes on from there. She

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1 concludes with "we have to gather all the  
 2 information together to review it and see what  
 3 information must be excluded from release.  
 4 The two biggest issues will, of course, be the  
 5 personal information and information  
 6 pertaining to a quality review and, therefore,  
 7 protected under the Evidence Act. The person  
 8 co-ordinating this release of information will  
 9 get us all together in the very near future.  
 10 If you have any questions, let me know.  
 11 Heather".  
 12 So, do you recall or do you have any  
 13 recollection of why--because you've indicated  
 14 that there would be an ATIPP co-ordinator or  
 15 response person. And, in fact, Ms. Predham  
 16 points out "the person co-ordinating this  
 17 release of information will get us all  
 18 together in the very near future".  
 19 MR. TILLEY:  
 20 A. Uh-hm.  
 21 COFFEY, Q.C.:  
 22 Q. Do you know if there had been any ATIPP  
 23 requests before this, at all, to Eastern  
 24 Health?  
 25 MR. TILLEY:

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1 A. The one that we spoke of yesterday -  
 2 COFFEY, Q.C.:  
 3 Q. That was the department -  
 4 MR. TILLEY:  
 5 A. - that was for the Department of Health.  
 6 There's nothing specifically that comes to  
 7 mind. I think when the ATIPP legislation came  
 8 in place, there was, I believe, an expectation  
 9 that each organization would designate  
 10 somebody who would, sort of, co-ordinate these  
 11 issues. And I'm thinking that that would have  
 12 been that person.  
 13 COFFEY, Q.C.:  
 14 Q. Now, as to--if we could look please at Exhibit  
 15 P-0404. Ms. Predham, the next day at 8:08  
 16 a.m. sends an e-mail to the same individuals,  
 17 but points out, she says, "Hi! I forgot to  
 18 say that your search would include documents  
 19 from May 1, 2005 to March 10, 2006. Sharon,  
 20 would you be able to pass this onto the  
 21 oncologist in your area? Heather". My  
 22 question on that is this, was Heather the one  
 23 actually directing the parameters of  
 24 responding to this because she's spelling out--  
 25 she says--"your search would include

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1 documents" and she is, in fact, if you look at  
 2 the e-mail that had been sent the day before,  
 3 she says--she's, in effect, instructing all of  
 4 you to do a search of your computers and e-  
 5 mails using certain key words. So, -  
 6 MR. TILLEY:  
 7 A. Is she co-ordinating this as opposed to  
 8 somebody else?  
 9 COFFEY, Q.C.:  
 10 Q. No, well, right here she says -  
 11 MR. TILLEY:  
 12 A. Yes.  
 13 COFFEY, Q.C.:  
 14 Q. - in paragraph 2 you can see it.  
 15 MR. TILLEY:  
 16 A. Yeah.  
 17 COFFEY, Q.C.:  
 18 Q. "What I need for all of you to is to start  
 19 gathering all the information that you have  
 20 re: ER/PR. Anyone else in your area involved  
 21 in this issue would also have to be notified  
 22 and start gathering information. This  
 23 includes doing a search of your computers and  
 24 e-mails using the key words ER/PR or estrogen,  
 25 et cetera. If you are unsure on how to do

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1 this search, let me know". So she, in effect,  
 2 seems, at this point, to be at least starting  
 3 the response.  
 4 MR. TILLEY:  
 5 A. Yes.  
 6 COFFEY, Q.C.:  
 7 Q. And she's asking Sharon in the e-mail the next  
 8 morning to pass this onto the oncologists.  
 9 MR. TILLEY:  
 10 A. Uh-hm.  
 11 COFFEY, Q.C.:  
 12 Q. Now, at the time, what was the state of  
 13 readiness, if at all, of your organization to  
 14 deal with these requests?  
 15 MR. TILLEY:  
 16 A. Well that would have been within the quality  
 17 initiatives department and I -  
 18 COFFEY, Q.C.:  
 19 Q. Where Heather was?  
 20 MR. TILLEY:  
 21 A. That's correct.  
 22 COFFEY, Q.C.:  
 23 Q. Okay.  
 24 MR. TILLEY:  
 25 A. And I can't speak to that level of detail.

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1 THE COMMISSIONER:  
 2 Q. So that was the department that would handle  
 3 those kinds of requests, was it?  
 4 MR. TILLEY:  
 5 A. I think there was a person designated there,  
 6 that's my recollection.  
 7 THE COMMISSIONER:  
 8 Q. But then when the request was being replied  
 9 to, did you not have a role?  
 10 MR. TILLEY:  
 11 A. In terms of providing information?  
 12 THE COMMISSIONER:  
 13 Q. When the information was gathered together for  
 14 ATIPPA requests, did you have a role?  
 15 MR. TILLEY:  
 16 A. Not unless it was directed to me, but I'm  
 17 sensing here it was directed to somebody other  
 18 than me, but I can't say specifically, but my  
 19 role would be, if it was directed to me, I  
 20 would have forwarded it out to those people  
 21 who are responsible for it. They would  
 22 prepare the necessary documentation and then I  
 23 would write back, if in fact, that was the  
 24 route it had come in.  
 25 COFFEY, Q.C.:

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1 Q. If we could, to assist you in answering that  
 2 question I just posed, Exhibit P-0405. Again,  
 3 it's the same series of e-mails, but this is  
 4 an extra one at the top of the page. Patricia  
 5 Pilgrim on Friday, March 17, 2006, 11:01 a.m  
 6 has written to the whole group as it were  
 7 including yourself about the ATIPP requests  
 8 and she says, "in my opinion" that's  
 9 Patricia's--"this has to stay with quality for  
 10 now. We cannot have individual programs and  
 11 departments taking the lead and responding to  
 12 these requests. If it means we have to put an  
 13 extra resource in quality until we get our  
 14 permanent structure worked out, well, that is  
 15 what we have to do. Some "ONE" person has co-  
 16 ordinate this. My thoughts for what they are  
 17 worth. Signed, Pat".  
 18 So, I take it that at the time, this  
 19 suggests that Ms. Pilgrim's view was that you,  
 20 as an organization, had not yet got your  
 21 permanent structure worked out as to how this  
 22 would be done?  
 23 MR. TILLEY:  
 24 A. That appears to be implied there.  
 25 COFFEY, Q.C.:

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1 Q. Do you know if, in fact, you ever did conduct  
 2 such a search as Heather was directing you to?  
 3 MR. TILLEY:  
 4 A. I'm looking through my notes, but can't find  
 5 it. There was a telephone note in my log  
 6 which was from Heather. By the look on your  
 7 face, I'm thinking that that might be the one  
 8 that's related.  
 9 COFFEY, Q.C.:  
 10 Q. Actually, if we go to P-0406 actually is the  
 11 next -  
 12 MR. TILLEY:  
 13 A. P-406.  
 14 COFFEY, Q.C.:  
 15 Q. - exhibit up. And I think, in fact Mr.  
 16 Tilley, if we scroll down to page three of  
 17 this -  
 18 THE COMMISSIONER:  
 19 Q. Mr. Tilley, those are in Volume 2.  
 20 MR. TILLEY:  
 21 A. Okay, thank you, Madam Commissioner. Yes,  
 22 that's the one I was thinking.  
 23 COFFEY, Q.C.:  
 24 Q. P-0406, page 3, Commissioner.  
 25 THE COMMISSIONER:

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1 Q. Thank you.  
 2 MR. TILLEY:  
 3 A. Mr. Coffey, what was the late date we had for  
 4 this one. That was some time later, was it?  
 5 COFFEY, Q.C.:  
 6 Q. I'm sorry, well, those e-mail exchanges  
 7 involving this ATIPP request began on March 15  
 8 and went on through the 17. And this is the -  
 9 MR. TILLEY:  
 10 A. In any event -  
 11 COFFEY, Q.C.:  
 12 Q. Oh, I'm sorry, you're trying to get the date  
 13 here?  
 14 MR. TILLEY:  
 15 A. Yes. It's probably not significant for the  
 16 purposes of this.  
 17 COFFEY, Q.C.:  
 18 Q. Well, it's difficult to tell depending on  
 19 which page is which. Now, this on--in fact,  
 20 the page before this, and if you just look at  
 21 the top right-hand side of page two of exhibit  
 22 P-0406, do you see the right-hand side is  
 23 right here, volume 46, page 239, very top of  
 24 the page.  
 25 MR. TILLEY:

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1 A. Okay, now I have it.  
 2 COFFEY, Q.C.:  
 3 Q. Yes, do you see that.  
 4 MR. TILLEY:  
 5 A. Yes.  
 6 COFFEY, Q.C.:  
 7 Q. Of course, much of this is redacted because it  
 8 has nothing to do with the Commission in this  
 9 matter at all, but when you go to the next  
 10 page, which I'll just flip through here, page  
 11 3 of the exhibit, this is the next volume 46,  
 12 page 240, which is the way we received it from  
 13 counsel for Eastern Health, suggesting I think  
 14 that this note was probably dated May 12th as  
 15 best we can tell, I mean, sometimes you didn't  
 16 date all your entries.  
 17 THE COMMISSIONER:  
 18 Q. Oh now, Mr. Simmons is on his feet.  
 19 MR. SIMMONS:  
 20 Q. Excuse me, if you go back one more page,  
 21 you'll find a March date and from the look at  
 22 the way this is redacted, I'm guessing that  
 23 that May 12th date is part of a narrative,  
 24 rather than and if we go back (inaudible) and  
 25 we have the original book here if we need to

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1 confirm that.  
 2 THE COMMISSIONER:  
 3 Q. So we have March 18th, March 21st and then we  
 4 get May and then the date after that is also -  
 5 COFFEY, Q.C.:  
 6 Q. Yeah, now Mr. Simmons' point, is I take it  
 7 this might be just text and not the actual--  
 8 and that's a point well taken.  
 9 THE COMMISSIONER:  
 10 Q. Yes, and I have a suggestion where we can  
 11 resolve this, the afternoon break, Mr. Simmons  
 12 can pull out the original documents and we can  
 13 determine what it is. Fifteen minutes or  
 14 whatever you need to find the document.  
 15 COFFEY, Q.C.:  
 16 Q. Thank you, Mr. Simmons, thank you,  
 17 Commissioner.  
 18 (RECESS)  
 19 THE COMMISSIONER:  
 20 Q. Please be seated. Mr. Coffey.  
 21 COFFEY, Q.C.:  
 22 Q. Yes, Commissioner, we discussed the issue  
 23 about the dates and so on. I think whatever  
 24 the date of the particular entry might be, I  
 25 think I gather from Mr. Tilley that exhibit P-

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1 0406, page 3, whatever the actual date that  
 2 that note was made, will be of some assistance  
 3 to him to answer the question generally, I  
 4 think he -  
 5 THE COMMISSIONER:  
 6 Q. Okay.  
 7 MR. TILLEY:  
 8 A. This particular phone log, Madam Commissioner,  
 9 is from Heather Predham and it is quite unique  
 10 that somebody would call me about spending  
 11 that amount of money, but my recollection was  
 12 that CBC had indicated that it didn't have a  
 13 lot of money and if we could provide it free  
 14 of charge. So the question was being posed to  
 15 me was whether it would be seen as an obstacle  
 16 to say to CBC, no, we're going to stand the  
 17 ground and you have to pay the same amount.  
 18 So you can see, I'm not sure what ASR  
 19 represents, there's a little arrow and then it  
 20 says "costs arrow down" which is my way of  
 21 saying reduce cost and listing out the  
 22 options. Well, if we can reduce the amount  
 23 requested or summarizing give them headings.  
 24 But you can see the last point, I think, which  
 25 is the one that I recalled and the reason I

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1 wanted to speak to it today, was just the  
 2 importance of having all info.  
 3 COFFEY, Q.C.:  
 4 Q. And you did have that -  
 5 MR. TILLEY:  
 6 A. Yes.  
 7 COFFEY, Q.C.:  
 8 Q. Importance of having all info and you've  
 9 underlined all info?  
 10 MR. TILLEY:  
 11 A. Yes.  
 12 COFFEY, Q.C.:  
 13 Q. While we're on, while we have this P-0406 in  
 14 front of us, page one, please, Registrar. Mr.  
 15 Tilley, happily this part of the log is dated  
 16 March 21, '06, bottom of the page, Bob  
 17 Williams. I think it's Dan Fontaine there,  
 18 personal tests, press release, referrals and  
 19 shortage of pathologist compensation. So at  
 20 that point in time -  
 21 MR. TILLEY:  
 22 A. We were talking about it then for sure.  
 23 COFFEY, Q.C.:  
 24 Q. And I take it there were some, at one point,  
 25 if not more than one point, there was an issue

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1 involving Dan Fontaine, who is a pathologist,  
 2 and compensation issues.  
 3 MR. TILLEY:  
 4 A. Yes. And he was, if I remember this, either a  
 5 Newfoundlander or an Atlantic Canadian and was  
 6 certainly seen as an individual that we were  
 7 endeavouring to retain.  
 8 COFFEY, Q.C.:  
 9 Q. And, sir, if we could look, please,  
 10 Commissioner and Registrar, at P-0407. Now  
 11 here there is an e-mail from Heather Predham,  
 12 Monday, March 27th, 2006, 11:22 a.m. It's to  
 13 Robert Williams, Susan Bonnell, Pam Elliott,  
 14 Patricia Pilgrim, Terry Gulliver, Don Cook,  
 15 Nash Denic, Sharon Smith and yourself, Mr.  
 16 Tilley and it's carboned to a number of other  
 17 individuals who I gather work in QI. And the  
 18 subject is Re: ATIPP request. She says, "Hi,  
 19 everyone, Deanne Emberley will be co-  
 20 ordinating this request right now. We are  
 21 currently on day nine, so if you could forward  
 22 your information to Deanne ASAP, we will  
 23 greatly appreciate it. I know the corporate  
 24 communication's information is en route. In  
 25 speaking with Dan Boone, we do have an

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1 additional exception, anything Dan was present  
 2 for could be identified as being solicitor  
 3 privilege. Please let Deanne know ASAP when  
 4 you anticipate getting the information to her,  
 5 when it is reviewed, exempted information  
 6 identified, she will let you all know the  
 7 information that must be released. If you  
 8 have any questions, don't hesitate to call.  
 9 Heather." So, Mr. Tilley, in terms of, now  
 10 this response to an ATIPP request, from your  
 11 perspective as a CEO, who was in charge of  
 12 deciding ultimately, within your organization,  
 13 what was redacted and what wasn't?  
 14 MR. TILLEY:  
 15 A. Well, I would leave it to the Quality  
 16 Initiatives Department because I really  
 17 physically was not able to look at these  
 18 things and give it the attention that it  
 19 probably would deserve and a final sign off.  
 20 COFFEY, Q.C.:  
 21 Q. Now, sir -  
 22 THE COMMISSIONER:  
 23 Q. Do know if that department had training in  
 24 ATIPP?  
 25 MR. TILLEY:

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1 A. It rings a bell, Madam Commissioner, that when  
 2 they introduced that legislation, there was  
 3 some training provided. I would be surprised  
 4 if we did not participate in that.

5 THE COMMISSIONER:  
 6 Q. Okay, and Ms. Predham would presumably know?  
 7 MR. TILLEY:  
 8 A. Not sure exactly who, but there may have been  
 9 one or more than one recognizing the size of  
 10 the organization.

11 THE COMMISSIONER:  
 12 Q. Okay, thank you.

13 COFFEY, Q.C.:  
 14 Q. Now, in terms of proceeding here, Exhibit P-  
 15 0199 please? Now in particular page two  
 16 please? Now, Mr. Tilley, bear with me, this  
 17 is a letter of May 16th, 2006 from  
 18 Newfoundland and Labrador Medical Association,  
 19 it's addressed to Tom Osborne, Minister of  
 20 Health and Loyola Sullivan, Minister of  
 21 Finance. "Dear Minister, re: provision of  
 22 pathology services in Newfoundland and  
 23 Labrador." And it goes on, watch me scroll  
 24 through here, for some five pages, we're into  
 25 the fifth page and this is a letter setting

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1 out, I gather, the views of Dr. Denic, the  
 2 president of the Newfoundland Association of  
 3 Pathologists and Rob Ritter, the executive  
 4 director of the NLMA about the pathology  
 5 compensation issues. And I note that no one  
 6 from your organization or any of the other  
 7 health authorities is mentioned, in terms of  
 8 being copied on this?

9 MR. TILLEY:  
 10 A. No.

11 COFFEY, Q.C.:  
 12 Q. So that, I take it, reflects a practice here  
 13 that they wouldn't involve the CEOs.

14 MR. TILLEY:  
 15 A. That's right.

16 COFFEY, Q.C.:  
 17 Q. Despite the fact that your organizations are  
 18 employing all the pathologists.

19 MR. TILLEY:  
 20 A. Uh-hm.

21 COFFEY, Q.C.:  
 22 Q. Would you be kept apprised of what was going  
 23 on with this?

24 MR. TILLEY:  
 25 A. The deputy minister had initiated regular

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1 conference calls and that would have been one  
 2 means that we could have gotten updated on it,  
 3 but we would have been on the sidelines.

4 COFFEY, Q.C.:  
 5 Q. Okay, because in this context on the bottom of  
 6 the fourth page of the letter that has been  
 7 co-signed by Dr. Denic and Mr. Ritter, they  
 8 have written, "It is our responsibility to now  
 9 forewarn you that the path your government has  
 10 recently decided to embark upon will have  
 11 serious consequences and risks. It is our  
 12 opinion that the stability and breakdown of  
 13 medical care in the province rests in the  
 14 balance." And one can look through the entire  
 15 letter to see the context in which that was  
 16 being said, but that kind of, the fact that  
 17 these two gentlemen were painting such a  
 18 caution to the two ministers of the  
 19 government, there was no mechanism in place, I  
 20 take it, to ensure that this was brought to  
 21 your attention? If it was, it would have been  
 22 more by being brought up in a route telephone  
 23 call.

24 MR. TILLEY:  
 25 A. That's correct. Being in the organization, I

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1 certainly would pick up the frustrations of  
 2 both unionized, non-unionized, management and  
 3 physicians in terms of how the local  
 4 compensation compared to the rest of the  
 5 country and clearly a lot of frustration, but  
 6 that's certainly very significant.

7 COFFEY, Q.C.:  
 8 Q. But there was, in terms of the mechanism,  
 9 there was nothing in place, I take it, with  
 10 the Department of Health that would ensure  
 11 that the CEOs are given a heads up in terms of  
 12 there's trouble brewing here, potentially.

13 MR. TILLEY:  
 14 A. There's certainly not a formal mechanism other  
 15 than the informal processes of information  
 16 sharing that was put in place by the then  
 17 deputy minister.

18 COFFEY, Q.C.:  
 19 Q. Okay. If we could, please, Exhibit P-0409.  
 20 Now, this is an e-mail from Heather Predham,  
 21 Tuesday, May 16th, 2006 at 1:57 p.m. It's to  
 22 yourself and Robert Williams and carboned to  
 23 some other individuals. The subject is CBC  
 24 request for ER/PR info. And in light of that  
 25 other date in the notes may in fact be a

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1 correct one.  
 2 MR. TILLEY:  
 3 A. Yes.  
 4 COFFEY, Q.C.:  
 5 Q. May 12th, I believe. But here it says,  
 6 Heather says, "I need direction from both of  
 7 you on how to proceed with this request." And  
 8 the "both" in this context is George Tilley  
 9 and Robert Williams. "Deanne spoke with Mark  
 10 Quinn on Friday and explained that we had to  
 11 release all the information as requested and  
 12 that we really couldn't allow him to review  
 13 the information prior to paying for it. He  
 14 was okay with that, but then he wanted to, as  
 15 he is allowed, refine his request so that  
 16 there was no duplication, for example, if  
 17 there were several copies of e-mails that  
 18 formed a conversation, the final one which had  
 19 all the previous e-mails attached is all that  
 20 is now requested. As well, he does not want  
 21 any articles. He said he could do his own  
 22 search on the internet and find those.  
 23 Anyway, after spending another two hours going  
 24 through the documents, we have reduced the  
 25 amount of paper from 779 sheets to 117 double

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1 sided, which reduces the total cost from  
 2 \$443.00 down to \$270.00, so I need the  
 3 following advice: No. 1, do we increase the  
 4 hours cost by two hours which would increase  
 5 the final cost to \$300.00; No. 2, can we  
 6 provide a copy of selected articles to him,  
 7 free of charge, as a gift. I only ask this  
 8 because I'm concerned of what he will or won't  
 9 find if he does a search on the internet.  
 10 Anyway, thank you for any advice you can give  
 11 us. Heather". And do you recall if you had  
 12 any advice to give or did give any?  
 13 MR. TILLEY:  
 14 A. Well I'm thinking that might have been it  
 15 right there. I'm assuming that's what it was  
 16 because we do have a May date before that that  
 17 could very well have been -  
 18 COFFEY, Q.C.:  
 19 Q. And that date in fact is May what?  
 20 MR. TILLEY:  
 21 A. May 12th on that one.  
 22 COFFEY, Q.C.:  
 23 Q. That's on your handwritten note we just looked  
 24 at.  
 25 MR. TILLEY:

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1 A. Yes, telephone log.  
 2 COFFEY, Q.C.:  
 3 Q. So the idea of giving here, at least according  
 4 to Heather, giving him something free of  
 5 charge as a gift, namely a copy of select  
 6 articles, she couches it in terms of being  
 7 afraid of what Mr. Quinn might or might not  
 8 find himself on the internet, as opposed to  
 9 perhaps charity.  
 10 MR. TILLEY:  
 11 A. In his search of the internet on this issue,  
 12 yes.  
 13 COFFEY, Q.C.:  
 14 Q. And the advice, if any you had, is recorded in  
 15 those notes about -  
 16 MR. TILLEY:  
 17 A. I think that would be the advice, the  
 18 importance of having all information.  
 19 COFFEY, Q.C.:  
 20 Q. Which would mean send him the articles, I take  
 21 it.  
 22 MR. TILLEY:  
 23 A. Right.  
 24 COFFEY, Q.C.:  
 25 Q. Now, sir, could we look please, Registrar, at

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1 P-0167? Now this again is not written to you  
 2 but it's following on a pathology manpower  
 3 crisis, as it is termed here, June 15th, 2006,  
 4 a letter from a Dr. Pollett, who was professor  
 5 and chair of the Discipline of Surgery at  
 6 Memorial University of Newfoundland to, a  
 7 letter to Tom Osborne, Minister of Health and  
 8 it's copied, you can see at the bottom of the  
 9 page, to Dr. Denic and Mr. Ritter. And Dr.  
 10 Pollett says he's writing with respect to the  
 11 current shortage of pathologists in the  
 12 province and he goes on to indicate that they  
 13 are critical members of the health care system  
 14 who are essential to the management of  
 15 patients with surgical diseases, especially  
 16 cancer. And he points out there is currently  
 17 a significant shortage, "much of which relates  
 18 to an inability to be competitive in the  
 19 marketplace for these highly trained  
 20 physicians"--and he's encouraging the  
 21 officials "to take necessary steps to ensure  
 22 that we have a sufficient pathologists well  
 23 into the future"--and says he's available to  
 24 talk about it. So this, again, is following  
 25 up on that earlier correspondence, letters

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1 we've seen -

2 MR. TILLEY:

3 A. From Dr. Denic and Mr. Ritter.

4 COFFEY, Q.C.:

5 Q. Yes. Now on this point, I wanted to ask you

6 about this, Dr. Pollett in Memorial

7 University's medical school, what, if any,

8 interaction did you as CEO have with Memorial

9 University's medical school?

10 MR. TILLEY:

11 A. Well we would have an affiliation agreement

12 that would show how the two organizations

13 connect, it would refer to some positions that

14 we would consider joint. You will recall our

15 discussion about the leadership team of the

16 programs.

17 COFFEY, Q.C.:

18 Q. Yes, the discipline chairs, yes.

19 MR. TILLEY:

20 A. Well, for example, with regards to the

21 clinical chiefs, it would say something to the

22 effect that, you know, both entities would be

23 given an opportunity to provide input into the

24 selection of the clinical chief, but Eastern

25 Health would have the final say in the

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1 selection if there's a disagreement. And

2 referring to the reverse, if there was a

3 clinical--sorry, discipline chair, then both

4 would collaborate, but it talks about joint

5 appointments because many of the physicians,

6 the far majority of all physicians working in

7 St. John's hospitals were also individuals

8 that taught in the academic program and

9 participated in various research activities.

10 But he certainly wasn't signing this letter in

11 his capacity as any official in Eastern

12 Health. He was writing it in his capacity,

13 official capacity with the university.

14 COFFEY, Q.C.:

15 Q. But in terms of your interaction, there's an

16 affiliation agreement, you've described that

17 and how about in terms of what kind of a basis

18 would you have interaction with your--well,

19 who would be your counterpart at Memorial?

20 MR. TILLEY:

21 A. The president of the university.

22 COFFEY, Q.C.:

23 Q. And how much interaction in terms of -

24 MR. TILLEY:

25 A. Very little with the president. Now that had

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1 evolved, the primary liaison occurred between

2 the dean of the Faculty of Medicine and the

3 vice president for Medical Services, both of

4 whom were located in the Health Sciences

5 Centre complex. Historically there was a

6 relationship pre Eastern Health, it may have

7 been midway through Health Care Corporation

8 days, when the CEO linked up with the dean.

9 And that goes back historically when the

10 Janeway was a separate hospital, et cetera, et

11 cetera. But clearly as the Health Care

12 Corporation became an entity and then Eastern

13 Health, the relationships got very different

14 and even in the old agreements, it talked

15 about the chair of the Board of Regions even

16 particularly participating, which was really

17 well beyond its day.

18 COFFEY, Q.C.:

19 Q. I take it then that in your time as CEO of the

20 Health Care Corporation and then of Eastern

21 Health, you would have had little interaction

22 with the dean of medicine?

23 MR. TILLEY:

24 A. The dean, though it occurred to me that in

25 Eastern Health's day we did have the dean as

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1 an ex officio member of the Board or Trustees.

2 COFFEY, Q.C.:

3 Q. Okay.

4 MR. TILLEY:

5 A. Not a -

6 THE COMMISSIONER:

7 Q. In Eastern Health's day or -

8 MR. TILLEY:

9 A. Yeah, in Eastern Health's day.

10 COFFEY, Q.C.:

11 Q. Yes, and in fact, is there something about the

12 fact that he couldn't send a substitute.

13 MR. TILLEY:

14 A. Oh yes, that's correct, that rings a bell.

15 The dean had difficulty attending all board

16 meetings and at one point in time, Dr. Rourke

17 had suggested that he designate a substitute

18 and I had chatted to the board chair about

19 that and she felt that it was important to

20 have continuity, so he either could attend

21 meetings or he couldn't, but he would be

22 entitled to get access to minutes of board

23 meetings.

24 COFFEY, Q.C.:

25 Q. Sure. But in terms of you, as the CEO of the



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1 organization and the dean of medicine, there  
 2 wouldn't be a whole lot of interaction, it  
 3 would be sporadic.  
 4 MR. TILLEY:  
 5 A. On the issues that would require resolution  
 6 would typically be dealt with between the  
 7 vice-president and the dean.  
 8 COFFEY, Q.C.:  
 9 Q. In terms of ER/PR, did you ever have any  
 10 interaction with the medical school or their  
 11 representative, like, you know, as medical  
 12 representatives and ER/PR that you can recall?  
 13 MR. TILLEY:  
 14 A. No, I can't recall.  
 15 COFFEY, Q.C.:  
 16 Q. On that point, Eastern Health, by this point  
 17 in time, the time we're concerned about, does  
 18 Eastern Health employ any epidemiologists?  
 19 MR. TILLEY:  
 20 A. I'm trying to organize in my mind, there were  
 21 epidemiologists around, but I think they were  
 22 employed by the university, but thought that  
 23 we could access them if in fact that was an  
 24 issue.  
 25 COFFEY, Q.C.:

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1 Q. And in term of, though, statistical analysis  
 2 or that sort of thing -  
 3 MR. TILLEY:  
 4 A. I can remember a discussion with Dr. Williams  
 5 at one point when he took over the quality  
 6 portfolio in Eastern Health, he had made a  
 7 suggestion, in fact, that we probably would  
 8 benefit from having an epidemiologist on  
 9 board.  
 10 COFFEY, Q.C.:  
 11 Q. Okay, and he suggested it, did it ever  
 12 actually get done?  
 13 MR. TILLEY:  
 14 A. It certainly didn't occur during my tenure.  
 15 COFFEY, Q.C.:  
 16 Q. And do you know, you know, in the time you  
 17 were involved with the ER/PR issue, was there  
 18 ever any thought given to or voiced to in  
 19 employing a statistician simpliciter or an  
 20 epidemiologist in relation to the ER/PR  
 21 matter?  
 22 MR. TILLEY:  
 23 A. Discussions on my part in terms of  
 24 retroactively looking at this, in terms of  
 25 data management, yes, but during that point in

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1 time, don't recall anything specific about  
 2 epidemiologist statistician, but you know,  
 3 there's a lot of information flowing, a lot of  
 4 people talking.  
 5 COFFEY, Q.C.:  
 6 Q. In terms of yourself, you don't -  
 7 MR. TILLEY:  
 8 A. I can't recall anything of that nature.  
 9 COFFEY, Q.C.:  
 10 Q. If we could, please, Exhibit P-0411 and you'll  
 11 be happy to know, Mr. Tilley, we're into July  
 12 of '06. Now this is, well seems to be a memo  
 13 from Heather Predham, dated July 4th, 2006.  
 14 It's to Dr. Williams, yourself, Pat Pilgrim  
 15 and Pam Elliott, who was the director of  
 16 quality and risk management. It's re:  
 17 estrogen and progesterone receptor testing,  
 18 DCIS and retro converters. And she starts, "I  
 19 need to bring your attention to two situations  
 20 that have developed during our ER/PR review."  
 21 Now, if I could, just while I'm at it, Mr.  
 22 Tilley, there's some handwriting down at the  
 23 bottom of the page there. Do you recognize  
 24 whose handwriting that is?  
 25 MR. TILLEY:

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1 A. No, I don't, the names I recognize, but not  
 2 the writing.  
 3 COFFEY, Q.C.:  
 4 Q. Yes, and it's Larry Alteen -  
 5 MR. TILLEY:  
 6 A. And Ken Jenkins, both of which were vice-  
 7 presidents for Medical Services in the Central  
 8 and Western Health Authorities, respectively.  
 9 COFFEY, Q.C.:  
 10 Q. Yes. Now, the first of these paragraphs, the  
 11 first of the two situations is described as  
 12 one, ductal carcinoma in situ (DCIS) and this  
 13 memo goes on about DCIS and how certain things  
 14 had developed in respect of it. And then if  
 15 we go to the second page, there is a  
 16 classification, "Retro Converters". And she  
 17 concludes by saying, "I will update you as we  
 18 deal with the remaining patients in the DCIS  
 19 category. If you have any questions, please  
 20 do not hesitate to contact me." Now, the  
 21 situation with respect to DCIS and the retro  
 22 converters, when was that first brought to  
 23 your attention, do you recall?  
 24 MR. TILLEY:  
 25 A. I was certainly aware of it, but I can't speak

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1 to when I would have first become aware of it.  
 2 My understanding was is that these were issues  
 3 that while they're related to the ER/PR thing,  
 4 were picked up as issues while the review was  
 5 underway.  
 6 COFFEY, Q.C.:  
 7 Q. Okay, and what was your understanding of like  
 8 who was addressing them?  
 9 MR. TILLEY:  
 10 A. That their treating oncologists, is my  
 11 understanding, would be following up in terms  
 12 of a disclosure with the patients with regards  
 13 to this diagnosis.  
 14 COFFEY, Q.C.:  
 15 Q. So the DCIS category here is described in the  
 16 third last paragraph on the first page,  
 17 "However, this review has also revealed  
 18 patients who were incorrectly diagnosed in  
 19 their original pathology report with an  
 20 evasive disease. This may have lead them to  
 21 being treated with Tamoxifen or chemotherapy.  
 22 At this time there are three women who fall in  
 23 this category. Representatives of Eastern  
 24 Health and the clinical chiefs of pathology in  
 25 cancer care will meet with them in the next

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1 few weeks to disclose this information." And  
 2 they were then waiting for four more patients  
 3 to be reviewed, to be determined as to whether  
 4 or not the same categorization applied to  
 5 them. You know, from your perspective as a  
 6 CEO and dealing with the people in this  
 7 situation, how did that figure in your world,  
 8 as it were, in terms of managing the issue?  
 9 MR. TILLEY:  
 10 A. Well, I was very concerned with that finding.  
 11 It would have originated from the original  
 12 diagnosis within the lab. As I've alluded to  
 13 already, I know that adverse events happened.  
 14 COFFEY, Q.C.:  
 15 Q. Sure.  
 16 MR. TILLEY:  
 17 A. And unfortunately we had, through this  
 18 process, picked up these issues, but I also  
 19 understood that there was efforts underway to  
 20 make contact with the patients.  
 21 COFFEY, Q.C.:  
 22 Q. And they're, in fact, reflected, it's  
 23 reflected there, the actual efforts are -  
 24 MR. TILLEY:  
 25 A. Okay.

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1 COFFEY, Q.C.:  
 2 Q. It refers to a meeting has been arranged--  
 3 "will meet with them in the next few weeks to  
 4 disclose the information", that is  
 5 representatives of Eastern Health and the  
 6 clinical chiefs of pathology in cancer care.  
 7 MR. TILLEY:  
 8 A. Right, so they were bringing these two issues,  
 9 the latter, I think, was retro converters.  
 10 COFFEY, Q.C.:  
 11 Q. Yes, the second issue was retro converters  
 12 which is on the second page. And this is  
 13 described as all patients who were negative  
 14 for ER were included in the retesting process.  
 15 As the clinical definition of negative changed  
 16 over the years, all patients with an ER of 30  
 17 percent or less were retested. This means  
 18 that in the group retested there are women  
 19 who, although their ER level met this  
 20 definition of negative, were considered  
 21 positive at the time and received hormonal  
 22 treatment. However in four cases, retesting  
 23 by Mount Sinai identified that women in this  
 24 category now have an ER/PR status of zero  
 25 percent, which has been confirmed by

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1 subsequent retesting in Mount Sinai and  
 2 representatives of Eastern Health and the  
 3 clinical chiefs of pathology in cancer care  
 4 will meet with them in the next few weeks to  
 5 disclose this information." So, what was your  
 6 understanding of what had happened with your  
 7 retro converters?  
 8 MR. TILLEY:  
 9 A. I'm trying to interpret the comments here, but  
 10 because there were people with less than -- or  
 11 fell in the definition of negative, it had  
 12 turned out that their results were, in fact,  
 13 zero, and that would have put them in the  
 14 negative status in terms of treatment.  
 15 COFFEY, Q.C.:  
 16 Q. So did you understand that they had been over  
 17 or under treated with Tamoxifen or had  
 18 received Tamoxifen at all, the retro  
 19 converters?  
 20 MR. TILLEY:  
 21 A. My understanding is that they would have  
 22 received Tamoxifen and maybe unnecessarily.  
 23 COFFEY, Q.C.:  
 24 Q. Okay. You understood they were being dealt  
 25 with by way of follow up by physicians?

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1 MR. TILLEY:  
 2 A. Yes.  
 3 COFFEY, Q.C.:  
 4 Q. And representatives from Eastern Health. If  
 5 we could, please -- what in the meantime was  
 6 going on with respect to the ER/PR matters in  
 7 terms of -- as a general overview? I believe,  
 8 in February of '07, the -- I'm sorry, February  
 9 of '06, all the retest results were generally  
 10 back from Mount Sinai. This is the summer of  
 11 '06.  
 12 MR. TILLEY:  
 13 A. My recollection is that there was work going  
 14 on to ensure that the recommendations of the  
 15 external reviews were being acted upon, that  
 16 there was whatever patient follow up that was  
 17 to be done was underway or concluded, that  
 18 they were starting to put some numbers around  
 19 -- summary numbers around the overall results.  
 20 There was -- a recollection that there was a  
 21 lot of discussion going on in the lab that did  
 22 result in some presentations in the fall.  
 23 COFFEY, Q.C.:  
 24 Q. Okay.  
 25 MR. TILLEY:

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1 A. That internally initially was to try to deal  
 2 with the need for the lab to be able to assure  
 3 the organization and the other physicians  
 4 about what we had done and the competence in  
 5 the system.  
 6 COFFEY, Q.C.:  
 7 Q. Okay. If we could, please, Exhibit P-0412,  
 8 page 18. Now, Mr. Tilley, this is on Eastern  
 9 Health's letterhead. It's a letter from Dr.  
 10 Robert Williams on the stationery. The stamp  
 11 here is "Office of the CEO", July 26th, 2006,  
 12 Eastern Health, and it's dated July 19th,  
 13 2006, the actual letter. It's addressed to  
 14 yourself, and it's a handwritten note over  
 15 here to the right hand side. I believe it  
 16 says, "George, I advised Peter Dawe of these  
 17 developments. He is supportive", and that  
 18 would be Dr. Williams initials, July 21, 2006,  
 19 and here Dr. Williams had written this to you,  
 20 but it's copied to Dr. Denic, Terry Gulliver,  
 21 Pam Elliott, and Heather Predham. He's noted  
 22 here --  
 23 MR. TILLEY:  
 24 A. That's me.  
 25 COFFEY, Q.C.:

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1 Q. Pardon me?  
 2 MR. TILLEY:  
 3 A. That's my writing.  
 4 COFFEY, Q.C.:  
 5 Q. Yes, acknowledged by e-mail, August 14th, '06.  
 6 MR. TILLEY:  
 7 A. Uh-hm.  
 8 COFFEY, Q.C.:  
 9 Q. That could be 14 or 7, but it's one or the  
 10 other. Mr. Tilley, he's written to you  
 11 saying, "I'm writing concerning the national  
 12 issue we've been advocating for concerning  
 13 setting up a reference lab for laboratories  
 14 that do ER and PR testing in the country, and  
 15 I've attached a proposal from a group called  
 16 Canadian Coalition for Quality Laboratory  
 17 Medicine, with a proposal with respect to  
 18 immunohistochemistry. The proposal deals with  
 19 Class I tests, which does not include the  
 20 important ER and PR component. Dr. Don Cook  
 21 advises that the weekend meeting of the  
 22 Canadian Association of Pathologists held in  
 23 St. John's this matter was discussed on their  
 24 agenda. The Canadian Association of  
 25 Pathologists, through their President, Dr.

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1 Diponkar Banerjee, will be writing the  
 2 Canadian Coalition for Quality Laboratory  
 3 Medicine supporting the thrust of their  
 4 initiative, but recommending that Class II  
 5 test also be included in their proposal. He  
 6 will also be writing the Canadian Association  
 7 of Medical Oncologists, the Canadian  
 8 Association of Radiation Oncologists, the  
 9 Canadian Association of Provincial Cancer  
 10 Agencies, and the Canadian Cancer Society, to  
 11 ask for their support in setting up some kind  
 12 of a national quality testing program for  
 13 immunohistochemistry, perhaps similar to that  
 14 in place in other jurisdictions. This is good  
 15 news, and hopefully this will lead to national  
 16 standardization and assurance that the lab's  
 17 testing in this area will be part of a  
 18 national quality assurance program, yours  
 19 sincerely". Now, Mr. Tilley, you had made an  
 20 effort certainly in the fall of 2005, and  
 21 we've looked at that, to have this addressed.  
 22 I think this is perhaps in the summer of '06  
 23 where the matter stood.  
 24 MR. TILLEY:  
 25 A. Yes.

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1 COFFEY, Q.C.:

2 Q. Now on that point, you're currently working

3 for whom?

4 MR. TILLEY:

5 A. The Canadian Health Services Research

6 Foundation.

7 COFFEY, Q.C.:

8 Q. And their general mandate?

9 MR. TILLEY:

10 A. To promote the use of evidence-based decision

11 making in health services, but not clinical

12 services.

13 COFFEY, Q.C.:

14 Q. Okay.

15 MR. TILLEY:

16 A. But the whole thrust of the organization is to

17 promote the fact that there's evidence

18 available that we're probably not using as a

19 system, or maybe the evidence doesn't exist,

20 and we should be going to look to get evidence

21 on which to base decisions.

22 COFFEY, Q.C.:

23 Q. Now, sir, I appreciate that your current

24 occupation doesn't involve you in ER/PR

25 matters, I understand that, but are you aware

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1 of -- have you paid any attention to the idea

2 of standardization, national standardization

3 in respect of immunohistochemistry, in

4 particular, ER/PR? Have you paid any

5 attention to where that is?

6 MR. TILLEY:

7 A. Not directly, but I worked mostly out of

8 Ottawa for the past year, and I do listen to

9 the news from time to time and keep hearing

10 this issue being spoken of, so it clearly is

11 something that seems to be stuck on the radar

12 screen and I'm glad to hear that.

13 COFFEY, Q.C.:

14 Q. But in terms of it actually having advanced to

15 the point where there is standardization, you

16 have no reason to believe that's occurred?

17 MR. TILLEY:

18 A. I have not seen anything specifically, nor has

19 anybody jumped out to tell me that we've

20 reached the summit.

21 COFFEY, Q.C.:

22 Q. Yeah. Did anyone ever -- Mr. Tilley, you

23 stayed on for another year beyond this with

24 Eastern Health.

25 MR. TILLEY:

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1 A. Uh-hm.

2 COFFEY, Q.C.:

3 Q. Did anyone -- has anyone ever explained to

4 you, in your capacity as CEO of Eastern

5 Health, why there was no standardization when

6 you first inquired, and what the problem was

7 or the obstacles were to having it? In your -

8 - you were involved in this as a CEO, and you

9 advocated --

10 MR. TILLEY:

11 A. I don't think anybody sat down and said to me

12 why. The few contacts that I made on a

13 individual level didn't seem to get much

14 appetite in terms of picking this issue up.

15 So for me, it was an effort to try to speak to

16 this on the national scene, but why there was

17 any reluctance on the national scene, I

18 couldn't elaborate.

19 COFFEY, Q.C.:

20 Q. You'd be speculating about it, but --

21 THE COMMISSIONER:

22 Q. Mr. Tilley, do you have any reason to believe

23 that ER/PR is somehow unique? Why would we

24 believe that there's this one test that has

25 escaped all efforts to standardize? Is ER/PR

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1 unique in that sense; are we saying there are

2 standardized tests for everything else in the

3 lab, but there are none for ER/PR, or are

4 there a class of tests perhaps where there is

5 not standardization?

6 MR. TILLEY:

7 A. Madam Commissioner, I can't -- I don't have

8 enough knowledge to speak about the lab, but

9 if I can speak about health care, in general.

10 THE COMMISSIONER:

11 Q. Okay.

12 MR. TILLEY:

13 A. You'll find that policies and standards really

14 are routine for most things that go on within

15 a health care setting. So to have areas that

16 have been in existence for some time that

17 don't have specific standards stand out, and,

18 you know, there are obviously new develops on

19 an ongoing basis and it takes time for some of

20 those things to actually get put in force, but

21 when I started becoming aware of this issue

22 and got an appreciation for what was happening

23 on the global scene, but not on the Canadian

24 scene, it does stand out as to how come that

25 we haven't advanced to that part, but that's

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1 only speaking as a layman. There may be other  
 2 things in the lab, but I am not aware of them,  
 3 that would be similar to this nature.  
 4 THE COMMISSIONER:  
 5 Q. What about the setting of standards generally  
 6 speaking in the health care? For example, an  
 7 area where you -- well, pick an area where you  
 8 would expect to find standards.  
 9 MR. TILLEY:  
 10 A. Within nursing.  
 11 THE COMMISSIONER:  
 12 Q. Okay, so who sets those?  
 13 MR. TILLEY:  
 14 A. Well, in the main, we have professional  
 15 nursing bodies that would be providing what  
 16 parameters would be, the abilities of nurses  
 17 would be. There would be national standards  
 18 from the Canadian Standards Association who  
 19 would provide guidance in terms of how or  
 20 whether equipment should be used. I often use  
 21 this analogy when I talk to people, "There are  
 22 days that I wondered about as CEO what I  
 23 actually controlled", because so many things  
 24 were being controlled by groups that were  
 25 outside of my control. There were three

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1 levels of government, there were unions, there  
 2 were professional bodies, there were  
 3 researchers, there were physicians who I  
 4 didn't employ, but were given the privilege, a  
 5 term we use internally, to practise within the  
 6 organization. We had suppliers who were  
 7 putting new equipment in front of our eyes  
 8 constantly. So we used -- we look to bodies to  
 9 help guide us. Now having said that, we would  
 10 also look in the organization, and I'm sure if  
 11 you would go to any work area in Eastern  
 12 Health and said show me your policy and  
 13 procedure manual, you'll probably get  
 14 something that doubles the size of what I have  
 15 on my desk because policies are very important  
 16 in terms of articulating what the standards  
 17 would be, what the protocols would be, so  
 18 staff would be given guidance. So from my  
 19 thinking, it was a surprise that we did have a  
 20 test within the system that really didn't --  
 21 wasn't developed to the point of what we  
 22 typically saw in health care.  
 23 COFFEY, Q.C.:  
 24 Q. Exhibit P-0413, please. Mr. Tilley, to help  
 25 you to -- in a documentary way, help you

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1 refresh your memory as to what else as time  
 2 went on was going on related to this issue,  
 3 this is a letter of July 5, 2006, to Dr.  
 4 Robert Williams. It's from Drs Joy McCarthy  
 5 and Beverley Carter, who are co-chairs of  
 6 Breast Disease Site Group, cc'd to Ms. Pat  
 7 Pilgrim, Sharon Smith, Dr. Kara Laing, and  
 8 yourself, and the two doctors who were at a  
 9 recent meeting, great enthusiasm was expressed  
 10 by many specialty groups for creating a breast  
 11 disease site group at Eastern Health. As you  
 12 recall, the impetus for this group came from  
 13 your office", which would be Dr. Williams, "as  
 14 a result of multiple meetings concerning ER  
 15 and PR laboratory testing and the care of  
 16 patients with breast cancer in this province.  
 17 Please see attached proposal for the  
 18 development and staffing needs for the BDSG.  
 19 We look forward to your prompt reply and are  
 20 available for a meeting at your convenience".  
 21 Is this -- you would have received a copy of  
 22 this, I presume, and the proposal. This is  
 23 summer of '06. Do you recall what this was  
 24 about, Mr. Tilley?  
 25 MR. TILLEY:

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1 A. Well, I hadn't seen it probably since the  
 2 summer of '06, but it comes back to me that I  
 3 remember feeling good about the fact that this  
 4 thing seems to be taking on a great deal of  
 5 interest within the organization. The issue -  
 6 - when I scroll down the page, if there are,  
 7 and I'm assuming through reference in the  
 8 cover page that there's reference to the need  
 9 for support, human resource support --  
 10 COFFEY, Q.C.:  
 11 Q. Yes.  
 12 MR. TILLEY:  
 13 A. Sharon Smith would be the Program Director for  
 14 Cancer Care, so would be given the first  
 15 opportunity to see what they could do within  
 16 the program, and she would report to Pat  
 17 Pilgrim, and Pat Pilgrim then to me. So I was  
 18 seeing this more of a positive outcome of what  
 19 we were going through, and would be the types  
 20 of things that I would see appropriate within  
 21 a teaching hospital.  
 22 COFFEY, Q.C.:  
 23 Q. Do you recall if you were ever called upon to  
 24 provide further resources?  
 25 MR. TILLEY:

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1 A. That I have no recollection of.  
 2 COFFEY, Q.C.:  
 3 Q. If we could, please, Registrar, Exhibit P-  
 4 0170. If we could, please -- this is an e-  
 5 mail again -- it involves the Department of  
 6 Health, but August 4th, 2006, 3:37 p.m. The  
 7 subject is Message for the Current. For your  
 8 information, the Current is running a story on  
 9 ER/PR. Please see attached statement  
 10 forwarded by Eastern Health. This story was  
 11 air nationally on Monday. Signed, Tansy".  
 12 Then if we could go, please -- well, actually  
 13 just turn the page. I'll just go to page two  
 14 here so you can see it. This is a statement  
 15 on Eastern Health letterhead. The signator at  
 16 the bottom is George Tilley, yourself. This  
 17 one happens to be undated, but if we could go,  
 18 please, to Exhibit P-0102, this is the same  
 19 letter on Eastern Health letterhead from  
 20 yourself. At the bottom, it says, "Message to  
 21 the Current, CBC Radio, August 4, 2006". So  
 22 what -- Mr. Tilley, what was this about? I  
 23 mean, how did this come about?  
 24 MR. TILLEY:  
 25 A. What I recall is that the Current, which is a

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1 national radio program, had called to the  
 2 organization to look for a person to speak on  
 3 this particular issue. As it happened, my  
 4 recollection is that both Dr. Williams and I  
 5 had taken some time off, that Susan Bonnell  
 6 had been unsuccessful in her ability to reach  
 7 Dr. Williams, he was on vacation, but she did  
 8 reach me. I was at home at the time and  
 9 talked about how or what options there might  
 10 be in terms of replying to this, and I can't  
 11 remember whose idea it was, but the letter  
 12 that you see is what came out of it, and I  
 13 ended up putting my signature to it, and my  
 14 recollection then is that they did a story  
 15 which talked about this particular test and  
 16 then read out loud this letter.  
 17 COFFEY, Q.C.:  
 18 Q. So had Eastern Health been invited to  
 19 participate in the program?  
 20 MR. TILLEY:  
 21 A. That's my recollection.  
 22 COFFEY, Q.C.:  
 23 Q. And there was a conscious decision made not to  
 24 actually participate live?  
 25 MR. TILLEY:

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1 A. Well, that's right. We weren't able to access  
 2 Dr. Williams at the time, and I certainly  
 3 didn't feel that I had the knowledge to be  
 4 able to speak to this on a -- extensive way.  
 5 COFFEY, Q.C.:  
 6 Q. And the advantage of providing a written  
 7 statement was what?  
 8 MR. TILLEY:  
 9 A. Well, at least we were prepared to make an  
 10 effort to send a message.  
 11 COFFEY, Q.C.:  
 12 Q. Now, do you recall who drafted this statement?  
 13 MR. TILLEY:  
 14 A. I was in my family room and I know that there  
 15 were other people on the other end of the  
 16 phone. I'm sure Susan was there, but beyond  
 17 that I can't recall.  
 18 COFFEY, Q.C.:  
 19 Q. And she was there, what -  
 20 MR. TILLEY:  
 21 A. On the other end of the phone.  
 22 COFFEY, Q.C.:  
 23 Q. The phone, okay.  
 24 MR. TILLEY:  
 25 A. Yeah. And I think there were other people

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1 with her, but I can't pull those out of my  
 2 head.  
 3 COFFEY, Q.C.:  
 4 Q. And what was the, you know, the gist or the  
 5 thrust of the current program to be about,  
 6 what was the topic?  
 7 MR. TILLEY:  
 8 A. It was, to my recollection, ER/PR. And -  
 9 COFFEY, Q.C.:  
 10 Q. Did it have anything to do with--look at the,  
 11 when we look through that letter, it's the  
 12 third-last paragraph says, "As to the  
 13 statements of claim filed against the  
 14 organization, every individual has the right  
 15 to take whatever action they deem appropriate.  
 16 One must allow the legal system to address the  
 17 legal issues." Was the program at least  
 18 partially about the statements of claim?  
 19 MR. TILLEY:  
 20 A. Okay. Well, I'm glad I never said what I  
 21 thought it was about, which was the national  
 22 ER/PR issue. I can't recall that. It  
 23 certainly could have been.  
 24 COFFEY, Q.C.:  
 25 Q. Okay. And now in terms of, you know, this

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1 matter of providing information to the media  
 2 or dealing with the media, as of that point,  
 3 which is the beginning of August of 2006, what  
 4 was Eastern Health's position concerning  
 5 dealing with the media on ER/PR?  
 6 MR. TILLEY:  
 7 A. Well, at one point in time we did become more  
 8 restrictive in terms of what we were talking  
 9 about, but I don't recall that being a  
 10 significant issue in the summer of '06. If  
 11 they were focusing on the legal claim, then I  
 12 would think that it would be inappropriate for  
 13 us to be out there speaking to that issue.  
 14 But the issue about the matters which we've  
 15 already shared with the minister in terms of  
 16 what he was given to talk about in the house,  
 17 then that certainly would have been  
 18 information that we would be willing to share.  
 19 COFFEY, Q.C.:  
 20 Q. Now, what was--you know, 2005 had ended, we  
 21 were more than halfway through '06 now by this  
 22 point in time. What was the position of Susan  
 23 Bonnell about, you know, dealing with the  
 24 media by then, by 2006? We've seen some  
 25 expression of her views, you know, in e-mails

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1 back in October of '05.  
 2 MR. TILLEY:  
 3 A. Um-hm.  
 4 COFFEY, Q.C.:  
 5 Q. But by the summer of '06 what position was she  
 6 espousing? I say that and I'll lead you on  
 7 this point.  
 8 MR. TILLEY:  
 9 A. Okay.  
 10 COFFEY, Q.C.:  
 11 Q. I have reason to believe that the Commissioner  
 12 will hear evidence that Ms. Bonnell was urging  
 13 Eastern Health to be much more proactive in  
 14 dealing with the media.  
 15 MR. TILLEY:  
 16 A. And that's where my head was. I mean, the  
 17 fact that we sent this was an indication.  
 18 Susan had certainly expressed over time the  
 19 value of being as open as possible and I would  
 20 believe that that's typical of most  
 21 communications people.  
 22 COFFEY, Q.C.:  
 23 Q. If she was talking about that, was she saying--  
 24 -what was she saying to you about media  
 25 inquiries, were the media like from time to

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1 time inquiring about ER/PR and looking for  
 2 information from Eastern Health?  
 3 MR. TILLEY:  
 4 A. Undoubtedly they were. In the fall when we  
 5 started talking about the certification  
 6 process, certainly remember getting calls  
 7 there and Susan and I chatting and deciding  
 8 that the issue would be inappropriate to  
 9 comment because it's not something that we  
 10 want to dissect in the public arena if it's  
 11 something going through a court process.  
 12 COFFEY, Q.C.:  
 13 Q. Do you have any recollection of her at times  
 14 urging you in a fairly adamant fashion that  
 15 you had to be more interactive with the media  
 16 because she was getting a lot of queries from  
 17 the media?  
 18 MR. TILLEY:  
 19 A. Susan would have been the prime contact with  
 20 the media and I have no doubt that there were  
 21 times that she shared with me the fact that  
 22 there was constant calls coming in with  
 23 regards to that. On a factual basis, I mean,  
 24 no question about sharing information. The  
 25 issues about causation of error were things

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1 that I was still very uncomfortable feeling  
 2 that we had a definitive solution to.  
 3 COFFEY, Q.C.:  
 4 Q. So that's your memory of her advice to you and  
 5 your reaction to it?  
 6 MR. TILLEY:  
 7 A. What I just said?  
 8 COFFEY, Q.C.:  
 9 Q. Yes.  
 10 MR. TILLEY:  
 11 A. Yes. Like, Susan had initially thought that  
 12 direct patient contact was the advantage. She  
 13 had talked about public disclosure being not  
 14 desirable. But she was a strong advocate for  
 15 maximizing what we could in the public arena.  
 16 COFFEY, Q.C.:  
 17 Q. So because after the fall of '05 in the  
 18 beginning of that first month or so it sort of  
 19 died out of the news as it were, and her e-  
 20 mails would suggest she wasn't unhappy about  
 21 that at the time. But, you know, as '06 goes  
 22 on, you know, we have reason to believe that  
 23 she's going to come in and tell the  
 24 Commissioner that she was urging you, strongly  
 25 urging you and your fellow executive to be

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1 much more interactive with the media and she  
 2 didn't have any success.  
 3 MR. TILLEY:  
 4 A. Okay.  
 5 COFFEY, Q.C.:  
 6 Q. Convincing you. So I'm just going--while  
 7 you're here I'm going to ask you now as -  
 8 MR. TILLEY:  
 9 A. Well, I remember a discussion that was held  
 10 previous to the--at the executive committee  
 11 previous to the December debriefing. And  
 12 there were suggestions or discussions there  
 13 with regards to the Evidence Act and to what  
 14 extent that might limit or not the discussions  
 15 that we have in the media, and despite that we  
 16 made a decision to say, well, we're going to  
 17 go ahead and be open about this. There's also  
 18 some notes in my log for the executive  
 19 committee about legal counsel or Dan Boone  
 20 being reluctant and then a note to the fact  
 21 that there's public trust issues, so we went  
 22 ahead and dealt with it anyway. During the  
 23 month of--during the fall of 2006 -  
 24 COFFEY, Q.C.:  
 25 Q. See, this is before that.

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1 MR. TILLEY:  
 2 A. Right.  
 3 COFFEY, Q.C.:  
 4 Q. I'm getting at the spring of '06 and the  
 5 summer of '06 -  
 6 MR. TILLEY:  
 7 A. Right.  
 8 COFFEY, Q.C.:  
 9 Q. That's what I'm--that era right now.  
 10 MR. TILLEY:  
 11 A. Right.  
 12 COFFEY, Q.C.:  
 13 Q. And the early fall of '06. And, you know, and  
 14 I just, I have reason to believe, you know,  
 15 that's going to happen, so I want to give you  
 16 the opportunity to -  
 17 MR. TILLEY:  
 18 A. Yeah. Right.  
 19 COFFEY, Q.C.:  
 20 Q. To comment upon it.  
 21 MR. TILLEY:  
 22 A. Is there anything that you found here that  
 23 could help -  
 24 COFFEY, Q.C.:  
 25 Q. Not that I'm aware of.

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1 MR. TILLEY:  
 2 A. No.  
 3 COFFEY, Q.C.:  
 4 Q. Mr. Simmons, I'm sure, you know, and anyone  
 5 else will, if it's possible to, but -  
 6 MR. TILLEY:  
 7 A. Well, all I can say is that Susan at various  
 8 points in time was a strong advocate for  
 9 public disclosure.  
 10 COFFEY, Q.C.:  
 11 Q. Yeah.  
 12 MR. TILLEY:  
 13 A. There would have been times that she would  
 14 have said to me that the information or that  
 15 the media were requesting information. And  
 16 you know, there could be times that we would  
 17 not have responded to the media if, in fact,  
 18 there was either no information to share.  
 19 That's the only way I can think of it at the  
 20 moment, yeah.  
 21 COFFEY, Q.C.:  
 22 Q. Okay. Now, if we could look, please, at  
 23 Exhibit P-0103? This is, it's two e-mails,  
 24 the earliest in time is the bottom of the  
 25 first page, it's a message from Patricia

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1 Pilgrim, sent Monday, August 7th, 2006, 2:42  
 2 p.m. to Sharon Smith, Heather Predham,  
 3 carboned to Susan Bonnell, Leona Barrington  
 4 and Dianne Smith and the subject is "ER/PR  
 5 Review Process, The Status". Sensitivity is  
 6 confidential. And she is going--I'm going to  
 7 take you through this before we finish up  
 8 today. Actually, perhaps I won't get through  
 9 it. But if we just could go back for a  
 10 moment, I apologize, Commissioner, and Mr.  
 11 Tilley, I just want to ask you, there's one  
 12 question I wanted to ask you about P-0170,  
 13 page 2, I forgot it. This is page 2 of that  
 14 exhibit. Now, sir, just looking at this  
 15 because this is, you understood, was going to  
 16 be read out nationally, potentially?  
 17 MR. TILLEY:  
 18 A. Yes, that's correct.  
 19 COFFEY, Q.C.:  
 20 Q. Which would include within Newfoundland on the  
 21 CBC network, and the third paragraph says,  
 22 "More than 900 test samples were sent to Mount  
 23 Sinai Hospital". Actually, I'll go back up a  
 24 bit, "Eastern Health originally began a review  
 25 of all ER/PR receptor tests conducted by our



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1 laboratory since 1997 when we discovered  
 2 inconsistencies in a small number of results.  
 3 Our priority was and continues to be -- our  
 4 first priority, I'm sorry, was and continues  
 5 to be our patients. More than 900 test  
 6 samples were sent to Mount Sinai laboratory in  
 7 Toronto. Collecting, sending, retesting,  
 8 reviewing all these test samples has been an  
 9 extensive process, but most tests have been  
 10 reviewed and most patients have been notified.  
 11 In the majority of cases, the patients  
 12 treatment was confirmed appropriate. As part  
 13 of the review, we have identified a small  
 14 number of cases that require further follow  
 15 up. We are in the process of reviewing and  
 16 addressing each of these cases individually,  
 17 and Eastern Health is committed to disclosure  
 18 and our clinical team members have  
 19 communicated individually with all patients  
 20 impacted by this review, however", you talk  
 21 about patient confidentiality being important,  
 22 "and, therefore, we do not discuss the details  
 23 of the individual cases publicly", and then  
 24 there's a comment about the Statements of  
 25 Claim. Now, Mr. Tilley, the small number of

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1 results is used in the first paragraph, and  
 2 then in the fourth paragraph -- I'm sorry --  
 3 yes, the fourth paragraph, "a small number of  
 4 cases that require further follow up" is  
 5 referred to. Reading this, and not knowing  
 6 anything else about this, what would you think  
 7 the average reader or listener would think  
 8 about the number of cases, number of people  
 9 who were affected by this, affected in the  
 10 sense of, you know, had their treatment  
 11 changed?  
 12 MR. TILLEY:  
 13 A. Well, of course, the intent was that the small  
 14 number of cases and that each one of them were  
 15 being followed up was in relation to the  
 16 letter that we discussed earlier about the  
 17 DCIS and the retro converters.  
 18 COFFEY, Q.C.:  
 19 Q. Which total about 12 or less patients.  
 20 MR. TILLEY:  
 21 A. Yes. So that's why it was referenced "a small  
 22 number of cases". Having the opportunity to  
 23 sort of look at it without that information --  
 24 COFFEY, Q.C.:  
 25 Q. Because that's not mentioned anywhere here, is

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1 it?  
 2 MR. TILLEY:  
 3 A. No, you're right.  
 4 COFFEY, Q.C.:  
 5 Q. So it would lead -- would you agree it would  
 6 lead any listener or reader perhaps not  
 7 unreasonably to conclude that there were only  
 8 a small number of cases, period, that were  
 9 affected by this entire matter?  
 10 MR. TILLEY:  
 11 A. I can see now how that might be read that way.  
 12 COFFEY, Q.C.:  
 13 Q. Mr. Tilley, at this point in time, because  
 14 this is the beginning of August -- if we  
 15 could, please -- just one moment, please. I  
 16 don't actually have that particular exhibit  
 17 I'm thinking about here right in front of us  
 18 right now, but as an example, and it's readily  
 19 available and the numbers don't change, if we  
 20 could bring up Exhibit P-0171. Now, Mr.  
 21 Tilley, this is -- page two, please. This is  
 22 a briefing note and again I will when you  
 23 return the next day have the actual exhibit  
 24 here, but before we finish up here, there's  
 25 quite a number of numbers here in this memo.

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1 The evidence will show that these all came  
 2 from -- were provided by Eastern Health at the  
 3 end of July to the Department of Health, and  
 4 it's category and numbers, and if we go on to  
 5 the second page, there's a whole bunch of  
 6 categories and numbers and the third page the  
 7 same thing, okay. My question is this, is  
 8 that when we look at P-1 -- I'm sorry, P-0102,  
 9 by the time you wrote this on August 4th,  
 10 2006, I'm going to suggest to you that your  
 11 organization had a lot of numbers available to  
 12 it?  
 13 MR. TILLEY:  
 14 A. We did.  
 15 COFFEY, Q.C.:  
 16 Q. And, in particular, you'd arrived by then if  
 17 not at final numbers, you were certainly close  
 18 to it?  
 19 MR. TILLEY:  
 20 A. That's accurate.  
 21 COFFEY, Q.C.:  
 22 Q. In terms of dealing with an organization such  
 23 as the Current, why not provide more numbers?  
 24 MR. TILLEY:  
 25 A. Well, I can't speak to that other than the

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1 fact that the discussion started to evolve  
 2 around this letter, and in the end I was  
 3 prepared to put my name by it. It wasn't the  
 4 ideal way to write a letter through a  
 5 conference call, but --  
 6 COFFEY, Q.C.:  
 7 Q. What was the need at the time to provide  
 8 anything to the Current if it wasn't from your  
 9 perspective, and bearing in mind you were on  
 10 vacation, and it wasn't a satisfactory  
 11 position to be in on the phone trying to  
 12 dictate this and have it presumably read back  
 13 to you and so on, you know, why provide  
 14 anything to the Current at all at that point?  
 15 MR. TILLEY:  
 16 A. I guess it was just a feeling that we should  
 17 be saying something as opposed to hearing the  
 18 "no comment" reference.  
 19 COFFEY, Q.C.:  
 20 Q. Now there is -- while we have that there, P-  
 21 0171, please. I want to ask you about this  
 22 now while we're on it. If we could go,  
 23 please, to page five of the exhibit, and this  
 24 will give you some sense of the -- Mr. Tilley,  
 25 I have no reason to believe you ever saw this,

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1 but it's a briefing note that went to the  
 2 Cabinet Secretariat. It's dated you'll see  
 3 down there, August 18th, 2006.  
 4 MR. TILLEY:  
 5 A. Okay.  
 6 COFFEY, Q.C.:  
 7 Q. Prepared by/approved by Heather Predham,  
 8 Eastern Health, and Moira Hennessey, HCS,  
 9 reviewed by Marilyn McCormick, Gary Cake,  
 10 Cabinet Secretariat. If we could go back,  
 11 please, to page one of the exhibit. This is an  
 12 attachment, Mr. Tilley, to an e-mail between  
 13 Moira Hennessey and John Abbott on August  
 14 17th, 2006, advising Mr. Abbott, "For your  
 15 information and review, this note will likely  
 16 go to the Premier's Office later today or  
 17 tomorrow. Signed, Moira". Were you aware that  
 18 there was a briefing note being prepared in  
 19 early and mid August for the Cabinet  
 20 Secretariat concerning ER/PR?  
 21 MR. TILLEY:  
 22 A. I don't have any recollection of that.  
 23 COFFEY, Q.C.:  
 24 Q. And on that point, as you indicated your note  
 25 to the Current or for the Current, that

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1 letter, you were on vacation at the time.  
 2 MR. TILLEY:  
 3 A. Yes.  
 4 COFFEY, Q.C.:  
 5 Q. Is there any way of you ascertaining when your  
 6 vacation was that summer?  
 7 MR. TILLEY:  
 8 A. It was erratic. The vacation schedule really  
 9 for the 2005 and 2006 years were set, but  
 10 really not achieved to an extent that I had  
 11 originally hoped.  
 12 COFFEY, Q.C.:  
 13 Q. In terms of - this does say, and I'm not  
 14 suggesting it was prepared by, although it's  
 15 printed here "prepared by Heather Predham",  
 16 and I'm not suggesting that's necessarily at  
 17 all the case, but you have no recollection of  
 18 being asked about this, for your input or your  
 19 organization's input into this?  
 20 MR. TILLEY:  
 21 A. It would certainly not be a surprise to me if  
 22 somebody had indicated that information was  
 23 being compiled for the Department of Health.  
 24 COFFEY, Q.C.:  
 25 Q. Sure, but other than -- would you have vetted

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1 it?  
 2 MR. TILLEY:  
 3 A. I would have what?  
 4 COFFEY, Q.C.:  
 5 Q. Vetted it?  
 6 MR. TILLEY:  
 7 A. Vetted it?  
 8 COFFEY, Q.C.:  
 9 Q. In the sense of --  
 10 MR. TILLEY:  
 11 A. No.  
 12 COFFEY, Q.C.:  
 13 Q. Would just be told, like, Heather is sending  
 14 info over and --  
 15 MR. TILLEY:  
 16 A. Right. I would have liked to have been copied  
 17 on it.  
 18 COFFEY, Q.C.:  
 19 Q. And in terms of, though, like, whatever final  
 20 form a Cabinet Secretariat briefing note took,  
 21 you were never asked to vet the final form  
 22 internally in government?  
 23 MR. TILLEY:  
 24 A. No.  
 25 COFFEY, Q.C.:

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1 Q. Okay. Thank you, Commissioner.  
2 THE COMMISSIONER:  
3 Q. Thank you. We'll adjourn for the day. The next  
4 scheduled hearing day would be Thursday of  
5 next week, Mr. Tilley, and otherwise it's a  
6 symposium on Tuesday and Wednesday. Thank you  
7 all.

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1 CERTIFICATE  
2 I, Judy Moss, hereby certify that the foregoing is  
3 a true and correct transcript in the matter of the  
4 Commission of Inquiry on Hormone Receptor Testing,  
5 heard on the 18th day of April, A.D., 2008 before  
6 the Honourable Justice Margaret A. Cameron,  
7 Commissioner, at the Commission of Inquiry, St.  
8 John's, Newfoundland and Labrador and was  
9 transcribed by me to the best of my ability by  
10 means of a sound apparatus.  
11 Dated at St. John's, Newfoundland and Labrador  
12 this 18th day of April, A.D., 2008  
13 Judy Moss

<p><b>-\$-</b></p> <p><b>\$270.00</b> [1] 250:2  <b>\$300.00</b> [1] 250:5  <b>\$443.00</b> [1] 250:2  <b>\$900</b> [1] 79:3</p> <hr/> <p><b>-&amp;-</b></p> <p><b>&amp;</b> [2] 126:22 134:6</p> <hr/> <p><b>-'-</b></p> <p><b>'05</b> [13] 76:10 104:20  105:2 118:21,21 156:14  164:6 166:8 170:1 208:13  210:6 282:1 284:17</p> <p><b>'06</b> [19] 205:11,24 217:2  220:9 242:16 259:12  265:9,11 267:5 268:22  275:23 276:2 281:10,21  282:5 284:21 286:4,5,13</p> <p><b>'07</b> [4] 81:12 166:3 170:1  265:8</p> <p><b>'96</b> [1] 118:14</p> <p><b>'all</b> [1] 230:11</p> <hr/> <p><b>---</b></p> <p><b>-she</b> [1] 232:25</p> <p><b>-so</b> [1] 159:16</p> <p><b>-what</b> [1] 282:24</p> <p><b>-you're</b> [1] 227:7</p> <hr/> <p><b>-0-</b></p> <p><b>00</b> [6] 52:8 53:5,6 54:1  55:2 56:14</p> <p><b>0101</b> [1] 202:23</p> <p><b>0170</b> [1] 277:4</p> <p><b>0171</b> [1] 293:21</p> <p><b>0199</b> [1] 245:15</p> <p><b>0357</b> [1] 20:9</p> <p><b>0358</b> [1] 6:24</p> <p><b>0361</b> [1] 114:15</p> 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