

<p style="text-align: center;">COMMISSION OF INQUIRY ON HORMONE RECEPTOR TESTING</p> <p style="text-align: center;">BEFORE THE HONOURABLE JUSTICE CAMERON - COMMISSIONER</p> <p style="text-align: center;">MAY 12, 2008</p> <p>Appearances:</p> <p>Bernard Coffey, Q.C. Commission Co-counsel Sandra Chaytor, Q.C. Commission Co-counsel</p> <p>Rolf Pritchard/Megan Collins/ Jackie Brazil Her Majesty in Right of NL</p> <p>Peter Browne Doctors Kara Laing et al</p> <p>Daniel Simmons Eastern Regional Integrated Health Authority</p> <p>Pamela Taylor Members of the Breast Cancer Testing Class Action</p> <p>Mark Pike NL Medical Association</p> <p>Jennifer Newbury Canadian Cancer Society (NL Division)</p> <p>David Eaton, Q.C./ Stacey O’Dea Central, Western and Labrador-Grenfell Regional Integrated Health Authorities</p>	<p style="text-align: center;">LIST OF EXHIBITS</p> <p>EXHIBITS P-0489 THROUGH P-0536 INCLUSIVE Pg. 17 EXHIBITS P-0538 THROUGH P-0586 INCLUSIVE Pg. 17 EXHIBITS P-0588 THROUGH P-0696 INCLUSIVE Pg. 18 EXHIBITS P-1075 THROUGH P-1085 INCLUSIVE Pg. 18 EXHIBITS P-1087 THROUGH P-1163 INCLUSIVE Pg. 18 EXHIBITS P-1165 THROUGH P-1171 INCLUSIVE Pg. 18 EXHIBITS P-1173 THROUGH P-1188 INCLUSIVE Pg. 18 EXHIBIT P-1190 Pg. 18 EXHIBITS P-1192 THROUGH P-1216 INCLUSIVE Pg. 18 EXHIBIT P-1218 Pg. 18 EXHIBITS P-1220 THROUGH P-1222 INCLUSIVE Pg. 18 EXHIBITS P-1224 THROUGH P-1231 INCLUSIVE Pg. 18 EXHIBIT P-1233. Pg. 18 EXHIBITS P-1235 THROUGH P-1238 INCLUSIVE Pg. 18 EXHIBITS P-1240 THROUGH P-1244 INCLUSIVE Pg. 18 EXHIBIT P-1247 Pg. 18 EXHIBIT P-1254 Pg. 19 EXHIBIT P-1256 Pg. 19 EXHIBIT P-1257 Pg. 19 EXHIBITS P-1259 THROUGH P-1270 INCLUSIVE Pg. 19 EXHIBITS P-1272 THROUGH P-1275 INCLUSIVE Pg. 19 EXHIBIT P-1278 Pg. 19 EXHIBIT P-1249 Pg. 19 EXHIBITS P-0697 AND P-0698 Pg. 264</p>
<p style="text-align: center;">TABLE OF CONTENTS</p> <p style="text-align: center;">May 12, 2008</p> <p>Ms. Jacqueline Brazil is heard re: application . . . Pgs. 4 - 15</p> <p>MR. GEORGE TILLEY - RESUMES THE STAND</p> <p>Examination by Bernard Coffey, Q.C. Pgs. 15 - 271 Examination by Rolf Pritchard Pgs. 271 - 305 Examination by Peter Browne Pgs. 305 - 320</p> <p>Certificate</p>	<p style="text-align: right;">Page 4</p> <p>1 COMMISSIONER: 2 Q. Thank you. Please be seated. Mr. Coffey. 3 COFFEY, Q.C.: 4 Q. We have George Tilley is here. I understand 5 there’s someone wanted to--Mr. Pritchard has 6 someone here with him today. 7 COMMISSIONER: 8 Q. Mr. Pritchard. 9 MR. PRITCHARD: 10 Q. Ms. Jackie Brazil is here for the province. 11 She wishes to speak - 12 MS. BRAZIL: 13 Q. Madam Commissioner. 14 COMMISSIONER: 15 Q. Ms. Brazil, if you wish to speak to a matter, 16 would you come forward and do it from here? 17 MS. BRAZIL: 18 Q. Certainly. 19 COMMISSIONER: 20 Q. Just makes life a lot easier for all of us. 21 Just give me a moment to get my computer 22 working here. Now, are you joining Mr. 23 Pritchard’s team? 24 MS. BRAZIL: 25 Q. For the short term, I guess, milady, at this</p>

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1 point, is as much as I can say. I'm here on
 2 behalf of Her Majesty, as well. And I
 3 apologize for the short notice. I spoke to
 4 all counsel involved yesterday to advise them
 5 of my intention to make this, I don't know if
 6 you'd call it an application or really what it
 7 is, it's, I hope to request that you provide
 8 us with some clarification with respect to
 9 your rules of procedure, with the Commission
 10 rules of procedure.
 11 COMMISSIONER:
 12 Q. Wait now, let's get some basics.
 13 MS. BRAZIL:
 14 Q. Certainly.
 15 COMMISSIONER:
 16 Q. Straight. So you are here representing a
 17 party with standing, ie, the Government of
 18 Newfoundland and Labrador?
 19 MS. BRAZIL:
 20 Q. Her Majesty in Right of Newfoundland and
 21 Labrador, that's correct.
 22 COMMISSIONER:
 23 Q. Okay.
 24 MS. BRAZIL:
 25 Q. Madam Commissioner.

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1 COMMISSIONER:
 2 Q. And not any one particular witness?
 3 MS. BRAZIL:
 4 Q. No, Madam Commissioner.
 5 COMMISSIONER:
 6 Q. So that I assume then that you take your
 7 instructions from the witness we had last
 8 week, Mr. Thompson?
 9 MS. BRAZIL:
 10 Q. I don't believe you should assume that, Madam
 11 Commissioner, that I took my instruction from
 12 Mr. Thompson.
 13 COMMISSIONER:
 14 Q. Well, Mr. Thompson was here last week and
 15 advised me during the course of his evidence,
 16 and perhaps I misunderstood him, but I did
 17 believe that he had been charged with the
 18 conduct of the Inquiry on behalf of the
 19 Government of Newfoundland and Labrador. In
 20 fact, he told me that Mr. Pritchard was part
 21 of his group and that the organization of the
 22 government's preparation for the hearings was
 23 under his auspices, as it were, so I assumed
 24 that, perhaps incorrectly, that the conduct of
 25 the government's case, as it were, to use a

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1 legal term that shouldn't be used in this
 2 context, was under his direction and therefore
 3 the people that would be coming here would be
 4 acting pursuant to his mandate. You seem to
 5 be suggesting perhaps you're not in that
 6 position?
 7 MS. BRAZIL:
 8 Q. Madam Commissioner, I say this with the utmost
 9 of respect, but all I can say with respect to
 10 who my client is is Her Majesty, my client is
 11 Her Majesty in Right of Newfoundland and
 12 Labrador. I understand that Her Majesty is
 13 the party with the standing at this Commission
 14 of Inquiry.
 15 COMMISSIONER:
 16 Q. Oh, there's no doubt that the Government of
 17 Newfoundland and Labrador has standing at this
 18 Inquiry, and as indeed the Government of
 19 Newfoundland and Labrador should. I'm just
 20 trying to understand the basis upon which you
 21 wish to pursue this line, so if you're not
 22 receiving your instructions from Mr. Thompson,
 23 then can you tell me whether or not your
 24 instructions come from the Attorney General,
 25 for example?

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1 MS. BRAZIL:
 2 Q. Again, Madam Justice Cameron, I have never--I
 3 realize that government is a large--Her
 4 Majesty--when I stand here and say that I
 5 represent Her Majesty in Right of Newfoundland
 6 and Labrador that is a large -
 7 COMMISSIONER:
 8 Q. I just want to know what entity I'm dealing
 9 with. I thought it was a simple question.
 10 I'm not asking you what your instructions are,
 11 I'm not asking you to breach solicitor/client
 12 -
 13 MS. BRAZIL:
 14 Q. That's my concern.
 15 COMMISSIONER:
 16 Q. - confidentiality, not at all. I don't care
 17 to know what your--the person who is
 18 instructing you told you to do, except if you
 19 want to make a presentation, of course, you'll
 20 have to tell me the basis of your
 21 presentation. But I do want to know whether I
 22 am dealing with the branch of this argument
 23 that I have been dealing with for the last
 24 month or two and I believe quite successfully,
 25 or is this a new angle? Now, Mr. Pritchard,

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1 you're on your feet.

2 MR. PRITCHARD:

3 Q. Justice Cameron, perhaps I can just add some

4 clarity to that. I think it might be fair to

5 say that Ms. Brazil's instructions come from

6 the same source that Mr. Thompson's did.

7 COMMISSIONER:

8 Q. Well, thank you, Mr. Pritchard, that's very

9 helpful.

10 MS. BRAZIL:

11 Q. Thank you.

12 COMMISSIONER:

13 Q. Now, okay. Now, you've indicated that you

14 want to make some kind of an application. Can

15 you tell me the general nature? I'm not

16 inviting you to get into your application, but

17 I would like to know the general nature -

18 MS. BRAZIL:

19 Q. Certainly.

20 COMMISSIONER:

21 Q. - of the application which you want to make.

22 MS. BRAZIL:

23 Q. Thank you, Madam Commissioner. Again, as I

24 stated, before I get into that, I would like

25 to apologize for the short notice.

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1 COMMISSIONER:

2 Q. Well, the short notice may determine how we

3 deal with this, so let's get on with what it

4 is that you--the nature of the thing that you

5 want to do.

6 MS. BRAZIL:

7 Q. And I would like to say for the record that I

8 spoke with all counsel yesterday but for Ms.

9 Taylor, who I was unable to reach, so--and I

10 spoke to her this morning, so counsel have

11 been advised, albeit, with short notice, that

12 I intended to be here.

13 COMMISSIONER:

14 Q. Very short notice. But the question was

15 whether--you know, could you just give me some

16 general idea of the nature of the application

17 you want to make?

18 MS. BRAZIL:

19 Q. Yes, I can, Madam Commissioner. My client

20 seeks clarification on the issue of whether

21 Commission counsel has an automatic right to

22 cross-examine all witnesses that come before

23 this Commission.

24 COMMISSIONER:

25 Q. So you're asking for what, a ruling in respect

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1 of the general law of examination and cross-

2 examination, are you asking for an

3 interpretation of our rules, is that what

4 you're looking for?

5 MS. BRAZIL:

6 Q. Yes, I'm seeking an interpretation of Rule 29

7 of the Commission's Rules of Procedure.

8 COMMISSIONER:

9 Q. Okay.

10 MS. BRAZIL:

11 Q. And related to that, Rule 18 of the Rules of

12 Procedure.

13 COMMISSIONER:

14 Q. Rules 29 and 18?

15 MS. BRAZIL:

16 Q. Twenty-nine and 18, yes.

17 COMMISSIONER:

18 Q. All right. Now, Ms. Brazil, I'll tell you

19 what my problem is. You haven't been with us,

20 so I wouldn't necessarily expect that you

21 would be aware of this, but we have a witness

22 scheduled for today who has been extremely

23 cooperative with the process of the Inquiry.

24 That witness is not a person who is

25 represented by the person that you represent

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1 or the organization that you represent. Last

2 week there was some effort to delay this

3 witness', completion of this witness'

4 testimony. There was objection by counsel who

5 represented him. In my remarks in response to

6 Mr. Simmons' request, I agreed with Mr.

7 Simmons that it was vitally important that Mr.

8 Tilley be given the opportunity to complete

9 his testimony, to be given the opportunity to,

10 as it were, get this over with and get on with

11 things. In light of what I think has been the

12 extraordinary effort on his behalf to come to

13 us on four separate occasions, I agreed with

14 Mr. Simmons and I indicated at that time that

15 we would complete the testimony of Mr. Tilley

16 in the time allotted under our schedule, which

17 would be today and tomorrow. I intend to keep

18 that promise to Mr. Tilley and to others. So

19 it seems to me that since the most effective

20 way of dealing with your application would be

21 as follows, Mr. Tilley, we anticipate will be

22 two days. Following Mr. Tilley, I believe,

23 and perhaps counsel can confirm this, I

24 believe the next witness is Dr. Williams. He

25 also is not the client of the organization

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1 with which your work. So, it seems to me the
 2 most efficient way of handling this so that
 3 everybody gets a fair opportunity to both
 4 understand completely your application and
 5 respond appropriately, while not interfering
 6 with the progress of matters which are now
 7 ongoing, is to have you make your application
 8 in writing. I therefore propose the
 9 following: You can submit your application in
 10 writing by, oh, say, 5:00 tomorrow afternoon.
 11 Counsel with standing for other parties in the
 12 room will be given until, say, Friday at 5. I
 13 recognize that you people have to be here so
 14 that I'm giving counsel for parties with
 15 standing a little more time because they will
 16 be in this room engaged in--and I'm assuming
 17 you not necessarily going to stay, but if you
 18 are, then I'll have to rethink this business
 19 of when you have to submit your application in
 20 writing. That should give everybody a fair
 21 opportunity to make their position known on
 22 your application. It's a long weekend. I'll
 23 take the weekend and have a look at the
 24 positions and assure you that before a witness
 25 who would be represented by Her Majesty takes

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1 the stand, you'll have an answer on the
 2 application. That, I think, is the best we
 3 can do for you and at the same time keep my
 4 promise to Mr. Tilley.
 5 MS. BRAZIL:
 6 Q. Madam Commission, thank you. I'll--that's
 7 fine. And I'm sensing, and maybe I'm wrong,
 8 but I'm sensing that perhaps I should have
 9 made this application in writing and perhaps
 10 you feel that it would have been a more
 11 efficient -
 12 COMMISSIONER:
 13 Q. Well, if you had given longer notice and
 14 everybody in this room had had an opportunity
 15 to know precisely what the nature of your
 16 application was and a chance to consider it so
 17 that they could properly put this forward,
 18 then perhaps we could have done it this way.
 19 But my concern at the moment is finally--
 20 frankly one of timing. As everybody in this
 21 room knows, although not in the way I would
 22 have preferred for them to know, I have made
 23 application to the Government of Newfoundland
 24 and Labrador to extend the time in which to
 25 file my report. Thus far I have not heard

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1 from the government. I therefore must proceed
 2 on the basis that I will not have an
 3 extension. That means that we cannot waste a
 4 moment in terms of the time that the witnesses
 5 are on the stand. And frankly, I think the
 6 application in writing is the way of getting
 7 through as many witnesses as we can as
 8 thoroughly as we can and still allow you the
 9 opportunity to make your application. That's
 10 the best I can do for you. Thank you, Ms.
 11 Brazil. Let's get on with it. Mr. Coffey.
 12 Mr. Tilley, would you--welcome back, Mr.
 13 Tilley.
 14 UNKNOWN SPEAKER:
 15 Q. Mr. Tilley is back on the stand.
 16 COMMISSIONER:
 17 Q. We're all envious, Mr. Tilley. Now.
 18 MR. GEORGE TILLEY, EXAMINATION-IN-CHIEF BY BERNARD
 19 COFFEY, Q.C. (CONTINUED)
 20 COFFEY, Q.C.:
 21 Q. While Mr. Tilley is being seated, Madam
 22 Commissioner, or Commissioner, as I avoided
 23 the usage of the word madam, I have some other
 24 exhibits. Mr. Simmons is aware of these. I
 25 have alerted Mr. Tilley to the fact that I

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1 would be asking that they go in, but -
 2 COMMISSIONER:
 3 Q. But I hope you've told him you're not going to
 4 ask him to address all of these.
 5 COFFEY, Q.C.:
 6 Q. You've got it, Commission. If I could,
 7 please, Exhibits, I understand it's P-0489
 8 through 0536.
 9 COMMISSIONER:
 10 Q. Yes.
 11 COFFEY, Q.C.:
 12 Q. P-0489 through 0536 inclusive. P-0538.
 13 COMMISSIONER:
 14 Q. Okay.
 15 COFFEY, Q.C.:
 16 Q. Through P-0586, inclusive.
 17 COMMISSIONER:
 18 Q. Um-hm.
 19 COFFEY, Q.C.:
 20 Q. P-0588 through P-0696, inclusive.
 21 COMMISSIONER:
 22 Q. Um-hm.
 23 COFFEY, Q.C.:
 24 Q. And P-1075 through 1085, inclusive. And P-
 25 1087 through P-1163, that's 1163. And then P-

1 1165 through P-1171, inclusive. And then P-
2 1173 through P-1188, inclusive. P-1190 alone,
3 please, by itself. And then P-1192 through P-
4 1216, inclusive. Another Exhibit P-1218 by
5 itself, P-1220 through 1222, inclusive, and
6 then P-1224 through P-1231 inclusive. P-1233
7 by itself. P-1235 through P-1238, inclusive.
8 P-1240 through 1244, inclusive. P-1247 by
9 itself. P-1254 by itself. P-1256 and P- 1257
10 by themselves. And then P-1259 through 1270,
11 inclusive, P-1272 through 1275, inclusive.
12 And finally, P-1278.
13 COMMISSIONER:
14 Q. Madam Registrar.
15 REGISTRAR:
16 Q. You missed on, P-1249.
17 COFFEY, Q.C.:
18 Q. And that one, as well, please, Commissioner.
19 COMMISSIONER:
20 Q. The registrar having followed this more
21 closely than the rest of us would just please
22 enter all of those exhibits?
23 EXHIBITS P-0489 THROUGH P-0536, INCLUSIVE, ENTERED INTO
24 EVIDENCE.
25 EXHIBITS P-0538 THROUGH P-0586, INCLUSIVE, ENTERED INTO

1 EXHIBIT P-1254 ENTERED INTO EVIDENCE.
2 EXHIBITS P-1256 ENTERED INTO EVIDENCE.
3 EXHIBIT P-1257 ENTERED INTO EVIDENCE.
4 EXHIBITS P-1259 THROUGH P-1270, INCLUSIVE, ENTERED INTO
5 EVIDENCE.
6 EXHIBITS P-1272 THROUGH P-1275, INCLUSIVE, ENTERED INTO
7 EVIDENCE.
8 EXHIBIT P-1278 ENTERED INTO EVIDENCE.
9 EXHIBIT P-1249 ENTERED INTO EVIDENCE.
10 COFFEY, Q.C.:
11 Q. Yes, I apologize, Registrar. Keeper of the
12 records. Mr. Tilley, sir, if we could, please,
13 Registrar, if we could bring up, please,
14 Exhibit P-0280, P-0280? Okay, Mr. Tilley, and
15 I'm just trying to--because it has been a
16 little time since you've been here, I'll get
17 you back to where we were in reviewing the
18 events being examined here. The last exhibit,
19 this is the last exhibit we looked at, I
20 believe, on the record, it's a e-mail from
21 Sharon Smith, of Eastern Health, to Beverley
22 Griffiths, with the Government of Newfoundland
23 and Labrador, March 7th, 2007 at 12:30 p.m.
24 And she says, "Re: Some info yet again." And
25 then she goes on to describe "ER/PR testing

1 EVIDENCE.
2 EXHIBITS P-0588 THROUGH P-0696, INCLUSIVE, ENTERED INTO
3 EVIDENCE.
4 EXHIBITS P-1075 THROUGH P-1085, INCLUSIVE, ENTERED INTO
5 EVIDENCE.
6 EXHIBIT P-1087 THROUGH P-1163, INCLUSIVE, ENTERED INTO
7 EVIDENCE.
8 EXHIBIT P-1165 THROUGH P-1171, INCLUSIVE, ENTERED INTO
9 EVIDENCE.
10 EXHIBITS P-1173 THROUGH P-1188, INCLUSIVE, ENTERED INTO
11 EVIDENCE.
12 EXHIBIT P-1190 ENTERED INTO EVIDENCE.
13 EXHIBITS P-1192 THROUGH P-1216, INCLUSIVE, ENTERED INTO
14 EVIDENCE.
15 EXHIBIT P-1218 ENTERED INTO EVIDENCE.
16 EXHIBITS P-1220 THROUGH P-1222, INCLUSIVE, ENTERED INTO
17 EVIDENCE.
18 EXHIBITS P-1224 THROUGH P-1231, INCLUSIVE, ENTERED INTO
19 EVIDENCE.
20 EXHIBIT ENTERED AND MARKED P-1233.
21 EXHIBITS P-1235 THROUGH P-1238, INCLUSIVE, ENTERED INTO
22 EVIDENCE.
23 EXHIBITS P-1240 THROUGH P-1244, INCLUSIVE, ENTERED INTO
24 EVIDENCE.
25 EXHIBIT P-1247 ENTERED INTO EVIDENCE.

1 was restarted on February 1st, 2007." And if
2 you just look down through this, Mr. Tilley,
3 in fact, the first two paragraphs she says
4 that, "A major effort has been made by the lab
5 program to implement a Q/A process to insure
6 reliability of testing, including the
7 designation of a small group of pathologists
8 to perform this testing, lead by a pathologist
9 who has completed a breast pathology sub-
10 specialty. They also are sending specimens to
11 Mount Sinai every month for rechecks to insure
12 inter-rate reliability. If you need further
13 information about that, you should contact Dr.
14 Denic. There have not been many issues since
15 the technical briefing. We did have one
16 individual who had not seen a doctor to get
17 her results (a number of attempts have been
18 made to contact her, but she was missed), and
19 she did go to the press in January. And we
20 know the court case is proceeding under Ches
21 Crosbie and I have no further word on that and
22 can't connect with our risk manager at this
23 point. In terms of lab accreditation they
24 will be surveyed in September as part of a
25 pilot project with the Canadian Council on

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1 Health Services accreditation." And then Ms.
 2 Griffiths goes on about a number of other
 3 things.
 4 MR. TILLEY:
 5 A. Um-hm.
 6 COFFEY, Q.C.:
 7 Q. And that had been given, that e-mail was given
 8 in response, and I show you these e-mails
 9 because the general--then a general question.
 10 The e-mail from Bev Griffiths was March 5,
 11 2005 at 4:23 p.m. to Ms. Stone, and she says,
 12 "I do not need this today." She said, "Hi
 13 Sharon, I do not need this today. I am
 14 updating information for the minister on
 15 various issues in preparation for the opening
 16 of the House of Assembly soon." And one of
 17 them is, "No. 1, retesting of breast cancer
 18 patients, ER/PR testing. (a) Are new patients
 19 now being tested in St. John's? (b) What
 20 measures are put in place to reduce the risk
 21 of a similar problem occurring in the future?
 22 (c) Have there been many issues since the
 23 technical media briefing December 11th, '06 in
 24 this issue? (d) Last note said that Eastern
 25 Health filed an affidavit in court by December

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1 15th and lawyers have to file documents in
 2 case law with the court by February 9th, '09,
 3 (sic.) at which time a request is made for the
 4 hearing of the certification application. Any
 5 word on this?" And (e) Where are you with
 6 accreditation of lab services?" And she goes
 7 on about another topic, out-of-province cancer
 8 treatments. And then she thanks in advance.
 9 "A small e-mail response on each is more than
 10 sufficient." Signed, "Bev."
 11 Now Mr. Tilley, in this regard, were you
 12 aware that this kind of--not of this
 13 particular e-mail, but this kind of exchange
 14 was going on between somebody like Ms.
 15 Griffiths, who works with the Department of
 16 Health, and Sharon Stone--sorry, Sharon Smith,
 17 I apologize. No, it wouldn't be Sharon Stone.
 18 I apologize. Were you aware of that? I just
 19 apologized for the remark.
 20 MR. TILLEY:
 21 A. I'm not surprised. It seemed to me over the
 22 last few years, in particular, that the
 23 connections between our organization and
 24 officials in the Department had gotten
 25 numerous, blurred, and I think people were

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1 feeling somewhat accustomed to making contacts
 2 with representatives within the organization,
 3 not on this particular topic, in particular,
 4 but over the years, I had heard of individuals
 5 members in Government making direct contacts
 6 with people at the director or below level,
 7 seeking answers to questions, and I guess, in
 8 part, the size of the organization was such
 9 that it probably ended up being the most
 10 expeditious way they could access information.
 11 COFFEY, Q.C.:
 12 Q. And so, I take it, as a CEO, you were not
 13 generally aware that this was going on, but
 14 the nitty gritty of any one contact wouldn't
 15 have been brought to your attention?
 16 MR. TILLEY:
 17 A. That's correct.
 18 COFFEY, Q.C.:
 19 Q. If we could, please -
 20 THE COMMISSIONER:
 21 Q. I take it, Mr. Tilley, that this was not a
 22 method of communication of which you approved?
 23 MR. TILLEY:
 24 A. Well, it was a bit frustrating, Madame
 25 Commissioner, in that there were times that

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1 there was information going to government that
 2 I ended up probably having to respond to and I
 3 had no idea it had been sent. I think
 4 ideally, we'd like to be able to have a single
 5 conduit of information flow on whatever issue
 6 the organization may be going through, but I
 7 know that there were individuals in the
 8 organization that, from time to time,
 9 wondered, because they had a particular call
 10 from a government representatives, whether
 11 they also had some ability to exert some
 12 authority in terms of the issue being dealt
 13 with. So it did present some issues within
 14 the organization from time to time.
 15 THE COMMISSIONER:
 16 Q. Okay.
 17 COFFEY, Q.C.:
 18 Q. And you say, you were just telling the
 19 Commissioner, at times you have to respond, I
 20 take it, you would get a call from--or a
 21 contact from some government person asking you
 22 about something that, in fact, you didn't
 23 even--weren't even aware that the government
 24 was already aware of?
 25 MR. TILLEY:

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1 A. Yes, though I can't be specific, but it's just
 2 a general sense of recollection here.
 3 COFFEY, Q.C.:
 4 Q. Ms. Smith worked in what part of the
 5 organization?
 6 MR. TILLEY:
 7 A. At that point in time, I suspect she would
 8 have been the director of the Cancer Care
 9 Program.
 10 COFFEY, Q.C.:
 11 Q. So that Ms. Griffiths, who I understand
 12 there'll be evidence that she works for Ms.--
 13 or reported to Ms. Hennessey, the ADM.
 14 MR. TILLEY:
 15 A. I'm not totally sure, but I believe she's a
 16 consultant in the Department of Health.
 17 COFFEY, Q.C.:
 18 Q. Yes. Would be dealing directly with a person
 19 who was working in the Cancer Care Centre, and
 20 looking for particular information to update a
 21 briefing note.
 22 MR. TILLEY:
 23 A. Right.
 24 COFFEY, Q.C.:
 25 Q. A government briefing note.

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1 MR. TILLEY:
 2 A. Now, in all intents and purposes, it could
 3 have been sent to somebody higher in the
 4 organization and been redirected down to Ms.
 5 Smith, if that was felt to be the most
 6 appropriate person.
 7 COFFEY, Q.C.:
 8 Q. Here actually, apparently the e-mails are
 9 directed between the two individuals.
 10 MR. TILLEY:
 11 A. Okay.
 12 COFFEY, Q.C.:
 13 Q. If we could, please, Exhibit P-0281? This is
 14 again two e-mails, an e-mail exchange between
 15 Ms. Griffiths and Ms. Smith, and again, I
 16 acknowledge that, of course, these are not
 17 involving you, but just to ask you about
 18 whether you were aware, again, of this sort of
 19 information flow. The first one is from Ms.
 20 Griffiths to Ms. Smith at March 7th at 14:46
 21 hours. Subject is ER/PR testing, one more,
 22 and she says "Sharon, in our note to the
 23 Minister in December, we advised the
 24 following: Eastern Health has to file an
 25 affidavit in Court by December 15th 2006. The

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1 lawyers have to file documents and case law
 2 with the Court by February 9th 2007, at which
 3 time a request can be made for the Court date
 4 for the hearing of the certification
 5 application. Do you know who can confirm what
 6 happened on these dates?" Signed Bev.
 7 And then Ms. Smith responds to Ms.
 8 Griffiths saying, at 3:18 that day, "Heather
 9 Predham should know this and her number is"
 10 and she gives her phone number. So I take it
 11 within--were you aware within your own
 12 organization that even the person, the point
 13 of contact person, Ms. Smith here, was
 14 involved then in redirecting the government
 15 official to other employees within your
 16 organization?
 17 MR. TILLEY:
 18 A. Again, I wouldn't be specifically aware, but I
 19 would hope that people would direct it to the
 20 person who would be most appropriate to
 21 respond.
 22 COFFEY, Q.C.:
 23 Q. And can you tell the Commissioner, please, and
 24 just this is just one, we could point to more
 25 such exchanges, whether you have any

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1 understanding of whether this sort of
 2 interaction we've just witnessed here, would
 3 that be representative of how information
 4 might be exchanged between Eastern Health's
 5 people and government during those last couple
 6 of years you were there?
 7 MR. TILLEY:
 8 A. Well, I believe it was a common practice, got
 9 no sense as to whether it would represent 20
 10 percent of the time that things would happen.
 11 COFFEY, Q.C.:
 12 Q. Or 50, you wouldn't know, but it was common?
 13 MR. TILLEY:
 14 A. No, but it had happened enough to know that it
 15 was happening out there.
 16 COFFEY, Q.C.:
 17 Q. Okay. If we could, please, Exhibit P-0201?
 18 And on that, Mr. Tilley, did you--you just
 19 told the Commissioner that you, at times, had
 20 misgivings about--as a CEO, about this going
 21 on.
 22 MR. TILLEY:
 23 A. The flow?
 24 COFFEY, Q.C.:
 25 Q. Flow.

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1 MR. TILLEY:
 2 A. Yes.
 3 COFFEY, Q.C.:
 4 Q. Did you ever take any steps to try to, I
 5 suppose, better manage it or to get more--I
 6 don't--more control of it, which is, I take
 7 it, what you were concerned about, in terms
 8 of--not control in the sense of to stop it,
 9 but to monitor the flow. Did you ever take any
 10 steps in that regard?
 11 MR. TILLEY:
 12 A. Well, a couple of things jump to my mind. The
 13 first was a request that came about a month or
 14 two later than this one, where I had made a
 15 request to all of those individuals that
 16 seemed to be involved in this particular
 17 issue, in particular, to ask what information
 18 has actually transpired between Eastern Health
 19 and the Department of Health and Community
 20 Services, and at that point in time, I sense
 21 that I had come from a meeting and information
 22 was being shared that I hadn't seen myself.
 23 So I just needed to get a sense as to what was
 24 happening, and that was sort of overlaid with
 25 other issues in other parts of the

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1 organization where contact seemed to be
 2 happening fairly frequently. And I can say in
 3 many ways, it's not to say it was
 4 counterproductive, it probably meant for
 5 expeditious follow up on issues, but it still
 6 raised the concern for me of not knowing if
 7 different messages were given out, depending
 8 on who you may have contacted.
 9 COFFEY, Q.C.:
 10 Q. And you said, you just pointed out to the
 11 Commissioner earlier that times someone from
 12 government would ask you about something, a
 13 particular piece of information that you
 14 hadn't realized had gone over to government,
 15 okay, and I take it now what you've just told
 16 us that at times, even though in this later
 17 event, that you're referring to about a month
 18 or so later, that when you made inquiries in
 19 that regard, there was certain information
 20 that even you hadn't been aware of?
 21 MR. TILLEY:
 22 A. Well, that's true. Now in actual fact, the
 23 results of that effort that I undertook to
 24 seek what had been transpired didn't get the
 25 thorough analysis that I intended to, because

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1 my time at the organization didn't last long
 2 after that.
 3 COFFEY, Q.C.:
 4 Q. Okay. And now looking at this, this is a
 5 March 8th 2007 letter from--it's from Dr.
 6 Denic to Mr. Abbott, I appreciate, the deputy
 7 minister, and it is about--I apologize,
 8 recruitment and retention of pathologists and
 9 this deals with the issue of increased
 10 remuneration. Just on this point, in terms of
 11 the whole issue of remuneration for
 12 pathologists, from your perspective as the CEO
 13 of Eastern Health, did you have any actual
 14 involvement in that?
 15 MR. TILLEY:
 16 A. In a peripheral way. Dr. Williams and I
 17 certainly had multiple discussions about it.
 18 When every--when opportunities presented
 19 themselves in conversations that I had with
 20 the deputy, I would raise this issue as to the
 21 importance of it.
 22 COFFEY, Q.C.:
 23 Q. I take it you would be encouraging the deputy
 24 to obtain -
 25 MR. TILLEY:

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1 A. To get action on this, because it was becoming
 2 a major issue. We were starting to lose
 3 people and others were talking about leaving.
 4 And I recall having a meeting with the chair
 5 of the Medical Advisory Committee, and I think
 6 that was one of the issues that they had come
 7 to me about, in terms of how we might be able
 8 to find a way to make this happen sooner than
 9 later. So I wasn't directly involved. Dr.
 10 Williams was instrumental in getting the
 11 position paper developed on this. I certainly
 12 knew it was a major issue though and its
 13 impact pretty significant if it wasn't
 14 resolved.
 15 COFFEY, Q.C.:
 16 Q. I take it then from that that every chance you
 17 got, the topic would come up, at least in an
 18 informal way with your counterparts or
 19 counterpart, Mr. Abbott, you'd bend his ear on
 20 it and try and get him to move it along?
 21 MR. TILLEY:
 22 A. Right, and in fairness to Mr. Abbott, there
 23 was never a time that I felt that he was
 24 rejecting the opinion of Eastern Health.
 25 COFFEY, Q.C.:

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1 Q. He was on the same--he was of the same view?

2 MR. TILLEY:

3 A. I believe so, yeah.

4 COFFEY, Q.C.:

5 Q. And he has told us that, in fact. If we

6 could, please, Exhibit P-0202? Now this is an

7 e-mail exchange of March 15th 2007 at 10:35

8 p.m. involving Ms. Mundon and government

9 officials, but it says--the first line says

10 "for your information, Susan Bonnell told me

11 this afternoon that Eastern Health received a

12 submission under access to information from

13 the media requesting patient conversation

14 rates" and I presume it should be conversion

15 rates.

16 MR. TILLEY:

17 A. Um-hm.

18 COFFEY, Q.C.:

19 Q. "Associated with ER/PR. Apparently Susan was

20 only informed about the request today, but the

21 request has to be completed by early next

22 week. It appears that the media will receive

23 limited information. Once Susan receives

24 further details, expected tomorrow, she will

25 advise me accordingly. Thanks, Tansy." Now

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1 sir, which--do you recall which ATIPP request

2 this was? Is this the one looking--well, do

3 you recall?

4 MR. TILLEY:

5 A. Well, I remember there was one in January that

6 was looking for individual patient breakdowns.

7 COFFEY, Q.C.:

8 Q. January or February of '07?

9 MR. TILLEY:

10 A. Right. Is this the same one?

11 COFFEY, Q.C.:

12 Q. In time frame, if it was February of '07, it

13 would be the same time frame.

14 MR. TILLEY:

15 A. That's the only one that's sort of ringing in

16 my mind, and we talked briefly--we spoke

17 briefly about it in one of our last sessions.

18 COFFEY, Q.C.:

19 Q. Yes. Okay, so that's the--that would be the

20 one. Within your organization, who was, from

21 your perspective, left to deal with this?

22 MR. TILLEY:

23 A. Well, we had a person that was designated

24 within the quality department, and I keep

25 forgetting her name, but Marion Crowley is one

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1 name that sort of slips in my mind that she

2 would coordinate any request coming in for

3 information.

4 COFFEY, Q.C.:

5 Q. Now within your organization, who had to sign

6 off on any--sign off in the sense of sign the

7 response cover letter?

8 MR. TILLEY:

9 A. My indication, my understanding of the Act was

10 that we would designate a person within the

11 organization to be that coordinator. Beyond

12 that, I'm sorry, I can't answer the question.

13 COFFEY, Q.C.:

14 Q. And were you actively, yourself, involved in

15 responding to this request, like the one

16 you're speaking of.

17 MR. TILLEY:

18 A. Right.

19 COFFEY, Q.C.:

20 Q. The one with the individual results without

21 the patients' names?

22 MR. TILLEY:

23 A. I was certainly aware that the request had

24 come in. I was also aware that there were

25 concerns about releasing individual names, but

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1 beyond that, the system that we had in place

2 was left to deal with some of those concerns.

3 COFFEY, Q.C.:

4 Q. Sir, if we could -

5 THE COMMISSIONER:

6 Q. Mr. Tilley, small point, I think. You talked

7 about the person having been designated as the

8 ATIPP coordinator?

9 MR. TILLEY:

10 A. Yes.

11 THE COMMISSIONER:

12 Q. Would that be the person who would be signing

13 the documents or would you be signing the

14 response to the ATIPP request?

15 MR. TILLEY:

16 A. Commissioner, when I spoke to Mr. Coffey about

17 not knowing, that was the point that I really

18 was speaking to.

19 THE COMMISSIONER:

20 Q. Oh, okay.

21 MR. TILLEY:

22 A. I don't remember if she actually signed off on

23 it or I did.

24 COFFEY, Q.C.:

25 Q. Well, if it had to be you then, you would do

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1 so?

2 MR. TILLEY:

3 A. It that was the requirement, yes.

4 THE COMMISSIONER:

5 Q. Yes, okay.

6 COFFEY, Q.C.:

7 Q. Whatever the legislation required, you'd

8 comply with.

9 MR. TILLEY:

10 A. Right, and I apologize, I just don't remember.

11 THE COMMISSIONER:

12 Q. No, I'm--perhaps me, I--you answered the

13 question about you had an ATIPP coordinator,

14 but I wasn't sure whether you were saying that

15 that was the person who actually signed the

16 response that went out or not. Thank you.

17 COFFEY, Q.C.:

18 Q. Now Mr. Tilley, fast forward really to May

19 15th, as it were, but in the intervening time

20 between mid March and mid May, did ER/PR come

21 up as a topic, do you recall?

22 MR. TILLEY:

23 A. I'm thinking there was ongoing media coverage.

24 The affidavit was already out at this point in

25 time.

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1 COFFEY, Q.C.:

2 Q. I believe, and I stand--I can't give evidence,

3 but I believe, and I don't think anyone in the

4 room will take any issue with the CBC report

5 on the affidavit information was May 15th

6 2007.

7 MR. TILLEY:

8 A. Okay, so that came later.

9 COFFEY, Q.C.:

10 Q. So in between, do you recall--I'm not

11 suggesting there was. I'm just asking -

12 MR. TILLEY:

13 A. The MHA discussions in the House.

14 COFFEY, Q.C.:

15 Q. Same day.

16 MR. TILLEY:

17 A. Okay, so I'm not recalling anything -

18 COFFEY, Q.C.:

19 Q. In between?

20 MR. TILLEY:

21 A. - other than those issues.

22 COFFEY, Q.C.:

23 Q. If we could, please, Exhibit P-0106? Now this

24 is--it's actually a five-page exhibit, Mr.

25 Tilley. I'm going to take you to the last--or

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1 the first e-mail in time that comprise it.

2 This is an e-mail from yourself, May 15th

3 2007, at 3:56 p.m. See that it's to a number

4 of people, really the Board, I take it?

5 MR. TILLEY:

6 A. Yes, it looks that way.

7 COFFEY, Q.C.:

8 Q. And it's copied, cc'ed to the executive team,

9 Eastern Health, May 2005. See that?

10 MR. TILLEY:

11 A. Um-hm.

12 COFFEY, Q.C.:

13 Q. I take it that was a way of communicating with

14 the senior executive officers.

15 MR. TILLEY:

16 A. Right, I had a habit of general e-mails that

17 would go to the Board, I would circulate to

18 the executive team so that they were kept in

19 the loop.

20 COFFEY, Q.C.:

21 Q. And this would be all of the VPs and COOs.

22 MR. TILLEY:

23 A. That's correct.

24 COFFEY, Q.C.:

25 Q. Without spelling out all their names.

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1 MR. TILLEY:

2 A. Right.

3 COFFEY, Q.C.:

4 Q. If we see that there, that means it went out

5 to, for example, Oscar Howell?

6 MR. TILLEY:

7 A. Yes.

8 COFFEY, Q.C.:

9 Q. And Louise Jones and so on.

10 MR. TILLEY:

11 A. Yes.

12 COFFEY, Q.C.:

13 Q. The subject here is "ER/PR testing, media

14 coverage" and you've written "Trustees,

15 there's been media coverage today pertaining

16 to ER/PR testing problem that we briefed you

17 on some time ago, the focus of attention is

18 more on the information that was provided to

19 the media in December and a technical briefing

20 was provided to them, compared to the

21 information that was provided on our court

22 affidavit. For your information, there's been

23 no change in the numbers. In December when

24 reporters asked us for totals of changed tests

25 or an error rate, we told them the following,

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1 up to this point our focus has been on making
 2 treatment changes where appropriate and 117
 3 individuals have experienced treatment
 4 changes. Some of these changes are because of
 5 a conversion in their ER/PR test result from
 6 negative to positive; some because of the
 7 definition of "negative" has changed; some
 8 because of where patients are today with the
 9 disease. There are multiple factors involved.
 10 We've gone on to state that now that legal
 11 proceedings have been initiated, we will have
 12 to allow the legal process to determine if in
 13 fact an error has occurred." And you go on to
 14 write, "The number that the media is focussing
 15 in on today in the affidavit is 317, which is
 16 the number of cases where the result changed.
 17 What we focused on were the 117 individuals
 18 (out of 317) that actually had a change in
 19 their treatment plan because of the results.
 20 It is believed that the number of individual
 21 conversions are not relevant and risk turning
 22 the process into a "numbers game". For
 23 example, some people have minor conversions
 24 that did not impact upon whether they would be
 25 considered suitable for hormonal therapy.

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1 Some individuals converted, but upon review of
 2 their treatment plan, it was discovered that
 3 for other clinical reasons, they were already
 4 receiving Tamoxifen. We did meet with the
 5 Minister of Health this morning and briefed
 6 him on the situation. He will likely respond
 7 to the media. As you would have expected on
 8 the advice of our legal counsel, we are
 9 staying away from any public debate, as this
 10 issue proceeds through the Court process."
 11 Signed George. And then attached to that, of
 12 course there's your, under your title and
 13 you've quoted here, "Error rate of
 14 Newfoundland and Labrador cancer tests alarms
 15 advocates." And it's a story from CBC news,
 16 their website, last updated Tuesday, May 15th,
 17 2007 at 8:05 a.m., Newfoundland time. And
 18 this is, I gather, Ms. Bonnell had provided
 19 that to yourself, I take it.
 20 MR. TILLEY:
 21 A. Yes.
 22 COFFEY, Q.C.:
 23 Q. Now, Mr. Tilley, I'd like you to think back
 24 because that story, you'll see, is posted, the
 25 last update at 8:05 a.m. that day, May 15th,

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1 which would be early on a Tuesday morning.
 2 And this is Tuesday afternoon you're writing
 3 to your executive team and the trustees. Did
 4 you have the morning, before the morning of
 5 Tuesday, May 15th, any inkling or warning that
 6 this was about to happen, yourself?
 7 MR. TILLEY:
 8 A. The issue of the 317 number?
 9 COFFEY, Q.C.:
 10 Q. Yes, in the sense of the media were about to
 11 report it.
 12 MR. TILLEY:
 13 A. I know that there have been a number of calls
 14 that had come through. I know that during the
 15 December briefing session itself, there were
 16 questions about what about the other number,
 17 so it certainly didn't surprise me to see that
 18 there was a continued interest in the 317.
 19 COFFEY, Q.C.:
 20 Q. In the week before May 15th, do you recall it
 21 being brought to your attention? And again,
 22 I'm not suggesting it was, I'm just--and the
 23 reason I raise it is this, okay, there is a
 24 document, it's one of your Communications
 25 Department's documents, referencing a phone

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1 call during the week before May 15th inquiring
 2 about ER/PR. So I'm just wondering, ask you,
 3 do you recall whether you, as a CEO, was
 4 alerted to it?
 5 MR. TILLEY:
 6 A. I get alerted to a lot of things, without
 7 putting you on the witness stand, I'm trying
 8 to remember if that was a call from a media
 9 reporter or -
 10 COFFEY, Q.C.:
 11 Q. Yes, it was, it was actually from Mark Quinn,
 12 according to the document.
 13 MR. TILLEY:
 14 A. So Mark Quinn is calling. I'd be surprised if
 15 I wasn't made aware of that.
 16 COFFEY, Q.C.:
 17 Q. And the action noted is "no response".
 18 MR. TILLEY:
 19 A. Right.
 20 COFFEY, Q.C.:
 21 Q. The matter is before the court or words,
 22 something to that effect and we'll see that
 23 document in due course, but here you said to
 24 your trustees, the organization's trustees,
 25 your last sentence is, "As you would have

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1 expected on the advice of our legal counsel,
 2 we are staying away from any public debate as
 3 this issue proceeds through the court
 4 process."
 5 MR. TILLEY:
 6 A. Right.
 7 COFFEY, Q.C.:
 8 Q. So by mid afternoon on May 15th that was still
 9 Eastern Health's position?
 10 MR. TILLEY:
 11 A. Yes.
 12 COFFEY, Q.C.:
 13 Q. They would not comment.
 14 MR. TILLEY:
 15 A. Yes.
 16 COFFEY, Q.C.:
 17 Q. Because the matter was before the courts.
 18 MR. TILLEY:
 19 A. The way I was looking at that is that with
 20 something that was about to be dealt with in
 21 the court process, it really was inappropriate
 22 to be out there speaking to it in the media to
 23 try to, perhaps, influence whatever
 24 discussions were going on in court. And
 25 secondly, not to have individual components of

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1 this dissected in the court of public opinion,
 2 rather than in the court of law.
 3 COFFEY, Q.C.:
 4 Q. Okay. And you referred here, you said, "on
 5 the advice of our legal counsel", so was there
 6 actual legal advice to that effect or -
 7 MR. TILLEY:
 8 A. Well, I'm sure there had been some
 9 conversations with legal counsel in readiness
 10 for this. Throughout the whole process, as
 11 you would have gathered by now, there was some
 12 reluctance but the organization chose to talk
 13 about this more than probably legal counsel
 14 may have preferred, but it certainly wasn't
 15 legal counsel's opinion not to. It was just
 16 an opinion of reluctance.
 17 COFFEY, Q.C.:
 18 Q. And just to follow then the events of, as
 19 reflected here in these e-mail exchanges of
 20 May 15th. On May 15th, 2007 at 8:56 p.m.,
 21 that evening, William Boyd--and Mr. Boyd, I
 22 take it, was a member of the Board of
 23 Trustees?
 24 MR. TILLEY:
 25 A. Yes.

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1 COFFEY, Q.C.:
 2 Q. And you understand Mr. Boyd's occupation to be
 3 what?
 4 MR. TILLEY:
 5 A. He's a lawyer.
 6 COFFEY, Q.C.:
 7 Q. And is he, to your knowledge at the time, the
 8 only lawyer on the Board? Do you remember any
 9 other lawyers?
 10 MR. TILLEY:
 11 A. Excuse me while I look at the e-mail addresses
 12 below.
 13 COFFEY, Q.C.:
 14 Q. Go right ahead.
 15 MR. TILLEY:
 16 A. My quick review suggests that he's the only
 17 one.
 18 COFFEY, Q.C.:
 19 Q. Okay. And he has e-mailed yourself, the
 20 subject "ER/PR testing media coverage" and Mr.
 21 Boyd writes, "Thanks for the heads up, George.
 22 I was confronted today with a story and
 23 questions from colleagues. I heard the
 24 comments of the Minister during a supper hour
 25 CBC report. He must say more than that

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1 Eastern Health was advised by its lawyers to
 2 not disclose information. That sounds very
 3 bad and makes it appear that we did
 4 deliberately mislead. We must respond, in my
 5 view, to the allegations that we mislead the
 6 media and the public in our previous
 7 disclosures. I think we can do so without
 8 prejudicing the legal case for the defence."
 9 Signed Bill.
 10 MR. TILLEY:
 11 A. Uh-hm.
 12 COFFEY, Q.C.:
 13 Q. And Bill would be Mr. Boyd's commonly used
 14 name.
 15 MR. TILLEY:
 16 A. Right.
 17 COFFEY, Q.C.:
 18 Q. And so, on May 16th, 2007, early the next
 19 morning, 7:53 a.m., you forwarded, I take it,
 20 Mr. Boyd's opinion which had been given to you
 21 in response to your e-mail, out to the Board,
 22 to Dr. Howell, Ms. Predham and Ms. Bonnell.
 23 The subject is "ER/PR testing media coverage"
 24 and you've written to Dr. Howell and Ms.
 25 Predham and Ms. Bonnell, "opinion of Board

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1 member, Bill Boyd (lawyer)", okay. So having
 2 read Mr. Boyd's view and by the time you
 3 forwarded it to Dr. Howell, Ms. Predham and
 4 Ms. Bonnell, what was your view on the matter?
 5 MR. TILLEY:
 6 A. Well I think we were starting to see the need
 7 to get out there and be visible and speak to
 8 the media to try to clear this issue. My
 9 recollection is that the story that Mr. Boyd
 10 had referred to with the Minister, was in
 11 relation to the 317 and the withholding of the
 12 information on legal counsel's advice, and in
 13 my view that wasn't accurate because what
 14 legal counsel was talking about, speaking
 15 about this in public because of an imminent
 16 court process, but the issue about not giving
 17 the 317 was more attached to the point that,
 18 as a group, they felt that the number 117 was
 19 the key piece of information.
 20 COFFEY, Q.C.:
 21 Q. And here, after you sent--well you did send
 22 Mr. Boyd's or forward Mr. Boyd's opinion on to
 23 Dr. Howell, Ms. Predham, Ms. Bonnell. Why did
 24 you send it to them?
 25 MR. TILLEY:

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1 A. Well Dr. Howell would have been the key player
 2 in this now that Dr. Williams had retired.
 3 Heather Predham and Susan Bonnell would have
 4 been very, very active, probably spending more
 5 time in their day-to-day roles on the ER/PR
 6 issue than any other issue they were dealing
 7 with. And then it was a matter of trying to
 8 get other thoughts in the organization around
 9 this issue. And I think that it probably did
 10 precipitate what eventually became--it began
 11 the thinking which eventually became a press
 12 conference on our part, the day of which I
 13 have no recollection at the moment.
 14 COFFEY, Q.C.:
 15 Q. Later on, well later that morning of May 16th,
 16 2007 on this exhibit, P-0106 at the top of the
 17 page, Ms. Predham sends an e-mail to George,
 18 to your self, George Tilley, Oscar Howell and
 19 Susan Bonnell, the same subject matter. She
 20 says, "Hi all, there's part of me that totally
 21 agrees and feels that we should be out on roof
 22 tops clarifying this point. I admit I only
 23 heard part of the coverage. I had to turn off
 24 Lorraine Michaels and I couldn't bear to watch
 25 Peter Dawe on "Out of the Fog". The other

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1 part of me is thinking we're only going to
 2 give them more fodder and that whatever we say
 3 will fan the fires and it would be better to
 4 hold the "no comment" line. I'll call Dan
 5 this a.m. I got a voice mail from him last
 6 night which was difficult to understand with
 7 background noise. He was at a pre-hearing
 8 meeting with the judge, re: the certification
 9 and the judge believes that Ches's case is not
 10 developed enough to be heard and wants to
 11 postpone it until September. The difficult
 12 part of the message to hear was that I think
 13 Dan said that Ches still wants to proceed. I
 14 guess the key point of clarification is that
 15 all the patients who needs to know, knows.
 16 It's the general public and the media that
 17 doesn't have all the details and that is
 18 because it is before the court." Signed
 19 Heather. So the Dan, "I'll call Dan this
 20 morning" that would be Mr. Boone, I take it,
 21 in this context?
 22 MR. TILLEY:
 23 A. That's my assumption as well.
 24 COFFEY, Q.C.:
 25 Q. So having received this early in the morning,

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1 the working morning of May 16th from Ms.
 2 Predham, what was your understanding overall
 3 as a CEO, of her advice?
 4 MR. TILLEY:
 5 A. Well she was basically suggesting that there
 6 was probably no value in going out and
 7 speaking, that was one opinion on that.
 8 COFFEY, Q.C.:
 9 Q. If we could please, Exhibit P-0107? Putting
 10 context now, what information or at least some
 11 of the information that you were receiving
 12 that day. This is an e-mail from Susan
 13 Bonnell, Wednesday, May 16th, 2007 at 8:54
 14 a.m. It's to Dr. Howell, yourself, Ms.
 15 Predham, and Stephen Dodge and the subject is
 16 "CTV National News Last Night" and there's a
 17 website posting updated Tuesday, May 15th,
 18 2007 at 7:58 p.m., eastern time. And the
 19 title is "Affidavit: cancer patients given
 20 wrong treatment." Glancing down through this,
 21 this in effect refers to the affidavit that
 22 had been filed, some of its contents, Ms.
 23 Rogers, a quotation from her and at the bottom
 24 of the page, a quote from Mr. Dawe. And he's
 25 suggested here, as well as a quotation from

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1 Dwight Ball, who is apparently a member of the
 2 opposition at the time, here in Newfoundland.
 3 "And Peter Dawe, head of the Province's Cancer
 4 Society said hormone receptor tests are
 5 notoriously complicated, but he still found
 6 the number of incorrect results by the
 7 authority extremely worrying "42 percent
 8 error" A 42 percent error rate is almost like
 9 flipping a coin" he said. And the CTV goes on
 10 to say, "The authority has refused to discuss
 11 the test results while the case is before the
 12 court, but Dawe said the public should be
 13 educated about the findings." He says, "Two
 14 years ago we had people contacting us just
 15 hysterical, I mean literally panicking and we
 16 went through that process with dozens of
 17 people" he said. There's one other I would
 18 like to show you, please, exhibit P-0438.
 19 This is another e-mail from Ms. Bonnell,
 20 Wednesday, May 16th, 2007 at 10:18 a.m. to
 21 yourself, Ms. Predham, Dr. Howell and to Dan
 22 Boone. The subject is "The Telegram Breast
 23 Cancer Articles", it's printed and there's an
 24 attachment. And if we just go to the second
 25 page of the exhibit, it's a PDF file

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1 containing a story from The Telegram written
 2 by Rosie Gillingham entitled "Mistakes will
 3 drive class action lawyer. Breast cancer
 4 patients given wrong results." So, Mr.
 5 Tilley, you had been over to see the Minister
 6 of May 15th, to brief him. Do you recall who
 7 went over with you?
 8 MR. TILLEY:
 9 A. My recollection is Dr. Howell, Susan Bonnell
 10 and Heather Predham and then a number of
 11 people that he would have had in his office
 12 with him.
 13 COFFEY, Q.C.:
 14 Q. Do you recall who was there from him office?
 15 MR. TILLEY:
 16 A. Other than the minister, all I can is there
 17 were others, but I can't tell you who they
 18 were.
 19 COFFEY, Q.C.:
 20 Q. The minister at the time was Mr. Wiseman?
 21 MR. TILLEY:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. Had you ever spoken to Mr. Wiseman before
 25 about this, do you recall?

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1 MR. TILLEY:
 2 A. Not that I recall.
 3 COFFEY, Q.C.:
 4 Q. And the purpose of you being there was what?
 5 MR. TILLEY:
 6 A. My recollection is that he was getting ready
 7 for the House of Assembly that afternoon and
 8 was looking for information with regards to
 9 this issue.
 10 COFFEY, Q.C.:
 11 Q. And can you tell the Commissioner, please,
 12 what you recall about that meeting?
 13 MR. TILLEY:
 14 A. I do have some notes, I believe, and -
 15 THE COMMISSIONER:
 16 Q. If we could aid Mr.--the binder is in front of
 17 Mr. Tilley, can we aid him in finding where
 18 those notes might be.
 19 COFFEY, Q.C.:
 20 Q. Well, the -
 21 MR. TILLEY:
 22 A. DOHCS that seems to be ringing a bell for me,
 23 in terms of heading up the paper.
 24 COFFEY, Q.C.:
 25 Q. Let me just see now, I'm going to--because you

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1 have quite a number of notes, different forms
 2 of notes for different purposes.
 3 THE COMMISSIONER:
 4 Q. We'll find that number for you, Mr. Tilley.
 5 COFFEY, Q.C.:
 6 Q. We'll find that now.
 7 MR. TILLEY:
 8 A. Well, I mean, I can try to work from top of my
 9 head on this sort of stuff.
 10 THE COMMISSIONER:
 11 Q. Well, no, we'll find you your note, if we can.
 12 That'll aid you in -
 13 COFFEY, Q.C.:
 14 Q. Just a moment please, Commissioner. I have--
 15 if I could, please, Exhibit P-0436 -
 16 MR. PIKE:
 17 Q. Page 415 on the upper right -
 18 COFFEY, Q.C.:
 19 Q. Yes, it's page 5 of the exhibit.
 20 MR. TILLEY:
 21 A. Yes, that's the one I'm thinking of.
 22 COFFEY, Q.C.:
 23 Q. All right.
 24 MR. TILLEY:
 25 A. I may have the date wrong.

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1 COFFEY, Q.C.:

2 Q. And I think, I suspect everybody involved

3 would agree. You go ahead, sir.

4 MR. TILLEY:

5 A. Okay. These are just, sort of, points that

6 were being made during the meeting. You

7 probably got a sense as to how I, sort of,

8 record my notes. Sometimes they make a great

9 of sense and other times they're just little

10 words stuck out in the middle of nowhere. But

11 the issue was with regards to difference

12 versus wrong. There would have been some

13 discussion about the 117 versus the 317 and

14 that had to do with the reason for--given the

15 number where there was a change in treatment.

16 And I think it was the minister that had

17 referenced this point or somebody in the

18 department, saying, well, the perception of

19 the media is that they've been misled. And

20 that the perception goes on to say the focus

21 is on the treatment only because of the

22 pending lawsuit. Now, as I alluded to a few

23 moments ago, at that point in time in December

24 because that's what I recollect, that was that

25 issue that was being talked about. The

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1 certification process or the affidavit, that

2 was, I think, initially thought was going to

3 be in December, but it didn't occur until much

4 later. So, we got into discussion about

5 avoiding an error rate and basically that was

6 because--and in my mind, still today, lack of

7 conclusiveness in terms of what is the actual

8 error here. And I think, you know, it's

9 obviously a task that the Commissioner will

10 try to bring greater clarity to, but with

11 issues that are multiple steps with multiple

12 national experiences, lack of standards, it is

13 a challenge to find that.

14 The 15 to 20, I can't tell you off the

15 top of my head what that goal applies to.

16 It's just not ringing a bell with me. Then

17 the note saying, "can we identify an error

18 rate"? So, it goes on to say, "focus on

19 treatment, no change, not a research project,

20 but a patient care exercise". Sorry?

21 COFFEY, Q.C.:

22 Q. What was that about? Why was that -

23 MR. TILLEY:

24 A. Well, we had gotten into this from the very

25 beginning with a belief that our prime aim was

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1 to see if we could benefit any patient who

2 could result from a change in the result. And

3 that's why that comment was being made by--it

4 wasn't one that would normally set up as a

5 perfect research process, but one where we

6 simply took the results and followed up with

7 the patients to see if there was Tamoxifen

8 that could be made available to them.

9 COFFEY, Q.C.:

10 Q. And you were explaining this to the minister

11 at -

12 MR. TILLEY:

13 A. Right. So then it goes on to say, "multiple

14 steps, multiple places to go wrong", so

15 that's, I guess, just goes to speak to the

16 error rate reference and the other changes and

17 factors. And then a comment about new

18 information and the answer is no. So, it came

19 down to well, why not show it? So -

20 COFFEY, Q.C.:

21 Q. I take it that was the minister's question.

22 MR. TILLEY:

23 A. Right, right, because it was not new

24 information, it was factual information, then

25 why did we show--what that discussion--what I

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1 recall from that discussion is to say to the

2 minister, it wasn't on the direction of legal

3 advice that that 317 wasn't there. I mean, he

4 was a part of the discussion; we know that

5 from the e-mails that were copied in the

6 process, but it was the fact on what they saw

7 as the most significant issue which was the

8 change.

9 COFFEY, Q.C.:

10 Q. I'm sorry, I apologize, you said what to the

11 minister about that?

12 MR. TILLEY:

13 A. That the reason the 317 wasn't referenced in

14 the December debriefing session was not

15 because of legal direction or not because of

16 the impending court proceedings. It was

17 factual information. It wasn't given because

18 the thought was the figure of 117, of people

19 who actually had a change in treatment was, in

20 fact, the most significant factor. So that's

21 the discussion that we would have had with the

22 minister.

23 COFFEY, Q.C.:

24 Q. While we're on that topic, Mr. Wiseman if

25 recall correctly and my understanding is, has

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1 told us that he understood that the figure
 2 wasn't given out, the 317 -
 3 MR. TILLEY:
 4 A. Yes.MR. TILLEY:
 5 A. - based upon what you told him, he said that
 6 it's because--it wasn't given out because
 7 there was legal advice to the effect -
 8 MR. TILLEY:
 9 A. I understand that, yes.
 10 COFFEY, Q.C.:
 11 Q. Okay. So, you're saying that that's not your
 12 recollection -
 13 MR. TILLEY:
 14 A. No.
 15 COFFEY, Q.C.:
 16 Q. - of what he was told?
 17 MR. TILLEY:
 18 A. No.
 19 COFFEY, Q.C.:
 20 Q. Okay.
 21 MR. TILLEY:
 22 A. We talked a lot about lawyers, we talked a lot
 23 about information, but that information,
 24 unless it was connected up with the wrong
 25 dots, that information was not said.

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1 COFFEY, Q.C.:
 2 Q. That wasn't the message that you wanted to
 3 convey to Mr. Wiseman.
 4 MR. TILLEY:
 5 A. Right.
 6 COFFEY, Q.C.:
 7 Q. Mr. Tilley, did you say anything to the
 8 minister about or explain to him, well why
 9 didn't both numbers come out? I mean he must
 10 have been asking, well why one came not, not
 11 the other, both? Did you explain that to him?
 12 MR. TILLEY:
 13 A. I don't recall that discussion, no.
 14 COFFEY, Q.C.:
 15 Q. And again, as CEO, I'm on the topic now,
 16 looking back on it, you know, why couldn't
 17 both numbers have come out in December?
 18 MR. TILLEY:
 19 A. Mr. Coffey, there is no reason, good reason,
 20 in looking back, to say we should have put it
 21 out there. We knew that it was factual
 22 information. At some point in time, whether
 23 it was in the affidavit or in some other
 24 process, the figure would have been there.
 25 And I think the issue at that time was the

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1 media or others would just make an assumption
 2 that it is an error rate. There was lots of
 3 discussion about whether it would be
 4 appropriate to call it an error rate,
 5 recognizing the context of the test itself.
 6 And of course, as you know, within the press
 7 conference that I got involved in we took that
 8 and said it very clearly.
 9 COFFEY, Q.C.:
 10 Q. So, I'm sorry, go ahead sir, you were looking
 11 through your notes. You'd gotten down to "why
 12 not show" -
 13 MR. TILLEY:
 14 A. Whole RHAS, I'm not sure the reference there.
 15 But over to that it says, "contact with
 16 patients, call and MDs", so I know there were
 17 letters that were sent to physicians advising
 18 them that this process had been initiated in
 19 terms of patient contact.
 20 COFFEY, Q.C.:
 21 Q. And "contact with patients", it's either a
 22 bracket or a slash, "call".
 23 MR. TILLEY:
 24 A. Yeah, that would be part of the bracket, but -
 25 COFFEY, Q.C.:

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1 Q. Okay. What part of the conversation with the
 2 minister was that about? Was there talk about
 3 whether the patients were told about this and
 4 if so, when? Was that a method?
 5 MR. TILLEY:
 6 A. That would be my connection there in terms of
 7 how the patients were being contacted and that
 8 would have been through a telephone call.
 9 COFFEY, Q.C.:
 10 Q. And if you could look, please, at page 6 of
 11 the exhibit. Now, it's your handwriting, do
 12 you know if it's part of the same meeting? It
 13 says -
 14 MR. TILLEY:
 15 A. The other one was page five, was it?
 16 COFFEY, Q.C.:
 17 Q. Page five is the page before, yes.
 18 MR. TILLEY:
 19 A. Okay.
 20 COFFEY, Q.C.:
 21 Q. Page five of the exhibit.
 22 THE COMMISSIONER:
 23 Q. Can we just go back to page 5?
 24 COFFEY, Q.C.:
 25 Q. Yes, I apologize, there you are.

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1 THE COMMISSIONER:
 2 Q. Okay, that says, 415 and then this one says--
 3 it's that a jump to 417 or--I mean, one could
 4 have gone from -
 5 COFFEY, Q.C.:
 6 Q. Yes, and I -
 7 THE COMMISSIONER:
 8 Q. You can leave with the other side of the page
 9 blank, if you're taking note, I don't know,
 10 but -
 11 COFFEY, Q.C.:
 12 Q. Commissioner, if I could--in terms of that,
 13 Mr. Tilley while we're on it, because it would
 14 be useful for, certainly us, in keeping notes,
 15 do you write on both sides of the page?
 16 MR. TILLEY:
 17 A. Not necessarily.
 18 COFFEY, Q.C.:
 19 Q. Sometimes, I take it.
 20 MR. TILLEY:
 21 A. I'm pointing out all my inconsistencies here
 22 and poor grammar, I appreciate that, but I
 23 didn't really have it down to an art.
 24 COFFEY, Q.C.:
 25 Q. Okay, in terms, some people, kind of, as you

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1 know, would kind of religiously turn the page,
 2 flip it over and some don't and sometimes -
 3 THE COMMISSIONER:
 4 Q. Mr. Tilley, if it's any consolation, never
 5 read a transcript. You discover that lawyers
 6 never talk in sentences, nor do judges.
 7 MR. TILLEY:
 8 A. Thank you.
 9 COFFEY, Q.C.:
 10 Q. So, it might vary from time to time and you'd
 11 have to look at the context.
 12 MR. TILLEY:
 13 A. It will. I might end up starting in the
 14 middle of the book, but that would be
 15 inadvertent.
 16 MR. SIMMONS:
 17 Q. If it helps, there is an intervening page, I
 18 think it's page 416 which does notes of the
 19 nine related executive meetings on it. So,
 20 that was an -
 21 THE COMMISSIONER:
 22 Q. Thank you.
 23 COFFEY, Q.C.:
 24 Q. That's why it's not here. Do you remember
 25 anything else about the meeting with the

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1 minister? Do you recall, first of all, how
 2 long it went on for?
 3 MR. TILLEY:
 4 A. Half an hour. He was -
 5 COFFEY, Q.C.:
 6 Q. How much did he appear to know when you
 7 arrived, about the matter?
 8 MR. TILLEY:
 9 A. He certainly had a general sense of the
 10 information. He was preparing for the House
 11 and apparently just before ministers go into
 12 the House, they have meetings with their staff
 13 to talk about what possible issues of the day
 14 might be. And we were just being asked to
 15 come in and join in that discussion. I don't
 16 recall when the minister left the meeting that
 17 evening that he had any particular strategy in
 18 mind of how he was going to reply to it.
 19 COFFEY, Q.C.:
 20 Q. At least not that he communicated to you?
 21 MR. TILLEY:
 22 A. No, certainly.
 23 COFFEY, Q.C.:
 24 Q. What was the, I refer to tone or atmosphere of
 25 the meeting?

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1 MR. TILLEY:
 2 A. Nothing out of the ordinary. I mean, I have
 3 had a few later meetings with the minister
 4 that were a little bit more challenging and
 5 difficult for me, but certainly, that one
 6 wasn't one that I felt at all uncomfortable
 7 in.
 8 COFFEY, Q.C.:
 9 Q. I'm sorry, at all uncomfortable?
 10 MR. TILLEY:
 11 A. Yes.
 12 COFFEY, Q.C.:
 13 Q. On the 15th, did you have any other dealings
 14 with the matter? I mean, you've been called
 15 over to the Confederation Building, briefed
 16 the minister, he's gone on to the House. What
 17 happened then?
 18 MR. TILLEY:
 19 A. Well, the only thing that rings in my head is
 20 a call from John Abbott and I believe I had
 21 that call in my office; I'm sure I had it in
 22 my office, because my telephone log refers to
 23 a call that came in. So, I'm assuming that
 24 when this meeting was over, I would have left
 25 their offices and went back to mine. So, I

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1 can't remember anything intervening.
 2 COFFEY, Q.C.:
 3 Q. And in terms of the call with Mr. Abbott, what
 4 was that about?
 5 MR. TILLEY:
 6 A. He was giving me some feedback with regards to
 7 how the House of Assembly went that day. It's
 8 been a while since I looked at that, but I
 9 think it said something like, things went bad
 10 in the House today.
 11 COFFEY, Q.C.:
 12 Q. Okay.
 13 MR. TILLEY:
 14 A. And a reference to multiple ministers getting
 15 up and speaking to the same issue and that, I
 16 subsequently learned was not a common
 17 practice. And I do have some telephone log
 18 notes that -
 19 COFFEY, Q.C.:
 20 Q. Yes. I'm just trying to--if we could, please--
 21 just a moment please, Commissioner. If we
 22 could, please P-0431, please. If we could
 23 look at page 13 of the exhibit, please?
 24 That's the one, yes, thank you. If that might
 25 assist you, your first line, it's "John/Moira"

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1 -
 2 MR. TILLEY:
 3 A. Right, so they must have called me. They were
 4 his office at the time, "things went bad in
 5 the House, minister insensitive, minister out
 6 of turn, Premier presentation", can't remember
 7 now if the Premier was actually speaking to
 8 that or not.
 9 COFFEY, Q.C.:
 10 Q. Is that--and again, it's your handwriting -
 11 MR. TILLEY:
 12 A. Yes.
 13 COFFEY, Q.C.:
 14 Q. - it's not mine, but is that "out of turn" or
 15 might that be "out of town"?
 16 MR. TILLEY:
 17 A. It looks like "out of town", I agree with you,
 18 but I have a recollection it was "out of
 19 turn".
 20 COFFEY, Q.C.:
 21 Q. Okay.
 22 MR. TILLEY:
 23 A. That was said to me.
 24 COFFEY, Q.C.:
 25 Q. Thank you. And "out of turn" means what in

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1 this context
 2 MR. TILLEY:
 3 A. That a minister, other than the Minister of
 4 Health had gotten up and spoken to the issue.
 5 COFFEY, Q.C.:
 6 Q. Speaking out of turn, as it were, that's -
 7 MR. TILLEY:
 8 A. That's how I read what he said or interpret
 9 what he said.
 10 COFFEY, Q.C.:
 11 Q. And "Premier presentation"?
 12 MR. TILLEY:
 13 A. Yeah, I'm not sure what that refers to, can't
 14 remember if the Premier had actually stood and
 15 spoke to the issue at that time, or whether it
 16 had to do with--there was a Cabinet meeting,
 17 that could have been it. Sorry, what date was
 18 this again?
 19 COFFEY, Q.C.:
 20 Q. This would be May 15.
 21 MR. TILLEY:
 22 A. The 15th.
 23 COFFEY, Q.C.:
 24 Q. There was a briefing to Cabinet May 17, on
 25 Thursday.

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1 MR. TILLEY:
 2 A. So, it certainly is a possibility -
 3 COFFEY, Q.C.:
 4 Q. That this is a reference to that -
 5 MR. TILLEY:
 6 A. That the Premier had asked for a presentation.
 7 And that might be reinforced by bullet one
 8 there that talks about a 10 a.m. standby.
 9 COFFEY, Q.C.:
 10 Q. Yes.
 11 MR. TILLEY:
 12 A. Because -
 13 COFFEY, Q.C.:
 14 Q. I take it, at the briefing for the Cabinet,
 15 were you standing by during that.
 16 MR. TILLEY:
 17 A. Right. We were out in the hallway as Cabinet
 18 was meeting and it wasn't my first experience
 19 to be out in the hallway and not all people
 20 get called in, but you're there in the event
 21 that there's some information that's needed.
 22 So, more likely than not, that "Premier
 23 presentation" and 1 a.m. (sic.) standby could
 24 be one in the same point.
 25 COFFEY, Q.C.:

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1 Q. Yes, the 10 a.m., okay. Go ahead, there's a
 2 number two bullet.
 3 MR. TILLEY:
 4 A. Right. I think that's Gerri Scott and dash
 5 Dan Boone.
 6 COFFEY, Q.C.:
 7 Q. Might it be Gerri Smith or do you know?
 8 MR. TILLEY:
 9 A. Well, I believe -
 10 COFFEY, Q.C.:
 11 Q. It's G-E-R-R -
 12 MR. TILLEY:
 13 A. - it was a lawyer in the Department of
 14 Justice, so would that be Smith?
 15 COFFEY, Q.C.:
 16 Q. It's G-E-R-R-I, is the spelling?
 17 MR. TILLEY:
 18 A. That's what I've got yes.
 19 COFFEY, Q.C.:
 20 Q. Okay.
 21 MR. TILLEY:
 22 A. Now, that's not to say that it's the correct
 23 way in spelling it. That's as good as it gets
 24 and I apologize to -
 25 COFFEY, Q.C.:

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1 Q. No, I think you have the right. And so, well
 2 take us through, please, was the rest of this
 3 connected with Mr. Abbott's and Ms.
 4 Hennessey's phone call, the rest of the -
 5 MR. TILLEY:
 6 A. Can we just go -
 7 COFFEY, Q.C.:
 8 Q. Sure, go right ahead, sir, I'll take you down
 9 through it.
 10 MR. TILLEY:
 11 A. Yes, I'm thinking it was and the reason--well,
 12 I'll just -
 13 COFFEY, Q.C.:
 14 Q. Perhaps you can translate it for us or read it
 15 out to us and -
 16 MR. TILLEY:
 17 A. Yes, "176 deceased, how were they contacted"?
 18 So, it's a question obviously that needed to
 19 be dealt with. "How many tested might not
 20 have been contacted" and then a reference to
 21 "public announcement". What -
 22 COFFEY, Q.C.:
 23 Q. Well, before we get to this, "176"?
 24 MR. TILLEY:
 25 A. Right.

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1 COFFEY, Q.C.:
 2 Q. Brackets -
 3 MR. TILLEY:
 4 A. Follow-up.
 5 COFFEY, Q.C.:
 6 Q. Follow-up, do you recall what that was about?
 7 MR. TILLEY:
 8 A. Now, I see the 176 above reference deceased.
 9 I assume that it had related to that.
 10 COFFEY, Q.C.:
 11 Q. What was Mr. Abbott concerned about in terms
 12 of how many tested might not have been
 13 contacted, what was that about?
 14 MR. TILLEY:
 15 A. I don't recall.
 16 COFFEY, Q.C.:
 17 Q. Okay. Go ahead, sir.
 18 MR. TILLEY:
 19 A. I'm thinking it goes on to say, "what
 20 mortality rate of those who received"--no,
 21 sorry--"what mortality rate of those received
 22 incorrect tests"? So I guess that goes back
 23 to those individuals that are now deceased.
 24 Then it goes on to say, "those not"--no,
 25 sorry--"those who tested, told, not died". I

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1 can't say I follow the logic there, I
 2 apologize for that and then a reference to
 3 "October calls".
 4 COFFEY, Q.C.:
 5 Q. Yes.
 6 MR. TILLEY:
 7 A. And this word down here says, "worse before
 8 better" and something "of advisory", could be
 9 start "of advisory" or -
 10 COFFEY, Q.C.:
 11 Q. Okay.
 12 MR. TILLEY:
 13 A. But I remember, not sure why I wrote it in
 14 capital letters, but I think that's how the
 15 conversation ended, that he felt that this had
 16 entered a new phase and was going to require a
 17 lot more attention.
 18 COFFEY, Q.C.:
 19 Q. Things might get worse before they got better?
 20 MR. TILLEY:
 21 A. Right.
 22 COFFEY, Q.C.:
 23 Q. At least, that was the way--if he didn't
 24 explicitly say it, that's what you summarized
 25 -

1 MR. TILLEY:
2 A. I think he had said that, certain things that
3 seem to stick in my mind.
4 COFFEY, Q.C.:
5 Q. So then, I take then the purpose you'd
6 understood, the purpose of Mr. Abbott's call
7 to you that afternoon was to let you know how
8 things had gone in the House -
9 MR. TILLEY:
10 A. Right.
11 COFFEY, Q.C.:
12 Q. - described from his perspective, described
13 that. Was he looking for anything from you at
14 the time, other than we talked about 10 a.m.
15 standby?
16 MR. TILLEY:
17 A. Nothing that I can recall and if, in fact,
18 there was a request, more likely than not, I
19 would have had it logged in the telephone
20 note.
21 COFFEY, Q.C.:
22 Q. Now sir, during the meeting with the minister
23 on May 15, do you recall whether the topic of
24 the external review reports came up?
25 MR. TILLEY:

1 reports being, at least copies of--it's five
2 reports of being on your desk -
3 MR. TILLEY:
4 A. Yes, my former desk.
5 COFFEY, Q.C.:
6 Q. Yes, former desk. And on that point, do you
7 recall--you have told us that at some point
8 Mr. Abbott asked you for those.
9 MR. TILLEY:
10 A. Yes.
11 COFFEY, Q.C.:
12 Q. Do you recall when that was?
13 MR. TILLEY:
14 A. I thought there was an e-mail that you might
15 be able to use because I seem to recall a
16 short e-mail for the access to the reports.
17 COFFEY, Q.C.:
18 Q. Okay, and there may be--I'm--Mr. Simmons -
19 MR. TILLEY:
20 A. Ring any bells?
21 COFFEY, Q.C.:
22 Q. I'm not saying it's not there, but -
23 MR. TILLEY:
24 A. Good.
25 COFFEY, Q.C.:

1 A. I don't have any recollection of that topic
2 coming up.
3 COFFEY, Q.C.:
4 Q. Okay. There's reference in the notes here,
5 but Mr. Abbott has testified, okay, that
6 during that meeting that that topic was raised
7 and his obtaining a copy of those reports was
8 first spoken of.
9 MR. TILLEY:
10 A. Okay.
11 COFFEY, Q.C.:
12 Q. Do you recall -
13 MR. TILLEY:
14 A. No.
15 COFFEY, Q.C.:
16 Q. So, but if he recalls it and you don't, are
17 you saying that he's wrong or are you just--
18 it's quite possible he's right and you just
19 don't recall it?
20 MR. TILLEY:
21 A. It could be possible that he's right, I just
22 don't recall it.
23 COFFEY, Q.C.:
24 Q. Sure, okay. On that point, because you have
25 already told the Commissioner about the

1 Q. - I've seen an incredible amount of
2 information -
3 MR. TILLEY:
4 A. Yeah, I just remember a two-point e-mail and
5 it was from there that I had drafted the
6 letter with the reports attached.
7 COFFEY, Q.C.:
8 Q. And there's certainly a reference, and I'll
9 come to that, in your telephone logs of a
10 phone call on May 29, about it -
11 MR. TILLEY:
12 A. With John Abbott?
13 COFFEY, Q.C.:
14 Q. Yes.
15 MR. TILLEY:
16 A. Okay.
17 COFFEY, Q.C.:
18 Q. There is a reference to it. Perhaps, if we--
19 you have no present recollection of -
20 MR. TILLEY:
21 A. During that meeting.
22 COFFEY, Q.C.:
23 Q. Yes.
24 MR. TILLEY:
25 A. No.

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1 COFFEY, Q.C.:

2 Q. Nor during this phone call, I take it?

3 MR. TILLEY:

4 A. This phone call -

5 COFFEY, Q.C.:

6 Q. Yes, the one referenced here at page 13 of the

7 -

8 MR. TILLEY:

9 A. Oh, I'm sorry, no.

10 COFFEY, Q.C.:

11 Q. Okay. So, Mr. Abbott has called you. How

12 about internally, did you have any discussions

13 with your own personnel about, kind of, where

14 we're going from here?

15 MR. TILLEY:

16 A. I think there had been a number of discussions

17 about the media coverage. I think by this

18 time the House, the Opposition parties were

19 starting to--no, I think I'm getting a little

20 bit ahead of myself.

21 COFFEY, Q.C.:

22 Q. The first day, May 15, you were over to brief

23 the minister and Mr. Abbott calls you

24 afterward about how things went in the House.

25 MR. TILLEY:

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1 A. Yes. I seem to remember an e-mail that I had

2 gotten from Susan Bonnell making some

3 suggestions about getting out there to start

4 speaking about this issue.

5 COFFEY, Q.C.:

6 Q. If we could bring up, please, actually we have

7 a couple of e-mails from Ms. Bonnell that day.

8 Perhaps exhibit P-1220. Now, this is amongst

9 the materials that were filed this morning,

10 but we hadn't gotten this far in your account.

11 This is an e-mail from Ms. Bonnell, this is to

12 Tansy Mundon at 4:44 p.m., but this is the

13 next day. I'm sorry, I thought that was the

14 15th. So, you believe there's one perhaps on

15 the 15th?

16 MR. TILLEY:

17 A. I thought that there was one that was internal

18 to the organization.

19 COFFEY, Q.C.:

20 Q. We'll have to have a look to see if we can

21 find that. And she was urging what? She was

22 urging you to get out there anyway?

23 MR. TILLEY:

24 A. Right.

25 COFFEY, Q.C.:

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1 Q. That was your -

2 MR. TILLEY:

3 A. So, we were having this discussion about how

4 this had sort of taken on a higher level of

5 intensity and we were starting to talk about

6 despite the certification process, to go out

7 and speak to it.

8 COFFEY, Q.C.:

9 Q. And that's -

10 MR. SIMMONS:

11 Q. Did you try P-0012?

12 COFFEY, Q.C.:

13 Q. Pardon me?

14 MR. SIMMONS:

15 Q. P-0012.

16 COFFEY, Q.C.:

17 Q. Just 12?

18 MR. SIMMONS:

19 Q. Yes.

20 COFFEY, Q.C.:

21 Q. P-0012. And this is, in fact, the next day

22 and I appreciate -

23 MR. TILLEY:

24 A. And that's the one that I was thinking about.

25 COFFEY, Q.C.:

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1 Q. Okay. And I take it then the first day kind

2 of ended with, it's there, it's out in the

3 media and Mr. Abbott has suggested to you

4 things are going to, in his view, get worse

5 before they get better?

6 MR. TILLEY:

7 A. um-hm.

8 COFFEY, Q.C.:

9 Q. Okay.

10 MR. TILLEY:

11 A. And, you know, while the day had ended, the

12 mind doesn't stop. So, I suspect all of us,

13 during that evening were into assessing what

14 possibly we could do next.

15 COFFEY, Q.C.:

16 Q. If we could, please, Exhibit P-0431, I'm

17 sorry, page 17. Thank you. Now, these are, I

18 gather, part of, again, your telephone log.

19 It's the day May 15. See that?

20 MR. TILLEY:

21 A. Um-hm.

22 COFFEY, Q.C.:

23 Q. And there's some figures and so on here.

24 There's a reference to--I'm sorry, go ahead.

25 MR. TILLEY:

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1 A. Just so that you don't spend a lot of time
 2 looking at it, that was a cell phone package I
 3 was inquiring about at that time.
 4 COFFEY, Q.C.:
 5 Q. I appreciate that, but it's here because of
 6 the date of May 15. I appreciate that, Mr.
 7 Tilley. There's a reference to Moira
 8 Hennessey, so I take it Ms. Hennessey would
 9 have called you?
 10 MR. TILLEY:
 11 A. Yes.
 12 COFFEY, Q.C.:
 13 Q. And what's this -
 14 MR. TILLEY:
 15 A. Okay. What it says, "attend briefing pre-
 16 media, opposition, morning, review, still
 17 working through, Premier spoke, doing a
 18 review". There was a Cabinet meeting.
 19 COFFEY, Q.C.:
 20 Q. Yes.
 21 MR. TILLEY:
 22 A. So that was the day -
 23 COFFEY, Q.C.:
 24 Q. That was Thursday--or this was be the 17th,
 25 the 15th was--and it's hard to tell at times

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1 because you don't always date your -
 2 MR. TILLEY:
 3 A. No.
 4 COFFEY, Q.C.:
 5 Q. - your telephone logs. So, -
 6 MR. TILLEY:
 7 A. So, by this time, if my chronological
 8 understand, recollection is right, we must
 9 have been working to have a press conference
 10 and the meeting with the representatives from
 11 the Opposition party.
 12 COFFEY, Q.C.:
 13 Q. If I could, on that, the next page in the
 14 exhibit is, of course, page 18 and it's
 15 volume--the page we just looked at was Volume
 16 46, page 453. This is Volume 46, page 454.
 17 And some of your handwriting even I can
 18 decipher.
 19 MR. TILLEY:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. You've written "Abbott" and perhaps you can
 23 just take us down through this.
 24 MR. TILLEY:
 25 A. Well, it says, "external reviews".

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1 COFFEY, Q.C.:
 2 Q. Yes.
 3 MR. TILLEY:
 4 A. "Peer review/QA".
 5 COFFEY, Q.C.:
 6 Q. That would be Quality Assurance.
 7 MR. TILLEY:
 8 A. Quality Assurance. "Not focused on persons,
 9 public forum, document, prepared to release
 10 external reviews, didn't focus on people".
 11 COFFEY, Q.C.:
 12 Q. Okay. So, I take it, the e-mail, I'm not
 13 exactly--this e-mail, not familiar with, but
 14 this recounts a phone call with Mr. Abbott -
 15 MR. TILLEY:
 16 A. It could be and I'll look for the e-mail maybe
 17 when I'm finished here, but that certainly
 18 talks about the external reviews that we had
 19 done.
 20 COFFEY, Q.C.:
 21 Q. So, this reflects you and Mr. Abbott having a
 22 phone call.
 23 MR. TILLEY:
 24 A. Right.
 25 COFFEY, Q.C.:

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1 Q. Does this assist your memory in the nature of
 2 that call, what was discussed, what was
 3 decided?
 4 MR. TILLEY:
 5 A. Well, only to the extent of the notes that I
 6 have there and thank God for that, but I guess
 7 the thing that stands out to me here is the
 8 note, which it says, "prepared to release
 9 external reviews".
 10 COFFEY, Q.C.:
 11 Q. And the references to "not focused on persons"
 12 and that's the third reference.
 13 MR. TILLEY:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. And then the last reference is "didn't focus
 17 on people". So, I take it--because you had
 18 already looked at the reports.
 19 MR. TILLEY:
 20 A. Right.
 21 COFFEY, Q.C.:
 22 Q. And before--there's two of them. You had
 23 understood that they did not focus on
 24 individuals technologists or physicians?
 25 MR. TILLEY:

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1 A. That would be my assumption in terms of those
 2 comments.
 3 COFFEY, Q.C.:
 4 Q. And were you telling Mr. Abbott this or was he
 5 telling you this?
 6 MR. TILLEY:
 7 A. Probably I would have said that to him because
 8 he wouldn't have seen it at that point.
 9 COFFEY, Q.C.:
 10 Q. And when you say that you were "prepared to
 11 release external reviews"?
 12 MR. TILLEY:
 13 A. Yeah.
 14 COFFEY, Q.C.:
 15 Q. So, whose prepared to release them to whom
 16 MR. TILLEY:
 17 A. Well, I was prepared to release them to John
 18 Abbott and we were still struggling with that
 19 issue with regards to the protection of that
 20 information, but I felt that the two
 21 organizations were working close enough
 22 together and in light of the discussions that
 23 were going around as to what's in it, that we
 24 could have found a way for us to share that
 25 with the department. And I was working on the

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1 assumption that they would have kept it
 2 confidential as opposed to released it
 3 further.
 4 COFFEY, Q.C.:
 5 Q. Okay. Do you know if Mr. Abbott ever actually
 6 saw the reports?
 7 MR. TILLEY:
 8 A. Not to my knowledge.
 9 COFFEY, Q.C.:
 10 Q. Okay.
 11 COMMISSIONER:
 12 Q. Mr. Coffey, when you're able to find a
 13 convenient place, we'll take the morning
 14 break.
 15 COFFEY, Q.C.:
 16 Q. Thank you. If we could, please, because
 17 again, to help put this--you know, what you
 18 were experiencing at the time, in context for
 19 the Commissioner. If we could look, please,
 20 to the next page, page 19? I apologize. The
 21 next reference is a phone call from Mr. Abbott
 22 and there's an arrow to radiologists?
 23 MR. TILLEY:
 24 A. Yes.
 25 COFFEY, Q.C.:

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1 Q. And then could you just decipher this, please?
 2 MR. TILLEY:
 3 A. Okay. So the first bullet says,
 4 "Radiologist", second arrow doesn't have
 5 anything attached to it. Then it goes down to
 6 "high-level plan" and references a 1-800
 7 number. Over on the right it says, "Lots of
 8 peer review, second review, all films to be
 9 reviewed."
 10 COFFEY, Q.C.:
 11 Q. Okay.
 12 MR. TILLEY:
 13 A. Now, at that point in time this pertains, of
 14 course, to a radiologist in one of the rural
 15 sites in the jurisdiction of Eastern Health
 16 whose interpretation of films was being drawn
 17 in question. They had done a couple of peer
 18 reviews, but they were going to bring in
 19 another review and then a decision to review
 20 all films that that person had been involved
 21 in.
 22 COFFEY, Q.C.:
 23 Q. Yeah, and we'll get to that. So this was, and
 24 again, your handwritten telephone logs, this
 25 is one of the first, anyway, references to it.

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1 And as to the actual dates, we'll see, I
 2 believe they refer to around May 22 or so, but
 3 I'll come to that. If we could, Commissioner,
 4 please? Thank you.
 5 COMMISSIONER:
 6 Q. Thank you. (Inaudible) Mr. Pritchard, so that
 7 I don't forget it because it will slip my mind
 8 if I don't speak to you now, it occurred to me
 9 after Ms. Brazil had left the room that she
 10 should address, in her submissions, since the
 11 particular sections of the rules which she has
 12 cited seem to deal with the questioning
 13 witnesses and how that goes on, so she should
 14 also address the right of the Commissioner to
 15 ask questions of a witness and if there are
 16 any limitations on that at all.
 17 MR. PRITCHARD:
 18 Q. I'll convey that.
 19 COMMISSIONER:
 20 Q. Thank you, very much, I'd appreciate if you
 21 would do that. We'll take 15.
 22 (RECESS)
 23 COMMISSIONER:
 24 Q. Thank you. Please be seated. Mr. Coffey.
 25 COFFEY, Q.C.:

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1 Q. Thank you, If we could, please, Exhibit P-
 2 0826? Now, Mr. Tilley, this is, well, it's
 3 actually two e-mails. The one at the bottom
 4 of the page is December 11, 2006, 8:52 a.m. to
 5 Susan Bonnell, to Tansy Mundon. And then
 6 there's one of May 16th, 2007, 4:44 p.m. from
 7 Ms. Bonnell to Ms. Mundon, and there are a
 8 number of attachments on that and they are
 9 documents that relate to the December 11th,
 10 2006 briefing note--I'm sorry, media technical
 11 briefing. But on the 16th of May Ms. Bonnell
 12 says, "I know I sent this to you already, but
 13 just in case." And I'll just give you some
 14 sense of it. That's the ER/PR retesting
 15 chronology, December, 11th, '06. And then the
 16 related news release, and key messages, and
 17 then a slide show, the media technical
 18 briefing, December 11th, '06. Mr. Tilley, I
 19 know we've talked about this in the context of
 20 December of '06, okay, but at this point in
 21 time in May of '07, which would be May 16th,
 22 '07, the 15th, 16th, 17th, 18th, did you have
 23 occasion to review all this material at that
 24 time or had you done so before that? Had you
 25 ever actually reviewed all of this media

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1 technical briefing material?
 2 MR. TILLEY:
 3 A. Well, back in December I recall the last time
 4 we met we referred to an e-mail that I had
 5 sent on a Sunday morning which said, you know,
 6 very comprehensive, good luck, sort of thing.
 7 I can't recall if I specifically went through
 8 that documentation again. I certainly have
 9 seen a lot of material during this period of
 10 time, though.
 11 COFFEY, Q.C.:
 12 Q. And your understanding--well, first of all, as
 13 the CEO, were you aware that on May 16th that
 14 Ms. Bonnell, Communications Director for
 15 Eastern Health, was sending--was having a
 16 significant amount of communication with Tansy
 17 Mundon?
 18 MR. TILLEY:
 19 A. It's possible, because I knew by that time
 20 that the relationship between the two
 21 communications departments were very close.
 22 COFFEY, Q.C.:
 23 Q. If we could, please, Exhibit P-0189? Again,
 24 this is--well, it's actually two e-mails. The
 25 one in May, May 16th, 2007 is 4:46 p.. from

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1 Ms. Bonnell to Ms. Mundon, the subject is
 2 "Materials for tomorrow." And she writes,
 3 "This might help as well... re the dead." And
 4 then attached to that is an e-mail from
 5 yourself, Sunday, December 10th, 2006 at 2:57
 6 p.m. to a number of individuals, Ms. Bonnell,
 7 Dr. Howell, Ms. Predham, Dr. Laing, Dr. Denic,
 8 Jane Bussey, who I take it is a colleague of
 9 Mr. Boone's? That would be correct?
 10 MR. TILLEY:
 11 A. Yes, I think I asked you that question last
 12 time around.
 13 COFFEY, Q.C.:
 14 Q. Yes, sure, okay, I'm the one, okay, advised
 15 you that.
 16 MR. TILLEY:
 17 A. Yes. And that's the e-mail that I was just
 18 referring to a moment ago.
 19 COFFEY, Q.C.:
 20 Q. Okay. This is the one where you had back in
 21 December had said "this is very
 22 comprehensive"?
 23 MR. TILLEY:
 24 A. Right.
 25 COFFEY, Q.C.:

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1 Q. "I appreciate the efforts you are all putting
 2 into this. In the end we need to keep
 3 reminding ourselves that we are here to do the
 4 best for our patients, despite what the media
 5 may choose to present. Good luck." Signed,
 6 "George." And the attachment to that, which
 7 is an e-mail from Ms. Bonnell to the same
 8 individuals of December 9th at 6:21 p.m.
 9 "Materials for tomorrow." This is the e-mail
 10 that had--in which Ms. Bonnell had pointed out
 11 that, "I guess the most significant change you
 12 will note from the original material is the
 13 lack of reference to a 'rate of error'" in
 14 quotes, "rate of error."
 15 MR. TILLEY:
 16 A. Yes.
 17 COFFEY, Q.C.:
 18 Q. And she also in the bottom paragraph, see, "Re
 19 the dead, we must also be prepared."
 20 MR. TILLEY:
 21 A. Um-hm.
 22 COFFEY, Q.C.:
 23 Q. Now, Mr. Tilley, on this point, because I'm
 24 not going to take you through this again, but
 25 this had all been canvassed internally back in

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1 December, you know, the various subject -
 2 MR. TILLEY:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. - matters and approaches. And you, did you
 6 understand in December of '06, on December
 7 11th, '06 that all of that material as
 8 finalized had been already sent to the
 9 Department of Health? On December 11th, the
 10 day the media technical briefing was occurring
 11 in December?
 12 MR. TILLEY:
 13 A. Yes.
 14 COFFEY, Q.C.:
 15 Q. Would you have understood that Ms. Bonnell
 16 would have sent over the package, as it were,
 17 to the Department of Health?
 18 MR. TILLEY:
 19 A. The package, the media packages?
 20 COFFEY, Q.C.:
 21 Q. Yes.
 22 MR. TILLEY:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. Okay. Then on May 16th of '07, which is the

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1 day really after this got into the media in a
 2 significant way, on the 15th, what was your
 3 understanding at the time of what it was the
 4 department was looking for or the purpose in
 5 sending them, you know, portions of the
 6 material, which we just saw here, for example,
 7 because they'd gotten all the material before?
 8 So just as the CEO do you recall why that was?
 9 MR. TILLEY:
 10 A. No. I can only make an assumption that the
 11 communications people in government were
 12 asking questions and it was felt that a
 13 reissuing of this information would be the
 14 appropriate way to respond to it. But other
 15 than that I'd be--I'm really just guessing.
 16 COFFEY, Q.C.:
 17 Q. Okay. Now, sir, at that point in time, which
 18 is May 16th, had--as we've seen in some of the
 19 notes, there's a reference to the patients
 20 being contacted, or all contacted?
 21 MR. TILLEY:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. Were you ever involved in giving any
 25 assurances to Mr. Wiseman or John Abbott that

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1 all patients had been contacted?
 2 MR. TILLEY:
 3 A. Well, that certainly became an issue. And in
 4 a number of documents that we had released as
 5 an organization we clearly had referenced that
 6 all patients had been contacted in terms of
 7 follow-up.
 8 COFFEY, Q.C.:
 9 Q. And yourself as the CEO, you were relying upon
 10 whom at this point, in mid May?
 11 MR. TILLEY:
 12 A. Well, the -
 13 COFFEY, Q.C.:
 14 Q. In regard to that issue.
 15 MR. TILLEY:
 16 A. I understand. The process of patient contact
 17 was being managed by our quality initiatives
 18 department. And as you will recall, we made a
 19 decision that most of those contacts, all of
 20 those contacts were to be made by telephone,
 21 and those individuals were very capable of
 22 dealing with some emotional issues that often
 23 times arise. But the summary would have come
 24 from, or the fact that we had made contact
 25 with them all really would have been sourced

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1 through that department.
 2 COFFEY, Q.C.:
 3 Q. Okay. And the--do you recall who in the
 4 department was telling you? I believe you've
 5 told us before it was Ms. Elliott?
 6 MR. TILLEY:
 7 A. Well, yes, Pam Elliott was the director. And
 8 I know I recall one particular conversation
 9 with her, but I'm sure there were others in
 10 the department that would have reinforced that
 11 understanding either directly to me or to
 12 others to me.
 13 COFFEY, Q.C.:
 14 Q. And if we could, please, Exhibit P-0827? This
 15 is, well, it's actually a slide presentation
 16 for the briefing for Cabinet May 17th, 2007 on
 17 ER/PR. This is the, I take it, the Cabinet
 18 briefing that you were outside the room,
 19 outside the Cabinet room?
 20 MR. TILLEY:
 21 A. Okay.
 22 COFFEY, Q.C.:
 23 Q. And do you recall actually being called over
 24 to -
 25 MR. TILLEY:

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1 A. Oh, I remember sitting outside the Cabinet
 2 room.
 3 COFFEY, Q.C.:
 4 Q. Okay.
 5 MR. TILLEY:
 6 A. I've been there about two times else in my
 7 career, so I knew the drill.
 8 COFFEY, Q.C.:
 9 Q. And had you been asked--I mean, you arrived
 10 there that morning and to be available. Had
 11 you had any or been given any opportunity to
 12 review what was going to be presented to the
 13 Cabinet?
 14 MR. TILLEY:
 15 A. We went up to the meeting room outside of
 16 Cabinet. John Abbott had a copy of his
 17 overhead in his possession and I recall
 18 sitting down and just flipping pages in front
 19 of me at that point in time.
 20 COFFEY, Q.C.:
 21 Q. Okay. But that's as much?
 22 MR. TILLEY:
 23 A. Right.
 24 COFFEY, Q.C.:
 25 Q. You weren't asked for your input, you were--it

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1 was made available for you just to look
 2 through?
 3 MR. TILLEY:
 4 A. Right.
 5 COFFEY, Q.C.:
 6 Q. How about before that? That would have been
 7 the morning of May 17th. Like, the day
 8 before?
 9 MR. TILLEY:
 10 A. I have no--I'm confident that there was no
 11 opportunity for me to actually provide input
 12 other than in any general issues with regards
 13 to ER/PR follow through that had already been
 14 known.
 15 COFFEY, Q.C.:
 16 Q. Okay.
 17 COMMISSIONER:
 18 Q. Mr. Tilley, are you clear on the reason you
 19 were there that morning, it was in relation to
 20 ER/PR or was there--might there be another
 21 reason you would have been there?
 22 MR. TILLEY:
 23 A. My assumption was ER/PR.
 24 COMMISSIONER:
 25 Q. Um-hm.

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1 MR. TILLEY:
 2 A. And that we were only there in the event that
 3 Cabinet had a question that the deputy was
 4 unable to answer.
 5 COMMISSIONER:
 6 Q. Okay. Did you--were you, around that time,
 7 dealing with other issues that Cabinet might
 8 have wanted your input on?
 9 MR. TILLEY:
 10 A. That's always possible, Madam Commissioner,
 11 but I don't recall -
 12 COMMISSIONER:
 13 Q. Doesn't stand out in your mind?
 14 MR. TILLEY:
 15 A. - any other issue that would have been -
 16 COMMISSIONER:
 17 Q. All right, okay. Thank you.
 18 COFFEY, Q.C.:
 19 Q. Commissioner, you may be thinking of the
 20 radiology, but I gather that's probably a
 21 little bit later, actually.
 22 MR. TILLEY:
 23 A. Right. And there was issues about
 24 infrastructure, I mean, there were several
 25 that legitimately was probably on the

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1 Cabinet's agenda, but there was no indication
 2 it was anything other than this one.
 3 COMMISSIONER:
 4 Q. Thank you.
 5 COFFEY, Q.C.:
 6 Q. If we could, please, Exhibit--and I take it
 7 you were not called into the Cabinet room?
 8 MR. TILLEY:
 9 A. No.
 10 COFFEY, Q.C.:
 11 Q. Exhibit P-0241, please? And the "we" in this
 12 context who was outside the Cabinet room was
 13 yourself and?
 14 MR. TILLEY:
 15 A. I think it was Oscar Howell.
 16 COFFEY, Q.C.:
 17 Q. Oscar.
 18 MR. TILLEY:
 19 A. And maybe Moira Hennessey, but I'm not dead
 20 sure of that.
 21 COFFEY, Q.C.:
 22 Q. Now, this is a Cabinet directive May 17th,
 23 2007. It says, "Presentation on ER/PR testing
 24 was received from the deputy minister of the
 25 Department of Health. Direction was provided

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1 to the minister of health to direct Eastern
 2 Health to provide a technical briefing to
 3 media and other interested parties on this
 4 matter." Signed, "Sandra Barnes, Deputy
 5 Clerk." Okay, the meeting of the Cabinet
 6 ended and you weren't, you weren't inside the
 7 room. What then happened?
 8 MR. TILLEY:
 9 A. Well, I seem to recall that we actually left
 10 and went over to the Department of Health.
 11 COFFEY, Q.C.:
 12 Q. Um-hm.
 13 MR. TILLEY:
 14 A. I have a briefing--sorry, a handwritten note,
 15 I believe, that's titled "Post Cabinet
 16 briefing note" or something to that nature.
 17 COFFEY, Q.C.:
 18 Q. Yes. If I could, please, while I'm at it?
 19 Just a moment, please? Exhibit P-0436,
 20 please, page 7? Right here. Does that assist
 21 you?
 22 MR. TILLEY:
 23 A. That's the one I'm thinking about.
 24 COFFEY, Q.C.:
 25 Q. Yes.

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1 MR. TILLEY:
 2 A. I'm not sure if it helps us any, but this is
 3 the conversation that would have taken place.
 4 I assume it would have been John Abbott
 5 providing Oscar Howell and I with this. I'm
 6 not sure if it's overly helpful, but do you
 7 want me to read it?
 8 COFFEY, Q.C.:
 9 Q. Sure, if you would, please, yeah?
 10 MR. TILLEY:
 11 A. Talks about the opposition and a public
 12 inquiry, and I suspect that relates to their
 13 ongoing request for one. Then it refers to
 14 the word "immediate" and then goes back to
 15 December briefing. It says, "Expanded to
 16 include the affidavit." I'm not sure how to
 17 read that other than maybe it's saying that
 18 there's an immediate need to talk about the
 19 December briefing session, but include the
 20 information in the affidavit. Then we talk
 21 about the deceased. "Had there," and that
 22 should be T-H-E-I-R, "tests been different,
 23 would that have changed the outcome?" And
 24 that was a question that was being proposed
 25 that we didn't have an answer for. "How many

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1 are waiting for results?" "Why didn't you
 2 tell us in total?" "Didn't compare" "compare"
 3 might or might not be accurate. I know the
 4 second word there is "results" but I can't
 5 tell you what the other words is. "Patient",
 6 anyway, I'll go on. Question, "Why did the
 7 problem or change occur? How do you know
 8 you've fixed it." So I think that's the end
 9 of those notes if my memory is accurate.
 10 COFFEY, Q.C.:
 11 Q. So you went over to Mr. Abbott's office, I
 12 take it?
 13 MR. TILLEY:
 14 A. Yes. That's gone into something else there by
 15 the looks of it.
 16 COFFEY, Q.C.:
 17 Q. And what happened then in Mr. Abbott's office
 18 with that as perhaps some assistance, refresh
 19 your memory?
 20 MR. TILLEY:
 21 A. I don't recall a lot beyond that. And in the
 22 absence of being--of seeing the actual Cabinet
 23 directive, I had been thinking in the fall
 24 when you and I first talked about, you know,
 25 what was it that drove the briefing and the

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1 MHA and my only belief then was that, well,
 2 Eastern Health certainly wouldn't of initiated
 3 that meeting with MHAS, so somebody must have
 4 drove that, so I'm assuming we must have had
 5 some conversations at that point around that.
 6 And the issue about the media briefing that's
 7 referred to, I obviously got no record of that
 8 being talked about, though we ended up with a
 9 media briefing. But having said that, Eastern
 10 Health was in that frame of mind to do a
 11 briefing, in any event. So in the absence of
 12 it being written there, I can't imagine that
 13 Mr. Abbott wouldn't have come down and shared
 14 those two points that are on the document, if
 15 in fact they were talked about in that
 16 strength.
 17 COMMISSIONER:
 18 Q. Mr. Tilley, did I understand you to be saying
 19 that while you were directed to have a
 20 briefing, you were moving in that direction in
 21 any event?
 22 MR. TILLEY:
 23 A. That's correct. There were two things that we
 24 spoke about earlier, one was an e-mail that
 25 the director of communications had put

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1 together.
 2 COMMISSIONER:
 3 Q. Um-hm.
 4 MR. TILLEY:
 5 A. Which talked about the need to get out there
 6 and speak to it. And the second issue we
 7 spoke about earlier was the e-mail that I had
 8 sent to the trustees, and in particular, Mr.
 9 Boyd's feedback about, you know, let's get out
 10 there, and that was sort of the general tenor
 11 of where everybody's head space in Eastern
 12 Health was at that time.
 13 COMMISSIONER:
 14 Q. Okay.
 15 MR. TILLEY:
 16 A. Not everyone, but certainly the majority.
 17 COMMISSIONER:
 18 Q. So do you recall how far along in your
 19 planning you had been about that when, as it
 20 were, events intervened and you had to move
 21 quickly?
 22 MR. TILLEY:
 23 A. My recollection is the memos were around the
 24 15th of May that we spoke to. So things were
 25 happening very quickly at that point in time.

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1 And when we actually did the press conference,
 2 we actually sought support from an outside
 3 consultant to help us. So in part that was a
 4 reflection of the short time lines we had to
 5 try to make this happen as soon as possible.
 6 COMMISSIONER:
 7 Q. Okay. So okay. You had these memos being
 8 sent to you around the 15th of May which
 9 suggested a course correction, as it were, in
 10 the business of informing the public?
 11 MR. TILLEY:
 12 A. Yes.
 13 COMMISSIONER:
 14 Q. And then subsequently you got a directive to,
 15 in fact, deal with the media and provide
 16 information. Was the business of hiring
 17 outside personnel to assist you in public
 18 information already ongoing by the time you
 19 got the directive or was it the directive that
 20 sort of required that you move so quickly that
 21 you went and got that assistance?
 22 MR. TILLEY:
 23 A. Well, I recall Susan Bonnell coming to me and
 24 saying that she'd like to bring in some
 25 outside help. I think at that point in time

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1 there were a lot of things happening in the
 2 organization and I had always valued Susan's
 3 contributions, so I knew when she came and
 4 made a suggestion that we bring in some
 5 additional support for her, that she felt it
 6 necessary and I was certainly willing to
 7 support it. But it was all happening in a
 8 very short period of time.
 9 COMMISSIONER:
 10 Q. Okay.
 11 COFFEY, Q.C.:
 12 Q. If we could, Commissioner, in that regard, P-
 13 0012? Now, this is an e-mail which I thank
 14 Mr. Simmons for having earlier identified.
 15 This is kind of day 2, as it were, May 16th.
 16 MR. TILLEY:
 17 A. Okay.
 18 COFFEY, Q.C.:
 19 Q. 2007 at 4:25 p.m. from Ms. Bonnell to
 20 yourself, Mr. Dodge and Dr. Howell. And
 21 subject is "ER/PR private and confidential."
 22 And she really says, "Why should we speak
 23 publicly?" and there's a number of bullets,
 24 and "What could we possibly say to the media?"
 25 and a number of bullets. And she also has a

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1 heading, "these were our key messages in
 2 December," and a number of bullets, and then
 3 some of the Q and A from December, and it's
 4 question three, answer three, question four
 5 and answer four from December, question nine
 6 and answer nine, question ten and answer ten,
 7 question 15 and answer 15, question 22 and
 8 answer 22. So again, to assist you perhaps,
 9 and if you just look at this, I take it that
 10 the purpose of Ms. Bonnell, your understanding
 11 of Ms. Bonnell's purpose in preparing this was
 12 what? The pros and cons of what you were
 13 going to do or what you might do?
 14 MR. TILLEY:
 15 A. No. I think at that point in time, it was
 16 safe to say that Eastern Health was spoken of
 17 very frequently in the media. We were being
 18 positioned as trying to cover up information
 19 and that was frustrating everybody involved in
 20 this, because right from the very beginning,
 21 the intention was to make contact with the
 22 patients. So in our greatest hope that we
 23 were going to be doing this in such a way that
 24 a patient would benefit, the way it was being
 25 presented was that we were actually doing

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1 something the opposite, and I think that's
 2 where we were all getting frustrated about
 3 this.
 4 COFFEY, Q.C.:
 5 Q. So this e-mail is--apparently it's dated and
 6 timed 4:25 p.m. on May 16th, which is really
 7 35 minutes from the end of routine business
 8 day. So there had been a full two days, I
 9 take it, May 15th and 16th had gone by and
 10 Eastern Health hadn't said anything publicly.
 11 MR. TILLEY:
 12 A. Yes.
 13 COFFEY, Q.C.:
 14 Q. Except no comment.
 15 MR. TILLEY:
 16 A. Yes, and in fairness to Susan, her work days
 17 were well -
 18 COFFEY, Q.C.:
 19 Q. And I appreciate beyond that, but in terms of-
 20 -in effect, two full days had gone by
 21 generally, business days had gone by and
 22 Eastern Health still had not decided to say
 23 anything.
 24 MR. TILLEY:
 25 A. Right, but the 15th was the day we met with

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1 the Minister.
 2 COFFEY, Q.C.:
 3 Q. Yes.
 4 MR. TILLEY:
 5 A. And then the House, so this was the following
 6 day.
 7 COFFEY, Q.C.:
 8 Q. Yes, and this is the end of the following day.
 9 MR. TILLEY:
 10 A. Yes, okay, right.
 11 COFFEY, Q.C.:
 12 Q. If Eastern Health was to say anything, whose
 13 decision was that? Who had to make that
 14 decision?
 15 MR. TILLEY:
 16 A. Well, at this point in time--well, throughout
 17 the whole process, there were a number of
 18 people involved in this, and we always sought
 19 to get consensus as we moved along. But it
 20 had reached a point here where everybody was
 21 believing that we had to speak to something,
 22 and in the end, it would be my call to say we
 23 needed to get out there and speak to this
 24 issue.
 25 COFFEY, Q.C.:

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1 Q. I take it that, was there an understanding
 2 within Eastern Health, at that time, that
 3 unless Mr. Tilley agrees, no one will speak to
 4 the media? Was it your understanding as the
 5 CEO that it was ultimately your decision?
 6 MR. TILLEY:
 7 A. I think so.
 8 COFFEY, Q.C.:
 9 Q. And now do you recall when it was that you
 10 actually made the decision finally to speak to
 11 the media?
 12 MR. TILLEY:
 13 A. There's no one point in my mind that sort of
 14 says "we're going to do this."
 15 COFFEY, Q.C.:
 16 Q. When you arrived over at the Cabinet the next
 17 morning, on the 17th, had you made up your
 18 mind at that point?
 19 MR. TILLEY:
 20 A. I think we were certainly heading in that
 21 direction, but not to the point of having
 22 actually articulated how we might do it.
 23 COFFEY, Q.C.:
 24 Q. Now this is an e-mail, deal with it with you,
 25 because you were the CEO at the time. Ms.

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1 Bonnell says "our credibility as an
 2 organization and our ability to provide
 3 quality care are being maligned. When you
 4 don't speak, the story continues with or
 5 without," with or presumably that should be
 6 without you.
 7 MR. TILLEY:
 8 A. Yes.
 9 COFFEY, Q.C.:
 10 Q. "And the media look for less credible
 11 spokespeople who will speak to them, hence
 12 Peter Dawe, Geri Rogers, Ches Crosbie. Two
 13 things happen when you don't stand up to bad
 14 press. The public automatically assumes
 15 there's a good reason why you're being quiet
 16 and there must be something to the
 17 allegations, and two, just like the school
 18 yard bullies, an individual with an axe to
 19 grind feels uninhibited and will keep digging
 20 and digging." Third bullet, I'm sorry, fourth
 21 bullet "moreover, a gang mentality develops.
 22 I'm already seeing this amongst the press
 23 themselves who automatically assuming that the
 24 organization is lying to hide the true facts.
 25 'If they don't defend themselves, then they

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1 must be'" should presumably, "'pack of
 2 liars.'"
 3 Next bullet, "bad stories come and bad
 4 stories go. I don't suggest for a minute that
 5 we should jump to react on every bad story.
 6 That would not be responsible, ethical or
 7 sensible. However, this issue is not just any
 8 issue. We've been dealing with this for two
 9 years and we've been acting in good faith in
 10 the best interest of patients, knowing the
 11 full consequences, and we're letting the media
 12 beat us up on the wrong issue."
 13 Next bullet, "if they want to criticize
 14 us for negatively impacting 117 people, so be
 15 it. We should be held accountable. However,
 16 we shouldn't allow the media to unfairly
 17 criticize for (a) admitting we negatively
 18 impacted patients publicly, but (b) refusing
 19 to play a numbers game, and (c) respecting the
 20 legal system once action was initiated."
 21 Last bullet, "we are also allowing the
 22 Canadian Cancer Society to leave the general
 23 public with the impression that there are a
 24 'new' group of women. This is causing
 25 confusion. We're getting calls asking about

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1 this. There's a new level of fear and anxiety
 2 that Peter Dawe is creating and then blaming
 3 us for it."
 4 Now sir, did you ever speak to Ms.
 5 Bonnell about the tone of this?
 6 MR. TILLEY:
 7 A. Well, it was a private and confidential e-mail
 8 to me, and I had sensed by this time some of
 9 the frustrations that Susan was sensing or
 10 having with regards to how our absence in the
 11 media was unfolding and who others were sort
 12 of taking over the fold. I certainly--I had
 13 always felt that she was very capable in terms
 14 of giving me good advice and the tone, I just
 15 put down to the climate or the situation that
 16 we were in at the time.
 17 COFFEY, Q.C.:
 18 Q. And so I take it then, you did not speak to
 19 her subsequently about it?
 20 MR. TILLEY:
 21 A. No. No, I did not.
 22 COFFEY, Q.C.:
 23 Q. Now sir, there is this reference to "refusing
 24 to play a numbers game," see that?
 25 MR. TILLEY:

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1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. And under the heading "what could we possibly
 4 say to the media?" under the fifth bullet, and
 5 she's written a number of things, but one of
 6 them is "however, in December, we told the
 7 press we could not (a) release all the numbers
 8 or (b) assign a rate of error for this test.
 9 The total number of individuals impacted by
 10 this retesting is a key part of the legal case
 11 and needs to be dealt with in Court, not in
 12 the press. Secondly, we cannot assign 'a rate
 13 of error' for this test. Error will need to
 14 be determined by the Courts. They have said
 15 repeatedly in the media that we do not know
 16 with certainty what caused there to be new or
 17 differing results." Okay?
 18 Sir, at the time that you received this,
 19 May 16th, is what Ms. Bonnell wrote here, did
 20 that accurately reflect the true state of
 21 affairs, from your perspective?
 22 MR. TILLEY:
 23 A. Well, that in December we weren't going to
 24 speak to an error, because we weren't in a
 25 position to draw a conclusive connection

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1 there. That's where we had always made the
 2 belief, that we would look to the Courts to
 3 help us determine that. In terms of making a
 4 distinction between the error rate and
 5 releasing all the numbers, I know there's been
 6 a lot of discussion about the number of people
 7 who actually converted, even though they had
 8 not been--or even though they had not resulted
 9 in a treatment change. I guess the concern
 10 was that those were going to be automatically
 11 assumed to be the error rate and quite, I
 12 guess, arguably, one could make a difference
 13 between that number and it being an error
 14 rate. I think there's a fairly strong opinion
 15 that once that number was there, it was going
 16 to be used as the number to say that was
 17 wrong, but I keep going back to the point
 18 about the real number that was talked about
 19 internally was the one where the patients
 20 actually had a change in treatment, and I
 21 remember discussions around having to look at
 22 the results of this treatment as a
 23 probabilistic test and having to be taken in
 24 the context of individual patients. So to
 25 look at the number on its own would not be an

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1 accurate way of assessing it.
 2 THE COMMISSIONER:
 3 Q. Which number?
 4 MR. TILLEY:
 5 A. The number of those who actually changed, but
 6 no treatment.
 7 THE COMMISSIONER:
 8 Q. The what's called conversion number?
 9 MR. TILLEY:
 10 A. Yes.
 11 THE COMMISSIONER:
 12 Q. All right. Do you know what analysis was done
 13 of those people whose treatment was not
 14 changed?
 15 MR. TILLEY:
 16 A. I can't speak to it, Madame Commissioner.
 17 THE COMMISSIONER:
 18 Q. All right. Who would be able to talk to us
 19 about that?
 20 MR. TILLEY:
 21 A. I'm assuming the representative on the panel
 22 would be the best person to speak to that.
 23 THE COMMISSIONER:
 24 Q. All right, thank you.
 25 COFFEY, Q.C.:

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1 Q. And your understanding then, because we've
 2 seen this reference to numbers game before -
 3 MR. TILLEY:
 4 A. Yes.
 5 COFFEY, Q.C.:
 6 Q. - and your interpretation of that was what?
 7 Because the phrase is "play a numbers game."
 8 MR. TILLEY:
 9 A. Right. Well, that by putting out the other
 10 figure, then that was the figure that was
 11 going to automatically assumed to be the error
 12 rate. That's how I interpreted it.
 13 COFFEY, Q.C.:
 14 Q. And Mr. Tilley, now looking back on it, did
 15 anyone, to your recollection, ever discuss,
 16 you know, what might happen if we give out one
 17 number, the lower number, the 117, and at some
 18 point the 317 becomes public, whether in a law
 19 suit or otherwise, and what, if anything, the
 20 effect that might have on the public
 21 confidence?
 22 MR. TILLEY:
 23 A. Right.
 24 COFFEY, Q.C.:
 25 Q. Was that ever discussed at the time?

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1 MR. TILLEY:
 2 A. I can't--I remember when we ended up deciding
 3 to do the press conference and speak to that
 4 issue, that question was raised.
 5 COFFEY, Q.C.:
 6 Q. So which press conference is this?
 7 MR. TILLEY:
 8 A. This is the press conference that I spoke to
 9 with regards to releasing that other
 10 information.
 11 COFFEY, Q.C.:
 12 Q. Oh, it's May 18th then, okay, go ahead.
 13 MR. TILLEY:
 14 A. 18th, was it?
 15 COFFEY, Q.C.:
 16 Q. Yes.
 17 MR. TILLEY:
 18 A. And saying at that point in time that in
 19 retrospect, we wished that we had. Now this
 20 goes back to the value of, if I might use my
 21 analogy, the Monday morning quarterback.
 22 Things stick out and you wonder why, but I
 23 don't recall any discussion about thinking
 24 through that issue at that time.
 25 COFFEY, Q.C.:

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1 Q. Back in December that would be?
 2 MR. TILLEY:
 3 A. That's correct.
 4 COFFEY, Q.C.:
 5 Q. Okay. Now at this point, and this is May
 6 16th, what was your understanding as to the
 7 cause of the problem or what had caused the
 8 problem?
 9 MR. TILLEY:
 10 A. That particular figure was the one that--I'm
 11 sorry.
 12 COFFEY, Q.C.:
 13 Q. To cause the problem with the test.
 14 MR. TILLEY:
 15 A. With the test? I am of the same opinion today
 16 as I was back in May.
 17 COFFEY, Q.C.:
 18 Q. Which is the one you'd had -
 19 MR. TILLEY:
 20 A. Right, which is not a conclusive appreciation
 21 for what is happening here.
 22 COFFEY, Q.C.:
 23 Q. So what I'm asking you about really at this
 24 point is this, on this point, because you've
 25 explained to the Commissioner before how when

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1 you read the report -
 2 MR. TILLEY:
 3 A. Right.
 4 COFFEY, Q.C.:
 5 Q. - in Dr. Williams' office, and what, if any,
 6 conclusions you drew at the time, but at the
 7 point where this becomes, again, a matter of
 8 significant public interest, 15th, 16th, 17th,
 9 did you ever speak with anyone at that time
 10 about the cause, internally within your own
 11 organization?
 12 MR. TILLEY:
 13 A. Well, certainly the clinical chief would have
 14 been there, of both Laboratory Medicine and
 15 Cancer Care. Dr. Howell would have been
 16 there.
 17 COFFEY, Q.C.:
 18 Q. I take it nothing was said then to change your
 19 originally -
 20 MR. TILLEY:
 21 A. No, no, it wasn't. I knew--I've always been
 22 influenced by what I have picked up
 23 nationally, which is suggesting, and I guess
 24 time is proving it to be factual, that this is
 25 a problem that is being shared in many other

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1 places. So somewhere along the way, I had
 2 always wondered to what extent this issue is
 3 inherent in the way the Canadian health system
 4 has chosen to apply it versus how much of it
 5 is something that's unique to Eastern Health,
 6 and I just don't know the answer to that.
 7 THE COMMISSIONER:
 8 Q. Sorry.
 9 COFFEY, Q.C.:
 10 Q. No, go ahead, Commissioner.
 11 THE COMMISSIONER:
 12 Q. But could you just be a little more expansive
 13 on your view of the Canadian health system's
 14 application versus what was happening in
 15 Eastern Health?
 16 MR. TILLEY:
 17 A. Well, I know in my conversations, both around
 18 the time of this issue, since I've left
 19 Eastern Health, and just monitoring some of
 20 the news coverage with regards to other
 21 centres throughout Canada that are having a
 22 look at its pathology services, and all of
 23 them sort of suggest to the fact that it's an
 24 area that's in need of further development.
 25 So in my mind, the question is was what

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1 was happening within St. John's consistent
 2 with the majority of labs throughout the
 3 country? Or was what happened in St. John's
 4 something less than what was happening in the
 5 rest of the country? And I really don't know
 6 the answer to that, and I'm going to speculate
 7 and say it may be a combination of both, and
 8 that's where the technical people are going to
 9 be useful, in terms of articulating that.
 10 THE COMMISSIONER:
 11 Q. So are we talking--is your concern here
 12 whether in the Canadian health system
 13 generally, the approach to pathology is such
 14 that it seems to have, at least in recent
 15 times, resulted in a number of cases of, let
 16 us say, questionable results, as opposed to
 17 the incident at Eastern Health being something
 18 that is unique to within the system at Eastern
 19 Health?
 20 MR. TILLEY:
 21 A. That's right.
 22 THE COMMISSIONER:
 23 Q. Or just about unique or whatever?
 24 MR. TILLEY:
 25 A. Right, and I guess what I'm believing, at the

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1 very least, it's a combination of both.
 2 THE COMMISSIONER:
 3 Q. Okay.
 4 MR. TILLEY:
 5 A. I'm not going to go as far as to say that, you
 6 know, this is the same thing that everybody
 7 else is finding. I have made an effort,
 8 Commissioner, to talk to people in the area
 9 and it's clear that this is an issue that I
 10 suspect will come out of what's happening in
 11 Newfoundland and cause organizations to look
 12 at their practices.
 13 THE COMMISSIONER:
 14 Q. Okay. So we're not--are we just talking
 15 standards here? Because I know that on a
 16 prior occasion, you did refer to the lack of
 17 standards for certain tests -
 18 MR. TILLEY:
 19 A. Right.
 20 THE COMMISSIONER:
 21 Q. - within the field of pathology. Or are we
 22 talking about something wider than that?
 23 MR. TILLEY:
 24 A. I suspect it's both.
 25 THE COMMISSIONER:

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1 Q. Okay.
 2 MR. TILLEY:
 3 A. Anything that applies to the practice of
 4 pathologists, you know, there are groups in
 5 this system that you typically look to to give
 6 guidance or take leadership to bring them to a
 7 more advanced level or a more accurate level.
 8 I learned and shared with you on an earlier
 9 occasion about the literature that was
 10 available in Europe and in the States and was
 11 quite surprised with the lack of discussion on
 12 the Canadian scene, at least from a research
 13 perspective, and in the literature, but yet,
 14 when you made individual calls, you were
 15 clearly seeing evidence of people talking
 16 about this within their own shops, but nobody
 17 taking it on from a leadership capacity on a
 18 national level.
 19 THE COMMISSIONER:
 20 Q. Well, who would be expected to do that, Mr.
 21 Tilley?
 22 MR. TILLEY:
 23 A. Well, I think every part of the system has a
 24 role here, but I would certainly be looking to
 25 the Canadian Association of Pathologists if

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1 there is literature that suggests that some of
 2 the practices that we've typically done in
 3 this country are not--are behind Europe and
 4 the U.S.. If oncologists feel that that
 5 literature is suggesting that Canada is being
 6 behind, I would have expected them to be
 7 making more steps to follow up on it because
 8 these people are relying upon pathologists in
 9 a very significant way. I suspect that the
 10 national accrediting bodies would have an
 11 opportunity or certainly could play a role, in
 12 terms of what standards should be in place for
 13 particular tests. Now they don't typically
 14 look at individual technical pieces. They
 15 look at the -
 16 THE COMMISSIONER:
 17 Q. Well, and I understood from the evidence of, I
 18 believe, Ms. Jones, that really, in essence,
 19 it was only the last time around that even in
 20 the general accreditation -
 21 MR. TILLEY:
 22 A. That's correct.
 23 THE COMMISSIONER:
 24 Q. - process anybody went into the lab.
 25 MR. TILLEY:

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1 A. Right, and that's probably a reflection that
 2 it's so technical that they decided to stay
 3 away from it and it's only in recent years
 4 that you're seeing a new form of proficiency
 5 in labs, and that is to have other reputable
 6 labs audit as you are moving on a go-forward
 7 basis, which makes eminent sense, but still is
 8 fairly recent in the Canadian context.
 9 THE COMMISSIONER:
 10 Q. It would seem to me, Mr. Tilley, that one of
 11 the problems in this country, as we always run
 12 up against this, and is because of if you're
 13 dealing with matters which are highly
 14 technical, which involve the expenditure of a
 15 lot of funds, and you're in a situation where,
 16 as in Newfoundland, we've got a very small
 17 population base, and essentially health is an
 18 issue that is a provincial matter. I know
 19 that Health Canada has a role, but I'm
 20 wondering if sort of within the Canadian
 21 constitutional structure, which we're kind of
 22 stuck with, you see a body that should be
 23 expected to take the lead in respect of a
 24 couple of different issues. One is the one
 25 that I referred to before, and that is the

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1 question of standards for the performance of
 2 particular tests, and the other is the
 3 question of maintaining the appropriate
 4 quality levels of performance within labs.
 5 MR. TILLEY:
 6 A. Right.
 7 THE COMMISSIONER:
 8 Q. So where do you think that belongs properly?
 9 MR. TILLEY:
 10 A. Maybe where it belongs doesn't even exist
 11 today, but if I was looking for a body to say
 12 we got a problem here in the country and it
 13 needs to be looked at and is reflective of the
 14 provinces, I'd be thinking about the Council
 15 of Provincial Health Deputy Ministers. And I
 16 think you've really raised an important point.
 17 We have multiple levels of government and
 18 everybody has sort of been cautious to stay
 19 out of one another's way, and for the main,
 20 there's been a lot of willingness to allow
 21 individual provinces to make their own
 22 decisions and rightly so when it comes to the
 23 issue of making sure the services in those
 24 provinces are reflective of the needs in those
 25 provinces. But having said that, we have

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1 missed an opportunity to start applying some
 2 of the ways we deliver our services with a
 3 national perspective. And we spoke the last
 4 time about low volume services and the
 5 concerns that that might bring, in terms of
 6 being able to assure quality in that, and I
 7 think I specifically referenced the cardiac
 8 surgeon in the pediatric field.

9 THE COMMISSIONER:
 10 Q. Uh-hm.

11 MR. TILLEY:
 12 A. Every service needs to be looked at with an
 13 eye to can you ensure quality service and to
 14 that end, it may be a criteria which says
 15 there's a value in having that service in the
 16 province or in each region of the province,
 17 but for each time you make those decisions,
 18 there's another set of criteria which says how
 19 can you ensure that the quality of services
 20 you're going to maintain there. It's not to
 21 say you can't, but I suspect in the smaller
 22 areas you're going to have to put in a lot
 23 more supports to ensure that that actually
 24 happens.

25 THE COMMISSIONER:

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1 Q. When another witness was here, I raised with
 2 him the possibilities of regional co-operation
 3 in respect of these things, have you got any
 4 experience with attempts at regional co-
 5 operation? Now, I do recognize that there are
 6 occasions when, by way of a contract, for
 7 example, Newfoundland may take advantage of a
 8 service which could be made available from
 9 another area, I guess a prime example would be
 10 those who are getting their radiation
 11 treatments in Ontario.

12 MR. TILLEY:
 13 A. On an interim basis.

14 THE COMMISSIONER:
 15 Q. Yes, but that's kind of viewed as a one-off,
 16 as it were.

17 MR. TILLEY:
 18 A. Right.

19 THE COMMISSIONER:
 20 Q. What I was wondering about is whether or not
 21 it would be realistic to think that if you
 22 live in population areas which are small and
 23 which perhaps cannot maintain all of the
 24 services that you would like to provide, could
 25 there be a chance for the region to pull some

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1 resources and put centres of excellence in one
 2 place or another?

3 MR. TILLEY:
 4 A. Madam Commissioner, you are right and I think
 5 there's got to be a lens there that asks that
 6 question for each service. But the problem
 7 is, I have this--I'm not sure if I mentioned
 8 it before, but I've often spoke on the value
 9 of evidence in decision-making in health care
 10 and I've talked about the three E's of
 11 decision-making and I apologize if I've raised
 12 it here before.

13 THE COMMISSIONER:
 14 Q. No, that's all right.

15 MR. TILLEY:
 16 A. But the two E's, the last E is evidence and I
 17 put it last because it's usually the last one
 18 that gets looked at and we've got to find a
 19 way of putting it up front. There are two
 20 other very important E's that speak to the
 21 issue that you're getting at. One is emotion
 22 and the public will tend to look to have quick
 23 access to services and to look at the
 24 circumstances of individual patients who, even
 25 within this province have to travel to access

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1 services, you can't help but feel for the
 2 frustrations that they must experience in
 3 having to travel to access.

4 THE COMMISSIONER:
 5 Q. Uh-hm.

6 MR. TILLEY:
 7 A. But you see a lot of emotion in health care
 8 and therefore, the propensity is to say let's
 9 get them the services as close to home as
 10 possible, but no consideration to what the
 11 impact might be from a quality perspective.
 12 The second issue is employment--the second E,
 13 I'm sorry, and I can tell you that in over the
 14 years, any discussions that I've had with
 15 regards to setting centres of excellence in
 16 this country is it has always been the larger
 17 provinces that will say, sure, let's all come
 18 in here.

19 THE COMMISSIONER:
 20 Q. Uh-hm.

21 MR. TILLEY:
 22 A. So what you do is that you stimulate the
 23 Ontario economy and you end up losing the
 24 opportunity to have services, highly trained
 25 people maintained in this province. So -

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1 THE COMMISSIONER:
 2 Q. But that's part of your problem, isn't it,
 3 because if you've got 5,000 population and you
 4 have someone walking through the door who is
 5 just fresh off the line from, as a
 6 pathologist, whose got training in a
 7 specialized area and you say now you get to
 8 come to, even Eastern Health where maybe the
 9 volumes would be as high as they would be
 10 anywhere in the province, the likelihood of
 11 that person actually being able to keep up to
 12 date and do enough volume in his or her
 13 speciality, are probably not very high.
 14 MR. TILLEY:
 15 A. No, it's not. Now there are options, for
 16 example you may chose to say, well, if you put
 17 up a screen to say once and for all we're
 18 going to start paying attention to the quality
 19 issue as a part of the decision-making and if
 20 the volume is not there, then you could make
 21 arrangements for secondments up to the larger
 22 hospitals on a regular basis, so they're
 23 working with peers who are doing this
 24 constantly.
 25 THE COMMISSIONER:

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1 Q. What I wondered is, you know, if you're
 2 sharing resources, one way of doing it is to
 3 plot one giant lab at some point, equidistant
 4 from wherever, I don't know where that ends
 5 up, probably some place in New Brunswick or
 6 something, but the other possibility is to
 7 divide where certain kinds of clinical work
 8 are done and have expertise in pathology of a
 9 certain kind here, for example; an expertise
 10 of another kind of pathology in another
 11 location. Now, I recognize your point about
 12 people being interested in having a service
 13 near to them, but frankly if you look at
 14 ER/PR, essentially Eastern Health has been the
 15 source of most of the work in respect of ER/PR
 16 testing for quite some time, so if you're
 17 living in St. Anthony, I'm not so sure that it
 18 would make much difference if your sample was
 19 being processed in St. John's or if it was
 20 being processed in Charlottetown.
 21 MR. TILLEY:
 22 A. No, that's correct.
 23 THE COMMISSIONER:
 24 Q. And with modern technology, the minute the
 25 thing is read -

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1 MR. TILLEY:
 2 A. Right. Examples that I was thinking of when I
 3 spoke to my emotional issue was more when the
 4 patient has to relocate and we hear that from
 5 people from Labrador, the west coast -
 6 THE COMMISSIONER:
 7 Q. And I understand that, but it seems to me that
 8 pathology, the problem with pathology in many
 9 respects is that the patients don't seem them
 10 and are perhaps not given, there's the lack of
 11 understanding of what they do and perhaps,
 12 unfortunately for them, they're not given the
 13 kind of attention in terms of remuneration
 14 payment and in terms of assuring that they get
 15 the appropriate tools and continuing education
 16 to do their jobs. The other side of it is
 17 that if nobody sees them, I'm not so sure
 18 people would necessarily be concerned about
 19 whether the pathologist who is doing the work
 20 on their specimen, which has to go some place,
 21 is going to St. John's or to Charlottetown or
 22 wherever, as long as the person who was
 23 reading it was going to do the best job
 24 possible.
 25 MR. TILLEY:

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1 A. That is the right way of thinking, Madam
 2 Commissioner. What you would--some of the
 3 small things that would be important is to
 4 make sure that no matter where it's located,
 5 there's an equity in terms of access for
 6 everybody.
 7 THE COMMISSIONER:
 8 Q. Uh-hm.
 9 MR. TILLEY:
 10 A. The problem that Eastern Health ran into with
 11 Mount Sinai, for example, is that we were--we
 12 thought we were on a fast track, in fact, we
 13 got put on the slow track because of their own
 14 problems.
 15 THE COMMISSIONER:
 16 Q. Yes.
 17 MR. TILLEY:
 18 A. The issue of employment is more, you know,
 19 small communities look to get high paid
 20 individuals in their communities, so they look
 21 for a surgeon, they look for a radiologist and
 22 so on. To pull those out, you know, that
 23 would be an issue for them. But I've always
 24 felt that if the public were presented with
 25 the option of saying, you know, do you want a

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1 service but it's not the same level of service
 2 that you're going to get in one of the other
 3 centres, I suspect most people will choose to
 4 says I want the quality service as opposed to
 5 stimulating that local community.
 6 THE COMMISSIONER:
 7 Q. Okay, thank you. Sorry, Mr. Coffey, I got
 8 diverted again.
 9 COFFEY, Q.C.:
 10 Q. No, thank you, Commissioner. Just on that
 11 point, just to--in terms of Mount Sinai,
 12 looking back at '05, just so we're clear on
 13 that, there is certainly, the retesting
 14 certainly took a lot longer than you had
 15 originally anticipated, but I take it there
 16 was also current testing going on by Mount
 17 Sinai at the time?
 18 MR. TILLEY:
 19 A. Yes.
 20 COFFEY, Q.C.:
 21 Q. Do you know what the turn-around time was for
 22 the current testing?
 23 MR. TILLEY:
 24 A. I couldn't tell you.
 25 COFFEY, Q.C.:

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1 Q. Do you recall whether there were ever any
 2 complaints or concerns about Mount Sinai being
 3 slow to get back on the current tests?
 4 MR. TILLEY:
 5 A. It certainly had been raised with me, that -
 6 COFFEY, Q.C.:
 7 Q. No, no, no. If we could, please, if we could
 8 bring up exhibit P-0443. Now, Mr. Tilley, the
 9 exhibit has a page on it, News Conference, May
 10 18th, 2007. Then there's a media statement
 11 and introduced panel and it goes on and ends
 12 with "I will now take your questions" at page
 13 7 of the exhibit, and there's a statement of
 14 statistics, an ER/PR retesting chronology, May
 15 18th, 2007 and that ends it. So, sir, if I
 16 could, you've described to the Commissioner,
 17 you're sitting outside the Cabinet room on the
 18 17th, you went to Mr. Abbott's office
 19 afterward, a discussion and I believe a phone
 20 call, and then there was a press conference on
 21 May 18th, which would have been a Friday.
 22 MR. TILLEY:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. Do you recall ultimately, obviously it was

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1 your decision, I take it, or were you told to
 2 hold it?
 3 MR. TILLEY:
 4 A. I have no recollection of somebody saying to
 5 me I was going to do this. There's a few
 6 other events in my career where that has
 7 happened and I remember well, but I certainly
 8 don't have it in this case.
 9 COFFEY, Q.C.:
 10 Q. Is it possible that you had already in your
 11 own mind decided you were going to do it and -
 12 MR. TILLEY:
 13 A. Well that's where my head was, to be quite
 14 frank with you.
 15 COFFEY, Q.C.:
 16 Q. Okay. So how did you prepare for it then?
 17 MR. TILLEY:
 18 A. Well, I pulled a group of senior people
 19 together. This was, I believe late in the
 20 afternoon of the 17th. We did have, at that
 21 point in time, a representative from an
 22 outside communications group, Bristol seems to
 23 ring a bell, and what they brought to the
 24 table was an analysis of what the media were
 25 interested in. So it was using that as a

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1 guide to anticipate what might come up during
 2 the press conference. Everybody stayed around
 3 for two to three hours of that discussion and
 4 then they left and Susan Bonnell and I stayed
 5 and developed this statement.
 6 COFFEY, Q.C.:
 7 Q. Okay.
 8 MR. TILLEY:
 9 A. The press conference was held in corporate
 10 office. At the head table it was the three
 11 physicians that had actually been involved in
 12 the December briefing, they were at the table
 13 to respond to anything that I was not in a
 14 position to be able to respond to.
 15 COFFEY, Q.C.:
 16 Q. Who were they?
 17 MR. TILLEY:
 18 A. Doctors Denic, Howell and Laing.
 19 COFFEY, Q.C.:
 20 Q. And so in terms of the senior people you got
 21 together on the 17th to prepare, were whom?
 22 Ms. Bonnell, yourself -
 23 MR. TILLEY:
 24 A. Yes. Again, I have a note to that effect, Mr.
 25 Coffey, I'm not sure if it's of any help, but

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1 I seem to remember some members of our senior
 2 management team, Dr. Howell, Ms. Pilgrim,
 3 probably Ms. Smith from Cancer Care, I'm
 4 assuming probably Ms. Predham. So it was just
 5 a discussion around, you know, what is it the
 6 media are focused in on and how can we deal
 7 with this issue, because it seems to have
 8 gotten away from us.

9 COFFEY, Q.C.:

10 Q. Now, sir, so people, I take it, went about
 11 their business helping to prepare or provide
 12 input into the materials and they were
 13 actually prepared by whom?

14 MR. TILLEY:

15 A. Well in terms of the media statement, Susan
 16 Bonnell would have probably conducted a first
 17 draft and then her and I would have worked on
 18 it through the evening, in terms of messaging.

19 COFFEY, Q.C.:

20 Q. And I take it that in its final form, is this
 21 reflected here?

22 MR. TILLEY:

23 A. Is this the final document? Well I'm going to
 24 assume that it is.

25 COFFEY, Q.C.:

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1 Q. So the plan was what? You would go to the
 2 press conference and do what?

3 MR. TILLEY:

4 A. I would read this prepared statement and then
 5 open up the floor to questions.

6 COFFEY, Q.C.:

7 Q. I take it there were media there?

8 MR. TILLEY:

9 A. There were quite a number of media there, yes.

10 COFFEY, Q.C.:

11 Q. And then how did it unfold?

12 MR. TILLEY:

13 A. Well, probably as good as I could have hoped
 14 it would be, there were questions from various
 15 media sources, it was tough, and you know, it
 16 was just one of those things that we felt we
 17 had to do.

18 COFFEY, Q.C.:

19 Q. Do you recall if there were any questions that
 20 you were asked by the media that you either
 21 refused to answer or could not answer?

22 MR. TILLEY:

23 A. I can't remember ever refusing anything.

24 COFFEY, Q.C.:

25 Q. I'm not suggesting you did, not at all.

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1 MR. TILLEY:

2 A. I know you're good at those types of
 3 questions, but I know that I did--I know that
 4 Dr. Laing spoke to a question and maybe Dr.
 5 Denic, so I'm assuming from that that there
 6 were some questions that I would have
 7 redirected to them or they were questions that
 8 were directed to them in the first instance.

9 COFFEY, Q.C.:

10 Q. If we could, please, just looking at this, it
 11 says the bottom of the page, the media
 12 statement, the first page of the media
 13 statement says, "It is important for everyone
 14 to know that we contacted each and every
 15 patient who was affected by the ER/PR test
 16 review, making sure they received all the
 17 information and support they required." Now,
 18 to your knowledge had Eastern Health ever made
 19 that statement publicly before?

20 MR. TILLEY:

21 A. The last time we would have spoken would have
 22 been December and I don't know if it was said
 23 in December, there were a couple of ads,
 24 newspaper ads that went out. I seem to recall
 25 that there may have been some references in

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1 them that references all patients being
 2 contacted, but I confess the dates of those
 3 elude me right now.

4 COFFEY, Q.C.:

5 Q. Now, sir, if I could please, do you know if
 6 you spoke at that time about the cause of
 7 causes of the problem, because looking back in
 8 December of '06, you had anticipated the media
 9 would ask -

10 MR. TILLEY:

11 A. Yes.

12 COFFEY, Q.C.:

13 Q. Was that question or issue raised during this
 14 press conference?

15 MR. TILLEY:

16 A. I'm not sure it was raised in that press
 17 conference, though I do believe it may have
 18 been raised in subsequent media interviews I
 19 did following the press conference.

20 COFFEY, Q.C.:

21 Q. Following the May 18th one.

22 MR. TILLEY:

23 A. Right.

24 COFFEY, Q.C.:

25 Q. Okay, and what was your response at that time?

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1 MR. TILLEY:
 2 A. In terms of the cause?
 3 COFFEY, Q.C.:
 4 Q. Yes.
 5 MR. TILLEY:
 6 A. That we, general recollection is that we had
 7 the reviews done, we were following up on the
 8 reviews, that the causes were not conclusive
 9 for me to be able to pinpoint to any one
 10 particular person on that, and we were looking
 11 at that as a system's issue.
 12 COFFEY, Q.C.:
 13 Q. If I could please, now the Statement of
 14 Statistics, was this distributed to the media
 15 at the time, do you know?
 16 MR. TILLEY:
 17 A. I'm assuming it was.
 18 COFFEY, Q.C.:
 19 Q. Refers to it as filed in court affidavit, is
 20 dated February and March, 2007, and then
 21 there's a, well first of all, that Statement
 22 of Statistics, who was that prepared by, do
 23 you know?
 24 MR. TILLEY:
 25 A. No, I don't know.

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1 COFFEY, Q.C.:
 2 Q. The ER/PR retesting chronology, I take it that
 3 would have been distributed as well?
 4 MR. TILLEY:
 5 A. I knew there were background material that had
 6 been circulated with a package.
 7 COFFEY, Q.C.:
 8 Q. And do you recall who that was prepared by?
 9 MR. TILLEY:
 10 A. I'm assuming it would have been a combination
 11 of Communications and the Quality Department.
 12 COFFEY, Q.C.:
 13 Q. Now sir, at the time, do you recall whether or
 14 not there was any slide presentation at that
 15 time to the media or in that press conference?
 16 Again, I'm not suggesting there was -
 17 MR. TILLEY:
 18 A. No, I don't think there was. Certainly the
 19 room wasn't set up for it.
 20 COFFEY, Q.C.:
 21 Q. Okay. In terms of the ER/PR retesting
 22 chronology and the Statement of Statistics,
 23 who in your organization would you have been
 24 relying upon to ensure they were accurate?
 25 MR. TILLEY:

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1 A. Well the Statement of Statistics I would have
 2 certainly looked towards the Quality
 3 Department, they would have been the ones that
 4 would have been co-ordinating the patient
 5 contacts and I notice when you covered it, it
 6 said reference to the affidavit, so they would
 7 have been the most or the closest internal
 8 source to that process. In terms of the
 9 itinerary, I'm guessing that with the way
 10 technology is this day and age, there's a lot
 11 of cutting and pasting going on, so these
 12 things would probably be developed through the
 13 Communications process but reviewed by people
 14 who would be affected by its content.
 15 COFFEY, Q.C.:
 16 Q. Now the press conference ended and what then
 17 happened? Did you follow the media coverage.
 18 MR. TILLEY:
 19 A. I'm not a good person for following media,
 20 particularly when I've been involved in it
 21 personally.
 22 COFFEY, Q.C.:
 23 Q. You're the subject matter of it, yes, go
 24 ahead.
 25 MR. TILLEY:

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1 A. Yes, you just assume not to have to look at
 2 yourself any more than you got to.
 3 THE COMMISSIONER:
 4 Q. I can understand that.
 5 COFFEY, Q.C.:
 6 Q. How about the reports afterward? I appreciate
 7 your comment, that look, I didn't sit around
 8 and watch myself on tape.
 9 MR. TILLEY:
 10 A. Right.
 11 COFFEY, Q.C.:
 12 Q. But in terms of from your communications
 13 director afterward, because this had been an
 14 exercise to communicate with the public, you
 15 know.
 16 MR. TILLEY:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. What was the overall reaction within your
 20 organization by your key people?
 21 MR. TILLEY:
 22 A. In terms of how the media took it all?
 23 COFFEY, Q.C.:
 24 Q. Yes.
 25 MR. TILLEY:

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1 A. I seem to recall there were some stories that
 2 did not get the message as clearly as we had
 3 hoped.
 4 COFFEY, Q.C.:
 5 Q. And what aspect, do you recall, was not -
 6 MR. TILLEY:
 7 A. I'm drawing a blank. One of the things that
 8 does come to mind that I seem to always be
 9 frustrated by is that usually on the tail end
 10 of a story somewhere, we always--not always,
 11 from time to time reference this information
 12 was being kept from patients. And that was an
 13 issue that was tough to swallow because when
 14 we got into this in the very beginning, we
 15 were, what I considered to be making a very
 16 bold effort, albeit it didn't roll out in the
 17 best played plan that we had, but we were
 18 always very clear that we were going to be
 19 following up with the patients who were
 20 impacted here. And that reference would often
 21 times get inserted and that was difficult, but
 22 I can't say specifically that I recall
 23 anything more around this particular one.
 24 COFFEY, Q.C.:
 25 Q. Okay, so going--that was a Friday before the

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1 long weekend, as it turned out.
 2 MR. TILLEY:
 3 A. Okay.
 4 COFFEY, Q.C.:
 5 Q. Now we know from other materials we have that
 6 on the Tuesday following, that May 22nd, the
 7 establishment of the Commission of Inquiry was
 8 announced.
 9 MR. TILLEY:
 10 A. Okay.
 11 COFFEY, Q.C.:
 12 Q. Do you recall when you first heard about the
 13 idea of establishing a Commission of Inquiry,
 14 and if so, who told you and what, if any,
 15 involvement or input you were asked for?
 16 MR. TILLEY:
 17 A. I didn't have any input into it, I can't
 18 remember exactly when, but I would think that
 19 the source would be from the deputy minister,
 20 Mr. Abbott, that one was being contemplated.
 21 COFFEY, Q.C.:
 22 Q. And at the time did you, in fact, express a
 23 view publicly?
 24 MR. TILLEY:
 25 A. About it?

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1 COFFEY, Q.C.:
 2 Q. Yes.
 3 MR. TILLEY:
 4 A. Yes, I did. I do recall it being asked
 5 because I know there were a few interviews
 6 that I did and I said that I welcomed it, that
 7 I thought it would be a good opportunity to
 8 clear the air. This was as a complex an issue
 9 that I had ever seen, but there was a lot of
 10 good things that were happening behind the
 11 scene that I felt were getting overlooked, but
 12 still it probably needed something of this
 13 magnitude to really lay it out if we were
 14 going to do it justice.
 15 COFFEY, Q.C.:
 16 Q. In fact, you did say, I believe, that you
 17 welcomed it. And I'll ask you now while I'm
 18 on the topic, how do you feel about that now,
 19 even now?
 20 MR. TILLEY:
 21 A. I think the Commissioner is a great person.
 22 COFFEY, Q.C.:
 23 Q. Okay, fair enough. I appreciate that. How
 24 about the process overall? In terms of, you
 25 know, because you've been there and -

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1 MR. TILLEY:
 2 A. I have been through a lot of difficult
 3 circumstances in my life. I would rate this
 4 as being amongst the most difficult. I know
 5 counsel a little bit, so that helps a bit.
 6 But I will also say to you, being away from
 7 the province, as I have been since September,
 8 and coming back and talking to some of my
 9 former colleagues about it, that this is
 10 having its toll on that organization. And in
 11 my mind, in my mind I had said this has got to
 12 be one of the most demanding management times
 13 for that organization, because I think that
 14 staff are feeling a tremendous amount of
 15 anxiety and I don't only put it down to the
 16 Commission, I think that over the past year
 17 there's been a lot of media attention to that
 18 organization, and I believe some of it is very
 19 unfair. And that organization needs a lot of
 20 support and attention. And it's not a
 21 surprise to me that people are choosing to
 22 look elsewhere.
 23 COFFEY, Q.C.:
 24 Q. If I could, please, Exhibit P-871? This is an
 25 e-mail from Tansy Mundon to yourself, May

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1 21st, 2007 at 3:50 p.m. It's copied to Mr.
 2 Abbott, Ms. Hennessey and Ms. Bonnell. She
 3 says, "George, as per John's request I am
 4 forwarding these questions to you for response
 5 ASAP tomorrow morning. Will", questions are,
 6 "Will all deceased tests be retested? If so,
 7 has this process started and what are the
 8 details?" Second question is, "How many of
 9 the deceased have been retested? The court
 10 affidavit states 103 but the statement of
 11 statistics document released to media on
 12 Friday states 105. Thanks, Tansy." Now, what
 13 was this about, sir?
 14 MR. TILLEY:
 15 A. Well, it was obviously about deceased
 16 patients.
 17 COFFEY, Q.C.:
 18 Q. If I could, because I'll assist you in this
 19 regard.
 20 MR. TILLEY:
 21 A. Okay, thank you.
 22 COFFEY, Q.C.:
 23 Q. Exhibit P-0446? This is, when you look down
 24 toward the bottom of page, that's that 3:50 e-
 25 mail of Ms. Mundon to yourself, okay, of May

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1 21. And then May 21 at 5:03 p.m. you sent an
 2 e-mail or sent that one with the accompanying
 3 text here, to Ms. Predham, Dr. Howell, Ms.
 4 Bonnell, Ms. Pilgrim and Ms. Elliott.
 5 "Questions requiring response." And you say,
 6 "Hi guys, Please review my responses to
 7 questions being asked by the Department of
 8 Health. Thanks, George." And I gather your
 9 response was, "All of the deceased will be
 10 retested (we need to keep the Mount Sinai
 11 serviced to insure consistency). To date we
 12 have had XXX retested and XX have changed. An
 13 earlier decision based on an ethical review
 14 for this information was to" -
 15 MR. TILLEY:
 16 A. Right.
 17 COFFEY, Q.C.:
 18 Q. - "to be provided on request in order to be
 19 sensitive to the wishes" I presume "on the
 20 family" or "of the family". "These new
 21 results have not been put through the panel to
 22 allow the panel to focus on where it can make
 23 a difference. Fourteen families have
 24 contacted us. We will be writing these
 25 families directly to advise of this issue and

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1 offer to follow through." Signed, "George."
 2 MR. TILLEY:
 3 A. Um-hm.
 4 COMMISSIONER:
 5 Q. Now, the information contained in your draft
 6 response here, you obtained that from where?
 7 MR. TILLEY:
 8 A. Well, I think I had spoken to it in the press
 9 conference to say that we would be retesting
 10 the deceased. I knew of the ethical review
 11 process and how that was going to work.
 12 Obviously the Xs mean that there's some
 13 information that I don't know. The reference
 14 to 14 families, I couldn't tell you exactly
 15 the source of that. If it wasn't in any of
 16 the documents that I had in my possession up
 17 until that point in time, then I might have
 18 gotten it from one of the individuals,
 19 perhaps, that I was sending this to.
 20 COFFEY, Q.C.:
 21 Q. The reference to "We will be writing these
 22 families," is that the 14 families?
 23 MR. TILLEY:
 24 A. No. My understanding would be the other
 25 families that -

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1 COFFEY, Q.C.:
 2 Q. All of them, all the other families of
 3 deceased?
 4 MR. TILLEY:
 5 A. - of the deceased.
 6 COFFEY, Q.C.:
 7 Q. So the families of all the deceased?
 8 MR. TILLEY:
 9 A. Right.
 10 COFFEY, Q.C.:
 11 Q. Okay. And the follow through would be, I take
 12 it, to let them know the results?
 13 MR. TILLEY:
 14 A. Well, the ethics review, as I recall it, was
 15 basically to be sensitive to families
 16 circumstances and if families felt that it was
 17 not information they wanted for any number of
 18 justifiable reasons, then the decision would
 19 be left to the family.
 20 COFFEY, Q.C.:
 21 Q. As to whether or not they wanted to know?
 22 MR. TILLEY:
 23 A. Sorry, yes.
 24 COFFEY, Q.C.:
 25 Q. The results.

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1 COMMISSIONER:
 2 Q. So are you saying--sorry, Mr. Coffey, are you
 3 saying that you--the decision was to write
 4 each of the families essentially saying if you
 5 want to know?
 6 MR. TILLEY:
 7 A. Yes.
 8 COMMISSIONER:
 9 Q. Okay.
 10 COFFEY, Q.C.:
 11 Q. Do you know if that ever happened?
 12 MR. TILLEY:
 13 A. I can't say if it did. I probably had about
 14 six weeks beyond that.
 15 COFFEY, Q.C.:
 16 Q. I appreciate that. If we could, please,
 17 Exhibit--first of all I'll just ask you, do
 18 you know if you ever actually sent this
 19 response to the Department of Health or at
 20 least, you know, a fuller version of it?
 21 MR. TILLEY:
 22 A. You asked the question means that you haven't
 23 seen it?
 24 COFFEY, Q.C.:
 25 Q. Well, it doesn't--not necessarily, but I just

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1 -
 2 MR. TILLEY:
 3 A. Okay.
 4 COFFEY, Q.C.:
 5 Q. You can't recall?
 6 MR. TILLEY:
 7 A. No, no. I would like to think that we did.
 8 COFFEY, Q.C.:
 9 Q. Sure. And in this, if we could, please,
 10 Exhibit P-0431? That May 21st was actually
 11 Monday, the holiday. Now this is page 21,
 12 please? This is your telephone log of May
 13 22nd, 2007. And there's a reference to Susan
 14 B?
 15 MR. TILLEY:
 16 A. Yes.
 17 COFFEY, Q.C.:
 18 Q. Can you decipher that?
 19 MR. TILLEY:
 20 A. Well, that looks like -
 21 COFFEY, Q.C.:
 22 Q. That looks like Bonnell.
 23 MR. TILLEY:
 24 A. "MHA excluded" or "included."
 25 COFFEY, Q.C.:

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1 Q. "Included." And I'll get to that in terms of
 2 the MHA.
 3 MR. TILLEY:
 4 A. Yes, okay. "Privacy," maybe, question mark?
 5 COFFEY, Q.C.:
 6 Q. Yes.
 7 MR. TILLEY:
 8 A. "Recruitment and retention of pathologists."
 9 COFFEY, Q.C.:
 10 Q. And then there's a reference to John Abbott, I
 11 take it, having phoned you?
 12 MR. TILLEY:
 13 A. Yeah.
 14 COFFEY, Q.C.:
 15 Q. And could you just take us through this?
 16 There's a reference to "press conference -
 17 noon"?
 18 MR. TILLEY:
 19 A. The timing of this, again, is that post the
 20 press conference?
 21 COFFEY, Q.C.:
 22 Q. It would be post, yeah, you had had your own
 23 press conference May 18th.
 24 MR. TILLEY:
 25 A. Okay. And this still relates to the ER/PR

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1 issue, we think?
 2 COFFEY, Q.C.:
 3 Q. No. I'm just--perhaps you could just read
 4 down through it?
 5 MR. TILLEY:
 6 A. Right, okay. So "John Abbott, press
 7 conference - noon. What went wrong with the
 8 tests that"--"Why was problem? Could it have
 9 been" "Were" sorry.
 10 COFFEY, Q.C.:
 11 Q. "Were patients"? That word be patients?
 12 MR. TILLEY:
 13 A. It could be patients.
 14 COFFEY, Q.C.:
 15 Q. Okay.
 16 MR. TILLEY:
 17 A. But the other word doesn't help me, in terms
 18 of why. "were time outcomes. Did authority
 19 communicate with general public? Are test
 20 systems -
 21 COFFEY, Q.C.:
 22 Q. I apologize here.
 23 MR. TILLEY:
 24 A. "Are test systems best," maybe. Sorry, I
 25 can't help you.

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1 MR. BROWNE:
 2 Q. Best practice.
 3 MR. TILLEY:
 4 A. Best practice.
 5 COFFEY, Q.C.:
 6 Q. Yes, thank you, Mr. Browne. We'll give credit
 7 where it's due.
 8 THE COMMISSIONER:
 9 Q. Mr. Browne, you can read it and Mr. Tilley
 10 can't.
 11 MR. BROWNE:
 12 Q. Years of reading doctors' handwriting.
 13 MR. TILLEY:
 14 A. Thank you.
 15 THE COMMISSIONER:
 16 Q. Yes, I was thinking that Mr. Tilley's long
 17 association with the medical profession shows.
 18 MR. TILLEY:
 19 A. I've never used that excuse, but I think I
 20 will from here on in. So then E would be "EH,
 21 Eastern Health, QI system will not"--sorry,
 22 can't tell you what that word is, and then
 23 "findings and recommendations, clinical piece,
 24 litigation" and then a word up on the side
 25 says "systems."

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1 COFFEY, Q.C.:
 2 Q. So I take it Mr. Abbott then was calling you
 3 probably on the 22nd of May about a press
 4 conference that was going to be held? Do you
 5 know--now, I can tell you, if it would -
 6 MR. TILLEY:
 7 A. If you could.
 8 COFFEY, Q.C.:
 9 Q. - in terms of May 22nd is the day that the
 10 press release occurred from the government
 11 informing the public about the establishment
 12 of a Commission of Inquiry.
 13 MR. TILLEY:
 14 A. Okay.
 15 COFFEY, Q.C.:
 16 Q. So might that -
 17 MR. TILLEY:
 18 A. Okay, thank you.
 19 COFFEY, Q.C.:
 20 Q. Does that assist in any way?
 21 MR. TILLEY:
 22 A. Well, it explains it because a lot of it
 23 wasn't making sense to me, and I guess what
 24 he's doing is just sort of covering off what
 25 some of the issues that you guys were going to

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1 be dealing with.
 2 COFFEY, Q.C.:
 3 Q. Okay.
 4 THE COMMISSIONER:
 5 Q. And Mr. Tilley, you're content that this note
 6 is in fact about the ER/PR situation, are you?
 7 MR. TILLEY:
 8 A. Well, the only other alternative, of course,
 9 might be the radiology issue, which was
 10 creeping in, but I'm thinking that was the
 11 following day, the 23rd.
 12 THE COMMISSIONER:
 13 Q. Okay.
 14 COFFEY, Q.C.:
 15 Q. And we'll get to that. If we could, please,
 16 page 25 of this exhibit? Now this is--if I
 17 just could, please, and actually before I
 18 actually venture on to the 23rd itself, if we
 19 could look at Exhibit P-0884? I apologize.
 20 Now sir, this is a--well, what sort of a
 21 document, first of all, was this?
 22 MR. TILLEY:
 23 A. It's a PowerPoint presentation and looking at
 24 the title page, it was the document that was
 25 used when the representatives from all sides

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1 of the House of Assembly were invited in to
 2 hear about this issue.
 3 COFFEY, Q.C.:
 4 Q. Okay.
 5 MR. TILLEY:
 6 A. And I'm guessing there was maybe a dozen
 7 people, give or take a couple.
 8 COFFEY, Q.C.:
 9 Q. It's entitled "Estrogen and Progesterone
 10 Testing. Members of House of Assembly
 11 briefing. May 22nd, 2007." The briefing
 12 participants are noted to be yourself, Dr.
 13 Oscar Howell, Dr. Nash Denic, and Dr. Kara
 14 Laing.
 15 MR. TILLEY:
 16 A. Yeah.
 17 COFFEY, Q.C.:
 18 Q. And then there is an agenda. Number one,
 19 understanding screening surgery adjuvant
 20 treatment and patient care. Two,
 21 understanding the ER/PR test. Three,
 22 chronology of events. Four, reviewing our
 23 outcomes. Five, understanding the principles
 24 and practice of disclosure. And six, patient
 25 care improvements. And then if we just--I

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1 don't propose to take you through all of them,
 2 but then there are some, at times, fairly
 3 detailed slides, are there not?
 4 MR. TILLEY:
 5 A. Yes.
 6 COFFEY, Q.C.:
 7 Q. Describing, amongst others, the slide at the
 8 bottom of page two is Tamoxifen and cancer,
 9 and there's a schematic diagram and text
 10 descriptions, are there not?
 11 MR. TILLEY:
 12 A. Yes.
 13 COFFEY, Q.C.:
 14 Q. So how did the MHAS briefing come about?
 15 MR. TILLEY:
 16 A. Well, I'm just connecting it back to the
 17 Cabinet -
 18 COFFEY, Q.C.:
 19 Q. From your perspective, yes.
 20 MR. TILLEY:
 21 A. - document and though I have--there's a gap in
 22 my retention about how that was unfolded, but
 23 I know that the ministers were speaking to
 24 this in the House of Assembly quite
 25 extensively and I assume that someone had

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1 decided to say "well, let's see if we can get
 2 the people who are asking the questions
 3 meeting with the people who can actually
 4 answer them," and that was asked to be done
 5 and I don't recall us doing any of the
 6 organizing, other than creating the room and
 7 having these presentations prepared by the
 8 individuals involved.
 9 COFFEY, Q.C.:
 10 Q. Okay, and did you participate in that?
 11 MR. TILLEY:
 12 A. I did. My role was more to welcome and
 13 introduce and then the other three individuals
 14 sort of carried the day. They didn't get it
 15 all done in a morning and it did flow over
 16 into a second day.
 17 COFFEY, Q.C.:
 18 Q. I take it it was set for the morning. It
 19 wasn't completed that morning?
 20 MR. TILLEY:
 21 A. That's correct.
 22 COFFEY, Q.C.:
 23 Q. And arrangements were made to do it the second
 24 day?
 25 MR. TILLEY:

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1 A. That's my recollection.
 2 COFFEY, Q.C.:
 3 Q. Now you, I gather, were called away at one
 4 point?
 5 MR. TILLEY:
 6 A. I was on the second day.
 7 COFFEY, Q.C.:
 8 Q. Second day, well, I'll get to that in a
 9 moment, please.
 10 MR. TILLEY:
 11 A. Okay.
 12 COFFEY, Q.C.:
 13 Q. In terms of for what you present for, the MHAS
 14 briefing, how did that go, from your
 15 perspective?
 16 MR. TILLEY:
 17 A. I thought it was a good discussion. I mean,
 18 these people had some appreciation for what
 19 was going on, but--and they asked some good
 20 questions, and I thought they were answered to
 21 their expectation. I remember somebody, I
 22 can't remember who, saying "I'm not sure what
 23 else you could have done." But you know, it
 24 was just one more part of this very complex
 25 process that we went through.

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1 COFFEY, Q.C.:
 2 Q. Okay. If we could, please, Exhibit P-0431?
 3 Page--yes. Now there's a reference here, this
 4 is in your telephone log from May 23rd '07,
 5 call from John Abbott, or to John Abbott,
 6 ER/PR. Could you just take us through that,
 7 please?
 8 MR. TILLEY:
 9 A. ER/PR technical complexity, variability,
 10 management disclosure, communications,
 11 rationale, Williams and technical briefing.
 12 COFFEY, Q.C.:
 13 Q. Do you recall what that was about?
 14 MR. TILLEY:
 15 A. No, I'm sorry.
 16 COFFEY, Q.C.:
 17 Q. Okay.
 18 MR. TILLEY:
 19 A. Then it goes on to say "Tuesday, House of
 20 Assembly, Minister did okay. Terms of
 21 Reference."
 22 COFFEY, Q.C.:
 23 Q. The Terms of Reference having been referred to
 24 or announced the day before?
 25 MR. TILLEY:

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1 A. Of the Inquiry perhaps?
 2 COFFEY, Q.C.:
 3 Q. Yes.
 4 MR. TILLEY:
 5 A. Yeah. So this is on the second day of the
 6 House of--the MHA meeting, isn't it?
 7 COFFEY, Q.C.:
 8 Q. Yes, sir, it would be.
 9 MR. TILLEY:
 10 A. Okay, so this might have been a second call,
 11 I'm thinking. It references radiology here,
 12 10 to 16 concerned, and peer review concerns.
 13 COFFEY, Q.C.:
 14 Q. Okay. So on that point, if--I'd like to, if
 15 we could, just after lunch, come back and
 16 finish that up.
 17 THE COMMISSIONER:
 18 Q. All right.
 19 COFFEY, Q.C.:
 20 Q. Thank you.
 21 THE COMMISSIONER:
 22 Q. 2:00.
 23 (LUNCH BREAK)
 24 THE COMMISSIONER:
 25 Q. Mr. Coffey.

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1 COFFEY, Q.C.:
 2 Q. Thank you, Commissioner. Waiting for the
 3 computer to load here. Thank you. We were
 4 looking at Exhibit P-0431 and that's of May
 5 23rd '07 and you had referred, before lunch,
 6 Mr. Tilley, to the second day of the MHAs
 7 briefing.
 8 MR. TILLEY:
 9 A. Yes.
 10 COFFEY, Q.C.:
 11 Q. Which was, I take it, at your corporate
 12 headquarters at Waterford Bridge Road at the
 13 time.
 14 MR. TILLEY:
 15 A. Right.
 16 COFFEY, Q.C.:
 17 Q. What happened during that briefing?
 18 MR. TILLEY:
 19 A. Well, the briefing was sort of following its
 20 normal course and the physicians were
 21 responding to a number of questions, and then
 22 one of my staff, that wasn't involved in the
 23 session, came into the room and came to me and
 24 indicated that Mr. Abbott was on the telephone
 25 and needed to speak to me, and I thought that

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1 it must have been fairly urgent because he
 2 knew what I was involved in at that point in
 3 time and I just assumed that he would not pull
 4 me out unless it was something that was fairly
 5 significant.
 6 In any event, it had nothing to do with
 7 ER/PR. It had to do with another situation
 8 that was going on within the organization
 9 involving a radiologist in the Burin
 10 Peninsula.
 11 COFFEY, Q.C.:
 12 Q. You learned that when you spoke to Mr. Abbott?
 13 MR. TILLEY:
 14 A. Well, yes, that was the issue. Now I was
 15 aware about the radiologist in the Burin
 16 Peninsula. Dr. Howell, in particular, as well
 17 as the chief operating officer for that area,
 18 Pat Coish Snow, had been the key people
 19 overseeing that issue. That came about as a
 20 result of one of the technologists raising
 21 questions about the practices of a specific
 22 radiologist and that resulted in a decision to
 23 do some repeat interpretations by some local
 24 radiologists. And that process was under way,
 25 let me just say that.

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1 COFFEY, Q.C.:
 2 Q. Sure.
 3 MR. TILLEY:
 4 A. Mr. Abbott's request, and I'm not sure if
 5 it's--I don't think this was the e-mail,
 6 sorry, the telephone log that dealt with it.
 7 I'm thinking it was earlier in the day. Mr.
 8 Abbott indicated to me that he wanted me to
 9 appear at a press conference before one p.m.
 10 to release the issue that was going on in the
 11 Burin Peninsula. So I -
 12 COFFEY, Q.C.:
 13 Q. Was this the first you heard of this, in the
 14 sense of there being a press conference?
 15 MR. TILLEY:
 16 A. Right.
 17 COFFEY, Q.C.:
 18 Q. Okay.
 19 MR. TILLEY:
 20 A. So I was saying, well, first of all, while I'm
 21 aware of the issue, I'm not the one that has
 22 been directly involved in it. In fact, Dr.
 23 Howell was the intended spokesperson for it,
 24 and secondly, here it was about 11:30 in the
 25 morning and I'm thinking how am I going to

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1 organize a press conference by 1:00. Any
 2 event, that was some of the discussion that we
 3 had, and Mr. Abbott, it seemed to me, was
 4 getting direction from somewhere because he
 5 said "George, I need for you to do it. I need
 6 for it to be done, and I need for you to do
 7 it." So I accepted that and started thinking
 8 about how we were going to do it. On one
 9 hand, I went to Mr. Dodge, who is the vice-
 10 president for people and information, and
 11 asked him to work with the chief operating
 12 officer in the area to put together a package
 13 that we could give to the media on this.
 14 Somewhere along the way, I can't remember if
 15 it was in the immediate conversation with Mr.
 16 Abbott or in a subsequent one, I learned that
 17 the Minister was having a press conference at
 18 2:00 on an unrelated matter. So between the
 19 jigs and the reels, the decision was made that
 20 while the media waited for the Minister to
 21 show up, somebody else would go in and say
 22 "oh, by the way, George Tilley wants to come
 23 in and make a statement first."
 24 So all of those things were put in
 25 motion. I had about a half an hour of wrap up

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1 with the MHAs, so I went back downstairs with
 2 that, and I guess suffice to say, I literally
 3 got briefed on this issue in the drive between
 4 Waterford Bridge Road and the Confederation
 5 Building.
 6 COFFEY, Q.C.:
 7 Q. Who briefed you?
 8 MR. TILLEY:
 9 A. Dr. Howell, to the extent that he had it.
 10 Susan Bonnell was up--went up there with Mr.
 11 Dodge and pulled together that information.
 12 So to make a long story short, I went in
 13 before the Minister and said, you know, "I've
 14 got something to speak to" and I spoke to the
 15 radiologist issue. It was a little on the
 16 fly. There were some things that I didn't
 17 fully have lined up, in terms of process, not
 18 the least of which was the question about how
 19 long is it going to take, because we were
 20 making a decision--announcing the fact that we
 21 were dealing with a radiologist issue and that
 22 we were going to also re-interpret or have all
 23 of the films and findings re-interpreted, and
 24 the question was asked of me, by the media,
 25 how long it would take and I had indicated

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1 four or five weeks. That proved to be changed
 2 within a few hours, but that's how the press
 3 conference happened and that was the reason
 4 for the interruption.
 5 COFFEY, Q.C.:
 6 Q. And you initially told the media four or five
 7 weeks?
 8 MR. TILLEY:
 9 A. I did.
 10 COFFEY, Q.C.:
 11 Q. Okay, and what--so it changed, you say, within
 12 hours.
 13 MR. TILLEY:
 14 A. Well, I learned that the Minister in the House
 15 that afternoon had made a comment that it was
 16 going to be done in two weeks.
 17 COFFEY, Q.C.:
 18 Q. Okay.
 19 MR. TILLEY:
 20 A. And I called Mr. Abbott and he is a man that I
 21 respect greatly, but my language was not
 22 something that was appropriate, but in no
 23 uncertain ways was expressing my degree of
 24 dissatisfaction about the change and I made
 25 comments about "you have no appreciation for

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1 what's involved in the system in order to get
 2 the radiologists who are going to be the ones
 3 that we were going to look to to do this." In
 4 any event, the focus for me then had to become
 5 how do we get the radiologists not to be taken
 6 aback by that directive and get on board with
 7 this to resolve it the best way we could.
 8 COFFEY, Q.C.:
 9 Q. So if we could, please, because I'm not going
 10 to delve--dwell at all on the radiology issue,
 11 but in terms of just because it came up in the
 12 course of this MHAs briefing and so the
 13 Commissioner has some sense of the ebb and
 14 flow from your perspective as to what was
 15 going on, what you were facing.
 16 MR. TILLEY:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. Okay. If we could, please, Commissioner, the
 20 same exhibit P-0431, page 26 of it. There's a
 21 reference here--this is your phone log, Rob
 22 Ritter, and extension number, and what is your
 23 handwriting there? "Upset that -
 24 MR. TILLEY:
 25 A. Well, he was saying that he was upset because

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1 we're upset.
 2 COFFEY, Q.C.:
 3 Q. Okay.
 4 MR. TILLEY:
 5 A. May 18th, I'm thinking that's date stopped,
 6 and -
 7 COFFEY, Q.C.:
 8 Q. Date stamped would have been, or date stopped?
 9 MR. TILLEY:
 10 A. I'm thinking date stopped, but you might be
 11 right.
 12 COFFEY, Q.C.:
 13 Q. Okay.
 14 MR. TILLEY:
 15 A. Then there's a question of morale. He's
 16 saying "you have support," and you or "who
 17 understand the situation." You have the
 18 support from people who understand the
 19 situation, and he was getting a lot of calls
 20 from radiologists who had really expressed
 21 their anger with respect to how this was being
 22 set up, because we really had to look to
 23 radiologists to take this on on top of their
 24 regular duties.
 25 COFFEY, Q.C.:

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1 Q. If we could, please, now there's a reference
 2 here "Bob Williams" is that -
 3 MR. TILLEY:
 4 A. Volunteers support. I'm thinking that Bob
 5 must have called during that time to say, you
 6 know, either you're relying upon volunteers to
 7 do this for you.
 8 COFFEY, Q.C.:
 9 Q. And if we could, please, look at Exhibit P-
 10 0459, please? Now, Mr. Tilley, this is a
 11 couple of e-mails. The one I'm showing you
 12 right here with the cursor is from Tansy
 13 Mundon, May 24th 2007 at seven p.m., to
 14 yourself, Mr. Abbott and Mr. Wiseman, copied
 15 to Ms. Bonnell. Subject is "latest draft of
 16 letter to editor" and then it says, and below
 17 she's written "Minister, John, George, here's
 18 the latest draft of letter. Since Elizabeth
 19 is okay with us sending tomorrow rather than
 20 tonight, I will contact the Globe in the
 21 morning to see if we can get permission to
 22 submit a letter of this length. If not, I
 23 will have to cut it significantly. Otherwise,
 24 she is fine with it. Thanks, Tansy" and then
 25 there's apparently a draft of a letter, "Dear

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1 Editor, I write in response to the article in
 2 the May 24th issue of 'The Globe and Mail' by
 3 Andre Picard regarding ER/PR testing at the
 4 Eastern Health Regional Authority in
 5 Newfoundland and Labrador."
 6 Sir, you then, the same day, at 7:23
 7 p.m., forwarded this e-mail, with the
 8 following message, to Ms. Bonnell, Ms. Predham
 9 and Dr. Howell, "latest draft of letter to
 10 editor" and you said "have a look at to
 11 identify any factual errors, recognizing that
 12 they may send in the morning." So here, I
 13 take it, you were being forwarded a draft of a
 14 letter that Mr. Wiseman was preparing to send
 15 to -
 16 MR. TILLEY:
 17 A. Yes, to "The Globe and Mail"
 18 COFFEY, Q.C.:
 19 Q. And you were asking your communications,
 20 quality, QI and Dr. Howell, your VP, to look
 21 for factual errors, to proof read -
 22 MR. TILLEY:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. - Mr. Wiseman's letter for factual errors.

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1 Were you involved yourself in any letter to
 2 "The Globe and Mail"?
 3 MR. TILLEY:
 4 A. Yes, we actually worked on our own letter.
 5 Mr. Picard is a health writer in the Globe and
 6 has a great following, and I would certainly
 7 count myself in that, but I was taken aback by
 8 the article that he had which, in my
 9 recollection, really was focusing on a belief
 10 that all this information was being withheld
 11 from patients. So we felt that the only way
 12 to deal with that was to put together a letter
 13 to the editor, and that's what we subsequently
 14 did at some point.
 15 COFFEY, Q.C.:
 16 Q. Exhibit P-0453, please? Now this is an e-mail
 17 from Ms. Bonnell, May 24th 2007, 12:54 p.m.,
 18 to yourself and Ms. Predham, copied to Mr.
 19 Dodge and Dr. Howell, letter to the editor,
 20 and Ms. Bonnell writes "the Department of
 21 Health has asked us to respond in writing to
 22 'The Globe and Mail' regarding Andre Picard's
 23 column from today. Here is my," that would be
 24 Susan's "attempt at a response for George.
 25 Heather, can you please review and provide

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1 comments. Steve and Oscar are cc'ed as well
 2 and comments are welcome. I'd like to send
 3 this late today or tomorrow, if possible."
 4 Does that reflect -
 5 MR. TILLEY:
 6 A. Yes.
 7 COFFEY, Q.C.:
 8 Q. So when she says there that "the Department of
 9 Health has asked us to respond in writing to
 10 'The Globe and Mail' regarding Mr. Picard's
 11 column" was -
 12 MR. TILLEY:
 13 A. I certainly don't have any recollection
 14 specifically around that, because obviously
 15 the Minister was going to do his own thing and
 16 there was a point in time that I thought both
 17 of us sending letters might be a bit of an
 18 overkill, but anyway, it's quite possible and
 19 I take Susan's note at face value that someone
 20 must have asked her.
 21 COFFEY, Q.C.:
 22 Q. That request on -
 23 MR. TILLEY:
 24 A. Could be, yeah.
 25 COFFEY, Q.C.:

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1 Q. Looking back on it, would you have sent your
 2 own letter anyway?
 3 MR. TILLEY:
 4 A. Yes.
 5 COFFEY, Q.C.:
 6 Q. Okay. If we could look at, please, P-0890?
 7 Now sir, this is--well, it's a fax
 8 transmission cover sheet, the first page of
 9 it, "highly private and confidential." It's
 10 to John Abbott, Department of Health, from Dr.
 11 Oscar Howell, VP Medical Services. It's
 12 indicated four pages long. The subject is a
 13 lab letter. The date of the fax is 24th May
 14 2007. And you'll notice at the bottom, Mr.
 15 Tilley, it says "Mr. Abbott, as discussed with
 16 Dr. Howell." And if we just look, the next
 17 page of this, the next three pages of this are
 18 the June 19th 2003 memo from Dr. Ejeckam to
 19 Terry Gulliver, okay?
 20 MR. TILLEY:
 21 A. Yeah.
 22 COFFEY, Q.C.:
 23 Q. Do you recall how this arose again at this
 24 time, and how it came to your attention? Who
 25 brought it to your attention? I appreciate it

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1 had come up in July of '05.
 2 MR. TILLEY:
 3 A. Right, right, right, right. Dr. Howell had
 4 forwarded it to the department, but I think
 5 how it came to my attention is that it was an
 6 issue that was raised in the House of
 7 Assembly, that's my memory, by the Premier.
 8 COFFEY, Q.C.:
 9 Q. And do you know, was it raised in the House by
 10 the Premier before you learned about it?
 11 MR. TILLEY:
 12 A. Well, I certainly knew of the letters, as you
 13 know, sometime earlier. The question is did I
 14 know it earlier -
 15 COFFEY, Q.C.:
 16 Q. Before the Premier referred to this matter in
 17 the House.
 18 MR. TILLEY:
 19 A. - or that he was going to refer to it? I
 20 certainly didn't know that.
 21 COFFEY, Q.C.:
 22 Q. Okay.
 23 MR. TILLEY:
 24 A. But I'm just trying to remember now if I knew
 25 that Dr. Howell had sent it at the time he

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1 did, or whether I found out that later, and I
 2 just--I can't say with certainty.
 3 COFFEY, Q.C.:
 4 Q. And if we could, on this point, if we could
 5 bring up, please, Exhibit P-0891? Now this is
 6 a--do you recognize the handwriting?
 7 MR. TILLEY:
 8 A. That looks like mine.
 9 COFFEY, Q.C.:
 10 Q. Okay. It's on -
 11 MR. TILLEY:
 12 A. Holiday Inn note pad.
 13 COFFEY, Q.C.:
 14 Q. - Holiday Inn note pad, and if you could just
 15 read that?
 16 MR. TILLEY:
 17 A. Yeah. It must have been a conversation that I
 18 had with Bob Williams. "Bob Williams,
 19 discussed with Terry Gulliver and Don Cook.
 20 This memo was brought to his attention," that
 21 would be Bob's, I guess, "in 2005. Response
 22 was that the issues were reviewed and followed
 23 up on as is evident that the service was
 24 reactivated. Example of issue being raised
 25 and followed up on. Did change need to go

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1 back. In fact, re-enforced it."
 2 COFFEY, Q.C.:
 3 Q. Do you recall what that -
 4 MR. TILLEY:
 5 A. Well, I'm not sure if the last line reads
 6 right to me, but my--do you have a date for
 7 this one, by the way?
 8 COFFEY, Q.C.:
 9 Q. There's no--this is the way it--as much as we
 10 have.
 11 MR. TILLEY:
 12 A. I seem to remember at the time calling Bob
 13 Williams again, because he was retired by this
 14 time, and just getting his view in terms of
 15 what went on here.
 16 COFFEY, Q.C.:
 17 Q. And this would have been your handwritten note
 18 on that?
 19 MR. TILLEY:
 20 A. Right.
 21 COFFEY, Q.C.:
 22 Q. The letter to "The Globe and Mail" did you
 23 send one on behalf of Eastern Health?
 24 MR. TILLEY:
 25 A. I did.

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1 COFFEY, Q.C.:
 2 Q. And was it published?
 3 MR. TILLEY:
 4 A. A small portion of it ended up in the Globe,
 5 but my guess is maybe 20 percent of the
 6 content.
 7 COFFEY, Q.C.:
 8 Q. If we could, please, Exhibit P-0220? Now
 9 there is the second e-mail here on this page,
 10 it's from Ms.--actually, it's from Susan
 11 Bonnell to Tansy Mundon. It's May 25 at 12:43
 12 p.m. The subject is a matter involving MHA
 13 Foote. Pleased with commitment to reduce
 14 turnaround time of radiology reports. But
 15 then Ms. Bonnell writes "any word on the
 16 letters to 'The Globe and Mail'? I'd like to
 17 send ours, even if yours is delayed." And
 18 then Ms. Mundon responded the same day at
 19 12:47 p.m. to Ms. Bonnell saying "we have sent
 20 ours as is and asked for permission to include
 21 as a guest column, given the length. John is
 22 okay with you sending your letter." See that?
 23 MR. TILLEY:
 24 A. Yes.
 25 COFFEY, Q.C.:

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1 Q. That would be John Abbott, I take it, in the
 2 context.
 3 MR. TILLEY:
 4 A. My assumption too.
 5 COFFEY, Q.C.:
 6 Q. Were you, at the time, you in the sense of you
 7 as CEO of Eastern Health, waiting for the
 8 Department to agree for you to send your
 9 letter?
 10 MR. TILLEY:
 11 A. No. I mean, it would have been out of
 12 courtesy with the Minister sending his that we
 13 were sort of complementing one another, but
 14 certainly not to the point of waiting for
 15 permission to send it or not.
 16 COFFEY, Q.C.:
 17 Q. If we could, please, Exhibit P-0462? This is
 18 an e-mail of May 25, 2007, Friday, of 3:18
 19 p.m. I take it, this is to all the Board of
 20 Directors?
 21 MR. TILLEY:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. And it's copied to the Eastern team, executive
 25 team of Eastern Health, and you've written

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1 "further to our conversation at the Board
 2 meeting last week, I am attaching a letter to
 3 the editor of 'The Globe and Mail' that was
 4 sent today in response to the story in
 5 yesterday's edition. I apologize for not
 6 getting it to you for input, but government
 7 wanted to see it before it was sent and we had
 8 a tight deadline to send it off. We hope that
 9 it is seen by those who read the original
 10 article and certainly by the author. Susan
 11 Bonnell, director of Corporate Communications
 12 Department, is assessing other opportunities
 13 to get out there, being sensitive to the
 14 situation at hand." Signed George.
 15 So is this the sort of thing, like a
 16 letter to the editor such as this by the CEO
 17 of Eastern Health, is that the sort of thing
 18 that would normally run past the Board first?
 19 MR. TILLEY:
 20 A. No, I wouldn't normally do that, though the
 21 Board had a particular interest in this one,
 22 and actually had some discussions earlier on
 23 about an ad we put in the paper, but I didn't
 24 run it through the Board.
 25 COFFEY, Q.C.:

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1 Q. Okay, for permission per se.
 2 MR. TILLEY:
 3 A. No.
 4 COFFEY, Q.C.:
 5 Q. Okay. In terms of that, up to this point in
 6 time, had--where was the Board at this point?
 7 I mean, you're into sending letters to the
 8 editor of the Globe and so on.
 9 MR. TILLEY:
 10 A. Yes.
 11 COFFEY, Q.C.:
 12 Q. What's your relationship with the Board at
 13 this point?
 14 MR. TILLEY:
 15 A. Well, certainly there would have been an
 16 ongoing dialogue with the Chair. I seem to
 17 recall there was a special board meeting that
 18 was held.
 19 COFFEY, Q.C.:
 20 Q. Okay.
 21 MR. TILLEY:
 22 A. I'm not sure of the date, but it seems to be
 23 getting close to the time when it was held. I
 24 remember talking about radiology as well as
 25 ER/PR and I can't remember if there was a

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1 third issue that necessitated them being
 2 briefed or not.
 3 COFFEY, Q.C.:
 4 Q. And do you recall what happened at the Board
 5 meeting, in a general way? Did they give you
 6 any direction?
 7 MR. TILLEY:
 8 A. Well, they were certainly given a briefing as
 9 to the status of all of those issues. I can't
 10 say with total comfort, but it seems to me
 11 that we did talk about an opportunity for the
 12 Board to have input into the ad that we were
 13 going to put together.
 14 COFFEY, Q.C.:
 15 Q. Okay.
 16 MR. TILLEY:
 17 A. I'm not sure if I'm getting that timing mixed
 18 up with another event, but that's one of the
 19 things that comes to my mind.
 20 COFFEY, Q.C.:
 21 Q. Now if we could, and again all around the same
 22 time frame, if we could look at, please,
 23 Exhibit P-0894? Now, sir, again, this is an
 24 e-mail from--well, it's a couple of e-mails.
 25 It's, the one at the bottom of the page is

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1 from Cathi Bradbury to Mr. Alteen, Ms.
 2 McGrath, yourself, Oscar Howell and other
 3 individuals involved in the senior executive
 4 of these various health authorities and the
 5 Department of Health. It's sent May 24th,
 6 2007 at 2:18 p.m. The subject is
 7 "Departmental update ER/PR testing (May 24th,
 8 2007). Please find attached a briefing note
 9 that was provided to the minister in follow-up
 10 to our teleconference this morning. I don't
 11 have the e-mail addresses for all participants
 12 other than the CEOs and VPs of medicine.
 13 Please forward the document to other
 14 teleconference participants within your
 15 regional health authority. Thank, Cathi."
 16 And Dr. Denic at 8 p.m. that evening
 17 responded, "Thanks, Cathi. It is as we
 18 discussed. Nash." And if we look at page 2
 19 of this, this is a briefing note for question
 20 period, and it's, the briefing note is
 21 actually two pages long. It's dated May 24th,
 22 2007 by Dr. Bradbury. And the issue is ER/PR
 23 testing for breast cancer background, Eastern
 24 Health, St. John's site. "Suspended the
 25 testing of ER/PR specimens for breast cancer

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1 patients in August, 2005. Since August, 2005
 2 Mount Sinai has been testing new specimens as
 3 well as retesting all ER/PR negative specimen
 4 reported between 1997 and 2005." And the
 5 anticipated questions are, "(1) What is the
 6 current status of ER/PR testing in the
 7 province?" And the first bullet is "ER/PR
 8 testing has resumed in St. John's as of
 9 February 1, 2007 for the St. John's sites
 10 only. ER/PR specimens for all other sites
 11 outside of St. John's continue to be tested
 12 and interpreted by Mount Sinai Hospital." And
 13 it goes on at some length from there about it
 14 and covers different time frames and breaks
 15 them down as to what kinds of tests, ER/PR and
 16 HER2/neu were being done. Now, sir, how had
 17 this issue arisen at this point, do you
 18 recall?
 19 MR. TILLEY:
 20 A. How had this briefing note?
 21 COFFEY, Q.C.:
 22 Q. Yeah, and what lead to this briefing note?
 23 There was obviously a teleconference?
 24 MR. TILLEY:
 25 A. Yeah.

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1 COFFEY, Q.C.:

2 Q. And what had lead to the teleconference, do

3 you recall?

4 MR. TILLEY:

5 A. No, I don't have any recollection unless

6 there's something that you can help me point

7 to.

8 COFFEY, Q.C.:

9 Q. As this unfolded in, for example, May 23rd,

10 May 24th, 2007, perhaps May 23rd, some

11 question arose as to why the other health

12 authorities were not sending their tissue

13 blocks to St. John's for processing?

14 MR. TILLEY:

15 A. Yes.

16 COFFEY, Q.C.:

17 Q. And there was some--the minister -

18 MR. TILLEY:

19 A. Right.

20 COFFEY, Q.C.:

21 Q. Some question about whether the minister had

22 actually understood that?

23 MR. TILLEY:

24 A. Right.

25 COFFEY, Q.C.:

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1 Q. Does that help?

2 MR. TILLEY:

3 A. Okay. A tiny bit. I just remember a

4 conversation or being party to a discussion

5 about the minister having stated that the

6 ER/PR has been reactivated.

7 COFFEY, Q.C.:

8 Q. Yes.

9 MR. TILLEY:

10 A. And then finding out later that it had only

11 been reactivated for St. John's. Now, I can't

12 remember if that's before or after this.

13 COFFEY, Q.C.:

14 Q. Well, there is a--when we look at page 1 of

15 this, I'm sorry, I'll just go back. This

16 first e-mail, the one at 2:18 refers to there

17 having been a teleconference that morning and

18 it presumably would have involved most or all

19 of these people listed there. Do you recall

20 whether or not you were part of a

21 teleconference involving CEOs and VP medicals

22 and others?

23 MR. TILLEY:

24 A. Well, if there was one, I'd be surprised that

25 I wouldn't be there.

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1 COFFEY, Q.C.:

2 Q. Okay.

3 MR. TILLEY:

4 A. Unless there was something that would prohibit

5 me from doing so.

6 COFFEY, Q.C.:

7 Q. Perhaps if we could assist you, Exhibit P-

8 0431, page 27. Thank you, Registrar. Now,

9 these are some notes--well, first of all, May

10 24th, '07, note on a conversation you had with

11 John Abbott. Can you decipher some of your

12 handwriting here?

13 MR. TILLEY:

14 A. Yes. Well, the first item is by the Globe and

15 Mail and then it says "Tansy."

16 COFFEY, Q.C.:

17 Q. That's the Globe letter, yes.

18 MR. TILLEY:

19 A. Sorry, yes, Globe letter. The second one says

20 "Two weeks ago" and I can't elaborate on what

21 that meant. And then a memo, "pathologists,

22 2003" so I director, I'm thinking.

23 COFFEY, Q.C.:

24 Q. Yes.

25 MR. TILLEY:

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1 A. So I guess that's the other issue we just

2 spoke of. And "Clarenville. Stop sending,

3 1999." And that rings a bell with regards to

4 the test, it's Clarenville I subsequently, I

5 recall, had been sending it to Mount Sinai for

6 some time, and that hasn't been changed back

7 to St. John's as of that date. Was that the

8 24th again?

9 COFFEY, Q.C.:

10 Q. Yes.

11 MR. TILLEY:

12 A. Okay.

13 COFFEY, Q.C.:

14 Q. I'll just bring it up so you're -

15 MR. TILLEY:

16 A. No, that's fine.

17 COFFEY, Q.C.:

18 Q. - comfortable. There we are right there.

19 COMMISSIONER:

20 Q. Why was Clarenville odd hospital out in this,

21 as it were?

22 MR. TILLEY:

23 A. I really can't elaborate on it other than it

24 was a personal choice of the pathologist who

25 had worked in that area before restructuring.

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1 Maybe one of the lead pathologists could help
 2 you gain some insight into that, Madam
 3 Commissioner.
 4 COMMISSIONER:
 5 Q. You can perhaps help me, though, in terms of
 6 that arrangement. Do you know anything about
 7 how it arose that the ER/PR tests were being
 8 sent to Eastern Health, was that a matter of
 9 the other hospital authorities entering into a
 10 contract with you to do certain work, was it a
 11 program by the department to encourage that
 12 being done, do you know? We can ask somebody
 13 else if that history is with somebody else,
 14 but -
 15 MR. TILLEY:
 16 A. I don't recall there ever being any financial
 17 transactions associated with this. And what I
 18 -
 19 COMMISSIONER:
 20 Q. So you don't think they pay you for doing it?
 21 MR. TILLEY:
 22 A. No. I just assume that it's probably
 23 something that's been going on for a long time
 24 and just got built into Eastern Health's
 25 operating budget. But my understanding was it

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1 was the blocks that were being sent in in to
 2 St. John's, the slides were repaired and the
 3 slides were being sent back to the regions
 4 where the pathologists there would read them.
 5 COMMISSIONER:
 6 Q. Um-hm.
 7 MR. TILLEY:
 8 A. Now, of course, when the effort was initiated
 9 with Mount Sinai, then it became a financial
 10 issue because they would charge. But I'm not
 11 able to speak to how long that practice has
 12 been going on.
 13 COMMISSIONER:
 14 Q. All right, thank you.
 15 COFFEY, Q.C.:
 16 Q. Or even why or how it had come about back in
 17 '97, '98?
 18 MR. TILLEY:
 19 A. No, can't speak to it, yeah.
 20 COFFEY, Q.C.:
 21 Q. The--now, Eastern Health had started to do its
 22 own, prepare its own ER/PR slides again on
 23 February 1, 2007.
 24 MR. TILLEY:
 25 A. Okay.

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1 COFFEY, Q.C.:
 2 Q. You had understood that?
 3 MR. TILLEY:
 4 A. Yes.
 5 COFFEY, Q.C.:
 6 Q. Before this arose as an issue on May 23rd,
 7 24th, '07, issue in the sense of the fact that
 8 other health authorities were still sending
 9 their current cases to Mount Sinai, had you
 10 been aware before it arose as an issue?
 11 MR. TILLEY:
 12 A. No, I hadn't been aware. And in fact, I never
 13 really gave reason or had reason to think
 14 about it. To be quite honest with you, my
 15 assumption was that when we said we were
 16 reactivating it, we were reactivating it for
 17 all regions if that was the--what we were
 18 involved with before it stopped.
 19 COFFEY, Q.C.:
 20 Q. When it became a subject of some interest May
 21 23rd, 24th, '07, did you make any inquiries as
 22 to why Eastern Health was not doing the
 23 others?
 24 MR. TILLEY:
 25 A. The issue of phasing seems to be coming to my

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1 mind. Now, whether it was let's start off and
 2 do one piece at a time, but I can't be more
 3 specific than that.
 4 COFFEY, Q.C.:
 5 Q. Okay. Just looking at continuation of these
 6 notes, there's a reference here to Bob
 7 Williams underlined?
 8 MR. TILLEY:
 9 A. Yes.
 10 COFFEY, Q.C.:
 11 Q. See that? What's that about and what's
 12 written underneath it?
 13 MR. TILLEY:
 14 A. It says, "Interview with Premier, see how it
 15 could happen, talk to Terry, he co-operated
 16 with Ejeckam, five weeks letter, it was
 17 reinstated." So I'm assuming it refers to
 18 maybe that documentation being raised in the
 19 house by the Premier.
 20 COFFEY, Q.C.:
 21 Q. Okay.
 22 MR. TILLEY:
 23 A. And then it says, "Don Cook involved, copied
 24 on it. He talked to Ejeckam." And then "Dan
 25 Boone" I don't know what the connection there

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1 with Dan Boone might be.
 2 COFFEY, Q.C.:
 3 Q. Now, if it turns out that the Premier's
 4 reference to this in the House of Assembly was
 5 sometime later than May 24th, if it turns out
 6 that's the case, does that reference to
 7 interview with Premier -
 8 MR. TILLEY:
 9 A. There must have been a media story that he's
 10 referring to.
 11 COFFEY, Q.C.:
 12 Q. If we could go on then to the next--you have
 13 no more recollection than that?
 14 MR. TILLEY:
 15 A. No, sorry.
 16 COFFEY, Q.C.:
 17 Q. Oh, no. Then there's--top of the page, on the
 18 next page, "Oscar" is underlined and then
 19 could you please interpret what's here?
 20 MR. TILLEY:
 21 A. Okay. It says, "Diagnostic imaging, all a
 22 go." Let me see, on the side it goes down, it
 23 says, "Friday, first 50 cases, iron out every
 24 day, one radiologist at St. Clare's, General
 25 doing Burin," looks like "Dan has" or "Don has

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1 called across the province. The other RHAS
 2 will do the fixation based."
 3 COFFEY, Q.C.:
 4 Q. Okay.
 5 MR. TILLEY:
 6 A. And then the "Lab, Ejeckam" up on the insert.
 7 COFFEY, Q.C.:
 8 Q. Yes, under "Oscar" I take it there's really
 9 two or three topics here, one is the
 10 diagnostic imaging -
 11 MR. TILLEY:
 12 A. Right.
 13 COFFEY, Q.C.:
 14 Q. And you've taken us down through the side of
 15 the page on that. Then there's the "lab,
 16 Ejeckam"?
 17 MR. TILLEY:
 18 A. Right.
 19 COFFEY, Q.C.:
 20 Q. And then below that it's "Call across the
 21 province."
 22 MR. TILLEY:
 23 A. "Other RHAS will do the fixation."
 24 COFFEY, Q.C.:
 25 Q. Now, I refer you to that because of the

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1 teleconference in Exhibit P-0894. Do you
 2 recall anything about that teleconference?
 3 MR. TILLEY:
 4 A. Not off the top of my head. Is there minutes
 5 to that effect here? No?
 6 COFFEY, Q.C.:
 7 Q. Not -
 8 MR. TILLEY:
 9 A. Okay.
 10 COFFEY, Q.C.:
 11 Q. Well -
 12 MR. TILLEY:
 13 A. No notes in my -
 14 COFFEY, Q.C.:
 15 Q. I've learned to be cautious about saying no
 16 here.
 17 MR. TILLEY:
 18 A.
 19 COFFEY, Q.C.:
 20 Q. But in terms of if there were to be dealings
 21 with the other health authorities in terms of
 22 whether or not they would re-institute the
 23 service using St. John's, the ER/PR service
 24 using St. John's, within your organization who
 25 would be responsible for, you know, arranging

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1 for that and the timing and coordination?
 2 MR. TILLEY:
 3 A. Right. It would be the VP of medical
 4 services, recognizing that that person would
 5 oversee both of those portfolios.
 6 COFFEY, Q.C.:
 7 Q. That would be Oscar Howell?
 8 MR. TILLEY:
 9 A. Right.
 10 COFFEY, Q.C.:
 11 Q. If we could, please, Exhibit P-0114? Now,
 12 sir, this is the typed version of, it's titled
 13 "Feedback from immunohistochemistry
 14 technologists."
 15 MR. TILLEY:
 16 A. Yes.
 17 COFFEY, Q.C.:
 18 Q. May 29th, 2007. And the first bullet says,
 19 "Expressed concerns related to coordination of
 20 quality assurance activities for entire
 21 immunohistochemical service." And then there
 22 are sub bullets under that, "Vast majority of
 23 IHC SOPs not signed off. ER/PR have been
 24 completed. No knowledge or feedback re
 25 external proficiency testing. No knowledge of

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1 overall action plan or status of same.
 2 Recommended training for technologists to
 3 recontrols has not occurred. Overall feeling
 4 that QA activities for ER/PR are in place but
 5 not for the remaining IHC service." And then
 6 there's a second bullet, a larger bullet,
 7 "Express concerns regarding communication."
 8 Smaller bullets, "Requests for project-type
 9 work are coming from numerous sources, ie,
 10 clinical chief, IHC chief, without explanation
 11 of knowledge of manager. Requests for
 12 documentation are coming in without knowledge
 13 of manager. ER/PR retesting restarted without
 14 knowledge of manager (manager informed by
 15 technologist after the fact)." Now, sir, as a
 16 CEO at the time, in late May, was this brought
 17 to your attention?
 18 MR. TILLEY:
 19 A. I don't -
 20 COFFEY, Q.C.:
 21 Q. I don't mean necessarily the memo, but the
 22 contents in it -
 23 MR. TILLEY:
 24 A. No.
 25 COFFEY, Q.C.:

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1 Q. - or the memo, for that matter?
 2 MR. TILLEY:
 3 A. The author is Dr. Howell or we don't know?
 4 COFFEY, Q.C.:
 5 Q. Well, it's hard to know.
 6 MR. TILLEY:
 7 A. I remember having a conversation with Heather
 8 Predham in which case she met with the
 9 technologists.
 10 COFFEY, Q.C.:
 11 Q. And I can tell you one of the source of this
 12 is Heather Predham.
 13 MR. TILLEY:
 14 A. Okay.
 15 COFFEY, Q.C.:
 16 Q. It came from two different sources.
 17 MR. TILLEY:
 18 A. And she did make a point of calling me to say
 19 "I'm picking up some concerns amongst the
 20 technologists."
 21 COFFEY, Q.C.:
 22 Q. Did she explain that?
 23 MR. TILLEY:
 24 A. Communication concerns, not being in the loop.
 25 So I asked that she share that information

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1 with Dr. Howell. And I do have a recollection
 2 of Dr. Howell actually meeting with the
 3 technologists at some point in time and a
 4 recollection that he said he was glad he had
 5 met with them and they had a good
 6 conversation.
 7 COFFEY, Q.C.:
 8 Q. And the details of that conversation or the
 9 nitty gritty of it, do you recall whether he
 10 told you what that -
 11 MR. TILLEY:
 12 A. I don't recall getting into the details other
 13 than a feeling that he had made some headway.
 14 But obviously, I think if I'm recalling the
 15 right situation, Heather, the staff had asked
 16 to meet with Heather and she was picking up on
 17 their concerns about being out of the loop,
 18 and that obviously was a concern that needed
 19 to be dealt with.
 20 COFFEY, Q.C.:
 21 Q. Now, had that subject matter, like that kind
 22 of feeling by the staff, the technologist
 23 staff, had you ever become aware of that
 24 before?
 25 MR. TILLEY:

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1 A. About the relationship?
 2 COFFEY, Q.C.:
 3 Q. Yes.
 4 MR. TILLEY:
 5 A. The only--not as a group. I mean, I knew that
 6 there was a reference earlier about the
 7 director, Mr. Gulliver, and the breast
 8 pathologist, Dr. Carter, having some
 9 coordination issues, but not as a group as a
 10 whole.
 11 COFFEY, Q.C.:
 12 Q. And could we open, please, Exhibit P-0784? If
 13 we can go to, please, page 44, or page 45,
 14 please? And this is, we've looked at this
 15 before, I'm not going to take you through--
 16 we've looked at some of it before. This is
 17 October 17th, 2005 report by Dr. Banerjee.
 18 But in relation to that subject matter, if we
 19 could go to page 48, please? Do you recall,
 20 Mr Tilley, if I could, we had looked at
 21 before, the, some of the text under
 22 conclusions about the reasons for test
 23 failure?
 24 MR. TILLEY:
 25 A. Yes.

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1 COFFEY, Q.C.:

2 Q. But on the next page, which is page 48 of the

3 exhibit, Dr. Banerjee, under the heading,

4 "Other System Flaws Observed" referred to or

5 lists a number of things, as he describes them

6 as "System Flaws Observed" and No. 5 reads,

7 "Disconnect between laboratory program

8 director, division manager, clinical site

9 chief and laboratory director in decision

10 making. The organizational charts indicate a

11 complete separation of reporting structures

12 into technical and clinical streams with no

13 matrices cross reporting between technical and

14 medical leadership. This leads to frustration

15 and resentment on both sides, lack of

16 communication, lack of accountability and lack

17 of buy-in. The division manager and program

18 director appear enthusiastic and keen on

19 modernizing the laboratory, but their efforts

20 have not been appreciated by the pathologists

21 and workload changes have not been mapped out

22 and implemented (example, Sakura Express

23 implementation has failed due to lack of

24 planning of workflow changes). Superior

25 outcomes could be achieved by insuring better

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1 linkages between technical, managerial and

2 medical leadership." Now, sir, you had

3 indicated, you've told the Commissioner in the

4 past that you had looked at this report in Dr.

5 Williams' office earlier on?

6 MR. TILLEY:

7 A. Yes.

8 COFFEY, Q.C.:

9 Q. You know, some, it would have been quite

10 sometime ago before May of '07. When you read

11 that, and I appreciate the technical, clinical

12 language you perhaps wouldn't have

13 appreciated, but this is not very technical,

14 is it?

15 MR. TILLEY:

16 A. No, it's not.

17 COFFEY, Q.C.:

18 Q. So and as a CEO, I mean, what did you take

19 from that, what, if anything, did you do about

20 it?

21 MR. TILLEY:

22 A. Well, I don't share his opinion with regards

23 to it not being matrixed.

24 COFFEY, Q.C.:

25 Q. Okay.

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1 MR. TILLEY:

2 A. And I recall in one of our earlier sessions

3 when we talked the program-based structure and

4 how there are two, if not three streams of

5 leaders amongst the leadership team. So the

6 leadership team for the lab would be comprised

7 of the director, which would be Mr. Gulliver,

8 the clinical chief, which would be Dr. Cook in

9 the first instance and Dr. Denic in the second

10 instance, but they are very much matrixed

11 together. And the expectation is that if they

12 have an issue that is a dispute in one area or

13 another, they're expected to resolve it at

14 that level.

15 COFFEY, Q.C.:

16 Q. Now, the assertion by Dr. Banerjee, you

17 understood Dr. Banerjee had been in St. John's

18 for how long in terms of how many days he had

19 been here?

20 MR. TILLEY:

21 A. I'd be guessing if I said, but you know, it

22 was certainly two or three days, maybe a week.

23 COFFEY, Q.C.:

24 Q. Two or three--and, you know, the reference to

25 frustration and resentment on both sides, lack

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1 of communication, lack of accountability and

2 lack of buy-in, did you ever ask Dr. Williams,

3 having read this, look, you know, what's the

4 story on this, doctor, this is your program?

5 MR. TILLEY:

6 A. I'm sure we've had a conversation about lab

7 and the relationships with the groups in lab.

8 this particular issue about the matrix

9 structure being the solution to it all was not

10 the one that would have made this any better

11 because it was already in place, so it was

12 more of an issue in terms of following up with

13 the individuals involved to make sure those

14 issues are being appropriately addressed.

15 COFFEY, Q.C.:

16 Q. So what, if anything, did you understand Dr.

17 Williams was going to do?

18 MR. TILLEY:

19 A. Well, there's been ongoing discussions with

20 Dr. Williams and by Dr. Williams with that

21 leadership team, so that's where I would have

22 expected it to be discussed.

23 COFFEY, Q.C.:

24 Q. Did he indicate whether he agreed with the

25 assertion that, you know, you got

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1 technologists on one side, the pathologists on
 2 another, according to Dr. Banerjee, and
 3 there's resentment, lack of communication,
 4 lack of accountability and lack of buy-in? I
 5 mean, did he speak to you about whether he
 6 agreed or disagreed with that?
 7 MR. TILLEY:
 8 A. I can't recall specifically.
 9 COFFEY, Q.C.:
 10 Q. And if it was to be addressed, I take it, it
 11 was to be left for Dr. Williams to?
 12 MR. TILLEY:
 13 A. That's correct.
 14 COMMISSIONER:
 15 Q. Mr. Tilley, can you clarify something for me?
 16 When I'm looking at this reference here and
 17 then trying to recall what we have been
 18 advised in respect of the structure within
 19 Eastern Health and I think I must have missed
 20 something first time around because my
 21 understanding was that within the laboratory
 22 structure there were, if you will, two
 23 streams. There is a technical, technology
 24 side which would be headed by Mr. Gulliver and
 25 there is a pathology side which for a period

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1 of time would have been Dr. Cook and then
 2 later Dr. Denic, as I understand it?
 3 MR. TILLEY:
 4 A. Yes.
 5 COMMISSIONER:
 6 Q. And what--and above them in the stream would
 7 be the VP medical?
 8 MR. TILLEY:
 9 A. That's correct.
 10 COMMISSIONER:
 11 Q. Okay. So how does that organizational chart
 12 encourage the teamwork between the
 13 pathologists and the technology division or -
 14 MR. TILLEY:
 15 A. Right. Well -
 16 COMMISSIONER:
 17 Q. - whether they're--I'm sorry, are they called
 18 technologists or are they called what, the
 19 people who work in the--be working in the lab
 20 -
 21 MR. TILLEY:
 22 A. Mostly technologists.
 23 COMMISSIONER:
 24 Q. Technologists?
 25 MR. TILLEY:

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1 A. Yes.
 2 COMMISSIONER:
 3 Q. Okay.
 4 MR. TILLEY:
 5 A. There might be some technicians.
 6 COMMISSIONER:
 7 Q. Yes.
 8 MR. TILLEY:
 9 A. In a formal sense it occurs with the director
 10 and the clinical chief because what Dr.
 11 Banerjee is referring to there is the need for
 12 it to be matrixed.
 13 COMMISSIONER:
 14 Q. Um-hm.
 15 MR. TILLEY:
 16 A. And that is where it is matrixed.
 17 COMMISSIONER:
 18 Q. Okay.
 19 MR. TILLEY:
 20 A. So each of the clinical teams that the
 21 organization has in place has a combination of
 22 a physician and a sort of professional
 23 manager.
 24 THE COMMISSIONER:
 25 Q. Uh-hm.

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1 MR. TILLEY:
 2 A. In this case, it's Mr. Gulliver, but the
 3 protocol for the program-based structure is
 4 that they would resolve the issues as a team.
 5 THE COMMISSIONER:
 6 Q. Yes, I think I understand that in the sense of
 7 it's expected that Mr. Gulliver, if there were
 8 an issue, would work with Dr. Cook or Dr.
 9 Denic, but it seems to me that there's a
 10 practical level thing here, you may or may not
 11 know, but I had an opportunity first when I
 12 was appointed to undertake this task, to go
 13 look at the lab, which was an interesting day
 14 or half day. And obviously particularly the
 15 section of the lab that would be dealing with
 16 ER/PR testing and it just seems to me based on
 17 what I saw, based on what I have subsequently
 18 read, that things work best if the people who
 19 work in that division dealing with IHC, are
 20 part of a team, genuinely see themselves as
 21 being and the pathologists see them as being
 22 part of a team in which they are in sync about
 23 what has to be done by each and in sync about
 24 what measures are to be taken to ensure that
 25 the end product is the best possible. And a

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1 question which I have had, since looking at
 2 the structure of the organization, is whether
 3 that particular structure provides or
 4 encourages that kind of teamwork.
 5 MR. TILLEY:
 6 A. Yes, good point. Well let me say first that
 7 it certainly would do more so than the old
 8 structure.
 9 THE COMMISSIONER:
 10 Q. Okay.
 11 MR. TILLEY:
 12 A. And if I can just repeat the old structure
 13 would be that you would have a pathologist
 14 stream go up towards pathologists, you'd have
 15 the technologists go up to a technologist and
 16 there was no provision for them linking
 17 formally.
 18 THE COMMISSIONER:
 19 Q. Uh-hm.
 20 MR. TILLEY:
 21 A. The program base model was built in to bring
 22 physicians more into the day-to-day operations
 23 of the organization and in fact to foster more
 24 of an interdisciplinary team approach. If I
 25 might just take us out of the lab environment

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1 for a second and go into any other program in
 2 the organization, you would have physicians,
 3 nurses, physiotherapists, all working on a
 4 day-to-day basis as a team. So very much so
 5 the expectations that--that IHC group would
 6 work as an integrated unit and that the
 7 pathologists would see his or her role as
 8 important, but really to the same extent that
 9 we would see the technologist's role as being
 10 important. So certainly we would be
 11 encouraging the collaboration for that group.
 12 THE COMMISSIONER:
 13 Q. And you think your structure does that? I
 14 mean, I--let me put it this way, in my visit
 15 to the lab, for example, Mr. Gulliver
 16 conducted the tour and he was kind enough to
 17 show me other parts of the lab and you got,
 18 you know, I'm not suggesting that this was--
 19 provided me with a great level of information,
 20 but it does provide me with a visual as to the
 21 size of the lab, where these people work, some
 22 little view of the kinds of things they do
 23 each day and frankly in that basement, in that
 24 building, struck me as being not a
 25 particularly wonderful place to be, but that's

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1 beside the point for the moment. But there
 2 are duties which would be performed by people
 3 within that lab that would require very little
 4 interaction with the medical side. I'm
 5 thinking particularly of the automated system
 6 for normal blood work, for example.
 7 MR. TILLEY:
 8 A. Yes.
 9 THE COMMISSIONER:
 10 Q. Well I can see where this reporting system and
 11 the occasional problem with communication
 12 perhaps with the medical side or something of
 13 that nature, works, but I can't shake the view
 14 that for IHC to work really well, you kind of
 15 got to feel you're all on the same team.
 16 MR. TILLEY:
 17 A. Right.
 18 THE COMMISSIONER:
 19 Q. And you ought to talk to each other.
 20 MR. TILLEY:
 21 A. Right, well I think your assessment is
 22 accurate, I think that the program-based model
 23 is better to achieve that than the other
 24 model. I think that in many ways the
 25 individuals involved also play a big role in

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1 terms of whether that happens effectively or
 2 not.
 3 THE COMMISSIONER:
 4 Q. As in a sense of personality or -
 5 MR. TILLEY:
 6 A. Personalities, how it would get approached,
 7 whether some are putting themselves on a
 8 different level than the others, whether
 9 they're truly being invited in to be a part of
 10 the team, whether they're given encouragement,
 11 support, guidance, and so on. Because our
 12 system as a whole is dependent more than
 13 anything else on an effective team, and right
 14 across the country that is a theme that is
 15 reappearing itself in terms of have we found
 16 the ideal way of doing that. And there's a
 17 whole combination of things, but I stand to be
 18 corrected in some other of the foundation
 19 documents of Eastern Health, you might see
 20 some of the values of the organization and one
 21 of the values would be collaboration and team-
 22 base working. It's not to say, Madam
 23 Commissioner, it's working ideal in each area,
 24 but I guess as a CEO what I would be looking
 25 for is to make sure that the right broad

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1 messages are being put in place to ensure that
 2 that's the direction that parts of the
 3 organization that need to have really strong
 4 integrated teams are in fact doing that.
 5 THE COMMISSIONER:
 6 Q. All right, thank you.
 7 COFFEY, Q.C.:
 8 Q. Thank you. If we could, please, exhibit P-
 9 0466. It's an e-mail of May 31st, 2007 at
 10 5:00 p.m., it's late on a Thursday to the
 11 executive team and the Board. And you write
 12 here, "Trustees in the House of Assembly
 13 yesterday, the Premier released an internal
 14 memo dated June, 2003 to the media, from the
 15 pathologist who was overseeing our
 16 histochemistry lab to the director of our
 17 laboratory medicine, in which the pathologist
 18 raises concerns about ER/PR testing in 2003,
 19 two years prior to the time the decision was
 20 made to retest. And the existence of the memo
 21 was not made known to Bob Williams until the
 22 summer of 2005 when we were discussing
 23 retesting. Of course, Bob, would have
 24 informed me after that." So when had Dr.
 25 Williams first told you that he had only

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1 learned about this?
 2 MR. TILLEY:
 3 A. Well I seem to recall that back in April that
 4 initial -
 5 COFFEY, Q.C.:
 6 Q. That would be July, I take it, July of -
 7 MR. TILLEY:
 8 A. Oh sorry, yes, July of 2005, and we referenced
 9 a telephone log just recently again, right, so
 10 sort of reinforced that.
 11 COFFEY, Q.C.:
 12 Q. Do you know if any inquiry had ever been made
 13 of Dr. Ejeckam about why there was no
 14 retesting in 2003? Do you know if there was
 15 ever any inquiry made of Dr. Ejeckam or were
 16 you ever told about any such inquiry?
 17 MR. TILLEY:
 18 A. I have a recollection of Dr. Williams
 19 following up on some issues from that letter,
 20 but I really can't tell you anything about the
 21 outcome of that.
 22 COFFEY, Q.C.:
 23 Q. If we could please, I'm just going to go to
 24 page two of this--well, in fact, I'll go back
 25 to the bottom of page one to put this in

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1 context for you, Mr. Tilley. The last
 2 paragraph, he says "It's been a discouraging
 3 day to say the least. The opposition party
 4 raised the question in the House today about
 5 whether I should stay on. I don't know how
 6 that question was responded to in the House.
 7 The media asked me about it and I said this
 8 was a time for strong leadership and I needed
 9 to lead the organization through good times
 10 and difficult times. In follow up to the
 11 request of the Board for us to strategize
 12 around seeking to clear up some of the
 13 confusion that has surrounded this, our
 14 communication's director, Susan Bonnell, met
 15 with Bristol Communications today. They are
 16 currently working on a content of an ad for
 17 this weekend's paper. Time is going to pre-
 18 empt the ability to give the Board an
 19 opportunity to provide input, since it will
 20 need to go tomorrow. I apologize for that. I
 21 went on the basis that you would want us to
 22 get this out there ASAP. They are working on
 23 an overall strategy involving other short and
 24 long-term measures." Signed George. So this
 25 is, I take it, a reference back in time now to

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1 the Board having asked you to strategize
 2 around -
 3 MR. TILLEY:
 4 A. That's my assumption too, yes.
 5 COFFEY, Q.C.:
 6 Q. And, if I could please, Commissioner, if we
 7 could look, please, at exhibit P-0467. I'm
 8 just going to, that's that same e-mail, Mr.
 9 Tilley in this exhibit, and that's that
 10 handwritten note above and the conversation
 11 with Dr. Williams, the Holiday Inn one.
 12 MR. TILLEY:
 13 A. Okay.
 14 COFFEY, Q.C.:
 15 Q. And then there's the e-mail from Dr. Howell to
 16 John Abbott of May 24th sending the June 19th
 17 memo, that's it there. And then here, at page
 18 9 of this exhibit, there's a--I'm sorry, Dr.
 19 Ejeckam's is May 2nd, 2003 memo to
 20 pathologists at the Health Sciences Centre,
 21 St. Clare's and out of town hospitals. And
 22 this is the one, he begins, "I am glad to
 23 inform you that we have rectified the
 24 difficulties related to the immuno stain of
 25 ER/PR; therefore, we can now resume regular

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1 requests for these antibody stains." And then
 2 he goes on at some length then about the issue
 3 or about the particular matter. At page 12 of
 4 this exhibit, there's an April 4, 2003 memo
 5 from Dr. Ejeckam to the same group of
 6 pathologists, locally and out of town. He
 7 says, "Kindly note that immunohistochemical
 8 stains with the following antibodies"--and he
 9 lists them--"have remained unreliable, erratic
 10 and therefore unhelpful for diagnostic
 11 purposes." He says they're going to be
 12 suspending those for awhile, "stopped
 13 forthwith until we can solve their
 14 reliability, sensitivity and specificity
 15 problems." Those May 2nd and April 4th memos,
 16 Mr. Tilley, when did you first see them or did
 17 you see them at all?
 18 MR. TILLEY:
 19 A. My recollection is that I saw them around the
 20 time of May or June of 2007 when I had to
 21 prepare to respond to an inquiry in relation
 22 to those e-mails.
 23 COFFEY, Q.C.:
 24 Q. Do you recall who you received them from?
 25 MR. TILLEY:

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1 A. Yes, Dr. Cook and Dr. Denic and I believe Mr.
 2 Gulliver. I asked them to come over to my
 3 office. They would have been based at the
 4 Health Science Centre in St. Clare's
 5 respectfully, and I remember them bringing
 6 several binders and they popped these out of
 7 the binders.
 8 COFFEY, Q.C.:
 9 Q. Exhibit P-0277 please? Now this is, actually
 10 I'm going to go to, this particular one is
 11 entitled "Recommendations,
 12 Immunohistochemistry service spreadsheet, Dr.
 13 D. Banerjee, Trish Wegrynowski, updated April
 14 25, '06," and out here to the right hand it
 15 says "compiled December 16th, '05." This
 16 particular one is two pages long and has 30
 17 recommendations. Would you have seen that
 18 list in 2005, you believe?
 19 MR. TILLEY:
 20 A. I don't recall seeing it in 2005.
 21 COFFEY, Q.C.:
 22 Q. Okay. Go on then to page three of the
 23 exhibit, this one is again entitled
 24 "Recommendations in Immunohistochemistry
 25 Service Spreadsheet, Dr. D. Banerjee, Trish

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1 Wegrynowski, updated June 30th, '06." And
 2 this one is 52 recommendations.
 3 MR. TILLEY:
 4 A. Uh-hm.
 5 COFFEY, Q.C.:
 6 Q. Do you recall if you saw that one?
 7 MR. TILLEY:
 8 A. I have a recollection of seeing a document
 9 like that, yes, but I'm not sure which time
 10 that I actually saw it.
 11 COFFEY, Q.C.:
 12 Q. In what context did you see it?
 13 MR. TILLEY:
 14 A. That it would have just been showed to me in
 15 terms of showing the process of follow up on
 16 recommendations.
 17 COFFEY, Q.C.:
 18 Q. And do you recall who showed it to you?
 19 MR. TILLEY:
 20 A. I would suspect it would have been the vice-
 21 president of Medical Services, whoever that
 22 would have been at the time.
 23 COFFEY, Q.C.:
 24 Q. And this is, page six is again
 25 "Recommendations, Immunohistochemistry

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1 Services Spreadsheet, Dr. D. Banerjee, Trish
 2 Wegrynowski, updated April 26, '07 by Dr.
 3 Denic, Dr. Elms. T. Gulliver and D. Dyer."
 4 And this one is 52 recommendations. Do you
 5 ever recall dealings with Drs. Denic and Ford
 6 Elms about the recommendations?
 7 MR. TILLEY:
 8 A. Not Dr. Elms, no. Dr. Denic would have been
 9 somebody that would have been involved in the
 10 process, but I wouldn't have been into a
 11 detailed discussion with him on the status
 12 report.
 13 COFFEY, Q.C.:
 14 Q. Page 9 of the exhibit has an e-mail from Joyce
 15 Penney to Tansy Mundon, dated May 31st, 2007,
 16 comments, it says, "Forwarded on behalf of
 17 George Tilley, Thanks, Joyce." And in terms
 18 of that, the next page, page 10 of the exhibit
 19 is the June 30th, '06 version of the
 20 spreadsheet.
 21 MR. TILLEY:
 22 A. Okay.
 23 COFFEY, Q.C.:
 24 Q. Of recommendations. How is it that you came
 25 on May 31st to ask that these recommendations

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1 be forwarded to Tansy Mundon?
 2 MR. TILLEY:
 3 A. It seems to be not the logical place to
 4 forward them because if I was going to forward
 5 them, it would have typically gone to the
 6 deputy, unless she was requesting them on his
 7 behalf. I really can't remember that.
 8 COFFEY, Q.C.:
 9 Q. If we could, please, exhibit P-0227, now this
 10 is an e-mail from Ms. Bonnell to Tansy Mundon
 11 forwarding a message to our patient's
 12 advertisement, it says, "we're still in draft,
 13 but this is basically it. This is going in
 14 all Transcon papers and in the Telegram."
 15 Signed Susan Bonnell. And the third page of
 16 the exhibit, that's at least one of the drafts
 17 of that advertisement that was published.
 18 MR. TILLEY:
 19 A. Yes.
 20 COFFEY, Q.C.:
 21 Q. And did you approve of the ad that was finally
 22 published?
 23 MR. TILLEY:
 24 A. I'm sure I would have reviewed it and given my
 25 support for it.

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1 COFFEY, Q.C.:
 2 Q. Did you know as a CEO at the time whether it
 3 was also being vetted, as it were, or reviewed
 4 by the Department of Health and the Premier's
 5 office and Cabinet Secretariat?
 6 MR. TILLEY:
 7 A. It wouldn't have surprised me to hear about
 8 the Department of Health having a look at it,
 9 other departments, that would surprise me.
 10 COFFEY, Q.C.:
 11 Q. So it wasn't brought to your attention, I take
 12 it, at the time?
 13 MR. TILLEY:
 14 A. I certainly don't have any recollection of it
 15 being referenced.
 16 COFFEY, Q.C.:
 17 Q. If we could please, exhibit P-0231. Well
 18 actually I apologize, better still is P-0471.
 19 This is a series of e-mails, Mr. Tilley, the
 20 first of them is from Mr. Thompson to
 21 yourself, June 7th, 2007 regarding patient
 22 contact. "We keep on hearing through the
 23 media about patients who say they were not
 24 contacted in 2005 about their retest, yet your
 25 media material is clear that ALL retests

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1 patients were contacted in October of 2005.
 2 How do we reconcile this? A short quick reply
 3 would be appreciated as this may arise in the
 4 House in an hour." And then you wrote to
 5 various individuals within your own
 6 organization about the same thing at 12: 45
 7 p.m. saying, "Can I get a quick note on this
 8 as quickly as possible?" And then at 13: 02
 9 hours, Ms. Predham wrote to yourself and again
 10 some of these other people in your
 11 organization. She said, "Hi, everyone, in
 12 October of 2005 all patients who were
 13 identified at the time as part of the
 14 retesting were contacted by our department,
 15 QRM, there were calls to inform them that they
 16 were identified as ER negative and will be
 17 retested, the same time ads were put in the
 18 paper, media interviews were held, patient
 19 relations number was put in the paper and
 20 patients were told if they had questions or
 21 were not contacted by us to please call us.
 22 Between our list and the calls that we
 23 received, we felt we had a comprehensive list
 24 of all those scheduled to be retested;
 25 however, during the past two years, we've

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1 gotten an occasional call from someone who did
 2 not make the original list, there being a
 3 variety of reasons. I must note that we still
 4 get calls from people who say they weren't
 5 called, but were always ER positive and not
 6 part of the retesting, when the results came
 7 back, the patients that were confirmed
 8 negative were notified by the particular
 9 region, while the patients whose results were
 10 changed were notified by letter through their
 11 physician. I hope this clarifies this." And
 12 then there's an e-mail then--sorry, you then
 13 at 1:07 p.m. forwarded that, I gather, to Mr.
 14 Thompson saying, "Robert, attached is a reply
 15 from our risk manager on the question you
 16 raised." And you say "with respect to Burin,
 17 we are in the process of preparing a release
 18 for tomorrow." And then there's a response
 19 from Mr. Thompson at 1:39 p.m. beginning with
 20 "The return e-mail has unnerved us, let me
 21 explain" and he goes on at some length about
 22 why.
 23 MR. TILLEY:
 24 A. Yes, I remember it.
 25 COFFEY, Q.C.:

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1 Q. So, what do you recall about this then and how
 2 it unfolded in the days -
 3 MR. TILLEY:
 4 A. Well, we had, as we've alluded to in a number
 5 of conversations, worked in a number of our
 6 media releases that all patients had been
 7 contacted and we were still hearing through
 8 the media that in fact some people were still
 9 coming forward and saying, well I haven't.
 10 When I would ask that question internally, I'd
 11 often get an answer which would say, oh no, we
 12 talked to that person, but they thought it was
 13 something else to talk about. But there was
 14 always a belief that, by far, they had gotten
 15 all the patients, enough to the point that we
 16 could say all, when we made the contact. In
 17 any event, Robert rightly pointed out,
 18 following that e-mail that there were still
 19 patients and I understand that even as
 20 recently as lately, there have been patients
 21 identified which explains the complexity of
 22 this. So, I felt kind of deflated, but that's
 23 the way it was. That precipitated a meeting
 24 between myself, the deputy, Robert Thompson,
 25 the minister and the board chair. I'm

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1 thinking this is the same one. And this issue
 2 was discussed, can't remember if I have any
 3 notes on that, but I remember the tenor of the
 4 meeting fairly well. The minister was very
 5 critical of the fact that this reference to
 6 "all" was being there when, in fact, we were
 7 still finding patients who had not been
 8 contacted.
 9 So, it was discussed in terms of how we
 10 were going to follow up and in the end, I took
 11 the responsibility for the fact that while I
 12 believe that people had worked hard to get
 13 these patients contacted and thought that they
 14 had made the contact, in fact, they hadn't.
 15 And that's where I stepped up to the plate and
 16 said, then I would take the responsibility for
 17 that.
 18 COFFEY, Q.C.:
 19 Q. And when was that? Do you recall when,
 20 before--because you were gone by the end of
 21 the first week of July.
 22 MR. TILLEY:
 23 A. Right, I'm thinking it might have been the
 24 second last week in June.
 25 COFFEY, Q.C.:

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1 Q. Okay. Did you ever communicate that publicly?
 2 MR. TILLEY:
 3 A. No.
 4 COFFEY, Q.C.:
 5 Q. What, if anything--I mean, when it became
 6 apparent to you, as CEO, during June that not
 7 all patients perhaps had been contacted, were
 8 there any steps then being taken internally to
 9 try to identify them?
 10 MR. TILLEY:
 11 A. Well, I ended up agreeing with Robert that we
 12 would bring in an external group through the
 13 Newfoundland and Labrador Centre for Health
 14 Information. They had expertise that would go
 15 in and look at the database and at least, that
 16 would give us a degree of comfort that we had
 17 a more accurate picture than we would have had
 18 as of that moment.
 19 COFFEY, Q.C.:
 20 Q. And while you were still CEO, did that
 21 actually start, your understanding of the
 22 process?
 23 MR. TILLEY:
 24 A. There were some preliminary discussions.
 25 There were representatives from the Centre

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1 actually visit the Quality Department and look
 2 at what they had, but I can't tell you how far
 3 advanced it had gotten. I'm not sure that it
 4 had gotten very far by the time that I had
 5 left in early July.
 6 COFFEY, Q.C.:
 7 Q. As part of that process did, at one point, I
 8 think we looked at it last week when Mr.
 9 Thompson was here, you sent an e-mail giving
 10 your consent or agreement to have them have
 11 access to -
 12 MR. TILLEY:
 13 A. Yes.
 14 COFFEY, Q.C.:
 15 Q. - materials.
 16 MR. TILLEY:
 17 A. Certainly had no reluctance for anything other
 18 than us to try to get this resolved as quickly
 19 as possible.
 20 COFFEY, Q.C.:
 21 Q. Okay. If we could please, Exhibit P-0431,
 22 page 37, please. Now, the reference there,
 23 May 31, '07, "Susan arrow independent
 24 interview", is that -
 25 MR. TILLEY:

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1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. Would that be Susan -
 4 MR. TILLEY:
 5 A. Susan Bonnell is the only -
 6 COFFEY, Q.C.:
 7 Q. Should would be arranging for -
 8 MR. TILLEY:
 9 A. I'm not sure what that story was. There was a
 10 contact by "The Independent" about a patient
 11 who had not been contacted and I think in the
 12 end, Dr. Howell had written a letter. Now,
 13 that's the only one that's coming to my mind,
 14 unless there's something else that you can see
 15 from your perspective there.
 16 COFFEY, Q.C.:
 17 Q. There's a reference under John Abbott, his
 18 name is underlined -
 19 MR. TILLEY:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. - and then what's written there?
 23 MR. TILLEY:
 24 A. That--I'm fairly confident that that was the
 25 call that I got from John Abbott to say that

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1 he had been asked to step down.
 2 COFFEY, Q.C.:
 3 Q. Okay.
 4 MR. TILLEY:
 5 A. And it says something about political will and
 6 high profile and I guess he must have
 7 referenced that Robert Thompson will be
 8 assuming his position and I don't know if it
 9 was said then as if it was interim or not.
 10 COFFEY, Q.C.:
 11 Q. And I take it Joan Dawe as well called about
 12 Mr. Abbott's -
 13 MR. TILLEY:
 14 A. Right, she must have found out about it as I
 15 did. I see John Peddle here, I don't know if
 16 that's the same issue or not; yes, same thing.
 17 So, the news was getting around by then.
 18 COFFEY, Q.C.:
 19 Q. If we could please, page 39. There's a
 20 reference there, I believe, is that 30, 31st,
 21 30th or 31st, I wouldn't know, could be
 22 either, I take it.
 23 MR. TILLEY:
 24 A. Yes.
 25 COFFEY, Q.C.:

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1 Q. "Media, Danny Williams, positive, dash" -
 2 MR. TILLEY:
 3 A. It would be positive, so--what it tells me is
 4 that the chair had called, she had heard
 5 reference in the media to the Premier speaking
 6 and she felt it was a positive interview. I
 7 don't know what the topic was.
 8 COFFEY, Q.C.:
 9 Q. And below that it says -
 10 MR. TILLEY:
 11 A. "Take advice from medical specialists" is how
 12 I would interpret that.
 13 COFFEY, Q.C.:
 14 Q. If we could please, the next page, page 40 of
 15 the exhibit, "Bob W" I take it is Bob
 16 Williams?
 17 MR. TILLEY:
 18 A. Yes.
 19 COFFEY, Q.C.:
 20 Q. There's a reference to Don Cook, what is that?
 21 MR. TILLEY:
 22 A. That may be acknowledged, never came to
 23 attention of admin, internal memo, surgical
 24 pathology committee. So, I guess that goes
 25 back to the issue that we talked about

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1 earlier.
 2 COFFEY, Q.C.:
 3 Q. And I take it there's a reference to a phone
 4 call from Robert Thompson.
 5 MR. TILLEY:
 6 A. Right, the Premier waved the memo and just
 7 giving me a heads up.
 8 COFFEY, Q.C.:
 9 Q. That would be Dr. Ejeckam's memo.
 10 MR. TILLEY:
 11 A. Yes.
 12 COFFEY, Q.C.:
 13 Q. All right. And June 1, 07, you're telephone
 14 log refers to Pam Elliott.
 15 MR. TILLEY:
 16 A. Yes.
 17 COFFEY, Q.C.:
 18 Q. Could you just indicate what that says?
 19 MR. TILLEY:
 20 A. "CBC interview positive", I must have done one
 21 that morning perhaps. "Marion Harvey", not
 22 sure if I got the name right, it might have
 23 been Crawley.
 24 COFFEY, Q.C.:
 25 Q. Moira Hennessey possible too or you don't

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1 know?
 2 MR. TILLEY:
 3 A. I'm thinking that's a Marion.
 4 COFFEY, Q.C.:
 5 Q. Okay.
 6 MR. TILLEY:
 7 A. She was the one that was dealing with the
 8 ATIPP things. "Mark Quinn's request, ATIPP,
 9 appeal process, Dan Boone, personal
 10 information, even" -
 11 COFFEY, Q.C.:
 12 Q. Okay. Disidentified -
 13 MR. TILLEY:
 14 A. Thank you.
 15 COFFEY, Q.C.:
 16 Q. I'm not the first person to use that word.
 17 MR. SIMMONS:
 18 Q. De-identified?
 19 COFFEY, Q.C.:
 20 Q. De-identified, in fact, better still.
 21 THE COMMISSIONER:
 22 Q. What comes before de-identified?
 23 MR. TILLEY:
 24 A. "Even if" -
 25 THE COMMISSIONER:

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1 Q. Okay.
 2 MR. TILLEY:
 3 A. I do recall that Mr. Boone was making that
 4 even if the names are blocked out that one
 5 could possibly find out which patient actually
 6 was involved. So, that was just for
 7 information.
 8 COFFEY, Q.C.:
 9 Q. If we could please, look at Exhibit P-0236, in
 10 particular, page 3 please. Now, there are
 11 here, sir, is an e-mail. This is an internal
 12 e-mail to government, but the topic I wanted
 13 to ask you about, on page four of the exhibit,
 14 a reference to Dr. Howell. And this says,
 15 "June 14, 2007, 8:59 a.m., Feedback on lab
 16 testing. Blair Fleming talked to Dr. Howell
 17 about our questions. These questions focused
 18 on what did Eastern Health do after the June
 19 2003 letter about the remaining problems at
 20 the Eastern Health labs". And it goes on at
 21 some length about Dr. Howell, essentially
 22 repeated what he had told Moira earlier in the
 23 day and certain steps that were taken. And
 24 then Mr. Thompson continues, "these answers
 25 give rise to other questions. A the letter

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1 pointed out, lab weaknesses relate to five or
 2 six tests other than ER/PR". And it goes on
 3 to talk about that. Was this brought to your
 4 attention, the fact that in mid June, Mr.
 5 Thompson was making these inquiries and Dr.
 6 Howell was engaged in responding to Dr.
 7 Fleming?
 8 MR. TILLEY:
 9 A. Not specifically, though I do remember having
 10 a conversation with Robert about the other
 11 tests, but that was in a conversation in
 12 another meeting, but I wasn't aware of this
 13 particular routing.
 14 COFFEY, Q.C.:
 15 Q. And what was it did you discuss -
 16 MR. TILLEY:
 17 A. About whether it was just ER/PR or the other
 18 tests.
 19 COFFEY, Q.C.:
 20 Q. Who raised the subject, first of all?
 21 MR. TILLEY:
 22 A. Well, he raised the subject because he was
 23 looking at the documentation. And I had
 24 indicated to him that the time this became an
 25 issue for the ER/PR, there was no concerns

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1 raised with regards to the other tests. And
 2 my recollection is is that Dr. Williams and
 3 Dr. Cook had discussed that and reaffirmed
 4 that.
 5 COFFEY, Q.C.:
 6 Q. In June of '07?
 7 MR. TILLEY:
 8 A. No, back in the early days when we were
 9 involved in this and made the decision just to
 10 go and retest the ER/PR.
 11 COFFEY, Q.C.:
 12 Q. If we could look, please, at Exhibit P-0116,
 13 page two, please. Now sir, this is a letter
 14 of June 18, 2007 on Eastern Health letterhead.
 15 It's to Ms. Dawe, Joan Dawe. I'm just going
 16 to--and it's from Dr. Linda Inkpen, the Chair
 17 of the Medical Advisory Committee. And it
 18 says, begins with, "the last meeting of the
 19 MAC of Eastern Health held Wednesday, June 13,
 20 members asked that I write the Board of
 21 Eastern Health before their next meeting, the
 22 MAC appreciates the difficult environment in
 23 which they, as physicians, the board
 24 management, of Eastern Health have had to make
 25 decisions to provide medical services to the

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1 patient population of our region and province
 2 in the past recent months. The MAC committee
 3 feels strongly that the leadership of its CEO,
 4 George Tilley has been strong and focused
 5 during these challenging times". And if I
 6 could, he concludes by saying in his second
 7 last paragraph, "the MAC is appreciative of
 8 Mr. Tilley's leadership at this time. It's
 9 concerned that Mr. Tilley's approach and
 10 involvement is not understood to be highly
 11 supportive and integral to quality patient
 12 care services. It is not often that the MAC"-
 13 -and I'll just skip some of the wording there-
 14 -"chose to speak out on management and
 15 political issues. However, this letter speaks
 16 to the MAC's support that Mr. Tilley has in
 17 these difficult times". Now, were you aware
 18 that this was going on, Mr. Tilley?
 19 MR. TILLEY:
 20 A. I became aware a few days after it actually
 21 had been sent.
 22 COFFEY, Q.C.:
 23 Q. Okay. And how did you become aware of it?
 24 MR. TILLEY:
 25 A. I think it was the board chair had mentioned

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1 that they had sent it to me and that she had
 2 committed that she would send me a copy.
 3 Sorry, the board chair said it had been sent
 4 to her and she had committed that she'd send
 5 me a copy of it.
 6 THE COMMISSIONER:
 7 Q. Mr. Coffey, wherever you can find a convenient
 8 place, we'll take the afternoon break.
 9 COFFEY, Q.C.:
 10 Q. Thank you, Commissioner. Just a moment,
 11 please. Now, at that time and just on the
 12 topic, how were you feeling at the time?
 13 MR. TILLEY:
 14 A. Punched, feeling that 30 years of work was
 15 valuing less and less. So, that was sort of
 16 the mind set.
 17 COFFEY, Q.C.:
 18 Q. I take it that it was a tough time -
 19 MR. TILLEY:
 20 A. It was.
 21 MR. TILLEY:
 22 A. - for yourself. If we could please, before we
 23 break, Commissioner, Exhibit P-0476 and page
 24 two, please. Now, this is a letterhead of
 25 Office of the Information and Privacy

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1 Commissioner. It's a Mr. Philip Wall. He
 2 sent you a letter. The subject is
 3 Commissioner's report and request for review
 4 under the Access to Information and Protection
 5 of Privacy Act. It's received in your office,
 6 stamped June 28, 2007. And he writes, "on
 7 March 26, 2007, the office of the Information
 8 and Privacy Commissioner reviewed a request
 9 for review under the ATIPPA. Enclosed is a
 10 report of my findings on this review. Under
 11 authority of Section 50 of the Act, the head
 12 of Eastern Health must issue a response to
 13 these recommendations to this office and to
 14 the Applicant within 15 days".
 15 MR. TILLEY:
 16 A. Um-hm.
 17 COFFEY, Q.C.:
 18 Q. Now, if we could, sir, I'll just--you would
 19 have seen this report at that time?
 20 MR. TILLEY:
 21 A. I do recall it, yes.
 22 COFFEY, Q.C.:
 23 Q. Okay. And how was this then, at least while
 24 you were still there, how as it handled?
 25 MR. TILLEY:

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1 A. Well, it would have been a decision that had
 2 been made by the Privacy Commissioner that we
 3 had an expectation to follow up on. So that
 4 was referred on then to the people in Quality
 5 to initiate action on it.
 6 COFFEY, Q.C.:
 7 Q. And what was your understanding was going to
 8 happen?
 9 MR. TILLEY:
 10 A. That the information would be locked to de-
 11 identify the names and then forwarded on.
 12 COFFEY, Q.C.:
 13 Q. I have actually three questions when we come
 14 back, Commissioner, and I'll finish. Thank
 15 you.
 16 THE COMMISSIONER:
 17 Q. All right. We'll take 15 minutes.
 18 (RECESS)
 19 THE COMMISSIONER:
 20 Q. Please be seated. Mr. Coffey?
 21 COFFEY, Q.C.:
 22 Q. Thank you, Commissioner. If we could bring
 23 up, please, Exhibit P-0326, page four, please.
 24 Yes. Again, this is--and I'm just going back
 25 a considerable amount of time. It's

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1 something, I apologize, Mr. Tilley, I missed
 2 it through an oversight. We were looking at
 3 August of '05. These are your telephone logs
 4 from that time.
 5 MR. TILLEY:
 6 A. Okay.
 7 COFFEY, Q.C.:
 8 Q. I put it in context, it's a reference to
 9 August 1, '05 and just to give you some area,
 10 the telephone log.
 11 MR. TILLEY:
 12 A. Um-hm.
 13 COFFEY, Q.C.:
 14 Q. And it's a reference to Bob Williams and a
 15 phone call, 4:00 p.m. and it says certain
 16 things. And then August 2, reference to "Bob,
 17 follow-up conversation with Allan Kwan".
 18 MR. TILLEY:
 19 A. That looks like Allan Kwan, yes.
 20 COFFEY, Q.C.:
 21 Q. Okay. And "re" -
 22 MR. TILLEY:
 23 A. Algorithm.
 24 COFFEY, Q.C.:
 25 Q. And what was the algorithm, do you recall what

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1 -
 2 MR. TILLEY:
 3 A. I'm sorry, I don't.
 4 COFFEY, Q.C.:
 5 Q. Okay. "Get Ventana" -
 6 MR. TILLEY:
 7 A. "Now".
 8 COFFEY, Q.C.:
 9 Q. That would be get the Ventana checked now, I
 10 take it?
 11 MR. TILLEY:
 12 A. Yes.
 13 COFFEY, Q.C.:
 14 Q. "Meeting with oncologists".
 15 MR. TILLEY:
 16 A. Yes.
 17 COFFEY, Q.C.:
 18 Q. And then there's -
 19 MR. TILLEY:
 20 A. Another telephone call, "Ventana being sought,
 21 Mount Sinai, all go forward and five hundred
 22 retests".
 23 COFFEY, Q.C.:
 24 Q. And this is a call you had from Bob Williams?
 25 MR. TILLEY:

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1 A. Right.
 2 COFFEY, Q.C.:
 3 Q. Or with Bob Williams.
 4 MR. TILLEY:
 5 A. "QI review, Ventana validation, who signed
 6 off, Bev Carter, letter to Don Cook re:
 7 spooked".
 8 COFFEY, Q.C.:
 9 Q. Yes. And if we could please, if you could
 10 bring up please, Exhibit P-0079. And this is
 11 a letter that Dr.--you can see that it's
 12 August 2, 2005 to Dr. Cook from Dr. Carter.
 13 It's copied to Dr. Bob Williams. And if we
 14 could just go back then to that P-0326, page
 15 four, yes. Do you recall why you would have
 16 referred to this in conversation with Dr. Bob
 17 Williams "Bev Carter, letter to Don Cook, re
 18 spooked", what had you meant by spooked? Or
 19 fairer, what Dr. Williams meant?
 20 MR. TILLEY:
 21 A. Yeah, I think that was him being referenced,
 22 but it just seemed that the letter was
 23 referring to her wanting to withdraw from this
 24 and him just trying to anticipate what the
 25 basis for that would be and whether she just

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1 didn't want to be part of it.
 2 COFFEY, Q.C.:
 3 Q. Do you recall if the word "spooked" was Dr.
 4 Williams' characterization or yours? And I
 5 can bring up the letter again, if you want -
 6 MR. TILLEY:
 7 A. No, no, but I can't say exactly whether it was
 8 my file or his.
 9 COFFEY, Q.C.:
 10 Q. And in the circumstances--because the August 1
 11 larger meeting where you described, you know,
 12 how it deteriorated at one point -
 13 MR. TILLEY:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. - and this was the next day.
 17 MR. TILLEY:
 18 A. Right.
 19 COFFEY, Q.C.:
 20 Q. And you seen the exchange August 1 between Mr.
 21 Gulliver and Dr. Carter, described that
 22 earlier.
 23 MR. TILLEY:
 24 A. Yes.
 25 COFFEY, Q.C.:

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1 Q. In this context, can you help the Commissioner
 2 at all as to kind of why that there'd be any
 3 idea around at all about Dr. Carter being
 4 spooked? She was withdrawing from the -
 5 MR. TILLEY:
 6 A. Right, other than, you know, she, would
 7 surprise me because this was the, you know,
 8 one of the specialists that we had in the
 9 organization and, in fact, we'd rely upon
 10 those types of experts to be involved in the
 11 follow-up. But I mean, I wrote the word
 12 "spooked" in there because it was said by one
 13 of us or it was just my interpretation that
 14 for some reason she didn't want to be part of
 15 the follow-up.
 16 COFFEY, Q.C.:
 17 Q. Did anyone ever explain to you why she didn't,
 18 other than the--well, first of all, I don't
 19 think you ever got -
 20 MR. TILLEY:
 21 A. No.
 22 COFFEY, Q.C.:
 23 Q. The letter wasn't sent to you.
 24 MR. TILLEY:
 25 A. No.

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1 COFFEY, Q.C.:
 2 Q. Did you ever see the letter, do you know?
 3 MR. TILLEY:
 4 A. I can't say that I saw the letter, but nor, do
 5 I recall anyone explaining to me why she was
 6 uncomfortable in pulling out.
 7 COFFEY, Q.C.:
 8 Q. Did anyone ever tell you, do you recall, about
 9 what, if anything she had found during the
 10 investigation she had conducted?
 11 MR. TILLEY:
 12 A. No.
 13 COFFEY, Q.C.:
 14 Q. Okay. If we could, please, P-0966. This is
 15 an e-mail from Robert Thompson to Joy Maddigan
 16 and Reginald Coates, June 28, 2007, 7:44 p.m.,
 17 Subject is ATIPP, ER/PR. Mr. Thompson has
 18 written, "Reg, George Tilley called about the
 19 ATIPP request which they are completing. They
 20 wanted to know how we were approaching it in
 21 the Department. I told him to have his people
 22 call you, Reg, about how we interpret the Act
 23 in regard to specific documents. He's very
 24 concerned that some of this disclosure will
 25 have an impact on the way medicine is

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1 practised". And he goes on then to talk about
 2 what they should do in relation to the
 3 minister. Do you recall what your concern was
 4 at the time?
 5 MR. TILLEY:
 6 A. Was this the ATIPP request where the names
 7 were being -
 8 COFFEY, Q.C.:
 9 Q. Well it's -
 10 MR. TILLEY:
 11 A. Maybe not, the issue with regards to impact
 12 and the way medicine is practised, I recall
 13 using something similar to that when talking
 14 about the whole peer review process and how we
 15 use peer review to help us make an assessment
 16 about the capabilities of a physician and if
 17 that process is impacted to the extent that
 18 we're not able to get people to participate in
 19 that, either as a reviewer or as a person who
 20 has been reviewed, then we've lost one of the
 21 major tools.
 22 COFFEY, Q.C.:
 23 Q. Wait now, on this because I have to put this
 24 in context, because this is 7:44 in the
 25 evening, if we could please, exhibit P-0476

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1 and that's the evening of June 28th, '07. If
 2 we could look at page two, please? You'll see
 3 that is the day as well -
 4 MR. TILLEY:
 5 A. Day afterwards.
 6 COFFEY, Q.C.:
 7 Q. In fact, it's the office of the CEO, June
 8 28th, 2007.
 9 MR. TILLEY:
 10 A. Yes.
 11 COFFEY, Q.C.:
 12 Q. Eastern Health and if we go back to P-0966,
 13 it's later on the same day.
 14 MR. TILLEY:
 15 A. Right.
 16 COFFEY, Q.C.:
 17 Q. In terms of that. So the ATIPP request, that
 18 was the one where the privacy commissioner had
 19 gotten involved, so might it have been that
 20 one as well.
 21 MR. TILLEY:
 22 A. Right. I can't link the two back together,
 23 unfortunately.
 24 COFFEY, Q.C.:
 25 Q. And if we could, please, if you look at

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1 exhibit P-0163, and in particular page 9, now
 2 this is a whole series of e-mails in this
 3 exhibit on or about September 30th, 2005 about
 4 the fact that this is about to go public, the
 5 ER/PR problem.
 6 MR. TILLEY:
 7 A. Okay.
 8 COFFEY, Q.C.:
 9 Q. But there's an e-mail, the second e-mail, and
 10 this is a series of e-mails between Tansy
 11 Mundon and Carolyn Chaplin and there's one
 12 there from Carolyn Chaplin apparently to Tansy
 13 Mundon and at 5:10 p.m., well there's an
 14 earlier one at 5:07 p.m., and Tansy Mundon has
 15 written, "Eastern has prepared a note and is
 16 being revised. I'm a little puzzled about why
 17 Susan called you when she already spoke to
 18 me." And then at 5:10 p.m., Ms. Chaplin wrote
 19 apparently to Ms. Mundon, "George Tilley uses
 20 me as a sounding board from time to time, I
 21 believe it was before Susan called you because
 22 I asked about whether Health had been advised
 23 and was told that they had been trying to
 24 reach Moira." Okay? Now by this point in
 25 time Ms. Chaplin, I gather, was, had moved

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1 from the Department of Health in August, 2005
 2 to the Consultation and Communication's Branch
 3 of the Cabinet Secretariat. And this
 4 reference to George, that's yourself, using
 5 Ms. Chaplin as a sounding board from time to
 6 time, well first of all, had you ever been
 7 aware that she had so referred to you?
 8 MR. TILLEY:
 9 A. No.
 10 COFFEY, Q.C.:
 11 Q. And there was an e-mail I believe we looked at
 12 later in October, the one where you're, I
 13 believe, walking your dog at one point -
 14 MR. TILLEY:
 15 A. Right.
 16 COFFEY, Q.C.:
 17 Q. In terms of she had sent you one. After, well
 18 I'll ask you first of all, how much contact,
 19 if any, did you have with Ms. Chaplin in a
 20 direct way, e-mail or phone call or
 21 conversations about the ER/PR matter?
 22 MR. TILLEY:
 23 A. Only to the extent that she would have been
 24 involved in the department during the meetings
 25 that I would have attended with her. The e-

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1 mail that I think we both referenced there a
 2 moment ago was one that she had sent to me
 3 after she had left.
 4 COFFEY, Q.C.:
 5 Q. That's the one after the story broke?
 6 MR. TILLEY:
 7 A. Right and I had indicated to her something
 8 about whether we were heading in the right
 9 direction with restructuring or something.
 10 COFFEY, Q.C.:
 11 Q. Yes.
 12 MR. TILLEY:
 13 A. That's the only e-mail that I recall.
 14 COFFEY, Q.C.:
 15 Q. Would you use her as a sounding board in a
 16 communication sense?
 17 MR. TILLEY:
 18 A. No. She was a very competent person but it's
 19 not somebody that I would go to to get advice
 20 when I had my own internal -
 21 COFFEY, Q.C.:
 22 Q. And there are some e-mails, I take it, that
 23 we've seen that after she left the department,
 24 she certainly did e-mail at least to you on
 25 one or two occasions?

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1 MR. TILLEY:
 2 A. There's one that I'm aware of, yes.
 3 COFFEY, Q.C.:
 4 Q. And, but in terms of the ER/PR issue, it was -
 5 MR. TILLEY:
 6 A. Other than that e-mail you referenced.
 7 COFFEY, Q.C.:
 8 Q. Okay. Before I ask you this final question,
 9 Commissioner I would ask, because otherwise
 10 I'll forget, if I could have exhibits P-0697
 11 and 698 entered. I'm doing so at the request
 12 of other counsel.
 13 THE COMMISSIONER:
 14 Q. The numbers again were?
 15 COFFEY, Q.C.:
 16 Q. 697, Commissioner, and 698.
 17 THE COMMISSIONER:
 18 Q. P-0687 and P-0698 entered.
 19 EXHIBITS ENTERED AND MARKED P-0697 AND P-0698
 20 COFFEY, Q.C.:
 21 Q. And one final question, Mr. Tilley, is there
 22 anything that you wish to tell the
 23 Commissioner that we have not covered, that
 24 you think she should know?
 25 MR. TILLEY:

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1 A. I think you've overturned every rock since
 2 July of 2007 to today, so -
 3 COFFEY, Q.C.:
 4 Q. Well thank you, well I won't say I think you,
 5 I shouldn't say that, but is there anything in
 6 terms of overall, I appreciate and you
 7 understand -
 8 THE COMMISSIONER:
 9 Q. Remember what my task is, Mr. Tilley, so if
 10 there is anything you wanted to give me by way
 11 of advice, I'd be pleased to hear it.
 12 MR. TILLEY:
 13 A. I may risk repeating some of myself, but this
 14 situation, I'm not sure the likelihood of it
 15 ever being replicated in the way that this one
 16 unfolded is very unlikely to have a major
 17 restructuring project going on and then into
 18 this scenario having decisions made to refer
 19 tests out with hundreds of patients having the
 20 process slowed down and so on, a very complex
 21 and I hope unique set of circumstances. I
 22 think the biggest thing that kept Eastern
 23 Health going was it had made a decision to
 24 help patients. Obviously in retrospect it ran
 25 into problems that it didn't anticipate and

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1 there was a risk then, not only a risk, but a
 2 reality that all of the actions were being
 3 perceived as not being in the best interests
 4 of the patients. If I thought there was one
 5 thing that we needed to do differently, and
 6 that relates to the whole data management
 7 issue, we need to--the system does not have
 8 the level of automation that I think a lot of
 9 people in other industries have and it makes a
 10 situation when you literally have hundreds of
 11 patients near impossible to manage
 12 appropriately. So when I spoke to the
 13 Minister back in June or May or June of 2007,
 14 I had indicated to them then that I felt that
 15 there was a benefit to be had in a swat team,
 16 now not the right word, but the intent was the
 17 people within Eastern Health were working very
 18 hard to try to deal with this appropriately,
 19 but with the restructuring going on and the
 20 numbers, I think it could have benefited in
 21 retrospect from having that level of expertise
 22 available to it. I think our -
 23 THE COMMISSIONER:
 24 Q. Are you talking about a sort of, emergency
 25 measures of health crisis or are you talking

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1 about sort of something, well, once again to
 2 use your analogy of a "swat team", you know,
 3 the RCMP may have officers all across the
 4 country who again get called in in relatively
 5 short notice to do things, to respond to an
 6 emergency, but it means they come from outside
 7 that region sometimes, or are you talking
 8 about having within your own organization
 9 people who, when there is an urgent situation
 10 of that kind, you can say, okay, your regular
 11 duties you shed for whatever period of time is
 12 required and you go to work to solve this
 13 problem.
 14 MR. TILLEY:
 15 A. Right. It could be either, now I'm going to
 16 stick my neck out and say the likelihood of
 17 these things being repeated on a regular basis
 18 is remote. But you don't want somebody to
 19 take over the face of the organization, but
 20 what you want is somebody who can work behind
 21 the scenes to make sure all the processing and
 22 the flow of information and the completeness
 23 of it is accurate. And I think we could have
 24 benefited from someone who could have been
 25 doing that on a regular basis. The other

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1 thing, I believe that when we moved down the
 2 road three or four years, that this particular
 3 situation will have benefited health care
 4 organizations and cancer patients right across
 5 this country and I say that on the basis of
 6 the comments that I have had with others
 7 throughout the country that people are asking
 8 the question what's in place in their labs?
 9 And I think there is, this is an issue that
 10 will get more national attention because of
 11 this, so I often said to Dr. Williams, I want
 12 the organization to go down in history for how
 13 we'd followed up on this, that we did do what
 14 nobody else had done and make that bold
 15 decision to go back seven years. And by doing
 16 that, we would have helped patients, but also
 17 in doing that, we would have set a new
 18 standard in the health care system in terms of
 19 how far we're prepared to go. And I went on
 20 to say I know this is going to bring, I think
 21 there's a word "warts and on". Now I can also
 22 tell you in my wildest dreams I wouldn't think
 23 that I would be going through an inquiry to
 24 deal with that, but if this is what it takes
 25 in the end to make the system better for

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1 everybody, then it will be well worth the
 2 effort. But the health care system in this
 3 province is as good as any that I have seen in
 4 the country and we've got a lot to be proud of
 5 in this province. There are a lot of people
 6 that are working very hard behind the scenes.
 7 I never ever came across a person who I felt
 8 was out to do something wrong in the system.
 9 Their hearts are big. I fear that they've
 10 been living under a cloud for awhile and in
 11 the health care system, it's very important
 12 for people to feel confident and supported,
 13 but I think we're very lucky to have the
 14 people we got here. So while this sort of
 15 issue brings up bigger questions about
 16 confidence in the system and who've we got,
 17 you know, I think we're pretty lucky. There
 18 are people who have many, many other choices
 19 and one of the things you try to do as a CEO
 20 is create an environment where people feel
 21 supported and encouraged and developed. It's
 22 a very complex area, there's no "how to" book
 23 to really do it, you just draw upon the
 24 strengths of everybody that you have in there.
 25 And Baker and Norton studies said there are

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1 adverse events that happen in health care
 2 settings. When I first became aware of that,
 3 I was surprised at the level that they said
 4 was happening, surprised because nobody was
 5 hearing that level of activity or problems
 6 were occurring. Well why? Because many of
 7 them would never be known, so you've got to
 8 create an environment where issues, errors are
 9 talked about openly and people feel
 10 comfortable coming forward and there's a
 11 possibility that you can rectify the situation
 12 for the benefit of the patient or if nothing
 13 else, then you learn from it and you move on
 14 and make it better for the next person coming
 15 through. So you're into a very complex area
 16 and I wish you well as you delve into this and
 17 pull the pieces apart.
 18 THE COMMISSIONER:
 19 Q. Thank you.
 20 COFFEY, Q.C.:
 21 Q. Thank you very much, Mr. Tilley.
 22 THE COMMISSIONER:
 23 Q. Mr. Pritchard?
 24 MR. PRITCHARD:
 25 Q. Thank you, Commissioner.

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1 MR. GEORGE TILLEY, EXAMINATION BY MR. ROLF PRITCHARD
 2 MR. PRITCHARD:
 3 Q. Good afternoon, Mr. Tilley. My name is Rolf
 4 Pritchard, I'm representing Her Majesty in
 5 Right of Newfoundland and Labrador.
 6 MR. TILLEY:
 7 A. Uh-hm.
 8 MR. PRITCHARD:
 9 Q. Mr. Tilley, you've been good enough to come
 10 back, you've testified for many days. I just
 11 have a few questions for you. I wanted first
 12 to take you back to one of the ATIPP
 13 disclosures that was discussed with Commission
 14 counsel earlier, I believe it's document 0401.
 15 And you had an opportunity to look at that
 16 earlier. This particular one emanated in
 17 February of 2006 from Mr. Quinn, I believe,
 18 and when you were shown this the other day,
 19 you indicated in your evidence, I think, that
 20 you didn't actually do the physical work of
 21 preparing these, that you would have been
 22 advised by another individual within your
 23 organization, I think.
 24 MR. TILLEY:
 25 A. Yes.

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1 MR. PRITCHARD:
 2 Q. And one of the issues that came up about this
 3 particular document was the removal of a
 4 particular passage from Eastern Health's 20th
 5 of July, 2005 briefing note, as you will
 6 recall.
 7 MR. TILLEY:
 8 A. That's correct.
 9 MR. PRITCHARD:
 10 Q. And I wanted just to show you a different
 11 version of that particular package and that is
 12 contained in document 0394? And this is the
 13 same disclosure package again, it's a little
 14 further down the line, this one is dated March
 15 5th or 6th, there's a note on it, and this is
 16 actually the working file of Reginald Coates,
 17 whom you indicated you had a passing
 18 acquaintance with earlier.
 19 MR. TILLEY:
 20 A. Yes.
 21 MR. PRITCHARD:
 22 Q. And on this particular one, this has some of
 23 the notes--sorry, Mr. Coffey has just pointed
 24 out to me that the date on that document is
 25 March 8th actually. And on this particular

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1 one, this is Mr. Coates' working copy, so as
 2 you come into that, just as Mr. Coffey has
 3 indicated, what's happened here is that
 4 there's a little paper note that's been put
 5 over it, but it obscures the actual date which
 6 is March 8th. In any event, this one has Mr.
 7 Coates' notes on it that he made as he was
 8 preparing this disclosure package and if I
 9 take you to the last page, which I think is
 10 15, I get an appreciation for what a deft hand
 11 you have to have on this mouse, this is--I'll
 12 just show you the whole thing, this is the
 13 note that we've been talking about, 20th of
 14 July 2005 note from Eastern Health.
 15 MR. TILLEY:
 16 A. Yes.
 17 MR. PRITCHARD:
 18 Q. And scrolling down now to the last page, we
 19 had an opportunity to look at this passage in
 20 days gone by, this is the one regarding Dr.
 21 Ejeckam that is removed, it still appears in
 22 this particular one and here we see some
 23 handwritten notes and I think we'll hear in
 24 evidence later when, in fact I'm quite
 25 certain, when Mr. Coates testifies that he

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1 will indicate that you in fact called him and
 2 spoke to him and his note here says, "Spoke to
 3 G. Tilley"--which I take to be yourself, looks
 4 like "QA", which I take to be Quality
 5 Assurance, and I can't quite make out the next
 6 word and then it says "should be kept out."
 7 Do you recollect having that conversation with
 8 Mr. Coates?
 9 MR. TILLEY:
 10 A. Yes, and in fact I thought I had referenced
 11 the fact in my direct testimony to Mr. Coffey
 12 that when I had the request, I referred it to
 13 the appropriate person in the organization to
 14 deal with, they came back to me and then I
 15 followed up with Mr. Coates directly with the
 16 information that they had provided me.
 17 MR. PRITCHARD:
 18 Q. I think you did, actually. My purpose in
 19 showing you this is just to indicate that
 20 there's nothing here that contradicts the
 21 evidence that you gave earlier.
 22 MR. TILLEY:
 23 A. Okay, thank you.
 24 MR. PRITCHARD:
 25 Q. Was that correct?

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1 MR. TILLEY:
 2 A. Yes, because I did speak to him and pass on
 3 the issue about QA.
 4 MR. PRITCHARD:
 5 Q. Mr. Tilley, one of the other issues that you
 6 spoke to on a few occasions, actually, you had
 7 occasion to reference the fact that in 2007
 8 Mr. Abbott, I think, made a request of you to
 9 provide what have been called the peer reviews
 10 and external reviews and you indicated at that
 11 time that you had no trouble doing that, and
 12 you made some reference to the fact that, you
 13 know, Eastern Health, the department, you sort
 14 of thought of it as one big entity and
 15 therefore, it was permissible from your point
 16 of view to share that information with the
 17 department. And there was some debate, I
 18 guess as to when Mr. Abbott actually made the
 19 request, although I don't suppose that's
 20 particularly relevant to us, just trying to
 21 get a sense now, that was the first occasion,
 22 I think you said that you had been formally
 23 asked by someone at the department for those
 24 reviews, is that correct?
 25 MR. TILLEY:

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1 A. I'm not sure if it was the first formal time
 2 in that e-mail you're thinking about or, no,
 3 that telephone conversation?
 4 MR. PRITCHARD:
 5 Q. Well, no, I thought I had recollected you
 6 saying that the first time--that there'd never
 7 been an issue of you denying it, because you'd
 8 never been asked for it before that time?
 9 MR. TILLEY:
 10 A. No. There were requests--I remember a request
 11 from Moira Hennessey.
 12 MR. PRITCHARD:
 13 Q. Yes.
 14 MR. TILLEY:
 15 A. About the reports, and I redirected to Dr.
 16 Williams. That's the only one that I had a
 17 recollection on, other than the one that John
 18 Abbott had e-mailed me on. I thought it was
 19 the e-mail. Maybe it's the phone call about
 20 getting it.
 21 MR. PRITCHARD:
 22 Q. Okay. Now the request from Moira Hennessey, I
 23 believe, that emanates from an e-mail which I
 24 believe is Exhibit P-0096?
 25 MR. TILLEY:

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1 A. Yes, that's the one I'm referring to.
 2 MR. PRITCHARD:
 3 Q. Right, and I suppose, you know, you've been
 4 quite candid that perhaps Mr. Abbott's request
 5 wasn't the only request. Is there any reason
 6 why, on an earlier occasion, for example this
 7 one, that you wouldn't have offered--I think
 8 you would only have had one of the reviews at
 9 that point, Dr. Banerjee's?
 10 MR. TILLEY:
 11 A. Yes.
 12 MR. PRITCHARD:
 13 Q. Any reason why you wouldn't have offered it at
 14 that time?
 15 MR. TILLEY:
 16 A. Not off the top of my head, no. I mean, I
 17 would have certainly had a discussion about
 18 how these peer reviews are set up, and would
 19 have certainly said to them that if you feel
 20 there's a need then I'd be prepared to share,
 21 but on the understanding that it would be kept
 22 in confidence.
 23 MR. PRITCHARD:
 24 Q. It's presumably your view about the Department
 25 being within that circle of people that could

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1 receive it.
 2 MR. TILLEY:
 3 A. That's correct. We have a fairly close
 4 relationship obviously.
 5 MR. PRITCHARD:
 6 Q. You were still--you were of that view in 2005
 7 as well, were you?
 8 MR. TILLEY:
 9 A. Um-hm.
 10 MR. PRITCHARD:
 11 Q. Okay. So it didn't occur to you at that time
 12 to offer it or -
 13 MR. TILLEY:
 14 A. No. No, I can't say it did, other than any
 15 time that we went into meet with officials
 16 within the Department, there was a lot of
 17 discussion about follow up and that certainly
 18 was where our focus was.
 19 MR. PRITCHARD:
 20 Q. And I think in this particular e-mail, the
 21 question that's asked is for an update on the
 22 contacting of patients and also "have you
 23 received the report from the chief
 24 pathologist? If yes, can you give me a quick
 25 update?" So I suppose one could argue she

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1 doesn't have to--she doesn't ask directly for
 2 the review. Is that why you wouldn't have
 3 disclosed it at that time?
 4 MR. TILLEY:
 5 A. It's possible, but I can't say with
 6 confidence. If they're just looking for a
 7 quick update, then that could certainly have
 8 been provided by Dr. Williams.
 9 MR. PRITCHARD:
 10 Q. Okay. In terms of after Mr. Abbott leaves,
 11 which I think you indicate in your evidence
 12 was certainly very close with when you
 13 prepared the material, had it prepared to send
 14 out, of course you've indicated in evidence
 15 and you've been asked several times, you
 16 didn't leave until five or six weeks after
 17 that date?
 18 MR. TILLEY:
 19 A. Yes.
 20 MR. PRITCHARD:
 21 Q. And so I suppose, Robert Thompson comes on the
 22 site very quickly as deputy minister?
 23 MR. TILLEY:
 24 A. Yes.
 25 MR. PRITCHARD:

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1 Q. But he didn't receive it from you?
 2 MR. TILLEY:
 3 A. No.
 4 MR. PRITCHARD:
 5 Q. And I suppose, in the absence of Mr. Thompson
 6 or Mr. Abbott, it could have been conveyed to
 7 Ms. Hennessey.
 8 MR. TILLEY:
 9 A. Yes.
 10 MR. PRITCHARD:
 11 Q. Is there any reason why you wouldn't have
 12 conveyed it to Ms. Hennessey or to Mr.
 13 Thompson?
 14 MR. TILLEY:
 15 A. Good question. I've tried to re-activate or
 16 re-enact that issue in my mind. In light of
 17 the confidential nature of the reports, I
 18 would have secured it in one of my desk
 19 drawers and would have locked it away, and the
 20 next thing I recall, because my life really
 21 went into a demanding, challenging period for
 22 me, the next time I recall seeing those
 23 reports was the evening of July the 7th
 24 perhaps, a Friday, when I was clearing out my
 25 desk to leave the organization, and lo and

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1 behold, there was the reports.
 2 MR. PRITCHARD:
 3 Q. And did you do anything with the reports on
 4 July the 7th or did you say "okay, well this
 5 is on the pile for things that have to go out"
 6 or -
 7 MR. TILLEY:
 8 A. As of July the 7th, I was working on the
 9 assumption that I was no longer with the
 10 organization, so it was not my issue to deal
 11 with.
 12 MR. PRITCHARD:
 13 Q. Okay. At one point in your evidence, you were
 14 talking about the issue of the--I think you
 15 had termed it a blameless culture.
 16 MR. TILLEY:
 17 A. Yes.
 18 MR. PRITCHARD:
 19 Q. And I don't want to stretch the thing to a
 20 ridiculous extreme, but I'm wondering sort of
 21 as a policy issue, when you have a blameless
 22 culture and you're working with that format to
 23 try and solve problems or deal with an adverse
 24 event, it occurs to me that there may be
 25 occasions where what you detect in your

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1 investigation is that there's perhaps an
 2 individual who is unable to do their job and
 3 does there ever arise a situation in that type
 4 of approach where indeed someone has to be
 5 removed from their job?
 6 MR. TILLEY:
 7 A. Yes, you're correct. In fact, the radiology
 8 situation was a good example where the
 9 organization made a decision subsequently to--
 10 that person left the organization, but there's
 11 been occasions over the years when a review
 12 would have resulted in a belief that the
 13 person was not competent to do their
 14 particular chores. But I should also say that
 15 this concept of blameless culture is a
 16 relatively new one. It certainly started to
 17 gain momentum when I became a member of the
 18 Board of Directors of the Canadian Patient
 19 Safety Institute. I'm thinking that was in
 20 2003-2004.
 21 MR. PRITCHARD:
 22 Q. One of the issues that you talked about, and I
 23 guess we've heard evidence about on and off,
 24 this business about conversion rates.
 25 MR. TILLEY:

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1 A. Yes.
 2 MR. PRITCHARD:
 3 Q. And I think you gave evidence at one point
 4 that, you talked a little bit about different
 5 percentages. I think the number of 42 percent
 6 has been thrown around and so forth.
 7 MR. TILLEY:
 8 A. Right.
 9 MR. PRITCHARD:
 10 Q. And you know, acceptable averages, 20 percent,
 11 that type of thing, and I'm certainly not--you
 12 know, I'm trying to be conversant with those
 13 in the course of this, but obviously these are
 14 complex issues. But I suppose, generally, the
 15 issue here or one of them is that the
 16 conversion rate that was being experienced was
 17 higher than what it should have been, and just
 18 have you ever given any thought or do you
 19 know, that went undetected for some time, and
 20 have you given some thought as to why that is?
 21 MR. TILLEY:
 22 A. Well, the original figure that was referred to
 23 by Dr. Williams was a percentage that was
 24 given based upon positivity rates. The
 25 positivity rate that the literature was

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1 suggesting was to say that we should be in
 2 the, I'm not sure, high 70s or low 80s, and
 3 his belief, based upon the overall positivity
 4 rate that Eastern Health was experiencing, was
 5 that it was likely to go up to that national
 6 benchmark. So he's always been using that
 7 figure, and taking it on the basis of the
 8 total number of tests rather than just the
 9 number of negative tests, and I probably share
 10 your understanding or knowledge in terms of
 11 the epidemiology world, but I understand
 12 there's some fair debate about what is the
 13 appropriate numerators and denominators in
 14 that period, but I'm really not conversant
 15 enough to be able to articulate it.
 16 MR. PRITCHARD:
 17 Q. All right, fair enough. I want to take you
 18 now to some of your notes that we looked at
 19 earlier today.
 20 MR. TILLEY:
 21 A. Okay.
 22 MR. PRITCHARD:
 23 Q. And I believe it was document 0436, and page
 24 five, I think is what we're--and if memory
 25 serves, these are the notes that you took at

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1 your meeting which was actually on May 15th,
 2 is that correct?
 3 MR. TILLEY:
 4 A. Yes.
 5 MR. PRITCHARD:
 6 Q. With the Minister.
 7 MR. TILLEY:
 8 A. Right.
 9 MR. PRITCHARD:
 10 Q. And Mr. Abbott, and you weren't sure -
 11 MR. TILLEY:
 12 A. Minister Wiseman and Deputy Minister Abbott.
 13 I know the Minister was there, because we
 14 spoke to him, and I think I alluded to Dr.
 15 Howell, Susan Bonnell, and I'm fairly
 16 confident that Heather Predham would have been
 17 there as well.
 18 MR. PRITCHARD:
 19 Q. What I wanted to ask you about was one of the
 20 sentences here. It's towards the bottom of
 21 the screen. Right now, where the screen sits,
 22 it's the second last bullet, I think, and the
 23 statement is there, I think it's "multiple
 24 steps, multiple places." Is that multiple
 25 places to go wrong?

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1 MR. TILLEY:
 2 A. Yes.
 3 MR. PRITCHARD:
 4 Q. And I take it that's your description of--
 5 you're trying to articulate your sense of what
 6 it is that went wrong? Is that fair to say?
 7 MR. TILLEY:
 8 A. I think that would be related to that, yes.
 9 MR. PRITCHARD:
 10 Q. Okay, and at various times on behalf of
 11 Eastern Health, and we've heard different
 12 explanations, that's not--articulated in
 13 different ways. For example, I think it was
 14 Dr. Williams was interviewed a few times
 15 around about October of 2005 and he uses the
 16 statement "it's a complicated test, many
 17 steps. Lots of things can go wrong," those
 18 types of things, and this similar type of
 19 explanation. Is that fair to say?
 20 MR. TILLEY:
 21 A. Yes.
 22 MR. PRITCHARD:
 23 Q. Okay, and were you comfortable, based on what
 24 you knew at that time, that that was to the
 25 best of your ability, a reasonable explanation

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1 of what you understood to be the problem?
 2 MR. TILLEY:
 3 A. Well, that in itself doesn't give us the
 4 answer. I guess one of the things that I have
 5 struggled with, I suppose, for lack of a
 6 better word, is that we've had these external
 7 reviews done. We've obviously benefited from
 8 the thinking of the experts within the
 9 organization, and we've also had a good sense,
 10 in terms of what is happening throughout the
 11 world with this particular test, and I've
 12 walked away not feeling that I have a good
 13 conclusive thing that I could point to to say
 14 what the problem was. And as I alluded to the
 15 Commissioner earlier, I think in the end, that
 16 this particular situation has issues that are
 17 related to the national problem that we have,
 18 but I can't--I have no basis to say to the
 19 extent that it's all that. I know it's a very
 20 complex issue, and when you do a peer review
 21 process, you ask a person to come in for a few
 22 days and give you some opinions. We talked
 23 about it more as a systems issue. You've
 24 heard us say that or me say that, I guess,
 25 somewhere in the past couple of weeks. So

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1 it's a whole complex area which has multiple
 2 steps and any one of those steps could have
 3 lent to a problem, and whether the problem is
 4 local or just something that's being done as a
 5 part of the national approach, I can't say
 6 with confidence.
 7 MR. PRITCHARD:
 8 Q. Sure. I take it that, you know, obviously we
 9 have only your notes to tell us, in terms of
 10 what happened at the meeting, that at some
 11 point you were engaged by the Minister with an
 12 inquiry about what you understood to have gone
 13 wrong, and that your response, as part of that
 14 response at least -
 15 MR. TILLEY:
 16 A. Yes.
 17 MR. PRITCHARD:
 18 Q. - you indicated that there were multiple steps
 19 to this test, and things could go wrong at any
 20 stage. Is that a fair summary?
 21 MR. TILLEY:
 22 A. I think that's a fair assumption, yes.
 23 MR. PRITCHARD:
 24 Q. Mr. Tilley, I want to take you back now to the
 25 summer of 2005 and ask a few questions, just

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1 in terms of sort of the staging of some of the
 2 events around the 18th, 19th, 20th and 21st of
 3 July, if I May.
 4 MR. TILLEY:
 5 A. Okay.
 6 MR. PRITCHARD:
 7 Q. And that's really the last area of questioning
 8 that I have. I just want to refer you now to
 9 an Exhibit P-0300, and this is an e-mail dated
 10 July 18th 2005 between Heather Predham and Dr.
 11 Williams, and so obviously you're not a
 12 recipient or a sender of this particular
 13 document, but I'll use this as my starting
 14 point, and there's a reference there from the
 15 writer that they were "speaking with Deborah
 16 Thomas today in the Department of Health. The
 17 Department of Health has been notified and is
 18 now involved. They would like a letter sent
 19 to each woman outlining the problem and the
 20 steps we are taking to address it. The draft
 21 letter will have to be seen by our lawyer
 22 first, of course."
 23 Now at that point, July 18th, the
 24 approach that was being pursued by Eastern
 25 Health, were you looking at letters or were

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1 you--I think you were looking more at a
 2 general release?
 3 MR. TILLEY:
 4 A. You're right.
 5 MR. PRITCHARD:
 6 Q. Is that correct?
 7 MR. TILLEY:
 8 A. Yes.
 9 MR. PRITCHARD:
 10 Q. Okay, and we have seen, and I don't know that
 11 we need to refer to it, but document P-0071 is
 12 some draft briefing notes, and these briefing
 13 notes bear--I guess they have some resemblance
 14 to the July 20th briefing note, but these are
 15 obviously earlier drafts, and contained within
 16 here are also draft--there are a number of
 17 draft media releases, so at this point, around
 18 about the 18th or so, this is sort of--and
 19 there are different media releases. This is
 20 where the thinking had evolved. The notion
 21 that there might actually be individual
 22 letters sent out, that wasn't being developed
 23 yet. Is that -
 24 MR. TILLEY:
 25 A. It wasn't a part of our initial discussions.

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1 MR. PRITCHARD:
 2 Q. It wasn't a part of your initial discussions,
 3 okay. Now what I wanted to inquire about was
 4 the letter that we just looked at, the e-mail
 5 that we just looked at dated the 18th, which
 6 is P-0300, we don't need to--it's amazing,
 7 it's like magic. All right. The next one I
 8 wanted to refer you to is P -
 9 THE COMMISSIONER:
 10 Q. Just one moment, please. Mr. Simmons?
 11 MR. SIMMONS:
 12 Q. Excuse me. If you go back to P-0071, just to
 13 look at the last page, page 14.
 14 MR. PRITCHARD:
 15 Q. All right.
 16 COMMISSIONER:
 17 Q. The draft letter? Is there not a draft
 18 letter? Yes.
 19 MR. PRITCHARD:
 20 Q. Okay, that's actually what I was seeking some
 21 clarity on. We you developing both of those
 22 avenues at that time or -
 23 MR. TILLEY:
 24 A. I got to confess, I wasn't involved in that
 25 directly. It could have been, well, it would

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1 have been communications putting together
 2 various scenarios, but I had forgotten that
 3 that piece was there, to be honest.
 4 MR. PRITCHARD:
 5 Q. Okay.
 6 MR. TILLEY:
 7 A. Thank you.
 8 MR. PRITCHARD:
 9 Q. Now, there's another document which is
 10 numbered P-0328, and it may be that I'm asking
 11 you for more detail than you're able to
 12 provide. This appears to be another version
 13 of the briefing note. This says pre July 19,
 14 '05 on it, so I don't know if that's of any
 15 assistance to you. This one has attached to
 16 it at the end a draft letter that's there. Is
 17 that your handwriting by any chance?
 18 MR. TILLEY:
 19 A. It is.
 20 MR. PRITCHARD:
 21 Q. Okay. This one is attached to the draft
 22 letter, but the media releases are not
 23 attached with, and I don't know if that's
 24 significant or not. Is this the focusing of
 25 the approach or is it inappropriate to draw

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1 that kind of inference?
 2 MR. TILLEY:
 3 A. I'm sorry, what date is this again?
 4 MR. PRITCHARD:
 5 Q. Well, I believe the document is identified on
 6 the listing as the 19th, but it says on it pre
 7 July 19th, so I don't know that we actually
 8 know, you know, specifically what on the 19th
 9 or 18th this may have been.
 10 MR. TILLEY:
 11 A. Okay. But it was still fairly early, that's
 12 the point.
 13 MR. PRITCHARD:
 14 Q. Yes.
 15 MR. TILLEY:
 16 A. Then, you know, obviously for me if it was--it
 17 looks like it was given to me and I did make
 18 some suggestions in terms of content so it was
 19 evident that there was a lot of discussion or
 20 some discussion going on with a particular
 21 focus on sending out a letter.
 22 MR. PRITCHARD:
 23 Q. Okay. Now, am I correct in assuming that at
 24 this point the developing of the letter is not
 25 to the exclusion of a broader media release,

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1 is that correct?
 2 MR. TILLEY:
 3 A. There were multiple things being talked about.
 4 When Dr. Williams first talked to me, he was
 5 pushing or promoting the issue of let's advise
 6 the public as soon as possible. My
 7 understanding is that he had had some contact
 8 with communications and they started doing up
 9 some drafts of how that might be achieved.
 10 MR. PRITCHARD:
 11 Q. Okay. Now, if we can see document No. 0312,
 12 P-0312, please? And we've seen these on a
 13 number of occasions. These are these e-mails
 14 on the 19th, at least, which identify to
 15 Carolyn Chaplin is communicating now with
 16 central agencies. Now obviously these
 17 letters, particularly this one e-mail of
 18 yours, the 18th, suggests that there may
 19 indeed have been an earlier contact. But here
 20 Carolyn says she's just called from Health and
 21 Community Services to provide a heads up that
 22 a major story will break from the Eastern
 23 Health board as early as this Thursday, but
 24 more like less Monday. (sic.) So presumably
 25 in terms of piecing this together she's been

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1 advised from Eastern Health that they're, at
 2 that point, looking at a media release of some
 3 sort as early as Thursday or the following
 4 Monday. Is that -
 5 MR. TILLEY:
 6 A. Yes. Though that wasn't my position at that
 7 point in time. She had obviously been in
 8 touch with the communication staff. I think
 9 we had talked about this earlier, this in my
 10 time here. But we had clearly not reached a
 11 point where we were ready to make a clear
 12 announcement on Thursday or even the early
 13 part of next week. There was clearly a lot
 14 more information that was needed, including us
 15 being ready to respond to the calls that were
 16 undoubtedly going to be coming in from
 17 patients and families.
 18 MR. PRITCHARD:
 19 Q. Okay. So her information comes from someone
 20 other than you at Eastern Health?
 21 MR. TILLEY:
 22 A. Yes.
 23 MR. PRITCHARD:
 24 Q. Probably, all right. And then just while
 25 we're on this, the last one of these e-mails,

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1 which I believe is at 2:30 in the afternoon,
 2 the timing is--so this is her e-mail to Gary
 3 Cake at 2:37. This is the one where she says,
 4 "No action required at this time. We've
 5 arranged a briefing with the health authority
 6 for the later part of the week. Be in a
 7 better position to forward relevant briefing
 8 materials at that time. No public
 9 announcement will be forthcoming this week.
 10 And there's a possibility the significance of
 11 any announcement will be minimized." So I
 12 guess we can infer from that that at some
 13 point as the day has worn on, someone again
 14 has been in touch with her from Eastern Health
 15 and conveyed a course of action more along the
 16 lines that you felt was appropriate?
 17 MR. TILLEY:
 18 A. Well, what I'm assuming that this connects to
 19 was information that was developed about the
 20 positivity rates or negativity rates during
 21 particular years and these summaries were
 22 showing information that maybe the situation
 23 was not at the level that we had thought it
 24 might be. So it was an indication at that
 25 point in time that we would pause, but we only

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1 pause for a couple of days. But it seems to
 2 coincide with the timing of that e-mail.
 3 MR. PRITCHARD:
 4 Q. Sure. Now, just on the timing of that issue,
 5 I'm just trying to get a sense of what
 6 communications might have been flowing from
 7 Eastern Health up to the department, because
 8 we have been provided, I think, with notes of
 9 yours at P-0329. And these are your notes, I
 10 think, from July 19th?
 11 MR. TILLEY:
 12 A. Yes.
 13 MR. PRITCHARD:
 14 Q. And just sort of scanning down, you can see
 15 just at the bottom of that paragraph,
 16 "Discussion with Carolyn re announcement and"
 17 -
 18 MR. TILLEY:
 19 A. "Concerns of the minister."
 20 MR. PRITCHARD:
 21 Q. "Concerns the minister."
 22 MR. TILLEY:
 23 A.
 24 MR. PRITCHARD:
 25 Q. And then I take it these are written in

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1 chronologic order. So that item appears and
 2 then the next item is at 3 p.m. So we can
 3 assume that you had that conversation with
 4 Carolyn before 3 p.m. is that right?
 5 MR. TILLEY:
 6 A. I don't think we can assume that I actually
 7 had the conversation with Carolyn.
 8 MR. PRITCHARD:
 9 Q. Oh, all right. Sorry, that Susan Bonnell -
 10 MR. TILLEY:
 11 A. Would have had?
 12 MR. PRITCHARD:
 13 Q. Right.
 14 MR. TILLEY:
 15 A. Yeah.
 16 MR. PRITCHARD:
 17 Q. All right, so that conversation has been had
 18 with Carolyn and obviously results in that e-
 19 mail that we just saw?
 20 MR. TILLEY:
 21 A. That's where my connection is.
 22 MR. PRITCHARD:
 23 Q. Sure. You go on then to have a discussion, I
 24 guess, with Dr. Williams?
 25 MR. TILLEY:

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1 A. Yes.
 2 MR. PRITCHARD:
 3 Q. At 2:00, is that right?
 4 MR. TILLEY:
 5 A. Yeah.
 6 MR. PRITCHARD:
 7 Q. Okay. And there's the comment there, "Legal
 8 counsel cautions release pending full
 9 results." And we've seen earlier that there
 10 was an e-mail where Heather, Heather Predham
 11 talks about Dr. Williams having a conversation
 12 with Dan Boone.
 13 MR. TILLEY:
 14 A. Okay.
 15 MR. PRITCHARD:
 16 Q. He must have, I presume he brought that
 17 information to the meeting with you, is that
 18 correct?
 19 MR. TILLEY:
 20 A. Yeah, we think so, yeah.
 21 MR. PRITCHARD:
 22 Q. Okay. And then you go on on the next page of
 23 your notes to say, "Agreed to delay release."
 24 And I'm just wondering a little bit about the
 25 timing because there's been--someone's had a

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1 conversation with Carolyn at that point prior
 2 to your meeting with Dr. Williams?
 3 MR. TILLEY:
 4 A. Yes.
 5 MR. PRITCHARD:
 6 Q. I'm just wondering, you know, I might have
 7 expected that the conversation with Carolyn
 8 would be after your meeting with Dr. Williams.
 9 Any thought on the timing of that or is it
 10 there's several streams going on at once here,
 11 is that right?
 12 MR. TILLEY:
 13 A. That's quite possible, though I can't speak to
 14 whether Dr. Williams had been a part of the
 15 discussion in anticipation of the contact with
 16 Carolyn. It would just be speculation, to be
 17 honest with you.
 18 MR. PRITCHARD:
 19 Q. All right. I'll take you now to P-0074. And
 20 this is the e-mail from you, I believe, to
 21 Joan Dawe?
 22 MR. TILLEY:
 23 A. Yes.
 24 MR. PRITCHARD:
 25 Q. This is on the 20th, so this is the day before

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1 the meeting with the minister. And I'll just
 2 take you down now and there's the comment that
 3 you've been in touch with the minister. "I've
 4 been in touch with the minister who is edging
 5 us to go public ASAP. No doubt about the need
 6 to do that, but not until I know the size and
 7 shape of it." And then you say, "For example,
 8 that yesterday the size of the issue began to
 9 shrink as managers compared the results of
 10 these tests with national benchmark outcomes
 11 and found that in 2003 we were consistent."
 12 So can you--obviously there's a statement
 13 there about your view, at least, which is that
 14 until you've got a better handle on this, you
 15 don't want to go public, is that -
 16 MR. TILLEY:
 17 A. Right.
 18 MR. PRITCHARD:
 19 Q. That would be your position at that time?
 20 MR. TILLEY:
 21 A. Right.
 22 MR. PRITCHARD:
 23 Q. And then there's comment below about the
 24 national benchmark outcomes. Can you just
 25 articulate what that's about, please?

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1 MR. TILLEY:
 2 A. The national benchmark is where--oh, yes,
 3 okay. Well, when we met with Minister
 4 Ottenheimer, it was certainly his opinion that
 5 we go and make this known publicly as soon as
 6 possible. I guess that's what the reference
 7 was there. The day before we had gotten some
 8 information, a flag went up to suggest that,
 9 well, maybe we've overreacted here, maybe this
 10 is not as big an issue as we had thought it
 11 was, so that was in reference to that. But
 12 the issue with national benchmarks, the
 13 pathologists were giving us information to say
 14 that when you do this test on an--over an
 15 extended period of time, you should expect
 16 that a certain percentage of your tests will
 17 show positive within a range. That range in
 18 the early stages was very wide and apparently
 19 was being pulled out of the literature. But
 20 as time went on the range narrowed and I'm
 21 thinking it might have been sort of narrow
 22 within the 70 to 85 percent range. So that's
 23 what that reference would have referred to.
 24 MR. PRITCHARD:
 25 Q. And you're saying that that--you said the

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1 flags went up the day before, I think is the
 2 term you just used?
 3 MR. TILLEY:
 4 A. Right.
 5 MR. PRITCHARD:
 6 Q. All right. Now if we can go back to Exhibit
 7 0312, just the last page of that? All right.
 8 So when Ms. Chaplin makes the reference there
 9 to "There's a possibility the significance of
 10 any announcement will be minimized, is that
 11 the type of issue she's perhaps referring to?
 12 MR. TILLEY:
 13 A. That's what I'm assuming the connection is,
 14 yes.
 15 MR. PRITCHARD:
 16 Q. Okay. And now, we were just looking at your
 17 e-mail from the 20th. So the next day then
 18 you meet with the minister. And the version
 19 of the briefing note that, I guess, surfaces
 20 or is brought to the meeting potentially is
 21 the one at P-0075, please? We've seen earlier
 22 drafts of this briefing note in some of the
 23 exhibits that I referred you to earlier.
 24 MR. TILLEY:
 25 A. Okay.

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1 MR. PRITCHARD:
 2 Q. Now this particular briefing note I guess
 3 there's been some question now, is it your
 4 evidence that this was brought to that meeting
 5 or do you have a specific recollection of
 6 that?
 7 MR. TILLEY:
 8 A. No, I can't say with any confidence at all
 9 that it was brought to the meeting.
 10 MR. PRITCHARD:
 11 Q. Was it -
 12 MR. TILLEY:
 13 A. I'm not sure whose writing that is on the top.
 14 MR. PRITCHARD:
 15 Q. Was it your intention that it should be taken
 16 to the meeting?
 17 MR. TILLEY:
 18 A. If that note was prepared at the time, it
 19 would certainly be the intention to have it
 20 there.
 21 MR. PRITCHARD:
 22 Q. Okay. Is there any reason why this version
 23 doesn't have any of the sort of draft media
 24 releases or draft letters attached to it for
 25 the minister to consider?

1 MR. TILLEY:
 2 A. No, no, not that I can recall.
 3 MR. PRITCHARD:
 4 Q. Okay. Now you had gone to this meeting, we
 5 see from the e-mail of the previous day, it
 6 was your position that you weren't ready to
 7 disclose yet, is that correct?
 8 MR. TILLEY:
 9 A. That's correct.
 10 MR. PRITCHARD:
 11 Q. Okay. Thank you, Mr. Tilley, those are all
 12 my questions.
 13 MR. TILLEY:
 14 A. Thank you, sir.
 15 COMMISSIONER:
 16 Q. Mr. Browne.
 17 MR. GEORGE TILLEY, CROSS-EXAMINATION BY MR. PETER BROWNE
 18 MR. BROWNE:
 19 Q. Thank you, Commissioner. Good afternoon, Mr.
 20 Tilley.
 21 MR. TILLEY:
 22 A. Mr. Browne.
 23 MR. BROWNE:
 24 Q. I want to go back over an area of questioning,
 25 a line of questioning that the Commissioner

1 Q. And that position changed with the creation of
 2 the Health Care Corporation, did it not?
 3 MR. TILLEY:
 4 A. No.
 5 MR. BROWNE:
 6 Q. So it's the same responsibilities -
 7 MR. TILLEY:
 8 A. Well, if I might, because in the pre-1995
 9 days, pre-Health Care Corporation, I'm pretty
 10 certain that every hospital in St. John's had
 11 a medical director. In the post Health Care
 12 Corporation of St. John's days, there was a
 13 medical director and that was the vice-
 14 president of Medical Services, initially held
 15 by Dr. Parsons, then by Dr. Williams and now
 16 by Dr. Howell.
 17 MR. BROWNE:
 18 Q. Okay.
 19 MR. TILLEY:
 20 A. So that's the paid jobs. Pre Health Care
 21 Corporation of St. John's, there was always a
 22 medical staff organization. I'm scratching my
 23 head now to try and remember the names, every,
 24 like there was a chief of pediatrics, there
 25 was a chief of radiology, there was a chief of

1 asked you this afternoon concerning the
 2 interplay. And you described it as a matrix
 3 between the clinical chief and the program
 4 manager. And I think that arose from some
 5 comments from Dr. Banerjee in his report back
 6 in October of 2005.
 7 MR. TILLEY:
 8 A. Yes.
 9 MR. BROWNE:
 10 Q. And I want to start with, because I want to
 11 sort of get a very clear picture because there
 12 are some gaps I have, about the evolution of
 13 the role of clinical chief, now you said
 14 you've been in the health care system in
 15 Newfoundland for about thirty years.
 16 MR. TILLEY:
 17 A. Uh-hm.
 18 MR. BROWNE:
 19 Q. Pre-Health Care Corporation of St. John's,
 20 were the various medical disciplines headed by
 21 physicians that held the position known as a
 22 medical director, is that -
 23 MR. TILLEY:
 24 A. Yes, that's correct.
 25 MR. BROWNE:

1 laboratory, there may have been a chief of
 2 internal medicine, those for the most part
 3 were volunteer positions, but they were people
 4 who were chosen within their areas of
 5 speciality and they represented the issues of
 6 pathologists or radiologists or internal
 7 medicine people at the Medical Advisory
 8 Committee table. When the Health Care
 9 Corporation of St. John's came into fold, it
 10 brought in this new program structure and
 11 features that I've referenced to earlier, but
 12 one of the things that did change is that
 13 those positions took on a--had a remuneration
 14 attached to it, so they in some ways, I guess,
 15 Mr. Browne, do take on some of the elements of
 16 the old medical directors, even though the old
 17 medical director still existed in the form of
 18 one person, but they also took on some of the
 19 roles of the former volunteer people who were
 20 the chief of those areas that I had mentioned
 21 earlier.
 22 MR. BROWNE:
 23 Q. So in essence, the vice-president of Medical
 24 Affairs took over that responsibility for,
 25 that various other physicians held as medical

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1 directors for the control over, say, in this
 2 instance, technical and medical side, that
 3 came under the auspices now of the then
 4 current VP Medical?
 5 MR. TILLEY:
 6 A. Back in the old days?
 7 MR. BROWNE:
 8 Q. Yes, that would have been distributed among a
 9 number of people, would that be like for each
 10 hospital?
 11 MR. TILLEY:
 12 A. Yes, certainly for each hospital, so let's
 13 take the General Hospital for an example,
 14 there would be a chief of pathology there that
 15 the pathologist would report up to, but there
 16 would also be a medical director that would be
 17 responsible for liaising with the chief of
 18 pathology and the other chiefs. And then, of
 19 course, you would have a director, which is
 20 the equivalent of the person that we've used
 21 here by the name of Terry Gulliver, who is a
 22 program director, and he would be responsible
 23 to some senior manager within the General
 24 Hospital, could have been the medical director
 25 or could have been one of the others.

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1 MR. BROWNE:
 2 Q. Did the medical director position have any
 3 control over budgetary and financial aspects?
 4 MR. TILLEY:
 5 A. Yes, certainly as a part of the senior
 6 management team.
 7 MR. BROWNE:
 8 Q. And what about hiring and, I guess,
 9 determination of the level of training of non-
 10 medical personnel, would that be the program--
 11 or this other director that you mentioned of
 12 the three positions?
 13 MR. TILLEY:
 14 A. Certainly, non-medical personnel you're
 15 speaking to?
 16 MR. BROWNE:
 17 Q. Yes.
 18 MR. TILLEY:
 19 A. That would predominantly be the program
 20 director in support with the Human Resources
 21 Department. If there was a disagreement, then
 22 it's possible that the next level of
 23 management would be involved.
 24 MR. BROWNE:
 25 Q. And putting aside the clinical chief, or the

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1 department chief position, which was a
 2 volunteer position under the old system, the
 3 medical director position was a paid position,
 4 is that right?
 5 MR. TILLEY:
 6 A. Yes.
 7 MR. BROWNE:
 8 Q. And what was the distribution, time
 9 distribution for expected, for a medical
 10 director under the old system? I know I'm
 11 asking--cast your mind back.
 12 MR. TILLEY:
 13 A. Well, actually under the old system, you know,
 14 they were paid as full-time employees. There
 15 may have been some exceptions to that where
 16 somebody may have wanted to continue some
 17 practice, but it would be negligible.
 18 MR. BROWNE:
 19 Q. So that's the distinction here, though, isn't
 20 it, in terms of when we switch over to the
 21 Health Care Corporation of St. John's, that
 22 level is then, I guess, channelled up to one
 23 position to the VP Medical Affairs, is that
 24 right?
 25 MR. TILLEY:

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1 A. Yes.
 2 THE COMMISSIONER:
 3 Q. Mr. Browne, you lost me in the--the witness
 4 might have understood, but the last question I
 5 didn't get.
 6 MR. BROWNE:
 7 Q. Okay, the last question, I think, we had the
 8 three positions, we had the department chief,
 9 which is a volunteer position, we have the
 10 medical directors at each hospital at -
 11 MR. TILLEY:
 12 A. Yes, each of the acute care sites in St.
 13 John's.
 14 MR. BROWNE:
 15 Q. Acute care sites. And then we also have
 16 program director. What changes, as I
 17 understand Mr. Tilley's evidence is in post
 18 Health Care Corporation or in the creation of
 19 Health Care Corporation, those are all wrapped
 20 in--the medical director positions are wrapped
 21 into one, which is a VP medical, am I correct?
 22 MR. TILLEY:
 23 A. Yes, because there would have been five or six
 24 medical directors that are wrapped into one,
 25 and then those division--sorry, department

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1 chiefs that you referred to that were
 2 volunteers, they sort of got regenerated in a
 3 clinical chief, which they took on a
 4 remuneration for that.
 5 MR. BROWNE:
 6 Q. Right.
 7 MR. TILLEY:
 8 A. Now that wasn't full time, it's only the vice-
 9 president Medical that would be fulltime.
 10 MR. BROWNE:
 11 Q. Right, so effectively and this is where I sort
 12 of want to go a little bit now, what
 13 additional responsibilities did the clinical
 14 chiefs get because we now have them switch
 15 from a volunteer position to a paid position,
 16 what responsibilities came with that?
 17 MR. TILLEY:
 18 A. Well, there's a job description that I'm sure
 19 you could get a lot more information than I'm
 20 probably going to be able to remember, but -
 21 MR. BROWNE:
 22 Q. Generically, I guess.
 23 MR. TILLEY:
 24 A. Well, they would be responsible for the
 25 recruitment of physicians within their areas.

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1 They would be responsible for liaising with
 2 the program director on any issues where
 3 physicians were involved. They would
 4 certainly be talking with the program director
 5 in terms of any budget that was going to be
 6 submitted up for consideration. Planning, so
 7 you know, high level issues.
 8 MR. BROWNE:
 9 Q. Sure, and just in taking that a little bit
 10 further, at the same time that these positions
 11 were merged into--I guess the medical director
 12 positions were merged into the one position of
 13 VP Medical Affairs, on the, I guess, program
 14 director side, there was a number of cuts in
 15 that level of management at the various
 16 hospital sites?
 17 MR. TILLEY:
 18 A. That's correct.
 19 MR. BROWNE:
 20 Q. Were some of these responsibilities put over
 21 on the clinical chief's position as well?
 22 MR. TILLEY:
 23 A. I wouldn't think so. They're not the type
 24 that go looking for anything other than
 25 directly medical related.

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1 MR. BROWNE:
 2 Q. And you mentioned at the time there was
 3 limited literature about the--and I'm talking
 4 now the time is the transition into the Health
 5 Care Corporation of St. John's, and in respect
 6 of the experiences, both the advantages and
 7 disadvantages about this system, the program
 8 management system, has there been a lot of, I
 9 guess, to use your term, clinical based
 10 evidence to talk about this since?
 11 MR. TILLEY:
 12 A. In fact, no. There's been very little
 13 evaluation done on regional health
 14 authorities, program based models. It's not
 15 to say they don't exist. It still is the most
 16 popular approach in the country, but there's
 17 restructuring going on in this country every
 18 month and there are a few people scratching
 19 their heads saying "where's the evidence for
 20 this?"
 21 MR. BROWNE:
 22 Q. And I guess that's my question. Should there--
 23 again, someone who's been in this system now,
 24 should there be some tracking of how these
 25 organizational changes occur, their effects

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1 within the system, and so on, in terms of some
 2 experiences we've learnt here?
 3 MR. TILLEY:
 4 A. Right, there certainly should be, but I should
 5 also add that Dr. Parfrey, who is well known
 6 in the Newfoundland community, and Dr. Brendan
 7 Barrett have done an evaluation of the
 8 restructuring in St. John's. So there's been
 9 some work done on it, but certainly not
 10 anything significantly on a national basis.
 11 MR. BROWNE:
 12 Q. Now when these positions of clinical chiefs
 13 were created, were the physicians who were
 14 designated to assume these positions given, I
 15 guess, you mentioned about remuneration, were
 16 they given some clear direction as to their
 17 time responsibilities? Because unlike, as you
 18 said, the previous medical director's
 19 position, and unlike program directors -
 20 MR. TILLEY:
 21 A. Yes.
 22 MR. BROWNE:
 23 Q. - the clinical chiefs had a unique position,
 24 did they not?
 25 MR. TILLEY:

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1 A. They did.
 2 MR. BROWNE:
 3 Q. Because they had to keep clinical
 4 responsibilities along with administrative
 5 responsibilities?
 6 MR. TILLEY:
 7 A. Right. So what was worked out on an
 8 individual basis was how much administrative,
 9 sort of non-clinical time, would be realistic
 10 for them to commit. So there was a
 11 compensation scheme that varied depending on
 12 what was worked out with individual clinical
 13 chiefs.
 14 MR. BROWNE:
 15 Q. And again, maybe this is another--and I think
 16 you've sort of answered this previously.
 17 There was no sort of tracking of how much time
 18 a particular clinical chief would need to
 19 necessarily carry out administrative
 20 functions, was there?
 21 MR. TILLEY:
 22 A. That's--from my perspective, I think you're
 23 faced--I agree with you. Now Dr. Williams may
 24 say it was more rigorous than that.
 25 MR. BROWNE:

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1 Q. Okay.
 2 MR. TILLEY:
 3 A. I can tell you that we did have physicians who
 4 came to us from time to time to say that they
 5 were spending more hours in the clinical chief
 6 role than the compensation had provided, and
 7 it resulted in some renegotiation of the
 8 compensation.
 9 MR. BROWNE:
 10 Q. Was there also--just talking about in terms of
 11 the feedback from physicians about the
 12 clinical chief's position, was there any sort
 13 of feedback provided to you and your executive
 14 team about the fact that the program based
 15 management also seemed to create at least
 16 responsibilities but sort of perception of no
 17 control or lack of control?
 18 MR. TILLEY:
 19 A. Well, glad you raised it because back in 2000,
 20 when I left Worker's Compensation and came
 21 back to the Health Care Corporation of St.
 22 John's, one of the things I did was I met with
 23 leadership team for every program and I had
 24 made it clear to them that I wasn't wedded to
 25 the program based approach, because when I had

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1 left, it was still into its growing pains and
 2 there were people who were critical of it. I
 3 was quite surprised because not one person had
 4 indicated they want to go back to the old way.
 5 So it was onwards.
 6 MR. BROWNE:
 7 Q. Since the ER/PR issue has arisen, have you had
 8 any discussions with anybody, Dr. Williams or
 9 any of the clinical chiefs about sort of
 10 looking at the current program based
 11 management structure as it relates to say the
 12 lab medicine?
 13 MR. TILLEY:
 14 A. In fact, Dr. Williams had raised the point
 15 about whether there should be one person in
 16 charge, as opposed to having a joint
 17 leadership team. I'm not a strong supporter
 18 of that, to be quite honest with you, because
 19 the areas that are served by a physician and a
 20 technical people are very complex and if
 21 anything, we should be encouraging
 22 collaboration rather than having one person be
 23 able to make an override decision. Having
 24 said that, there are areas of the country that
 25 have just one person responsible and therefore

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1 either the pathologist or the program director
 2 report to one or the other. So it really
 3 comes down to a style of management.
 4 Eastern Health has many programs and this
 5 concept has been working satisfactorily, so to
 6 change it for one, I just--I'm not convinced
 7 that it's the right decision, but you know,
 8 it's still an acceptable organizational
 9 structure.
 10 MR. BROWNE:
 11 Q. Commissioner, I have another area of
 12 questioning. I can carry on or -
 13 THE COMMISSIONER:
 14 Q. It's getting at a break time. Why don't we
 15 adjourn until the morning?
 16 MR. BROWNE:
 17 Q. Okay.
 18 THE COMMISSIONER:
 19 Q. 9:30.
 20 MR. BROWNE:
 21 Q. Thank you.
 22 THE COMMISSIONER:
 23 Q. Thank you very much.
 24 (ADJOURNED AT 4:51 P.M.)

CERTIFICATE

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

Inquiry on Hormone Receptor Testing

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