COMMISSION OF INQUIRY
ON HORMONE RECEPTOR TESTING

BEFORE THE HONOURABLE JUSTICE CAMERON - COMMISSIONER

MAY 7, 2008

Appearances:

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

Rolf Pritchard/Megan Collins . . . . Her Majesty in Right of NL

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

Daniel Simmons . . . . . Eastern Regional Integrated
. . . . . Health Authority

Chesley Crosbie, Q.C./
Darlene Russell . . . . . Members of the Breast Cancer
. . . . . Testing Class Action
Mark Pike . . . . . NL Medical Association
Jennifer Newbury . . . . . Canadian Cancer Society (NL Division)
Stacey O'Dea . . . . . Central, Western and Labrador-Grenfell
Regional Integrated Health Authorities

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Certificate

THE COMMISSIONER:
Q. Please be seated. Good morning, Ms. Newbury.
MS. NEWBURY:
Q. Good morning, Mr. Abbott.
MR. JOHN ABBOTT, EXAMINATION BY MS. JENNIFER NEWBURY (CONT'D)
MS. NEWBURY:
Q. I just have one more set of questions for you this morning. You were testifying a few days ago about the existence of some friction between Eastern Health and Peter Dawe due to some comments made by him in the media. Do you recall that?
MR. ABBOTT:
A. Yes.
MS. NEWBURY:
Q. And how long, in your view, had that friction been present?
MR. ABBOTT:
A. I guess my take on it would have been in the fall of 2005.
MS. NEWBURY:
Q. Starting from about the fall of 2005.
MR. ABBOTT:
A. Yes.

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MS. NEWBURY:
Q. And continuing throughout the time that you were deputy minister?
MR. ABBOTT:
A. Possibly and I think, but it was and for me, it would have been sort of periodic where you could see just by the media stories and some conversations I might have had with Eastern Health where there was, you know, some tension, friction, what have you.
MS. NEWBURY:
Q. And you had indicated that you had spoken to Mr. Tilley or someone else at Eastern Health?
MR. ABBOTT:
A. Yes.
MS. NEWBURY:
Q. Asking if you're talking to Mr. Dawe, to perhaps to resolve some issues.
MR. ABBOTT:
A. Yes, and to make sure he was informed on what they were doing and the issues that seemed to be raised in the media.
MS. NEWBURY:
Q. Okay, did you or anyone else at the Department of Health ever make a point to consider

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whether there might be some validity to the continuing concerns that Mr. Dawe had and represented to the media?
MR. ABBOTT:
A. I didn't question, you know, from my perspective the validity of, you know, Mr. Dawe's comments or observations as reported in the media.
MS. NEWBURY:
Q. Uh-hm.
MR. ABBOTT:
A. My interest was that Eastern Health and the Canadian Cancer Society were, you know, were working together, sharing information perspectives, so that to avoid, say friction or misinformation in, both in the public and certainly for cancer patients, that the society would be, obviously, advocating an interest in their issues.
MS. NEWBURY:
Q. But I think you've indicated that the criticism did continue in the media. Are you aware of anyone at Eastern Health actually making a point to consider, listen, we've shared information with Mr. Dawe, we're still

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hearing some criticism in the media, maybe we should sit back and consider, maybe there's really something to what he's saying and we should perhaps re-evaluate some of the issues that he's raising in the media.
MR. ABBOTT:
A. I accept what you're saying and that's what I was, would want and to assume that Eastern Health, through conversation with Mr. Dawe, would in fact address those and at the end, there may be differences in views and different perspectives, but that was my intent to make sure that those, you know, the avenues of communication were kept as open as possible, so that was the intent there.
MS. NEWBURY:
Q. Okay, so you weren't, in effect, just saying to Mr. Tilley or whoever else you spoke to at Eastern Health, share your information with him, but you were also in effect saying why don't you listen to what Mr. Dawe is saying, he might have some valuable comments to make about Eastern Health's approach?
MR. ABBOTT:
A. Well I can't say, you know, to be fair that I

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said the latter, but it wasn't to preclude that, obviously.
MS. NEWBURY:
Q. It was just to engage in some sort of discussion, communication with him.
MR. ABBOTT:
A. Yes.
MS. NEWBURY:
Q. Thank you, those are all the questions I have. Thank you, Mr. Abbott.
THE COMMISSIONER:
Q. Thank you, Ms. Newbury. Ms. Russell?
MS. RUSSELL:
Q. I have no questions.
THE COMMISSIONER:
Q. No? Mr. Pritchard.
MR. JOHN ABBOTT, EXAMINATION BY MR. ROLF PRITCHARD
MR. PRITCHARD:
Q. Thank you, Commissioner. Good morning, Mr. Abbott.
MR. ABBOTT:
A. Good morning.
MR. PRITCHARD:
Q. Mr. Abbott, just before getting into substantive questions, there are a few things

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that you mentioned earlier in your evidence I wanted to ask you about just to clarify. One of the things was you mentioned earlier when you were going through your CV, that at various times you worked, I think for Treasury Board and you referred to your title then as assistant secretary?

MR. ABBOTT:

A. Yes.

MR. PRITCHARD:

Q. And how would that relate to a title like deputy minister or assistant deputy minister?

MR. ABBOTT:

A. It would be equivalent as an assistant deputy minister.

MR. PRITCHARD:

Q. Now you mentioned that you had an earlier period when you were with the Department of Health and Community Service and you had the title of associate deputy minister?

MR. ABBOTT:

A. Yes.

MR. PRITCHARD:

Q. Can you just explain what the difference between an associate deputy minister and an

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assistant deputy minister is?

MR. ABBOTT:

A. Associate deputy minister in the provincial government system would have the similar rank as deputy minister, but in generally assigned very specific range of programs and responsibilities within the department, reporting to a deputy minister and based on the Executive Council Act, there is only one deputy minister permitted or allowed per department. And in my case, at that time as associate deputy minister, I was on contract to the government to perform very specific functions in the Department of Health and Community Services at that time, but was given that title.

MR. PRITCHARD:

Q. Okay. Now, you were questioned at some length by a number of the counsel on the issue of the Hay report and looking back now over that period of time when you were implementing the recommendations of the Hay report, have you drawn any conclusions about whether or not the measures that were implemented had a negative impact on the quality of service that was

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provided, I guess by what was then the Health Care Corporation of St. John's or the quality of service or patient safety, any of those types of issues?

MR. ABBOTT:

A. On a general level or a macro level, my view and perception on that period and through the Hay review and the implementation of the report that we in fact improve the delivery of services, we improve the overall operation of the Health Care Corporation of St. John's and we're able to achieve this, in terms of some of the fiscal and financial objectives at the same time. The board was very conscious of making sure that the balance was right and the balance would be in favour of patient, improving patient care to the degree that that was possible. And what we tried to model ourselves on was some of the best in the country, and the Hay report in terms of the indicators that they used to help measure the Health Care Corporation's performance on a whole range of services was in terms of the leading, comparable leading facilities in the country, and that's what we tried to model

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ourselves on and I think we achieved that in large measure.

MR. PRITCHARD:

Q. One of the other themes that has run through some of the questions that we've heard has been and again, another event that you were involved in, the amalgamation of the various boards that ultimately formed Eastern Health and there's been a suggestion by some that perhaps it created an entity that was too big and because of that, it may have had some negative impacts, one of which ultimately may have been the impact on the IHC lab. Do you have any comment on that?

MR. ABBOTT:

A. Well there's no doubt that through the creation of the four health authorities in this province that it's a monumental task for any of the four boards to manage the delivery of services, whether it's acute care, long-term care, community services, but we had experience in how that could be done, certainly up in the Labrador region as to how you can integrate and should integrate services. So the concept I think certainly is

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sound, there was wide acceptance of the approach right throughout the health sector and any criticisms that I was aware of, initially for sure, were for some communities that might have seen their headquarters moved from one, say one two or city to another. An example being Clarenville did have a headquarters for the Peninsulas Health Care Corporation, obviously they would have lost that. Gander, Grand Falls, you know, Grand Falls was the headquarters, so we received some of those criticisms, but not on the fundamental premise and design. Now, if you look Eastern Health, you have a large geographic territory, you're going from, you know, Bonavista down to the tip of the Burin Peninsula to St. John's, so you have a large geographic area and that, in itself, is going to pose some operational challenges. You have sixty percent of the population now being covered and then you have a wide spread service delivery system. The leadership of Eastern Health, George as CEO, so it would be--let me step back, for the leadership in terms of the board, it was a new board drawn from

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the region, but yet, they are to look at the delivery, design and delivery of services on a regional basis, not on a subset or a community basis, so that required bringing new board members, many of whom had no association or connection or knowledge of health care, health and community service delivery, but were brought together for their particular knowledge or expertise to the board. So that was a challenge in and of itself. Then you brought an executive team together that were drawn from the different elements, whether it's acute care, which, say Mr. Tilley was, strongly his background, you have people who were from the community services side, some of their VPs or chief operating officers, as they were called, and then you also brought in long-term care, some of which had been connected to some of the health--previous health boards, but for Eastern Health as a whole, you would have brought all of that together. So, but the reality was that it was designed to support the delivery of all of those services, they were resourced to do that. One particular challenge, which was

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discussed the other day, was around the management positions and the Treasury Board sort of directive that if you're bringing all of these organizations together, you're not going to need as many managers and some in administrative support, so that had to be addressed. But when you're looking at front line delivery, resident care services, patient care services, none of those were to be affected in terms of reducing support and the intent, obviously, was to how you bring those together, integrate them and support them to deliver a better service overall. Now time will tell, you know, if that will happen. We looked at setting up an evaluation process to guide the implementation so that we could learn from that. Unfortunately that didn't get funded, but you know, there is a conscious recognition that that's a valuable thing to do and there had been previous evaluations done of the merger of the facilities and boards to bring together the Health Care Corporation of St. John's, and there's some literature on that and some findings which were, I think, insightful when you look back on it and we can

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use those to help guide the implementation of the new entities. But when you look at the basic services, as an example, the lab services and certainly lab services of St. John's, they would not have been materially affected by this integration because nothing really changed there. They continued to do the same work as they did before. Now the program management and who reported to whom may have changed, but the fundamental service would not have changed. And so, if I may, the conclusion I've drawn, it is not too big, it isn't a cause of any particular operational problems we have seen, including the lab, but it is--it's still in its infancy in reality.

We are three years into this and from an organization design, management and review and to make it optimal, it is going to take, you know, five, seven, ten years to know exactly what the final design, shall we say, should look like, and through that period we should see and expect to see a changes in the structure and the management and the management style. And that's what I would expect, you know, to continue.

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THE COMMISSIONER:
Q. Sorry, there's a question popping through my mind, excuse me, but I really want to pursue that.
MR. PRITCHARD:
Q. Absolutely.
THE COMMISSIONER:
Q. On the question of seeing over time management changes, is that your analysis that as the operation coalesces, one will see where changes in management are appropriate or was this started both at a board level and at a level of management, with the idea that these authorities would be moved into a particular style of management?
MR. ABBOTT:
A. Well I think if you can just sort of step back, in terms of the original decision, it was I would say politically driven, it was driven from the Cabinet to say, look, this is what we want to do. Now the question is what should it look like and that process started with the boards and the senior management teams. At this period, year three, as it were, they are still working through how they

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work together, how they integrate the management and management styles, how they integrate services and how they manage the overall enterprise. And you bring in, from that point of view, you bring in a leadership style that says how to do that. Over time you expect, look, we've arrived at a certain point in time, how do we build and improve on that, whether it would be the same leadership style or the same leaders and leadership style at that point, verses something new, that's not uncommon, that that would change and evolve over time. We're fortunate at this juncture that the fiscal challenges facing the health sector have diminished because of the government's overall fiscal position has improved, so there is ample opportunity now to, shall we say experiment with some of this, to identify where the gaps are and improve on that, and that will continue and should continue, you know, ad infinitum in that respect. So there's no one, you know, specific design that's going to, management design that's going to get you where you want to go and each of the authorities will be

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different in that regard. St. John's or I should say Eastern Health is quite different because it has a lot of provincial services that it manages on behalf of the whole, so it has an even greater challenge to balance all of those interests.
THE COMMISSIONER:
Q. Okay, just to make sure that I have the correct snapshot, what I hear you saying is that a decision was made by government, as indeed is government's role, to deliver health care in this manner, that is via these regional authorities. But in that process the government did not direct that a particular style of management be adopted or for that matter as I understood what you said the other day, from the perspective of a board, that a particular governance policy be adopted, rather government was saying you figure out depending on the kinds of services you have to deliver and the area over which you have to deliver it and what your particular challenges are, the appropriate way of delivering the service in your area, is that fair?
MR. ABBOTT:

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A. Yes, and there were, you know, some guidelines in terms of doing some strategic planning, start developing service plans, but it would be representative of your needs and your interests. If you go to Labrador, obviously you have a strong aboriginal community and presence and how you integrate their leadership into the board's governance and that was one of their particular challenges. The west coast was another, centra another and eastern another.
THE COMMISSIONER:
Q. And when I further heard you say, I think, once again correct me if I'm wrong, is that you would anticipate that in the process of-- in the case of Eastern Health, an organization which was made up of a large number of other organizations, all of whom would have come in--all of which would have come in with a particular style of management, which may not necessarily be the one that is now in operation, and that there therefore would have been a period of adjustment, both because they were coming at it from different directions and because when this larger organization

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began to coalesce, one would expect that you would identify a need perhaps to adjust your management styles in light of what you are now doing, having had some experience with it and perhaps discovering that certain things now are more easily managed in a different way than perhaps other things.

MR. ABBOTT:

A. Yes, I think that's -

THE COMMISSIONER:

Q. So natural growth process, as it were.

MR. ABBOTT:

A. Yes.

THE COMMISSIONER:

Q. All right, thank you. Sorry for interrupting.

MR. PRITCHARD:

Q. Thank you, Commissioner. Mr. Abbott, one of the things you were asked to comment on in your evidence was the size of Health and Community Services as a department in relation to government overall and we heard some statistics regarding what portion of the budget and those types of things. And some have suggested that perhaps part of the issue here is that Health and Community Services, as

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a department, is too large. Do you have any feelings on that issue?

MR. ABBOTT:

A. Well I was asked that question early in my tenure and then it periodically would come up and I know one of the things I had committed for myself was to sort of assess that as time went on. The conclusion I reached and continue to hold is that in fact, no, it wasn't too big, it wasn't unmanageable. We were resourced to address our responsibilities. Most organizations you can always do with, you know, more resources, more staff, but not that they were ever, shall we say, denied generally, I mean, there would be instances where you would certain approvals but they may not have materialized, but on the whole, we felt we--I say I felt certainly that we were well positioned to carry on our responsibilities. Again, it was how that gets--your department gets designed, how it gets managed, what your focuses are, ability to priorize, those kinds of things and that's something that I was able to bring to the department. So when we'd look at any

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particular issues, and there was a lot of activity for that period that I was there, a lot of new legislation, a lot of new programs, a lot of expansion of programs, lot of new funding initiatives for the health authorities, so there was a lot of activities. And we kept quite focused and the things that we should not be delivering or directly delivering, we devolved those to the health authorities so that we could stay focused, which is primarily on our legislative function, make sure the legislation is in place, the regulations are in place to guide the system, that the policies and program designs are in place. And that, as well, is a continuing and evolving work. All that being said, my job as deputy minister was to make sure that the minister was all, you know, his needs and requirements were met and that as the primary focus. And then we looked at then, as a department, what we had to do to deliver on that and to support him and the government overall in the health care delivery issues of the day.

MR. PRITCHARD:

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Q. Okay. I want to come and move forward a little bit now from the general to some specific events and talk to you a little bit about the events around July 19th, 20th and 21st of 2005. And you were quite candid when you were asked this a number of times, Mr. Abbott, about your recollections around that time. And I think you acknowledged that your memory might be fallible and that if it were put to you or it came out in evidence later that Carolyn Chaplin insisted that she had said or done a particular thing, that you didn't necessarily disagree with that, that her memory might indeed be better of those events. Is that a fair statement?

MR. ABBOTT:

A. Yes. And that, I think, came up on a number of occasions. I know that the people that I was working with around this file or this issue for the period were all people I know and worked--know reasonably well, worked well with and I trust, you know, their opinions and their judgments and their assessments for that period.

MR. PRITCHARD:

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Q. Okay. And during that period of time, particularly on July the 19th, we were shown a series of e-mails. And I would ask if we could have, I think it's Exhibit 0312? Okay. There were a series of e-mails that we were shown from this day. And as the day developed one of the things we saw was that some instructions were given by Robert Thompson. For example, here he says, "Please insure the department and the board include in their com plan the assurance that once a solution is set in motion, an evaluation will be done to determine the specific or systemic reasons." And this is at 10:51 in the morning. And comments to that effect. Now, the fact that Mr. Thompson makes the request and asks that Eastern Health, in this case, do some specific thing, does that mean necessarily that Eastern Health would do that or could they push back on that point?

MR. ABBOTT:

A. Well, you know, assuming it got communicated to them, and I'm assuming if it did, you know, from just, shall we say, hypothetically, it would be through the department to, one, to

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Eastern Health that the clerk's office and in this case Mr. Thompson wouldn't be communicating directly with the health authority, so it would be, this is what, from that perspective, this is what the clerk's office has suggested you do, and would like you to do. But if the authority thought that it didn't want to do it or couldn't do it, it would say that. It wouldn't be automatic that it would be done.

MR. PRITCHARD:

Q. Now, as we move through these e-mails we see later in the day, in the afternoon, I think, around about 2:00 or so that there is an e-mail from Carolyn Chaplin basically saying that no action is required at this time and that a briefing has been arranged with the health authority for the latter part of the week and will be in a better position for relevant briefing materials at that time. No public announcement will be forthcoming this week and there's a possibility the significance of any announcement will be minimized. Obviously that's referring to the briefing -

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MR. ABBOTT:

A. Yes.

MR. PRITCHARD:

Q. That, I guess, you were instrumental in arranging for a few days later, on the 21st?

MR. ABBOTT:

A. Yes.

MR. PRITCHARD:

Q. Would it be fair to say that that action of organizing that briefing basically causes the activity around this file, as it then exists, is to be focused in health and community services, that it, really, the activity moves to health and community services and the requirement for Cabinet Secretariat to be directly engaged probably recedes at this point?

MR. ABBOTT:

A. Yes, that would be fair enough.

MR. PRITCHARD:

Q. Okay. Now, just commenting sort of more generally about this event and some that arise later, you made the comment that in some respects this issue should not have come to the department as it did, that it might have

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been more appropriate if the management at Eastern Health had approached the board and then the chair, in turn, had approached the minister around the issue that there was going to be an announcement, that might normally have been the way the protocols would have worked. Is that correct?

MR. ABBOTT:

A. Yes. But if I just step back for a second?

MR. PRITCHARD:

Q. Yeah.

MR. ABBOTT:

A. Again, my take on this is this, there was an issue in the lab, there was issues around, you know, now, issue around disclosure and possibly a public reporting, which was certainly within the purview of Eastern Health to do. It didn't need to come to the department for anything in that regard. That being said, because the potential of it being a significant public issue, that the minister should be apprised that, in fact, that was a-- that they would be doing a public announcement and really for heads up. There was nothing for him to direct, ideally, or to even

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necessarily concur with, if you take it from really what this--where this issue was. And so in terms of formal, you know, and my response, it was certainly on the formally-- that this would happen in the absence of the board chair, which I believe may have been the case, you know, the CEO took it on himself to come directly to the minister through me. And you know, and that's fair enough.

MR. PRITCHARD:

Q. All right. So you have on this occasion, on earlier occasions characterized your perception of how that relationship should work?

MR. ABBOTT:

A. Yes.

MR. PRITCHARD:

Q. When you were being questioned about that earlier, you used the word, and I think it was reported in the media, that things got murky?

MR. ABBOTT:

A. Yes.

MR. PRITCHARD:

Q. Can you explain what you mean by that?

MR. ABBOTT:

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A. Well, once it came, once the issue sort of came over to the minister and sort of the department, we then got into a discussion, it really should have been a discussion around, "Minister, we have this issue. We're going out to report and we want to give you a heads up in case you have, you know, there's a question of you, but this is what we're doing." But then we got into a discussion, you know, discussions around how we were doing it and what's best to do, do we talk about a letter, for argument sake, or are we waiting for the physicians to advise the patients. Do we do it now, do we do it until results, test results are back. And then we were engaged in those sort of discussions and things just got pushed along and pushed along or delayed, as it were, and not for anything that the department was saying or doing. And that's sort of really what I was getting at here. And, you know, yes, we see, you know, numerous e-mails. You gave me the one here about, showed me the one there about Mr. Thompson talking to, you know, e-mailing to Mr. Cake. Well, really, that, why that happened, how it

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happened really shouldn't, it shouldn't have gotten there at any point, really. And it was done in the absence of really any information. So, you know, this ball starts to either grown or what have you. And consequently then that's sort of really was my take on that, it was then things were sort of getting a bit murky, other players were being involved, we had more communications people involved, we have the executive assistants involved, all these things. And really, it shouldn't have got to that stage. And then, of course, the concern later on as to media issues, again, and who is responding and how are they responding, because we didn't collectively, I would say, make the right decision at the right time, things started, evolved as they did, and I guess one of the reasons why we're here today.

MR. PRITCHARD:

Q. Okay. During the time that you were deputy minister the Regional Health Authorities Act had not come into force, it has been passed but had not come into force. And my understanding is that you had a significant

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role in that legislation, that's the follow-up piece on the actual amalgamation, I guess?

MR. ABBOTT:

A. Yes.

MR. PRITCHARD:

Q. What is your understanding of, I guess there was an approximately a two year or a greater delay in implementing that legislation?

MR. ABBOTT:

A. Yes.

MR. PRITCHARD:

Q. Do you have any understanding of why there was a delay?

MR. ABBOTT:

A. In terms of the drafting, which basically took place, I would say, summer and fall of 2005 and we worked hard on that and was ready for the, that fall session. But given the order, the paper and issues around the order paper that period, it was delayed then and introduced in the spring of 2006 and then passed. From then to actually a proclamation the issue then was around developing the one, the regulations to go with the legislation so that, and they were being worked on, didn't

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necessarily need, shall we say, two years to achieve that, but I do understand both when I was there and I guess since then in terms of the number of pieces of legislation, regulation that the department was involved in, as well as other demands on legislative council office, that the development of the regulations got delayed and until they were ready, they couldn't proclaim the legislation. But that being said, everybody was sort of, had that there as a guide in terms of as the issues were being moved forward.

MR. PRITCHARD:

Q. Okay. We've heard from several people, I think it was repeated in the questioning yesterday, that some claim that they had functioned throughout much of that period as though the Regional Health Authorities Act were, in fact, in force.

MR. ABBOTT:

A. Yes.

MR. PRITCHARD:

Q. Obviously it was not in force yet. The legislative regime at that time would have been the Hospitals Act?

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MR. ABBOTT:

A. Yes.

MR. PRITCHARD:

Q. And what I'd like to ask now is if you could comment on what actual statutory authority the minister has under the Hospitals Act, but the other piece of that question is, that's one side, the legislative authority, but as a practical matter what authority the minister has in situations like this?

MR. ABBOTT:

A. Well, if I may distinguish between the two pieces, was defining roles and responsibilities for the minister was probably maybe the greatest difference. The Hospitals Act spoke of what, you know, hospital boards and health boards of the day could and should do. It did speak about the minister through lieutenant governor in council appointing board members and board reporting to the minister, but there was no, as I recall it, there was no specific provision to allowing the minister, you know, specifically to direct. Now, from a practical perspective, that really wasn't a big issue for me in the

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sense that the minister was accountable to the house for the actions of a health board. The board chair would report, you know, to the minister and irrespective of a specific provision allowing him or her to direct a board, if there was an issue that the minister had concern about, then it was incumbent upon the minister to raise that with the board, board chair directly and seek a resolution. And as I said, over that period that did happen on a number of occasions. And conversely, the board chair was, the onus if there was an issue of concern, that he or she should report and bring that to the attention of the minister. And that was, I think, understood by everyone involved.

MR. PRITCHARD:

Q. Now, as we move on from the summer of 2005, one of the issues that you were asked about was the cabinet paper that you developed on the Herceptin therapy?

MR. ABBOTT:

A. Yes.

MR. PRITCHARD:

Q. And you made the remark that Mr. Tilley had

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phoned or phoned or communicated to you in some fashion -

MR. ABBOTT:

A. Yeah.

MR. PRITCHARD:

Q. - indicated that he was getting a lot of pressure from the doctors, the oncologists and wanted to be seen to be doing something. Can you just clarify, did he explain why this pressure was being exerted on him and what the concern of the doctors was?

MR. ABBOTT:

A. Well, he indicated to me that, you know, there was pressure being exerted by the oncologists to get approval for the use of this drug for early stages of breast cancer. The oncologists involved were aware of and I think had possibly attended a recent conference where the evidence had been presented on the efficacy of the drug for this purpose and felt that in the interest of patient care that this should be provided. They would have to let their patients know that this was, you know, a possibility, but in their case they could not prescribe it. And that, I think, put them in

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a very untenable position and that's, as I understood it at that time, that was sort of the position brought forward to Dr. Williams and Mr. Tilley. And again, Mr. Tilley felt that this was a very critical issue and he knew if it was to be resolved, he needed funding and funding would have to come from the department. As well, because of the nature of the drug and its purpose and the cost of it, there was another element which is sort of there's a sort of policy consideration here is do, in fact, we provide for and allow this to be administered in our facilities.

MR. PRITCHARD:

Q. As we were taken through the paper the other day, as we move through the paper we see that there are three options that are presented to cabinet, one is not to approve any new therapies or at least the ones that are discussed in the paper. The second, I think, was to approve the--I may the order of these mixed up. The second was to approve the Herceptin therapy and also a new therapy that was being dealt with for--or proposed for colorectal cancer?

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MR. ABBOTT:

A. Yes.

MR. PRITCHARD:

Q. And I think the final one was just to approve the Herceptin therapy, and that was the one ultimately that cabinet went with?

MR. ABBOTT:

A. And the second option was the third, you know, the third, you know, the third cancer indication, as well. And we, so we presented those options and they were considered by cabinet. They approved Herceptin at that time, but in the subsequent budget preparations and budget discussions leading into the 2006 budget funding was provided for the other drugs.

MR. PRITCHARD:

Q. And if we could see Exhibit 0128, please? Page 27, please? And this is a news release from the Province of Newfoundland and Labrador, the header on it is, "Budget '06." Just move down the page a bit and there's--this is--just bear with me a moment. Here we go. All right. This talks about the announcements in respect of cancer treatment

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that were part of the budget. And I believe in the section on preventing and treatment of cancer it makes reference to the initiative that you referred to?

MR. ABBOTT:

A. Yes.

MR. PRITCHARD:

Q. Okay. And that is the, I think, the second bullet from the bottom?

MR. ABBOTT:

A. Yes.

MR. PRITCHARD:

Q. And that's the 6.4 million to introduce three new cancer treatment therapies for colorectal cancer and a new treatment therapy for multiple myeloma?

MR. ABBOTT:

A. Yes.

MR. PRITCHARD:

Q. So ultimately both the Herceptin and also the colorectal cancer treatments were approved?

MR. ABBOTT:

A. Yes.

MR. PRITCHARD:

Q. Okay. If we could see document P-0401,

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please? Now, this was a document that was sent by Reg Coates to George Tilley. And the cover letter explains that he's being sent, he's sending a draft response for an ATIPP request. And you were questioned about why it would be necessary for the Department of Health and Community Services to solicit input from Eastern Health on a draft response that they were preparing. And I wasn't clear what the issue there was. Are you able to clarify that for us?

MR. ABBOTT:

A. Well, I guess there's two aspects, one--or three, really. One is just to let them know that they had the request. Two is that it was related to our transparency in terms of dealing with the health authorities and vice versa. And the third is that because of the nature of the correspondence or the request, both for what they--communication between both Eastern Health and ourselves, that we, for greater certainty we felt, you know, that as a matter of course that we would go to Eastern Health and say, "Look, we had this request. You review your records, we're reviewing ours,

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so that we capture all the records." And that was, that would be the purpose of doing that.

MR. PRITCHARD:

Q. And one of the documents that we were shown that was part of this package, I believe, was the 20th of July, 2005 briefing note that Eastern Health prepared. Typically would the department solicit the input of a third party if that third party's documents were included in the disclosure?

MR. ABBOTT:

A. Yes.

MR. PRITCHARD:

Q. Okay. Moving forward to in 2006. On November 23rd of 2006 you described a meeting that took place in a boardroom around the House of Assembly?

MR. ABBOTT:

A. Yes.

MR. PRITCHARD:

Q. And you attended that meeting along with other officials from the department; Mr. Tilley was there along with officials from Eastern Health. And at that time you were presented with a page with data on it regarding the work

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that Eastern Health had done on ER/PR?

MR. ABBOTT:

A. Yes.

MR. PRITCHARD:

Q. And that material was similar, I guess, to the numbers that were in the August 18th, 2006 briefing note?

MR. ABBOTT:

A. Yeah. Some refinements on those, but, yes.

MR. PRITCHARD:

Q. Right. And so you're presented with that material by Eastern Health. And are they presenting that in the context of here's this material, we're seeking direction or they're just presenting that material as an update or a briefing?

MR. ABBOTT:

A. I think it was primarily as an update and really that now they're at the, you know, concluding stage of the retesting and the review of the data and that they were now in a position to report publicly, and was really to advise the minister of that. There was no discussion on, now, minister, what do we do or where do we go. It was just that.

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MR. PRITCHARD:

Q. So in many respects the way the information flowed in that particular instance, it was quite consistent with that protocol that you were discussing earlier in your evidence about the board should be reporting these things or it should come up from Eastern Health perhaps through the board, to the minister, to update him on what's happening with this?

MR. ABBOTT:

A. Yes. Again, the board chair was not involved, but given the nature of it, that was not, not a big surprise to us.

MR. PRITCHARD:

Q. And you stated on a number of occasions in respect of the meeting of November 23rd and the subsequent briefing provided by Eastern Health on December 11th that you were not aware until the following May that they had not disclosed the information which they had shared on November 23rd?

MR. ABBOTT:

A. Yes.

MR. PRITCHARD:

Q. Now, you made the comment that you had

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understood that notwithstanding they were going to present this information, that there was not going to be any discussion of terms like error rates or conversions. And I think you were asked a question, it might have been by Ms. Newbury yesterday, but you had gleaned that information from what source?

MR. ABBOTT:

A. I'm not sure if I understand.

MR. PRITCHARD:

Q. The fact that they weren't going to talk about things like conversion rates or error rates, that wasn't actually discussed at the meeting, I think?

MR. ABBOTT:

A. No. Again, it was around the data, here it is. I do recall, and around the time of the press briefing in December 11th that reference, you know, that error rates weren't even really being discussed, conversion rates, for whatever reason, were not going to be discussed, as well. That was couched in, you know, legal advice, advice of our legal counsel, those kinds of things, that we wouldn't be speaking on those matters.

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MR. PRITCHARD:
Q. Right.
MR. ABBOTT:
A. I didn't think any more, other than that. If the data is there, the data is there and that was -
MR. PRITCHARD:
Q. Other than that, you thought all the numbers would be brought out?
MR. ABBOTT:
A. Yes.
MR. PRITCHARD:
Q. Okay. Now moving into 2007, you were asked on a number of occasions about when you became aware that all the patients had not been contacted, and I think your evidence was that that's really an awareness that came after you left the position of deputy minister?
MR. ABBOTT:
A. Yes.
MR. PRITCHARD:
Q. And in terms of how you got--not how you became aware that all patients had not been contacted, but in terms of your belief that all the patients had in fact been contacted,

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what is the source of that belief?
MR. ABBOTT:
A. Well, it would be through, as I said, the various briefing materials that we would have developed, based on information provided by Eastern Health and any conversations I would have had with, say, George Tilley, not that we spoke a lot, you know, and did I question him at any point, "are you sure that all patients have been contacted?" but that if the issue ever came up, it was always said "yeah, we've contacted all the patients." He's been advised all patients have been contacted. We talked yesterday about some correspondence to "The Globe and Mail" when we talk about all or every, so it was consistent there, recognizing that from time to time there was a report through the media that somebody had come forward to say "well, I hadn't been contacted. I wasn't informed," those kinds of things, but those individual cases, we were advised, were followed up and a reasonable explanation provided as to why what they said was reported, say, in the media.
MR. PRITCHARD:

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Q. You mentioned obviously that Mr. Tilley, you had conversations with Mr. Tilley. You said the other source of information for you on this point would have been briefing notes.
MR. ABBOTT:
A. Yes.
MR. PRITCHARD:
Q. And the information in the briefing notes would have come from where?
MR. ABBOTT:
A. Well, Eastern Health, and we were, you know, totally reliant on their information for those briefing notes to provide to the minister.
MR. PRITCHARD:
Q. Mr. Abbott, just sort of looking back over the last few years, you know, sort of pulling together your time when you were with the Board and you were with the department, and of course, now you're in private life, first of all, in terms of your transition from being chair of the Board to being deputy minister, do you feel that that transition evoked any possibility there might be a conflict of interest for you or how you conducted yourself?

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MR. ABBOTT:
A. Well, you know, I've sort of thought of that, when it got raised here, and I certainly didn't feel, at the time, and never really registered consciously with me, and when I think about it, in terms of, you know, through these past couple of days, I believe in terms of my role as chair, it was very specific, my roles and responsibilities. Obviously on this issue of issues in the lab, I wasn't apprised of those. Coming into the department, you know, take on a different role and in terms of looking at issues and then when ER/PR comes forward and interestingly enough, you know, even up until the questions were asked of me, I never really made any particular connection between "look, I was at Eastern Health as chair and should I have known about this?" and now I'm at the department, and is that going to influence what I'm doing or saying or to advising the minister or in any conversations with Mr. Tilley, and interestingly enough, I don't know--there was only one person that I recall ever saying to me, "now, you know, John, do you realize you were--you know, sort

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of chair at the time and now look, you know, where we are or what we're doing." But it was--you know, that was sort of said in jest, I think, at the time. But in terms of my approach, it was obviously to be as objective as possible there and never felt that I should excuse myself from any discussions on this because of my previous role.

MR. PRITCHARD:

Q. And what about in your current role?

MR. ABBOTT:

A. In terms of consulting?

MR. PRITCHARD:

Q. As a consultant.

MR. ABBOTT:

A. Oh yeah, well, again, the work I am doing for Eastern Health at present is quite removed from this issue, but in terms of doing that, I think I'm being asked to do it because of my knowledge and experience for that particular issue that I'm working with with Eastern Health. And again, there's no--there's been no discussions ever held around this issue, in terms of my current contract with them.

MR. PRITCHARD:

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Q. All right, and my last question is kind of a two-part question. So looking back again, do you feel there's anything that you did wrong, and with a view to the future that you might be able to help us out or suggest what we might do?

MR. ABBOTT:

A. Well again, looking back at this issue, in terms of my role and the role I played, I felt, at the time, I was doing what I needed to do to make sure the minister was informed, and the lines of communication between the department and Eastern Health were kept open. We had a very positive and transparent, I think, working relationship. Obviously some facts were not necessarily relayed to me and whether or not that would have influenced what I did at the time, I'm not sure. But if there was anything I--when I look back, what I know I could have done and probably should have done was ask more questions, and through that, things may have become a bit clearer, a bit sharper, and some of the issues that we are now grappling with could have been presented or addressed at that time. So that, for me,

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would be the thing that I believe I, you know, could have done and I would suggest others would be in the same boat.

In terms of looking forward, when you look at the crux of this issue, which is with respect to patients, and we--no matter where we are in health care or even outside health care, we always have to make sure that we keep the patient's interest foremost in any of our actions. I think what happened here is that that's where we started, but overtime, the patient interest got overridden by other factors and other considerations and we really need, at any point, to make sure that the patient interest are clearly addressed first and foremost, and how best to do that, in my view, is that we--in essence, we'll probably have to prescribe that in law so that when we have adverse events, and certainly adverse events affecting more than one patient, that there has to be some very immediate reporting, both disclosure to the patient and possibly to the public, and there are examples, whether we look at what we do in the public health world, very clear on reporting relationships and

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roles and responsibilities, and it is kept out of the hands of the administrator and is kept out of the hands of the politician or the minister.

So if there's a lesson learned that that's let's not confuse a patient issue with administration or political considerations. So that's something that certainly we need to focus on. There are other jurisdictions, I know in Canada, that are looking at this. There are a number of states in the United States that have legislation that addresses reporting on adverse events, and I think we need to move there and move there quickly.

And if you look at it, in terms of the lab and ER/PR, those who review, deliver the service, review the service, stop the service, renew the service, are all in the one organization. So there isn't an oversight or a regulator there. But when you look at it from a public health perspective, we do have that capacity right now, and now how do you define an adverse event in the lab and the relationship to a public health event, obviously there needs to be further, in my

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view, you know, further analysis and discussion on that. But when we are seeing that as affecting more than--you know, in this case, we were talking about hundreds, which is you're crossing over into a larger public health issue and if we hadn't uncovered this, obviously we'd be talking much larger numbers.

So there has to be some mechanism to--so that the, in this case, the director of the lab, once discovering this issue, he or she can report to a third body to say "this is what we discovered" and that third body will have to say "continue the service, but keep us informed" or "stop the service until we figure out what the issue was," and I think that's some of the way forward here. But that being said, that the patients, individually and collectively, who have been affected are notified and there is a very--should be a standard protocol again and a mechanism with time frames around that, so that we don't repeat this. And I suspect we will repeat it, if we don't really, you know, focus on some very specific and concrete mechanisms.

MR. PRITCHARD:

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Q. Mr. Abbott, those are all my questions. Thank you very much. Commission counsel may have some other questions for you. Thank you.

THE COMMISSIONER:

Q. Is there anything arising, Mr. Coffey?

MR. JOHN ABBOTT, RE-EXAMINATION BY BERNARD COFFEY, Q.C.

COFFEY, Q.C.:

Q. Yes, I do have--thank you. Mr. Abbott, I'm just going to, if I could, your thought just now, your concluding remarks, if I just could ask you, ask you a little bit if you could to, if possible, elaborate a bit upon them because I relate what I've heard you say just now back to a comment that the Commissioner had made to you earlier on about, you know, you're a person who was well situate, you know, to provide some insight.

In the public health field now, just referring to that, and how does that work, your understanding of how that works?

MR. ABBOTT:

A. Well, you know, we have specific legislation on public health. The chief medical officer of health has very, you know, very specific and prescribed powers and duties and

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responsibilities and they are done independent of the minister and of the deputy minister, shall we say, even though that person reports--you know, resides in the department, reports to me and then to the minister, but interestingly enough, I was reviewing that just recently and where the chief medical officer can report and advise me or the minister, in fact, that's what she's just done, report to the public.

So the--and it's for very good reason. Sometimes it's just timeliness, but it's--you know, shall we say, a clinical issue and it shouldn't involve me as the chief administrator for the department or the minister in that regard. Obviously the minister will have to--is still accountable for that function and will report and respond to questions in the House or the media or what have you. So you know, and it works and there's--and it is recognized and I mean, public health legislation is some of the oldest that we have in North America and in the health field and one that continues to be, you know, revised and addresses things on a

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fairly timely basis.

COFFEY, Q.C.:

Q. I take it that's because, from your perspective, that's because there's a legislative power and responsibility -

MR. ABBOTT:

A. Yes.

COFFEY, Q.C.:

Q. - assigned to that sort of an office.

MR. ABBOTT:

A. Very specific.

COFFEY, Q.C.:

Q. Very specific, and -

MR. ABBOTT:

A. And more importantly, I think, is that it's also recognized within society and within government that that role needs to be protected, as it were, and--or structured that way and protected.

COFFEY, Q.C.:

Q. So as to avoid, if at all possible, humanly possible, I take it, other interests perhaps intervening or interceding?

MR. ABBOTT:

A. But it's focused on--you know, which is

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focused on the health of the population, not other interests, whatever they may be.

COFFEY, Q.C.:

Q. Yes, and that's--and in this context, and I appreciate you've said that in relation to public health officer. Here you did refer just now in your answer to, from your perspective, looking back on it perhaps, as time went on, in relation to ER/PR, other interests may have overridden, I believe -

MR. ABBOTT:

A. Yes.

COFFEY, Q.C.:

Q. - patient interests. What other interests occur to you?

MR. ABBOTT:

A. Well, you know, and I want to be careful how I phrase this.

COFFEY, Q.C.:

Q. Sure.

MR. ABBOTT:

A. But in terms of the position and saying we--you know, one way I've interpreted was well, we sort of know best in how to advise our patients. That we don't have all the

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information, so we can't report. That we got to be conscious, and you obviously saw e-mails, on how we're perceived in the media. We've obviously got to deal with Canadian Cancer Society and we got to make sure we got their interest, or not, shall we say, to consider. Then we've got to talk about the minister and we've got to talk about, you know, did the Premier know or not know, and all of that. To me, totally not required.

My biggest worry here would be, after all is said and done, that--and we come up with some solutions here, but if at the end of the day, there's a choice that a minister of the Crown can direct whether or not there's patient disclosure or not, or public reporting or not, on a significant adverse event, that the pressure to not do it at some single point in time is real, and my point being is after all of this, I can see the government of the day saying "we have now, through a Commission's report, we're implementing all the recommendations. Problem solved." Adverse event, the day an election is called, and "oh, I thought we had it all solved.

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Well, this is not the day we're going to go out and announce this. We'll wait." The pressure on the CEO that day will be "can you just hold off?" and it should never--that discussion should never be held and we have to avoid that.

COFFEY, Q.C.:

Q. And one possible mechanism of doing that would be analogous to the public health approach?

MR. ABBOTT:

A. Yes.

COFFEY, Q.C.:

Q. From your perspective.

MR. ABBOTT:

A. I mean, you look at this situation that came to the minister. Now the minister could have, on the day, on July 21st, said to Mr. Tilley "I want you tomorrow to have letters," shall we say, "in the mail."

COFFEY, Q.C.:

Q. Yeah.

MR. ABBOTT:

A. But he shouldn't be put in the position to have to even suggest that.

COFFEY, Q.C.:

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Q. Okay, from your perspective, it would make it, to use the word you have used, certainly more transparent in the sense of if the legislature has spoken on that in the past, you know, at a particular point in time, then unless that legislation is changed, everybody involves knows what's required of him or her at the time.

MR. ABBOTT:

A. Yes.

COFFEY, Q.C.:

Q. Okay. On that point, because I did have something that I didn't wish to raise with you. Here it is. You were asked about--by Mr. Simmons. It arose in response to a question Mr. Simmons had asked, and you said that there was nothing in legislation that, from your perspective, and I'm paraphrasing your answer, that addressed the issue of whether patients had to be notified, as far as you could tell.

MR. ABBOTT:

A. Yes.

COFFEY, Q.C.:

Q. Okay. On that point, are you familiar with or

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were you aware of what is Section 31 of the Access to Information and Protection of Privacy Act?

MR. ABBOTT:

A. Well, I'm familiar with the Act, but read the provision -

COFFEY, Q.C.:

Q. Okay, I'll read you, okay.

MR. ABBOTT:

A. Yes.

COFFEY, Q.C.:

Q. If I could, to assist you, and I apologize, Commissioner, it hasn't been yet entered as an exhibit. We have some legislation here as exhibits. This one, I don't believe, has been, although I will attend to that, remedying that.

It says "whether or not a request for access is made, the head of a public body shall, without delay, disclose to" and it says "either the public, to an affected group of people, or to an applicant." So in this context, it would be "without delay, disclose to the public, to an affected group of people," I would think is probably the more

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germane here, in terms of patient care which you focused on. "Disclose to an affected group of people information about a risk of significant harm to the health or safety of a group of people, the disclosure of which is clearly in the public interest."

MR. ABBOTT:

A. Okay.

COFFEY, Q.C.:

Q. So I would just paraphrase it entirely in terms of focusing specifically here, as opposed to kind of a pandemic sort of situation at large. Here it would be, "whether or not a request for access is made," in other words, no matter what's going on really, "the head of a public body shall, without delay, disclose to an affected group of people information about a risk of significant harm to the health or safety of a group of people, the disclosure of which is clearly in the public interest," and it goes on to say, subsection two says "subsection one applies notwithstanding a provision of this Act," any provision.

And it goes on to say, sub three, "before

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disclosing information under subsection one, the head of a public body shall, where practicable, notify a third party to whom the information relates." I don't know if that would be applicable here. And sub four says, "where it is not practicable to comply with subsection three," which is notification of a third party to whom the information relates, "the head of the public body shall mail a notice of disclosure in the form set by the minister responsible for this Act to the last known address of the third party."

MR. ABBOTT:

A. Okay.

COFFEY, Q.C.:

Q. Now I don't know--and I haven't really -

THE COMMISSIONER:

Q. Do you have that in writing there, Mr. Coffey?

COFFEY, Q.C.:

Q. Yes, I can provide that to him.

THE COMMISSIONER:

Q. Could you just show it to the witness?

COFFEY, Q.C.:

Q. Yes, it's difficult to follow.

THE COMMISSIONER:

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Q. I have to see things in writing, if people are telling me -

COFFEY, Q.C.:

Q. If you would, please, just take your time.

MR. ABBOTT:

A. Yes. No, I'm familiar with the Act, you know, and I--but this is the first time that this has been brought forward in this context, you know, in terms around this issue. So you've taken it at face value and assuming this is all, you know, this section was proclaimed, then it may be, you know, obviously part of both the solution, but also, you know, part of something that could and should have been done.

COFFEY, Q.C.:

Q. And I appreciate -

MR. ABBOTT:

A. And the degree that this applies to the health sector, again, I'm not sure exactly how that was intended to apply.

COFFEY, Q.C.:

Q. And I appreciate that, sir, and of course, I'm not asking you for a legal opinion, but just to--in fact, you just responded to my point,

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which was to ask you--to bring it to your attention and ask, if it had ever come up while you were deputy minister, and you've just answered that saying no.

MR. ABBOTT:

A. No.

COFFEY, Q.C.:

Q. It wasn't brought to your attention. Commissioner, if that--okay, so -

THE COMMISSIONER:

Q. Yes. No, I just wanted to make sure the witness had actually the paper in front of him.

COFFEY, Q.C.:

Q. Thank you. Mr. Simmons did ask you as well--he showed you what is Exhibit P-0701. If we could, please, just page six? I'm sorry, I got the wrong page. Yes, this is--just a moment, please. No, it's actually--it's on page six as well. It's this chart. Remember this?

MR. ABBOTT:

A. Yes.

COFFEY, Q.C.:

Q. And if we could just blow that up, please.

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Mr. Simmons had--thank you. This is the one involving information systems expenses and administrative expenses and the comparison to the Canadian average, Newfoundland in 2002, '03 and then Eastern Health, as it was then, current and Eastern Health proposal. And you pointed out to Mr. Simmons in answering him that the information systems expense is a percentage of overall expenditure by the health authority. Certainly, Eastern Health was, I think, 50 percent--well, depending on how you do the calculation, certainly only three quarters or just over half of the canadian average.

MR. ABBOTT:

A. Yes.

COFFEY, Q.C.:

Q. On that point, in terms of information systems because you also had been chair of the board of the Health Care Corporation, during the time you were chair of the board, were shortcomings in information management systems brought to your attention?

MR. ABBOTT:

A. Yes, both in terms of information management

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and the systems to help you achieve better information management, yes. So, that was a fairly theme and discussion that I was aware of and the board would have been apprised of.

COFFEY, Q.C.:

Q. And to follow up just a little bit further on that, I take it as deputy minister, it got raised at times too.

MR. ABBOTT:

A. Yes, it was one of the priorities as a department that we saw that we knew to invest in the health authorities in that area.

COFFEY, Q.C.:

Q. And on that point, at the stage where there began to be some suggestion in the media that perhaps some people had been missed and -

MR. ABBOTT:

A. Yes.

COFFEY, Q.C.:

Q. - you've explained it. Eastern Health always, from your perspective, had an explanation for the exception.

MR. ABBOTT:

A. Yes.

COFFEY, Q.C.:

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Q. Did you ever relate the two?

MR. ABBOTT:

A. No.

COFFEY, Q.C.:

Q. Okay, never. What you understood were probably larger systemic problems with information management to the actual issue here in terms of patients.

MR. ABBOTT:

A. No, I understand, yes.

COFFEY, Q.C.:

Q. You didn't -

MR. ABBOTT:

A. No.

COFFEY, Q.C.:

Q. Okay. Now, questions, one or two questions in relation to something that Mr. Simmons raised and, in fact, Mr. Pritchard. They ask you about, in different ways, about conversion rates, error rate and the fact that you had understood in November of '06 that Eastern Health would not talk about either, error rate or conversion rate during the press conference.

MR. ABBOTT:

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A. Well, not in that November briefing in terms of rates.
COFFEY, Q.C.:
Q. Okay. Is that--I'm sorry--between then, the briefing and the actual media -
MR. ABBOTT:
A. Yes.
COFFEY, Q.C.:
Q. - briefing, you acquired the understanding during that intervening timeframe.
MR. ABBOTT:
A. Yes.
COFFEY, Q.C.:
Q. Okay. But you also understood that though or always thought, until May of '07 that all the numbers would be given out.
MR. ABBOTT:
A. Yes.
COFFEY, Q.C.:
Q. Just on that point, you had understood the word conversion meant change, change in result?
MR. ABBOTT:
A. Change in--conversion for me was conversion in their, shall we say, ER/PR -

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COFFEY, Q.C.:
Q. Stats from negative to positive.
MR. ABBOTT:
A. - from negative to positive or vice versa for the matter, yes.
COFFEY, Q.C.:
Q. Okay. And if we could bring up, please, Exhibit P-0126. I apologize, P-0125, I apologize, page 42. And this is, of course, is that one pager that you were given on May 23. Just as a matter of the approach at the time and I appreciate you got this on November 23 and during the following two and a half weeks you understood that they wouldn't talk about conversion rates, but the numbers would be given, really, just looking at the is page, Mr. Abbott, if you just add the 213 change in results, 213 and change in results, 104. So, that's the total number of change in results is 317.
MR. ABBOTT:
A. Yes.
COFFEY, Q.C.:
Q. And divided by the total number of results obtained which is 763, that is a conversion

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rate.
MR. ABBOTT:
A. Right.
COFFEY, Q.C.:
Q. In terms of that -
MR. ABBOTT:
A. The simple math, yes.
COFFEY, Q.C.:
Q. And when you acquire the understanding that Eastern Health was going to avoid talking about conversion rates -
MR. ABBOTT:
A. Yes.
COFFEY, Q.C.:
Q. - I take it you didn't address your mind to the fact that well, why would you avoid talking about it if -
MR. ABBOTT:
A. No, actually I--that's why I'm sort of mystified and still am in that regard as to why that was an issue in and of itself. Now, what the concern and what it denoted and in terms of how that got interpreted as error versus conversion because that word was -
COFFEY, Q.C.:

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Q. Oh yes.
MR. ABBOTT:
A. - floating around. So, without talking to anybody, I sort of, pulled those pieces together and said, well--and that's obviously within the purview of Eastern Health and with their legal counsel, for whatever reason, they are suggesting they should not talk about it, then I assume that was valid.
COFFEY, Q.C.:
Q. Is and also Mr. Simmons had asked or pointed out to you that back in the week of October 2nd, during that week, I think it's probably October 5th, Dr. Williams is quoted in a newspaper story, The Telegram story, ten percent of all the tests -
MR. ABBOTT:
A. Yes.
COFFEY, Q.C.:
Q. - were expected, perhaps, to change or to convert.
MR. ABBOTT:
A. Yes.
COFFEY, Q.C.:
Q. I don't remember the exact quote attributed

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there, but it's there to Dr. Williams. Bearing that in mind that Dr. Williams had been out doing that in October of' 05, again in relation to the same issue about, well, if he's going to talk about percentages back in '05, like in the fall of '05, what's the problem with talking about them in December of '06?

MR. ABBOTT:

A. Right, now again I didn't pull that forward and I don't think it was brought forward in the discussion.

COFFEY, Q.C.:

Q. Okay, and you didn't relate the two in any way -

MR. ABBOTT:

A. No. I mean, I understood the numbers but there was no discussion on that point.

COFFEY, Q.C.:

Q. Now you were asked by Ms. Newbury some questions about Mr. Dawe and at one point in the response and I appreciate you weren't--I gather you weren't applying to Mr. Dawe that you used the word "misinformation". Did you ever have any reason to understand there had

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been any misinformation given by Mr. Dawe in relation to ER/PR?

MR. ABBOTT:

A. No, again, it is how it was presented or come across in the media and knowing how, irrespective of what one would say what the media was reporting, obviously it was quite often it was quite different, but it's out there and sometimes it is referred to as misinformation but I don't--I wasn't ascribing that, obviously to him or anybody else.

COFFEY, Q.C.:

Q. You also in response to a question Mr. Pritchard had asked about looking back on it from your perspective whether or not any of the amalgamation changes had in any way perhaps potentially contributed to this problem and on that point, you said that fundamental clinical lab services did not change, at least according to your understanding of it. Would you have understood that for any given number of front line technologists, like people actually doing the work, as it were, that there would be after the amalgamation fewer managers? The

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ratio of managers kind of -

MR. ABBOTT:

A. For the lab itself?

COFFEY, Q.C.:

Q. Yes.

MR. ABBOTT:

A. No.

COFFEY, Q.C.:

Q. Well did you understand that there--where were the manager's positions not being refilled.

MR. ABBOTT:

A. It was more at, what I would call the senior management level at the executive and senior management level where you were bringing equivalent services, whether a corporate services or a delivery services together, and that's why on the lab side, I guess I work on the premise that there was really no, no change there, we weren't bringing different labs together because the St. John's labs were there.

COFFEY, Q.C.:

Q. And I appreciate that. Were you aware that Mr. Dyer was in fact really kind of the one level up from the actual technologist, Barry

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Dyer ended up having to split his time between the two major pathology labs in St. John's?

MR. ABBOTT:

A. No, I'm not familiar with the individual.

COFFEY, Q.C.:

Q. Would you have understood that if a front line manager, I'll put it in that way, was tasked with managing more individuals and more locations than he or she had before, that that particular individual probably would have less time to attend to all the tasks required of him?

MR. ABBOTT:

A. Well it's hard to answer that because, again, without really knowing specifically what he or she was doing and what support was provided, if it was--so and that happens quite often, but how you manage and your roles and responsibilities, you know, should also change. But if it was just a straight forward, you know, you were managing six and now you're managing ten, for example, and no other change, then obviously your time gets diluted and you can't, obviously, function at the same level as before.

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COFFEY, Q.C.:
Q. If we could, please, on that point, if ensuring that quality control procedures are in place or quality assurance procedures are in place and/or are being followed, you know, as a consultant and a person with your experience, would you have understood that those sorts of activities and all other things being equal, because there's only so many hours in the day -
MR. ABBOTT:
A. Right.
COFFEY, Q.C.:
Q. - might tend to be dealt with as second priorities.
MR. ABBOTT:
A. I would say that tends to happen right across the board.
COFFEY, Q.C.:
Q. Yes.
THE COMMISSIONER:
Q. So, if people who are dealing with quality control are also dealing with other--have other tasks.
MR. ABBOTT:

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A. Yes.
THE COMMISSIONER:
Q. And it's a long day and you're pressed for time. The thing that will get pushed aside is likely to be quality control?
MR. ABBOTT:
A. Yes, because the operational imperative is to get that -
THE COMMISSIONER:
Q. The first demand.
MR. ABBOTT:
A. - done, get the tests done. Whether we get the reports done, what have you, how we do it and how we should do it and how we approve on it, then, unfortunately does get pushed aside.
COFFEY, Q.C.:
Q. If I could, please, P-0312, page 5, I believe.
MR. ABBOTT:
A. Yes.
COFFEY, Q.C.:
Q. Mr. Pritchard had asked you, had referred you to this particular e-mail. And he suggested to you that, you know, reading that e-mail, the text of it, the practical effect then of such an e-mail would be that, as a result of

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it, that the focus for addressing this matter would have moved from the cabinet secretariat onto the Department of Health?
MR. ABBOTT:
A. Well, I never saw that it had moved to the cabinet secretariat in the first instance, other than, sort of, a heads up. But basically what Carolyn Chaplin is saying there is, despite what I just told you earlier, really, we're dealing with it here in the department and we'll let you know, if need be. That's, in essence, how I would summarize that. Because again, reference to no public announcement, that, you know, is, as I said earlier, that's well ahead of where I would have been because I wouldn't have even known that we were even talking about that at that point.
COFFEY, Q.C.:
Q. And did you ever take up with anyone, because you would have read this, where the notion of the significance of any announcement will be minimized, what the basis for that was?
MR. ABBOTT:
A. No, I'm pretty well sure I didn't in the

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context that there was assumption there that something was imminent and I didn't know, other than we had an issue to be briefed on. I mean, that's all I can, sort of, conclude on that.
COFFEY, Q.C.:
Q. Okay. In relation to this matter, in a general way you were asked by Mr. Pritchard about your views as to whether, how this, I suppose from a theoretical perspective, should have, or from you perspective, probably for the benefit of all concerned, should have unfolded, in terms of how was brought into the picture, as it were.
MR. ABBOTT:
A. Yes.
COFFEY, Q.C.:
Q. And you said that perhaps the e-mail that Mr. Cake generated that morning with a phone call that generated the e-mail from Mr. Cake -
MR. ABBOTT:
A. Yes.
COFFEY, Q.C.:
Q. - really shouldn't have gone there at that point. That is gone from Ms. Chaplin to Mr.

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Cake.
MR. ABBOTT:
A. Yes.
COFFEY, Q.C.:
Q. And how does that relate then to what you understood was the desire by the government of the day that the cabinet secretariat and the premier's office be apprised of anything of potentially pressing public interest.
MR. ABBOTT:
A. Right.
COFFEY, Q.C.:
Q. How do you -
MR. ABBOTT:
A. And we're talking, you know, a couple of days here, really. A call was made by the CEO to the department, we have an issue, we are coming in to brief. And I'm saying well, you know, and let's--so, nothing needs to happen, no notification internally until we know, really, the substance of the issue, what's at play and coming from that, you know, make a determination as to who should be involved or not at that point. So, what I'm saying is, in this case, Ms. Chaplin took it on herself to,

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from whatever she understood to raise that with the cabinet secretariat. I certainly wasn't there because Mr. Tilley had said, we agreed, he's coming in within two or three days to tell us what the issue.
COFFEY, Q.C.:
Q. So, but you understood Ms. Chaplin had done so pursuant to an understanding, certainly, throughout government that -
MR. ABBOTT:
A. Yes, that was the -
COFFEY, Q.C.:
Q. - communications people, that they would alert the premier's office and the cabinet secretariat.
MR. ABBOTT:
A. Yes, and how you apply that direction.
THE COMMISSIONER:
Q. Do I take it then, what you're saying is you're not suggesting that Ms. Chaplin's role did not include--too many "not"s in there--Ms. Chaplin's role included taking the course of action of giving the premier's office or the cabinet secretariat a heads up.
MR. ABBOTT:

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A. Yes.
THE COMMISSIONER:
Q. I read your statement in respect of her conduct to say it was your judgment that you just didn't have the information to be able to move it forward at that point. And until you got further information, you're not in a position to determine whether or not it's the type of incident that needs to go to that level.
MR. ABBOTT:
A. Yes.
THE COMMISSIONER:
Q. Is that it?
MR. ABBOTT:
A. That would be correct.
THE COMMISSIONER:
Q. Thank you.
COFFEY, Q.C.:
Q. I take it, from your perspective, as of right now, as of the time you left as deputy minister, there was no clear guideline in that regard?
MR. ABBOTT:
A. No, it tended to, you know, you could capture

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everything or you could capture very little. And there were different variations of how that got done over time. We ended at one point, at least before I left, we had weekly reports that would identify issues that might be out in the public. And we were having to assume or guess, whatever the word is, what, in essence, really the premier might be interested in. And that's not, you know, obviously always easy to do. At the same time you didn't want to overwhelm his office with a lot of issues. I'm one of 15 departments, you can only imagine what gets up there and so you have to be judicious in that regard.
COFFEY, Q.C.:
Q. Okay. Now, you were asked--thank you, Mr. Abbott--you were asked by Mr. Pritchard about the Hospitals Act and your understanding of that particular legislation and the authority of a minister and so on. While you were deputy minister, were you ever aware of any circumstance where a minister suggested or directed--well, suggested that a board do something and the board refused or the authority refused?

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MR. ABBOTT:
A. Not in my tenure.
COFFEY, Q.C.:
Q. All right. So, if you're not aware of a suggestion, then certainly you're not aware of any direction where the minister gave a direction and authority refused?
MR. ABBOTT:
A. No.
COFFEY, Q.C.:
Q. Okay. So, it was your experience, whatever the legislation, you were saying to the Commissioner, whatever the legislation may legally say or how some judge might interpret it, that from your perspective in practice, anything that was couched as a suggestion by the minister was followed?
MR. ABBOTT:
A. Yes.
COFFEY, Q.C.:
Q. How about at the deputy minister level?
MR. ABBOTT:
A. I was careful, as I said before, that I would offer an opinion, a suggestion, what have you and left it then to the CEO to either accept

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or not that suggestion. Again, given the nature of the working relationship, we understood, sort of, each other's worlds. There were really, I can't say there were any, through that period, any conflicts. Again, it's sometimes is, this is the issue, this is how I think you might want to address it, but it's left to you to decide that. That was obviously in their purview and their mandate.
COFFEY, Q.C.:
Q. And there was at least once or twice we saw that you made a suggestion and -
MR. ABBOTT:
A. As I said, I've made many and some were accepted -
COFFEY, Q.C.:
Q. Yes.
MR. ABBOTT:
A. - and others were--I was thanked for them and that was it.
COFFEY, Q.C.:
Q. But even in relation to ER/PR, there -
MR. ABBOTT:
A. Yes.
COFFEY, Q.C.:

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Q. - was a couple of particular instances where Eastern Health chose not to, apparently, follow your suggestion. You were asked by Mr. Pritchard about that document dealing with approval of Herceptin -
MR. ABBOTT:
A. Yes.
COFFEY, Q.C.:
Q. - as a funded drug. And there were three options. One was status quo; the second was fund the colorectal treatment and herceptin for early breast cancer treatment.
MR. ABBOTT:
A. Yes.
COFFEY, Q.C.:
Q. And the third one was early breast cancer treatment.
MR. ABBOTT:
A. Yes.
COFFEY, Q.C.:
Q. Herceptin usage. There was not a fourth which is just fund the colorectal drug.
MR. ABBOTT:
A. Right.
COFFEY, Q.C.:

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Q. Do you know why there was not -
MR. ABBOTT:
A. Well, the herceptin was the focus of--at least the discussion and why we were engaged by Eastern Health and the cancer program directly. And in terms of colorectal, in terms of their readiness to actually administer was--and that's one of the reasons why Herceptin was the focus, because they were ready to roll immediately where colorectal there had been--other processes had to be put in place before they could, in fact, administer the drug. So, they were comforted, I think, in terms of discussion that we heard what they had to say and we took them seriously and we would still work on that. But at the time we did the submission to Cabinet, it was--and the phrase "at that time" was critical because that's what we could, in fact, do if we got approval. But in terms of colorectal, it was never put to us, if you had a choice to do just that one.
COFFEY, Q.C.:
Q. Okay. So, the primary--your understanding at the time was the primary focus from the

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oncologists was on Herceptin. The colorectal would have been desirable, but it wasn't -

MR. ABBOTT:

A. Well, as I said, it wasn't ready to go, you know, for administration of the drug that fall, in any event. So, we agreed and felt appropriate, we'd advise Cabinet, it's there, but we will be coming back on that in subsequent months.

COFFEY, Q.C.:

Q. And in fact, the colorectal drugs were not any one particular drug. There were a number of different drugs.

MR. ABBOTT:

A. Avastin being one and again, some of the approvals of those were, for this purpose, were just getting in place. And some jurisdictions have yet to fund that drug.

COFFEY, Q.C.:

Q. So, I take it though that, was there ever actually any consideration given to having a fourth option?

MR. ABBOTT:

A. No, not the way you put it, no.

COFFEY, Q.C.:

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Q. Okay. You were asked by Mr. Pritchard about whether at the November 23, 2006 briefing of the minister suggested to you or you respond-- he suggested to you and you agreed or you responded, in fact, that there was no discussion such as, minister, what do we do; where do we go? That kind of -

MR. ABBOTT:

A. Yes.

COFFEY, Q.C.:

Q. On the point though, when the issue of the deceased came up, okay, I take it that there was some suggestion or advice from the minister and his executive assistant, Mr. Hynes, that Eastern Health's personnel might want to reconsider or consider carefully what they would say in the media about their approach.

MR. ABBOTT:

A. Well, that certainly came out of the meeting, but it was a discussion around how that is addressed and explained reasonably and that people can understand because obviously, it's very, more than a sensitive point. That would be just this, a matter of discussion.

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COFFEY, Q.C.:

Q. Just two final points. From you perspective, were there political or other issues in this case that might have caused Eastern Health to hold off on disclosure in mid July?

MR. ABBOTT:

A. No.

COFFEY, Q.C.:

Q. Or late July?

MR. ABBOTT:

A. No.

COFFEY, Q.C.:

Q. Okay. And you did say, to the Commissioner, that looking back on it, that you think that perhaps you could and should have asked more questions and I appreciate your response in that regard. In that, at any particular stages or at what stages, do you think now, looking back -

MR. ABBOTT:

A. Well, I would say certainly at the very beginning and really question more of why we couldn't and shouldn't go and disclose at that point. And really I then, I think around certainly the fall of 2005 why is this taking

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more time than we had initially understood and why can't we do a little bit more about it or at least communicate that much more effectively. And then I would say in looking at the press briefing of December, coming out of that, why were some of these questions still lingering and what, again, what is it that was missed there in the briefing. And would that have influenced me in advising, say, the minister, we may need--on your behalf, you may need to do more to insert yourself into this file. And that would be generally how I see it, looking back on it.

COFFEY, Q.C.:

Q. Hindsight, okay. And one final point, you did indicate to Mr. Pritchard that during, while all this was going on, the notion of conflict of interest -

MR. ABBOTT:

A. Yes.

COFFEY, Q.C.:

Q. - yourself didn't come up in terms of crossing your own mind, but you did say that someone had brought up the issue in a jocular fashion.

MR. ABBOTT:

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A. Yes.
COFFEY, Q.C.:
Q. Do you recall who that was?
MR. ABBOTT:
A. I think it would be Darrell Hynes.
COFFEY, Q.C.:
Q. Okay. Thank you.
THE COMMISSIONER:
Q. Thank you, Mr. Coffey.
COFFEY, Q.C.:
Q. I do want to thank you, Mr. Abbott. Thanks very much.
MR. ABBOTT:
A. Thank you.
MR. JOHN ABBOTT, EXAMINATION BY THE COMMISSIONER
THE COMMISSIONER:
Q. Mr. Abbott, could you give sort of one final piece of advice for me, it occurs to me as I'm listening to some of the testimony and reading some about this, in terms of solutions and dealing with problems down the road, is there a place in health care in this province for co-operative ventures in the Atlantic region? And I'm not thinking of just sort of contracting out something and sending some--I

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understand that that is done not only within Atlantic region, but in the case actually of breast cancer with--there's an arrangement in Ontario to give radiology services at the moment to, or at least within the recent past -
MR. ABBOTT:
A. Yes.
THE COMMISSIONER:
Q. - to certain patients. But I'm just wondering, are there examples of co-operative ventures where because of the small population base perhaps here, we can't do certain things that maybe a larger population base would allow you do. And you might say to your colleagues in the other Atlantic provinces, why don't we do this together?
MR. ABBOTT:
A. During my tenure, I've had several conversations with my equivalents counterparts in the Atlantic provinces on issues as you suggest. How can we do things; how can we share things; how can we do things together; and even under one, sort of, organizational structure? And the ministers have been party

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to those types of conversations at a very high or general level. The challenge seems to that no one is either able or willing to give up their mandate, their jurisdiction and to share on this. I see it in a number of areas where it can be done and I think it's going to have to be done for exactly the reasons, we have a small population base; we have a small specialist base and we are--but at the same time we are expected to deliver a wide range of services and at a very high standard and we are unable to do that in many areas. And if you look at regulation of occupations and all of those things that we can--there is opportunity to do that, but it will require political will to, in fact, say that we are prepared to give up our jurisdiction to a joint body. Now, we have one example and it may not be the best one, but I'm just commenting, in terms of the Atlantic lottery. We have done that, it works, got some issues obviously, but it works. And we had some other bilateral arrangements where certain services are delivered for or on behalf of us and we contribute to that. But in terms of

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fundamentally looking at--a good example would be how you would manage adverse events, so that there's four jurisdictions that can come together, all struggling with the same issues and that you can have a regulatory approach that would all abide by that and how that gets managed. And numbers are important in this field. So, I see that there is opportunity, but it is easy to say, but getting consensus and getting the will to do it has been lacking up until now.
THE COMMISSIONER:
Q. All right. Well, that's been a long haul, Mr. Abbott and I want to echo the comment of Mr. Coffey. I very much appreciate your candour and your insights into how things do work and possibly could work. Thank you very much.
MR. ABBOTT:
A. Thank you very much.
THE COMMISSIONER:
Q. Mr. Coffey, do you want to take the morning break before we start with the next witness?
COFFEY, Q.C.:
Q. Yes, thank you.
THE COMMISSIONER:

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Q. Fifteen.
(RECESS)
THE COMMISSIONER:
Q. Please be seated. Mr. Coffey.
COFFEY, Q.C.:
Q. Thank you, Commissioner. The next witness is Robert Thompson. Registrar, please.
MR. ROBERT THOMPSON, AFFIRMED, EXAMINATION BY BERNARD COFFEY, Q.C.
REGISTRAR:
Q. And would you please state and spell your complete name for the Commission?
MR. THOMPSON:
A. Robert Thompson, R-O-B-E-R-T T-H-O-M-P-S-O-N.
REGISTRAR:
Q. Thank you.
MR. THOMPSON:
A. Thank you.
COFFEY, Q.C.:
Q. Commissioner, I have some more exhibits that I'm going to ask be entered, or some more documents to be entered as exhibits, if I could. They are or would be Exhibits P-0950 to P-0986, P-0988 to P-0992, P-0994 to P-1002, that's 1-0-0-2, and P-1004 to P-1064.

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THE COMMISSIONER:
Q. All right then, Exhibits P-0950 through to 0986, P-0988 through to 0992, P-0994 through to 1002, P-1004 through to P-1064?
COFFEY, Q.C.:
Q. That's correct.
THE COMMISSIONER:
Q. Entered.
EXHIBITS ENTERED AND MARKED P-0950 THROUGH P- 0986
EXHIBITS ENTERED AND MARKED P-0988 THROUGH P- 0992
EXHIBITS ENTERED AND MARKED P-0994 THROUGH P- 1002
EXHIBITS ENTERED AND MARKED P-1004 THROUGH P- 1064
COFFEY, Q.C.:
Q. Thank you.
THE COMMISSIONER:
Q. Thank you.
COFFEY, Q.C.:
Q. Good morning, Mr. Thompson.
MR. THOMPSON:
A. Good morning.
COFFEY, Q.C.:
Q. Mr. Thompson, could you outline for the Commissioner, please--or first of all, what's your current occupation?
MR. THOMPSON:

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A. I'm the secretary to Cabinet for health issues, as well as chair of the Task Force on Adverse Health Events.
COFFEY, Q.C.:
Q. And could you outline for the Commissioner, please, your educational background and your professional background?
MR. THOMPSON:
A. Sure. I have a Bachelor of Arts and Political Science and I have done graduate work in public administration at York University and in business administration at Memorial. And in my professional background, would you like me to start at the beginning -
COFFEY, Q.C.:
Q. Sure.
MR. THOMPSON:
A. - and take it on through? Well, just about my full career has been with the Provincial Government. I started with the Department of Rural Agricultural and Northern Development in 1983, and then I was in the area of research and planning and policy, and progressed to the position of director of the research division in that department. And left there in 1986

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and went to become director of planning and research in the Department of--the old Department of Career Development and Advanced Studies. After that, in 1990, I left there. Actually that department switched from Career Development and Advanced Studies to the Department of Education. I left there in 1990 and went to the Intergovernmental Affairs Secretariat as the director of resource programs. I was there for about four years.
Subsequent to that, I worked with the Cabinet Secretariat as the assistant secretariat of Cabinet for economic policy. After that, in 1996, I was appointed deputy minister of Tourism, Culture and Recreation and I was there until 2001, when I became deputy minister of Health and Community Services, and then in 2003, appointed as clerk of the Executive Council, Secretariat of Cabinet, and that went until May 30th of 2007.
COFFEY, Q.C.:
Q. And in May of '07, you became what?
MR. THOMPSON:
A. I assumed my present responsibilities, but in addition to my present responsibilities, for

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about five months or so, I was--that is from June 1st approximately to early November of 2007, I was also the acting deputy minister of Health and Community Services, while the Government was searching for a replacement for that position.

COFFEY, Q.C.:

Q. Okay. I'll start at the latter or the end and then touch on some things going back in time. In your current role as secretary to Cabinet for health?

MR. THOMPSON:

A. Health issues.

COFFEY, Q.C.:

Q. Health issues. I'm sorry, for health issues. What does that entail?

MR. THOMPSON:

A. Okay. The primary function there is to assist government in preparing for full and open participation in the Commission of Inquiry. So it would assemble a small team of officials, including our legal counsel, and bring together all the necessary information that government may have, bearing upon the Terms of Reference of the Commission, ensure

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that it's forwarded to the Commission appropriately. It would also include understanding the circumstances that led up to the raising of the issues and the Terms of Reference and to do that, we also asked for a collection of documents from various health authorities.

So it's to advise and to ensure we understand early lessons learned, communicate those to the Cabinet, in the event that they may want to make decisions at an earlier point in time than the final report of the Commission, to actually take some early steps to resolving issues that arise. So generally, that's the responsibility.

COFFEY, Q.C.:

Q. And the Adverse Health Events?

MR. THOMPSON:

A. The Task Force on Adverse Health Events is separate, although of course, the two functions have become overlapped in everybody's mind and it does cause some confusion from time to time, but at any rate, the Task Force has a separate terms of reference. What the terms of reference would

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be was indicated when the Task Force was--when there was an announcement that the Task Force would exist, going back to last--or May/June 2007, and it was generally to--in recognition that the Commission of Inquiry was focused on ER/PR and certainly there'd be many generalizable lessons from the Commission's pursuits that there still might be value to government and to the health system of examining current policies generally on how adverse events, once they happen, are managed within the health system, and to look at existing policies and processes, procedures, right from adverse events to single individuals, up to multi-patient adverse events, adverse events that may involve more than one health authority, for example, and try to understand whether we have a set of policies that enable the system to properly respond to such events when they happen.

The key here being that adverse events may always happen in the future and that it'll be an important part of an effective system and one that would sustain the confidence of the public, if it was clearly known that once

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an adverse event happens that there are effective systems in place to deal with them, and so had a reporting deadline for that part of my work of June 30th, 2008.

COFFEY, Q.C.:

Q. Now the idea for each of these roles and functions, like the idea for the Task Force, where did that originate?

MR. THOMPSON:

A. Well, it originated in a dialogue between myself and Brian Crawley, chief of staff to the Premier, and the Premier.

COFFEY, Q.C.:

Q. And do you recall when that was?

MR. THOMPSON:

A. It would have been in the days leading up to May 30th of 2007.

COFFEY, Q.C.:

Q. And that would be the Task Force aspect of the matter, and I will come back to this. The secretary to Cabinet for health matters, where did that idea originate? When did that idea originate and with whom?

MR. THOMPSON:

A. Well, in the days leading up to the May 30th

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announcement and it originated, not with me, but perhaps with the Premier and Mr. Crawley, but I can't say for sure exactly where the origin is.

COFFEY, Q.C.:

Q. So the secretary to Cabinet for health matters, I take it, predated the Task Force in the sense of -

MR. THOMPSON:

A. Yes.

COFFEY, Q.C.:

Q. And it evolved--the notion of a Task Force came up as well, and -

MR. THOMPSON:

A. As part of the discussion of what the other role entailed.

COFFEY, Q.C.:

Q. Okay. Just on that point, and while it's on my mind, the Task Force to address or in relation to adverse health events, ER/PR would be an adverse health event?

MR. THOMPSON:

A. Yes.

COFFEY, Q.C.:

Q. Events, of course, is plural. Is there

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anything that you're aware of, at the time this was set up or since, that would involve--are you aware of any other such adverse health events that had to be addressed or you anticipate would have to be addressed, that you're aware of right now?

MR. THOMPSON:

A. That have happened since that time or have -

COFFEY, Q.C.:

Q. Were aware of at the time and since that time.

MR. THOMPSON:

A. Well, we looked on other adverse events as potential case studies that we could learn from, in terms of how they were managed once they had occurred, and I say it that way specifically because the Task Force does not take into--does not have a mandate to get into the whole area of patient safety and how to prevent adverse events, how to restructure clinical settings, for example, to prevent adverse events. So there are other events that we're interested in knowing about to determine how the response mechanisms played out in those cases, and as an example, the gynecological sterilization event in Labrador.

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There was also the more recent Burin and Gander radiology issues. There may be others that we could examine inside this province, and there's others outside that we've become interested in as case studies.

COFFEY, Q.C.:

Q. And I will be revisiting and asking you, exploring with you further some of the preparatory work for participating in the Commission of Inquiry process, but to go back in time, you were the deputy minister of the Department of Health and Community Services, I take it, beginning in 2001?

MR. THOMPSON:

A. Yes.

COFFEY, Q.C.:

Q. And you remained in that position until?

MR. THOMPSON:

A. November of 2003.

COFFEY, Q.C.:

Q. Okay. As the deputy minister of the Department of Health and Community Services at that time, what was your role?

MR. THOMPSON:

A. Well, similar job role to the deputy minister

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of any department in government, to be the chief permanent public official in the department for the administration of the affairs of the department, and to provide policy advice to the minister on any variety of matters and then, I guess, a large amount of other duties.

COFFEY, Q.C.:

Q. So policy advice?

MR. THOMPSON:

A. Um-hm.

COFFEY, Q.C.:

Q. I'm sorry, administrative -

MR. THOMPSON:

A. Policy and administration are the two key terms. Administration perhaps is the--takes up most of one's time in operating a department, and then policy advice to advance the agenda of the government in the health and community services area.

COFFEY, Q.C.:

Q. Would administrative duties involve getting involved in operational considerations or matters?

MR. THOMPSON:

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A. Certainly within the context of what the department is responsible for within its programs and services, absolutely.
COFFEY, Q.C.:
Q. And the Ministers of Health that you served for were whom?
MR. THOMPSON:
A. Initially, Julie Bettney, and then Gerald Smith.
COFFEY, Q.C.:
Q. And -
MR. THOMPSON:
A. I should say, I'm sorry, and then for a few days, Beth Marshall.
COFFEY, Q.C.:
Q. And who replaced you as deputy minister?
MR. THOMPSON:
A. Debbie Fry.
COFFEY, Q.C.:
Q. And just prior to your becoming clerk of the Executive Council, who had been the clerk?
MR. THOMPSON:
A. Debbie Fry.
COFFEY, Q.C.:
Q. So yourself and Ms. Fry -

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MR. THOMPSON:
A. We switched.
COFFEY, Q.C.:
Q. - in effect, switched positions.
MR. THOMPSON:
A. Right.
COFFEY, Q.C.:
Q. Now sir, I'd like to explore with you a little bit your--on a day-to-day basis, in a general way, what a deputy minister of Health did in routine day or routine week while you were deputy minister. What sorts of things would you get involved in? And I ask it in the sense of like how much contact would you routinely have with your minister, other officials in your department, and the Cabinet secretariat of the day, and the various health boards.
MR. THOMPSON:
A. Sure.
COFFEY, Q.C.:
Q. And quite a number of them at the time.
MR. THOMPSON:
A. Well, first of all, every day is different and every week is different, so I'll have to give you -

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COFFEY, Q.C.:
Q. And that's why I extended it to a week or a month, okay.
MR. THOMPSON:
A. I'll have to give you some examples, and it varies throughout the year as well, budget cycle being a good example. So in terms of let's deal first with contact with the minister. Generally, the minister, especially if the minister is representing a St. John's or close by district, will be available on a frequent basis and typically working in the office, and our offices are in an adjoining suite, so the minister would be close by, and therefore there'd be, no doubt, daily encounters with the minister, sometimes scheduled meetings. Some ministers, for example, would want to have a morning briefing or a once a week briefing, but that wasn't the most frequent encounter with the minister. Many issues that would arise during any typical day might require a consultation. So frequent dialogue with the minister. So is that satisfactory?

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COFFEY, Q.C.:
Q. Yes, oh yes, in terms of that, the minister.
MR. THOMPSON:
A. Okay. With other officials in the department, well, with assistant deputy ministers, the next level of executive personnel, we would meet officially once a week on Friday mornings and we'd keep an agenda and we would take minutes. So it was a fairly formal meeting to record directions that we were taking and new initiatives that were being planned or to resolve very specific issues, whether they be a human resource or a financial issue or some program issue. So we'd have weekly meetings to bring all those issues together and even though the assistant deputy ministers didn't all have related functions, they would, as that kind of senior group, they would get to share in those discussions and the group would learn and be able to contribute to each other's responsibilities. But in the--there was hardly ever an issue that was exclusively the one domain of one assistant deputy minister. So the discussions were very good to integrate the way that the department was

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administered.

With others within the department, it would all depend upon the issues. So if there was, say, an issue in the Pharmacy division, we would perhaps call together several officials from the Pharmacy division, the appropriate assistant deputy minister and myself and get a briefing or try to resolve an issue or do the planning necessary on that topic. So there'd be frequent meetings that would involve officials from different parts of the department of that nature.

Outside the department, we would have reasonably frequent contact with Cabinet secretariat typically on Cabinet submissions that we were trying to advance to Cabinet for decision-making purposes, and those--I guess the dialogue that we would have with Cabinet secretariat would be to respond to their attempt to analyze our Cabinet submissions and our providing additional information or clarification. There'd be many other kinds of frequent dialogue, phone calls, to get information from them on the status of these decisions, perhaps providing them with

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briefing notes on issues that were thought to be of relevance to the Cabinet secretariat and the Premier and so on. So that's Cabinet secretariat in general. Any other particulars parts you want?

COFFEY, Q.C.:

Q. Yes, communications directors.

MR. THOMPSON:

A. Okay. Within our department -

COFFEY, Q.C.:

Q. In your time it was--do you recall who they were, in your time as a DM?

MR. THOMPSON:

A. Yes, initially in the Department of Health, when I went there, I seem to recall that Carrie McCarthy was with us for a short while, and subsequent to that, Carmel Turpin, and then Dianne Keough. I believe they were the three.

COFFEY, Q.C.:

Q. Okay, and what sort of contact, as the deputy minister, would you have with them?

MR. THOMPSON:

A. Again, fairly frequent, sometimes daily, sometimes not. It would all depend upon if

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there was a, you know, communications event being planned, and so the communications director might seek a meeting with me to discuss a draft plan for the event or a draft communications plan that needed to be attached to a Cabinet submission or may ask for--by way of e-mail or by way of a meeting, for me to comment on a draft press release, and sometimes just to make me aware of an event that was unfolding outside the department that she was making the minister aware of, and therefore wanted to make me aware of as well.

COFFEY, Q.C.:

Q. And such an event unfolding outside the department, I take it that would be sometimes involve events that were potentially publicly controversial or contentious?

MR. THOMPSON:

A. Or just important.

COFFEY, Q.C.:

Q. Or just important, for whatever reason.

MR. THOMPSON:

A. For whatever reason.

COFFEY, Q.C.:

Q. Now, so the--you referred to, in your days as

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deputy minister of Health, at times the communications directors would run the com plan or show you the com plan?

MR. THOMPSON:

A. Um-hm.

COFFEY, Q.C.:

Q. Was this your first encounter with com plans or had they gone back?

MR. THOMPSON:

A. Well, they became--there was an evolution of communications plans over about ten years perhaps, and so my experience, for example, in the Department of Tourism was that communications plans were not often done, so really done around very big and important events. The experience changed when I was in Cabinet secretariat, when there was a mandatory requirement that all Cabinet papers had to be accompanied by communications plans, but we were on the receiving end then, as opposed to the doing end. So when I went to the Department of Health, in a sense it was a learning curve for me to understand, you know, how these plans are prepared and all the ins and outs of the process.

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COFFEY, Q.C.:
Q. Now your understanding of a com plan then, you know, during the time anyway you were deputy minister of Health, what was the purpose of a com plan?
MR. THOMPSON:
A. Well, it was to plan the fashion in which the messages related, the government's messages related to a decision or an event or an issue, the way that they would be launched to intended audiences. Some communications plans may not have a media component, they may be directed to stakeholder groups through the internet or the mail. Typically, though, they were directed at media and the general public. It was to take into account all the stakeholder groups, to identify the issues in the environment that might affect the way that the government's messages would be understood by these groups and to fashion then the plan, the channels of communication, the way things should be phrased, the potential implications of the approach to communication in that proposal, the implications that might occur. So it was to take into account all of these

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factors with the goal, obviously, of being, having a more successful communications launch of any issue. And successful being clearly communicated to the intended audience with the intended audience receiving a clear understanding of the issue that government is trying to communicate.
COFFEY, Q.C.:
Q. Now, when you were deputy minister of health, what was the--what was your understanding of the--who the communications directors or director of the day in the department reported to?
MR. THOMPSON:
A. This has changed a bit over time. And, well, currently, of course, they report to the deputy minister formally and have a very important relationship with the minister. And exactly when that changed, I don't recall, because they were political appointments or part of political staff prior to that, but I don't recall right now when that date changed.
COFFEY, Q.C.:
Q. And that can be ascertained, though, I take it?

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MR. THOMPSON:
A. Oh, sure.
COFFEY, Q.C.:
Q. Actually ascertained. In a practical sense, now I appreciate there was a formal change -
MR. THOMPSON:
A. Sorry -
COFFEY, Q.C.:
Q. - but in a practical sense -
MR. THOMPSON:
A. In struggling for recollection, I think it did happen on the change of government in 2003 because there was a rehiring process that went under way to select communications directors. I could be wrong, but my sense is that that's when it occurred.
COFFEY, Q.C.:
Q. And whatever the formality in the changes, whenever they occurred and whatever they were, was there any practical change, from your perspective, in terms of the reporting relationship in the sense of you've pointed out that they reported, at least now, formally report to the deputy minister, have a close working relationship with the minister, does

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the communications director now also deal with the communications and consultation branch, I believe they're called?
MR. THOMPSON:
A. Yes, yes.
COFFEY, Q.C.:
Q. And what's that relationship?
MR. THOMPSON:
A. Well, there's two questions there.
COFFEY, Q.C.:
Q. Sure, yeah.
MR. THOMPSON:
A. Is there a change and what's -
COFFEY, Q.C.:
Q. Okay. So we'll deal first of all with has there--in practice was there a change?
MR. THOMPSON:
A. I think there was a modest change of tone that, you know, everybody understood that as political staff that a certain part of their function was to be--to have a political, I guess, analysis of the content of communications whereas that wasn't therefore in the future to be a political analysis -
COFFEY, Q.C.:

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Q. That's after the changeover?
MR. THOMPSON:
A. After the change.
COFFEY, Q.C.:
Q. Okay.
MR. THOMPSON:
A. Now, that doesn't mean that in analysing the sensitivity of an issue or the way it would play in the media, that there's not some political sensitivity in that, so it's a matter of perhaps tone. There wasn't a substantive change, in my view, but there was some sense of recognization (sic.) of a change in the way I've described.
COFFEY, Q.C.:
Q. And then in terms of the, under the current regime -
MR. THOMPSON:
A. Yes.
COFFEY, Q.C.:
Q. - current structure the reporting relationship of the communications directors of departments, in particular, Department of Health vis-a-vis the cabinet--I'm sorry, the communication, consultation and communications

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branch, I believe is the formal title?
MR. THOMPSON:
A. Um-hm.
COFFEY, Q.C.:
Q. Of cabinet secretariat, how does that work?
MR. THOMPSON:
A. Well, I think it's like a matrix relationship where the communications director is responsible for their employment and their accountability to the deputy minister, but they also have a horizontal responsibility to the assistant secretary to cabinet for consultations and communications. In other words, for their day-to-day functions they report to the deputy minister, for standards, for government-wide expectations and also for sign off on some kinds of documents, they will receive that from the centre. So they really have two bosses in many ways and they pay attention to both.
COFFEY, Q.C.:
Q. And what are they expected--what's your understanding of what they're expected to do in relation to the cabinet secretariat, when do they interact with the cabinet secretariat?

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MR. THOMPSON:
A. Not frequently. And -
COFFEY, Q.C.:
Q. What circumstances are the expected to do so?
MR. THOMPSON:
A. I'm not aware of any circumstances in which they're expected to do so. There may be dialogue between a cabinet officer who would be an official in the secretariat examining a cabinet submission and perhaps also, therefore, examining the communications plan, because the plan is attached, and if that officer has questions of the communications director to understand the content of a cabinet submission, one actually would go directly to the communications director to sort that out. But other than that, there's no, from my point of view, there's no expectation that there'd be a structured and ongoing dialogue between the communications director and the cabinet secretariat.
COFFEY, Q.C.:
Q. What about the idea of giving them a heads up on something potentially of importance?
MR. THOMPSON:

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A. Yeah. That could certainly happen. And in my view it would happen, number one, based on a personal relationship or, I guess, a more familiar relationship between two individuals who might have worked together in the past or--and therefore there was an open or easy and open dialogue opportunity, or if there were people that weren't available to be spoken with in the communications and consultations branch. So let me give you a hypothetical. A director of communications has a sensitive issue, knows it's going to break in the media, wants to make sure that appropriate people are alerted, so they call the communications and consultations branch. Perhaps the individual who they want to talk to, the most senior person there, is not available but the issue is breaking at such a rate that they need to alert other people, it would make sense of them to phone the equivalent ranking person in the cabinet secretariat, because we're all, we all try to work together as a team, and make the information known there. That would make a lot of sense.
COFFEY, Q.C.:

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Q. So the appropriate people are alerted. In this context who would the appropriate people be, what sorts of people?
MR. THOMPSON:
A. In which context?
COFFEY, Q.C.:
Q. Well, in the context of the example you just gave?
MR. THOMPSON:
A. Okay. Well, when I said that, I mean that the senior person in the communications and consultation branch being the assistant secretariat. And so if that assistant secretariat is not available, it would be appropriate to call an assistant secretariat within the cabinet secretariat.
COFFEY, Q.C.:
Q. And okay, so that's the current regime. Is there an expectation, you know, within government circles, at least from your perspective, that if something of some potential public notoriety or controversy becomes known to a communications director that he or she is to contact cabinet secretariat about it?

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MR. THOMPSON:
A. No.
COFFEY, Q.C.:
Q. There's not, okay.
MR. THOMPSON:
A. There's not. I don't understand there to be an expectation that that would happen. I understand there's an expectation that the communication will go to the communications and consultations branch.
COFFEY, Q.C.:
Q. Of cabinet secretariat?
MR. THOMPSON:
A. Of executive council.
COFFEY, Q.C.:
Q. Of executive council, okay.
MR. THOMPSON:
A. Yes, that's right. And that that communication with cabinet secretariat would normally, and the expectation would be, would go from an assistant deputy minister or deputy minister in the department to the, you know, the same ranking person in the cabinet secretariat. Now, that sounds very formal, but that would be the expectation. One might

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communicate across those lines, depending on the circumstances.
COFFEY, Q.C.:
Q. Okay. And communicating across those lines means what?
MR. THOMPSON:
A. It means instead of communicating to a person of equal rank, they communicate with a person above that rank or below that rank.
COFFEY, Q.C.:
Q. Now, why the need for a matrix-type structure, from your perspective?
MR. THOMPSON:
A. For the communications personnel?
COFFEY, Q.C.:
Q. Why two or three bosses, depending upon how you view it, the minister, deputy minister being potentially, you know, boss A, you know, 1, A, B and the communications people, secretary being boss 2, as it were? Why the need for the matrix?
MR. THOMPSON:
A. Well, it's the nature of the beast. The -
COFFEY, Q.C.:
Q. What function does it fulfil, is what I'm

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asking?
MR. THOMPSON:
A. Well, it fulfils the function of insuring that the--that the organization, the government-wide organization operates in a coherent fashion. So if we have, if we have a communications director only reporting to a minister, then an announcement of some kind which might have interdepartmental implications or might have government wide sensitivities, they would not get identified if that communications director was solely advising the minister on an event without obtaining additional intelligence or feedback on the information that they provide across departmental lines or into the centre. So that's one clear, simple function that it serves, that there's additional information flow that occurs that can help make the plan a more nuance plan, a better plan because it takes into account more issues. That's one function. The second function that it serves is in the area of, I guess, professional learning and advice. So in a department typically the communications director is the

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only person with communications education, background and skills. There might be assistants, but generally that person is the only person. So by networking together all of the communications professionals in government in the way that's been done, it allows for advice to flow back and forth with the experiences of others being offered in how to most effectively communicate on a certain issue. I guess there's a third function that it serves, and that is that centre of government has a continuous source of intelligence on what's going on and what's arising in all of the departments so that it can be better equipped to deal with its own--the expectations we have for that central area.

COFFEY, Q.C.:

Q. And are you aware of any guidelines or protocols or policies or some such that communications directors are to follow in terms of decisions as to when the information flow is supposed to take that path towards central government?

MR. THOMPSON:

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A. I'm not aware of them. They may exist, but I don't know about them.

COFFEY, Q.C.:

Q. So I take it that the purpose of the matrix structure, then, or one of the purposes is to insure that at least in a communications view of the world, all information flows to the centre of government?

MR. THOMPSON:

A. That's one of the functions.

COFFEY, Q.C.:

Q. One of the functions.

THE COMMISSIONER:

Q. Perhaps I'm just not quite understanding what a communications director does, so I'd like to clarify that. Is the communication director's function related solely to the government's interaction with outside of government in the sense of communicating to those outside as opposed to communicating with those within government except for the function of telling cabinet secretariat, perhaps, what's going on generally?

MR. THOMPSON:

A. Sure, I understand.

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THE COMMISSIONER:

Q. Is there a role that enables--does a communications director help you to communicate with other departments, other divisions, that kind of stuff?

MR. THOMPSON:

A. The answer is the main other function than external communications is that they should assist, and actually, run a program for internal communications within the department itself. Generally communications directors don't aid in interdepartmental communications.

THE COMMISSIONER:

Q. Um-hm.

MR. THOMPSON:

A. Sometimes they get involved in it if it means several departments collaborating in a communications plan. But otherwise, most of their time is spent communicating externally, but there is a residual responsibility, unfortunately, often the last thing done after everything else is done, but there is a responsibility for internal communications, as well. So that might entail a newsletter or internal events to help the--everybody in the

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department understand, for example, the strategic direction of the department. But as I said, it tends to fade away when it's competing with the urgency of daily events.

THE COMMISSIONER:

Q. And would a communications director be involved in assisting in doing just that? I don't--in terms of communication there are times when it's very important that a department express itself clearly, you perhaps want to be persuasive about a particular thing that you want to--proposal you're making, something of that nature, you want to accomplish your goal, as it were. And is a communications director a source of advice, knowledge, useful, even, in that kind of communication in the sense of how do we make this clearer, how do we get our point across to those within the system that we want to convince, you know, is this kind of language better accomplish that than otherwise or once again, are we mostly concerned about how we communicate with others outside of government?

MR. THOMPSON:

A. Sure. If I understand what you mean, then the

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communications director, no, is not often used to get involved in interdepartmental communications or with cabinet secretariat. So let me explain. When a cabinet submission is drafted and that's a separate document from a communications plan, generally an official from within the department other than communications will draft the cabinet submission. And while the communications director will see it and assess it in order to prepare the communications plan, generally there isn't a, you know, there isn't an expectation that the communications director might edit it or offer suggestions to restructure to make it clearer. There certainly could be benefit in doing that, but that's generally not the way it works.

THE COMMISSIONER:

Q. Okay. Actually, it occurred to me and we haven't yet gotten to the people who were involved in this, so it may turn out, but it occurred to me if the purpose of having such people was the ability to communicate, to make things clearer, to express things in ways that one would expect to be useful, then things

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like letters you might want to send to patients, perhaps, might be put through a communications division for the purpose of assessing whether or not the letter accomplishes what you want to communicate?

MR. THOMPSON:

A. I wouldn't have meant to exclude those, for sure. My understanding is and my expectation would be that communications officials would get involved in letters that were perhaps at an RHA level that are sent to patients. And if the department had to send a mass mail out of any kind of flyer or a letter from the minister or even just for if we were sending, if we were the department responsible for sending out your annual guide for moose licence applications, communications directors would often be involved in those kinds of activities.

THE COMMISSIONER:

Q. So those functions are part of their duties?

MR. THOMPSON:

A. They're part of the external side of them, yes, that's right.

THE COMMISSIONER:

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Q. All right, thank you.

COFFEY, Q.C.:

Q. And before I return to your days as deputy minister of health, in terms of the communications director's activities and his matrix structure, where, if at all, is the premier's office fall into that?

MR. THOMPSON:

A. Within the world of the communications director?

COFFEY, Q.C.:

Q. Yes.

MR. THOMPSON:

A. They're on the periphery of the matrix, if you like, generally most communication--most interaction with communications directors will occur through the communications and consultations branch, so there will be an intense back and forth relationship between -

COFFEY, Q.C.:

Q. And to put a name on it, that currently would be Josephine Cheeseman?

MR. THOMPSON:

A. Right, Josephine Cheeseman or her next in line, Carmel Turpin right now. They would

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have the most intensive communication back and forth with the director for communications in the premier's office, you know, getting sign off and approval for the final version of a plan or a press release to be released. But from time to time, the director of communications in the premier's office will correspond, have conversations with directors of communications and departments, but my sense is that is the exception, rather than the rule.

COFFEY, Q.C.:

Q. And I take it that that would also be true going the other way? Communications director of a department contacting the premier's office's communications director directly would be the exception, rather than the rule.

MR. THOMPSON:

A. Yes, that's my sense of it.

COFFEY, Q.C.:

Q. How does that, what you've described about the kind of current situation for communications directors and government compare with the situation that existed when you were deputy minister, the structure, was it more or less

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the same? And I say deputy minister of health is what I'm referring to.

MR. THOMPSON:

A. Yes, more or less the same, yes.

COFFEY, Q.C.:

Q. Anything in particular that stands out that might be of a different -

MR. THOMPSON:

A. Well if that, no, I could only perhaps speculate that if at that time, if my memory is correct, that the communications directors were political staff, that there may have been more connectivity with the premier's office, but I don't have that as a clear recollection that there was.

COFFEY, Q.C.:

Q. And that may be one of--the change, whenever that change occurred from political staff classification to public employee classification.

MR. THOMPSON:

A. Yes.

COFFEY, Q.C.:

Q. There was, I gather you're saying that it is your understanding there was perhaps a

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lessening of the contact or frequency of contact by communications directors with the premier's office? It began to become more functioned on Josephine Cheeseman's shop?

MR. THOMPSON:

A. I think that's a fair summary of what I said, I just can't verify if that was the case.

COFFEY, Q.C.:

Q. And we'll figure out the date. Now your days as deputy minister of health, interaction with the health boards of the day -

MR. THOMPSON:

A. Uh-hm.

COFFEY, Q.C.:

Q. I believe there were fourteen or so at the time.

MR. THOMPSON:

A. Right.

COFFEY, Q.C.:

Q. How did that work as deputy minister, who did you deal with?

MR. THOMPSON:

A. Okay, well the most formal relationship that we had was approximately once monthly CEO meetings and they were organized by the

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Newfoundland and Labrador Health Boards Association, generally at their office and so part of the meeting they would meet among themselves with, on business that would not involve the department, and the rest of the meeting I would be involved in. And there was an established agenda, minuted, so forth.

COFFEY, Q.C.:

Q. Would there be anybody else from the department with you?

MR. THOMPSON:

A. From time to time, depending on what was on the agenda.

COFFEY, Q.C.:

Q. And these would be the CEOs of these organizations.

MR. THOMPSON:

A. Correct.

COFFEY, Q.C.:

Q. Would they generally have people along with them?

MR. THOMPSON:

A. Sometimes, again, depending upon the issue or as a substitute if they couldn't make it themselves.

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COFFEY, Q.C.:

Q. And this Newfoundland and Labrador -

MR. THOMPSON:

A. Health Boards Association.

COFFEY, Q.C.:

Q. Does that still exist?

MR. THOMPSON:

A. Yes, it does.

COFFEY, Q.C.:

Q. And in a practical way, who is that? I appreciate it's an organization.

MR. THOMPSON:

A. Well it's more than one person but the head of the organization is John Peddle at the executive level.

COFFEY, Q.C.:

Q. And what sorts of things would be discussed at those meetings.

MR. THOMPSON:

A. Well I'm just trying to recall back, a variety of things, collective bargaining would probably be a constant type of discussion. If we're heading then into a strike, which we were, at least once or twice, there'd be intensive discussion around a contingency

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plan. There would be a discussion around the efficiencies and the kind of budgetary expectation or limitations that the department may have for individual--for the set of health authorities or health boards. There might be specific discussions around annual reports and strategic plans. There could be discussions around national issues, for example, I might bring back a report from a federal provincial deputy minister's meeting to share it with the CEOs and then perhaps quite another long list of other issues that would come up from time to time.

COFFEY, Q.C.:

Q. And, but that meeting would not, in particular, I take it, involve actual physicians?

MR. THOMPSON:

A. No.

COFFEY, Q.C.:

Q. As most of your are not physicians anyway.

MR. THOMPSON:

A. That's right. There's a separate committee related to or that meets kind of parallel, the Vice-Presidents of Medicine Committee.

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COFFEY, Q.C.:

Q. And they would be meeting -

MR. THOMPSON:

A. About once monthly, maybe somewhat less.

COFFEY, Q.C.:

Q. Was there anybody from the department that would attend that meeting?

MR. THOMPSON:

A. Yes, the medical director, Dr. Ed Hunt, would attend that meeting.

COFFEY, Q.C.:

Q. And what is that organization called or group called?

MR. THOMPSON:

A. Well it's, again, a committee that's under the rubric of the NLHBA.

COFFEY, Q.C.:

Q. Okay, so the NLHBA there would be, presumably for them also an agenda and minutes.

MR. THOMPSON:

A. Yeah, that's my recollection, although I just hesitate a little because I'm not sure which of their officials, the association's officials would attend, so I'm thinking perhaps it was somewhat a little bit more

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distant, but then again, perhaps John Peddle did sit in on those meetings as well, my memory on that is not great.

COFFEY, Q.C.:

Q. But it was in the main, though, a meeting of Vice-President Medical, whatever the -

MR. THOMPSON:

A. Right, the chief administrative physician.

COFFEY, Q.C.:

Q. Physician from these fourteen authorities or boards.

MR. THOMPSON:

A. Not the full fourteen because they didn't all have medical directors, only five or six of them did because six or seven of the boards were just community services boards and there was one that was a long-term care and so then it's the acute -

COFFEY, Q.C.:

Q. Acute care boards.

MR. THOMPSON:

A. Right, would have had medical directors.

COFFEY, Q.C.:

Q. Their medical directors would get together and meet and Mr. Hunt was the departmental rep at

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those meetings.

MR. THOMPSON:

A. Correct.

COFFEY, Q.C.:

Q. Would Mr. Hunt, back in those days, would he report to you?

MR. THOMPSON:

A. Yes.

COFFEY, Q.C.:

Q. In relation to anything of any significance that arose?

MR. THOMPSON:

A. Yes.

COFFEY, Q.C.:

Q. And how would you find out as deputy minister what was going on?

MR. THOMPSON:

A. Minutes of the meetings would be circulated in my recollection and he might report to me on an item that occurred and we might talk about an item in advance in order to bring a certain position to those meetings.

COFFEY, Q.C.:

Q. And your understanding of the function of that sub-group, as it were, what was there, what

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was your understanding of their function or role? What was the purpose of these VP medicals getting together with Mr. Hunt or Dr. Hunt?

MR. THOMPSON:

A. It would be in general, I'm sure there's a mandate statement that can be obtained and I presume they still meet today in that way, would be to talk about province-wide co-ordination of medical services and as an example, and I'm really making it up because I don't know, it's been on their agenda, but the issue of transfers between hospitals and how that--the policies by which that happens and what happens when one hospital needs to transfer a patient, another hospital is perhaps not ready to receive it, what can protocols would take place, who should call who. Maybe that's one kind of issue that might get discussed. It could be any variety of province-wide issues that would be discussed.

COFFEY, Q.C.:

Q. And a matter that involved a potential clinical problem that had cut across board

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lines, geographic lines, would--when you were deputy minister, would you have anticipated that that might be raised in that sort of a meeting?

MR. THOMPSON:

A. Sure and it would be a good forum to raise it.

COFFEY, Q.C.:

Q. While we're on that now, while you were deputy minister of health, did you ever, was it ever brought to your attention any concerns or problems concerning immunohistochemical staining?

MR. THOMPSON:

A. Ever when I was deputy minister -

COFFEY, Q.C.:

Q. Of health in '01 to '03.

MR. THOMPSON:

A. No.

COFFEY, Q.C.:

Q. Dr. Hunt never did bring that forward or any other way in terms of this NLHBA?

MR. THOMPSON:

A. No.

COFFEY, Q.C.:

Q. So whether it could or couldn't have been used

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back then, in terms of to talk about, you know, within that small group, it certainly was never brought to your attention that it was.

MR. THOMPSON:

A. So if it was raised at one of those meetings, when I don't know that it was, it's possible that I would have learned about it at that time, but I certainly don't have any recollection of that.

COFFEY, Q.C.:

Q. And because there's immunohistochemical staining, another way to talk about that issue is fixation.

MR. THOMPSON:

A. And here we're talking about the period up to November of '03.

COFFEY, Q.C.:

Q. Yes, nothing before that at all.

MR. THOMPSON:

A. Right.

COFFEY, Q.C.:

Q. Now, sir, okay that's one of the formal mechanisms to meet, what other communications, as deputy minister, would you have with the

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boards of the day; in particular, the acute care boards?

MR. THOMPSON:

A. Well on a periodic basis there might be phone calls, e-mails, meetings about specific issues related to one board or another, so a wide variety of meetings were held with the old Health and Community Services, St. John's, on their budget issues which led to the Hay report, which I know has been discussed here. So that would be an example of a board-related issue on which there were meetings between the board and the department. And when I say the "board", I'm kind of covering not just the trustees, but all of the officials included in there. And we would have had similar budgetary meetings with other health--other of the boards from time to time, budget and efficiency and maintaining costs within allocated budgets was a major preoccupation throughout the period that I was in the department. On other occasions we might have discussions about a specific service, the opening of a dialyses service or acquisition of a CAT scan or the construction needed for a

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new long-term care facility, so any range of issues could precipitate a phone call, an e-mail or a direct meeting with myself and the CEO or it could involve the minister and others.

COFFEY, Q.C.:

Q. And the, what about phone calls, letters, faxes, back then probably even e-mails with the CEOs, like individual CEOs about particular issues, would that occur?

MR. THOMPSON:

A. Sure, oh yes.

COFFEY, Q.C.:

Q. So who is the primary person who had contact with, for example, the Health Care Corporation of St. John's as CEO on a day-to-day basis, who would--would it be you, would it be the deputy minister or your ADM?

MR. THOMPSON:

A. Well it probably wasn't day to day, but either myself or Moira Hennessey would have been the primary contact. Moira would feel free to call any CEO because of her special responsibilities for board matters.

COFFEY, Q.C.:

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Q. And she was the ADM responsible for that during the entire time that you were deputy minister?

MR. THOMPSON:

A. No, not for the entire time. Who preceded her, I just can't--I think we had a rotation, I think she took on that responsibility about halfway through my time.

COFFEY, Q.C.:

Q. Your time as deputy minister of health in the '01 to '03 time.

MR. THOMPSON:

A. That's right.

COFFEY, Q.C.:

Q. Okay, and while you were deputy minister of health, did the matter that is now know or any aspect of the matter that is now known as ER/PR ever come to your attention?

MR. THOMPSON:

A. No.

COFFEY, Q.C.:

Q. And you are, of course, certainly now aware of Dr. Ejeckam's stated concerns back in 2003.

MR. THOMPSON:

A. Uh-hm.

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COFFEY, Q.C.:

Q. And you first became aware of those when?

MR. THOMPSON:

A. When they were brought by Minister Wiseman into a Cabinet meeting in May of '07.

COFFEY, Q.C.:

Q. And you would have certainly read them, three such memos and I'll look at those in a bit more detail later, but--and bearing in mind the substance of what's in them, okay, particularly the third memo which is the one that speaks about concerns that he expresses in June of '03 about the IHC testing at the General Hospital. If that was to be brought to your attention when you were deputy minister in the period '01 to '03, what means would you have anticipated as deputy minister that might have been brought to your attention, if it was going to be brought up?

MR. THOMPSON:

A. I wonder if we could bring it up on the screen just to refresh my memory.

COFFEY, Q.C.:

Q. Oh sure, if we could please.

MR. BROWNE:

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Q. 890.

COFFEY, Q.C.:

Q. 890? That's great, thank you, Mr. Browne. One of a number of versions, they're all the same version but one of a number of different copies we have of this. You go ahead.

MR. THOMPSON:

A. So your question, sorry?

COFFEY, Q.C.:

Q. The subject matter of this, would you agree that reading it, and its contents, it suggests that there could be potentially dyer consequences from a health care perspective, would you agree that that's -

MR. THOMPSON:

A. Yes, it suggests that.

COFFEY, Q.C.:

Q. While you were deputy minister of health and because this would relate to potentially a service being provided by the General Hospital across the province, for all the hospitals in the province, if this was to be brought to your attention as deputy minister, what means would you have anticipated as deputy minister that it would make its way up the chain to

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you?
MR. THOMPSON:
A. Well -
THE COMMISSIONER:
Q. Are you asking what was the likely route?
COFFEY, Q.C.:
Q. Likely route, yes, that's the word I was looking for.
MR. THOMPSON:
A. Well, first of all, it would be a little bit unusual to receive an internal memo like that -
COFFEY, Q.C.:
Q. Not the memo so much, it is the subject matter of it, that's what -
MR. THOMPSON:
A. No, but even the subject matter, I think and so if it did make its way in a formal route, it would come through the, likely through the CEO directly to me or to Moira Hennessey for our review or for our information.
THE COMMISSIONER:
Q. Are you expressing a view then that you would not have anticipated this to come to you in any event?

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MR. THOMPSON:
A. Right.
COFFEY, Q.C.:
Q. And why is that?
MR. THOMPSON:
A. Well, my sense of the memo is that, well first of all, it's an internal memo between a clinical person and a lab person, and that there are a variety of levels of management above these two people that are charged with. Part of their responsibility, presumably, is to deal with quality issues in the lab, whether they be equipment acquisition, supplies acquisition, professional development and training, these are functions that belong to people who work in this organization. And I would also imagine that this would not-- issues like this might arise from time to time where there's disagreements or there's observations about how a service can be made better and that good managers would jump on that and deal with the matter. It's an operational matter that is perhaps, if one came cold to this memo, would say it's an operational matter that can be handled by

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management in charge of this. So that's why it would not be a typical kind of memo to come to the department.
COFFEY, Q.C.:
Q. Well back in 2003 and you'll note here the first person copied on this is the discipline chair or the chair discipline of laboratory medicine, which would be, you understand that would be Memorial University's Medical School.
MR. THOMPSON:
A. Right.
COFFEY, Q.C.:
Q. Well looking at, on the fourth page of this memo, the paragraph numbered six, four last lines, Dr. Ejeckam wrote, "Diagnosis based on inappropriate immuno stain will surely jeopardize patient care and may even expose the Health Care Corporation of St. John's to litigation; therefore, it will be ill advised to operate an unreliable and erratic immunohistochemical procedures in our laboratory." Now, as the deputy minister of health of the day, do you think it would have been wise for you to have at least been alerted to that? Assuming that he's accurate,

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I'm not saying he is or isn't, I'm just saying because this is what it states, and -
MR. THOMPSON:
A. Would it have been wise to alert, will I think -
COFFEY, Q.C.:
Q. Would it have been important for the deputy minister to know that this was a potential problem, province wide?
MR. THOMPSON:
A. Well the deputy minister and the minister would expect to be briefed on issues that are occurring within a health authority that have an important impact things like the overall budget position, overall difficulties with human resource recruitment, collective bargaining, potential strikes, capital equipment that's wearing out, building conditions that need to be managed, the need for new services and at the end of that list, not necessarily the last, are emergent situations that create risk of such a nature that because they would become public sensitivities or because they would become items that require expenditure that, sure,

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that they need to be put in front, for information, not for decision, but for information. Now does this fall into one of those categories? It's a judgment call, I believe, it's a judgment call. So knowing that the managers and CEO at the time, I don't know who had this information, but if I was here today knowing that they assessed this and they decided that there was an appropriate means of dealing with this internally to deal with the risks that were identified in the memo, I'd be satisfied that, after the fact, hearing all the facts play out, I'd be satisfied that no, they dealt with it appropriately.

COFFEY, Q.C.:

Q. And if that was not the case?

MR. THOMPSON:

A. If they didn't deal with it appropriately? Well assess the question because -

COFFEY, Q.C.:

Q. See, one of the categories, one category you did not list and I think you listed seven categories, seven or eight, was whether it would be important for a deputy minister and a

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minister to be alerted to the assertion, an assertion by a physician who apparently had some influence, in terms of IHC, at least addressing the immediate problems then, an assessment in writing by him that the clinical wellbeing of potentially a significant number of patients throughout the province being negatively impacted by the procedures being used in the--then being used in the lab.

MR. THOMPSON:

A. Um-hm.

COFFEY, Q.C.:

Q. Now the fact that potentially tens, hundreds, if not thousands of people could be negatively impacted--now, it doesn't involved necessarily money or spending more money. It doesn't fall into that category. I'm asking you, as the deputy minister, do you think it would be important for the deputy minister or the minister to know that that was out there? It had been asserted and it was out there, internally within Health Care Corporation.

MR. THOMPSON:

A. Well, you'd need more information to answer the question. You'd need to know what was the

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view of management on what it was going to take to deal with these questions. Are they straightforward questions or are they complicated questions that require budget and may evolve into an issue that would call the--that would affect the public's confidence in the institution? So I'd need to be possessed of all that information to properly answer your question. So really, my whole answer is really it depends.

COFFEY, Q.C.:

Q. How, in principle, does that situation and the situation involving the two earlier memos, there's one in April saying "we're stopping IHC stains" and one in May saying "we're starting up ER/PR again," and you'd be aware of those. How does that situation in '03, in principle, differ from the 2005 situation, in terms of what a deputy minister or a minister should know?

MR. THOMPSON:

A. Well, in 2005, we have an event, a diagnosis, a changed diagnosis that grows into a retrospective testing exercise of a large proportion of people, and therefore has a--not

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only--it's turned into a reality, if you like, that there's the reality of potential harm to individuals. Here, this is an assertion that it could, but it hadn't turned into a reality, the way it's expressed there.

COFFEY, Q.C.:

Q. I take it because there'd been no retesting. You couldn't know whether there was a problem.

MR. THOMPSON:

A. Well, fair enough, but you're saying in principle, what are the differences, and this is a difference. Also, the situation was dynamic. It was growing in size and it had the immediate, I think, possibility of becoming an issue that affected the reputation of and confidence in that particular part of the health system. So for all those reasons, it certainly seems to me to have counted as a--in 2005, an item that would have justified briefing the department.

COFFEY, Q.C.:

Q. Certainly the suggestion that the current state of affairs, if it continues in '03, could jeopardize patient care and may even expose the Health Care Corporation to

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litigation. I mean, you're not suggesting, are you, that -

MR. THOMPSON:

A. No, but you're leaving out the other part of what I said to you.

COFFEY, Q.C.:

Q. Which is the retesting.

MR. THOMPSON:

A. No, no, on.

COFFEY, Q.C.:

Q. The big difference is there had been a retest in '05, some retesting.

MR. THOMPSON:

A. No, no, no, the piece of information that I mentioned earlier that we don't--and that we don't have is the management view on how difficult it would be to address these matters and reduce the risk that Dr. Ejeckam raises there, and I may add another piece too, because a memo like this, if assessed as being a major risk and that management saw that it was a major risk and they--and it came forward to the department, we wouldn't be surprised if it was accompanied by an assessment that "here we have something that you need to know about

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because people are at risk and we are going to undertake a retesting exercise and deal with the issues that Dr. Ejeckam has presented." So we wouldn't find, if that had been the outcome, that that would be surprising.

But at the same time, if management felt differently and they thought that it was going to be resolved in a straightforward fashion, then to send the memo on its own, or wanted--in other words saying "we want you to know this, even though we have it well handled" is--that would be a little bit more unusual.

COFFEY, Q.C.:

Q. Okay, so as the deputy minister, it was your understanding or view, deputy minister of Health, between 2001-2003, that if management of the Health Care Corporation, for example, felt that they had it in hand -

MR. THOMPSON:

A. Um-hm.

COFFEY, Q.C.:

Q. - then there'd be no need to let you know, despite the potential for, or at least stated potential, for--and that would involve a significant number of people's care

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potentially being jeopardized. So you believe that as deputy minister, you'd leave it in the management of the Health Care Corporation's hands and judgment, the subject matter of this type of a memo?

MR. THOMPSON:

A. Well, there's another backdrop here as well, and that is that we rely upon the health authorities to manage their quality system, and their professional development. Quality in our health system is not something that the department has a large role in. First of all, there's an accreditation process which all of the health authorities participate in, and so it addresses, I'm told in a fairly vigorous way, a whole variety of functions related to quality and quality systems in the health system, and those accreditation reviews identify recommendations and they expect that these things will be fixed.

And then we have individual professionals who have responsibility within their profession to uphold a high standard of practice. A variety of then, policies and procedures within the hospital environment

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related to quality control, quality assurance, quality committees, that will--are designed to extend the quality system into a deeper level of detail.

And so within a network of that, which the department is not involved in, the hospitals do these things and we know that, and we expect the hospitals and the management in the hospitals to make good decisions about issues of quality.

Now this is a quality issue and the question would be does it have that extra dynamic feature, the unknown features of how large a problem it might be and any aspect of there being real impact on people occurring that that needs to be shared with the department for information. And so with all that as context, you know, I think my answer still says it depends.

COFFEY, Q.C.:

Q. It depends. This is what I'm--your time as the deputy minister, because you were the deputy minister of Health while this IHC staining matter which Dr. Ejeckam raised in 2003 was going on. You were the deputy

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minister.
MR. THOMPSON:
A. Yes.
COFFEY, Q.C.:
Q. I'm trying to get some--to provide to the Commissioner some context in terms of your understanding of the deputy minister, your expectation as the deputy minister, of the CEO of Eastern Health at the time, would have been George Tilley?
MR. THOMPSON:
A. Um-hm.
COFFEY, Q.C.:
Q. And the VP medical at the time would have been Dr. Bob Williams?
MR. THOMPSON:
A. Right.
COFFEY, Q.C.:
Q. And what your sense was of when you expected to hear from them and in terms of what had to happen or what sort of matters would have to be brought to your attention, the Department's attention, and what sorts of matters could be left to them to decide.
MR. THOMPSON:

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A. Right.
COFFEY, Q.C.:
Q. And you were comfortable with them--you would have to be comfortable with them deciding it, what the expectations were of them. You see what--I'd like to try and focus on that here. This is a concrete example, this memo, and the other two ones two months before, because in 2007, May 2007, this gets sent over.
MR. THOMPSON:
A. Um-hm.
COFFEY, Q.C.:
Q. To government. It doesn't get sent in June of 2003. What was different?
MR. THOMPSON:
A. There was a world of difference occurring in the sense that we had a very dynamic situation in -
COFFEY, Q.C.:
Q. From a patient care perspective, what was different?
MR. THOMPSON:
A. No, but this is the difference, in May 2007, we had a dynamic situation breaking in the public domain, big concerns about confidence

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in this--not just in the service, but in the way that the organization is communicating around it and one of the issues will and was becoming could it have been detected at an earlier time? What's the history? Why did this problem occur?
So the offering of this memo and these other documents in the context of that, indeed is relevant because it shows that, at an earlier point in time, there was concern about this very service and so it becomes important to understand it and to analyze it in retrospect. So there's no surprise that this memo, once found, would surface and say now, there may well be a connection here. So let's examine that. And that's why my response to you about whether or not, at the time, in 2003, this should have been forwarded to the department has to be said in the context of what was the management's analysis of this. What was the--what were the responses that were carried out in relation to this? And did management have a good plan to deal with the concerns of Dr. Ejeckam? And you can only answer the question you're posing me if I had

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that additional information.
COFFEY, Q.C.:
Q. I'm not asking so much as should it have been sent. I didn't -
MR. THOMPSON:
A. Oh, that's how I've been interpreting your question.
COFFEY, Q.C.:
Q. No, I'm not asking that. I'm asking what was your expectation as deputy minister as to what sorts of things, bearing in mind this as a potential example, should or should not, from your perspective as deputy minister, influence whether or not you were alerted to it as the deputy minister?
MR. THOMPSON:
A. Well, okay, that's a more nuanced question than I've understood you to be asking. So what extra features of this or what features of this might be present to characterize this as something that should be sent? Well, if we had the additional feature added in of a management that thought that this was a problem that was and had--was jeopardizing people's health, was jeopardizing people's

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health and will continue to, and perhaps on top of that, that a retesting exercise, at that time, would be engaged to sort out if anybody had been harmed in the past, and a potential resource issue as well, and a potential public sensitivity, then all of those, and maybe not all of them, but certainly some subset of them, if added to the actual memo itself, would have justified clearly it being brought forward to the department.

COFFEY, Q.C.:

Q. Now if that June 19th 2003 memo had made it onto your desk, as deputy minister, in 2003, without some satisfactory explanation accompanying it from the management of the Health Care Corporation, which in effect said that this has been attended to, would that have caused you concern or alarm at the time?

MR. THOMPSON:

A. If the accompanying information spelled out how it had been attended to, and put it in context, and said that it was properly investigated and fixed, then it would be an important issue to read and understand, but it might not be accompanied with alarm.

COFFEY, Q.C.:

Q. So I take it then, as deputy minister of Health, you expected or anticipated that the CEO would let you or Ms. Hennessey know, in 2003, about any matter that could affect-- well, any matter that they could affect public health, the health of a number of people in the public, that had been attended to? I mean, I'm trying to get some sense of when is it they're supposed to pick up the phone and call you and let you know. Is it when they've reached the conclusion "we can't fix it? We can't handle it," and only then? Or is it that it's gotten outside, it's gotten in the public domain or it's about to, and give you a heads up, whether they've handled it or not? I mean, what was the expectation back in 2003 as to when George Tilley was supposed to pick up the phone and call you and give you a heads up about something?

MR. THOMPSON:

A. Yeah, I went through a list of things earlier of the kinds of occasions or events that would justify a phone call or an alert that

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information needed to go to the department. Now, not every alert requires a decision. Many alerts will just be for information, often because something will become an issue in the public media and it's important that the minister understand what lies behind it when it actually does get reported in the media. So what would justify such a communication would--do you want me to review the list again?

COFFEY, Q.C.:

Q. No, you went through them. I'm just wondering what about, for example, this sort of a situation--because arguably, if it had been brought forward in '03 to you, this would have arguably been potentially addressed years ago.

MR. THOMPSON:

A. I understand that, yes.

COFFEY, Q.C.:

Q. So you understand, you'd be acutely aware of it.

MR. THOMPSON:

A. Yes.

COFFEY, Q.C.:

Q. So in terms of that, as the deputy minister of the day, what did you think you communicated to Mr. Tilley, and perhaps indirectly to Dr. Williams, as to what sorts of things should be brought to the deputy minister and the minister's attention, bearing in mind clinical issues? Because this is a clinical issue.

MR. THOMPSON:

A. Um-hm.

COFFEY, Q.C.:

Q. And public notoriety, was that -

MR. THOMPSON:

A. No, it includes that, but -

COFFEY, Q.C.:

Q. That's one of them, potentially.

MR. THOMPSON:

A. Yeah, but I will have to review the list again then, because the things that they should communicate are: when there are problems with equipment that need to be replaced, and sometimes that is just handled through the normal budget system, but sometimes a piece of equipment just crashes mid year and there's a need to deal with it; unexpected budget variances we would have; the need for new capital construction; the advice on when and

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where a new service might need to open; perhaps even anticipated public pressure for a new service somewhere in the province might be communicated; when something has gone wrong as well, an adverse event, that has some significance, so that the minister is alerted to it makes sense as well, and there are many different kinds of adverse events from a very--from potential ones that might only affect one person right up to actual events that might affect many people.

So there's a variety of things that--and when they communicate, of course, it means that they have analyzed, that the management of the organization has analyzed the situation at hand and reached a conclusion that for any one of those kinds of reasons, it should be communicated to the department. Now if this memo had just been sent with a note saying "wanted you to be aware of this" okay, without any other context, and it was read, that line certainly would have stood out because we would have been unaware at that moment of any management analysis and therefore any follow through, and from that point of view, it would

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alarm us and swing us into action asking more questions back, "well, what does all this mean?" But that's not the way a memo or an issue like that would come to us.

COFFEY, Q.C.:

Q. Would one of the questions have been "have you done any retesting?"

MR. THOMPSON:

A. Potentially.

COFFEY, Q.C.:

Q. It is, because it's one of the things that kind of jumps out at you, isn't it, when you read it?

MR. THOMPSON:

A. Well, certainly we'd have all the documents and Dr. Ejeckam was clear that there'd been erratic results and so one would--well, you'd have to find out what happens when you have an erratic result. Does that mean that someone might not get proper therapy or diagnosis? And if the answer to that is yes, you would pursue it back further. There's no question that this is a big flag that something had happened and that test results had been affected and the question remains, I think,

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why didn't retrospective testing occur at that time. So those are logical questions to pursue, related to this memo.

THE COMMISSIONER:

Q. Mr. Coffey, wherever you can find a convenient space, we'll break for lunch.

COFFEY, Q.C.:

Q. At the time, in 2003, while you were deputy minister, your view of your own authority vis-a-vis the health authorities was what, or the health boards of the day? Did you have the--did you view yourself as having the power or authority to direct them to do things or merely to suggest that they do things or advise that they do things?

MR. THOMPSON:

A. Yeah. Well, my impression of it, of course, is constrained by--initially by what the legislation says and the legislation doesn't really confer much authority on the department or none, I guess, on the deputy minister, but that's just the legislation. Legislation does allow for a budget process, and that's a big place where the department can exercise influence and authority.

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Departments will make their submissions. We have this team that analyses these budget submissions in detail, so that we can understand what the plans and priorities are of the health authority and do they match up with the plans and priorities of the government for the province as a whole. So if we disagree with where a health authority wants to go, we can negotiate and have a lot of influence in seeking a certain outcome through the budget process.

We can also place conditions on the way certain parts of an approved budget is to be spent. For example, we can delay a part of the budget until a more appropriate plan arrives at the department in order to give the department confidence that it'll be a good expenditure.

COFFEY, Q.C.:

Q. So you can use the budgetary process as a pressure point.

MR. THOMPSON:

A. No question, and used often in that regard. And in flipping that, though, within the budget process, we can also add money to the

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budget process and ask for--therefore try to influence RHA's priorities in that respect and RHAs are generally quite willing to receive new money to introduce new services or improve other services, sometimes even if they haven't asked for those as their priorities, but nonetheless perceived as the government's priorities.

COFFEY, Q.C.:

Q. How about outside the budgetary process?

MR. THOMPSON:

A. Sure, sure. If the department--well, we have, I would call it, in part, relationship authority and influence of the office. It's a more informal source of authority. The relationship authority exists when in meetings or in other context, you know, the CEOs and the deputy minister know that we have to deal with each other in our careers. They have a role making their organization successful. I have a role making the department successful, and if we have good relationships, we can find win-win solutions on a variety of issues. So we try to apply our resources in a certain direction and if I'm indicating I'd like an

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issue to head in a certain direction, typically, you find very willing and compliant CEOs, but not always. There are many occasions where CEOs would say back to me, "well, we don't have the money to do that. It's not a priority for us. Why would you be pushing that as hard as you are?" and we would have a discussion. I never felt that I had the ability to direct them in this context, to overrule their authority, but rather managed within that more influence so that the relationship brought about.

Now the influence of the office is slightly different, and it really exists in kind of a shared way with the minister's office, in that the RHAs and thus the CEOs understand that they are creatures of the legislation that the minister is responsible to administer, and therefore the minister appoints the Board of Trustees and that there's an accountability relationship back to the minister. So by virtue of all that, and the other authority is there with the budget process, that there's a lot of respect accorded to the views of the minister and to

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the deputy minister as well.

So when the department wants to accomplish a certain end, makes its views known, sometimes makes its views known strongly, then generally there is receptiveness to taking the direction from the department. But again, it's done within a context that there's no formal authority, at least not at that time, to formally direct the RHAs to do something which they may not wish to do, and we do get--and even ministerial suggestions will get pushed back if there are good reasons and there'll be a dialogue on that and an outcome.

COFFEY, Q.C.:

Q. And in terms of, as the deputy minister, your relationship with the minister of the day, what was your role vis-a-vis the minister, because there were three different ministers, but I'm interested in terms of how did you view your role and function vis-a-vis the minister?

MR. THOMPSON:

A. Well, sort of intertwined. My role is generally, you know, a responsibility to

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administer the affairs of the department. Part of that was administration of that relationship that we have with RHAs, the budgetary and other kinds of relationships that we have. So I have to look--I look to the minister to provide leadership and guidance on what the government's objectives are in the health sector and so I take on tasks that advance those objectives. We have to consult with each other closely to make sure that what I'm doing is directly in line with what objectives he or she is setting out, but I regard my role, if I could generalize and saying is implementing the policy of the government and doing that in close collaboration with the minister.

COFFEY, Q.C.:

Q. Thank you, Commissioner.

THE COMMISSIONER:

Q. Okay, 2:10 please.

COFFEY, Q.C.:

Q. Thank you.

THE COMMISSIONER:

Q. Thank you.

(LUNCH BREAK)

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THE COMMISSIONER:
Q. Please be seated. Mr. Coffey.
COFFEY, Q.C.:
Q. Thank you, Commissioner. Mr. Thompson, in, I take it, November 2003, you moved to the clerk's position?
MR. THOMPSON:
A. Correct.
COFFEY, Q.C.:
Q. You though had worked in--and not as the clerk, but in that office, I take it, before, back in the mid 90s?
MR. THOMPSON:
A. Yes.
COFFEY, Q.C.:
Q. When you went there as the clerk in November of 2003, and were there until, you indicated May of 2007, could you explain to the Commissioner, please, about how that office is structured?
MR. THOMPSON:
A. Sure. Well, the clerk of the Executive Council has a dual title. The other title is the secretary to Cabinet, and in that--so certain functions, I guess, pertain to each

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capacity. As clerk of the--but together, they make up really three functions. The first function is as head of the provincial public service and in that capacity, the position is responsible for ensuring that the public service is, as a whole, is prepared and capable to implement government's agenda, whatever that may be. So we look out for human resource issues, organizational structure, performance programs, and the like. So that's the head of public service component.

Second component deals with support for the Premier and so our office would support the Premier as much as a department or department staff would support a minister. If the Premier needs advice, briefing notes, communications forwarded to areas within the public service, that would be our function, our second large function, and in that capacity, we, I guess, we keep our eyes and ears open and gather intelligence on issues which are going on within government, so we can relay that as necessary to the Premier's office.

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And then the third broad function is decision support for the Cabinet and perhaps I should have mentioned that one first, because it's the one that in which we have most of our people employed and in some ways has the greatest significance. And in that role, we are the staff function that helps set the agenda for Cabinet meetings. We take the minutes of Cabinet, issue those minutes to all the appropriate people who need to follow through on decisions of the Cabinet. We give similar support for the committees of Cabinet. So whenever a Cabinet committee meets, it's generally one of the people who are within Cabinet Secretariat that would provide an agenda and minutes and communication function for that committee. And we also carry out an analysis of briefing--I'm sorry, of Cabinet submissions that come from departments so that they can be--all the loose ends and appropriate questions get asked at a staff level and prepared into a briefing note for purposes, not just of the Premier, but of course for every minister for when the meeting arrives, so that they'll have a--not only the

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paper from the ministry and the communications plan attached to that, but also a staff analysis to help them understand some of the policy issues and interconnections between departments.
COFFEY, Q.C.:
Q. I'm sorry, something would come from a department, communications piece as well on it, and input from the Cabinet Secretariat staff?
MR. THOMPSON:
A. Right. Now I've omitted, but it's important as well, that there is a communications consultations branch within Executive Council that really are part of the team that supports Cabinet and they will analyze communications plans that come in as part of Cabinet papers and send along their thoughts on those plans and our Cabinet officers, who conduct the analysis of the Cabinet papers would incorporate those comments or that analysis from the communications side directly into the notes that get prepared as we forward papers onto the Cabinet agenda.
COFFEY, Q.C.:

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Q. So the role of the Cabinet--okay, so I'm just trying to get some sense then of the roles of these various positions. So starting at the top of the Cabinet Secretariat, your role is what?

MR. THOMPSON:

A. Clerk of the Executive Council, or sorry, what do I do?

COFFEY, Q.C.:

Q. Yes, what do you do?

MR. THOMPSON:

A. Try to appropriately manage all of those three functions. So would you like me to describe the executive team?

COFFEY, Q.C.:

Q. Sure. Yes, please.

MR. THOMPSON:

A. Okay. There's really a five-person team, including the clerk. There are two assistant secretaries responsible for supporting the Cabinet process, and when I say that, I mean one assistant secretary for all of the Cabinet submissions that come from the economic departments, and another assistant secretary to receive and assess all the Cabinet papers

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coming from the social departments, and they each have a staff in order to--that have several departments each to run that process. So that's the structure of the flow of paper on Cabinet submissions.

COFFEY, Q.C.:

Q. How many of you are there? There's -

MR. THOMPSON:

A. There's two assistant secretaries, and they would each have maybe -

COFFEY, Q.C.:

Q. No, I understand that.

MR. THOMPSON:

A. Okay.

COFFEY, Q.C.:

Q. But you said the senior executive, there's you, the two of them, and?

MR. THOMPSON:

A. The deputy clerk.

COFFEY, Q.C.:

Q. Oh, the deputy clerk, okay.

MR. THOMPSON:

A. And the assistant secretary for communications. So there's five in all.

COFFEY, Q.C.:

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Q. Okay.

MR. THOMPSON:

A. The deputy clerk plays a key role in the paper flow in the office, routing a Cabinet paper to the appropriate Cabinet committee once it's arrived in from the department, ensuring then that when the Cabinet agenda is set that the Cabinet agenda--that the piece of documentation that's to support an item on the agenda includes not only the department's paper but a fully processed analysis, the comments that may come from the Department of Finance or the Department of Justice, any recommendations that are overlaid on that paper from one of the committees of Cabinet, and only then when all of those documents are together does that actually--is it actually ready to be placed on the agenda. So the deputy clerk oversees that function, but also coming out of Cabinet, the deputy clerk oversees the minuting, in conjunction with me or with the clerk, oversees the minuting of the decisions and then the processing of that out to people who need to receive the minutes, and then oversees as well the filing function

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for all of those documents that are associated with decision making.

COFFEY, Q.C.:

Q. And the Cabinet officers, those two Cabinet officers, what do they do?

MR. THOMPSON:

A. There's two assistant secretaries.

COFFEY, Q.C.:

Q. Assistant secretaries, yes.

MR. THOMPSON:

A. To Cabinet, who have two or three Cabinet officers.

COFFEY, Q.C.:

Q. Okay, so the two assistant secretaries, I'll get it right, okay, what is their role?

MR. THOMPSON:

A. As I said, they have--they separate all of the departments in government into two pieces, okay, so the social and economic. It's a little bit blunt, but you know, we sort all the departments into those two categories, and then for each of those categories, there is a Cabinet committee. So for the assistant secretary for economic policy, there's an economic policy committee of Cabinet. The

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assistant secretary is actually the secretary to that Cabinet committee, and so the assistant secretary ensures, in conjunction with the chair of the committee, that the agenda gets set, that papers are circulated to the appropriate ministers on that committee, and that the meeting gets held and that the minutes, which are essentially recommendations to Cabinet--all the minutes of committees generally are recommendations to Cabinet, that they are documented and that they are provided to the deputy clerk, so that they can be combined with other material for a full Cabinet meeting.

COFFEY, Q.C.:

Q. Okay. So how many such Cabinet committees are there?

MR. THOMPSON:

A. Well, there's--the most important Cabinet committees, in addition to the economic policy committee and the social policy committee -

COFFEY, Q.C.:

Q. Sure, there's two of those?

MR. THOMPSON:

A. There's two of those, that's right. They're

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kind of the workhorses, if you like, along with the Treasury Board. Treasury Board is a committee of Cabinet dealing with finance, financial and administrative matters in the main. There are other committees of Cabinet that meet from time to time. There's a planning and priorities committee of Cabinet, but it doesn't meet frequently. It meets at the call of the Premier. There's a committee--there is a committee called the economic initiatives committee, which meets infrequently, and then there might be special purpose committees that get called from time to time to take on a certain task, an example being the committee that was set up around the Turner Inquiry.

COFFEY, Q.C.:

Q. And the committee or the--you're secretary to Cabinet for health matters right now. Where does that fit in this?

MR. THOMPSON:

A. Well, it's an unusual creation. It doesn't normally exist, and it's really a designation recognizing the job that I held before, that my job continues to exist within the Executive

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Council at that rank, but I don't carry those responsibilities that I had in my previous job.

COFFEY, Q.C.:

Q. But how does that fit in with--your current role fit in with kind of the existing structure? As you say, it's an -

MR. THOMPSON:

A. So to whom do I report?

COFFEY, Q.C.:

Q. Yes.

MR. THOMPSON:

A. Well, I report, in that capacity, to the Premier, okay.

COFFEY, Q.C.:

Q. That's the capacity of secretary to Cabinet for health matters.

MR. THOMPSON:

A. For health issues.

COFFEY, Q.C.:

Q. Health issues, I'm sorry.

MR. THOMPSON:

A. So in that capacity, I report to the Premier.

COFFEY, Q.C.:

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Q. As a practical matter, what does that really mean in the sense of -

MR. THOMPSON:

A. Well, that I will brief him from time to time and that may mean, you know, less than--or once a month or so, about the work I do, or on special occasions, if he requires a briefing, and I ensure that he receives any written material I generate. But as a practical matter, I work closely with the Minister of Health and the deputy minister of Health, because this is a health issue, and I also have a relationship with the Cabinet as a whole in the sense that as Task Force chair, the Task Force is a creation of Cabinet.

COFFEY, Q.C.:

Q. Okay, and as the Task Force chair, you report to Cabinet as a whole?

MR. THOMPSON:

A. Right.

COFFEY, Q.C.:

Q. And in a practical way, what does that mean?

MR. THOMPSON:

A. Well, in a practical way, it doesn't mean a lot because there isn't a regular reporting or

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accountability set up around that function, other than to ensure deliver of final report summarizing all the matters within that, but I will brief the minister and I'll brief the Premier's office on my activities.

COFFEY, Q.C.:

Q. The Minister of Health and the Premier?

MR. THOMPSON:

A. Yes.

COFFEY, Q.C.:

Q. On your activities as the Task Force chair?

MR. THOMPSON:

A. Correct.

COFFEY, Q.C.:

Q. Okay. So back to then, as the clerk at the time, from--well, from late 2003 until May of '07, did any of the structures you've just described change in any significant way during that time frame, particularly bearing in mind what we're here about, ultimately about ER/PR and that, anything that changed that would--might have had any influence or effect on that?

MR. THOMPSON:

A. No, they were mainly stable throughout. Some

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changes in personnel.

COFFEY, Q.C.:

Q. Sure, I appreciate that. Now the Cabinet officers role is what?

MR. THOMPSON:

A. Well, each Cabinet officer, so this is not a manager, it's a staff person in the office. Sometimes we recruit them from the management ranks, sometimes from a research officer type rank or other places. But it's a staff function within the office, and each officer is responsible for maybe two or three or four different departments, and their primary function is to receive--they'll be the first recipient in Cabinet Secretariat of a Cabinet submission once it's received from a department, and once it's been routed to a committee. So the deputy clerk takes a paper, routes it to social policy committee, and one of the Cabinet officers within that group will be designated, let's say, for the Department of Health and then that officer would read the paper, identify questions that need to be clarified or analytical points that may be outstanding and then enter into a dialogue

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with the primary author of the paper or the appropriate ADM or DM and conduct that dialogue, perhaps ask questions that require more information to come forth. All of that is for purposes of preparing what we call a Cabinet Secretariat analysis.

Now that may have other inputs, if required, say from the Department of Justice or Department of Finance or who knows, there could be a variety of issues. Sometimes we get input from the Women's Policy office or from the Royal Secretariat, so that officer needs to manage inputs from all of those places on a Cabinet submission.

In the ideal world, the officer would have received a draft submission, so that you could start that back and forth at the draft stage, and then the paper will be in good shape at the final stage with the Minister's signature on it, in order to quickly move through the stages of decision making, and so that more or less encompasses the role of the Cabinet officer.

COFFEY, Q.C.:

Q. Okay. So that's a paper that, I take it,

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originates from outside and comes in?

MR. THOMPSON:

A. Correct.

COFFEY, Q.C.:

Q. How about the requests for Cabinet Secretariat--you know, briefing notes for the Cabinet Secretariat that originate within the Cabinet Secretariat?

MR. THOMPSON:

A. Okay, actually how about I address first briefing notes -

COFFEY, Q.C.:

Q. Sure.

MR. THOMPSON:

A. - that come in from departments and then the latter? When Cabinet Secretariat identifies a need for a briefing note, and perhaps we can get into the reasons why we would after, but when we do, we'll contact, through that officer generally, sometimes through the assistant secretary, but through the officer, the right person in the department, typically an ADM, and request that a briefing note on that topic be brought forward. Draft will usually arrive in whatever time is specified.

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There may be some dialogue back and forth between the Cabinet officer and the department, again clarifying what's in the note, and then the finalization of that note will often have the signature or the signature space or an indication of the primary author who reviewed it in the department, and who reviewed it within Cabinet Secretariat, as it passes then through other levels towards--typically towards the intended recipients in the Premier's office and in Cabinet, and in Executive Council. So that's the role of a paper that we pull in, actually sorry, that would come in from a department, although I have confused that as I've talked. But the process is actually the same, that in between process is the same, if a department is identifying its own note to send in or if we reach out to pull it in. The internal process and the kinds of signatures or indications of who's reviewed it on the bottom is basically the same.

COFFEY, Q.C.:

Q. Well what about--okay, so what are the circumstances in which the Cabinet Secretariat

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or someone from the Cabinet Secretariat might reach out, as you say, and look for a briefing note, what sort of circumstance?

MR. THOMPSON:

A. What would be the criteria for that?

COFFEY, Q.C.:

Q. Yes.

MR. THOMPSON:

A. Well, it's--we don't actually have a policy documented on what those kinds of circumstances might be, but generally, if we think that there's an item that requires some direction from the Premier, we might ask for a note. If there's just generally an important issue that is coming to a milestone and there needs to be information passed on to the Premier and his staff and ourselves, we'll reach out for that. But I would say those two kinds are generally the ones that are identified by the department, and they send them in and not us reaching out.

When we reach out, it's typically a dynamic issue that's developing, often in the media, or however else we may have picked it up, and our sense is that there needs to be

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information in the Premier's office and in Cabinet Secretariat on that matter that day or very soon, and so we'll reach out and ask them to prepare a note, and we're met often with the response "we've already thought of that, and one is under way," and then we engage in the normal process.

COFFEY, Q.C.:

Q. And what is the expectation, in your experience, throughout government, at least the time you were clerk, as to the turnaround time in relation to a briefing note that the Cabinet Secretariat has reached out for? If they were to reach out to the Department of Health on a matter that had arisen in the media -

MR. THOMPSON:

A. Well, if the -

COFFEY, Q.C.:

Q. - what kind of time frame would you, as clerk, expect to see it within?

MR. THOMPSON:

A. It varies, but if the House of Assembly is open and we think it's an issue that might come up in the House, that the Premier might

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have to deal with, we would ask for something by the end of the morning, by 12:00. If it was something that, for reasons inherent in the issue, that wasn't as urgent as that, perhaps by the end of the day, and reluctantly perhaps, would agree to the next day. That's about the time frame.

COFFEY, Q.C.:

Q. And what about if the House is not open?

MR. THOMPSON:

A. Well then, in general, if it's an issue nonetheless that's breaking that day and a minister or the Premier might be expected to talk to it, then we would have the same kind of urgent expectation.

COFFEY, Q.C.:

Q. I take it is that sort of--the urgency or sense of an expectation on the part of Cabinet Secretariat that the response is to be prompt -

MR. THOMPSON:

A. Yes.

COFFEY, Q.C.:

Q. - do you think that's kind of widespread known throughout government?

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MR. THOMPSON:
A. I think so, yes.
COFFEY, Q.C.:
Q. Now in that reporting structure, who--as Cabinet Secretary, I'm sorry, as clerk of the Council, Executive Council, who reported to you directly?
MR. THOMPSON:
A. The deputy clerk.
COFFEY, Q.C.:
Q. Yes.
MR. THOMPSON:
A. And all of the assistant secretaries.
COFFEY, Q.C.:
Q. So the assistant secretaries report to the deputy clerk?
MR. THOMPSON:
A. Well, they did in many ways, in that they had a very close relationship and coordinated work, but on an organizational chart, their reporting relationship was to me.
COFFEY, Q.C.:
Q. And the assistant secretary involved in communications in the cabinet secretariat, Ms. Cheeseman, who would she report to?

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MR. THOMPSON:
A. To me.
COFFEY, Q.C.:
Q. To you. In her shop, as it were, and the name of that is, what was it?
MR. THOMPSON:
A. Communications and consultations branch.
COFFEY, Q.C.:
Q. Okay. In her shop what was the structure?
MR. THOMPSON:
A. Far as I understand--sorry -
COFFEY, Q.C.:
Q. Were there cabinet officers? Because there are cabinet offices under the assistant secretaries.
MR. THOMPSON:
A. Right. No -
COFFEY, Q.C.:
Q. In Ms. Cheeseman's shop who was -
MR. THOMPSON:
A. I don't think we used that term in that area. I don't know all the terms, as well, that they may have used there. I think there was a director of communications and a director of consultations, perhaps communications

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specialists and some specialized functions, as well, around media and--that is setting up computers and audio and web sites and things like that. But I don't know the job functions, as well.
COFFEY, Q.C.:
Q. In terms of, well, if they're cabinet officers, you understood, any one cabinet officer might have two or three departments within their responsibility?
MR. THOMPSON:
A. Yeah.
COFFEY, Q.C.:
Q. What about in the communications and consultation branch?
MR. THOMPSON:
A. Yeah. My sense is that they didn't have enough staff to divide it up that way. I could be wrong, but my sense was that people pitched in as necessary on whatever, working with whatever department had needs that day.
COFFEY, Q.C.:
Q. And what about--so in terms of that we should ask Mr. Cheeseman that, I take it?
MR. THOMPSON:

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A. Yeah, sure.
COFFEY, Q.C.:
Q. Is the one who would know more about that, I take it?
MR. THOMPSON:
A. Um-hm.
COFFEY, Q.C.:
Q. If on any one topic that was in the media or potentially in the media or in the media from time to time that was of interest to the cabinet secretariat, particularly yourself as clerk, did the situation develop where you could identify, you know, John Doe as being the communications person who was following this from time to time and if you wanted to know something about it, you'd contact John Doe?
MR. THOMPSON:
A. In a department, you mean?
COFFEY, Q.C.:
Q. Yes. No, not in the department, in the communications and consultation branch?
MR. THOMPSON:
A. No, I typically would call Josephine or if she was not available, her second in command. I

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usually didn't call others.
COFFEY, Q.C.:
Q. Did you ever get the sense that on any particular issue a particular person was the one who had followed it?
MR. THOMPSON:
A. No.
COFFEY, Q.C.:
Q. Any time you checked, the same name kept coming up?
MR. THOMPSON:
A. That doesn't--no, no, I don't have that memory.
COFFEY, Q.C.:
Q. So in terms of, to your knowledge there was no structure in place to insure continuity amongst the communications people in dealing with a particular issue?
MR. THOMPSON:
A. Well, I wouldn't know the answer to that, but the sense I'm trying to give you is that I don't think that they had the depth in terms of the numbers of staff to structure themselves like we did in cabinet secretariat.
COFFEY, Q.C.:

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Q. How many cabinet officers were there?
MR. THOMPSON:
A. It would vary from time to time. Usually two to three for each of the two branches, so five or six.
COFFEY, Q.C.:
Q. Five or six cabinet officers?
MR. THOMPSON:
A. Um-hm.
COFFEY, Q.C.:
Q. And how many communications personnel would work for Ms. Cheeseman?
MR. THOMPSON:
A. If you're thinking about core communications officers, if we could call them that, my sense it was two to three.
COFFEY, Q.C.:
Q. And the other types of officers were?
MR. THOMPSON:
A. Well, more technical types of people who would work on cameras and computers and power point presentations or manage the web site, manage the media room down on the ground floor of Confederation Building, get news releases out over the wire, those kinds of things.

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COFFEY, Q.C.:
Q. Okay, that's what they would do. How many would be involved?
MR. THOMPSON:
A. Don't know for sure, but my sense is four or five of those kind of people.
COFFEY, Q.C.:
Q. Because at one point in 2005, beginning of, mid 2005, Carolyn Chaplin worked in that group?
MR. THOMPSON:
A. Right.
COFFEY, Q.C.:
Q. So Carolyn was one person. How many Carolyns, as it were, were there?
MR. THOMPSON:
A. See, Carolyn, I believe, was the director so was second in command in that unit, and as I understood it, might have had a couple of people, that is communications specialists, let's say, working for her.
COFFEY, Q.C.:
Q. When something--what was the structure in the cabinet secretariat in the clerk's office for keeping track of things, how would you keep

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track of, you know, documents that came in?
MR. THOMPSON:
A. Well, you have to break down the documents into a few categories. Most of our business was oriented around decision making for cabinet and the document flow there had a highly structured approach. Cabinet submissions had a system for being logged and routed and then joined up with the other documents assigned into a document management system, an on line system and tracked over time, so there was a highly routine way of tracking those documents. As for briefing notes, when they would come in, and there would be interaction with them at the officer level with the officer in the department, then, as I understand it, the final product of that note would make its way into a similar part or another part of our electronic document management system that would be--it has a place and they get recorded there. As for--then from time to time there might be special projects that staff or any level within the organization, our organization would be involved in so--or committees that we

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might be on. And so files would be created by individuals who are responsible for those committees or projects and maintained by them in the same files in their own filing cabinets or with their administrative assistants.

COFFEY, Q.C.:

Q. What about something that, you know, came in via the phone for the first time, what would happen?

MR. THOMPSON:

A. Well, I can tell you what I would do, and we didn't have a generic policy on it. People weren't trained to all use a single approach. And so my phone messages, I would only record something that--a significant point from a phone message if I had to follow up on it. And generally I just record it on a scrap of paper and use that as my guidance for executing or for reminding myself to take a certain kind of action or pass on a certain kind of message.

COFFEY, Q.C.:

Q. Okay. So what about if you got a phone call and the subject matter was of potential, potentially of significant public importance?

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MR. THOMPSON:

A. Um-hm. Yeah, well -

COFFEY, Q.C.:

Q. So you get the phone call or you get the phone message, what happens then?

MR. THOMPSON:

A. Well, a variety of things could happen. So I could take you through the spectrum, if you like. And it's not clear to me that there's any one preferred method among these. First of all, if it's a dynamic breaking issue, first, one of the first things that you think about is, well, is somebody managing this issue out in the department. And typically, I think, an assurance of that would be had over the telephone. If it's not quite as dynamic but still important and needs to be known by others, particularly in the premier's office, quickly, or maybe it might be a minister, quickly, you'd use the telephone to communicate that. If there was, if it wasn't quite as urgent but nonetheless important, you might use an e-mail to communicate that message. If it was a little less urgent, I think you might invite a briefing note from

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the department to summarize what you just heard on the phone and get that in promptly. So any number of different methods.

COFFEY, Q.C.:

Q. And was there any system in place that you utilized or that your office utilized that once you had been alerted to something, that would keep track of it in the sense of would bring it forward, to ensure that it got brought forward?

MR. THOMPSON:

A. The tracking of an issue, remember now, we put most of our effort into tracking the flow of documents for cabinet.

COFFEY, Q.C.:

Q. Oh, yes.

MR. THOMPSON:

A. We also have a system for, a repository of briefing notes. We keep project files on things that we're working on. But if an issue is breaking, it's of--or an important issue that we just hear about by phone or e-mail, we don't really have a structured process to utilize that unless it is guided into one of the other formats. If it's--you know, it

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could be guided into a briefing note format, could be guided into a cabinet decision. So but nonetheless, if an issue of importance comes in and we want to track it, we will normally depend upon the assistant secretary and the cabinet officer responsible for that department to track the issue over time, to follow up with the department from time to time and just be aware of what's happening. We may similarly alert the communications folks to the same issue so that they can keep in touch with the communications director on the same issue. But that's a very general explanation of how it might occur.

COFFEY, Q.C.:

Q. Okay. Well, how else might it occur?

MR. THOMPSON:

A. Well -

COFFEY, Q.C.:

Q. If something of some significance, potential public significance and a public interest and that could prove to be controversial -

MR. THOMPSON:

A. Sure.

COFFEY, Q.C.:

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Q. - comes in via the phone or by e-mail or by fax, for that matter, to use an older technology, what sort of--so I take it then that there was no system in place, really?
MR. THOMPSON:
A. No, you -
COFFEY, Q.C.:
Q. I could phone -
MR. THOMPSON:
A. We don't have an incident reporting system.
COFFEY, Q.C.:
Q. Incident reporting system?
MR. THOMPSON:
A. No, no, we don't.
COFFEY, Q.C.:
Q. And kind of once it's reported some, you know, the system keeps track of bringing it forward until somebody signs off on it, there's no such system in place?
MR. THOMPSON:
A. No, no. I was going to give you another example of a way that we might respond or communicate. Shouldn't say respond. But I might take that issue and if it had enough significance at that moment, I might go call

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Brian Crawley, as the premier's chief of staff, and say, "Listen, we need to meet. We need to discuss this important item that's emerged and let's try to determine if--what next steps, if any, are necessary for us to take where we are." And many times, of course, these matters may emerge from a line department. That's generally the source of our information on such matters. And a general principle would be that the line department has first responsibility for managing the issue. That's where legislative responsibility rests, all portfolio responsibilities. They usually have the staff resources to understand, investigate, appreciate significance of an issue and deliver good information. So if there is a default in the system is that while we're being provided with information, it's the department that we normally expect to manage the issue and it would be--we may be, you know, deeply interested, we may have a high requirement for information, we may--until the issue becomes coherent in some fashion. So in a sense that's why we don't have a routine

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structure for dealing with these items is because the routine is actually the department managing an issue and informing the centre about their progress.
COFFEY, Q.C.:
Q. And so that the cabinet secretariat, then, has no structure in place, at least while you were there, you know, as the clerk, to insure that if a matter of some potential significance was brought to your attention as the clerk, to insure that it didn't slip your mind or your attention afterward, because you worked in a very busy environment, I understand?
MR. THOMPSON:
A. Um-hm.
COFFEY, Q.C.:
Q. That there was no process in place to ensure that, I don't know, a diary dating system, a tickler system, a reminder system, you know, as to bring it forward in two days or two weeks, whatever, you know, whatever you said or the system automatically said to insure that, oh, yes, well, where is that?
MR. THOMPSON:
A. Well -

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COFFEY, Q.C.:
Q. No such system in place?
MR. THOMPSON:
A. Well -
COFFEY, Q.C.:
Q. You'd be relying upon -
MR. THOMPSON:
A. Only in a partial sense because our main business is decision making, so we have a well established system not to lose sight of matters in government, the most important policy matters, most important issues that need decision. So, you know, there's a well-developed system that we--to remind us to continue to follow up on those.
COFFEY, Q.C.:
Q. On those. But I'm not asking about those.
MR. THOMPSON:
A. No, no, but it's important to put everything in context because that's our main business. And then--in terms of briefing notes and the general expectation that then come through and to follow through to make sure they're clear and that then they get circulated to intended recipients, that's our main business. If we -

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COFFEY, Q.C.:
Q. Go ahead. I'm sorry.
MR. THOMPSON:
A. And if an expectation is upon a department then to bring back something for decision or to bring back something at a milestone stage, we don't have a system for dictating for if, you know, a flag comes up on our calendar and says, "Phone so and so today to remind them that they have, you know, a briefing note to file." Now, individuals may indeed to that as a track for their own set of departments, but we don't have an electronic system developed that would perform that function.
COFFEY, Q.C.:
Q. Okay. And so the system that was in place at the time, such as it was, involving out of the routine events, matters that were breaking or might be or were anticipated would break in the media, for example, there was no system in place by way of computer or otherwise to kind of enter it, we have a file on this, as it were, and let's follow it or somebody who is--there was no system in place to do that? And if it was followed at all, it would be by an

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assistant secretary of his or her own initiative or by the cabinet officer to whom it devolved of his or her own initiative or by the department of its own initiative to insure that it was brought forward, is that the situation?
MR. THOMPSON:
A. Well, we don't have an electronic system to track every piece of information that is alerted to us so that we can fit it into a reminder, a flagging system to go back and deal with it. The reality is, is that that would mean a volume of such great extent and magnitude that one wonders if it would be efficient at all.
COFFEY, Q.C.:
Q. Well, the system that was in place was what, was purely memory, I take it, then?
MR. THOMPSON:
A. No, it would be unfair to say that it's purely memory. What I'm trying to do is create an understanding for you that if an incident was--needed direction, you know, we would ask for a briefing note, okay, then it's captured in the briefing note system. If it needed a

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cabinet decision, we would direct that issue into a request for a cabinet submission and it would get caught up in a highly structured system. If it was an alert to something that was happening and developing, it is--it comes in as information. Here's something that a department wants the premier and others to know about, so here it is. Now, if you have any questions, we'll follow up. So we process it in regard to for what it's worth at that point in time. When something turns--we don't necessarily make it the cabinet secretariat's role then to follow up on every issue that on which we're alerted by telephone or e-mail, the volume is so high. And on top of that, many alerts come through conversations through, on the margins of meetings and so forth, so it's a complicated system. Most of these information alerts are probably at a modest level of importances. So when something breaks through, and this is, you know, this discussion is leading, if something breaks through, you know, that has a high level of sensitivity, the--it more than likely would get guided into one of the other

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existing processes unless there's a good reason that it doesn't. Unless, for example, if we know that a department is managing an issue well and that it is in charge of alerting us on information and alerting us when a decision is made, cabinet secretariat is happy that that function is working because that's the way it should work. The ministers and departments are in charge of the matters within their responsibilities and while not always, in the main they are responsible for bringing forward matters to the cabinet secretariat and the cabinet for purposes of information and decision making.
COFFEY, Q.C.:
Q. Well if as clerk, you were to give explicit direction to a department and a government agency in those situations where it was seen fit, from your perspective to, you know, give such explicit direction, is there any system in place to follow up to ensure that it was actually followed and adhered to?
MR. THOMPSON:
A. The--if it's in an ad hoc situation there isn't a system to follow up, other than

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maintaining a note or asking one's assistant to bring forward a certain file at a future point in time so that you can be reminded, which is something that I use frequently. But no, there isn't, again a system of bringing back--except for any system that an individual might employ themselves.

COFFEY, Q.C.:

Q. Yes, and from your perspective as the clerk at the time that you gave direction, I take it what system, if any, did you have in place to ensure that you were reminded to check to see if your direction was followed out.

MR. THOMPSON:

A. Well, first of all my memory of something, making a meeting with someone at which time we would follow up on an issue, asking the individual who I expect action from to come back on a certain date, leaving a note on top of my desk so that it's there as a constant reminder, asking my assistant to, by way of e-mail or otherwise, to remind me to follow up, or to hand it off to an assistant secretary to say here's an issue that I would like followed up and let me know how this file unfolds. So

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any variety of those ways, but there isn't one super system that will--that we use for those kinds of non-routine reminders.

COFFEY, Q.C.:

Q. Well who was your assistant who would have done that for you during July of 2005?

MR. THOMPSON:

A. My administrative assistant? Catherine Evans.

COFFEY, Q.C.:

Q. Catherine Evans, uh-hm, so you would simply ask Ms. Evans verbally or by an e-mail to remind you.

MR. THOMPSON:

A. If necessary, yes. If I chose to use that particular route.

COFFEY, Q.C.:

Q. And how would a system that ended up in a briefing note format, you know, resulted in a briefing note to the Cabinet secretariat, I appreciate that it would be tracked until the briefing note existed and it got that little stamp on it -

MR. THOMPSON:

A. Right.

COFFEY, Q.C.:

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Q. - saying that it was finalized, but after that existed, was there any system in place to check on what's the status from time to time of that issue?

MR. THOMPSON:

A. Well if a--not just the status because most notes perhaps are for information purposes and if one note was seeking some kind of direction, we would--myself and the deputy secretary in the main, the deputy clerk, would maintain those sets of notes active on top of our desk or in a KIV file and just continue to remind the Premier's office, you know, we need direction on this.

COFFEY, Q.C.:

Q. But if you're not looking for direction, if it's simply a note reporting on a developing and ongoing situation -

MR. THOMPSON:

A. We provide the information and if there's no need to follow up, then in the blizzard of activities and issues that are underway in that setting, if there's no follow up necessary, then one doesn't follow up.

COFFEY, Q.C.:

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Q. And who would make, in that context, the decision as to whether or not there's a need to follow up, as it were?

MR. THOMPSON:

A. Well several people all at the same time would be making such decisions, the people who receive the notes and the people who are providing the notes, and typically the context is self evident as to whether or not next steps are required.

COFFEY, Q.C.:

Q. How would a decision be made as to whether or not a briefing note was required? If information came in, the Cabinet secretariat and it involved a matter that was of some sensitivity, to use your word, and it was about to become public and there was talk about briefing notes, what system, if any, was in place to ensure that a briefing note actually showed up?

MR. THOMPSON:

A. Well perhaps we had better talk about the specifics here because this is a very unusual kind of situation.

COFFEY, Q.C.:

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Q. Okay.
MR. THOMPSON:
A. And it probably wouldn't occur that often.
COFFEY, Q.C.:
Q. And I will go to that, I'm just, again from the Commissioner's perspective, I'm trying to explore the structure that was in place, such as it was, to handle matters of public interest that came to the Cabinet secretariat's attention.
MR. THOMPSON:
A. Uh-hm.
COFFEY, Q.C.:
Q. If something came in and some attention was focused by yourself, as clerk on it, was there any structure then, other than, you know, your kind of reminder to yourself, as you said, leaving it on the corner of your desk or whatever, or asking your administrative assistant to bring it forward or someone else to bring it forward, I take it there was no structure in place to follow through to ensure that -
MR. THOMPSON:
A. Well, if we wanted a briefing note on a

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matter, if I wanted to see a briefing note generated on a matter, if I wished, I could phone the deputy minister directly.
COFFEY, Q.C.:
Q. Sure.
MR. THOMPSON:
A. I could ask the assistant secretary to follow through and on occasion, several different people, but the--so if a briefing note is requested, that's how, there are channels to follow through in the request.
COFFEY, Q.C.:
Q. Having you say a briefing note been promised, was there any system in place to ensure that it showed up two or three days later?
MR. THOMPSON:
A. No.
COFFEY, Q.C.:
Q. To remind yourself.
MR. THOMPSON:
A. No, if a briefing note is promised, it's one of those things that we would hear all the time, briefing notes forthcoming. It's on its way, someone is preparing it. So those are not sort of things that you would log as it

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doesn't become a trigger in and of itself, it's just common parlance that you would hear that.
COFFEY, Q.C.:
Q. In terms of was there any system in place to ensure that, you know, if it's a Tuesday and you expect or are told the briefing note will be there by Friday, was there any system in place to ensure that on Friday you were reminded to ask where that briefing note was?
MR. THOMPSON:
A. No, except for one's own tracking of an issue.
COFFEY, Q.C.:
Q. When briefing notes were prepared for cabinet secretariat and were finally signed off on, you know, informational type, okay, and were filed in the executive registry, I think executive council registry and were distributed, was there any system in place to keep track of whether or not the people on the distribution list actually received the note and certified that they read it?
MR. THOMPSON:
A. No.
COFFEY, Q.C.:

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Q. If a department sent a briefing note via e-mail to the director of communications in the Premier's office, it's a departmental briefing note, okay, was there any system in place whereby that sort of a briefing note would be distributed within the cabinet secretariat as well.
MR. THOMPSON:
A. As I understand it, it's an unusual route to get a briefing note into our circulation system, so I don't think there would be a system. If though it was sort of inadvertently sent by that channel, we'd simply have to rely on the alertness of the person that received it to say, oh, this needs to go back to the other channel in order to get reviewed appropriately and put into circulation.
COFFEY, Q.C.:
Q. With respect to, as you said briefing notes generally tend to be of the variety of informational, sometimes they would, though, seek direction?
MR. THOMPSON:
A. Uh-hm.

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COFFEY, Q.C.:
Q. Would the contents of such a briefing note spell out that we're looking for direction?
MR. THOMPSON:
A. Yes.
COFFEY, Q.C.:
Q. Sometimes in fact they would put in the words of the decision that they want, so there's clarity about what the intended outcome is.
COFFEY, Q.C.:
Q. Okay. How much interaction as clerk of the executive council would you have with staff in the Premier's office?
MR. THOMPSON:
A. My primary contact would be with the chief of staff and that would be frequently, often daily and with other staff in the Premier's office less than that, but the director of communications and some of the other senior staff, perhaps weekly.
COFFEY, Q.C.:
Q. And so the chief of staff throughout the time that you were clerk was -
MR. THOMPSON:
A. Brian Crawley.

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COFFEY, Q.C.:
Q. And so would you see Mr. Crawley, was it a scheduled meeting daily or -
MR. THOMPSON:
A. No, sometimes they were ad hoc meetings and for a period of time we tried a specific time each day, but that was fairly hard, given both of our schedules, so we would make extra effort to be available to each other as necessary to conduct business.
COFFEY, Q.C.:
Q. And where were your offices at the time in relation to each other?
MR. THOMPSON:
A. I'm on the ninth floor of the east block, Confederation Building and he's on the eighth floor.
COFFEY, Q.C.:
Q. And your method of communicating with Mr. Crawley was generally what? In person, I take it at times?
MR. THOMPSON:
A. Yeah, telephone and in person, both frequently and e-mail.
COFFEY, Q.C.:

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Q. Now while I'm on the subject of communication, do you use a BlackBerry?
MR. THOMPSON:
A. Yes.
COFFEY, Q.C.:
Q. Are you familiar with the concept of pinning?
MR. THOMPSON:
A. Uh-hm.
COFFEY, Q.C.:
Q. Do you use it?
MR. THOMPSON:
A. Well not now, I have in the past for a period of time, but I don't use it now.
COFFEY, Q.C.:
Q. Do you recall during what period of time you did use it and for what purposes?
MR. THOMPSON:
A. Well for about, I'd say about a year during the period when I was clerk, I perhaps used it more than at other times and for what purposes, it's a--well, first of all, as I understand the technology, it's a type of e-mail communication that's not routed through an e-mail server, so it doesn't leave the content of the message in the e-mail server,

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so therefore the kind of purpose that you would use it for are, it really is a substitute for conversation, as opposed to a substitute for e-mails or transactions that you have in government. So as an example, if the intended recipient of the conversation that you might have wasn't available at that time, you might transmit an informal message of the kind that you would have on the telephone.
COFFEY, Q.C.:
Q. And I take it that with a view that it would not then be recorded in a permanent way on the e-mail system.
MR. THOMPSON:
A. Correct.
COFFEY, Q.C.:
Q. Your understanding, I take it, is that by utilizing this pin function that it, the message itself does not get permanently recorded on the e-mail system.
MR. THOMPSON:
A. That's right.
COFFEY, Q.C.:
Q. That's your understanding. Are there any

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particular matters--would the confidentiality of a matter matter to that?

MR. THOMPSON:

A. No.

COFFEY, Q.C.:

Q. To the usage of whether or not you would use a pin?

MR. THOMPSON:

A. No, in fact, I became aware that pin messages lack the security of an e-mail message and therefore, they could be hacked into fairly easily, so one would be rather weary of putting confidential information in a pin, so and to give you an example, if, you know, are you finished your meeting, can we meet at such and such a time, or maybe even something like you might comment on a presentation you just received, well that was a lousy presentation, I hope we get a better one tomorrow. So it is those kinds of things that are not, don't even deserve an e-mail but are the kinds of conversations one might have, dependent upon the topic.

COFFEY, Q.C.:

Q. Now do you recall what period of time it was

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while you were clerk that you did use the pinning system?

MR. THOMPSON:

A. I don't have the dates in my mind clearly, but it would have been sort of mid stream, so between '03 and '07, '04/'05.

COFFEY, Q.C.:

Q. Would it have covered any of the time from July--would it have covered July through October 2005?

MR. THOMPSON:

A. Well it could have, yes.

COFFEY, Q.C.:

Q. Do you know if in relation to the, you know, matter of breast cancer testing or ER/PR, you ever used the pinning system?

MR. THOMPSON:

A. Well I highly doubt that I did, I don't recall any of the content of the pin messages specifically that I would have sent, but that's the sort of topic that one would avoid using pin messages for.

COFFEY, Q.C.:

Q. And why is that?

MR. THOMPSON:

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A. Well because of the security issue, to transmit something like that is a message of content, substance and you would want to make sure that that's protected.

COFFEY, Q.C.:

Q. And you stopped using the pinning system -

MR. THOMPSON:

A. Yeah, I sort of, I didn't find it much more useful than e-mail, to be frank, and e-mail is actually easier I found to pull up the address on my BlackBerry, so it just kind of petered out over time and now I don't use it at all.

COFFEY, Q.C.:

Q. When did you become aware of the security issue involving that?

MR. THOMPSON:

A. Around the same period. I didn't know it immediately when I was told about the function, but I would have become of it, say, within months of finding out about the function.

COFFEY, Q.C.:

Q. Do you recall who told you about the function?

MR. THOMPSON:

A. The function itself?

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COFFEY, Q.C.:

Q. Yes, that utility, do you remember -

MR. THOMPSON:

A. Three or four people that come in mind when you ask me that question, so I can't be absolutely sure.

COFFEY, Q.C.:

Q. Are they people within that office, with the Cabinet secretariat office?

MR. THOMPSON:

A. Two of the people who come to mind are in the communications line, okay, and two others are managers in the Premier's office.

COFFEY, Q.C.:

Q. And who are they, can you tell us?

MR. THOMPSON:

A. Well, again, I don't know if they told me about it, but it could have been others, I should name all of the names now.

COFFEY, Q.C.:

Q. Sure, if you would please.

MR. THOMPSON:

A. For what good quality this evidence is, the people that come to mind are Karen McCarthy, Carolyn Chaplin, Elizabeth Matthews and Brian

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Crawley, but also Debbie Fry, interestingly, so I remember discussions about this amongst these types of people, but I don't remember exactly who was the first person who told me about it.

COFFEY, Q.C.:

Q. And so it's your understanding, though, that if anything was relevant to the Commission's mandate, if the pinning system was used in relation to it, any such communication, that that would not be retrievable?

MR. THOMPSON:

A. Well my impression has always been that it's not retrievable and I've checked that out since and confirmed that it's not retrievable.

COFFEY, Q.C.:

Q. And I ask that because it will come up in relation to your efforts as secretariat to Cabinet to prepare for the Commission, in terms of trying to gather up information.

MR. THOMPSON:

A. Uh-hm.

COFFEY, Q.C.:

Q. So it's in relation to that. I'd like to go back now to your days as deputy minister, you

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earlier this morning referred to the Hay report.

MR. THOMPSON:

A. Uh-hm.

COFFEY, Q.C.:

Q. And what, if any, involvement did you have with the Hay report? I take it that was 2002?

MR. THOMPSON:

A. Right.

COFFEY, Q.C.:

Q. Can you tell us -

MR. THOMPSON:

A. Well, I was involved, along with Minister Bettney in the conception of the requirement for a management consultant type study to be done for the Health Care Corporation, and then I was involved in -

COFFEY, Q.C.:

Q. And why was it perceived to be necessary?

MR. THOMPSON:

A. Well the root of the issue is that the government had identified health care spending as a strategic issue in the sense of trying to achieve a balanced budget or to minimize the overall provincial deficit. Certainly there

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had to be some way to try to control or ease the growth of what seemed to be just an expenditure category that was growing very rapidly. So there was, the provincial treasury was a lot weaker then than it is today and a lot of eyes were focused on the health system and when we look at the health system, we look particularly at the regional health authorities, which spend on behalf of government, most of government's budget allocation. And so if that's where funding is flowing, we have to look at the issue of are they running budget deficits in a particular-- and every year around that time, the budget deficits of most of the boards were running-- well there were deficits spending in excess of the allocated amount. So our first target was to try to find out from all such boards can you live within the allocation that's been given and please propose to us measures, propose to the department measures by which you can live within the allocations provided. Are there efficiencies that can be obtained in delivering services in different ways more efficiently, with more productivity. So, it's

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natural that one would do that. There's no effort here to compromise the points or care or the quality of care, but the effort is to try to, nonetheless, live within available budget.

So, within that context, the messaging that we were getting back from the Health Care Corporation of St. John's after their own internal review of opportunities was that their 20 or 30 million dollars projected budget deficit could not be reduced beyond that. We had the view in the department that perhaps an inadequate amount of effort had gone into that or perhaps commitment or energy because we weren't hearing the message, here's how you can do it, but we recommend not doing it. But the message we were hearing was we can't do it. Two quite different messages. So, no organization has the authority to run a deficit without permission. And they were giving the department at that time options on how to live within the budget deficit they were projecting.

So, there was a real divide between the department and the Health Care Corporation at

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that time in their understanding of how this system was to work. And really, fundamentally, which body was it that had control, appropriate control over the allocation of funding to health care.

So, in order to move the government's objectives along, we thought it best to bring in a management consulting firm that would comb through the various programs and operations of the corporation and identify, based on experience across the country and benchmarks, where opportunities for cost savings might exist. And then make those recommendations both to the government and the board and within that set of tools that would be offered by the final report. The corporation and the government will be able to select from those, with the goal of maintaining a balanced budget.

COFFEY, Q.C.:

Q. So, the Hay Group are so tasked. They report. What happened?

MR. THOMPSON:

A. Well, what happened after they reported?

COFFEY, Q.C.:

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Q. No, in terms of well--how much input, if any, did you have to their actual report?

MR. THOMPSON:

A. Well, I sat on the committee that helped make sure that--or that received interim reports and made sure that they were on track. But I wasn't directly involved in the clinical investigations and developing the particular things that they may have said. So, I was involve merely from a government's point of view of the process and then in helping the minister structure, like, post study process for the corporation to analyze and deliver a report to government that said, here's what we can do with these recommendations.

COFFEY, Q.C.:

Q. Okay. So, the report comes in. Health Care Corporation is asked to respond; they do. And you receive that report and their commentary, as it were. And what happened? What came out of that?

MR. THOMPSON:

A. I don't have good recollection and I'm just wondering what the date is that they reported because I think some of the follow through

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activity may have occurred after I left the department, but I can't be sure.

COFFEY, Q.C.:

Q. Okay. So, as clerk then, you wouldn't be involved in the -

MR. THOMPSON:

A. No, not directly. I'd see some of the results of that from a different perspective.

COFFEY, Q.C.:

Q. Okay. Now, while you were deputy minister of health back in '01 to '03, do you have any recollection of there being any clinical, large scale clinical issues in the sense of, problems coming to the floor?

MR. THOMPSON:

A. Well, one that stands out for me is the gynaecological sterilization issue in Labrador West.

COFFEY, Q.C.:

Q. Okay. And when did that arise, do you recall?

MR. THOMPSON:

A. Not precisely, but I sense it's sort of mid '03, but I could be wrong.

COFFEY, Q.C.:

Q. So, it was while you were deputy minister?

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MR. THOMPSON:

A. Yes.

COFFEY, Q.C.:

Q. And that would have continued on after you left the portfolio.

MR. THOMPSON:

A. Um-hm.

COFFEY, Q.C.:

Q. But as deputy minister at the time how much were involved in that?

MR. THOMPSON:

A. Very little. I do know I was briefed on it. I don't recall how I was briefed. No doubt there was a briefing note of some kind that would have come into the department. We weren't--so, we were briefed about, in very general terms, my recollection is briefed about the process that they are undertaking to evaluate the situation and to communicate it to people. But again, my general recollection is not being involved in any operational sense.

COFFEY, Q.C.:

Q. Okay. Communicate what to people? The patients--at this stage the patients didn't

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know.
MR. THOMPSON:
A. Yeah, the incident--correct.
COFFEY, Q.C.:
Q. So, you were brought in before the patients were notified?
MR. THOMPSON:
A. Well, I'm not sure about that.
COFFEY, Q.C.:
Q. I'm just asking -
MR. THOMPSON:
A. Yeah, I'm not sure.
COFFEY, Q.C.:
Q. So, as the deputy minister, you became aware that probably from the department--I'm sorry, you're in the department, from the authority.
MR. THOMPSON:
A. Right.
COFFEY, Q.C.:
Q. That there was a--about the issue and we have to communicate it or we've communicated it--there was an issue that we did communicate and now we got a legal problem.
MR. THOMPSON:
A. Not sure.

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COFFEY, Q.C.:
Q. You don't recall?
MR. THOMPSON:
A. No, I don't recall at the time. And my senses of that, they wouldn't necessarily have communicated it directly with me. It may have come in through the board services branch.
COFFEY, Q.C.:
Q. Yes, and I appreciate that, whoever the ADM of the time was.
MR. THOMPSON:
A. Sure.
COFFEY, Q.C.:
Q. But in the latter part of your time--if it was mid '03, that's the latter part of your time as the deputy minister, that would be Moira Hennessey.
MR. THOMPSON:
A. Yes.
COFFEY, Q.C.:
Q. And certainly whether it came directly to you or otherwise, you and Ms. Hennessey would have been aware of this sterilization issue and the complaint about the manner of disclosure -
MR. THOMPSON:

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A. Yes, that sounds right.
COFFEY, Q.C.:
Q. Were you aware, while you were deputy minister or then afterward when you became clerk that there was a lawsuit launched, a class action lawsuit in relation to that?
MR. THOMPSON:
A. I became aware of that, yes.
COFFEY, Q.C.:
Q. Were you still deputy minister at the time?
MR. THOMPSON:
A. My sense is no.
COFFEY, Q.C.:
Q. And in terms of afterward, how much, if anything, did you--how much, if at all, did you keep track of it afterward in terms of what was going on.
MR. THOMPSON:
A. Not closely. My sense is that we did receive a briefing note of some kind in the Cabinet secretariat about the class action and the resolution of it, but again, for information.
COFFEY, Q.C.:
Q. Do you recall when that was?
MR. THOMPSON:

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A. No.
COFFEY, Q.C.:
Q. Do you recall whether that was before or after ER/PR became an issue?
MR. THOMPSON:
A. Well I have a clue on that one because of reading the ER/PR material there's a reference to that back in the sort of July '05 period, and they talk about that in the past tense, so before ER/PR would be my conclusion based on that.
COFFEY, Q.C.:
Q. That there had been a briefing note -
MR. THOMPSON:
A. No, that the resolution of the issue essentially took place, but I could be wrong, there could have been--it could have been based on court documents or legal documents just summarizing the issue, so I don't have a good recollection of the timeframe.
COFFEY, Q.C.:
Q. So the Cabinet was briefed at some point on this Labrador issue?
MR. THOMPSON:
A. Well, if it was a briefing note that came

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across my desk, it would have been a note that would have gone to the premier's office and others in Cabinet Secretariat.

COFFEY, Q.C.:

Q. Do you know if the Cabinet itself was ever briefed on it as a whole?

MR. THOMPSON:

A. I don't recall any briefing on that.

COFFEY, Q.C.:

Q. But a briefing note on the issue that came to Cabinet Secretariat and got that stamp, with the distribution list -

MR. THOMPSON:

A. More than likely, that was the format.

COFFEY, Q.C.:

Q. And it's quite possible that that occurred, that briefing note occurred before ER/PR was identified by Eastern Health.

MR. THOMPSON:

A. That's my sense of it. So, the more I talk about it, the less I'm sure.

COFFEY, Q.C.:

Q. Okay. And I take it that briefing note would still exist in some format?

MR. THOMPSON:

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A. I would guess so, yes.

COFFEY, Q.C.:

Q. Do you recall what the nature of the concern was in relation to the Labrador issue as it was presented to you?

MR. THOMPSON:

A. Well, I know more about it now because we've been looking at it as one of our case studies and the task force. So, it's hard for me to go back and take my mind to a few months ago when I was perhaps less well informed about it. So, how would you like me to answer it?

COFFEY, Q.C.:

Q. Well, as best you can in terms of trying to reconstruct for the Commissioner what you would have known in the middle and late 2005 about the Labrador situation.

MR. THOMPSON:

A. Okay. As best I can say is that I would have known that an incident occurred, that it involved some group of people, that it was a sterilization concern that would have been linked to the potential or the threat of some kind of infectious disease if all the right circumstances came together, that there was a

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low incidents of risk. And that Health Labrador had made a decision to communicate this to the people within a time period that had been exposed to this instrument when it was being improperly sterilized. I just put that forward to you maybe a little bit more coherently than I could have actually done at that time.

COFFEY, Q.C.:

Q. And what was the complaint in the class action?

MR. THOMPSON:

A. My best sense of it if I can put myself back then is that it had something to do with the anxiety that was created as a result of the method of communication of this to the patients.

COFFEY, Q.C.:

Q. And the method of communication that had been used was what in Labrador?

MR. THOMPSON:

A. At that time I may not have known. I understand today it was registered letter.

COFFEY, Q.C.:

Q. Okay. If we could, please--in terms of your

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dealings with people as the clerk, how often would you meet with the premier?

MR. THOMPSON:

A. As clerk, sometimes once a day, sometimes perhaps less than that and some weeks not at all.

COFFEY, Q.C.:

Q. And I take it there was no structured meeting?

MR. THOMPSON:

A. Well, for a period of time there was a structured meeting daily or perhaps three or four times a week, but as time went on and I guess as people became comfortable with their roles, the meetings became less frequent and less structured and so when an accumulation of issues were there that needed decision, direction or a conversation, I'd seek the meeting and we'd work out schedules.

COFFEY, Q.C.:

Q. Okay. By July 2005, July through October 2005 what kind of frequency was there by that point?

MR. THOMPSON:

A. Well, by then I believe that the more structured daily meetings had kind of broken

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up, that process. And it was more when I had an accumulation of issues. I would forward an agenda of issues regularly to his assistant and then she would try to find a time on his schedule. So, it might have been, let's say, once a week at that point.

COFFEY, Q.C.:

Q. And such an agenda of issues -

MR. THOMPSON:

A. And sorry, during the summer, it would be more infrequent.

COFFEY, Q.C.:

Q. Okay. And the agenda of issues would be generally issues that you identified?

MR. THOMPSON:

A. Generally they would be, yes.

COFFEY, Q.C.:

Q. And would those agendas still exist?

MR. THOMPSON:

A. Yes.

COFFEY, Q.C.:

Q. Other than the agenda, would there be anything else? Like, would there be any sort of supporting document?

MR. THOMPSON:

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A. Sure, um-hm, often, on issues that required it.

COFFEY, Q.C.:

Q. More than a one line in an agenda?

MR. THOMPSON:

A. Um-hm.

COFFEY, Q.C.:

Q. Okay. So, they would still exist. Have you checked those agendas and those documents?

MR. THOMPSON:

A. Yes.

COFFEY, Q.C.:

Q. Do any of them relate to the ER/PR matter?

MR. THOMPSON:

A. No.

COFFEY, Q.C.:

Q. Okay. When you would speak with--as you pointed out, you -

MR. THOMPSON:

A. Should note as well, we also checked those for any notations in the margins and so forth and there's nothing.

COFFEY, Q.C.:

Q. There's nothing, okay. And in terms of your dealings with Mr. Crawley that you said you

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had fairly frequent meetings with him, sometimes more than once a day, sometimes once day and sometimes a little bit less frequently, but generally it's frequent. He being the premier's chief of staff, what was your understanding--what would the purpose be of meeting with Mr. Crawley advising him of any one particular matter? What did you understand he would do with the information?

MR. THOMPSON:

A. He was the senior official in the premier's office. So, he, in addition to being in charge of the running, administration of that office, was also the premier's right hand person on all matters pertaining to the premier's agenda. So, he would be his closest political assistant and advisor on all the matters that the premier dealt with. And therefore, often, not always, but often a conduit for information and sometimes a conduit for seeking direction from the premier when the premier wasn't available to me, Brian had, of course, more frequent and direct access to the premier, being on the--operating on the same floor. So, very often meeting

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with him to put issues on his agenda to get direction from the premier would be one topic. Another might be just to make sure that he was in the loop and he could decide whether or not a matter needed to be passed onto the premier, and a whole host of related issues.

COFFEY, Q.C.:

Q. If a matter of--again, to use your phrase--"some sensitivity" and potential public interest was to be passed on or communicated by you to Mr. Crawley, was it your anticipation or expectation that he would pass that on to the premier?

MR. THOMPSON:

A. Yes, most times, yes, but it would be his decision depending upon the matter.

COFFEY, Q.C.:

Q. Sure. With respect to--and I appreciate you've indicated that you would have, you've described the meetings with the premier from time to time and their frequency. Would you ever, yourself, pick up the phone or, you know, turn on your BlackBerry or your computer and send, communicate directly with Mr. Williams on an issue?

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MR. THOMPSON:
A. Less frequently, but it might happen from time to time.
COFFEY, Q.C.:
Q. In relation to the ER/PR matter or the breast cancer testing
MR. THOMPSON:
A. No.
COFFEY, Q.C.:
Q. - matter, you never did?
MR. THOMPSON:
A. No.
COFFEY, Q.C.:
Q. Now, I say never, I take it--I'm talking about July through--throughout '05. I mean, have you ever, in terms of -
MR. THOMPSON:
A. And my never is based on my better reviews of these materials.
COFFEY, Q.C.:
Q. Yes. In terms of Mr. Williams, have you ever had any dealings with Mr. Williams about this matter at all, like face to face or on the phone or -
MR. THOMPSON:

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A. In that time period -
COFFEY, Q.C.:
Q. No, no -
MR. THOMPSON:
A. Oh yes -
COFFEY, Q.C.:
Q. You would have, yes. I'm talking about in '05 really, right now.
MR. THOMPSON:
A. No, no.
COFFEY, Q.C.:
Q. Okay.
THE COMMISSIONER:
Q. Mr. Coffey, whenever you can find a convenient place, we'll take the afternoon break. Can I just clarify that last question? You were asking whether or not the witness had ever communicate directly with the premier -
COFFEY, Q.C.:
Q. Yes.
THE COMMISSIONER:
Q. - in the year 2005 on the subject of ER/PR -
COFFEY, Q.C.:
Q. Or breast cancer testing.
THE COMMISSIONER:

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Q. - or breast cancer testing. And I understood you to say no?
MR. THOMPSON:
A. Right. And I think the only refinement I'd make to that answer is that in the days after the July 19 e-mails, I really can't recall any additional conversations. Although it's plausible that I did have some with other people. And so, it's possible that such a conversation could have had--but I certainly have no recollection of one. And on top of that, given the nature of the e-mails and the way that we operate and operated at the time, the likelihood is that it didn't happen as well.
THE COMMISSIONER:
Q. Now?
COFFEY, Q.C.:
Q. Break time.
THE COMMISSIONER:
Q. Okay, 15 minutes.
(RECESS)
THE COMMISSIONER:
Q. Please be seated. Mr. Coffey.
COFFEY, Q.C.:

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Q. Thank you, Commissioner. Mr. Thompson, when you took on the roll of secretary to Cabinet for health issues and set about preparing for the Commission of Inquiry, could you tell us please about how you went about gathering information to be provided to the Commission.
MR. THOMPSON:
A. Generally, you mean?
COFFEY, Q.C.:
Q. Yes.
MR. THOMPSON:
A. Okay. Well, first of all, I didn't expect initially, when I knew about my appointment, that I would also be appointed as acting Deputy Minister of Health. So, that was a huge complicating factor in my ability to get involved in the function of secretary cabinet solely, but that's an important point generally. But the first things that we did, of course, is set up our office and hire legal counsel and so forth. So, the actual process of putting together information didn't start right away and I also looked to Rolf Pritchard for guidance in what would be the right way to bring together information in government.

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COFFEY, Q.C.:
Q. What did you do then? Having listened to Mr. Pritchard and whomever else, how did you go about actually getting information? What steps did you take?
MR. THOMPSON:
A. Okay. Well, the steps that we took were to make sure that all the relevant people in the department were advised, perhaps by e-mail, perhaps by letter, I'm not sure, but were advised that they had to disclose to Mr. Pritchard all of the documentary material and notes, e-mails, files, all related information that they had in their possession to him for purposes of disclosure to the Commission.
COFFEY, Q.C.:
Q. Was any record kept of what criteria people were told they should follow?
MR. THOMPSON:
A. I don't have my own record of that, but I'm sure that we could produce a record on the search process.
COFFEY, Q.C.:
Q. Okay, go ahead. So, people within the department are told.

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MR. THOMPSON:
A. So, for myself, there's two phases that need to recognized. One is phase, since I came back to the Department of Health and I asked my assistant, Betty Donahue, to work with Mr. Pritchard in examining e-mails and files and notes so forth to bring together that phase of work which was really fairly new. Although, perhaps it is important to point out, we didn't start collecting these documents together day one. And I think that it's, sort of, the August period that we put most of our effort into collecting those documents, August, September. So, there is some accumulation of documents already by that point in time within the Department of Health and the task force records that would be relevant to this process. For Cabinet Secretariat, there's two parts really. One is my own e-mail record that I would still have available to me on my desk top. So, I searched those. And then in terms of other Cabinet Secretariat records we communicated with them to tell them to do a similar search that we had asked for our own officials in the

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Department of Health to look at e-mails and old files, records of all kinds and to prepare them for disclosure to the Commission.
COFFEY, Q.C.:
Q. I'm just trying to get some sense now of this. So, did anyone ever--like, back in 2007, systematically sit down, from your perspective, to your knowledge, systematically sit down and say, look, these are the people who have to be contacted within government, an exhaustive list of them. This is what they have to do, this is what they have to be instructed to do and to ensure that they understand it, it's communicated to them in writing, as to what we expect of you. Was that ever done, at that time?
MR. THOMPSON:
A. I relied upon Rolf Pritchard and discussions with him to work out what that process should be. So we identified who in the department, so that was an important part. We identified what it is that we want.
COFFEY, Q.C.:
Q. So was there such a list created?
MR. THOMPSON:

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A. I'm sure that there was, but I don't have a recollection of this list. I perhaps would have relied upon Rolf to prepare that list at that time, but you know, it's one--it's an aspect of this early preparation of lists and the criteria and notes that I don't have front of mind, so I can only give you general answers on that right now.
COFFEY, Q.C.:
Q. Okay. So in terms of--so there's a--as best you can tell, if there is a list, it doesn't immediately come to mind and it wasn't created at your explicit instruction?
MR. THOMPSON:
A. Well, it would have been created at least in dialogue with me about what are the kinds of key terms that we need to use, who are the people that we want to do the searching, and what are the kinds of documents that we expect to come forward. Exactly how we tapped on each shoulder, you know, was it an e-mail or a letter or some other--did we do a verbal communication, I don't recall that, perhaps because I wasn't involved in each and every instance, being so busy and preoccupied with

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the other duties in the Department of Health. I would say that my division of time in the Department of Health, during that period, was probably 90/10, 90 percent departmental, 10 percent on this function, as well as the Task Force function.

COFFEY, Q.C.:

Q. So the--who then, from your perspective, in 2007, was primarily responsible for gathering information?

MR. THOMPSON:

A. Through Rolf Pritchard, we gave most of the responsibility to Reg Coates, and he's the director responsible for access to information and regulatory functions in the department, and asked him to--and he's good at this function to work with all the individuals on the list and to make sure that we produced all the documents that we could in the most timely manner.

COFFEY, Q.C.:

Q. And did you ever get any request from Mr. Coates to search your e-mail accounts using certain terms?

MR. THOMPSON:

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A. No. Oh, did I receive it from him, for me to do that?

COFFEY, Q.C.:

Q. Yes.

MR. THOMPSON:

A. I'm not sure if I did, because I knew that it was a function that I had to do.

COFFEY, Q.C.:

Q. Were you ever given a list of kind of key terms that should be utilized in 2007?

MR. THOMPSON:

A. Yeah, I have a recollection of a list of key terms, but I can't recall the details on it. They would have the search terms that one would expect, breast cancer, ER/PR, Eastern Health, and so forth, but I don't recall--I can't visualize the list in my mind.

COFFEY, Q.C.:

Q. In 2007, do you know whether any computer programmers or consultants were asked by government to assist in tracking down such information?

MR. THOMPSON:

A. Through Reg Coates, the office of the chief information officer was enlisted to try to

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reestablish the e-mail records of certain individuals. As I understand, it was the three ministers, the one current and the two former, as well as a couple of people who had left the department, Carolyn Chaplin and John Abbott, so that searches could be conducted on their records.

COFFEY, Q.C.:

Q. Do you know how successful -

MR. THOMPSON:

A. I don't know by volume, but I do understand that he did identify records that were disclosed through that.

COFFEY, Q.C.:

Q. Do you have any understanding that there were some records that apparently you have reason to believe now that may have existed and were not located?

MR. THOMPSON:

A. Yes.

COFFEY, Q.C.:

Q. That were subsequently found another way?

MR. THOMPSON:

A. Oh yes, indeed.

COFFEY, Q.C.:

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Q. So in terms of that whole matter, for now, my question is how certain are you that what information does exist in that data, electronic data form, that's relevant to this matter that all of it has been provided to the Commission?

MR. THOMPSON:

A. Well, having gone through this second process, which involved going even beyond the kind of search that was done by Reg Coates, I'm convinced that every place to look for electronic records has been examined. Every person involved in these affairs, we've searched the full extent of available archived e-mail and pulled out, to the best of our ability, every document that could be retrieved. I hesitate to say never say never, but I have a high level of confidence that we've done a good job.

COFFEY, Q.C.:

Q. And this second search activity, second wave of the search activity occurred when?

MR. THOMPSON:

A. It occurred in late March or early April. I do have a note on that, if you want to run

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through that in more detail.
COFFEY, Q.C.:
Q. So that would be though, beginning I take it, probably April 1, 2008?
MR. THOMPSON:
A. Right.
COFFEY, Q.C.:
Q. Because it was the night after--the day after you found certain e-mails yourself?
MR. THOMPSON:
A. That's right, that's when it started.
COFFEY, Q.C.:
Q. Okay. Can you assist the Commissioner in--explain to the Commissioner why that sort of effort was not done before that?
MR. THOMPSON:
A. Well, we had to--I have explained to you how I encountered the additional five e-mails that came to my attention, because then that was the route of--the trigger for the broader search that uncovered some more. So would you like me to run through all that?
COFFEY, Q.C.:
Q. I would in a minute, but I'm just curious about it, and I appreciate that there was a

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trigger for that, and I'm certainly going to have you explain that to the Commissioner, but whatever the trigger might have been, and I take it the trigger ultimately was you found e-mails that you had not seen before in the information gathering process. That alerted you to the idea that "I've got to do a much wider, more thorough search here"?
MR. THOMPSON:
A. Yes.
COFFEY, Q.C.:
Q. Using people who actually, this is their business, OCIO types. Why had that not been done before?
MR. THOMPSON:
A. Well, the explanation comes from the manner in which I discovered the five e-mails, which I did, the July 19th e-mails. So first of all, before I found those e-mails, we were convinced that the searches we had done had been complete and we knew of no additional places to search, and -
COFFEY, Q.C.:
Q. Who's we?
MR. THOMPSON:

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A. Our team, Reg Coates, Rolf Pritchard, myself, various secretaries. So that chapter essentially was over, and what had happened though really, without us being conscious of this, is that there were--for me, that my e-mail archive was invisible to me on the Novell GroupWise e-mail system, and please stop me if I go too far with this detailed explanation, but I think it may be important.
When we did the searches in August/September, that was the name of the system, e-mail system I was using, and by mid or late November, there was a new e-mail system put in place. So the searching that was done was done on this old system, and like any e-mail system, there's a--generally, the list of your current e-mails are down the centre and on the left-hand panel there is a list of folders and one can transfer e-mails over into those folders for purposes of safe keeping or retention. I would have perhaps used the word archiving at that time, mistakenly. And over the years, because I have folders there from my previous jobs, going back to Department of Tourism and so the

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Department of Health, Executive Council, some individually in fact named for certain years in those folders. And over time, I had--over those years, in an effort, a hope to maintain an e-mail history, I had transferred or had IT people transfer blocks of current e-mail into an archive, which I assumed were those folders, and so that process continued on. Whenever I tried to look for an old e-mail, if it wasn't in my current e-mail, which in and of itself would run back a year or two, I would try to look for it in the folders. I'm not talking about ER/PR, but on other occasions, and sometimes I might find something. Sometimes I might not. I never had to look for old e-mails in the context of a situation like this, so there wasn't any analogous situation.
So when the new e-mail system was created, unbeknownst to me, the IT people went and they gathered all my old archives and made it available in a more obvious, intuitive, you know, visually accessible format, right on the e-mail screen. And so there were--there was my GroupWise archive available next to my

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current inbox and sent box, in the folders column.

The key difference, before and after, is that those archives which were now on the surface page, if you like, the top page that one looks at each day, when you compare that to GroupWise, the access to the archive is not actually in the folder list. It's in a drop-down menu located in the upper left-hand corner of the screen, and one has to press that drop-down menu and see the word "archive" in order to go into that archive, which I admit, sounds fairly simple to do, if one knows about it, number one, and number two, if the IT people had actually created a link between that e-mail page and the archive that you had. And I know now, through the people I worked with at OCIO, because they could recreate for me what that page would have looked like in, say, August or September, is that that drop-down menu did not actually have the archive link established to it.

So even if I had known that that was how one accessed the archive, even if I had known that the archive wasn't actually in my folder

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list, but it was something else, and I had clicked on the drop-down menu, there would have been no archive link for me to then go into that second layer. But I didn't know all of that at that time. So when I did the search on my folder list and on my current e-mail, it didn't produce any of those e-mails. So that was the situation that existed when we did the e-mail search.

And now, on April 1st or March 31st, whatever that night was, when Mr. Ottenheimer was--or on that day when he had given his testimony, I was following it quite closely from my desk on the internet, and he was mentioning and talking about Carolyn Chaplin, and that period of time, and looking at my e-mails, and there were, of course, in the folder list, right on the top, you know, all my old archives. I still didn't realize that they had any more in it than what they might have had before, but nonetheless, I knew that this search function on Outlook was a more easy to use, quicker to respond kind of e-mail system, so I just tapped in her name and what came out, within seconds, were more e-mails

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from that period of time.

So, it was a huge surprise, as you can imagine, because I thought that my job actually is defined as full and open participation, government's full and open participation in the Inquiry. So it was pretty shocking to find that I had some e-mails from that period of time, and I guess the story goes from there, but that essentially is how I discovered, and it explains the background of how those e-mails were sort of--they weren't inaccessible perhaps to people with the right knowledge and technical ability to find them, but they were certainly inadvertently inaccessible to me when I did those searches.

COFFEY, Q.C.:

Q. Sir, those sorts of people, and I'll refer to them as the ICO types, okay?

MR. THOMPSON:

A. Um-hm.

COFFEY, Q.C.:

Q. I'm sorry, OCIO types, I think I have that right, OCIO?

MR. THOMPSON:

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A. Yes.

COFFEY, Q.C.:

Q. Yes. I take it that for them, when you finally did consult them in April of 2008, that this was no--in their world, this was a simple matter to attend to?

MR. THOMPSON:

A. Well -

COFFEY, Q.C.:

Q. The way they communicated it to you, I mean, this is no big deal?

MR. THOMPSON:

A. Well, they said to me that it's not a software glitch or problem if you know how to operate that software correctly.

COFFEY, Q.C.:

Q. If you know what you're doing -

MR. THOMPSON:

A. Right.

COFFEY, Q.C.:

Q. - in that world, and so a way of asking you then, I take it then that when you set out, as the secretary to Cabinet in this role, this new role, you thought you knew what you were doing in that regard, but as it turns out, you

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didn't?
MR. THOMPSON:
A. Right.
THE COMMISSIONER:
Q. Do we know whether other people who might have been searching themselves thought like you?
MR. THOMPSON:
A. That was the very next question that occurred, and if you like, I could certainly take you through some of the search processes that we undertook in the following couple of days.
THE COMMISSIONER:
Q. Yes, please.
MR. THOMPSON:
A. Okay. So that was the--I thought, and actually the way I described it in my e-mail to Rolf Pritchard was that now we have a better search tool, we might be able to find more. But as I got into the material, I found that it wasn't so much the better search tool, but for an experienced person searching with the other software could still have found these e-mails. So that is the premise of going and searching for others, and what we did, we actually visited several offices of

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people in question, people like Moira Hennessey and Bev Griffiths and Gary Cake, and we tested that out by searching their desktops and what was available on their desktops for e-mails that had not previously been disclosed, and we came up empty on that. So there wasn't any greater access on their desktops than what--which had been my first theory. So as a second step we went to OCIO and to their offices and asked them to give us access to backup tapes that we could then recreate using the Novell Groupwise the old software, and have a second look at that. Because the theory then was that even though people may have searched the e-mail accessible on the desktop, maybe there were archives, nonetheless, that were in the background that had not been searched the first time around. So there are some backup tapes and not--and the backup tapes are not as extensive as I thought that they might have been. And that's another story that we're learning some lessons about, but--and there's a big story here about records managements and retention of important e-mails that perhaps we can come back to on

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another time. But the story that's here is that we were able to identify some archives that had not been previously searched and also archives for people that Reg Coates had not searched for. And what I mean by that is that Reg Coates had been asked to search for the three ministers, plus, sorry, Carolyn Chaplin and John Abbott. But we went beyond that and took this backup tape and searched for all of the other individuals that had done their own desktop searches. So we combed, as I said, the outer extremities of these archives and that were over at OCIO. And then in addition to all that, with the assistance of OCIO, we tapped into e-mail archives in the Department of Health that may not have been accessible to people who work in the Department of Health because actually they, in effect, they get chopped out of current e-mail and placed in an e-mail archive, but not actually directly accessible from the desktop of the people who work in the department. So we were able examine those archives, as well. So all of that searching, using the standard key word criteria and looking at all those individuals

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and also doing--looking at every e-mail from certain key dates. So we focused in, for example, around July 19th of '05, around August 18th of '06 and November, December of '06, focusing in on those dates and I think in the end we collected together about 50 e-mails not all, I think, as substantive or as relevant to a key point in time as the July 19th. But we were--we did harvest a variety of additional e-mails which weren't available before.
COFFEY, Q.C.:
Q. If we could, please, Exhibit -0949?
UNKNOWN SPEAKER:
Q. Mr. Coffey, did you want to enter -
COFFEY, Q.C.:
Q. I'm sorry, this is two new ones. Yes, I did tell Mr. Rolf before we came in this afternoon that I would do so. I would ask, Commissioner, please, if we enter Exhibits P-0948 and 0949?
THE COMMISSIONER:
Q. 0948 and 0949?
COFFEY, Q.C.:
Q. Yes, please.

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THE COMMISSIONER:
Q. Entered.
EXHIBITS P-0948 AND EXHIBIT P-0949 ENTERED INTO EVIDENCE.
COFFEY, Q.C.:
Q. And this document, do you recognize this?
MR. THOMPSON:
A. Yes.
COFFEY, Q.C.:
Q. Mr. Thompson, what is it? What is this?
MR. THOMPSON:
A. These are my notes that describe the additional e-mail searches in those days, a couple of days following the discovery of the July 19th e-mails.
COFFEY, Q.C.:
Q. So with respect to this matter, is there any period of time, say, since, I don't know, I'll pick a date, say July 1, 2005 to April 1, 2008 that you understand is not accessible, you know, or was not accessed during this OCIO search in April?
MR. THOMPSON:
A. This most recent search?
COFFEY, Q.C.:
Q. Yes.

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MR. THOMPSON:
A. Yes. There are gaps in the e-mail record that we have identified, yes.
COFFEY, Q.C.:
Q. And that having been identified, is that described anywhere or written down anywhere, like, these gaps?
MR. THOMPSON:
A. You mean precisely from when to when?
COFFEY, Q.C.:
Q. Yes.
MR. THOMPSON:
A. No, I didn't write them down as part of this note, but we could, indeed, construct--but there's two aspects to it. One is, for example, Carolyn Chaplin, which I used as a case study, sort of, in this document. There are--there's an identifiable, perhaps six month, gap in her e-mail and it's around the time that she left the Department of Health and moved to executive council. And the story goes that in the Department of Health they would archive things 180 days old. So when she went to executive council, she took everything with her, so to speak, that was

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less than 180 days old so it's missing entirely from the Department of Health. So when we accessed her e-mail archive in executive council, we don't find it anywhere, so we can--and why that is, I could speculate on. It perhaps has something to do with executive council's different policy for managing the amount of space that they have on their servers and they issue notices to all employees in executive council and as does the Department of Justice, to delete old e-mails to create space for the continuing accumulation of new e-mails. Now, unfortunately, sometimes that's interpreted by people that just go in and delete, get rid of, and it's okay to do so. Actually, it should be interpreted as meaning that insure that you properly take public records and have them put in a folder or file or hard copied somehow before you delete them. But what I found out since is that a lot of people just delete. And so we have blocks of time like that where e-mail records are missing. And I guess we could recreate those blocks of time, but then we also have, for some people, certain dates

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that have some e-mails but not as many as you would expect to have on those dates. And I'm not talking about critical dates, but I'm talking about many, many dates. So those are people who are what I'd call habitual deleters and they manage their flow of e-mail just by deleting things when they deal with them. So there's quite a lot missing. And I'll just end with this point, that it's one of our targets in this e-mail search was to find e-mails that actually came out of Eastern Health's disclosure to the Commission, but had never shown up in the government's disclosure, so clearly these e-mails originated in the government system, but had never shown up in any searches so far. So we specifically went after those and we did produce a few of them, but certainly not all the ones that have shown up from Eastern Health. So there's a deficiency in the way that government manages its e-mails as public records that we've learned lessons on here and are correctable.
COFFEY, Q.C.:
Q. I want to come back to that a little bit later. But there are gaps that have been

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identified in respect of certain individuals and certain periods of time?

MR. THOMPSON:

A. Um-hm.

COFFEY, Q.C.:

Q. Would it be possible to create a summary of those?

MR. THOMPSON:

A. Sure.

COFFEY, Q.C.:

Q. Okay. So perhaps if you could arrange to have that done, have that passed on to Mr. Pritchard for ourselves so at least the Commission then would have some, you know, outline of really the thoroughness of the e-mail or electronic searches in respect of particular individuals and particular periods of time?

MR. THOMPSON:

A. Sure.

COFFEY, Q.C.:

Q. Bearing in mind that for some periods of time there might be gaps and, you know, one can make what one wants of what might or might not have been there.

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MR. THOMPSON:

A. Sure.

COFFEY, Q.C.:

Q. Okay. If we could, please, can we bring up Exhibit P-0312? This is one of those July 19th e-mails. It's an e-mail from Gary Cake to yourself, July 19th, 2005 at 10:32 a.m. The subject is "Major Health Matter". And he writes "Robert, Carolyn Chaplin just called from the HCS," I take it, is Health and Community Services, "to provide a heads up that a major story will break from the Eastern Health board as early as this Thursday, but more likely next Monday. Eastern Health board has recently discovered errors in its breast cancer testing program. This matter affects clients who were subject to breast cancer testing from 1997 to April, 2004. I understand that an estimated 1200 to 1500 clients will need to be retested. The Eastern Health board is currently working on a strategy for communicating this news to affected clients and the public at large. Legal advice is being engaged in this process. HCS will be advised of the communication

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strategy. A briefing note is currently being prepared. Carolyn has also alerted Elizabeth to this matter." Signed, "Gary." Now, sir, at that time, July 19th, 2005, who were the assistant secretaries to cabinet?

MR. THOMPSON:

A. Gary Cake and Sherry McDonald.

COFFEY, Q.C.:

Q. And what was Mr. Cake's primary assignment then?

MR. THOMPSON:

A. Assistant secretary for economic policy.

COFFEY, Q.C.:

Q. And Ms. MacDonald?

MR. THOMPSON:

A. Social policy.

COFFEY, Q.C.:

Q. And the Department of Health and Community Services fell under which?

MR. THOMPSON:

A. Social.

COFFEY, Q.C.:

Q. Social policy?

MR. THOMPSON:

A. Right, um-hm.

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COFFEY, Q.C.:

Q. Who was the cabinet officer at the time responsible for the Department of Health?

MR. THOMPSON:

A. I know from that notes that I've read that it would have been Bruce Cooper.

COFFEY, Q.C.:

Q. And Mr. Cooper remained in that position for how long?

MR. THOMPSON:

A. I'm not certain how long after that, but he's left cabinet secretariat since.

COFFEY, Q.C.:

Q. Do you know if he was there for months afterward or--would he have still been there, say, October 2, 2005?

MR. THOMPSON:

A. I think so, but he would have--within that year after that, would be my guess, that he moved off to the Department of Labour Relations. I can verify that for you, if you wish.

COFFEY, Q.C.:

Q. If you would, please? Now, Elizabeth in this context would be Elizabeth Matthews?

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MR. THOMPSON:
A. Right.
COFFEY, Q.C.:
Q. At the time you received this, because it's apparently when we look at page, if I could, page 2 of the same exhibit, that you had certainly read it by 10:49 a.m. that morning?
MR. THOMPSON:
A. Right.
COFFEY, Q.C.:
Q. Now in terms of this, you're sitting at your desk at 10:32 or in the minutes thereafter, how would you become aware that you'd received this e-mail?
MR. THOMPSON:
A. Could have been by Blackberry, if I had a--if it vibrated or I could have just been working on the computer and an e-mail alert would have come up.
COFFEY, Q.C.:
Q. Had you ever received, while you were clerk, up to this point in time, any heads up, as it were, from a health authority or from the Department of Health about an major clinical patient issue?

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MR. THOMPSON:
A. Not one that I can recall right now, but it's possible.
COFFEY, Q.C.:
Q. Because in terms of large, you know, clinical issues of public interest, I take it that the Labrador sterilization issue and communication in relation to that dated back to your time as deputy minister?
MR. THOMPSON:
A. Yeah. So other potential examples, although I don't know if they occurred in this time frame, might have been the MRI backlog because of a machine malfunction is the kind of example we might get a heads up on or a discontinuance of a service in a community because of the lack of availability of a physician, if it was sensitive for some reason. So there's certainly possibility over that four-year period I did receive other alerts, but I can't recall that. It wasn't a frequent occurrence, for sure.
COFFEY, Q.C.:
Q. And now Carolyn Chaplin at that point, did you know who Carolyn Chaplin was?

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MR. THOMPSON:
A. Yes.
COFFEY, Q.C.:
Q. And how did you know who Carolyn Chaplin was?
MR. THOMPSON:
A. I'd been introduced to her as the director of communications in the Department of Health.
COFFEY, Q.C.:
Q. So she went--she had not been there, though, when you were deputy minister?
MR. THOMPSON:
A. No, I encountered her, met her, but I didn't know her well.
COFFEY, Q.C.:
Q. Now this refers to "errors in its breast cancer testing program and affecting clients from 1997 to April 2004."
MR. THOMPSON:
A. Should I click back to the other document?
COFFEY, Q.C.:
Q. I apologize, yes, thank you. P-0312 please? There we are. "Errors in its breast cancer testing from 1997 to April 2004, an estimated 1200 to 1500 clients will need to be retested." Now at that point in time, you

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know, reading a description of breast cancer testing, what sorts of breast cancer testing were you aware of at that point in time?
MR. THOMPSON:
A. None.
COFFEY, Q.C.:
Q. Breast cancer testing, if you consider it at all, that would have meant what, in the sense of diagnosis, if anything would immediately spring to mind.
MR. THOMPSON:
A. Yeah, perhaps, I would distinguish it from screening, but as to what kind of testing it would be for purposes of diagnosis or treatment, I really wouldn't know.
COFFEY, Q.C.:
Q. And this also indicates that an estimated 1200 to 1500 clients, as it's referred to, in terms of any one matter involving that quantity of patients, 1200 to 1500 patients, in your career, have you ever dealt with, as deputy minister of health or as clerk, a problem involving that many patients or potential problem involving that many patients?
MR. THOMPSON:

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A. Not that I can recall, although I would have conditioned that statement with the first sentence in that paragraph that errors have been discovered, but it didn't say that errors were errors belonging to 1200 to 1500 clients, it said that that many might need to be retested.

COFFEY, Q.C.:

Q. Sure.

MR. THOMPSON:

A. So one would have formed the view that, you know, that's a retesting group and that some proportion of those might have some potential impact if one was to extrapolate out and think the worse, so it would have been unclear to me the actual magnitude from this e-mail.

COFFEY, Q.C.:

Q. And you're advised at that point that Eastern Health is then currently working on a strategy for communicating this news to affected clients and the public at large. Now legal advice is being engaged in this process. Which process is that?

MR. THOMPSON:

A. I'm not sure if it was clear what process,

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other than the general management of this as an emerging issue.

COFFEY, Q.C.:

Q. Did you understand it that they needed legal advice as to the testing or retesting or legal advice as to the communication with affected clients.

MR. THOMPSON:

A. Well I can't recall what I thought about it at the time, but I could only react to what it appears to say now.

COFFEY, Q.C.:

Q. Now if in fact there had been media reports in July, early July of 2005 reporting on the certification of the class action in Labrador, as clerk, would you have been made aware of the fact that that certification had occurred?

MR. THOMPSON:

A. Well, was it in the media?

COFFEY, Q.C.:

Q. Oh yes.

MR. THOMPSON:

A. I would have been in tune to that in some fashion, some measure.

COFFEY, Q.C.:

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Q. And would at that point, by July 19th, 2005, would you have been aware that at least in Labrador there had been legal ramifications apparently arose in relation to the method used to communicate with patients about a large scale adverse event? Were you aware of that?

MR. THOMPSON:

A. I think so, generally.

COFFEY, Q.C.:

Q. And you would have been aware that there was so much so, there was a lawsuit.

MR. THOMPSON:

A. Uh-hm.

COFFEY, Q.C.:

Q. Now there's a reference here to "a briefing note is currently being prepared".

MR. THOMPSON:

A. Uh-hm.

COFFEY, Q.C.:

Q. On the morning of July 19th, would you have anticipated or interpreted that as a briefing note was being prepared for Cabinet secretariat?

MR. THOMPSON:

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A. Well, you can read it two different ways.

COFFEY, Q.C.:

Q. How would you have read it that morning.

MR. THOMPSON:

A. One of two ways. Well first of all, Eastern Health is currently working on a strategy, so that sounds like for itself, is currently working on a strategy for itself, HCS will be advised of that strategy and that a briefing note is currently being prepared, so it's not clear whether it's being--well, I think it's clear that it's being prepared for the minister or for the department, I think that's clear, but by mentioning it there, I think if I received something like that today, I would expect that a briefing note like that would be, perhaps, repackaged but come over to Cabinet secretariat with, to follow through on an alert like this. So one would have, perhaps, a general expectation like that.

COFFEY, Q.C.:

Q. As the clerk at the time on July 19th, is this the sort of matter that you would have expected Mr. Cake to request a briefing note on?

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MR. THOMPSON:
A. Well given that there was an indication that a note was being prepared, I'm not sure how he would have responded to it -
COFFEY, Q.C.:
Q. Would you have expected him as clerk, he's working for you -
MR. THOMPSON:
A. Uh-hm.
COFFEY, Q.C.:
Q. He's advising you of this, would you have expected, anticipated in -
MR. THOMPSON:
A. I think the nature of this issue, as it presented on that day with this information, is the kind of issue that one would expect or ask about a briefing note, yes.
COFFEY, Q.C.:
Q. And "Carolyn has also alerted Elizabeth to this matter", what if anything did that mean, other than the fact that Carolyn Chaplin has apparently advised Elizabeth Matthews about it, what would the purpose of that be?
MR. THOMPSON:
A. Well Carolyn would have felt, looking at this

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now but I think it's an accurate interpretation that Carolyn would have felt that this was an issue of, dynamic issue that had a sufficient level of sensitivity that the Premier's office needed to be alerted quickly and that's why she went directly to Elizabeth.
COFFEY, Q.C.:
Q. Looking at page two of the exhibit, at 10:49 a.m. I gather you sent this e-mail to Mr. Crawley. Your purpose in doing so was what?
MR. THOMPSON:
A. Well, again, based on what it says there now, it's pretty clear that I also felt that there was significance to this issue and it was something the Premier's office needed to be made aware of, so I immediately transferred it on to Brian Crawley to make sure that that happened.
COFFEY, Q.C.:
Q. And the attachment here which is "Major Health Matter.text, I take it the attachment then, which you say forwarding, which you would have forwarded as that attachment would be the e-mail at page one?
MR. THOMPSON:

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A. Correct.
COFFEY, Q.C.:
Q. Of P-0312. And so would you have typed this e-mail out yourself?
MR. THOMPSON:
A. Yes.
COFFEY, Q.C.:
Q. So you write this as major, "once the solution is set into motion, we will expect the department and the board to undertake appropriate evaluation to determine why this happened." Signed Robert. So again your purpose in sending this to, I appreciate you understood it was potentially a major issue, but why would you send it to Mr. Crawley?
MR. THOMPSON:
A. To alert the Premier's office of a dynamic potentially sensitive issue.
COFFEY, Q.C.:
Q. Now you had already been advised that Elizabeth Matthews knew about it, so who in the community--who in the Premier's office other than Mr. Crawley, was there any intention or did you expect that this would be passed on to Mr. Williams?

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MR. THOMPSON:
A. Well I wouldn't have passed it on to Brian for an expectation that he would pass it on, but not Elizabeth, if that's part of your question, but rather my normal liaison with the Premier's office is through Brian. Carolyn Chaplin's or somebody on the communication side is through Elizabeth. I, just to make sure that there was no gap in time between, another appreciation of this in the Premier's office, I wanted to make sure it arrived in the in box of my main contact.
COFFEY, Q.C.:
Q. Which is Mr. Crawley.
MR. THOMPSON:
A. Right.
COFFEY, Q.C.:
Q. Having done so at the time, would it have been, bearing in mind, you've described it as major and what we see on page one of the exhibit as described there, did you expect that Mr. Crawley in the normal course would bring the information on page one and, in fact, perhaps your commentary on it on page two of the exhibit to Mr. Williams' attention?

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MR. THOMPSON:
A. Well I expect that he would consider that and depending upon the Premier's availability and Brian's perceived understanding of whatever else was on the Premier's agenda that day and the timing available to him to do it, that yes, he would make him aware of this. It's the kind of issue that deserves to be known about.
COFFEY, Q.C.:
Q. Now, here in your e-mail on page two of the exhibit, you've typed, "We will expect the department and the board to undertake appropriate evaluation to determine why this happened." Who is the "we"?
MR. THOMPSON:
A. Cabinet secretariat.
COFFEY, Q.C.:
Q. And in this context, that I take it is, well, whomever else it is, it's Robert Thompson.
MR. THOMPSON:
A. Yes.
COFFEY, Q.C.:
Q. And as the clerk and I take it in this capacity you'd be acting primarily as the

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chief civil servant.
MR. THOMPSON:
A. Uh-hm.
COFFEY, Q.C.:
Q. That would be your -
MR. THOMPSON:
A. Yes, here it's a bit murky because this doesn't fall neatly--this kind of action doesn't fall neatly into one of the three headings, head of public service, support for the Premier, it doesn't fit at all, I should say, under the decision-making process for Cabinet, so it's one of these roles of trying to add value to an issue that seems to be emerging, you know, trying to share your experience with others as to an appropriate next step.
COFFEY, Q.C.:
Q. And pointing out or saying to Mr.--or advising Mr. Crawley that we will expect the department, well certainly the department at least in one sense reported to you, the civil servants in it, the board and their personnel, as clerk of the executive council and chief civil servant or the leader of the civil

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service, do the employees of Eastern Health fall within your mandate or under your -
MR. THOMPSON:
A. No, not directly.
COFFEY, Q.C.:
Q. How about indirectly?
MR. THOMPSON:
A. Well no, not indirectly either, there's no hierarchial relationship, an employer/employee relationship with them.
COFFEY, Q.C.:
Q. And your purpose in telling Mr. Crawley that, you certainly, on behalf of the Cabinet secretariat, will expect the department and the board, Eastern Health that would be, to undertake appropriate evaluation to determine why this happened. Why would you tell Mr. Crawley that? Why did you see the need to say that -
MR. THOMPSON:
A. To give him an indication of my initial thinking that there needed to be some kind of process, here's my initial thinking about what the process was and, although it doesn't say it there, it infers that we will ask the

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department to pursue it in that fashion.
COFFEY, Q.C.:
Q. And in particular to find out why this happened.
MR. THOMPSON:
A. Right.
COFFEY, Q.C.:
Q. Now, I'm just going to, on that point I'm just going to, from your perspective up until the time the Commission of Inquiry was established, did you ever learn the answer to that question, why this happened?
MR. THOMPSON:
A. Up until the time the Commission was established, no.
COFFEY, Q.C.:
Q. I'm not suggesting you have since, either, but I'm just asking up to that point. If we could, please, page 3 of the exhibit. Now this, sir, is a response, a reply, sorry, by you, Tuesday, July 19th, 2005 at 10:51 a.m. to Mr. Cake to his earlier 10:32 e-mail and you've written to him, "Thanks, please ensure that the department and the board include in their com plan the assurance that once the

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solution is set into motion, that an evaluation will be done to determine the specific or systemic reasons why this occurred so that the matter will be properly addressed in the long term. I'd like to see this aspect before it goes out. Thanks." Before I go on to ask you about this, having sent that e-mail at 10:49 to Mr. Crawley, did you ever speak with him about it?

MR. THOMPSON:

A. I can't recall.

COFFEY, Q.C.:

Q. So why did you respond to Mr. Cake at all?

MR. THOMPSON:

A. I formed a view about a kind of perspective that the department and through them, the board, should be taking on communicating this because they said--the initial e-mail to me says that they are developing a communications plan, so it seemed to me based on my initial reaction to this, that there was a certain kind of thing that should be communicated because it would help elevate, perhaps, the level of confidence that people could have that even if something goes wrong in the

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health system, that it gets evaluated and things are corrected. It's important to sustain confidence, even if things go wrong, so perhaps that point of view, that perspective evolved somehow out of my time in the Department of Health, perhaps not, I'm not sure, but it just seemed that that was extra value I wanted to communicate to the department.

COFFEY, Q.C.:

Q. And so you, in so advising Mr. Cake, you expected he would do what? You say "please ensure the department and the board", so what did you expect him to do?

MR. THOMPSON:

A. Well I think that those words mean communicate that to the department and then, of course, later in the paragraph, I say, "I'd like to see this aspect before it goes out." So I was somewhat taken with this idea that something like that should be said in the communications plan, in public communications, so I wanted to, I expressed at that moment a desire to see whatever product was produced, that this thinking was in it. And in saying that, it

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doesn't mean that I have the authority to, and I'm sure you will come to this, that I have the authority to direct people to place it in there, but I can, at times, have an influence over some things that happen. I fully expect if it was seen to be a bad idea, that people would come back and discuss it with me and we would sort out what the right approach is. But the key being that I wanted to offer this and I had some degree of, as I said, I was perhaps taken with that idea.

COFFEY, Q.C.:

Q. And you did have at least a certain amount of experience as a deputy minister of health, you brought that certainly to the mix.

MR. THOMPSON:

A. Perhaps that was where that experience came from.

COFFEY, Q.C.:

Q. So you would like to see this aspect before it goes out, I take it, their communications plan, the department's and the board's -

MR. THOMPSON:

A. Re-reading it now after this time, I think that's what I mean there, to see the

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communications plan.

COFFEY, Q.C.:

Q. And that would be to check to see if, in fact, they had addressed your suggestion in that regard?

MR. THOMPSON:

A. Or if there's some valid alternative, at least one would know that it's been seen through properly.

COFFEY, Q.C.:

Q. And I take it that in suggesting that their com plan include a reference or an assurance that an evaluation will be done, presumably by the department or board or both, to determine the specific or systemic reasons why this occurred, that if the department or board put that in a com plan and was going to tell that to the public, okay, it would be your expectation, as the clerk, that the department and board having promised that in effect to the public, that they'd actually carry through on it.

MR. THOMPSON:

A. Of course.

COFFEY, Q.C.:

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Q. And on that point, without such an assurance going out in a com plan, okay, or being communicated to the public, was there any assurance at all that the public would receive that there would be such an evaluation?
MR. THOMPSON:
A. I don't think my thinking would have evolved-- would have taken on that question at that time. For all I knew a the time, maybe there were automatic mechanisms in place to do evaluations like that, but perhaps not being aware of that, it seemed like the right thing to say.
COFFEY, Q.C.:
Q. Okay. As the deputy minister of health, had you ever encountered the concept of peer review or quality assurance reviews?
MR. THOMPSON:
A. In very general terms I'm sure that I encountered the terms, but I don't think I encountered them in any kind of detailed way or developed a specific appreciation of them.
COFFEY, Q.C.:
Q. The notion that if a matter, a potentially adverse event was investigated through the

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mechanism of a peer review or quality assurance review, that if that was done it would never become known publicly, if they found the cause, as it were. Were you aware of that?
MR. THOMPSON:
A. No, I don't think I was because since I become aware of it now, it occurs to me to have certain flaws from the point of view of being made public or sharing the lessons and building confidence in the public that the actual cause of an event has been determined. So I know I'm getting ahead of you, but -
COFFEY, Q.C.:
Q. No, you're not in terms of, as I'm thinking from your perspective as deputy minister if you had been kind of acutely aware of it the times at the end -
MR. THOMPSON:
A. No, no.
COFFEY, Q.C.:
Q. - it might explain why you would insist, as a clerk, that this be done.
MR. THOMPSON:
A. I doubt that that lay behind putting that

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there.
COFFEY, Q.C.:
Q. Okay, well at the time you weren't aware of this peer review quality assurance -
MR. THOMPSON:
A. I don't think so, no, that's right.
COFFEY, Q.C.:
Q. In a sense of you have no conscious memory when you typed this, this is why I'm putting this here because I know that they can kind of deal with this in a confined fashion if they approach it in a certain way and it will never become known.
MR. THOMPSON:
A. That's right.
COFFEY, Q.C.:
Q. That's not why -
MR. THOMPSON:
A. I don't think I had an awareness, so that would not have been why I would have said that.
COFFEY, Q.C.:
Q. Now did you, having sent these e-mails to Mr. Crawley and Mr. Cake, did you ever discuss this matter in the office with anybody else in

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the Premier's office that day or anybody else in Cabinet secretariat that day?
MR. THOMPSON:
A. I had no additional recollection, unfortunately, about any discussions that I might have had or not had about these e-mails or about that event at that time. I can't, I've tried hard because it's clearly an obvious question, but I just don't know what happened next. I can put forth some plausible possibilities, I think, but I don't have recollections on it.
COFFEY, Q.C.:
Q. Could you perhaps tell us what those might be?
MR. THOMPSON:
A. Sure. Well first of all I did want to see this aspect before it goes out and I had said to Gary Cake to ensure the department and the board include it in their com plan. So asking that to Gary, being the diligent fellow that he is, that I know him to be, I would expect that he would have somehow communicated that to Carolyn directly or someone else in the Department of Health that we have an expectation about what might be in this

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communications plan which has been referenced in Carolyn's e-mail. And then, of course, we get another e-mail back from Carolyn later in the afternoon, which we haven't looked yet here on the screen -

COFFEY, Q.C.:

Q. Well we'll go ahead to that then right now.

MR. THOMPSON:

A. Okay.

COFFEY, Q.C.:

Q. If we could please, there's one at 2:51 p.m. from Gary Cake, this is at page 4 of the exhibit, Commissioner, to Mr. Thompson. It's re: "Update Eastern Health Matter" and it just says "Robert, FYI"--for your information--"GC"-will be Gary Cake, and I take it that little icon there is the "Re: Update Eastern Health Matter" is, that icon is page 5?

MR. THOMPSON:

A. Right.

COFFEY, Q.C.:

Q. And page five is an e-mail from Carolyn Chaplin, July 19th 2005, 2:37 p.m. to Gary Cake, copied to Mr. John Abbott, re: update Eastern Health matter. It's reads "Gary,

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further to this morning and incoming information this afternoon, no action is required at this time. We have arranged a briefing with the health authority for the latter part of this week and will be in a better position to forward relevant briefing materials at that time. No public announcement will be forthcoming this week and there is a possibility that the significance of any announcement will be minimized." Signed Carolyn Chaplin, Director of Communications.

So I'm sorry, you were about to speak of the possible scenarios.

MR. THOMPSON:

A. Right, because while it's not certain though, this e-mail, I believe, is a response to something that Gary may have said to her. It says "further to this morning and incoming information, no action is required at this time." Now of course, she could have been referring to departmental action that we might not have known about or it could have been referring to Gary asking her to include something in the communications plan and she's

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conveying back, no, no action required on something like that, at this time.

So if that, in fact, is what happened next, then we would have--we were being told, you know, the term has become stand down or at least to hold off because they are doing other things, arranging a briefing with the health authority, will be in a better position then to forward relevant briefing material. So there's an expectation of briefing materials raised there, and clearly the idea that "no public announcement would be forthcoming this week" and something even less later was already depressing or reducing the significance, it would seem, of a communications plan altogether, and that's the one issue that we were communicating back to them on is something in the communications plan.

So what we have here is, I think, a response to the message I had given to Gary. So what happens after this though is unclear. We do know, of course, some--we know now, some of the things that happened in the Department of Health, the briefing provided by Eastern

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Health for the minister and some of his staff on July 21st, and the delay that happened and the communications approach then. So the question occurs to me, well, did that sense of delay in communications and testing patients first and waiting to communicate later, was that conveyed to Cabinet Secretariat and to me?

COFFEY, Q.C.:

Q. Do you have -

MR. THOMPSON:

A. But I have no record of it, but I believe that because both Gary and I had been alerted to this on this day, on the 19th, that we must have come into some information about, let's call it, the alternative approach to this file that had emanated from the Department of Health and from--inclusive of the minister, okay. It's not my job to overrule the management decision or a direction of a minister. I contribute. I try to assist departments, as the case may be, with perspectives, but if a minister is managing an issue, has set a course, if the department appears to be engaged and managing or, you

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know, have a good relationship with their agency, here Eastern Health, then--you know, what I'm constructing for you is the sense that if there was a communication, that's the kind of communication that would have come back to us verbally or on the margin of some meeting, and we would have therefore, I guess, disengaged, if you like, for lack of a better word.

COFFEY, Q.C.:

Q. And in terms of that, and this is why I asked you earlier about whether there's any process in place to keep track of things, having been advised, arguably before coffee break in the morning, that 1200 to 1500 clients will need to be retested, spanning a period of seven-eight years, involving errors in breast cancer testing by Eastern Health, and other than being told "no action is required at this time," and relevant briefing materials, they'd be in a position to forward them later in the week, nothing had changed here, in writing.

MR. THOMPSON:

A. Um-hm.

COFFEY, Q.C.:

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Q. So you're saying to the Commissioner that you can't recall at all what, if anything, happened? So you go home to supper that night and as far as you can recall, nothing had changed, other than this terse e-mail?

MR. THOMPSON:

A. I don't have a recollection that nothing changed, and I don't have a recollection that something changed. It's something that I can't peer into the past on, and I do--I could only construct something from what are the likely kinds of things that people would engage in, that's all.

COFFEY, Q.C.:

Q. What, if anything, do you know of happened on July 19th, 2005 that would have made you believe, by supper time that evening, that this matter had gone away, other than this?

MR. THOMPSON:

A. Other than this -

COFFEY, Q.C.:

Q. Yes.

MR. THOMPSON:

A. - I have nothing to rely upon.

COFFEY, Q.C.:

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Q. And so from the perspective of the public interest, public health, you know, patient health, as far as you know, there was no follow up by the Cabinet Secretariat in relation to finding out what happened with this?

MR. THOMPSON:

A. As far as I know, that's been documented. I have no--and no recollection of anything that Cabinet Secretariat did to obtain further information on this.

COFFEY, Q.C.:

Q. And wouldn't you have been curious as to why there was a possibility by 2:37 p.m. that the significance of any announcement will be minimized?

MR. THOMPSON:

A. Well, I may have been curious, I don't recall, and I may have called over to find out why. I may have tracked the meeting later that week, and I may have received information on it. I just don't recall.

COFFEY, Q.C.:

Q. And just before we break, Commissioner, if I could ask, do you think it's a satisfactory

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state of affairs that there's no record, other than these e-mails of what happened in Cabinet Secretariat that day and in the days following, concerning this issue? Do you think that's satisfactory?

MR. THOMPSON:

A. Well, it would be an actual package of information, if there was an explanation as to why we reconciled with--you know, taking no further action or following up in any more detailed way. But that's not to say that nothing happened to ensure or bring that about. We do know that there was information in the Department of Health. We do know that things changed course as a result of the July 21st briefing. I understand your question, but it's important to place it in its full context that while there may be nothing that's on the documentary record, it doesn't mean that the officials involved, all of whom are highly capable individuals and have a good sense of how to manage issues, didn't take the right steps at that time.

COFFEY, Q.C.:

Q. Do you have--other than the documentary

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record, do you have any reason to believe that there's any official in Cabinet Secretariat who has any actual memory of this or purports to have any actual memory of what happened?

MR. THOMPSON:

A. No. I know that no one does because I've asked them all.

COFFEY, Q.C.:

Q. Yes. So that as far as you know, and you've asked your fellow Cabinet Secretariat officials, no one can remember anything about what happened afterward?

MR. THOMPSON:

A. That's right, and so that creates the impression, for me -

COFFEY, Q.C.:

Q. Yes, I'm sorry, go ahead, sir.

MR. THOMPSON:

A. - that this issue was somehow assessed in the days following as declining very dramatically in its--the requirement to follow up, from a Cabinet Secretariat point of view. It creates the impression for me that this became regarded, quite quickly, while a serious matter, one that was being perceived as well

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managed within the Department in the normal course of department subordinate agency relationships.

COFFEY, Q.C.:

Q. But despite its novelty, as a situation, for you and despite its sheer magnitude, you have no memory of what, if anything, any of those factors might have been that -

MR. THOMPSON:

A. No, and in terms of its sheer magnitude, keep in mind, and it is a large issue. We know in retrospect it's a very significant issue, but that that the e-mail that we received talked about testing errors in the lab and that a large group of people would need to retested, but we did not have any scale, sense of scale or proportion as to how many people might be affected or what the risk levels are. So those are really important factors in determining how one acts on and monitors and attaches significance to an issue. So I'm not saying that we should minimize this here, but one has to keep open the possibility that the assessment on that day was one where we put it into a status of serious but well managed

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issue and it's not heading for decision in Cabinet, which is our main business, and it's--briefing notes have been talked about and I admit, I wish we had received one.

COFFEY, Q.C.:

Q. That's my next -

MR. THOMPSON:

A. Yeah.

COFFEY, Q.C.:

Q. This is the sort of issue that cried out for a briefing note, didn't it?

MR. THOMPSON:

A. I think that it deserved a briefing note.

COFFEY, Q.C.:

Q. And your search, I gather, has led you to believe that there was no such briefing note?

MR. THOMPSON:

A. Right.

COFFEY, Q.C.:

Q. Until October?

MR. THOMPSON:

A. Correct.

COFFEY, Q.C.:

Q. And are you able to explain why, at all, there is no briefing note?

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MR. THOMPSON:

A. I would only have to construct what might be a plausible explanation and there might not be much value in doing that.

COFFEY, Q.C.:

Q. Okay, I'll come back to that in the morning.

MR. THOMPSON:

A. But I don't have -

COFFEY, Q.C.:

Q. I'll come back to it in the morning then, Commissioner, if I could.

THE COMMISSIONER:

Q. I just want to clarify your last response. You were saying, as I understood it, that given what you knew on the day, you would agree that a briefing note should have been pursued at that time, even with the messages you interpreted to be a sort of stand down, or are you saying the urgency of the briefing note had gone away and maybe we'd look for it later or whatever?

MR. THOMPSON:

A. Yeah, I think that--or my sense of it, from these words, that even though the urgency may have been diminished by the afternoon, the

fact that there were testing errors and that it potentially involved retesting of that many people seems to be--it seems to have, just on those markers alone, a significance that would deserve a briefing note follow through.

The fact that they said that a briefing note was coming in these e-mails would have led us to believe, I think, that a briefing note in fact was coming. We wouldn't have reached out to pull it in because it would have been promised to us. Now what happened to change our view on--or to change our view perhaps on why it did not--whether or not it was satisfactory that it did not arrive, that would bring me right into the area of the unknown, because I have no recollection of that.

THE COMMISSIONER:

Q. All right, thank you. 9:30 in the morning.

COFFEY, Q.C.:

Q. Thank you, Commissioner.

(UPON CONCLUSION AT 5:00 P.M.)

CERTIFICATE

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

Dated at St. John's, Newfoundland and Labrador this 7th day of May, A.D., 2008

Judy Moss

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