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COMMISSION OF INQUIRY
ON HORMONE RECEPTOR TESTING

LIST OF EXHIBITS

BEFORE THE HONOURABLE JUSTICE CAMERON - COMMISSIONER

October 28, 2008

Appearances:

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

Rolf Pritchard/Jackie Brazil, Q.C. . . Her Majesty in Right of NL

Peter Browne, Q.C./Jane Hennebury . . . Doctors Kara Laing et al
Daniel Simmons/Sara Learmonth . . . Eastern Regional Integrated
. Health Authority
Chesley Crosbie, Q.C... Members of the Breast Cancer
. Testing Class Action
Mark Pike, Q.C. NL Medical Association
Jennifer Newbury Canadian Cancer Society (NL Division)
David Eaton, Q.C./Blair Pritchett
. Central, Western and Labrador-Grenfell
. Regional Integrated Health Authorities

EXHIBITS P-3577 THROUGH TO P-3579 Pg. 5
EXHIBITS P-3676 AND P-3677 Pg. 5
EXHIBITS P-3678 AND P-3679 CANCELLED
EXHIBITS P-3680 THROUGH TO P-3682 Pg. 5
EXHIBIT P-3683 CANCELLED
EXHIBITS P-3684 THROUGH TO P-3689 Pg. 5
EXHIBITS P-3469 THROUGH TO P-3471 Pg. 295
EXHIBITS P-3474 THROUGH TO P-3484 Pg. 295
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MS. PAMELA ELLIOTT (SWORN)

Examination by Bernard Coffey, Q.C. Pgs. 293 - 423

Certificate

1 THE COMMISSIONER:
2 Q. Please be seated. Mr. Coffey.
3 COFFEY, Q.C.:
4 Q. Thank you, Commissioner. The next witness is
5 Danny Williams, Mr. Williams.
6 MR. DANIEL WILLIAMS (SWORN) EXAMINATION BY BERNARD
7 COFFEY, Q.C.
8 REGISTRAR:
9 Q. Would you please state and spell your complete
10 name for the Commission?
11 MR. WILLIAMS:
12 A. Danny Williams. Spell my complete name?
13 REGISTRAR:
14 Q. Yes, please.
15 MR. WILLIAMS:
16 A. D-A-N-N-Y W-I-L-L-I-A-M-S.
17 REGISTRAR:
18 Q. Thank you.
19 MR. WILLIAMS:
20 A. I'm glad I got that right. If not, we would
21 have been off to a bad start.
22 COFFEY, Q.C.:
23 Q. Thank you, Mr. Williams. Commissioner, there
24 are some more exhibits, if I could, please.
25 They are Exhibits P-3577, 3578, 3579, 3676,

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1 3677, 3680, 3681, 3682, 3684, 3685, 3686,
 2 3687, 3688, and 3689.
 3 THE COMMISSIONER:
 4 Q. Entered.
 5 EXHIBITS MARKED AND ENTERED--P-3577 THROUGH P- 3579
 6 EXHIBITS MARKED AND ENTERED--P-3676 AND P-3677
 7 EXHIBITS MARKED AND ENTERED--P-3680 THROUGH P- 3682
 8 EXHIBITS MARKED AND ENTERED--P-3684 THROUGH P- 3689
 9 COFFEY, Q.C.:
 10 Q. Thank you, Commissioner. Mr. Williams, could
 11 you--I appreciate you're the Premier of the
 12 province, but could you tell the Commissioner,
 13 please, give her a brief overview of your
 14 educational and professional background?
 15 MR. WILLIAMS:
 16 A. Commissioner, first of all, if I could, I've
 17 got bronchitis, so from time to time I have to
 18 cough. If you can bear with me.
 19 THE COMMISSIONER:
 20 Q. Yes, and if you need a break at any time, just
 21 let us know.
 22 MR. WILLIAMS:
 23 A. I should be fine, but it's just one of those
 24 ticklish coughs.
 25 THE COMMISSIONER:

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1 Q. Okay.
 2 MR. WILLIAMS:
 3 A. We'll see where it takes us. Educational
 4 background. I was educated at Winterton
 5 School, then St. Bonaventure's College, then I
 6 went to Gonzaga High School. From there, I
 7 went to Memorial University where I got a
 8 Bachelors Degree, majoring in Political
 9 Science and Economics. I then left there and
 10 went to Oxford, where I got a Degree in
 11 Jurisprudence. I then left there and went to
 12 Dalhousie and got an LLB from Dalhousie.
 13 COFFEY, Q.C.:
 14 Q. And then your professional background then?
 15 MR. WILLIAMS:
 16 A. I was--I guess I was admitted to the bar in
 17 '72, I think it was '72, and practised law for
 18 approximately 30 years. I was also involved
 19 in some businesses as well, and then went into
 20 politics, I guess, now about nearly nine years
 21 ago. I was leader of the opposition for a
 22 period of time, and became Premier of the
 23 province after an election in October of 2003.
 24 COFFEY, Q.C.:
 25 Q. Mr. Williams, you became leader of the

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1 opposition when, do you recall approximately?
 2 MR. WILLIAMS:
 3 A. It would have been, I guess, around 2001, I
 4 would think.
 5 COFFEY, Q.C.:
 6 Q. So you were leader of the opposition -
 7 MR. WILLIAMS:
 8 A. Seems like a lifetime, put it that way.
 9 COFFEY, Q.C.:
 10 Q. What I'm asking--the reason I'm asking you
 11 that, of course, is in terms of your direct
 12 involvement with the political process.
 13 MR. WILLIAMS:
 14 A. I was in opposition for nearly three years,
 15 and then we've been in government for just
 16 over five years now.
 17 COFFEY, Q.C.:
 18 Q. As the Premier, could you describe for the
 19 Commissioner, please, beginning I suppose in
 20 the fall of 2003, the structure of your office
 21 in terms of the staffing. Who--you have the
 22 Chief of Staff, so on and so forth. Who was
 23 who?
 24 MR. WILLIAMS:
 25 A. Well, the Chief of Staff was Brian Crawley who

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1 had come with me from the Opposition Office,
 2 and was involved primarily there in a
 3 communications role. Elizabeth Matthews had
 4 just joined us. She was the Director of
 5 Communications. She had come from government
 6 originally. Stephen Dinn later joined us, and
 7 he's now Deputy Chief of Staff. Brian Taylor
 8 came from the Opposition Office. Christine
 9 Ings, who's my secretary, came from the
 10 Opposition Office, and then--I won't go down
 11 through all the staff, but there are other
 12 supporting staff who perform a very important
 13 role in that office, but I guess those would
 14 probably be the senior positions.
 15 COFFEY, Q.C.:
 16 Q. And I take it as well then the Premier's
 17 Office deals with -
 18 MR. WILLIAMS:
 19 A. Peter--I'm sorry, Peter Noel was also with us
 20 at that point in time. He's since moved on to
 21 another position.
 22 COFFEY, Q.C.:
 23 Q. The Premier's Office deals with the Executive
 24 Council, in particular, the Clerk of the
 25 Executive Council. Who was the clerk?

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1 MR. WILLIAMS:
 2 A. The clerk at that time was Robert Thompson,
 3 and, of course, the Commission is familiar
 4 with Mr. Thompson, of course, obviously.
 5 Since then, Gary has been--is the clerk as
 6 well.
 7 COFFEY, Q.C.:
 8 Q. Mr. Williams -
 9 MR. WILLIAMS:
 10 A. That's Gary Norris, by the way, I'm sorry.
 11 COFFEY, Q.C.
 12 Q. The relationship--yes, that would be Mr.
 13 Norris. The relationship between the
 14 Premier's Office and the minister's offices
 15 because, of course, the ministers had their
 16 particular departments, and what sort of
 17 relationship existed beginning in 2003 with
 18 your ministers in terms of--your fellow
 19 cabinet ministers in terms of--what I'm
 20 getting at is this. Here's what I'm asking
 21 you about, what were your expectations of them
 22 and the deputy ministers, for that matter, in
 23 relation to when the Premier's Office should
 24 be told something?
 25 MR. WILLIAMS:

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1 A. Well, you know, we had just come into
 2 government and our party had been in
 3 opposition for a significant period of time,
 4 probably 14 or 15 years, if I remember
 5 correctly. So we were new to government. At
 6 least I certainly was new to government. So
 7 we worked as a team. We had a fairly open
 8 relationship--when I say fairly, we had an
 9 open relationship when it comes to
 10 communicating between each other. You know,
 11 obviously, we had frequently cabinet meetings.
 12 I think since we've been in cabinet, we've had
 13 some 800 plus cabinet papers, for example,
 14 that have been presented to cabinet. I
 15 encouraged ministers at that point in time to
 16 be in contact, be in communication, to work
 17 together, to seek advice when they felt they
 18 needed it, but on the other hand, there was
 19 also a delegation of authority. They were
 20 also recognized as the team managers, as the
 21 people who were in charge of their
 22 departments, they were their ministries. When
 23 the felt there were issues of importance or
 24 issues that they needed to talk to someone
 25 about, we were there to listen, but, you know,

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1 very clear delegation of authority. At that
 2 point, we had a small cabinet because when we
 3 came in--there had been a larger cabinet in
 4 the previous government, and because of
 5 austerity measures, we decided--if I remember
 6 correctly, and I'm probably making your horse
 7 by coughing now, I can tell, but forgive me.
 8 From the austerity measures, we tried to
 9 reduce it as much as we can. So there was a
 10 heavy onus on ministers because they had
 11 multiple duties, but, you know, there was what
 12 I would term an open relationship between us
 13 in the sense of, you know, if you need to come
 14 to us, come to us, and when we need to go to
 15 you, we'll go to you, from a big picture
 16 perspective.
 17 COFFEY, Q.C.:
 18 Q. In the beginning, in the fall of 2003, did you
 19 communicate to your cabinet ministers anything
 20 in relation to certain things that you
 21 expected to be told about, like of any
 22 particular nature?
 23 MR. WILLIAMS:
 24 A. Well, you know, commonsense comes in here.
 25 These are intelligent people, people who stand

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1 for public office, who have been subject to
 2 public scrutiny, have stood the test of time.
 3 A lot of these were experienced--you know,
 4 people who have been in public life in one
 5 form or another, either as politicians, either
 6 as teachers, as professionals, so I relied on
 7 the fact that when I appointed them to these
 8 specific positions, they could use their good
 9 commonsense in knowing, if necessary, what
 10 they should come to the Premier's Office on
 11 and ultimately me, and, of course, there's
 12 also the cabinet table. There's an open forum
 13 for discussion at the cabinet table. There's
 14 sort of a preamble to meetings whereby issues
 15 that aren't on the formal agenda for approval
 16 are discussed. So they could be a topical
 17 issue for the day, for example, if it happened
 18 to be Abitibi, and then there would be a
 19 general discussion about Abitibi, what the
 20 current status was because that would be an
 21 important issue at the time.
 22 COFFEY, Q.C.:
 23 Q. Sure.
 24 MR. WILLIAMS:
 25 A. So that format allowed for that type of

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1 discussion and there were frequent cabinet
 2 meetings in those days.
 3 COFFEY, Q.C.:
 4 Q. And then as time went on, were cabinet
 5 ministers ever told anything more about or
 6 anything different about what you expected of
 7 them in terms of bringing something to your
 8 attention or your office's attention?
 9 MR. WILLIAMS:
 10 A. Well, they have now. You know, as a result of
 11 the exercise that we've gone through with the
 12 inquiry, you know, I've now sent instruction
 13 and I've indicated to cabinet ministers that,
 14 look, you know, if you have matters that you
 15 think are urgent and are--need to be brought
 16 to my attention and are considered to be in my
 17 realm with you, being the cabinet ministers,
 18 that you need to come and tell me directly
 19 because as a result of this process, you can't
 20 have a situation where just because if
 21 somebody makes a phone call to the office, and
 22 I'm sure we'll get to that -
 23 COFFEY, Q.C.:
 24 Q. And that's what I'm trying to get, some sense
 25 for the Commissioner, kind of an overview of

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1 this.
 2 MR. WILLIAMS:
 3 A. Absolutely, and I guess it's some lessons
 4 learned too and things as a result of the
 5 inquiry, but now we've said to the ministers
 6 quite clearly, look, if there's matters that
 7 you feel that I'm seized with with you, then--
 8 and they are major matters, you need to come
 9 to me, you need to come to me directly, you
 10 know, don't have a phone call made, don't have
 11 someone down the line or someone else in the
 12 office have a casual reference made. So
 13 that's certainly one very clear thing that's
 14 been done. The other thing I've got to tell
 15 you as a result of this whole exercise, which
 16 deeply concerns me, is the whole briefing note
 17 exercise. First of all, we've tried to tighten
 18 them up and make them as good as we can make
 19 them. We always assumed that they were as
 20 good as they could be, but with regard to
 21 complete accuracy--if a briefing note is sent
 22 to me, then I rely on it and I rely on the
 23 information in it, and I act upon the
 24 information that's in the briefing note. If
 25 there's anything that I think needs to be

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1 questioned, well, then obviously we'll talk to
 2 the minister, we'll pursue it further or my
 3 staff will pursue it. So we've done that.
 4 The one thing that -
 5 COFFEY, Q.C.:
 6 Q. I take it, that has come out of--arisen out of
 7 your experience with this whole ER/PR matter?
 8 MR. WILLIAMS:
 9 A. Absolutely, absolutely.
 10 COFFEY, Q.C.:
 11 Q. And we'll get to that.
 12 MR. WILLIAMS:
 13 A. And the other thing from that I was about to
 14 go into that does concern me is you don't want
 15 just briefing notes just sort of showered upon
 16 our office. I mean, you've heard other
 17 witnesses testify. The dynamic in the
 18 Premier's Office is a pretty intense heavy
 19 dynamic, I can tell you, on a day to day
 20 basis. You can go in with the best laid plans
 21 of what you're going to do for eight, ten, or
 22 twelve hours that day, and I can tell you it's
 23 nothing like what it started out at at nine
 24 o'clock or eight o'clock in the morning. So a
 25 concern is that just because someone decides

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1 that they're going to send a briefing note up
 2 to the Premier's Office, then now as a result
 3 of this exercise here, I have to assume that
 4 now I'm seized of every word that's in those
 5 briefing notes and that's a very stringent
 6 test and tough demand, I think, to make on
 7 anybody who sits in my office. So, therefore,
 8 you know, the main clearing house, which it
 9 always was to a certain extent, but now the
 10 main clearing house is Cabinet Secretariat,
 11 and if there are matters that are information
 12 matters, that's one thing; if there are
 13 matters that need to come through that are
 14 coming to my attention that require action,
 15 well, then so be it. This is not a deflection
 16 of action, this is just give us the berries,
 17 give us what's important to us so that we can
 18 act on it, but I do--you know, I am concerned
 19 what about if there's 20 inquiries after this
 20 one and I'm called in on every single inquiry
 21 to answer for every single briefing note that
 22 ever came into my office. You know, the
 23 number of briefing notes that come in a year,
 24 I'm told, I think there may be about 400. I
 25 could be wrong on that. The number of press

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1 releases are probably 1200 to 1600, but the
 2 number of contacts that come to the Premier's
 3 Office, the eighth floor, in the run of a year
 4 from all sources are between 125,000 and
 5 150,000 contacts. Now that's an overwhelming
 6 volume. So now as a result of this, I think
 7 we really need to make sure that we're very
 8 focused on what's before us and what our
 9 responsibility is. At the same token, not
 10 putting a filter in front of everybody to push
 11 back so that you don't get the information you
 12 need, and I got to tell you that's a fine
 13 line, and it concerns me.

14 COFFEY, Q.C.:

15 Q. Mr. Williams, when you first arrived in the
 16 Premier's Office in October, 2003, and in the
 17 months afterward you had your staff in place,
 18 staff that had come with you, and new staff in
 19 place, what if any system was in place that
 20 you recall knowing about or learning about
 21 which would address the matter of or the idea
 22 of bringing something forward? Like, the
 23 point is if something comes to someone's
 24 attention on a particular day, day one, and it
 25 goes off to be dealt with and -

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1 MR. WILLIAMS:

2 A. Bringing it forward to what level?

3 COFFEY, Q.C.:

4 Q. Well, to the same level perhaps that it was in
 5 the Premier's Office brought forward
 6 initially. An example is this, we've heard
 7 from--the Commissioner has heard evidence from
 8 your Chief of Staff, Mr. Crawley, has heard
 9 evidence from Robert Thompson who was the then
 10 Clerk of the Executive Council, and both if I
 11 recall their testimony correctly, have
 12 testified that, well, in effect, other than
 13 their memory or a sticky pad somewhere, a
 14 Post-It note somewhere, they had no mechanized
 15 systematic way of bringing things forward, and
 16 you're a litigator--I mean, you were a
 17 litigator in a prior life.

18 MR. WILLIAMS:

19 A. Yeah.

20 COFFEY, Q.C.:

21 Q. The idea of diary dating things and bringing
 22 them forward is not foreign to you.

23 MR. WILLIAMS:

24 A. No.

25 COFFEY, Q.C.:

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1 Q. So was there any such system in place that you
 2 recall?

3 MR. WILLIAMS:

4 A. No, not that I'm aware of. I got to tell you
 5 from my own perspective, the detailed systems
 6 in the office is not something that I would
 7 get involved in, rightly or wrongly. That may
 8 be an abdication of responsibility, however,
 9 you know, from an office setup perspective,
 10 that's just not somewhere where I'd be
 11 involved deeply. What I do know is that
 12 normally that matters that came into the
 13 office that were deemed to be important enough
 14 got through to me. Now given the number of
 15 contacts, as I said, the hundred thousand plus
 16 contacts that come into the office, obviously
 17 people on the eighth floor are making
 18 decisions on a daily basis as to what moves
 19 forward and what doesn't move forward, and
 20 that's at every level, from our receptionist
 21 who gets inundated with calls, depending on
 22 what the issue of the day or the issue of the
 23 month is, that person alone receives a lot of
 24 frontline compliments and attack from both
 25 perspectives. So, you know, there's--you put

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1 the best people that you can find in place,
 2 and you rely on their good judgment and
 3 commonsense then to bring matters forward as
 4 they see fit because if not, I couldn't
 5 possibly cope with what could conceivably come
 6 before me.

7 COFFEY, Q.C.:

8 Q. Do you--as premier, do you yourself have any
 9 personal kind of diary dating?

10 MR. WILLIAMS:

11 A. No. You may be amazed to know that, but, no.

12 COFFEY, Q.C.:

13 Q. No, I'm -

14 MR. WILLIAMS:

15 A. And you know why, I just decided that I just
 16 couldn't do this and get the job done. If on
 17 a daily basis that I had to sit down and keep
 18 notes on every single conversation or every
 19 matter that came before me, then I would lose
 20 a lot of my time. You know, the frustration
 21 that I find, having come from practice and
 22 from the private sector, is that in public
 23 life a considerable amount of your time gets
 24 tied up in just dealing with politics and
 25 media. You know, whatever the news story of

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1 the day happens to be, if there happens to be
 2 three or four stories that are important, then
 3 they move to the top because you're involved
 4 with looking at them under certain
 5 circumstances. As well, you're dealing in a
 6 political system and the opposition have
 7 issues on a daily basis and that's their job,
 8 so I recognize that. For me then on top of
 9 that to take on more responsibility in the
 10 office, and in addition to diarize and
 11 document, then I'd be giving about 10 percent
 12 of my time to productive work. So, you know,
 13 that's a personal decision. It probably isn't
 14 the right one because maybe, you know, maybe I
 15 should be documenting absolutely everything I
 16 do, but that's the only way I can operate.
 17 COFFEY, Q.C.:
 18 Q. It's not a question--and I appreciate your
 19 response in relation to kind of documenting of
 20 meetings and so on, and what transpires in
 21 them.
 22 MR. WILLIAMS:
 23 A. I do take notes in meetings, of course, as we
 24 go through meetings.
 25 COFFEY, Q.C.:

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1 Q. But in terms of, in particular, the idea of,
 2 okay, I've learned about something and to
 3 remind myself to check back in 30 days or in
 4 two months, you don't have such a system in
 5 place?
 6 MR. WILLIAMS:
 7 A. No. From time to time, though, when I'm back
 8 working in the nights or weekends, I will sit
 9 down and do a list of things to do and that
 10 can sometimes include things that I need to
 11 get back to, but it's a very unregimented--
 12 but it works for me. It worked for me in the
 13 past life and I assume it still does.
 14 COFFEY, Q.C.:
 15 Q. Mr. Williams, in relation to your senior staff
 16 and Mr. Thompson, were you aware prior to the
 17 whole inquiry process that apparently Mr.
 18 Crawley, Mr. Thompson, and Ms. Matthews,
 19 neither of them actually had a mechanized way
 20 of bringing things forward, you know, in terms
 21 of--at least that's what they've told the
 22 Commissioner.
 23 MR. WILLIAMS:
 24 A. I'd have to say yes. You know, I never sat
 25 down and asked them do we have these systems

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1 in place, but I knew from my interaction with
 2 them that I didn't see evidence of it, let's
 3 put it that way.
 4 COFFEY, Q.C.:
 5 Q. Okay.
 6 MR. WILLIAMS:
 7 A. But, you know, whether Robert, Elizabeth or
 8 Brian had something in their office that was
 9 their own personal system, retrieval system,
 10 that could have been, but, no, I didn't see
 11 any evidence, nor did I question it, nor did I
 12 insist on it.
 13 COFFEY, Q.C.:
 14 Q. Mr. Williams, I did want to explore with you
 15 briefly because although it's been talked
 16 about from time to time here at the inquiry by
 17 witnesses, I want to ask you about in a
 18 general way the budgetary process, and you've
 19 referred to, I believe just a little while
 20 ago, budget constraints from time to time. In
 21 making decisions about the expenditure of
 22 public funds, what's your understanding about
 23 we have to spend less, particularly in the
 24 health care system or in relation to the
 25 health care system, that that may mean--may

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1 necessarily mean less resources are available?
 2 MR. WILLIAMS:
 3 A. Let me tell you, this is a tough one for
 4 everybody who's involved in cabinet and in
 5 government. When we first were involved in
 6 government, we had very tight financial
 7 circumstances, and as a result we had to make
 8 difficult decisions and the first decision
 9 even were with wage increases for our
 10 employees. I was in office and found myself
 11 within six months with tens of thousands of my
 12 workers on the street, which is something that
 13 in private life, you know, was not something
 14 that happened to me. So we had to do it, and
 15 we had to do it for difficult reasons. I
 16 remember going through a budget process, and I
 17 don't know what the practice of other
 18 governments is, but we drill down as far as we
 19 can and we go through a pretty intense
 20 process. A general statement, it's easier to
 21 manage with less money than it is with more
 22 money, I can tell you right now, and that may
 23 seem a strange thing to say, but the demands
 24 then--once it surfaces, the demands that come
 25 in are enormous and you can't satisfy them

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1 all. From a budgetary perspective, and a
 2 health care perspective particularly, you
 3 know, I remember sitting around the table and
 4 having to decide on teeth and glasses for
 5 people, some of the basic necessities of life
 6 so that people could see and eat, and having
 7 representation made to us by good people who
 8 are involved in the budget process that had to
 9 put everything before us and saying to us
 10 these are the kind of decisions that you have
 11 to make, Cabinet, and you have to prioritize
 12 them. I've said it before and I'll say it
 13 again, sometimes when it comes to drugs,
 14 essential drugs for people, you find yourself
 15 playing God, and I don't use that term lightly
 16 because you have to make decisions between
 17 drug A or drug B because you can only afford
 18 to provide one of them to the people of the
 19 province. We tried to do that on the best
 20 available medical expertise that we can get.
 21 We also have to try and balance--I've got to
 22 give you a lengthy answer here, Mr. Coffey,
 23 because I really need to explore this with
 24 you. You then got to try and strike the
 25 balance between information technology, which

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1 is one thing, pharmaceuticals, infrastructure,
 2 so you don't have people in facilities--I've
 3 gone around, I've gone to old long term care
 4 facilities with five and six people in a room,
 5 people in terminal stages of their life where
 6 they're sharing a room with four other people,
 7 and the family around. So you've got to
 8 provide infrastructure, so you need the bricks
 9 and the mortar. Then you have to make sure
 10 that you can retain competent professionals to
 11 the best of your ability bearing in mind that
 12 you're competing with Alberta and Saskatchewan
 13 and Ontario. So you have to strike that
 14 balance, but then--that's the balance you
 15 strike in health care. Then you have to
 16 offset that with education, tourism, industry,
 17 and municipal works, and providing water and
 18 other things, but, you come back to it, health
 19 care is the most important because when you're
 20 talking health care, you're talking life and
 21 death, and nothing brings it home more than
 22 this Inquiry and the issues that are here.
 23 So, we try to, based on the advice that we get
 24 from the Department of Health and from Eastern
 25 Health and from physicians and experts,

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1 prioritize what we can afford to the best of
 2 our ability. Now obviously, if you put a
 3 dollar here, if you need ten dollars and you
 4 only have two available and you put a dollar
 5 there and a dollar there, then eight other
 6 dollars just aren't going to other needs.
 7 That's a tough job. It gets no easier
 8 when you have some surpluses because those
 9 surpluses aren't enough to get the job done
 10 for everybody, and at the same time, you've
 11 got to try and keep the economy going so that
 12 there's enough money down the road to keep
 13 sustaining the health care expenditures that
 14 you've already made. I got to tell you, it's
 15 not an easy process to go through, and I guess
 16 that's it in a nutshell, not a nutshell,
 17 that's a big broad overview.
 18 COFFEY, Q.C.:
 19 Q. Just, and I'm going to show you a document,
 20 Mr. Williams, and I'm not certain at all that
 21 you ever seen it, but it's Exhibit P-0700, and
 22 I just refer--I'm going to refer you to this
 23 because it maybe encapsulates what you just
 24 spoke about. It's here file, Budget
 25 Presentation 2005-06, December 14th final.

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1 This is apparently some kind of a budget
 2 presentation for that time.
 3 MR. WILLIAMS:
 4 A. If it's December -
 5 COFFEY, Q.C.:
 6 Q. Yes, 14th
 7 MR. WILLIAMS:
 8 A. - it's never final, I can tell you, because
 9 that budget process goes right through to
 10 March.
 11 COFFEY, Q.C.:
 12 Q. And excellence in--it's entitled Excellence in
 13 Health Care and it's a presentation on behalf
 14 of the Board Trustees, the staff. "I would
 15 like to thank you for this opportunity to
 16 speak to you." And this must have been some
 17 presentation given to someone, probably
 18 connected with the Department of Finance, but
 19 there's a particular--there's an overview of
 20 who we are and so on, description of the
 21 uniqueness and service delivery of the Health
 22 Care Corporation, which is the tertiary care
 23 centre for the province here, and here under
 24 the heading, "what we have done operational,"
 25 there's a PowerPoint slide, I presume. But

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1 below it, it says "since the regionalization
 2 in 1996, aggressive steps have been taken to
 3 consolidate and streamline our structure and
 4 administrative costs, which had resulted in
 5 the reduction of 236 management positions. In
 6 addition, we have closed three sites and
 7 financed the new Janeway out of these
 8 savings."
 9 Now again, for the Commissioner, perhaps
 10 give some sense of the magnitude over a decade
 11 period of the changes in management, sheer
 12 number of people involved in management, and I
 13 appreciate quite a number of these years since
 14 1996, between then and the middle of the
 15 2000s, would not have involved your
 16 administration, but the idea that there would
 17 be reductions of significant numbers of
 18 managers, were you aware, in your own
 19 budgetary process, that reductions in managers
 20 could result, of course, in reduction in the
 21 availability of people to supervise and ensure
 22 that the best possible procedures were being
 23 carried out, best possible quality assurance?
 24 MR. WILLIAMS:
 25 A. You know, the answer to running any operation,

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1 whether it happens to be a hospital or a
 2 health care system, is not just simply
 3 throwing people at it.
 4 COFFEY, Q.C.:
 5 Q. Yes.
 6 MR. WILLIAMS:
 7 A. And I know you don't agree with--I know you
 8 agree with that, but so you know, you have to
 9 run it efficiently, the best of your ability.
 10 To this day, I still hear nurses say to me
 11 that there's too much middle management, you
 12 know. We're still heavy in middle management,
 13 you know. If we had more frontline people and
 14 less management people, we'd all be better
 15 off. So to this day, that hasn't changed.
 16 Back in the mid '90s, and with all fairness to
 17 my predecessors and previous governments, we
 18 had just come through the moratorium. There
 19 was obviously tough times going on in this
 20 province, and if you're going to find the
 21 money necessary to put the life-saving drug in
 22 place for somebody who has to have it, who
 23 can't afford it, then perhaps you have to
 24 streamline and try and run the operation a
 25 little more efficiently to get some money.

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1 You're robbing Peter to pay Paul in some
 2 instances, but you have to basically take some
 3 money from pocket A and put it in pocket B
 4 because that happens to be a greater priority.
 5 The question as to whether that makes
 6 things better or worse is difficult to answer.
 7 You know, sometimes you take out excessive
 8 management and you can do more with less,
 9 you're better off, and that's a normal policy
 10 of any efficient operation. But sometimes, I
 11 guess, if there's cuts have to be made and,
 12 you know, in those days, probably excessive
 13 cuts had to be made in order just to keep her
 14 afloat, for want of a better term, then those
 15 things have to be done. But you know, the
 16 tough compromise, I come back to it, for
 17 anyone, the government at that time, is you're
 18 making possibly life affecting trade offs and
 19 that's really difficult, and it's a no win,
 20 because at the end of the day, the primary
 21 purpose for health care is for the patient.
 22 It's about making sure that the patient
 23 in Newfoundland and Labrador has the best
 24 possible health care that he or she can get,
 25 and of course, that's what brings it home here

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1 and the Commissioner and yourselves have the
 2 difficult job of trying to balance the heart
 3 wrenching stories and facts of people who have
 4 gone through this process and in fact, have
 5 not gotten treatment that they should or could
 6 have gotten that could have in fact give them
 7 better quality of life, extended their life
 8 and in some instances, perhaps, and I'm not a
 9 medical expert, save that life. Balancing
 10 that against the need to run an efficient
 11 health care system with all the uncertainties
 12 that are present in that system.
 13 I mean, this is--this Inquiry and this
 14 discussion and this health care system is not
 15 unique to Newfoundland and Labrador, I can
 16 tell you right now. We, on lots of times on
 17 national inquiries, have been out in front in
 18 order to lead the way in this country, and
 19 we're doing it again here, and you know, in
 20 some respects, it's unfair and unfortunate
 21 because, you know, I can guarantee you, from
 22 just my own overview of this, that there are
 23 similar problems in a lot of other
 24 jurisdictions that just aren't being discussed
 25 publicly at this particular point in time. So

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1 you know, there will be lessons learned from
 2 this process for others, and you know, that
 3 could talk about national standards, national
 4 accreditation, where we go from here, what
 5 kind of onus, and I've raised this at Council
 6 of Federation that in fact, you know, we
 7 should be looking at national standards,
 8 national accreditation and I can tell you,
 9 there's an initial reluctance to even want to
 10 go there, because they'll have to go through
 11 the process that we're going through here and
 12 they may have to change their systems and
 13 everything else, but you know, that's the
 14 reality and it's not just in Newfoundland and
 15 Labrador.

16 COFFEY, Q.C.:
 17 Q. Mr. Williams, when did you first--and if you
 18 think back on this, as you just described, you
 19 know, the effect or potential effects on the
 20 patients involved here, when did you--when did
 21 that first--and you articulated it in a fairly
 22 succinct way, the Commissioner has heard about
 23 the effect or potential effects on patients.
 24 When did you first come to that realization?
 25 MR. WILLIAMS:

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1 A. When it first came home to me, I mean, you
 2 know, when that first article, and I'm sure
 3 we're going to go through that.

4 COFFEY, Q.C.:
 5 Q. Yes, we'll look at that.

6 MR. WILLIAMS:
 7 A. When that first article appeared in The
 8 Independent, that was first of all, okay,
 9 what's going on here, and but then we'll talk
 10 about the content of that -

11 COFFEY, Q.C.:
 12 Q. Sure.

13 MR. WILLIAMS:
 14 A. - and what my perception was. But when we got
 15 into that period in May of 2007, and this all
 16 really came to forefront in a significant way,
 17 more significant way. What I do in a
 18 situation like that is I'll do a couple of
 19 things. If it's a woman's issues, and this is
 20 not strictly a woman's issue, I'll say "okay,
 21 what about if that was my mother or a female
 22 member of my family?" and if it's a medical
 23 issue, I will say, okay, and medical issue
 24 generally, and I did it with this, "what about
 25 if this was me, and all of a sudden now, I'm

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1 finding out that because something went wrong
 2 somewhere in this great big health care
 3 system, I've lost my mother." For example, it
 4 came home to me because my granddaughter,
 5 Abby, is in school with a child who lost his
 6 mother, and we probably know who that is.
 7 That person's been named here, and I won't
 8 name that person, but he's nine, he's now ten.
 9 He's one of three children, and he was a baby,
 10 and he's lost his mom. So that was something
 11 that brought it home directly to me.

12 And then I started thinking about people,
 13 and I had the correspondence sent to me, and
 14 people who contacted me, who've indicated
 15 that, you know, they thought everything was
 16 fine. They're going along and they accepted
 17 whatever their results were, and then they
 18 find out that two years later that they
 19 possibly could have had a treatment that could
 20 have extended their comfort level, extended
 21 their life at the end of the day, because
 22 assuming that they're still alive, and I got
 23 to tell you, that's pretty, pretty serious
 24 business.

25 COFFEY, Q.C.:

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1 Q. When did that first -

2 MR. WILLIAMS:
 3 A. I think when it really, really came home was
 4 when we were considering it at the Cabinet
 5 level, when we were considering calling this
 6 Inquiry.

7 COFFEY, Q.C.:
 8 Q. That would be May of 2007.

9 MR. WILLIAMS:
 10 A. That's right, yeah. You know, it was not in
 11 that depth at a previous stage because it had
 12 not gotten to that level of seriousness
 13 because there was a false comfort, a false
 14 sense of security, I think, that was kind of
 15 there that perhaps this wasn't as serious,
 16 that things were very much under control, that
 17 perhaps the numbers were minimized, and but
 18 then as it started to come to forefront that
 19 these numbers were even greater, you know,
 20 then it became a bigger issue.

21 COFFEY, Q.C.:
 22 Q. Okay. I'm going to ask you then, Mr.
 23 Williams, in effect, kind of what you knew and
 24 when you knew it.

25 MR. WILLIAMS:

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1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. Could you tell us, please, when you first
 4 heard of--well, first of all, when did you
 5 first hear of a problem? I won't describe it
 6 as ER/PR, I'll just describe it perhaps as
 7 breast cancer problem. When did you first
 8 hear of that?
 9 MR. WILLIAMS:
 10 A. Well, the first issue would have been--the
 11 first incidents would have been prior to The
 12 Independent story. That would have been the
 13 very first time. Now do you want to take it
 14 back through -
 15 COFFEY, Q.C.:
 16 Q. Yes, go back through.
 17 MR. WILLIAMS:
 18 A. - perhaps, because you know, I'm trying to
 19 reconstruct this from everything that I've
 20 gotten from the Inquiry and the information
 21 that I've been since given and I guess what
 22 I've done is gone back to--well, you can go
 23 all the way back. You can go back to June of
 24 2003 and Dr. Ejeckam's letter, and -
 25 COFFEY, Q.C.:

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1 Q. And we're going to come to that. I'll be
 2 coming back -
 3 MR. WILLIAMS:
 4 A. Yes, and I'm -
 5 COFFEY, Q.C.:
 6 Q. - be coming back around that.
 7 MR. WILLIAMS:
 8 A. - I'm just trying to trace when this thing
 9 came to the forefront and when--not this
 10 thing, this issue, when this came to the
 11 forefront and then we would have been in a
 12 position to start to know or find out what was
 13 going on.
 14 COFFEY, Q.C.:
 15 Q. And I appreciate that, and Mr. Thompson has
 16 got a fairly lucid analysis at times in some
 17 of his documents about, in terms of, you know,
 18 when certain things were known or at least he
 19 refers to his corporate knowledge and stuff
 20 like that.
 21 MR. WILLIAMS:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. I'm asking you, you, yourself, when do you
 25 recall actually -

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1 MR. WILLIAMS:
 2 A. Well, it would have been late September,
 3 early--and I just want to make sure I got my
 4 notes here. Late September, early October of
 5 2005, and that would have been when it first
 6 came to my knowledge, now, you know, to my
 7 knowledge and to my recollection. The one
 8 thing that's really important here that you
 9 need to understand is we, my staff, people in
 10 government, people throughout this process,
 11 are now being asked to recollect in detail a
 12 day in their lives or days in their lives, and
 13 I'd be less than honest with you or with the
 14 Commissioner if I told you I can recollect the
 15 detail on specific days and specific months in
 16 specific years over the last five years,
 17 because I'd be ashamed to say that probably
 18 less than five percent would I be able to
 19 accurately, from complete memory, absolutely
 20 recollect that this particular thing happened.
 21 Now if it happens to be a Sunday or a birthday
 22 or an anniversary or, God forbid, a death or
 23 something that's, you know, a significant
 24 milestone occurrence in your own personal
 25 life, because sometimes that's what you relate

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1 to, it's very difficult, you know, in a busy
 2 office to recollect specific details. So
 3 sometimes when I say to you that, okay, I'm
 4 remembering this, I got to tell you, I can't
 5 tell you that on September 30th at 2:15 p.m.,
 6 I remember someone coming and saying to me
 7 there's going to be a story in The
 8 Independent. But I do have a general
 9 recollection that there was a story that was
 10 going to come, and then I remember reading
 11 that story.
 12 COFFEY, Q.C.:
 13 Q. Okay. How about going back to July, in
 14 particular, July 19th, 2005. The Commissioner
 15 has heard a fair amount of evidence
 16 concerning, you know, various e-mail exchanges
 17 that day involving Mr. Thompson, Ms. Chaplin,
 18 Mr. Crawley. There's a reference in them to
 19 Elizabeth Matthews. Gary Cake is involved.
 20 Do you recall anyone, in July of 2005--and if
 21 I could, please, if we could bring up P-0312?
 22 This is the first of the e-mails. This is
 23 from Mr. Cake, that particular day. It
 24 happened to be a Tuesday, and I think, and to
 25 put it in context for the Commissioner, if we

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1 could look at Exhibit P-3578? 3578, please,
 2 and this is an excerpt from your calendar, in
 3 fact, for that week.
 4 MR. WILLIAMS:
 5 A. I didn't realize you had that, but anyway,
 6 that's good.
 7 COFFEY, Q.C.:
 8 Q. Yes, Mr. Pritchard has been diligent in
 9 providing material. You can see, Tuesday,
 10 July 19th, 11:00. There's a swearing in
 11 ceremony for Clayton Forsey at Government
 12 House, and then nothing else written in for
 13 the rest of the day. That doesn't mean you
 14 weren't doing anything, but there's nothing
 15 else written in there, and then the next day,
 16 there are various meetings and so on referred
 17 to that don't have anything to do with this.
 18 MR. WILLIAMS:
 19 A. So the 18th is a Monday.
 20 COFFEY, Q.C.:
 21 Q. 18th's a Monday.
 22 MR. WILLIAMS:
 23 A. Okay, yes, that's helpful actually.
 24 COFFEY, Q.C.:
 25 Q. So this is a Tuesday, and this particular day

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1 Mr. Forsey was being sworn in at Government
 2 House. I take it he was being sworn in as an
 3 MHA.
 4 MR. WILLIAMS:
 5 A. That's right.
 6 COFFEY, Q.C.:
 7 Q. 11 a.m. that day. If we could go back then to
 8 P-0312?
 9 MR. WILLIAMS:
 10 A. Can we just--can we -
 11 COFFEY, Q.C.:
 12 Q. Sure, I apologize.
 13 MR. WILLIAMS:
 14 A. - you don't mind going back to that?
 15 COFFEY, Q.C.:
 16 Q. That's fine.
 17 MR. WILLIAMS:
 18 A. I've tried to obviously reconstruct my week
 19 that week, and gone back to this calendar in
 20 particular and spoke to my secretary,
 21 Christine, to get her recollection, to the
 22 best of her ability. Now remember, of course,
 23 you know, Christine is also dealing with the
 24 same volume and days that we deal with. Her
 25 recollection was important because that week,

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1 Christine indicated to me that she cleared out
 2 that week--not cleared out, cleared the deck
 3 that week and was not in that week, which
 4 tells me, and she said it to me, I didn't say
 5 it to her, that in fact that indicates that
 6 that was one of those weeks in the summer when
 7 you tried to leave as much open as you could,
 8 because during the summer, apart from the
 9 Premier's Conference, like I try to spend as
 10 much time as I can in Newfoundland and
 11 Labrador for obvious reasons, depending on
 12 what weeks, what weather weeks you strike. So
 13 I tried to keep some flexibility, and normally
 14 what I try to do on a week like that is
 15 certainly keep the book ends, which I would
 16 say would be Monday and Friday, and then
 17 because of demands for things like you see,
 18 the Hebron briefing and other appointments, I
 19 will book a day in the middle of the week and
 20 kind of stack that up and then leave the
 21 others open. So that if it happens to be free
 22 and the weather happens to be good and I can
 23 grab a couple of days in the summer, then I
 24 will do that.
 25 I do know, after having talked to her and

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1 my staff, that in fact we were preparing for
 2 the New England Governors' Conference, which
 3 was a big thing for me then. It was in the
 4 early stages of being Premier, and that was
 5 something that I had to prepare for. The
 6 Hebron briefing, as you can see, was there as
 7 well. So the only other duty on that
 8 particular day, on the Tuesday, which I was
 9 committed to was a swearing in ceremony for
 10 Clayton Forsey. So that was at 11:00, so
 11 assume in the 10:40 to 11:00 range, I would
 12 have gone to Government House. That's the
 13 best reconstruction of that week. So it's
 14 very likely, and I can't say for sure because
 15 I don't remember, Monday and Tuesday and
 16 perhaps Monday and Thursday and Friday and
 17 perhaps Tuesday afternoon, I wasn't even in
 18 the office. But that doesn't mean that I was
 19 out of contact, because any day that I am not
 20 in the office, I am always in constant
 21 communication. Either my staff will contact
 22 me or I will contact them and the only
 23 exception to that rule is once in a blue moon,
 24 if I happen to be in a remote area, like a
 25 salmon river, for example, that has no

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1 contact. That's the only possibility, but in
 2 constant contact with my office.
 3 COFFEY, Q.C.:
 4 Q. So Mr. Williams, your staff then communicate
 5 with you by phone. Well, I take it in person,
 6 in writing, on paper.
 7 MR. WILLIAMS:
 8 A. By phone.
 9 COFFEY, Q.C.:
 10 Q. By phone, and that would include cell phones?
 11 MR. WILLIAMS:
 12 A. That's right.
 13 COFFEY, Q.C.:
 14 Q. And do you use text messaging or e-mail?
 15 MR. WILLIAMS:
 16 A. I've gotten to use a bit of text messaging
 17 lately because one of my children happens to
 18 use a text message to contact me.
 19 COFFEY, Q.C.:
 20 Q. Well, back in 2005, I'm thinking.
 21 MR. WILLIAMS:
 22 A. No.
 23 COFFEY, Q.C.:
 24 Q. Okay. So that began in what, in the past year
 25 or two?

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1 MR. WILLIAMS:
 2 A. The text messaging on the phone, yes.
 3 COFFEY, Q.C.:
 4 Q. But back in July 2005, cell phone, if you were
 5 out of the office?
 6 MR. WILLIAMS:
 7 A. Absolutely, primary communication was the cell
 8 phone.
 9 COFFEY, Q.C.:
 10 Q. Now I wanted to ask you -
 11 MR. WILLIAMS:
 12 A. Or a land line.
 13 COFFEY, Q.C.:
 14 Q. If we could go back to 0312, please? And do
 15 you use a Blackberry?
 16 MR. WILLIAMS:
 17 A. Yes, I do, yes, but a Blackberry is more of a-
 18 -it's a convenience tool that preempts a
 19 conversation. So as opposed to having to
 20 phone someone, you could say "call me" or if
 21 in fact from time to time there was a news
 22 clip that came up that was on the CP wire or
 23 VOCM or CBC or NTV or whatever, sometimes that
 24 would be forwarded to me on that. But
 25 primarily a convenience, conversational kind

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1 of tool.
 2 COFFEY, Q.C.:
 3 Q. Would you use it to--would people communicate
 4 with you through e-mails by your Blackberry?
 5 MR. WILLIAMS:
 6 A. No.
 7 COFFEY, Q.C.:
 8 Q. Okay.
 9 MR. WILLIAMS:
 10 A. I actually--you know, I have e-mail set up,
 11 but I'm--ashamed to say, I'm not an e-mail
 12 user.
 13 COFFEY, Q.C.:
 14 Q. Now here -
 15 MR. WILLIAMS:
 16 A. It's set up, people make contact to me through
 17 the office, into the office through e-mail,
 18 but as a general rule, I don't use e-mail,
 19 based on volume, quite frankly.
 20 COFFEY, Q.C.:
 21 Q. Here, looking at this particular e-mail,
 22 there's a reference to Ms. Chaplin having
 23 called to provide a heads up that a major
 24 story would break from Eastern Health Board as
 25 early as Thursday, which would be the 21st,

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1 and perhaps the following Monday, the 25th.
 2 "Eastern Health Board has recently discovered
 3 errors in its breast cancer testing program.
 4 This matter affects clients who were subject
 5 to breast cancer testing from 1997 to April
 6 2004. I understand that an estimated 1200 to
 7 1500 clients will need to be retested. The
 8 Eastern Health Board is currently working on a
 9 strategy for communicating this news to
 10 affected clients and the public at large.
 11 Legal advice is being engaged in this process.
 12 The Department will be advised of the
 13 communication strategy and a briefing note is
 14 being prepared. Carolyn has also alerted
 15 Elizabeth to this matter." That would be Ms.
 16 Matthews.
 17 Mr. Williams, pursue this a bit further,
 18 but that subject matter itself, such as it's
 19 framed there, would you have anticipated that
 20 you would have been told about that, in the
 21 normal course?
 22 MR. WILLIAMS:
 23 A. On a stand-alone basis, on a normal day, yes,
 24 as a general rule. Now the context, of
 25 course, and we're looking at this, this is

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1 coming in at around the same time that, you
 2 know, we're going to Government House. Now
 3 first of all, I can't tell you on that morning
 4 whether I left the Confederation Building to
 5 go to Government House or I left from my house
 6 to go to Government House, on the basis that I
 7 hadn't planned on being in the office that
 8 day. So I can't tell you that for sure, but I
 9 mean, in the normal working day, if in fact a
 10 major health matter had come up, and it's
 11 headed up major health matter, it's referred
 12 to as a major story, during the course of the
 13 day, depending on what the circumstances were,
 14 I would be apprised of that. Now you know, if
 15 I was in meetings all morning, they'd wait
 16 until I came out and there's a whole pile of
 17 variables that can go into that.
 18 COFFEY, Q.C.:
 19 Q. Sure, but you would expect that at some time,
 20 bearing in mind it came in at 10:30 that
 21 morning, if you were in the Confederation
 22 Building throughout the day, that it would be
 23 brought to your attention sometime before you
 24 went home?
 25 MR. WILLIAMS:

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1 A. If that was the stand alone. We know there's
 2 another e-mail comes later, but if that was
 3 the stand alone, yes.
 4 COFFEY, Q.C.:
 5 Q. How about if you weren't in the Confederation
 6 Building?
 7 MR. WILLIAMS:
 8 A. If I wasn't in the Confederation Building,
 9 yes, it's quite--it's very, very, very likely
 10 that I would be advised of that.
 11 COFFEY, Q.C.:
 12 Q. And we look at the next page of the exhibit,
 13 and the Commissioner has seen this before,
 14 it's just Mr. Thompson is forwarding this to
 15 Mr. Crawley, really within a matter of a
 16 couple of minutes, and he says "this is
 17 major," and he goes on to say, "once the
 18 solution is set into motion, we will expect
 19 the Department and the Board to undertake
 20 appropriate evaluation to determine why this
 21 happened," i.e. what the cause was.
 22 MR. WILLIAMS:
 23 A. Um-hm.
 24 COFFEY, Q.C.:
 25 Q. Okay.

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1 MR. WILLIAMS:
 2 A. Yes.
 3 COFFEY, Q.C.:
 4 Q. And I take it that that--would you agree that
 5 if you'd been told about the subject matter
 6 here, in the first e-mail, that one of your
 7 first reactions would have been "well, why did
 8 this happen?"
 9 MR. WILLIAMS:
 10 A. Certainly, yes, absolutely. But you know,
 11 understanding too that we would--there would
 12 be that kind of an exploratory question. It
 13 would be "okay, what's this all about? What
 14 happened?" Bearing in mind that, certainly
 15 not a similar circumstance to this, but
 16 important major instances come into my office
 17 on a very regular basis, and probably, you
 18 know, I may be overstepping to say, but I
 19 don't think so, I would say at least once a
 20 week, there's an issue, at least once a week,
 21 that comes into our office that could be
 22 considered a major matter that never becomes a
 23 major matter. It is on the way in. It
 24 settles down. The Department works it out,
 25 and then it moves on and it's never seen or

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1 heard from again, from our perspective.
 2 COFFEY, Q.C.:
 3 Q. And I'm going to ask you about that in a
 4 minute, I take you and pursue that. Here, Mr.
 5 Thompson, at page 3 of the exhibit, responds
 6 to Mr. Cake again before 11 a.m., and I
 7 appreciate by that point you would have been
 8 at Government House, certainly. And he says,
 9 "Please ensure the Department and the Board
 10 include in their comm plan assurance that once
 11 the solution is set into motion, an evaluation
 12 will be done to determine the specific of
 13 systemic reasons why this occurred so the
 14 matter will be properly addressed in the long
 15 term" and he wants to see the comm plan, that
 16 aspect of it before it goes out. If we can
 17 look, please, at page 4, Mr. Cake at 2:51 that
 18 afternoon sends or forwards Mr. Thompson
 19 what's described as an update on the Eastern
 20 Health matter, and then the attached update is
 21 this one at page 5.
 22 MR. WILLIAMS:
 23 A. Well, you know, you'll notice too now the
 24 subject has changed.
 25 COFFEY, Q.C.:

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1 Q. Yes.

2 MR. WILLIAMS:

3 A. From becoming a major health matter to an

4 update.

5 COFFEY, Q.C.:

6 Q. To an update.

7 MR. WILLIAMS:

8 A. On both of those.

9 COFFEY, Q.C.:

10 Q. And then he is, Mr. Thompson has simply copied

11 what Mr.--has simply copied or forwarded in

12 effect what Ms. Chaplin had written to him

13 about twenty minutes before. And she says,

14 "Further to this morning and incoming

15 information this afternoon, no action is

16 required at this time. We have arranged a

17 briefing with the Health Authority for the

18 latter part of this week and will be in a

19 better position to forward relevant briefing

20 materials at that time. No public

21 announcement will be forthcoming this week and

22 there's a possibility that the significance of

23 any announcement will be minimized." Now, and

24 again, the Commissioner has heard a fair

25 amount of evidence concerning this, but what I

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1 wanted to ask you is this, I take it then that

2 you have no recollection of this subject

3 matter having first come to your attention,

4 the 12 to 1500, nor being told this sort of

5 message?

6 MR. WILLIAMS:

7 A. No, but I've seen all these since and have

8 looked at them closely.

9 COFFEY, Q.C.:

10 Q. Would you have expected looking at this

11 exchange we've just looked at and these e-

12 mails, that with nothing more--page 5 kind of

13 ended the matter, right here, would you have

14 expected that your staff would have, well

15 first of all, explored this further?

16 MR. WILLIAMS:

17 A. Well you have to take it all in context and

18 you have to look and believe me, I've thought

19 about this in a lot of detail. You have to

20 look at what came in in the morning and I

21 pointed out to you and it came in as a major

22 health matter. By the afternoon, the subject

23 matter is now termed an update and then at

24 2:37, a memo is received that says, "Further

25 to this morning and incoming information", so

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1 we said it this morning and we've now got new

2 information, "no action is required at this

3 time." Now a "no action is required"

4 statement to me or my officials is exactly

5 that. Stand down, nothing to do--no action

6 required. "We've arranged a briefing with the

7 Health Authority for the latter part of this

8 week and will be in a better position to

9 forward relevant briefing materials at that

10 time. No public announcement will be

11 forthcoming." So before in the morning, there

12 was an alarm, basically major problem, there's

13 going to be a public announcement. Now

14 there's no public announcement and there is a

15 possibility that the significance of any

16 announcement will be minimized. So we've now

17 gone from major to minimal with no action

18 required. Based on that, that is a clear

19 signal to our office that this matter is, for

20 want of a better term, dormant right now in

21 the sense from our perspective, we're not

22 required to be involved and it is now in the

23 hands of health officials, whether that

24 happened to be the Department of Health or

25 Eastern Health.

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1 COFFEY, Q.C.:

2 Q. Now, Mr. Williams, again perhaps to

3 juxtaposition it, if such--if we were to

4 change breast cancer testing to some other

5 type of testing and a similar set of e-mails

6 was to occur tomorrow, would you expect that

7 it would be followed up on, whether or not Ms.

8 Chaplin told your office no action is required

9 at this time, has anything changed in that

10 regard?

11 MR. WILLIAMS:

12 A. Well, you know, I guess, Mr. Coffey, if you

13 look now as the result of the experience of

14 what we've all gone through, you know, I can

15 tell you right now that all senior officials

16 are on red alert and that means from a

17 perspective of, you know, major matters.

18 Ministers have been now told categorically in

19 a Cabinet meeting that if there's matters of

20 important that, you know, need my attention

21 and they need me involved and they affect the

22 people in this province in a major way,

23 whether that happens to be life safety or

24 whatever else, then you need to come to me

25 directly and you need to let me know directly.

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1 So from that perspective, you know, there's
 2 been a heightened awareness and that's
 3 probably the best way I can put it as a result
 4 of this exercise and when we're dealing with
 5 something as delicate as life safety, there's
 6 absolutely no question, but I can tell you at
 7 that point in time, given that set of facts
 8 and that notification from officials and
 9 especially coming back up through the
 10 Department of Health and Eastern Health, that
 11 that was proper conduct at that particular
 12 point in time, that, you know, nothing else
 13 will be done under those circumstances.

14 COFFEY, Q.C.:

15 Q. And again, and that's why I wanted to explore
 16 this a bit with you, your comments just then
 17 to the Commissioner just before I asked you
 18 the last question which is "no action is
 19 required at this time", this is coming from
 20 Ms. Chaplin who, at the time, was the director
 21 of communications with the Department of
 22 Health. She was at the time, she's testified
 23 to that fact.

24 MR. WILLIAMS:

25 A. Yes.

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1 COFFEY, Q.C.:

2 Q. So that the structure, such as it was at the
 3 time and the understandings, basic underlying
 4 understandings between the Premier's office
 5 and, for example, the Department of Health's
 6 director of communications or the Department
 7 of Health was that if the direction of
 8 communications of a line department, such as
 9 Health, told the Premier's office that no
 10 action is required at this time and you said,
 11 "of us", then that was a signal, a message
 12 that we do not literally need anything further
 13 from you and you don't have to inquire any
 14 further of us. Is that the -

15 MR. WILLIAMS:

16 A. This is coming from the person who started
 17 this in the first place.

18 COFFEY, Q.C.:

19 Q. Yes, and I appreciate that.

20 MR. WILLIAMS:

21 A. This is the person who rightly raised the
 22 alarm bell presumably because she had facts
 23 before her that determined that, so she raised
 24 the alarm bells and raised the flag and said
 25 this was a major matter and that was followed

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1 through. Now the very same person is coming
 2 back and saying, "okay, stand down here" and
 3 there are hundreds of instances in our office
 4 where an incidence, as I said before, may be
 5 raised as being a huge matter and then just,
 6 for want of a better term, dies on the vine
 7 because perhaps somebody over-reacted and this
 8 wasn't an over-reaction here, that's all I'm
 9 saying, but perhaps somebody over-reacted or
 10 all the information wasn't available, but then
 11 people pulled back and then, you know, our
 12 office then moves on to other important
 13 matters that happen to be before it. So
 14 there's one incidence, I've got to tell you
 15 which I can remember, one which actually
 16 stands out is we got a call, I guess it was
 17 from National Defence that in fact two fighter
 18 planes were intercepting some aircraft, I
 19 can't remember if it was a commercial aircraft
 20 or whatever, I think it was a commercial
 21 aircraft, and this plane was either going to
 22 be attempted to be forced down in Newfoundland
 23 and Labrador or some other dramatic
 24 circumstance, which I don't have the details
 25 on. Within an hour, there was nothing. It

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1 was just--I was contacted, my office phoned me
 2 and then within an hour, it was just all over
 3 and done with. So you can get those kind of
 4 dramatic flare ups. Now they can affect life
 5 safety, of course, because people are on
 6 planes and could be in jeopardy, but there are
 7 lots of instances, but further need to
 8 understand that is not for one minute to
 9 downplay the seriousness and importance of
 10 improper testing on patients that affects
 11 their lives, but at this stage, this matter
 12 was considered to be a non issue at the time
 13 and there's also, Mr. Coffey, an onus on
 14 departments to then come back. You know, we,
 15 unfortunately, don't have the staff or have
 16 the luxury of being able to send a team out
 17 and just start to drill down on every single
 18 issue every time something comes to the
 19 office. We can't do it, we don't have the
 20 resources to do it. And you've got, you know,
 21 some--perhaps that's a lesson to be learned,
 22 maybe we should be resourcing up the Premier's
 23 office with another 30 individuals so that we
 24 can, every time something comes up with the 20
 25 departments and the other 10 agencies, that

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1 we've got somebody who goes out and just gets
 2 directly hands on, but we don't have that. So
 3 we have to rely on the departments and the
 4 Department of Health is now up to a 2.3
 5 billion dollar budget, lots of resources, lots
 6 of expertise and I have a minister and a
 7 deputy minister in place and there's a CEO of
 8 Eastern Health who is a highly paid specialist
 9 whom we should be able to rely on.
 10 COFFEY, Q.C.:
 11 Q. So in the milieu of the time, such as it was
 12 in July of 2005 then, bearing in mind the e-
 13 mail traffic, the fact that it was not
 14 followed up on apparently by the Premier's
 15 office's staff nor by the clerk of the
 16 Executive Council, you do not find that
 17 remarkable--in the milieu of the time?
 18 MR. WILLIAMS:
 19 A. In the milieu of the time, given the
 20 instructions, I don't find it remarkable. I
 21 would think in a modern world now on the basis
 22 of this experience that we have gone through,
 23 that in fact you would find that a senior
 24 official in our office or perhaps given the
 25 way the structure is now, that someone through

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1 Cabinet Secretariat would likely follow it up
 2 to see if there was any further briefing
 3 material. But if they went back and they were
 4 told that there was no further briefing
 5 material or nothing else needed, then they
 6 would then rely on the fact that this is in
 7 capable hands, presumably, of the Department
 8 of Health and Eastern Health.
 9 COFFEY, Q.C.:
 10 Q. If we look back here, and this is--look back
 11 at page 1, that first e-mail in this line of
 12 them, Mr. Cake has noted "a briefing note is
 13 currently being prepared." Of course, if we
 14 could bring up then, please, Exhibit P-0075
 15 and when that comes up on the screen, Mr.
 16 Williams, this whole--that set of e-mail
 17 traffic we just saw for July 19th, the
 18 existence of that first came to your attention
 19 when?
 20 MR. WILLIAMS:
 21 A. This is a good question. I guess the e-mail--
 22 well it would have come up when it became an
 23 issue. Now that would have been, I would
 24 suggest to you, Mr. Coffey, probably some time
 25 after the inquiry was called, but I can't tell

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1 you for certain, but that would be my
 2 recollection.
 3 COFFEY, Q.C.:
 4 Q. We in fact, now this is a matter of public
 5 record, we had to adjourn I believe on April
 6 1st of this year because counsel for Her
 7 Majesty had provided us with this e-mail
 8 traffic he just apparently obtained from Mr.
 9 Thompson. So what I'm asking about is were
 10 you aware prior to that of the existence of
 11 this e-mail?
 12 MR. WILLIAMS:
 13 A. Prior to what?
 14 COFFEY, Q.C.:
 15 Q. To around April 1st of this year? This
 16 occasioned about a four-day adjournment.
 17 MR. WILLIAMS:
 18 A. I honestly can't tell you when I first saw
 19 this e-mail. Prior to April 1st, I would say
 20 yes, April 1st of this year?
 21 COFFEY, Q.C.:
 22 Q. Yes.
 23 MR. WILLIAMS:
 24 A. I would think so, I honestly don't know.
 25 COFFEY, Q.C.:

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1 Q. We're looking at--there's a mention of a
 2 briefing note, this is a briefing note which
 3 is dated July 20th and it says "meet with
 4 minister July 21, 2005", the minister at the
 5 time would have been Mr. Ottenheimer. Was the
 6 existence--I take it the existence of this was
 7 not brought to your attention in the summer of
 8 2005?
 9 MR. WILLIAMS:
 10 A. No. I was very surprised to find out and that
 11 could have been even in the 2007 period that
 12 in fact Eastern Health was aware of these
 13 issues in May and, of course, that briefing
 14 note indicates the background.
 15 COFFEY, Q.C.:
 16 Q. Yes.
 17 MR. WILLIAMS:
 18 A. Is that they were aware that there were
 19 problems in May, so, you know, this didn't
 20 even arise in government at the Department of
 21 Health level until July 19th, and by that
 22 time, testing, retesting had been done and
 23 decisions were being made to retest everybody,
 24 that's my recollection of the information that
 25 I have since read from this.

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1 COFFEY, Q.C.:

2 Q. Now, Mr. Williams, looking at this and you've

3 had, as you've indicated, you've had an

4 opportunity to review this, I take it, in some

5 detail?

6 MR. WILLIAMS:

7 A. Well, you know, all these briefing notes that

8 I was not privy to, I'm aware of them, but I

9 can't tell you, Mr. Coffey, that I have, you

10 know, I can speak to every issue, but if you

11 wanted me to, give me a copy of it and I'll

12 read it now and I'll go through it with you.

13 COFFEY, Q.C.:

14 Q. What I wanted to ask you about is this, in

15 fact, there is a copy of it there, but this is

16 the first briefing note that Mr. Ottenheimer

17 got, okay.

18 MR. WILLIAMS:

19 A. Yes.

20 COFFEY, Q.C.:

21 Q. Having read it in the years since, do you have

22 any thoughts upon--first of all, I take it Mr.

23 Ottenheimer didn't come to you with this that

24 you recall in July or August or September of

25 2005.

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1 MR. WILLIAMS:

2 A. Strangely enough, there was no conversation

3 and people are going to find this very hard to

4 believe, but it's true, strangely enough there

5 was no conversations between me and either--

6 either one of my ministers, Minister

7 Ottenheimer or Minister Osborne on this matter

8 over the entire period of time until it arose

9 in Cabinet in May.

10 COFFEY, Q.C.:

11 Q. And we'll come to that.

12 MR. WILLIAMS:

13 A. That's an amazing statement, but that's true.

14 COFFEY, Q.C.:

15 Q. And so he didn't speak to you about it.

16 Knowing what you do now about what's not only

17 in this briefing note, but I'm going to

18 suggest to you there's a whole raft of other

19 briefing notes subsequently, do you find that

20 remarkable?

21 MR. WILLIAMS:

22 A. Yes, for a couple of reasons, you know, I've

23 heard the Minister's statement where this was

24 termed a critical issue. So it's gone from

25 major in a briefing note to being a critical

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1 issue. I look at it three ways here, I look

2 at it as a patient; I look at it as a lawyer,

3 because that's my training; and I look at it

4 as my role as premier of the province. And,

5 for example, if I was a patient and this was

6 going on and something was wrong with testing

7 in my condition, I feel I have a right to know

8 as soon as possible because I need to be in a

9 position to be able to do something about it,

10 if I can. Now, you know, a lot of people

11 probably don't take the initiative to take

12 charge and say I've got to go and different

13 opinion or find out what's going--from my own

14 personal perspective, if there's something

15 wrong, I'd like to know at the earliest

16 available opportunity. As a lawyer, when I

17 look at this and I see this, I say, well okay

18 now, there's problems going on here, they've

19 been going on for a period of time. It's May,

20 June, July, two to three months before this

21 even comes to the Department of Health who

22 have an ultimate line responsibility here all

23 the way, and then as premier, I'm saying, you

24 know, Eastern Health have knowledge of this,

25 we'll go back, of course, to the Dr. Ejeckam

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1 letter which kind of, as a lawyer horrified

2 me, quite frankly. And all these things are

3 going on and nobody knows about it and it's

4 kind of all brewing there and I think people

5 are acting with the best of intentions. I

6 think they're trying to deal with a very

7 serious problem, but I think overall they're

8 all ignoring the patient's right to know.

9 Now, as we go through, I think possibly July

10 and August we'll talk about, in all fairness,

11 Minister Ottenheimer's decision not to go

12 public, even though he wanted to go public

13 because physicians were advising him that this

14 was not in the best interests of the patients

15 and I have to tell you quite honestly if

16 someone's doctor told me, as a minister, not

17 to go public with a piece of information

18 because it was not in his or her best health,

19 I would very likely take that advice and do

20 exactly the same thing. So--but the fact that

21 I was not notified by a minister on this, yes,

22 now in hindsight I find that to be

23 disappointing might be the best term. But

24 you've also got to put and I've also got to

25 put myself in his shoes at that particular

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1 point in time. So what was the process that
 2 he was going through there? Was he assured
 3 that everything was under control, that
 4 Eastern Health said that this is, you know,
 5 not a really serious situation, we're dealing
 6 with it, we're getting retesting done. We're
 7 stopping testing, we're going to be sending
 8 retesting off to the gold standard, Mount
 9 Sinai, we're notifying patients as we go.
 10 Everybody that needs to be informed is being
 11 informed, there's damage control that's done.
 12 The problem has already happened, now we're
 13 trying to see what we can do to correct it.
 14 And I would think he's being bombarded by
 15 medical advice that's saying to him, don't go
 16 public with this yet because we don't have a
 17 handle on it, we don't want to give added
 18 stress to people and we don't have all the
 19 answers either. So he had to put himself in a
 20 position of striking that really delicate
 21 balance between going public and not. Now,
 22 that's a long-winded answer to saying should I
 23 have known? Yeah. At a certain point in time
 24 through this process, I would have certainly
 25 liked to have known what was going on at this

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1 level.
 2 THE COMMISSIONER:
 3 Q. Mr. Williams, can we just go back for a minute
 4 because before we got to whether or not you
 5 might have expected to have been advised by
 6 your ministers, you referred to the period of
 7 time from when this arose within Eastern
 8 Health and when the department was advised and
 9 that brings up the subject of the relationship
 10 between government and agencies, such as
 11 Eastern Health, which is a very large
 12 corporation and which spends, frankly, quite
 13 large portion of the province's budget. Is
 14 there some way one knows what it is that--how
 15 does an issue get to be so big within a health
 16 authority that the information should go up
 17 the line to the Department of Health and if
 18 necessary, through the Department of Health to
 19 you?
 20 MR. WILLIAMS:
 21 A. Well, Eastern Health, my understanding of it
 22 and I don't pretend to be a complete expert on
 23 the legislative responsibilities, quite
 24 honestly, Madam Commissioner, but the line of
 25 authority is with Eastern Health. They run

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1 the operation, they run the corporation so
 2 they're responsible for handling it. There's
 3 a couple of things that come in here.
 4 Commonsense is one thing that if there's a
 5 major matter that affects a major number of
 6 people in the province and their life issues,
 7 then I would suggest that that would be
 8 something that the CEO or people in Eastern
 9 Health should consider to be important for the
 10 Department of Health to know. The other thing
 11 as well is the whole question of competence in
 12 the health care system. And I've said it and
 13 I'll say it again, the buck stops here with me
 14 at the end of the day, it just does because on
 15 the frontline, I'll end up being the one who
 16 has to answer and it's Eastern Health's
 17 responsibility to retain and sustain
 18 confidence in the health care system. If
 19 things are--and I want to be careful here
 20 because I'd like to use the term "suppressed",
 21 but no, that's not the term, but if sometimes
 22 things are being sugar coated in a way that
 23 they really aren't or I think people do a
 24 disservice and an injustice to everybody if
 25 that happens. So, you know, commonsense is

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1 one thing; legislative responsibility is
 2 another thing. They do have responsibility
 3 for the operational side, but if there are
 4 significant and serious things happening with
 5 Eastern Health, I would certainly like to
 6 think that, you know, the government and
 7 ultimately the people have a right to know,
 8 the people of the province have the right to
 9 know because if it doesn't affect them
 10 directly, it could affect someone in their
 11 family or relations.
 12 THE COMMISSIONER:
 13 Q. Okay, so it seems to me, though, your response
 14 really in respect of Eastern Health is
 15 somewhat similar to your response in respect
 16 of the minister in a sense of a minister using
 17 commonsense based on the nature of the problem
 18 should know to come to you and Eastern Health
 19 using commonsense based on the nature of the
 20 problem should know to go to the Department of
 21 Health, is that fair?
 22 MR. WILLIAMS:
 23 A. Yeah, and they're two difference exercises in
 24 the sense that when you're, you know, one is
 25 more of a--is a direct individual personal

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1 relationship, you know, at what point does a
 2 minister come to the premier who happens to be
 3 in office at the time and say, look, I think
 4 this is important enough that you need to be
 5 aware of it, but the other thing a minister
 6 can have a comfort in within his own
 7 department and his deputy minister, look,
 8 we've got a handle on this, we assume this is
 9 going to straighten out, so at what point in
 10 time do I go to the Premier's office with
 11 this. I'm not saying that on July 20th or
 12 July 21st, John Ottenheimer should have
 13 immediately went over to my office because I
 14 don't know exactly at what point his
 15 information levels and saturation were going
 16 up to a point where he really had a good
 17 handle on it. But the Eastern Health
 18 situation is even different again because they
 19 have the information before them that they've
 20 actually had retesting done and they found it
 21 to be wrong, they're now suggesting that all
 22 be retested, and as well, two years previous,
 23 you have a damning, for want of a better term,
 24 memo, a couple of memos from Dr. Ejeckam that
 25 indicate, like there's very serious issues

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1 gone on over here in this laboratory, so
 2 that's been kind of kept, you know, from some
 3 members of government for an extended period
 4 of time and that's--that's just not good,
 5 it's, you know, and what I want to say here
 6 too, if I can, is that this for government is
 7 not an exercise in just going in and saying,
 8 okay, we can put the finger right here and we
 9 can blame that person because they're
 10 responsible for this. In this situation, when
 11 we became seized of this, I would suggest to
 12 you that probably 95, 97 percent of this had
 13 already happened. It was already done. I
 14 think in 2004 on, there might be probably two
 15 or three percent that happened. So it was
 16 something that was systemic, it had gone on
 17 through previous governments and again, it's
 18 not a government blaming exercise, but there
 19 were a lot of problems, a lot of systemic
 20 problems that contributed to this and perhaps
 21 we'll have a discussion on that at the end and
 22 I don't have the either, but--So it was a
 23 caldron of unfortunate circumstances here, but
 24 I want to be very careful that, you know, I
 25 don't sit here and blame a single person or a

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1 single individual that people can point a
 2 finger at and say, he or she was responsible
 3 because I don't honestly think that was the
 4 case.
 5 COFFEY, Q.C.:
 6 Q. So in terms of yourself then, Mr. Williams,
 7 you have no memory of this in July or August,
 8 2005 at all.
 9 MR. WILLIAMS:
 10 A. No. I can qualify that, Bern, by saying that
 11 doesn't mean that I wasn't told, but I'm
 12 actually assuming that I have no knowledge of
 13 it, to be quite honest with you because I have
 14 no memory of it whatsoever.
 15 COFFEY, Q.C.:
 16 Q. And do you think that if someone had said to
 17 you and I'm going to go back to this, at the
 18 time before you got this briefing note in
 19 October, I'm going to take you to that in a
 20 moment, before that when somebody referred to
 21 breast cancer testing, in terms of your own
 22 knowledge, what, if anything, did you know
 23 about breast cancer testing in this summer of
 24 2005 in the sense of if somebody had just said
 25 to you, you know, Mr. Williams or Danny, look,

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1 you know, there's a problem with breast cancer
 2 testing, what would have come to your mind if
 3 they had?
 4 MR. WILLIAMS:
 5 A. Well it depends again how it was framed, you
 6 know, if there was no subsequent afternoon
 7 memo and this had just been left as a major
 8 matter with follow up and 1500 people
 9 affected, then that would be certainly an
 10 issue that would come to the forefront. Now,
 11 as to things like Tamoxifen and that, I had no
 12 detail of that kind of memo at all.
 13 COFFEY, Q.C.:
 14 Q. That's what I was going to ask you about, what
 15 type of testing--when somebody said breast
 16 cancer testing, in your world at that time -
 17 MR. WILLIAMS:
 18 A. Forgive my ignorance, I would have thought in
 19 terms of mammogram or mammogram side of
 20 testing.
 21 COFFEY, Q.C.:
 22 Q. Mammogram, yes, and you're not alone in that,
 23 there was some people have testified, I
 24 believe Mr. Cake, in fact, testified to that
 25 effect, that's the immediate thing that sprang

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1 to his mind.

2 MR. WILLIAMS:

3 A. Yes.

4 COFFEY, Q.C.:

5 Q. Back then, that's as much as he knew about it.

6 So the idea would have been at the time that a

7 mammogram is a detection issue or it relates

8 to detection, so -

9 MR. WILLIAMS:

10 A. And we've since reacted and put 12 mammogram

11 units in, on the very obvious -

12 COFFEY, Q.C.:

13 Q. 12 to 1500 people may have to have their

14 mammograms done again, in effect, that's what

15 it would -

16 MR. WILLIAMS:

17 A. I'm ashamed to say, but simplistically, yeah,

18 very likely.

19 COFFEY, Q.C.:

20 Q. Meaning that they're diagnosed, they had a

21 tumour and it was missed, or they were

22 diagnosed with having a tumour and they didn't

23 have one, in effect.

24 MR. WILLIAMS:

25 A. Yes.

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1 COFFEY, Q.C.:

2 Q. That would be the either/or. If we could,

3 please, go to Exhibit P-1631. Here now, this

4 is an e-mail from Carolyn Chaplin, September

5 30th, 2005. It's to Mr. Cooper, Ms. Matthews,

6 Ms. Cheeseman, Mr. Thompson and Ms. McDonald.

7 It's a heads-up Eastern Health issue and she

8 says "Eastern Health Authority has contacted

9 us to advise that an issue that had been

10 ongoing throughout the summer concerning ER/PR

11 testing of breast cancer patients is about to

12 hit the media. Late this afternoon, Eastern

13 Health was contacted by The Independent

14 inquiring whether the health authority had an

15 issue with its mammogram screening. Dr.

16 Laing, oncologist, spoke with The Independent

17 to respond, in addition NTV contacted the

18 authority at 4:15 this afternoon. Eastern

19 Health will be calling NTV back, but given the

20 late hour of the day, it won't be possible for

21 them to get a body for a clip tonight.

22 They're going to offer comment for Monday's

23 news." Now do you recall, and this is a

24 Friday at 4:42 p.m. whether that Friday you

25 were told about this?

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1 MR. WILLIAMS:

2 A. No, I don't. I don't recall if that was when

3 I was told, you know, I would think that if a

4 story is going to come up and I presume it was

5 the Sunday Independent, in the Sunday

6 Independent and a television station was

7 looking at a possible story, then I would

8 have--I'd have been alerted to that on Friday

9 or over the weekend or certainly on Monday

10 morning when the story was available and we

11 had a chance to look at it. It could be as

12 late as Monday morning, but -

13 COFFEY, Q.C.:

14 Q. Do you recall, because this is framed and I

15 appreciate the e-mail is not copied to you,

16 but it says--or sent to you, it says, it deals

17 with an issue that has been ongoing throughout

18 the summer concerning ER/PR testing. When it

19 was first brought to your attention in

20 September, over that weekend, the 1st or 2nd

21 or perhaps even on Monday, the 3rd, did you

22 have any sense at the time that this had been

23 going on for awhile, this problem or any

24 investigation of it?

25 MR. WILLIAMS:

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1 A. No, but it wouldn't be unusual for a file or a

2 matter or an issue to be ongoing in a

3 department and, you know, ninety-odd percent

4 of and more, ninety-five percent or more of

5 all issues that go on in departments that are

6 ongoing, we wouldn't have any direct knowledge

7 of, they carry out the normal business, they

8 do their normal week's, day's, month's work,

9 so that wouldn't have been significant. I

10 mean, I don't think I would have seen this e-

11 mail there.

12 COFFEY, Q.C.:

13 Q. Oh no, not the e-mail, there's no suggestion

14 that the e-mail went to you at all. Now

15 before I leave the topic of e-mails, when you

16 visited the Government House back in July for

17 the swearing in on July 19th, who would have

18 attended that?

19 MR. WILLIAMS:

20 A. Certainly Mr. Forsey and his family, other

21 MHAs, possible some Cabinet Ministers and I'm

22 not doing that from memory, I'm just saying

23 the type of nature, Lieutenant Governor and

24 staff would have probably been--from a media

25 perspective, it would have been Ms. Matthews

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1 and then possibly from a staff perspective,
 2 either Mr. Dinn or Mr. Noel who was with us at
 3 the time, if I remember correctly, yes.
 4 COFFEY, Q.C.:
 5 Q. So do you recall if Ms. Matthews was there at
 6 the time?
 7 MR. WILLIAMS:
 8 A. She would have been. Normally at Government
 9 House there's quite often the possibility of a
 10 media scrum afterwards, not necessarily on the
 11 issue at Government House. If there's issues
 12 of the day, that particular day, then she will
 13 be there because all media will be there for
 14 the swearing in and one other staffer besides.
 15 COFFEY, Q.C.:
 16 Q. So if on July 19th Ms. Matthews, before 10:30
 17 that morning had had a conversation with Ms.
 18 Chaplin about this and there is evidence to
 19 that effect, is it possible that she would
 20 have referred to the fact that Ms. Chaplin had
 21 contacted her about this problem or what was
 22 perceived to be the problem and told you about
 23 it?
 24 MR. WILLIAMS:
 25 A. It's possible, it's possible, but I don't have

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1 any memory of it, absolutely not.
 2 COFFEY, Q.C.:
 3 Q. But it's the sort of problem that 12 to 1500
 4 breast cancer testing, problem, six or seven
 5 years was the sort of thing you'd expect Ms.
 6 Matthews or Mr. Crawley to bring to your
 7 attention?
 8 MR. WILLIAMS:
 9 A. And it depends on the timing, you know, for
 10 example if that was something that either
 11 happened just before she left the office, when
 12 we go down for a matter, particularly on a
 13 Friday if the press are going to ask several
 14 questions about matters, I'll be briefed on
 15 things that are going to come up at that
 16 particular point in time. Obviously that was
 17 just a matter that was just arising at the
 18 time, I would not necessarily be briefed on
 19 that because it would be more about the
 20 current issues of the day that were going to
 21 be asked to me that morning, as well as I
 22 would be doing some backgrounder on Mr. Forsey
 23 and the District of Bishop Falls and
 24 surrounding, so it would be, the focus would
 25 definitely be more on that particular

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1 occasion.
 2 COFFEY, Q.C.:
 3 Q. But if at the time it was perhaps in her world
 4 earlier that morning something out of the
 5 ordinary, because that would be 12 to 1500
 6 breast cancer potential problems would be out
 7 of the ordinary, I gather even in her world,
 8 that if she accompanied you to that swearing
 9 in, that she may have mentioned in, the fact--
 10 or she may not have.
 11 MR. WILLIAMS:
 12 A. Well if she had an opportunity, see, if she's
 13 already there and I arrive and I go in, the
 14 process is I go in, in those days, it was Mr.
 15 Roberts was Lieutenant Governor, so he always
 16 basically me to go into this office and we'd
 17 sit down for as long as we had before the
 18 ceremony and have a chat. Then I would come
 19 out, I would go to the ceremony and then after
 20 the ceremony is over, I would do a scrum, if
 21 required, then we would go into a reception
 22 area for the member and his or her family and
 23 then after that, then I would leave. Now if
 24 that particular day I wasn't in the office,
 25 then I would just go on and if a matter arose

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1 that was a matter that was significant, then I
 2 can assure you that if that was a major
 3 matter, that was a current major matter, that
 4 before the close of business that day, I would
 5 have been told, one way or the other. It's a
 6 question of the timing, you'd have to--you've
 7 asked her that, you know whether she said on
 8 that.
 9 COFFEY, Q.C.:
 10 Q. And you're telling the Commissioner, I gather
 11 you're telling the Commissioner, look, you
 12 can't say that you were or weren't told and if
 13 you were told -
 14 MR. WILLIAMS:
 15 A. I can tell you that if this was a stand-alone
 16 major matter that affected 1500 people that
 17 was involving retesting of breast cancer
 18 patients and that's where it stood, then I
 19 most likely would have remembered that, I can
 20 tell you. But the fact that I don't remember
 21 it, tells me that this matter, when the
 22 subsequent memo came in, was considered to be
 23 a no action matter. The issue was minimized
 24 which is the term that was used, not in that
 25 context, but the term was used, so therefore,

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1 it may not be something that any members of my
 2 staff may have considered, you know, an issue
 3 to put before me at that particular point in
 4 time and, you know, again, that's from the
 5 perspective of the patients. That's not to
 6 minimize in any way the importance of this
 7 issue. All we can do is just tell you how we
 8 acted on the basis of the information that
 9 would have been before my staff at that
 10 particular point in time.

11 COFFEY, Q.C.:

12 Q. Do you think Ms. Matthews would have, in
 13 effect, let you face the media without--she
 14 had heard about it two hours before?

15 MR. WILLIAMS:

16 A. Yeah, because it wasn't something that was
 17 going to break. If it was a story and I don't
 18 know what Carolyn Chaplin said to her, I have
 19 no idea what the conversation was between
 20 those two people, so it's a complete hearsay
 21 situation here.

22 COFFEY, Q.C.:

23 Q. Okay.

24 MR. WILLIAMS:

25 A. So whatever that conversation was, if it's

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1 just well, okay Elizabeth, I'll follow up with
 2 you on that but the story is not going to
 3 break until next week, because I think that's
 4 what the context of that originally was -

5 COFFEY, Q.C.:

6 Q. Yes, it does say, it says Thursday or Monday.

7 MR. WILLIAMS:

8 A. Therefore, that's not something that she's
 9 going to put on my plate and put in my mind at
 10 that particular point in time because likely
 11 she is trying to focus me on whatever is going
 12 to hit that particular morning from questions
 13 from the media. You know, in fairness to
 14 staff, I mean, if there's matters that are
 15 priority and importance, they're the ones that
 16 they will focus me on.

17 COFFEY, Q.C.:

18 Q. I take it then implicit in your response there
 19 is that they make decisions about what they do
 20 and don't tell you?

21 MR. WILLIAMS:

22 A. Yeah, but, you know, let's not go to a
 23 plausible deniability here because I've got to
 24 tell you, there's no plausible deniability in
 25 my office, the consequence of any--denying me

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1 information to protect me from being involved
 2 in it doesn't work for me because, again,
 3 ultimately the buck stops here. I'm the one
 4 who has to answer on the frontline and I want
 5 to know and so, there's a consequence for not
 6 telling me something that I should know at a
 7 particular point in time.

8 COFFEY, Q.C.:

9 Q. And you believe your staff understand that?

10 MR. WILLIAMS:

11 A. Absolutely, absolutely. Now, that doesn't
 12 mean that they don't make decisions on a daily
 13 basis because they do and they have authority
 14 to do it and they're hired to do it and
 15 they're competent to do it and they make
 16 decisions on a daily basis that, you know,
 17 he's got 30 things on his plate and these are
 18 the five or ten things that we really need to
 19 deal with them today and then other things
 20 will come as they fall out over a period of
 21 time and some of those drop by the wayside and
 22 other things step in. So again, as I said in
 23 the beginning, this is a very dynamic evolving
 24 type scenario, I got to tell you, it's a
 25 different place to work.

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1 COFFEY, Q.C.:

2 Q. In September, late September, early October,
 3 September 30th, or late September, 2005, early
 4 October, 2005, what do you recall then about
 5 who you spoke to, who told you about this,
 6 what do you recall about that?

7 MR. WILLIAMS:

8 A. What I recall and what I assume happened could
 9 be two completely different things. I can
 10 remember reading -

11 COFFEY, Q.C.:

12 Q. First of all, perhaps what you recall first of
 13 all?

14 MR. WILLIAMS:

15 A. I can remember reading The Independent. Now
 16 that couldn't have occurred before Monday, but
 17 it could have been--I'm sorry, before Sunday,
 18 but it could have been Sunday I could have
 19 gone out and got it, or I could have got it on
 20 Monday morning. Sometimes my reading of The
 21 Independent depended on where they were. If
 22 it was the week before they attacked my family
 23 foundation, I would not have gone out and
 24 bought it and read it. If over a period of
 25 time, they were producing a lot of good

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1 stories, and that publication did a lot of
 2 very good stories which I used their own
 3 analysis for my own research from time to
 4 time, to be quite honest with you, I found it
 5 to be a very good paper to read, and so
 6 chances are I probably bought that on Sunday
 7 and read it, but within that 24 hour period,
 8 Sunday, Monday, I certainly would have read
 9 that story.
 10 COFFEY, Q.C.:
 11 Q. And--just a moment, please. Right off the top
 12 of the head, do you know the exhibit number?
 13 It's been exhibited a number of times for the
 14 --I had meant to, I apologize, Commissioner, I
 15 had meant to -
 16 MR. WILLIAMS:
 17 A. Is that the story?
 18 COFFEY, Q.C.:
 19 Q. Yes, the story itself.
 20 THE COMMISSIONER:
 21 Q. That's a great challenge.
 22 BRAZIL, Q.C.:
 23 Q. Try P-0086.
 24 COFFEY, Q.C.:
 25 Q. P-0086.

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1 THE COMMISSIONER:
 2 Q. Thank you.
 3 COFFEY, Q.C.:
 4 Q. Thank you.
 5 MR. WILLIAMS:
 6 A. That's the one.
 7 COFFEY, Q.C.:
 8 Q. This is the one, I take it, Mr. Williams?
 9 MR. WILLIAMS:
 10 A. Yeah, that's it, I have a copy in front of me.
 11 COFFEY, Q.C.:
 12 Q. And at the time you read it, could you tell
 13 us, please--I'm not going to take you through
 14 the entire story. Tell us what you were
 15 struck by?
 16 MR. WILLIAMS:
 17 A. Well, the questionable results is the heading.
 18 So they're saying that--first of all, you go
 19 to a heading and that's the kind of thing that
 20 I look to jump out and see what--so it says
 21 "Breast cancer treatment in St. John's
 22 impacted by inaccurate lab test". Now as you
 23 go through it, you get a sense here that the
 24 patients have been contacted. There's
 25 commentary here from the doctor who was

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1 involved, Dr. Laing, who talks about she
 2 doesn't want to create mass hysteria here, she
 3 doesn't want to make people afraid, but then
 4 there also seems to be a minimization here
 5 that, in fact, some people may be impacted,
 6 some people may not, but then throughout the
 7 story they go into talking about actions that
 8 are being taken, so there would be a
 9 reassurance here, an assurance here that, in
 10 fact, testing is being done, retesting is
 11 being done, the improper testing has been
 12 stopped, people are being notified, the matter
 13 is very much in hand. Two comments which she
 14 has in this article which I think would have
 15 certainly given me comfort at the time, are
 16 the fact that she says how many patients may
 17 be affected, although she suggest the number
 18 will be relatively small. So she's indicating
 19 a relatively small number of people will be
 20 impacted, and then she goes on to say out of
 21 the 40 or 50 people, there were five or six
 22 people that were there that it may have had an
 23 impact, so it's not a huge thing. There's a
 24 couple of statements there that say it's
 25 small, relatively small, and it's not a huge

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1 thing. In reading that article, I would take
 2 some comfort in the fact that the doctor in
 3 charge, and I assume that's why she was
 4 contacted there, was basically saying that
 5 this may not be a big deal, for want of a
 6 better term.
 7 COFFEY, Q.C.:
 8 Q. And -
 9 MR. WILLIAMS:
 10 A. And patients will be notified on an individual
 11 basis. The big thing for us from a public
 12 perspective would be that the matter is under
 13 control, that the patients are fully informed,
 14 that they are being notified, that the damage
 15 has been controlled, and that they're
 16 basically trying to get to the bottom of it
 17 and come up with the answers for people.
 18 COFFEY, Q.C.:
 19 Q. So I take it you don't rely exclusively on the
 20 newspaper to be briefed, so -
 21 MR. WILLIAMS:
 22 A. No, no, but, you know -
 23 COFFEY, Q.C.:
 24 Q. No, I appreciate that. That's just a way of
 25 going into the next exhibit which is what I'm

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1 going to ask you about.

2 MR. WILLIAMS:

3 A. But it's not to take anything away, though,

4 from good investigative reporting, to be quite

5 honest with you. You know, I don't agree with

6 a lot of it, don't get me wrong, I'm not here

7 to give full support to the media, not by a

8 long shot, but I can tell you there's lots of

9 good investigative reporting that gets done

10 that is very helpful to government because if

11 they get their job done and they get to the

12 bottom of things that we're unable to get to

13 the bottom of, that helps us do our job better

14 and safeguard people's lives in certain

15 situations.

16 COFFEY, Q.C.:

17 Q. P-0124, thank you, and I'm going to go to page

18 six please, but in the meantime, Mr. Williams,

19 having read The Independent story, certainly

20 by October 3rd, that Monday, what did you do?

21 You read it, you digested what was there, what

22 did you do?

23 MR. WILLIAMS:

24 A. There would have been a discussion, and time,

25 content, or people present, but I would say

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1 among the senior people in the office, there

2 likely would have been the discussion about

3 that article and what was the perception of

4 that particular article, and I would think

5 that people probably would have had the same

6 general observations that I would have had is

7 that the doctor involved here is indicating

8 that this seems to be under control, it's not

9 going to have a huge impact, may be relatively

10 a small issue, however, it is there, there's a

11 story there, and there was a reference to an

12 NTV story. I don't know whether NTV actually

13 did a story or not afterwards. Perhaps they

14 did. I assume they did. That would have

15 generated a need for some more information.

16 How that process would have happened, I can't

17 tell you because I can't remember.

18 COFFEY, Q.C.:

19 Q. And such a meeting, that would have involved,

20 I take it--would that involve Mr. Thompson?

21 MR. WILLIAMS:

22 A. It may or may not. It could have involved

23 just my immediate staff. It could be a

24 situation where Brian and Peter and Elizabeth,

25 and other people in the office, could have

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1 been involved, or it could have--and that

2 could have then resulted in a one off between

3 Mr. Crawley and Mr. Thompson because the

4 meetings I had with the clerk--when we first

5 got in office, there were very, very frequent

6 meetings with the clerk because there was an

7 awful lot I didn't know, and still don't know,

8 quite frankly, you know, you never know it all

9 in this business, but--so there was more of a

10 requirement to lean on the expertise of

11 someone like Mr. Thompson, who was basically

12 able to bring all the matters to your

13 attention and advise of government procedures,

14 and bring you up to speed. As time went on

15 then, some of those meetings would defer me to

16 the Chief of Staff and the clerk, and then I

17 would have then regular meetings with the

18 clerk, but not as regular as before. So

19 whether he would have been there at that

20 particular point in time, I can't tell you for

21 sure.

22 COFFEY, Q.C.:

23 Q. How about--so the others, though, who would

24 have been there, I take it, would have been

25 Ms. Matthews?

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1 MR. WILLIAMS:

2 A. Yeah, and probably -

3 COFFEY, Q.C.:

4 Q. Mr. Crawley.

5 MR. WILLIAMS:

6 A. Mr. Noel or Mr. Crawley, or perhaps Mr. Dinn.

7 COFFEY, Q.C.:

8 Q. And at that time, do you recall anyone

9 bringing to your attention the fact that, oh,

10 they had actually know, "they", your senior

11 staff, had heard something about this in July?

12 MR. WILLIAMS:

13 A. No, I can't say they did.

14 COFFEY, Q.C.:

15 Q. Okay.

16 MR. WILLIAMS:

17 A. I can't say they didn't, but I can't say they

18 did.

19 COFFEY, Q.C.:

20 Q. Okay, and there was evidence from the e-mail

21 exchanges we looked at, and, anyway, you

22 recall "I read the newspaper, I had my

23 thoughts on it, we talked about it in a staff

24 meeting".

25 MR. WILLIAMS:

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1 A. When I do this, Mr. Coffey, I'm completely
 2 reconstructing this from what I assume would
 3 have happened. You know, I've got to be
 4 honest with you, you know, I don't have a
 5 specific recollection of that, and, you know,
 6 Madam Commissioner, I don't know if I'm alone
 7 in this, but, you know, to remember a specific
 8 day three or four years ago, you know, I can't
 9 do it, I've got to tell you, unless there's a
 10 really, really unique circumstance that brings
 11 it home to me. You know, the days in my life
 12 that I remember are family days, marriages,
 13 and births, and deaths, 911, J. F. Kennedy's
 14 assassination, Paul Henderson's goal--
 15 strangely enough, that's a strange way to put
 16 things in perspective, but specific details on
 17 a specific day, I'm really trying to
 18 reconstruct that for you based on what I've
 19 got around me and what I really think would
 20 have happened. I don't want you to think I'm
 21 speaking directly from direct memory here
 22 because I'm not.

23 COFFEY, Q.C.:
 24 Q. At the time, coming out of the staff meeting,
 25 would you have requisitioned or asked for any

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1 information, any briefing, do you think?
 2 MR. WILLIAMS:
 3 A. That would have been--you know, I don't
 4 normally--most of the time staff recognize
 5 that, or either Mr. Thompson or Mr. Crawley
 6 would recognize a need for a briefing note and
 7 would have that generated. So I can safely
 8 say between us, we certainly would have
 9 indicated that there would have been a
 10 necessity for some backgrounder here because
 11 this is now something that I could very easily
 12 be seized with because if I happened to go to
 13 some public forum or public press scrum, then
 14 they could ask me about the details on it and
 15 I need to know.

16 COFFEY, Q.C.:
 17 Q. Exhibit P-0124, page six is there. This is
 18 this October 5th, 2005, briefing note. It
 19 went to the Executive Council. It's stamped
 20 here on the second page. See that there?
 21 MR. WILLIAMS:
 22 A. Uh-hm.

23 COFFEY, Q.C.:
 24 Q. And--number five, and it's entitled "Briefing
 25 note to Department of Health and Community

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1 Services, testing of breast cancer patients at
 2 St. John's Hospitals", and there's a
 3 distribution list there, October 5, and it's
 4 copied to a number of individuals, and you're
 5 there in your capacity of Premier, as is Mr.
 6 Reid. Mr. Reid at the time was your deputy
 7 minister?
 8 MR. WILLIAMS:
 9 A. Yes. Oh, Ross. I'm sorry, I didn't realize
 10 who you were talking about.

11 COFFEY, Q.C.:
 12 Q. And, Mr. Williams, in light of the fact that
 13 you've read the newspaper article of October
 14 2nd, I take it you would have read this
 15 briefing note when you obtained it?
 16 MR. WILLIAMS:
 17 A. Uh-hm.

18 COFFEY, Q.C.:
 19 Q. This would be kind of your first official, as
 20 it were, briefing. Would that be correct?
 21 MR. WILLIAMS:
 22 A. Yes, yeah.

23 COFFEY, Q.C.:
 24 Q. And do you recall then what, if any, thoughts
 25 you had arising out of this?

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1 MR. WILLIAMS:
 2 A. Well, you know, having gone through it since,
 3 I look at the content and then assume that,
 4 you know, my position wouldn't change in
 5 reading it. I mean, the title is testing of
 6 breast cancer patients. The issue at the top
 7 is described as media coverage, which as I've
 8 just indicated to you, this would be now
 9 provided to me on the basis that there is a
 10 media story and that I could be expected to
 11 respond, as well as providing me information
 12 as Premier of the province, and it also says,
 13 "regarding potential breast cancer diagnosis
 14 errors", so at this stage it's potential, but
 15 as I go through it, then you see there was a
 16 patient in 2005--I do note now as I go through
 17 that, it doesn't say May of 2005, that's
 18 omitted, that's not there. That would be
 19 relevant information for me on the basis that
 20 it didn't come to the department's attention
 21 in July, but it doesn't say May, 2005, and
 22 also talks about four other patients, and then
 23 it also talks about -

24 COFFEY, Q.C.:
 25 Q. Actually, Mr. Williams, just so--you refer to

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1 May, 2005. In fact, the Commissioner has
 2 heard evidence that, in fact, the patient--in
 3 fact it was April.
 4 MR. WILLIAMS:
 5 A. Okay, I'm sorry.
 6 COFFEY, Q.C.:
 7 Q. Just so--I appreciate that. Go ahead, I'm
 8 sorry.
 9 MR. WILLIAMS:
 10 A. Okay, no, fine, and I've been assuming May.
 11 There's four other patients tested, and then
 12 there was a decision to expand it to all
 13 samples, and from what I read into this, it
 14 looked like perhaps the technology was in
 15 question, that, in fact, was Ventana operating
 16 properly, and was it the DAKO, I don't know
 17 how it's properly pronounced, but was Ventana
 18 in question. I think they subsequently
 19 concluded that it was okay, the system was
 20 okay, and the procedures were okay. So in
 21 reading this, you take the comfort that the
 22 system that we're now using which was just put
 23 in place in 2004 seemed to be working fine
 24 from this. That's what I would take from it.
 25 Then you go on to the current status, and it

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1 talks about 16 to 20 individuals whose
 2 treatment could have been impacted. That
 3 would be a significant piece of information,
 4 but then I think the reassuring piece that
 5 would come from this would be that current
 6 samples have gone to Mount Sinai for
 7 processing, Eastern Health is sending letters
 8 to surgeons and contact is being made, there's
 9 going to be a follow-up action and physicians
 10 and patients are being notified. There's a
 11 telephone line being put there, consumer line,
 12 so people can phone for information, and
 13 there's also a peer review being done. Now at
 14 this particular point in time, I don't know if
 15 the ads were going out or when they went out,
 16 but there was a reassurance given to us then
 17 that this was very much under control, and
 18 people who needed to know, knew, and people
 19 who needed to be involved from an expert
 20 perspective were being very much involved.
 21 COFFEY, Q.C.:
 22 Q. Now in relation this, on the second page of
 23 this, there's a paragraph that says, "There
 24 could be some potential litigation issues for
 25 the families of deceased patients once the

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1 families are notified".
 2 MR. WILLIAMS:
 3 A. Uh-hm.
 4 COFFEY, Q.C.:
 5 Q. I take it that's a heads up to the effect that
 6 a lawsuit -
 7 MR. WILLIAMS:
 8 A. That wouldn't be a surprise to me, I can tell
 9 you. That's the business I was in before I
 10 got into politics.
 11 COFFEY, Q.C.:
 12 Q. And the second last bullet here says, "An
 13 external peer review by the Chief Pathologist
 14 of the BC Cancer Institute, and Chief
 15 Technologist from Mount Sinai Hospital was
 16 conducted, September 15th to the 22nd, 2005,
 17 to review current practises and procedures
 18 within the laboratory service. Debriefing was
 19 held after each review and a full report from
 20 each is expected within the next few weeks".
 21 Mr. Williams, when you read that, what did you
 22 understand those two individuals were going to
 23 be looking at?
 24 MR. WILLIAMS:
 25 A. I would assume that they would be trying to

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1 find out what went wrong, what was wrong, what
 2 were the problems, if any, on the basis that
 3 this was still potential at this time, but
 4 looked to me from reading it that this was
 5 more than potential, this was--this is a real
 6 problem now, but very much in hand.
 7 COFFEY, Q.C.:
 8 Q. "A debriefing was held after each review, and
 9 a full report from each is expected within the
 10 next few weeks". Now -
 11 MR. WILLIAMS:
 12 A. I'm sorry, it does indicate Dr. Williams did
 13 an interview.
 14 COFFEY, Q.C.:
 15 Q. Has done an interview. Now, sir, with respect
 16 to this, when we look through the rest of this
 17 briefing, would you agree that there's no
 18 other reference to any other real--other than
 19 looking at the Ventana machine, there's no
 20 reference to any other investigation having
 21 occurred as to why this had happened. These
 22 are the two?
 23 MR. WILLIAMS:
 24 A. Uh-hm.
 25 COFFEY, Q.C.:

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1 Q. When you look through this, and if you're
 2 going to find out why this happened, if you're
 3 going to find it anywhere, in those two
 4 reports?
 5 MR. WILLIAMS:
 6 A. Perhaps, yeah, that would be part of the--
 7 whatever we put together to try and reassemble
 8 this.
 9 COFFEY, Q.C.:
 10 Q. At the time, did you have any understanding
 11 about whether or not if you wanted to see
 12 those reports, you would be able to see them?
 13 MR. WILLIAMS:
 14 A. No, it was not an issue at the time, I can
 15 tell you.
 16 COFFEY, Q.C.:
 17 Q. Not an issue in the sense of -
 18 MR. WILLIAMS:
 19 A. Not an issue. I didn't make it an issue. It
 20 wasn't something at the time that certainly
 21 came to me to look at it. It was--it was
 22 being done, and again -
 23 COFFEY, Q.C.:
 24 Q. At the time, did you--would you have thought,
 25 well, I can get them if I want?

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1 MR. WILLIAMS:
 2 A. It honestly didn't come to me at the time. I
 3 can tell you that there's no doubt, because
 4 the peer review thing is an issue that
 5 obviously came up afterwards, and that's when
 6 it really twigged with me, and up to that
 7 point in time, it had not, it had not twigged
 8 at all.
 9 COFFEY, Q.C.:
 10 Q. So up to and including this point in time -
 11 MR. WILLIAMS:
 12 A. Up to and including that point. I mean, it
 13 was being done, so there's comfort that a peer
 14 review is being done, but as to me actually
 15 having any active involvement in that, this
 16 was something that was being handled by my
 17 minister in my department through Eastern
 18 Health. They were the experts, this was a
 19 very specific area of expertise, and, you
 20 know, the peer review could be double dutch to
 21 me, for example, if I read through it at the
 22 time. It was probably very technical. I've
 23 since seen it. It's probably very technical,
 24 so I would assume that that's for people who
 25 know more than I do to interpret.

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1 COFFEY, Q.C.:
 2 Q. At the time, would you have thought that as
 3 Premier if you wanted to see it, that you
 4 could see it?
 5 MR. WILLIAMS:
 6 A. Yeah, yeah.
 7 COFFEY, Q.C.:
 8 Q. And -
 9 MR. WILLIAMS:
 10 A. I'm sorry, if that was the question you were
 11 asking me -
 12 COFFEY, Q.C.:
 13 Q. That was it in terms of if you wanted to see
 14 it, you could. Having read this, now looking
 15 back on it, you've indicated that you don't
 16 recall ever speaking to Mr. Ottenheimer about
 17 it, it didn't occur to you, I take it at the
 18 time, to speak to Mr. Ottenheimer about, well,
 19 why didn't you tell me about this before?
 20 MR. WILLIAMS:
 21 A. Because, you know, at this stage I've got to
 22 take what I've got in that early October
 23 period in context; everything is under
 24 control, all things that need to be done are
 25 being done, I've got a doctor who's in the

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1 article indicating words like "minimal
 2 impact", "relatively small", "not a huge
 3 thing", "may have had an impact". That to me
 4 would, I guess for want of a better term, give
 5 me a sense of security. Whether it be a false
 6 sense of security or not, obviously has to be
 7 determined, but it would give me a sense of
 8 security that this is very much under control,
 9 a very serious matter, serious in the sense
 10 that any time you're talking about testing
 11 affecting people's lives it's serious, but
 12 also recognizing my own limitations, I am not
 13 a doctor and if this is in the hands of the
 14 doctors and the health organizations, Eastern
 15 Health, and the Department of Health, and the
 16 specialties that are hired there to know more
 17 about this than I do, then I would have
 18 assumed and certainly did assume that this was
 19 under control.
 20 COFFEY, Q.C.:
 21 Q. Now at that time, as of October 5th, after
 22 you'd read the briefing note, do you recall if
 23 you discussed its contents or the subject
 24 matter with anyone else at the time?
 25 MR. WILLIAMS:

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1 A. No, I don't.

2 COFFEY, Q.C.:

3 Q. And then following that, when did you expect,

4 if ever, that it would come back to your

5 attention again, what would bring it back to

6 your attention?

7 MR. WILLIAMS:

8 A. You would probably expect that there would be

9 a wrap up at the end of the day so that at

10 some point in time it was all resolved, you

11 might hear that. Now, you know, that's not to

12 say that everything that comes through to my

13 attention or to my office has closure at some

14 point because that's just not--that would be

15 an incorrect and unfair statement. You know,

16 perhaps in something like this, though, if in

17 fact all the tests had proven that they were

18 all okay, then perhaps I would have heard of

19 that, but that doesn't mean there's a complete

20 circle on every single issue that comes to my

21 attention because there isn't.

22 COFFEY, Q.C.:

23 Q. If we could look, please, at Exhibit P-0015,

24 and, Mr. Williams, this is a story that was

25 carried in the Globe and Mail, October 6th,

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1 2005. It's entitled "Hundreds of tissue

2 samples from Newfoundland and Labrador breast

3 cancer patients dating back to 1997 are being

4 retested after major flaws in a laboratory

5 test were uncovered". That's the subheading.

6 The actual heading is, "Flawed test imperils

7 scores of cancer patients". This is just one

8 story. The Commissioner has seen a number of

9 them. There are a number throughout October.

10 MR. WILLIAMS:

11 A. Okay.

12 COFFEY, Q.C.:

13 Q. There are a number of interviews conducted

14 with Dr. Williams, there are stories

15 throughout October, I believe a lesser number

16 in November, and if we could go then to page

17 five of this -

18 MR. WILLIAMS:

19 A. This particular story?

20 COFFEY, Q.C.:

21 Q. No, not this particular story, this is just--

22 page five of the exhibit.

23 MR. WILLIAMS:

24 A. The Globe and Mail are no friends of

25 Newfoundland and Labrador, I can tell you that

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1 much. Put that on the record.

2 COFFEY, Q.C.:

3 Q. And here is a story, Tuesday, December 13th,

4 2005, CBC, "lack of pathologists". They talk

5 about pathologists being in short supply.

6 MR. WILLIAMS:

7 A. I'm sorry, this is when, Mr. Coffey?

8 MR. WILLIAMS:

9 A. This is December of '05, and this is--again it

10 doesn't relate in particular to the ER/PR

11 matter, but it talks about pathology

12 recruitment as far back as that time.

13 MR. WILLIAMS:

14 A. One thing I do remember, if I can interject

15 here, and I don't know if it was in this

16 period, I think it was, the CBC carried a

17 story at one point and I don't know if you're

18 coming to that or not, but the CBC carried an

19 incorrect story that my office sat on

20 information for, I think, instead of three

21 months, a couple of years, I think they

22 indicated, and we made contact with The

23 National on that particular issue and they

24 quite properly and quite quickly retracted

25 that and corrected it.

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1 COFFEY, Q.C.:

2 Q. That would be in '07, actually.

3 MR. WILLIAMS:

4 A. It was actually later, was it? Okay.

5 COFFEY, Q.C.:

6 Q. Actually '08, I apologize, it was.

7 MR. WILLIAMS:

8 A. Okay.

9 COFFEY, Q.C.:

10 Q. It was probably April 2nd.

11 MR. WILLIAMS:

12 A. Okay.

13 COFFEY, Q.C.:

14 Q. April 1st-2nd of '08, but what I wanted to ask

15 you about is this, Mr. Williams, and again,

16 without taking you through each of the

17 stories, there are a number of stories in the

18 media, and in fact, there was some--and it was

19 talked about on open line shows, and I'll just

20 bring up one example of it, P-0667. Actually,

21 P-0666, I apologize. This is a transcript of

22 what was said October 25th, 2005 on VOXM

23 Talkback involving Mr. Rowe and a lady

24 identified as Patricia, and this talks about

25 the ER/PR matter, and as you can see from it,

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1 just go down the page a little bit, see the
 2 reference to Tamoxifen, estrogen receptors are
 3 negative and so on. So at this date in the
 4 media, throughout--certainly throughout
 5 October 2005, I wanted to ask you, were you
 6 aware of that?
 7 MR. WILLIAMS:
 8 A. Of these particular stories?
 9 COFFEY, Q.C.:
 10 Q. Not of these particular stories, but the fact
 11 that it was in the media?
 12 MR. WILLIAMS:
 13 A. I would have to say I would have been aware of
 14 it. I'm very much aware of what goes on in
 15 the media now. What Randy Simms says on a
 16 daily basis is not my concern, I got to be
 17 honest with you, but you know, I do get moved
 18 and moved to action as well by people like
 19 Patricia or if on TV I see stories that--I can
 20 specifically remember dialysis stories about
 21 people travelling three times a week, three
 22 hours to and three hours from dialysis units,
 23 and that was a big part in us putting in
 24 dialysis machines in remote areas of this
 25 province. So I am conscious of them and I am

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1 sensitive to them, but I can't say that I have
 2 the luxury of being able to follow all of
 3 them.
 4 COFFEY, Q.C.:
 5 Q. And were you aware then that in some of those
 6 media reports, in the fall of 2005, that
 7 patients, and in fact, as well I believe, Mr.
 8 Dawe, Peter Dawe, were quoted as asking about
 9 why this had happened?
 10 MR. WILLIAMS:
 11 A. I would certainly say I'd have to be aware of
 12 that and Mr. Dawe, who's here in the room now,
 13 that's his job and he's an advocate, and a
 14 good one, for his group and absolutely.
 15 COFFEY, Q.C.:
 16 Q. Were you aware that there were, at that point,
 17 no answers forthcoming from Eastern Health, at
 18 least publicly, as to why this had happened?
 19 MR. WILLIAMS:
 20 A. Well, you know, I'd assume if people were
 21 asking questions that, at that particular
 22 point in time, they weren't getting any
 23 answers, but I also knew from the briefing
 24 note and, you know, from the articles and what
 25 I was able to glean is that people were very

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1 much on top of this. That we were being
 2 assured and reassured that those who had to be
 3 contacted were contacted, that a testing
 4 procedure had started which my understanding
 5 was that it would have concluded a lot quicker
 6 than it ultimately concluded, if it has ever
 7 concluded. But having said that, we felt
 8 certainly that that was being done. So it is
 9 also a question too of just allowing the
 10 system to deal with the issue and to do it
 11 right, and to make sure that when they got
 12 back to people that they were able to say to
 13 people, like this person, Patricia, that's
 14 referred to here, that when they gave her an
 15 answer, this time they gave her the right
 16 answer, and that would have been important.
 17 COFFEY, Q.C.:
 18 Q. And I take it as well though perhaps, knowing
 19 well, why this had occurred in the first place
 20 would be important as well to know?
 21 MR. WILLIAMS:
 22 A. Why it occurred?
 23 COFFEY, Q.C.:
 24 Q. Yes.
 25 MR. WILLIAMS:

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1 A. Absolutely, yes.
 2 COFFEY, Q.C.:
 3 Q. When did you first learn why it had occurred?
 4 MR. WILLIAMS:
 5 A. You know, do we still know?
 6 COFFEY, Q.C.:
 7 Q. Well -
 8 MR. WILLIAMS:
 9 A. I have to be honest with you, you know,
 10 there's now--you know, as a result, in
 11 recapping over the last three years, you know,
 12 there's lots of things and I'm sure we'll talk
 13 about at the end that have come to my
 14 attention and things that we've done and I
 15 understand, of course, that a lot of the
 16 things that were mentioned in the peer reviews
 17 and there's some 52 items that all, if not
 18 most of all, of those have been corrected,
 19 have been implemented, have been dealt with.
 20 But it was very, very later on in this whole
 21 process that I became aware of the kind of
 22 things that went wrong. I mean, that's, quite
 23 frankly, why this Inquiry was called, was to
 24 get to the bottom of it and find out.
 25 COFFEY, Q.C.:

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1 Q. And I wanted to ask you about that, because
 2 we're going to look at some--there's media
 3 coverage as late as December of 2006.
 4 MR. WILLIAMS:
 5 A. Yeah.
 6 COFFEY, Q.C.:
 7 Q. Where people, including Mr. Dawe, are quoted
 8 as--and patients, some patients are quoted as
 9 asking well, why did this happen, and there's
 10 no answer forthcoming from Eastern Health and
 11 I gather, based upon what you've just--your
 12 answer just then, you didn't know the answer
 13 either yourself. So the idea or the notion
 14 that a set of circumstances can exist that for
 15 more than a year, year and a half -
 16 MR. WILLIAMS:
 17 A. Even longer than that.
 18 COFFEY, Q.C.:
 19 Q. - people are asking why this happened and
 20 there's no answer forthcoming, and in fact,
 21 you, as the Premier, don't know the answer
 22 either, do you have--can you explain to the
 23 Commissioner how that set of circumstances
 24 could come about?
 25 MR. WILLIAMS:

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1 A. It's not a good thing, first of all, that the
 2 answers aren't there, but there are a lot of
 3 things, you know, in government and in life
 4 that we don't get answers to and my
 5 understanding of this procedure is that it's a
 6 very, very complex procedure that involves,
 7 you know, 40 steps, and I'm just speaking from
 8 the little bit of what I've read and what I've
 9 heard. I haven't had the benefit of the
 10 exposure that yourselves and the Commissioner
 11 have had to all of this evidence, haven't been
 12 able to track it, but my understanding was
 13 that this process was being followed, that
 14 people were getting the bottom of it and that
 15 was being done had to be done by people who
 16 knew a lot more about it than I did.
 17 COFFEY, Q.C.:
 18 Q. What I'm--did you ever go and ask anybody why
 19 did this happen?
 20 MR. WILLIAMS:
 21 A. No, nor did anybody come to me and indicate
 22 that there were ongoing--you know, from within
 23 my organization, that there were ongoing
 24 problems. The Department of Health were
 25 saying, "look, you know, we can't get to the

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1 bottom of this. We don't have any answers.
 2 We need to do something about it." I think
 3 from our own perspective, our own Ministers
 4 and officials were saying to Eastern Health,
 5 "let us know what you need from a resource
 6 perspective to resource up to get answers" and
 7 I think that was done, certainly told it was
 8 done and I assumed it was being done.
 9 And you know, the other thing is too,
 10 it's perhaps, you know, you don't get quick
 11 immediate answers on something as complex as
 12 this. Like I said before, there are lots of
 13 things through court cases and trials and
 14 other procedures that take five, six, seven
 15 years to get answers to. Now that doesn't
 16 mean that there's an excuse or a reason for,
 17 you know, allowing things to go on, because I
 18 don't condone that, by the same token, but in
 19 my layman's estimation, I would assume that
 20 this is a very complex procedure and people
 21 are trying to get to the bottom of it from
 22 within.
 23 COFFEY, Q.C.:
 24 Q. If we could bring up P-0046, please?
 25 THE COMMISSIONER:

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1 Q. Mr. Coffey, we'll take the morning break when
 2 you get the time.
 3 COFFEY, Q.C.:
 4 Q. Thank you, Commissioner. You have had--this
 5 is Dr. Banerjee's first report, that of
 6 October 17th, 2005. I take it that--well,
 7 I'll ask you, when did you first have the
 8 opportunity to read this?
 9 MR. WILLIAMS:
 10 A. Within the last week.
 11 COFFEY, Q.C.:
 12 Q. Okay.
 13 MR. WILLIAMS:
 14 A. And I read it for the purposes of preparing
 15 for this Inquiry.
 16 COFFEY, Q.C.:
 17 Q. Why had you never read it before?
 18 MR. WILLIAMS:
 19 A. Well, on the basis that I considered it to be
 20 a document that would be better understood by,
 21 you know, people who were in the business, for
 22 want of a better term, people who knew what
 23 the consequences were, people who could
 24 actually assess whether it was right or wrong.
 25 I would not be in a position to be able to

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1 look at that document and say whether slices
 2 were inaccurate or quality assurance was
 3 accurate. Certain things, having read it, to
 4 be quite frank with you, I would have very
 5 clearly understood, and there's quite a lot of
 6 it that I did understand. But my perception
 7 of it was that this would have been a very
 8 sophisticated, complex document that might be
 9 extremely difficult for me to comprehend.
 10 COFFEY, Q.C.:
 11 Q. And if it was potentially difficult to
 12 understand because it's technically complex, I
 13 take it you have people though who are
 14 available to you to translate it, as it were,
 15 to read it and summarize it into layman's
 16 terms, if necessary?
 17 MR. WILLIAMS:
 18 A. Right, and I also assume that there's people
 19 within the Department of Health, if they have
 20 the document, and people within Eastern Health
 21 who have the document that are doing a much
 22 better assessment and lessons learned and
 23 things that need to be resolved assessment of
 24 that document, and my understanding is that
 25 was, in fact, done. That in fact, out of the

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1 52 odd suggestions or recommendations that a
 2 lot of them were in fact being implemented and
 3 if that's not the case, I'd really like to
 4 know, because that's my understanding.
 5 COFFEY, Q.C.:
 6 Q. And the recommendations are one thing, but the
 7 reasons for test failure, as Dr. Banerjee--
 8 conclusions about the reasons for test failure
 9 is potentially something else, or at least
 10 only related, and you've indicated to the
 11 Commissioner that upon reading this this past
 12 week, at least some of it, you could
 13 understand, even from a layman's perspective.
 14 MR. WILLIAMS:
 15 A. And I would -
 16 COFFEY, Q.C.:
 17 Q. It's fairly straightforward what he was
 18 saying.
 19 MR. WILLIAMS:
 20 A. Absolutely, and I would think that some of
 21 these recommendations and issues would be of
 22 assistance to the Commissioner in her
 23 findings.
 24 COFFEY, Q.C.:
 25 Q. Now Mr. Williams, having done that, this is

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1 what I want to ask you about, knowing what you
 2 do now about what's in it -
 3 MR. WILLIAMS:
 4 A. Um-hm.
 5 COFFEY, Q.C.:
 6 Q. - and knowing that it's dated October 17th,
 7 2005 and it arrived in St. John's that month
 8 and was seen by people who could certainly
 9 read it and understand it, do you have any
 10 thoughts on why it was that that was not
 11 conveyed to the Minister or, in fact, to
 12 yourself? I mean, this is, from a layman's
 13 perspective, is fairly--is not all that
 14 complicated.
 15 MR. WILLIAMS:
 16 A. It's not bad actually.
 17 COFFEY, Q.C.:
 18 Q. No.
 19 MR. WILLIAMS:
 20 A. No.
 21 COFFEY, Q.C.:
 22 Q. And if it had been provided or a summary of it
 23 had been provided to you, you would have been
 24 able to understand it at the time?
 25 MR. WILLIAMS:

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1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. Do you have any idea of why it wasn't provided
 4 to you?
 5 MR. WILLIAMS:
 6 A. Well, you know, I'd only go back to the whole
 7 legal issue that arose before this Commission
 8 as to the availability to provide peer reviews
 9 outside the scope of the request or quality
 10 reviews, external quality reviews, whatever
 11 they're referred to. So you know, perhaps
 12 there was a legal reason at the time as to why
 13 it was being withheld, perhaps, or perhaps
 14 there was another reason as to why it was
 15 being held. I can only speculate on that.
 16 COFFEY, Q.C.:
 17 Q. Are you aware that copies of these reports,
 18 this one, Ms. Wegrynowski's, which is P-0047,
 19 Trish Wegrynowski, the technologist's report,
 20 were you aware that on May 15th, 2007, the
 21 Deputy Minister asked Mr. Tilley for copies of
 22 those reports?
 23 MR. WILLIAMS:
 24 A. I am now. I wasn't aware at the time.
 25 COFFEY, Q.C.:

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1 Q. When did you first become aware that that was
 2 -
 3 MR. WILLIAMS:
 4 A. Just in reviewing documentation over the last
 5 five days to prepare for this.
 6 COFFEY, Q.C.:
 7 Q. So up to that point, you weren't aware that
 8 Mr. Wiseman had requested, Mr. Wiseman and Mr.
 9 Abbott had requested of Mr. Tilley that he
 10 provide these reports, and he agreed to do it?
 11 MR. WILLIAMS:
 12 A. No, and I can't remember being aware of that.
 13 Now, you know, if that was contained in some
 14 document that some point was presented to
 15 Cabinet or something, I don't know, but I can
 16 tell you, from my own recollection, I was not--
 17 I can't remember that a request was made that
 18 was denied, because when I read it, it seemed
 19 to be new information to me.
 20 COFFEY, Q.C.:
 21 Q. Thank you, Commissioner.
 22 THE COMMISSIONER:
 23 Q. We'll take a 15-minute break.
 24 (BREAK)
 25 THE COMMISSIONER:

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1 Q. Please be seated.
 2 COFFEY, Q.C.:
 3 Q. Registrar, please, Exhibit P-0312? This is
 4 that series of e-mails of July 19th, 2005, Mr.
 5 Williams. I gather you wanted to clarify
 6 something about this?
 7 MR. WILLIAMS:
 8 A. Yes, I think you were trying to--I'm sorry,
 9 you asked me whether--when I was first aware
 10 or first saw those.
 11 COFFEY, Q.C.:
 12 Q. Of its existence, yes.
 13 MR. WILLIAMS:
 14 A. Of the existence of those e-mails, and it
 15 would have been in this year, post April 1st.
 16 It would have been after April of this year,
 17 because I wasn't definitive on that when I
 18 gave you my answer before, but that's when
 19 those e-mails were produced.
 20 COFFEY, Q.C.:
 21 Q. And this, I take it, would have been brought
 22 to your attention by, their existence, Mr.
 23 Crawley?
 24 MR. WILLIAMS:
 25 A. It would have been likely Mr. Thompson,

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1 through the Task Force.
 2 COFFEY, Q.C.:
 3 Q. Okay. If we could go, please, to Exhibit P-
 4 1533? This is a copy of a directive passed by
 5 Cabinet at a meeting held November 4th, 2005.
 6 It's a particular minute-in-council, I gather
 7 is the way you refer to them as, and this has
 8 to do with the funding of Herceptin. The
 9 Commissioner has seen this before, and we look
 10 through this, as you can see there in the
 11 second page, Mr. Williams, Cabinet Secretariat
 12 note new treatment therapies for cancer
 13 patients, and you see, to add the drug,
 14 Herceptin, to the Provincial Systemic Therapy
 15 Formulary is referred to, and sorry, it's
 16 approved by the--action required, approved the
 17 Treasury Board recommendation, November 2,
 18 2005, and then there's a Treasury Board
 19 recommendation, the recommendation to Cabinet
 20 at page four, and then when we go on through
 21 it, there's a discussion at some length about
 22 the background to this, the numbers, the
 23 figures involved and so on and so forth, but I
 24 wanted to ask you what your approach was, at
 25 that time, in November of 2005, to reading

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1 such Cabinet submissions. Would you read them
 2 cover to cover?
 3 MR. WILLIAMS:
 4 A. Yes, when I can, I will try and get through
 5 them. I can't say that I've done it in 100
 6 percent every time. I should, but I'd be less
 7 than honest if I'd done it with everyone, but
 8 to be quite honest with you, on most of them,
 9 I try and get through them, time permitting.
 10 COFFEY, Q.C.:
 11 Q. If we could look please at page 18, Registrar.
 12 This is an annex to a communications plan.
 13 It's consulted--people indicated to be
 14 consulted with are Ms. Hennessey of the
 15 Department of Health, Mr. Abbott, the Deputy
 16 Minister, and the date drafted is October
 17 24th, 2005. I wanted to ask you, in relation
 18 to this, the ER/PR matter, when was the first
 19 time you ever spoke to Mr. Abbott about the
 20 ER/PR matter?
 21 MR. WILLIAMS:
 22 A. Probably when I had him in my office after I
 23 had discovered that he hadn't informed
 24 Minister Osborne about the -
 25 COFFEY, Q.C.:

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1 Q. Okay, so this is in May of '07, and we'll come
 2 to that.
 3 MR. WILLIAMS:
 4 A. Yes.
 5 COFFEY, Q.C.:
 6 Q. Okay, so that is the first time. Before that,
 7 you hadn't discussed it. Because you've
 8 indicated you didn't discuss it with Mr.
 9 Ottenheimer nor Mr. Osborne, but as well, you
 10 did not discuss it with Mr. Abbott, the Deputy
 11 Minister?
 12 MR. WILLIAMS:
 13 A. No, I can't remember that at all, unless he
 14 was part of some presentation somewhere along
 15 the way, but from my perspective.
 16 COFFEY, Q.C.:
 17 Q. No, the only--your first time, your memory of
 18 it is in May of '07. Now this communications
 19 analysis, the public environment is set out
 20 there. It refers to a recent Globe and Mail
 21 article, October 19th, 2005, having touted
 22 Herceptin as an effective drug, and then it
 23 goes on to say "locally, there's been a
 24 significant--there has been significant media
 25 attention around inaccurate results from

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1 hormone receptor tests for breast cancer
 2 patients," and it goes on then to talk about
 3 it and it says "there has been significant
 4 reaction to the issue, 'Ms. Rogers'" and is
 5 quoted in a recent Globe and Mail article,
 6 "'expressed concern over the timing for
 7 treatment." She's quoted as saying "if the
 8 case were to be that in fact there was an
 9 error in the pathology, then the window of
 10 opportunity for the effectiveness of Tamoxifen
 11 in my case has kind of passed" and then it
 12 quotes Peter Dawe as saying "this has the
 13 potential to be a big issue for the women's"--
 14 I'm sorry, "for the province's health care
 15 system and patients. It alters the treatment.
 16 You could have an inadequate treatment based
 17 on a test result. There is a group that has
 18 the test result in question and our fear is
 19 that they should have received treatment and
 20 didn't" and it goes on then to talk about it,
 21 the story having received national media
 22 attention, and then concludes by saying "given
 23 the negative coverage of this story and the
 24 resulting lack of confidence among breast
 25 cancer patients in the reliability of testing

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1 procedures in the province, it is important
 2 that government respond with positive messages
 3 about the introduction of Herceptin to the
 4 Provincial Systemic Therapy, Chemotherapy
 5 Program" and as well, Mr. Williams, the third
 6 bullet there under strategy considerations, it
 7 deals with the--it says "given recent media
 8 reports about ER/PR testing and the public's
 9 resulting loss of confidence in the health
 10 system, it is important the government respond
 11 to the needs of breast cancer patients." So
 12 in the normal course, you would have read
 13 this?
 14 MR. WILLIAMS:
 15 A. Perhaps, yeah.
 16 COFFEY, Q.C.:
 17 Q. And as of that time, did it occur to you the
 18 potential effect of not receiving the
 19 treatment in a timely fashion, potential
 20 effect on a patient?
 21 THE COMMISSIONER:
 22 Q. I'm sorry. I didn't follow the question.
 23 COFFEY, Q.C.:
 24 Q. I apologize, I'll rephrase it, and I
 25 appreciate your confusion, Commissioner.

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1 Sorry, Mr. Williams. At the time, I take it
 2 that, if indeed you did read this, like cover
 3 to cover, if you did, the references to the
 4 quotes from, for example, Ms. Rogers and Mr.
 5 Dawe about the potential effect on people who
 6 did not receive the treatment who should have,
 7 in a timely fashion -
 8 MR. WILLIAMS:
 9 A. Um-hm.
 10 COFFEY, Q.C.:
 11 Q. - the potential impact, i.e. shortening their
 12 life, affecting their quality of life, at the
 13 time, if you did read it, it didn't come home
 14 to you, at the time?
 15 MR. WILLIAMS:
 16 A. Well, you know, I can say that, from a public
 17 perspective, I mean, if it was in the Globe, I
 18 perhaps would have read it. I've had
 19 conversations with Gerri Rogers.
 20 COFFEY, Q.C.:
 21 Q. No, no, I'm talking about this actual -
 22 MR. WILLIAMS:
 23 A. No, I know, I'm trying to put this in context,
 24 and have had discussions with Gerri about her
 25 condition, was very familiar with her public

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1 dealing with her condition, which was a
 2 wonderful thing, the fact that she's dealt
 3 with it publicly on behalf of women who've
 4 gone through this experience. Peter has been,
 5 you know, a vocal advocate and so was aware
 6 that it was an issue and it was out there, but
 7 again, you know, a couple of things.

8 I got to bring you back first of all to
 9 the fact that, you know, I'm the Premier of
 10 the Province in the Premier's Office running a
 11 Government with all these various entities,
 12 corporation or departments, Crown agencies.
 13 In areas like this, you know, we have a
 14 Department of Health which has now a 2.3
 15 billion dollar budget. The Department of
 16 Health has, in fact, various RHAs, including
 17 Eastern Health, which is a billion plus
 18 corporation with all kinds of people who are
 19 knowledgeable and have expertise, including
 20 doctors and nurses and laboratory people and
 21 gazillions of other people. So you know, they
 22 deal with this particular area. Our
 23 involvement here, my involvement, as I see it,
 24 is oversight in the sense of general
 25 oversight, as running the province to the best

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1 of my ability, rightly or wrongly.

2 With regard to something like Herceptin,
 3 you know, when that drug or a suggestion is
 4 made from a pharmaceutical perspective as to
 5 what drugs are appropriate, that comes on
 6 recommendation, I think, if I remember
 7 correctly, from a panel of doctors or
 8 specialists who say to us, you know, this has
 9 been accepted by the appropriate agencies
 10 across the country or North America. It's now
 11 timely. It should be put in place, and if
 12 government can afford it, government should do
 13 it.

14 And the other thing is I don't know what
 15 the implication here is, if in fact the media-
 16 -saying is this going to help us deal with
 17 negative coverage of this story. No, we don't
 18 make decisions on drugs for people with
 19 illnesses and serious illnesses and especially
 20 under these circumstances, so that I can get a
 21 better public relations story or anybody else
 22 in my government can.

23 I got to be very blunt and very honest
 24 with you on this. To me, as I said right from
 25 the start, this is a very serious matter and

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1 these patients are a very serious concern of
 2 mine and the people who work for me and the
 3 people in my government who represent people,
 4 and so there's no political games being played
 5 here, under any circumstances whatsoever, and
 6 this Herceptin has been approved just as MS
 7 drugs were approved and Alzheimers drugs were
 8 approved and others, and I said to you right
 9 from the start, I made the statement in the
 10 beginning that, you know, unfortunately that's
 11 where the making life saving or threatening
 12 decisions comes into play, because we have to
 13 take limited resources in providing of these
 14 drugs.

15 So you know, ultimately here the public
 16 and the patients are our primary concern and
 17 so, you know, I remember, at the time, there
 18 was political hay was trying to be made by
 19 political opponents about the communication
 20 side of this drug, Herceptin, and the timing
 21 of it and was this all to minimize the damage
 22 that was being done to government. Well, you
 23 know, nothing's further from the truth, quite
 24 frankly.

25 COFFEY, Q.C.:

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1 Q. Mr. Williams, and I appreciate your comment in
 2 that regard, but I would--actually here, in
 3 terms of the quotes themselves, when one reads
 4 them, suggest that you could be--not suggest,
 5 he says, spells it right now, Mr. Dawe, you
 6 could be having inadequate treatment based on
 7 a test result. "There is a group that has the
 8 test result in question and our fear is that
 9 they should have received treatment and
 10 didn't." What I'm getting at is this, is in
 11 relation to what, at the time, that is circa
 12 October 2005 and early November 2005, you
 13 understood, based upon what you'd read or been
 14 told about the effect on patients of not
 15 receiving drugs in a timely--these particular
 16 drugs, Tamoxifen or the related drugs in a
 17 timely fashion. At that time, what did you
 18 understand?

19 MR. WILLIAMS:

20 A. Well, you know, my own understanding would be
 21 that there is a test that was performed that
 22 was not accurately performed.

23 COFFEY, Q.C.:

24 Q. Yes.

25 MR. WILLIAMS:

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1 A. And the result was not proper and therefore,
 2 as a result of that, some treatment was not
 3 properly given that could have had a
 4 favourable effect on somebody who deserved to
 5 have it and should have had it, and that would
 6 be my understanding at that particular point
 7 in time. Bearing in mind again, and I just
 8 got to keep coming back to it, that this is in
 9 the hands of the people who know and you know,
 10 I'm not a doctor, and all I can give is my
 11 best judgment and my deepest sympathy and
 12 concern for the people who are affected here.
 13 COFFEY, Q.C.:
 14 Q. You see, when we look back at--and I stand to
 15 be corrected, but if we look back at that
 16 October 5th 2005 briefing note, which is, if I
 17 could, Commissioner, P-0124, page six, and it
 18 begins by saying--you have it there in front
 19 of you, Mr. Williams, and the first bullet,
 20 "based on patient's specific test results, a
 21 patient's course of treatment is then
 22 determined by the attending physician." Okay,
 23 and -
 24 MR. WILLIAMS:
 25 A. Sorry, what was that again?

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1 COFFEY, Q.C.:
 2 Q. Looking at the first bullet, see here, "based
 3 on patient's specific test results, a
 4 patient's course of treatment is then
 5 determined by the attending physician." Okay?
 6 MR. WILLIAMS:
 7 A. Um-hm.
 8 COFFEY, Q.C.:
 9 Q. And if you look down through this, the actual
 10 effect, in terms of Tamoxifen, in terms of
 11 potentially prolonging life or negating the
 12 necessity for chemotherapy -
 13 MR. WILLIAMS:
 14 A. Where are you reading that?
 15 COFFEY, Q.C.:
 16 Q. No, it's not here. I mean, I'm just saying to
 17 you, we've heard evidence on this. When one
 18 looks at this, and having read that at the
 19 time, did you have any understanding about
 20 what the practical effect of not giving
 21 someone Tamoxifen was?
 22 MR. WILLIAMS:
 23 A. I'd have to say no.
 24 COFFEY, Q.C.:
 25 Q. Okay, and if I could then, please, if you

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1 could bring up, please, Registrar, I'm just
 2 going to show you an excerpt from Mr. Hynes'
 3 evidence, because I think this will illustrate
 4 for you and for the Commissioner what I'm
 5 getting at here. If we could bring up,
 6 please, Mr. Hynes testified on June 18th,
 7 2008, Registrar, June 8th.
 8 REGISTRAR:
 9 Q. June 18th?
 10 COFFEY, Q.C.:
 11 Q. 18th, I apologize. Need my glasses redone.
 12 Page--it's, in this one, it would be page--
 13 contains page 381. 381. Now Mr. Hynes was
 14 being examined at that time by Ms. Chaytor,
 15 Mr. Williams, and he's talking about the
 16 meeting, a meeting that occurred in November
 17 2005 with Dr. Laing to discuss Herceptin.
 18 MR. WILLIAMS:
 19 A. Um-hm.
 20 COFFEY, Q.C.:
 21 Q. And Mr. Ottenheimer was there at the time.
 22 Ms. Chaytor says "and were those questions
 23 about the Herceptin or were those questions
 24 about the ER/PR issue?" and Mr. Hynes replied,
 25 "no, I mean -

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1 MR. WILLIAMS:
 2 A. Can you put this in context? Like where
 3 those, what questions?
 4 COFFEY, Q.C.:
 5 Q. Yes, I apologize. Okay, sure, we'll back up.
 6 Ms. Chaytor, "and do you recall--what do you
 7 recall about that meeting?" and Mr. Hynes said
 8 "I remember Government, sorry, Cabinet had
 9 approved adding the drug, Herceptin, to the
 10 Provincial Drug Formulary, I believe, and it
 11 was a fairly new drug with significant cost.
 12 I believe it was approximately two billion."
 13 MR. WILLIAMS:
 14 A. Two million.
 15 COFFEY, Q.C.:
 16 Q. That should be two million dollars.
 17 MR. WILLIAMS:
 18 A. Two million, yeah.
 19 COFFEY, Q.C.:
 20 Q. "And would be used for 30 to 40 patients a
 21 year approximately and it had been reviewed
 22 for use in Canada and approved, and I think
 23 because of the savings we had in the drug
 24 program, Cabinet had approved its use. I
 25 believe Dr. Laing was involved in that program

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1 who would actually be the one administering
 2 it, okay, and I remember she was in the
 3 Minister's office. It was myself and the
 4 Minister and her, and she was in. I'd say it
 5 was lunch time, because I think the press
 6 release went out mid afternoon and that would
 7 have been the 8th or 9th of November '05, the
 8 Herceptin press release, and she was offering
 9 a comment in it which was like a third party,
 10 you know, comment saying that this drug is
 11 good and it's a good benefit, and as you know,
 12 chief clinical person, I appreciate its
 13 effectiveness, etcetera. So she was in to
 14 read whatever comments had been prepared for
 15 her, I guess, by our communications folks.
 16 She was in the process of reading, I guess,
 17 her comments and I asked her a couple of
 18 questions."
 19 And Ms. Chaytor said "and were those
 20 questions about the Herceptin or were those
 21 questions about the ER/PR issue?" and he
 22 responded, "no, I mean I asked about ER/PR. I
 23 just asked in a broad way 'how are things
 24 going?' and I remember she said, you know,
 25 'relatively well, I guess.' She said 'the

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1 results are coming back and we're notifying
 2 people and we're working through it.' I mean,
 3 you could, you know, it was a fairly big
 4 challenge, I guess, and as well, I remember
 5 asking if there were any individuals who were
 6 deceased who could have been helped if they
 7 had gotten Tamoxifen, based on, I guess, the
 8 work up to date."
 9 And Ms. Chaytor asked "what was her
 10 response?" "Yes," her response was. "And
 11 what was her response?" and the answer is
 12 "yes." "So there were people who--you were
 13 asking her if people had died--who had died,
 14 I'm sorry, could have been helped?" and he
 15 said "yes, and that's what she indicated."
 16 Ms. Chaytor asked "was there any other
 17 discussion around the ER/PR issue?" Mr. Hynes
 18 responded "no, because I don't think I could
 19 have asked any more questions after hearing
 20 that." Ms. Chaytor said "so I take it that
 21 stood out?" and he says "yes, so much so I
 22 remember I looked at the Minister and Minister
 23 Ottenheimer's expression just drained away,
 24 and I'm sure he, he looked as bad as I looked,
 25 because I think it was, you know, it was just

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1 something you'll never forget. It was a
 2 startling revelation in my mind." And then
 3 she goes on to another topic.
 4 Now this is--and there is evidence the
 5 Commissioner has heard, this is early November
 6 2005, this exchange occurs.
 7 MR. WILLIAMS:
 8 A. Yeah.
 9 COFFEY, Q.C.:
 10 Q. And that is a description of Mr. Hynes'
 11 recollection of his and Mr. Ottenheimer's
 12 reaction to kind of being asked--asking a
 13 person who would know, Dr. Laing, a question
 14 and getting the response she gave. I wanted
 15 to ask you, if that is so, if that did happen,
 16 at that time, your own state of knowledge
 17 concerning the potential effect of having the
 18 wrong test result a year or two or three or
 19 four before, would you have been as apparently
 20 surprised as Mr. Hynes and Mr. Ottenheimer
 21 were?
 22 MR. WILLIAMS:
 23 A. Absolutely, and I guess, you know, hearing it
 24 from Dr. Laing, I mean, the only thing I can
 25 go back to is the only statement that I was

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1 aware from her that were her public statements
 2 that said that the patients affected was
 3 relatively small and the impact mightn't be a
 4 huge thing. That's very contrary to what was
 5 said in that testimony there. I mean, that's
 6 just--that's pretty hard stuff.
 7 COFFEY, Q.C.:
 8 Q. And I take it, what is said there, now accords
 9 with what you now know or now understand, now
 10 about it could shorten people's lives. You
 11 understand that?
 12 MR. WILLIAMS:
 13 A. I do understand that now, and I do understand
 14 it.
 15 COFFEY, Q.C.:
 16 Q. At the time -
 17 MR. WILLIAMS:
 18 A. That's what makes this whole thing so
 19 horrible.
 20 COFFEY, Q.C.:
 21 Q. - Mr. Williams, what I wanted to ask you, in
 22 relation to that is this, if indeed that
 23 happened and apparently Mr. Ottenheimer
 24 reacted in the way he did and Mr. Hynes did,
 25 looking back on it, knowing what you do now,

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1 do you think that Mr. Ottenheimer perhaps
 2 should have brought that to your attention at
 3 the time?
 4 MR. WILLIAMS:
 5 A. Yes.
 6 COFFEY, Q.C.:
 7 Q. And why is that?
 8 MR. WILLIAMS:
 9 A. It's obvious. I mean, if the ramifications of
 10 what's going on are that people are dying as a
 11 result of the mistakes that were made, but yet
 12 the information that's in my domain and the
 13 public domain is that things are relatively
 14 small and under control here, then that's a
 15 significant change of circumstances that I
 16 would certainly like to be aware of.
 17 COFFEY, Q.C.:
 18 Q. And I take it then, Mr. Williams, from what
 19 you've told the Commissioner before the break
 20 today, that in the fall of 2005, at the time
 21 you felt, this is under the control of Eastern
 22 Health and the experts, and that's your--
 23 that's the way -
 24 MR. WILLIAMS:
 25 A. Yeah, absolutely.

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1 COFFEY, Q.C.:
 2 Q. Sure, okay.
 3 MR. WILLIAMS:
 4 A. You know, and that's--you know, I have no
 5 other reconsideration of that, to be quite
 6 honest with you. That was my very clear
 7 understanding about where it was and don't
 8 second guess that.
 9 COFFEY, Q.C.:
 10 Q. Now, if I could, please, Exhibit P-2429? Now
 11 again, Mr. Williams, I appreciate, and the
 12 Commissioner would, of course, appreciate that
 13 this e-mail and the related e-mails, there's
 14 no indication at all that there's ever one to
 15 your office, okay, but to put this in context,
 16 this is an e-mail from Heather Predham to
 17 Deborah Thomas-Pennell. Ms. Predham worked at
 18 Eastern Health, works at Eastern Health. Ms.
 19 Thomas-Pennell did at the time as well. The
 20 attachment is questions ER/PR one.doc. It's
 21 November 18th, '05, and she says "here is the
 22 latest. Call me." And here, the ER/PR
 23 questions, and just to put this in context for
 24 you, what you see in the non-bolded, the
 25 questions are not bolded. They're bulletins

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1 but non-bolded, and these were questions that
 2 had been posed by Mr. Ottenheimer and his
 3 staff on November 17th or November 18th to
 4 Eastern Health. Just so you can put it in
 5 context.
 6 He'd asked certain questions be answered
 7 and one of the them, at the bottom of the page
 8 here, he had asked--Mr. Ottenheimer or someone
 9 on his behalf had asked Eastern Health "has a
 10 review occurred to determine how this could
 11 have happened? How could there be inaccurate
 12 tests for a period of five years without being
 13 detected? Will there be disciplinary action
 14 taken?" Okay.
 15 MR. WILLIAMS:
 16 A. Um-hm.
 17 COFFEY, Q.C.:
 18 Q. That was his question, and then a draft, the
 19 response, and this is not the final draft,
 20 appears on the next page, and what you see, he
 21 does say "this is still an ongoing
 22 investigation and until all the results from
 23 retesting are obtained, it is impossible to
 24 determine the exact details of the scope and
 25 cause of the problem. Three reviews have

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1 taken place of our current testing procedure,
 2 our pathology services and our technical
 3 services. Recommendations have been made and
 4 are being acted upon which will immediately
 5 ensure the quality and reproducibility of
 6 results." And then you'll see something
 7 that's italicized here, okay, and it says
 8 "these are details supplied by the lab. It
 9 was found there were problems with
 10 interpretation and quality of specimens used
 11 for interpretation. There was no QA program"
 12 that's quality assurance program "in place
 13 being monitored by one individual. Too many
 14 individuals were involved without delegated
 15 responsibility and required individuals maybe
 16 unfamiliar with standards required for
 17 interpretation. Actions: implementation of a
 18 subspecialty sign out so only a few
 19 individuals would be responsible for
 20 overseeing the performance and interpretation
 21 and will also allow for individuals to
 22 maintain expertise in subspecialty area. CME,
 23 which is continuing medical education, will be
 24 provided for interpretation. Labs will
 25 undergo accreditation." See that?

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1 MR. WILLIAMS:
 2 A. Um-hm.
 3 COFFEY, Q.C.:
 4 Q. Now Mr. Williams, what's in the italics here,
 5 based upon the evidence the Commissioner has
 6 heard, does not end up in what goes to Mr.
 7 Ottenheimer's office. That was taken out.
 8 MR. WILLIAMS:
 9 A. By whom?
 10 COFFEY, Q.C.:
 11 Q. Yes, now, and I appreciate you wouldn't ever
 12 have seen this, but I wanted to ask you this -
 13 MR. WILLIAMS:
 14 A. But who took it out?
 15 COFFEY, Q.C.:
 16 Q. Well, that's taken out--the Commissioner has
 17 heard evidence about e-mails inside Eastern
 18 Health.
 19 THE COMMISSIONER:
 20 Q. (Inaudible).
 21 COFFEY, Q.C.:
 22 Q. But it's within Eastern Health, Mr. Williams,
 23 okay, just so you understand. Mr. Pritchard
 24 and Ms. Brazil can explore that with you more
 25 later on, but this sort of information, and I

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1 appreciate you can't speak for Mr.
 2 Ottenheimer, but would this have been a--at
 3 the time, to be told there was no QA program
 4 in place being monitored by one individual, to
 5 be told that there were problems with
 6 interpretation and the quality of specimens
 7 used for interpretation, and this all relates
 8 to these reviews. You can see that above.
 9 Would that have been of some interest to you
 10 at the time?
 11 MR. WILLIAMS:
 12 A. Again, it would be for a couple of reasons.
 13 It would be in my role as Premier. It would
 14 also be interesting to me as a lawyer, as
 15 these are problems that are discovered that
 16 are going on that is helping us get to the
 17 root of the problem here. Yes, it's relevant
 18 information. It's important information.
 19 COFFEY, Q.C.:
 20 Q. And at the time, going into this, kind of the
 21 end of '05, do you recall what your sense of
 22 this overall was, in terms of what the nature
 23 of the problem was, if any?
 24 MR. WILLIAMS:
 25 A. No. You know, there was a point where I

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1 actually thought it was equipment because
 2 someone had said it was equipment. I didn't
 3 know, but you know, again, I'm very much on
 4 the outside of this.
 5 COFFEY, Q.C.:
 6 Q. Yes.
 7 MR. WILLIAMS:
 8 A. You know, and the people in Eastern Health are
 9 the ones who are very much on the inside of
 10 this, and they're the ones who have access to
 11 the peer reviews and they're the ones that
 12 know what's going on. So like when you show
 13 me that, I just got to kind of take it at face
 14 value like you're showing it to me and you're
 15 saying somebody did this and presented this
 16 and -
 17 COFFEY, Q.C.:
 18 Q. Well, presented it internally.
 19 MR. WILLIAMS:
 20 A. - I'm not privy to any of this.
 21 COFFEY, Q.C.:
 22 Q. Yes, I appreciate that.
 23 MR. WILLIAMS:
 24 A. And it makes it very difficult for me to
 25 comment, but having said it, you know, I'm on

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1 the outside looking in here, and there's
 2 nothing more I can say.
 3 COFFEY, Q.C.:
 4 Q. There is -
 5 MR. WILLIAMS:
 6 A. This kind of information though, you know,
 7 from the patient's perspective and people
 8 affected and, you know, this is important
 9 information on the way through that should be
 10 passed on to people who have an ability to
 11 probably do something about it.
 12 COFFEY, Q.C.:
 13 Q. If we could, please, Exhibit P-0394? Now this
 14 is, Mr. Williams, a response to Mark Quinn of
 15 CBC for an ATIPP request that he had made of
 16 the Department of Health. You'll see this is
 17 March of '06. You'll see the actual request
 18 is down here, a request of February 3rd, 2006,
 19 and it's spelled out there. What I wanted to
 20 ask you was this, and there's a lot of
 21 documentation in it, were you aware, do you
 22 recall, in March, February or March of '06,
 23 that CBC had made an ATIPP request in relation
 24 to all memos, letters, etcetera, between
 25 Eastern Health and the Department between

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1 March '05 and December '05 regarding hormone
 2 receptors?
 3 MR. WILLIAMS:
 4 A. No, I don't remember being aware of that.
 5 COFFEY, Q.C.:
 6 Q. Okay. If we could look, please, at Exhibit P-
 7 3676? Now these are some materials that were
 8 provided by Her Majesty's counsel to
 9 Commission counsel. This is from some
 10 material we received from them. This is a--I
 11 want to ask you about this. It's a March 3rd,
 12 2006. It's addressed to whom it may concern,
 13 and it says "Office of the Premier, registry,
 14 received March 9th '06" and there's a document
 15 number and a file number and so on. Mr.
 16 Williams, would this sort of thing, and you
 17 can glance down through it, if you like, would
 18 the subject matter in this come to your
 19 attention, in the normal course?
 20 MR. WILLIAMS:
 21 A. I've since seen it.
 22 COFFEY, Q.C.:
 23 Q. Yes.
 24 MR. WILLIAMS:
 25 A. From time to time, some of these matters do,

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1 but basically, the staff will sometimes pass
 2 some of these messages through to me and
 3 sometimes they don't. When I say the staff,
 4 there's a line staff of course that we have in
 5 the office that receive all the correspondence
 6 and the calls and the mail which are a step
 7 down from the primary staff, the chief of
 8 staff and deputy chief of staff. Now I have
 9 since read this, and it's heart wrenching
 10 obviously. Whether I saw that one at the
 11 time, I don't know. I can say, Mr. Coffey,
 12 that I do get a fair number of these that I
 13 actually do see and I do read and I do, in
 14 fact, call people, like whether it's after
 15 supper, on weekends, when I'm in the office
 16 and going through these, because I find it
 17 keeps me in touch with what's going on. This
 18 particular one, I don't know if I saw it or
 19 not. I know it's in a package that came down
 20 to you. It did come into my office, but
 21 again, it would be one of a lot of pieces that
 22 would have been received. But it says it all
 23 though. When people talk about their
 24 Christmas being a hell and what's going on
 25 with the testing and everything, it's serious.

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1 COFFEY, Q.C.:
 2 Q. And now, if we could, please, Mr. Williams,
 3 what's your next recollection of ER/PR? We're
 4 kind of in now the beginning of '06.
 5 MR. WILLIAMS:
 6 A. When it comes home to me again?
 7 COFFEY, Q.C.:
 8 Q. Yes.
 9 MR. WILLIAMS:
 10 A. It would have been the briefing note that was
 11 received in August.
 12 COFFEY, Q.C.:
 13 Q. August of '06?
 14 MR. WILLIAMS:
 15 A. Yeah.
 16 COFFEY, Q.C.:
 17 Q. Okay. So in the intervening time frame, I
 18 take it, from your perspective, the management
 19 of this was with whom?
 20 MR. WILLIAMS:
 21 A. It was with Eastern Health. It was being
 22 handled by Eastern Health, and of course, with
 23 oversight by the Department of Health.
 24 COFFEY, Q.C.:
 25 Q. And here, if we could bring up, P-3039?

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1 Again, this is an e-mail exchange between Ms.
 2 Predham and Ms. Elliott, August 10th, 2006,
 3 Mr. Williams. The attachment is a briefing
 4 note, August 10th.doc. Now the fact--when did
 5 you first learn, under what circumstances did
 6 you first learn that a briefing note was being
 7 prepared?
 8 MR. WILLIAMS:
 9 A. Probably when I got it.
 10 COFFEY, Q.C.:
 11 Q. Okay, so it wasn't initiated by yourself?
 12 MR. WILLIAMS:
 13 A. No.
 14 COFFEY, Q.C.:
 15 Q. And I'll take you to the actual briefing note
 16 in a moment, but this says, and just look at
 17 it on the screen, note, "find the note
 18 attached. I made the changes to the first
 19 part. I have qualms about the concern section
 20 and the factors affecting the time lines. But
 21 I'll let you decide" and that's Ms. Elliott
 22 decide. "How do you want me to address it at
 23 the beginning? Also, I didn't include the
 24 information about the reviews. I think we can
 25 tell them that, but I don't want to write it

1 down. I'm here all afternoon." Signed
 2 Heather.
 3 And first of all, in relation to the
 4 reviews, based upon the evidence we're heard a
 5 fair inference that these reviews are the
 6 external reviews.
 7 MR. WILLIAMS:
 8 A. Um-hm.
 9 COFFEY, Q.C.:
 10 Q. Okay. The idea that the government might be
 11 able to be told, and I say the government, I
 12 mean Department of Health personnel, "we can
 13 tell them that, but I don't want to write it
 14 down." From your perspective, as the Premier,
 15 do you have any thoughts on that?
 16 MR. WILLIAMS:
 17 A. Well, you know, when somebody doesn't want to
 18 write something down, there's a reason for not
 19 wanting to write it down. They don't want to
 20 put it in writing, quite simply. Now, you
 21 know, in fairness, I watched--and I watched
 22 Ms. Predham testify partially last week and,
 23 you know, her role needs to be defined, I
 24 think. You know, her job, and she's hired, as
 25 I understand it, to manage risk, to minimize

1 consideration of what her job is. I don't
 2 justify it and I don't make excuses for it,
 3 but -
 4 COFFEY, Q.C.:
 5 Q. You're making an observation.
 6 MR. WILLIAMS:
 7 A. I'm making an observation that, you know, this
 8 is what she does.
 9 COFFEY, Q.C.:
 10 Q. To look at the actual briefing note, as it
 11 ended up, I gather, in your hands, Exhibit P-
 12 0125, please, page 31. Mr. Williams, you'll
 13 see you're copied, "To the Premier" up there
 14 on the top right hand side, August 18th, 2006,
 15 and I take it this is the briefing note that
 16 you recall receiving in August of 2006?
 17 MR. WILLIAMS:
 18 A. Uh-hm.
 19 COFFEY, Q.C.:
 20 Q. At the time, do you recall how you would have
 21 approached your review of this?
 22 MR. WILLIAMS:
 23 A. Well, a couple of things. I mean, it's--what
 24 I'll do with a briefing note when it comes in,
 25 and again I'll often get them in batches, I'll

1 risk. So she has a job to do and it's not a
 2 nice job. It's a dirty job, and so she has to
 3 try and, on behalf of her employer, try and
 4 keep their exposure and their risk to a
 5 minimum. But she's subordinate to somebody
 6 above her at higher levels who make the
 7 ultimate decisions on these things and decide
 8 whether, in fact, information should be going
 9 through to the appropriate people.
 10 The sad thing here, and again if I can
 11 make a commentary, is that quite often people
 12 have appeared before the Commission who are
 13 employees, who are people who are down the
 14 line and whether they happen to be people in
 15 the lab or communications people or clerks or
 16 people like Heather Predham, they're paid to
 17 do a certain job and they do it to the best of
 18 their ability. So in this circumstance, you
 19 know, she's obviously making a decision which
 20 is what she is paid to do. But somebody else,
 21 I think, above her at some point, has to take
 22 responsibility for the consequences of what
 23 gets omitted. Now the fact that something
 24 doesn't get wrote down, I got a big concern
 25 about that. But I got to put it in context in

1 probably get a batch of six to ten briefing
 2 notes unless there's something that comes in
 3 specifically that's pointed on a very current
 4 issue but normally they'll probably be on my
 5 chair in the morning, the following morning,
 6 so I'll come in and I'll go through them. So
 7 when I look at this, I read this as an update
 8 on pathology reports and legal action. My
 9 first blush of this is--and, of course, when
 10 you go to the conclusion of it, is that this
 11 is a legal update, that this provided to me to
 12 give me an idea of what the scope generally is
 13 of the--the consequences of any improper
 14 testing and/or the class action which has been
 15 started and/or any general exposure to
 16 government. Sometimes I would think that
 17 these would be provided to me because I was a
 18 lawyer, but it's not something that was
 19 specifically requested, to be quite frank.
 20 COFFEY, Q.C.:
 21 Q. I understand you didn't request it, and -
 22 MR. WILLIAMS:
 23 A. And the other interesting thing which is
 24 really important about this is I found out
 25 after that this had come to me from Health

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1 officials, and it was not even provided to my
 2 minister, so, you know, I assume that anything
 3 comes out of Tourism or Health or Education,
 4 my minister has gotten it, seen it, especially
 5 if it's coming to me, and signed off on it. I
 6 found out after the fact that the officials in
 7 the Health Department had not given this to
 8 the minister. That's a whole other story.
 9 COFFEY, Q.C.:
 10 Q. Yes, and we'll be visiting that before we
 11 finish.
 12 MR. WILLIAMS:
 13 A. I hope so.
 14 COFFEY, Q.C.:
 15 Q. But in relation to this, why would--let me ask
 16 you about why--at the time you received this
 17 in August of '06, did you understand you were
 18 being told about the legal action? You just
 19 referred to potential exposure by government
 20 to the class action. What was -
 21 MR. WILLIAMS:
 22 A. I guess because it was a class action, I guess
 23 because it had magnitude, I would think that
 24 somebody either in Justice or Health--it could
 25 have come from Justice, from my own

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1 perspective, was basically telling me about
 2 the relationship between the testing and the
 3 legal claims because at the end of it, it
 4 basically talks about some specific claims
 5 that were made, and another action that's not
 6 linked, and -
 7 COFFEY, Q.C.:
 8 Q. So your sense of it--perhaps you can take the
 9 Commissioner through it in terms of, okay, I
 10 get this, I'm sitting there, wherever I am
 11 that particular day, in your office -
 12 MR. WILLIAMS:
 13 A. Yeah.
 14 COFFEY, Q.C.:
 15 Q. You get it, and what would you have done, what
 16 did you do?
 17 MR. WILLIAMS:
 18 A. Well, I get it--well, I go to the background.
 19 The background basically doesn't seem to be
 20 much different than what was given before as
 21 general background information. Then it goes
 22 through a detailed list of patients. Now what
 23 would, I think, be of consequence to me as I
 24 went through this would be were people's
 25 treatment changed. That is something, I have

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1 to be honest, that would jump out at me. The
 2 second page, changed from negative to
 3 positive, and treatment recommendations,
 4 because that for me would zero in on who was
 5 impacted directly by this and who suffered
 6 consequences, and what patients out there
 7 could have had better treatment and might have
 8 had corrective or lifesaving or life extending
 9 procedures. That would have been very, very
 10 important.
 11 COFFEY, Q.C.:
 12 Q. And that's 109 people.
 13 MR. WILLIAMS:
 14 A. That's right, and then I would go on down
 15 through it and just the legal, just for
 16 general information, sometimes the legal side
 17 will just--sometimes can peak your curiosity
 18 on the basis it happens to be a legal issue,
 19 and sometimes you go back to days when you
 20 were there before. Another thing which would
 21 have jumped out here is that Eastern Health
 22 advises 22 women were impacted. So that's a
 23 statement that even though all the other
 24 information is there, it's in the summary, and
 25 it says that 22 women were impacted by a

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1 change in status. That would have some
 2 significance for me.
 3 COFFEY, Q.C.:
 4 Q. And what at the time?
 5 MR. WILLIAMS:
 6 A. Just the fact that we're talking about 22
 7 women being--you know, it says the summary, so
 8 the conclusion that would be drawn from it,
 9 because I would scan through this pretty
 10 quickly, and the--I would go to the summary to
 11 see what the message is here because, you
 12 know, briefing notes, because of the magnitude
 13 of them and--volume, I'm sorry, not the
 14 magnitude of them, is that briefing notes
 15 should properly be drafted to draw your
 16 attention and to tweak you in on the important
 17 issues at a particular time on an issue. This
 18 to me was an update on pathology and also the
 19 legal action. Then when you go to the
 20 summary, it's basically saying 22 women were
 21 impacted. What I'm seeing here is a pattern
 22 of a kind of minimization.
 23 COFFEY, Q.C.:
 24 Q. I take it, you weren't--were you seeing it as
 25 a pattern of minimization at the time, or now

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1 looking back on it?

2 MR. WILLIAMS:

3 A. I'm saying now, but having looked at it, I

4 would think there's--even though here there's,

5 you know, hundreds, and ultimately over a

6 thousand people that were involved in this

7 process, and even though they're saying

8 treatment recommendations of 109, they're

9 saying 22 people were impacted, so it was kind

10 of reduced out, and the only thing I have to

11 say to you is if one person was impacted,

12 that's really enough because if one person as

13 a result of someone's negligence or

14 incompetence, or failure to follow procedures,

15 or failure to disclose information, has

16 suffered because of this and suffered in a

17 significant way because of the consequences of

18 what's going on here, that's really enough,

19 but there seems to be sort of just--this seems

20 to be somewhat downplayed. Then at the end of

21 it when it talks about action required, again

22 there's no action required--it doesn't say

23 that, but there is no action required. It

24 says, "This notice is provided for information

25 purposes only". So -

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1 COFFEY, Q.C.:

2 Q. "Should you require further detail from

3 Eastern Health -

4 MR. WILLIAMS:

5 A. Yes, I'm sorry.

6 COFFEY, Q.C.:

7 Q. "Officials from Eastern Health or their legal

8 counsel will be made available".

9 MR. WILLIAMS:

10 A. I wouldn't normally involve myself quite

11 frankly with legal counsel of Eastern Health

12 on a matter like this because it would be

13 simply inappropriate. Why it was suggested, I

14 have no idea, I don't know where it came from.

15 COFFEY, Q.C.:

16 Q. And the Commissioner has heard evidence on

17 that as to whose idea it was, but here the

18 reference to 22 women, "Eastern Health advises

19 22 women were impacted by the change in status

20 of the ER/PR receptor test", what at the time

21 did you understand, if anything, about what

22 impact meant in this context?

23 MR. WILLIAMS:

24 A. I can't tell you exactly. I would have just

25 looked at it and kind of thought 22 women

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1 specifically have been impacted by the change.

2 In a previous note, I think there was between

3 16 and 20 women were impacted. At the time,

4 whether I made that connection -

5 COFFEY, Q.C.:

6 Q. That's the October -

7 MR. WILLIAMS:

8 A. Whether I made that connection or not, I can't

9 tell you, Mr. Coffey, to be quite honest with

10 you, but that would be sort of order of

11 magnitude to try and get a handle on what the

12 scope of this was.

13 COFFEY, Q.C.:

14 Q. Here it does say--they do go on to say, "These

15 women had changes in the progress of their

16 disease from the initial confirmation of the

17 disease and the beginning of their treatment

18 to the retesting done at Mount Sinai",

19 suggesting that there were 22 women whose

20 disease had gotten worse.

21 MR. WILLIAMS:

22 A. Absolutely, absolutely, yeah.

23 COFFEY, Q.C.:

24 Q. So you would have understood that that was so?

25 MR. WILLIAMS:

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1 A. Yes, yeah.

2 COFFEY, Q.C.:

3 Q. At the time, did you have any understanding

4 about whether or not that might have caused

5 people to die sooner than they otherwise might

6 have?

7 MR. WILLIAMS:

8 A. At that stage, I didn't know. You know, I had

9 certainly assumed, though, because of--I

10 guess, the consequences of improper testing

11 that if people have cancer and they're not

12 treated properly, then, yes, unfortunately

13 some people could die, but I did not know the

14 full extent of what Tamoxifen did, whether it

15 just gave a better quality at the time,

16 whether it actually saved your life. You

17 know, I still wasn't fully knowledgeable on

18 what it was because I hadn't been briefed on

19 it in any respect whatsoever, but, you know,

20 when people are impacted, they're impacted, it

21 obviously has a negative health impact on

22 them.

23 THE COMMISSIONER:

24 Q. Sorry, Mr. Williams, are you saying that you

25 interpreted this note to suggest that while

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1 there might be over 100 patients whose
 2 treatment required change, that the number who
 3 had been identified as having, if I can revert
 4 to the legal language "been injured", was 22?
 5 MR. WILLIAMS:
 6 A. Yeah, that's the way I would have read that
 7 summary.
 8 COFFEY, Q.C.:
 9 Q. Particularly bearing in mind legal language
 10 and your background, that's, in fact, the way
 11 that in terms of as a lawyer one would
 12 approach it.
 13 MR. WILLIAMS:
 14 A. Yeah.
 15 COFFEY, Q.C.:
 16 Q. In terms of 22 injured.
 17 MR. WILLIAMS:
 18 A. Yeah.
 19 COFFEY, Q.C.:
 20 Q. Looking at this, Mr. Williams, the paragraph
 21 here--before I leave that, we have--well, the
 22 Commissioner has seen a number of different
 23 versions of it, but if you could just look at
 24 page 29 of the same exhibit. This is a draft
 25 of the same document. It's not the one that

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1 finally ended up in your hands. Here under
 2 summary, the wording here is identical, with
 3 the exception of the word "greatly", 22 or
 4 more were greatly impacted by the change in
 5 status, "these women had changes in the
 6 progress of their disease from the initial
 7 confirmation of the disease and the beginning
 8 of their treatment to the retesting done at
 9 Mount Sinai". Mr. Williams, do you know
 10 whether or not the inclusion of the word
 11 "greatly" might or might not have made a
 12 difference at the time, bearing in mind that
 13 the rest of it is the same?
 14 MR. WILLIAMS:
 15 A. It's certainly a factor. I know that--I
 16 happen to know since testimony that that was
 17 actually omitted, but the omission of the word
 18 "greatly", greatly enhances impacted, there's
 19 no doubt about it, and for what reason it was
 20 removed, I don't know, I have no idea. People
 21 who are impacted is a great impact, anyway,
 22 but I've got to tell you the addition of the
 23 word "greatly" would certainly elevate the
 24 severity, I think, of the message that's
 25 contained in that particular sentence.

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1 COFFEY, Q.C.:
 2 Q. And I take it, bearing in mind the context of
 3 where it occurs in the briefing note in the
 4 summary?
 5 MR. WILLIAMS:
 6 A. That's right, it's--yeah. The other thing
 7 you'll notice too in this is "Eastern Health
 8 has engaged external consultants to review the
 9 procedures in the laboratory. When all
 10 reports are received, they will review -
 11 COFFEY, Q.C.:
 12 Q. Yeah, I'm going to ask you about that.
 13 MR. WILLIAMS:
 14 A. Okay.
 15 COFFEY, Q.C.:
 16 Q. If I could, please, the same exhibit, page 34,
 17 which is the actual exhibit you received.
 18 MR. WILLIAMS:
 19 A. Yeah.
 20 COFFEY, Q.C.:
 21 Q. Page 34, please. Thank you. Here one of the
 22 last things you would have read the day you
 23 read this was, "Reasons for the erroneous
 24 results and steps taken to prevent
 25 reoccurrence". It says, "Eastern Health has

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1 engaged external consultants to review the
 2 procedures of the laboratory. When all
 3 reports are received, they will be reviewed
 4 and the recommendations will be implemented.
 5 The goal is to have the laboratory accredited.
 6 Until these processes are completed, all
 7 samples will continue to be retested at Mount
 8 Sinai". I take it that the last statement
 9 would give one reassurance that, well, Mount
 10 Sinai, which apparently was thought to be an
 11 appropriate lab to have the retest and the
 12 current testing done in, was in the meantime
 13 going to handle things?
 14 MR. WILLIAMS:
 15 A. Uh-hm.
 16 COFFEY, Q.C.:
 17 Q. What was your sense at the time in relation to
 18 the first three lines?
 19 MR. WILLIAMS:
 20 A. That's there's an ongoing process that's still
 21 being done, there's an ongoing review process
 22 that hasn't been completed. "When all reports
 23 are received, they will be reviewed and
 24 recommendations will be implemented". So it's
 25 an assurance that when this is done, things

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1 will be done to correct them, but it's not
 2 completed yet.
 3 COFFEY, Q.C.:
 4 Q. Have you made any inquiries about why you were
 5 told that at that time versus being told that,
 6 in fact, there are two reports in from
 7 Banerjee, two in from Trish Wegrynowski? Have
 8 you made any inquiries?
 9 MR. WILLIAMS:
 10 A. I don't know why--I don't know why that would
 11 have been said compared to what actually in
 12 fact happened. I have no idea. The other
 13 interesting thing, when you look at the
 14 impacts of treatment with Tamoxifen, it's
 15 believed to prevent the growth of cancer, but
 16 then there's a lengthy sentence on possible
 17 side effects, and patients, however, who do
 18 not receive it that are ER positive, may
 19 experience further problems with cancer. So
 20 there's--there's also an attempt in that to
 21 kind of neutralize the impact of the message
 22 that Tamoxifen is available, but there's a
 23 whole lot of other problems with Tamoxifen, so
 24 it may or may not be a good or bad thing. I
 25 don't know who structures these and why they

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1 structure them the way they do, but there's a
 2 pattern.
 3 COFFEY, Q.C.:
 4 Q. And what is that pattern, from your
 5 perspective, Mr. Williams?
 6 MR. WILLIAMS:
 7 A. It's just--there seems to be a minimization
 8 here, you know. You know, we're expected to,
 9 you know--as a government here, we come in
 10 after the fact pretty well--this is done,
 11 we're trying to do damage control, officials
 12 within government and ministers and senior
 13 officials are trying to react and deal with
 14 this to the best of their ability. We need to
 15 be able to rely on the best possible
 16 information at the best available time, the
 17 most available time, when it's available, put
 18 it that way. It appears that we're not really
 19 getting the clear picture here throughout, and
 20 that concerns me.
 21 COFFEY, Q.C.:
 22 Q. Mr. Williams, on that point, to come right to
 23 it, this was vetted by--just go to the--
 24 leaving aside Ms. Predham for the moment out
 25 of this, okay, because we've heard evidence

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1 concerning the nature of her involvement in
 2 the drafting of this, but Ms. Hennessey was
 3 involved, as well John Abbott in fact saw a
 4 copy of this apparently at some point just
 5 before it got sent to your office. In terms
 6 of asking about your observations in relation
 7 to that, anybody who was knowledgeable, I take
 8 it from your perspective who knew the
 9 difference, who knew, for example, that those
 10 reports were in, they were done, and who saw
 11 this and knew the difference, should have
 12 changed it, no matter what level?
 13 MR. WILLIAMS:
 14 A. Definitely. The question--again then there's
 15 the question, though, who signs off on these,
 16 you know, who's at the top here, and if
 17 there's a group of officials that put together
 18 various information for various reasons and
 19 there's input from people who are risk
 20 managers and people who have other functions
 21 and other things to protect their vested
 22 interest, ultimately it has to go to the
 23 person who signs off and does this. In this
 24 case, it was presumably senior officials at
 25 Eastern Health, presumably the deputy

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1 minister--my minister was not involved, and
 2 was not given the opportunity to be involved,
 3 who I think was Minister Osborne at the time.
 4 COFFEY, Q.C.:
 5 Q. And I'm going to return to that. We referred
 6 to that earlier. I'll come back to that in
 7 dealing with May. Having read that in August
 8 of 2006, Mr. Williams, again what was your--
 9 again I'll ask you, what then coming out of it
 10 was your sense of this? In whose hands was
 11 it, and what was the status?
 12 MR. WILLIAMS:
 13 A. Really where it was, it was an ongoing
 14 process. Reading that, you would assume that
 15 the reviews are still ongoing, retesting is
 16 still going on at Mount Sinai, this is taking
 17 longer than it was expected to take, however,
 18 for me I wouldn't question that because if the
 19 process is taking longer, the last thing, I
 20 suppose, from a legal--from a medical
 21 perspective that people should do is fast
 22 track that process. As well, this is giving
 23 me a legal update as to where it is. Now, you
 24 know, I didn't need a legal update as to where

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1 it was. I was asked at some point after that
 2 what my opinion was on liability here, and I
 3 stated very clearly this is open and shut from
 4 my own perspective. So, anyway, I just
 5 thought, you know, thank you for the
 6 information and I took it for what it was, and
 7 then assumed I was leaving it in the capable
 8 hands of the people who know this best. Bear
 9 in mind that the impact of what it was having
 10 on people there and the retesting of people,
 11 and what the emotional side that they must
 12 have been going through through all this
 13 process had to be quite significant, and, you
 14 know, but I had also assumed, of course, that
 15 proper notifications were being done, people
 16 were being kept in the loop, they were being
 17 given the best information, and we had no
 18 reason to believe otherwise.

19 COFFEY, Q.C.:
 20 Q. If we could look, please--well, back up. I'll
 21 take you to this. I'll ask you, having read
 22 the August, 2006, briefing note, what was your
 23 understanding at the time in terms of contact
 24 with the patients?
 25 MR. WILLIAMS:

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1 A. At all times, you know, when we were informed
 2 on this, we were assuming that proper contact
 3 was being made with all patients who were
 4 affected. Now that really didn't start to
 5 change until the following--late in the spring
 6 in the following year when numbers just kept
 7 changing as quickly as anything.

8 COFFEY, Q.C.:
 9 Q. Were you ever--until 2007, before 2007, did
 10 anyone ever bring to your attention the
 11 apparent fact that Eastern Health was
 12 encountering problems from time to time even
 13 identifying patients?
 14 MR. WILLIAMS:
 15 A. No.
 16 COFFEY, Q.C.:
 17 Q. Might that have been of interest to you to
 18 know?
 19 MR. WILLIAMS:
 20 A. Yes, but, I mean, the fact that they would be
 21 having a problem identifying people, unless it
 22 was explained in the context, I would assume
 23 that some people couldn't be found, you know,
 24 it's very difficult in the modern day and age
 25 not to be able to find people, but -

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1 COFFEY, Q.C.:
 2 Q. I appreciate that, to be found to be told.
 3 MR. WILLIAMS:
 4 A. Yeah.
 5 COFFEY, Q.C.:
 6 Q. Okay, but how about identifying people at all
 7 to be retested?
 8 MR. WILLIAMS:
 9 A. Well, that would be a concern because
 10 obviously what database are they working from,
 11 what kind of information, what kind of
 12 internal systems to they have.

13 COFFEY, Q.C.:
 14 Q. If we could, please, Exhibit--before we go to
 15 it, what's your next recollection of this?
 16 You read the briefing note. Did you discuss
 17 the briefing note with anybody?
 18 MR. WILLIAMS:
 19 A. No.
 20 COFFEY, Q.C.:
 21 Q. What's your next recollection then of the
 22 ER/PR matter?
 23 MR. WILLIAMS:
 24 A. That was August of '06. The next recollection,
 25 I guess, would have been some media in the

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1 December period, basically some questions
 2 about information during the Eastern Health
 3 briefing.
 4 COFFEY, Q.C.:
 5 Q. And what do you recall about that?
 6 MR. WILLIAMS:
 7 A. Limited amount. I mean, we were in the House
 8 of Assembly at the time. It would have been
 9 an issue, but it would have been an issue that
 10 would have been dealt with by the Minister,
 11 Minister Osborne, and it was an issue that
 12 just kind of flared up and it just went away.

13 COFFEY, Q.C.:
 14 Q. Was it ever raised, actually raised in the
 15 House, do you know? This is December of '06.
 16 MR. WILLIAMS:
 17 A. A good question. I haven't checked. I don't
 18 think so, but I haven't checked.
 19 COFFEY, Q.C.:
 20 Q. If it had--if there's a record of it, I'd
 21 appreciate knowing, but -
 22 MR. WILLIAMS:
 23 A. Yeah, I--you know, I haven't seen anything.
 24 Now if in fact something--a check with
 25 Hansard, of course, would do that quite

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1 quickly, we could get that done if it had to
 2 be, but I haven't--I haven't seen anything
 3 that arose in the House.
 4 COFFEY, Q.C.:
 5 Q. In relation to -
 6 MR. PRITCHARD:
 7 Q. Commissioner, that request was made earlier
 8 and we had it checked out, and there's no
 9 record.
 10 COFFEY, Q.C.:
 11 Q. There's no record of that, okay, it never came
 12 up in the House, but in relation--in relation
 13 to it potentially coming up in the House, do
 14 you know if that occurred in late '06 because
 15 there was a media briefing on December 11th,
 16 2006, by Eastern Health on this issue.
 17 MR. WILLIAMS:
 18 A. And there was -
 19 COFFEY, Q.C.:
 20 Q. And there was media coverage.
 21 MR. WILLIAMS:
 22 A. And there was some media attention in mid
 23 December about whether the issue came up, but
 24 that would have been an issue for the Minister
 25 at the time. So it wouldn't have been my

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1 issue, put it that way, in that perspective.
 2 COFFEY, Q.C.:
 3 Q. Do you recall whether or not--I take it you
 4 have your own briefing, Premier's briefing
 5 book.
 6 MR. WILLIAMS:
 7 A. Yeah.
 8 COFFEY, Q.C.:
 9 Q. Do you recall whether or not it made it made
 10 it into the briefing book, your own briefing
 11 book at that time?
 12 MR. WILLIAMS:
 13 A. No, no, and interesting enough, and even in a
 14 briefing book after that which was prepared
 15 for the spring session, in the top five or six
 16 issues that were priority in the Department of
 17 Health, ER/PR was not even identified for me
 18 as being one of the top five or six issues.
 19 COFFEY, Q.C.:
 20 Q. Was it ever identified, do you know, at any
 21 point a being in the top five?
 22 MR. WILLIAMS:
 23 A. Well, certainly after--once it started to -
 24 COFFEY, Q.C.:
 25 Q. Oh, yes, after May.

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1 MR. WILLIAMS:
 2 A. But before, it may have been in a list of
 3 issues, but I can tell you, I think--I think
 4 my officials operated on the basis that they
 5 asked departments for the first five or six,
 6 top five or six top priority issues so that at
 7 least I could be generally informed, but
 8 basically I'll take frontline questions, but
 9 ministers will take the line questions for
 10 their departments.
 11 COFFEY, Q.C.:
 12 Q. If we could look, please, at P-0197. This is
 13 an e-mail from Tansy Mundon, who is Director
 14 of Communications in the Department of Health
 15 at the time to Elizabeth Matthews and Andrea
 16 Nolan. Andrea Nolan is whom?
 17 MR. WILLIAMS:
 18 A. She's an assistant to Ms. Matthews.
 19 COFFEY, Q.C.:
 20 Q. Tuesday, December 12th, 2006, 12:34 p.m. The
 21 subject is "BN", briefing note, "for Premier
 22 on ER/PR". It's written, "Elizabeth/Andrea.
 23 For the Premier's information, this issue is
 24 in the media today. Thanks, Tansy", and if we
 25 look, this is a question and answer briefing

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1 note, Department of Health and Community
 2 Services. The title is ER/PR testing, St.
 3 John's. The issue is framed as, "A mistake in
 4 testing may have led to incorrect treatment
 5 for 170 women in this province suffering from
 6 breast cancer not receiving proper treatment.
 7 It could mean a life and death issue for women
 8 going through cancer". Then here at the last
 9 page of it, it's dated December 12th, 2006,
 10 "Drafted by Beverley Griffiths, approved by
 11 Moira Hennessey". Now do you know, Mr.
 12 Williams, if you ever received this in
 13 December of 2006?
 14 MR. WILLIAMS:
 15 A. I likely wouldn't have received the actual
 16 hard copy of that. I would think in
 17 preparation for going to the House of
 18 Assembly, if that was a House day, if it was
 19 Monday to Thursday, it would have been--I
 20 don't know what day of the week that was. You
 21 know, what I do in preparation for going to
 22 the House, the briefing I'm given is on items
 23 that are going to come to me.
 24 COFFEY, Q.C.:
 25 Q. This is Tuesday.

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1 MR. WILLIAMS:
 2 A. Okay, the items that would have come to me.
 3 So that, I would suggest to you, and I would
 4 think would have been an item for the minister
 5 and the minister would have handled it. So it
 6 might have been brought to my attention that
 7 this could come up, but the minister would
 8 take care of it.
 9 COFFEY, Q.C.:
 10 Q. So in bringing it to your attention, would
 11 they have given you the actual briefing note?
 12 MR. WILLIAMS:
 13 A. No, I would think no, I would think that lots
 14 of similar type of notes come over to the
 15 office which are information back-up pieces,
 16 but that particular piece, no.
 17 COFFEY, Q.C.:
 18 Q. Well then in what context would it be brought
 19 to--how would it be brought to your attention?
 20 MR. WILLIAMS:
 21 A. It would be, you know, in preparing for the
 22 House, if we're busy all morning and at 12:30
 23 we get together and say the House is going to
 24 start at 1:30, question period will be on it,
 25 here's what are the likely questions that you

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1 will have to deal with yourself today, and of
 2 course, depending on what the issues are, then
 3 I would handle those, and then items that
 4 could come--I mean, that question could
 5 actually technically be asked to me and then I
 6 would just defer to the minister at the time.
 7 COFFEY, Q.C.:
 8 Q. So I take it the purpose then in providing you
 9 even with this heads up would be what?
 10 MR. WILLIAMS:
 11 A. Be from a co-ordination perspective, so that
 12 if this came out of left field in the House,
 13 so that I wouldn't just be hit between the two
 14 eyes and say, okay, there's an issue here that
 15 I'm not aware of, and I would be able to say
 16 in my own mind that I've looked to the
 17 Minister of Health and Tom would get up and
 18 handle that question. If it occurred and it
 19 didn't.
 20 COFFEY, Q.C.:
 21 Q. And at the time I take it from what you told
 22 the Commissioner earlier, this wasn't
 23 discussed with Mr. Osborne first nor last
 24 until May of '07?
 25 MR. WILLIAMS:

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1 A. That's right. And at that point he wasn't
 2 minister then, Minister Wiseman would have
 3 been the minister -
 4 COFFEY, Q.C.:
 5 Q. Yes, and I appreciate that. So here, though,
 6 in terms of issue, certainly not receiving
 7 proper treatment could mean a life and death
 8 issue for women going through cancer, that
 9 fairly boldly or baldly states the potential
 10 consequences here, doesn't it?
 11 MR. WILLIAMS:
 12 A. Yeah, it does, but it's interesting in the
 13 beginning it says a mistake may have led to
 14 incorrect treatment, so at that point even
 15 then whoever is writing this is saying it may
 16 have led, they're not saying it has led, but
 17 they are also indicating that there's a
 18 serious consequence for women--or men, I guess
 19 for that matter.
 20 COFFEY, Q.C.:
 21 Q. Now here, Mr. Williams, there are a number of
 22 anticipated questions, there are four of them
 23 and then nowhere does the word "answer"
 24 appear, there's a title "key messages" and
 25 then there are a number of bullets. And then

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1 other suggested responses as well, you'll see
 2 here as well.
 3 MR. WILLIAMS:
 4 A. Uh-hm.
 5 COFFEY, Q.C.:
 6 Q. And then there's the background, which goes on
 7 at some length. I wanted to ask you about
 8 this in terms of briefing notes and I
 9 appreciate this was not prepared for you or
 10 your office, it's prepared for the minister.
 11 And it's framed in terms of anticipated
 12 questions. I take it you have had some time
 13 to review these now since May of 2007, like
 14 this is a whole series of Q and A's for the
 15 Department of Health. And very often, I'm
 16 going to suggest to you, the anticipated
 17 questions are fairly insightful questions,
 18 pointed, insightful. The key messages at
 19 times do not seem to respond to or provide an
 20 answer to the anticipated questions and I take
 21 it you would agree with that at times that is
 22 so.
 23 MR. WILLIAMS:
 24 A. Uh-hm.
 25 COFFEY, Q.C.:

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1 Q. Do you have any thoughts on that in the sense
 2 of, in terms of--and I don't want to get into
 3 the politics of things, but to ask you about,
 4 because this, I understand is the--at the time
 5 anyway, was one of the key ways that ministers
 6 were briefed in terms of what the answer was
 7 to the questions posed. So do you have any
 8 thoughts on that?
 9 MR. WILLIAMS:
 10 A. Well I mean, you know, these are prepared by
 11 the staff and people who would be, I guess,
 12 assisting the minister in answering a
 13 difficult question in a, either a forthright
 14 or a political way, you know, sometimes
 15 questions will be answered by politicians by
 16 spinning them around, just deflecting them off
 17 and just moving them off and going to the key
 18 message, that's the way it's done, lots of
 19 times that happens. So there's a bit of that
 20 in allowing the person who is answering those
 21 questions to be able to have some background
 22 information so that they can present it in a
 23 manner that they're comfortable with. As to
 24 answering specific questions in a briefing
 25 note, there may be a risk adverse mentality

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1 there that is not going to put a specific
 2 answer down to a specific question and that
 3 may be something, I think that may just come
 4 from lay people when there are legal
 5 implications kind of consider something and
 6 they just avoid it. Now this format here,
 7 questions with key messages, that happens and
 8 that can happen and for someone who is getting
 9 ready for the House of Assembly, sometimes
 10 there will be postulated answers or questions
 11 and other times there'll just be messaging
 12 like that, so that's not unusual, but in that
 13 particular instance, that's the way it was
 14 obviously done for whatever reason. Again, I
 15 find it difficult commenting on other people's
 16 work because it's not fair, you know, you're
 17 dealing with it out of context.
 18 COFFEY, Q.C.:
 19 Q. And the Commissioner has heard from the people
 20 actually who drafted this.
 21 MR. WILLIAMS:
 22 A. Uh-hm.
 23 COFFEY, Q.C.:
 24 Q. And in fact, she has heard from them. I
 25 wanted to ask you in the context of being the

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1 Premier of the province that, in terms of--
 2 because this, I understand these messages are
 3 being provided to the ministers to potentially
 4 answer questions in the House or by the media.
 5 MR. WILLIAMS:
 6 A. Yeah, and that's a whole different exercise
 7 than a briefing note and information being
 8 provided and a briefing note provided which
 9 requires action. This is an exercise in
 10 dealing with the public political side of
 11 issues.
 12 COFFEY, Q.C.:
 13 Q. And now here, just looking at the questions,
 14 one of them, the third one is what is the rate
 15 of error and without getting into a discussion
 16 about what error means, here the second last
 17 bullet under key messages, says, "test samples
 18 for 939 breast cancer patients between '97 and
 19 2005 were retested. 117 patients had
 20 recommended changes in their treatment plans
 21 as a result of review by a panel of experts.
 22 There are multiple factors involved. Since
 23 legal proceedings have been initiated, we will
 24 have to allow the legal process to determine
 25 if in fact error has occurred." Now, Mr.

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1 Williams, I wanted to ask you from your
 2 perspective at the time, being the Premier of
 3 the province, did you have any problem with
 4 answering factual questions with factual
 5 answers, bearing in mind that they were the
 6 subject of legal proceedings?
 7 MR. WILLIAMS:
 8 A. No, and you know why it is, it's because I can
 9 do it because I'm at the top of the pyramid,
 10 so if I want to give an answer that's a
 11 factual answer to a factual question, I have
 12 the luxury of being in the position of
 13 authority to be able to make the determination
 14 of whether I can do it. In all fairness to
 15 line people below me, they sometimes don't
 16 want to stick their neck out and say something
 17 that commits them or commits the government or
 18 commits somebody to liability, but in my
 19 position, I'm in a position where I can say
 20 fine, yeah, I'm going to lay this out there
 21 because I take responsibility and I accept
 22 responsibility for what has been done. I
 23 think I'm more prone to do that, Mr. Coffey,
 24 because of the previous life being in the role
 25 of Ms. Chaytor, Mr. Crosbie or other people

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1 who have been involved in claims before and
 2 know the situation. I mean, how many times--
 3 anyway, as on times, how many times have I
 4 gone before major corporations or government
 5 or authority or groups that are in power and
 6 have all the mechanisms around them and I'm
 7 unable to get disclosure. You know, in the
 8 criminal process, as you very well know
 9 disclosure is there, I mean, there's now, you
 10 know, there's pretty full and open disclosure,
 11 but in civil matters, it's very difficult to
 12 get disclosure and you know, sometimes when
 13 you feel on behalf of a victim or a plaintiff
 14 that you've got a good case, it's hard to get
 15 to the bottom of it because Big Brother or Big
 16 Sister circles around and closes ranks and you
 17 can't get the information. So in all
 18 fairness, in my situation if I feel that
 19 there's been a wrong and that there's
 20 information that's important to get out in the
 21 public domain, then I will do it. I mean, I
 22 was asked a question by, I think it was David
 23 Cochrane, if I remember correctly, as to
 24 whether we--and I forget how he phrased it,
 25 but in other words, you know, do they have a

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1 good case here? And I just basically said yes
 2 and, so you know, from a disclosure
 3 perspective, Madam Commissioner, I don't know
 4 where procedurally we could ever go with this.
 5 In the criminal side there's disclosure
 6 requirements, but on the civil side, certainly
 7 from a public body perspective, you know, we
 8 wonder whether there should be more open
 9 disclosure because it's difficult to get it,
 10 but I do have to speak from a position where,
 11 like I can do it because, you know, I then
 12 have to answer to my Cabinet, but I know my
 13 Cabinet feels that, you know, information
 14 that's important in the public domain should
 15 be disclosed and that's an openness.
 16 COFFEY, Q.C.:
 17 Q. That's really where I would have gone with
 18 this is that in terms of, you know, the whole
 19 matter of because a matter has resulted in
 20 litigation or may result in litigation
 21 involving the government -
 22 MR. WILLIAMS:
 23 A. In Eastern Health primarily.
 24 COFFEY, Q.C.:
 25 Q. - or a government agency such as the health

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1 authorities, from your perspective in terms of
 2 factual information to be provided to patients
 3 and for that matter, to the public, what, if
 4 any part is the fact that there's ongoing
 5 litigation, what part should it play?
 6 MR. WILLIAMS:
 7 A. You'd first of all have to speak to the person
 8 who is not in my shoes and people when there's
 9 litigation, their general reaction, you know,
 10 when they're involved, not as plaintiffs, but
 11 as people who were involved in the defence
 12 side of it, is to kind of close ranks, keep
 13 your head down because that's kind of the
 14 general legal advice, don't say anything. I
 15 don't mean that's a good thing in a lot of
 16 instances, especially when you're talking
 17 about patients and patient slides and
 18 patient's health and safety because for two
 19 reasons, first of all, they obviously have a
 20 right to seek damages if at the end of the day
 21 their claim is valid and their damages are
 22 quantified, but more importantly, patients
 23 have a right to determine their own treatment
 24 and if they've been part of a process that has
 25 been flawed or is wrong or has been negligent

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1 or has been improperly handled, they certainly
 2 have a right to seek advice elsewhere or to
 3 look for a better remedy instead of being
 4 totally reliant on the ability or the will of
 5 the people who are involved in the wrong
 6 giving them information, and that concerns me,
 7 I have to tell you because, you know, these
 8 people, you know, from my perspective if it
 9 was me or it was my mother who was in this
 10 situation and had been misdiagnosed through
 11 this process and had found out after the fact
 12 that she could have had better treatment and I
 13 got to tell you, if I was her or it was me,
 14 I'd be pretty angry and pretty annoyed over
 15 the whole situation if in fact there was
 16 information that was important to me that was
 17 not disclosed or was not disclosed in a timely
 18 manner. Because I have the right as a patient
 19 to be able to go out and do what's in my best
 20 interest to try and extend my health and, you
 21 know, when you're talking about life and
 22 death, it doesn't get anymore important than
 23 that.
 24 COFFEY, Q.C.:
 25 Q. Now, I appreciate, you know, as a premier, of

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1 course, I'm going to ask you this, in a
 2 similar fashion or in an analogous way,
 3 knowing what you do now, how do you feel about
 4 what you were or were not told from time to
 5 time as the premier?
 6 MR. WILLIAMS:
 7 A. You know, there are pieces here that I wish I
 8 had been told, you know, I find hindsight is
 9 20/20. It's very difficult to go back and I
 10 don't even like to try and judge my
 11 predecessors, quite frankly, politically
 12 because they do things and they make decisions
 13 at a point in time with a given set of
 14 circumstances and facts to which I'm not
 15 privy, I wasn't there at a given point in
 16 time, however, there are pieces of information
 17 here that would have been relevant to me,
 18 would have helped. Now whether in fact in
 19 certain instances they would have changed
 20 anything, for example, if I had known
 21 something in July but a doctor had said to me
 22 don't disclose this right now because this is
 23 going to hurt patient "X" and patient "Y", I
 24 probably would have taken his or her advice on
 25 the basis that they're the medical experts and

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1 they're expressing concern for the patient,
 2 but when I now look at it, there's also the
 3 greater right of the patient to know and the
 4 patient should know if there's a problem and
 5 then should have the right, if they need to,
 6 to get a second opinion or go somewhere else
 7 to see if they can help reverse some of the
 8 damage that's been done to them.
 9 THE COMMISSIONER:
 10 Q. Mr. Coffey, you're approaching the luncheon
 11 break, so at a convenient spot we'll -
 12 COFFEY, Q.C.:
 13 Q. If I could, Commissioner, just one or two
 14 things and we'll break for lunch. Exhibit P-
 15 0201. This is a letter of March 8th, 2007 and
 16 I take it then, Mr. Williams, after that media
 17 coverage, I take it as a citizen you would
 18 have been aware of the media coverage of that
 19 briefing in December.
 20 MR. WILLIAMS:
 21 A. Uh-hm.
 22 COFFEY, Q.C.:
 23 Q. Do you recall discussing it with anyone?
 24 MR. WILLIAMS:
 25 A. And as I reflected back on that, it's just

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1 interesting as to what happened there, you
 2 know, we know the circumstances surrounding it
 3 and there was information that was not
 4 disclosed, the interesting thing is the press
 5 seemed to be very much on to that and on
 6 December 12th, they were kind of all over it
 7 and then the answer was, I think the answer
 8 was is that there's an action involved here,
 9 so therefore, that information is not out.
 10 And then it just died, and then in May as a
 11 result of the exercise and further prodding of
 12 some of the media, it resurrected again, same
 13 issue, but just five months later and then it
 14 took on a life of its own. Now, you know,
 15 part to as to which brought our attention to
 16 it was our own minister because when Minister
 17 Wiseman saw this happening, he came and he got
 18 our attention, we had a Cabinet briefing and
 19 all of that. But it's really interesting that
 20 the same issue five months before had kind of
 21 come up and was there, it was out there and
 22 then it just disappeared and then went away
 23 and then five months later resurrected. I
 24 don't have any explanation for that, to be
 25 quite honest with you.

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1 COFFEY, Q.C.:
 2 Q. Here, March 8th, 2007 is a letter on Eastern
 3 Health stationery to John Abbott, the deputy
 4 minister, it's involving recruitment and
 5 retention of pathologists and it's addressed
 6 to Mr. Abbott signed by Dr. Nash Denic as
 7 president of the Newfoundland Association of
 8 Pathologists and he was, at the time, interim
 9 clinical chief of the Lab Medicine Program at
 10 Eastern Health. And it's copied to Mr.
 11 Wiseman and yourself and Mr. Marshall and Mr.
 12 Ritter. Would you have received a copy of
 13 this?
 14 MR. WILLIAMS:
 15 A. Yes, I would have.
 16 COFFEY, Q.C.:
 17 Q. This would be brought to your attention, I
 18 take it?
 19 MR. WILLIAMS:
 20 A. Uh-hm.
 21 COFFEY, Q.C.:
 22 Q. And here, he does, in the second page, second
 23 paragraph, second sentence say "unfortunately
 24 the most recent problem in testing of the ER
 25 and PR of breast cancer patient and future

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1 delivery of sub-specialty pathology service to
 2 patient care depends on proper resources such
 3 as manpower." And he's, apparently,
 4 connecting the recent problems in ER/PR breast
 5 cancer testing to manpower issues. Was that,
 6 first of all at that time, was that news to
 7 you?
 8 MR. WILLIAMS:
 9 A. You know, we do get requests from various
 10 medical groups from time to time about, you
 11 know, the need for more specialities, more
 12 sub-specialties, more resources, and again,
 13 that's something that, you know, we rely on
 14 the advice of Eastern Health and the
 15 Department to deal with it and put it in
 16 perspective because, you know, even on the
 17 gynological oncologists, I indicated when we
 18 resolved that issue, that was a dangerous
 19 precedent because the minute you step into a
 20 specialized area and do something, then you're
 21 expected to deal with it across the board and
 22 of course, as you know, subsequently with this
 23 group and other groups--and other groups
 24 related, we subsequently stepped up and did do
 25 some of the things, of course, that obviously

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1 were necessary here.
 2 COFFEY, Q.C.:
 3 Q. So this would have been left then, had you,
 4 having received this, who did you leave this
 5 with?
 6 MR. WILLIAMS:
 7 A. Because I was copied of it, you know, for my
 8 information -
 9 COFFEY, Q.C.:
 10 Q. Sure, I appreciate that.
 11 MR. WILLIAMS:
 12 A. - so that I'm aware that there is an issue
 13 here and I certainly wouldn't deny that under
 14 any circumstances, but it was to the Deputy
 15 Minister of Health and Community Services and
 16 that's, of course, where it would have
 17 resided.
 18 COFFEY, Q.C.:
 19 Q. If we could come back then and take it up at
 20 May 15th, Commissioner, after lunch?
 21 MR. WILLIAMS:
 22 A. Sure.
 23 THE COMMISSIONER:
 24 Q. 2:15.
 25 (ADJOURNED FOR LUNCH)

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1 THE COMMISSIONER:
 2 Q. Please be seated. Mr. Coffey.
 3 COFFEY, Q.C.:
 4 Q. Mr. Williams, before lunch you had indicated
 5 to the Commissioner and as well as in
 6 reflecting upon it and looking back at it, you
 7 noted that December 11th, December 12th, 2006,
 8 the day or and the day after all the media
 9 briefing by Eastern Health, that there was a
 10 certain amount of media attention given to the
 11 issue, the story, and had pointed out, I take
 12 it that you at the time would have understood
 13 that the media were complaining, in effect,
 14 not so much the media, perhaps as people they
 15 were quoting in the media, patients, Mr. Dawe,
 16 that they didn't know why or what had caused
 17 this and they didn't know how many people
 18 whose results had changed. Do you recall
 19 that?
 20 MR. WILLIAMS:
 21 A. Yeah, I do.
 22 COFFEY, Q.C.:
 23 Q. And that in various media reports Eastern
 24 Health's refusal to provide that information
 25 was on the basis of, from their perspective

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1 when they said explicitly that, well there's
 2 litigation going on, we won't or can't or
 3 won't say, you would have understood that at
 4 the time?
 5 MR. WILLIAMS:
 6 A. That is, I think, the reason that was given,
 7 yes. Now before you leave that though, if
 8 there was an area where I think we dropped the
 9 ball from a government perspective, it's there
 10 and the reason being is that the Department
 11 Health should have and/or knew the figures,
 12 the minister was briefed prior to that. I
 13 believe the minister was briefed in November.
 14 COFFEY, Q.C.:
 15 Q. He was, November 23rd, actually.
 16 MR. WILLIAMS:
 17 A. So those numbers were available to the
 18 Department of Health, then a news conference
 19 was held and it's my understanding and my
 20 information that the Department of Health had
 21 nobody present at that. And so they
 22 acquiesced in allowing that to take place. I
 23 think that was--that was wrong. I'm not
 24 saying there's deliberate wrong doing in that
 25 sense, but I do think the Department dropped

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1 the ball in that particular instance because
 2 they're aware of that information and that
 3 information could have been made available or
 4 could have been interpreted for people who
 5 were asking the questions. So you know, the
 6 question then is the impact, I mean, the
 7 explanation I guess can be given that the 200
 8 that wasn't disclosed was not people that were
 9 in fact had a change of treatment, they were
 10 people who were retested but their treatment
 11 didn't change. So I suppose from a patient
 12 perspective, at least people who had their
 13 treatments changed, that was disclosed. But
 14 on the other hand, it's a question of the
 15 people of the public's right to know and even
 16 though the 200 people were probably told and
 17 were told that there had been in fact a
 18 change, that public information and the margin
 19 of error is an important piece of information
 20 that really should have been out there. So,
 21 you know, from my own perspective I think, you
 22 know, our own Department and minister should
 23 have been on top of that and that's something
 24 that should have been dealt with.
 25 COFFEY, Q.C.:

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1 Q. And from your perspective, again, I appreciate
 2 it's with the benefit of hindsight, within the
 3 government ranks, whose respons--you say the
 4 ministers should have been, the line minister,
 5 Mr. Osborne, I suppose, at the time.
 6 MR. WILLIAMS:
 7 A. Yeah, and I mean, you know, from the
 8 minister's perspective, and I go back to the
 9 August briefing note, in fairness to Minister
 10 Osborne, he did not have that briefing note.
 11 COFFEY, Q.C.:
 12 Q. Yes.
 13 MR. WILLIAMS:
 14 A. Because for some reason, his deputy and staff
 15 chose not to give it to him, which I find it
 16 unacceptable behaviour, quite frankly. So he
 17 was out of the loop there. Now he had been
 18 minister, of course, for a period of time, I
 19 think he was put in February, if I remember
 20 correctly -
 21 COFFEY, Q.C.:
 22 Q. February, yes.
 23 MR. WILLIAMS:
 24 A. So he was in that department during the course
 25 of this issue going on and then he was

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1 subsequently briefed in November on the issues
 2 and on the information. So unfortunately the
 3 information was there in the department and,
 4 you know, he and the department officials were
 5 privy to it, so I do think that to allow
 6 Eastern Health to go out and to do that and to
 7 withhold information which, you know,
 8 subsequently was coming out anyway, it was
 9 going to be disclosed in an affidavit and it
 10 was disclosed in an affidavit. So this
 11 becomes a question of public confidence in the
 12 system. I don't think this had a dramatic
 13 affect on any individual patient because
 14 people who weren't retested and the error rate
 15 wasn't disclosed; however, again, it's the
 16 patients' and people affected rights to know
 17 what the magnitude of the problem is and also
 18 if there appears to be any kind of a
 19 concealment and I'm not saying that the
 20 Department concealed this because I don't
 21 think they did, Eastern Health chose not to
 22 give this information for their own reasons,
 23 which I think and I understand were for legal
 24 reasons. But it's a question of public
 25 confidence and confidence in the health care

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1 system and it's these kind of things that
 2 erode that confidence and these are the
 3 reasons why on a daily basis I have to respond
 4 to the term "crisis". You know, now the
 5 fashionable word every time, you know, if the
 6 nurses speak through their representative, Ms.
 7 Forward, or the doctors speak through Mr.
 8 Ritter or anybody speaks, now they talk in
 9 terms of crisis. Now that makes our job as a
 10 government more difficult because we have to
 11 make sure that the people have confidence and
 12 patients and people affected by the health
 13 care system have confidence in the system.
 14 That doesn't mean we're burying our heads in
 15 the sand and when problems arise and there's
 16 things that have to be dealt with and things
 17 that can be corrected financially, we try to
 18 do it to the best of our ability, but, you
 19 know, we have to make sure that the sky is not
 20 perceived to be falling, that people can walk
 21 into the Health Sciences, for example, into
 22 Emergency and feel that they're in good hands.
 23 And it's an improper comparison but it's no
 24 different than the economic situation if now
 25 everybody thinks that the bottom is going to

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1 fall out and everybody panics and everybody
 2 goes, the banks withdraws their money, then
 3 you actually have a crash because the
 4 perception is there. In this situation, if
 5 everybody mistrusts the health care system,
 6 then you in fact can create a crisis because
 7 this is the perception out there. So in my
 8 role and in our role as a Cabinet, as a
 9 government, we've got to try and make sure
 10 that that confidence is sustained and that
 11 that proper balance is sustained, but still
 12 acknowledging the fact that problems exist
 13 and, you know, when they affect patients and
 14 when they affect our lives and our health and
 15 our families and our wellbeing, they're very
 16 serious matters.
 17 COFFEY, Q.C.:
 18 Q. You just referred to Minister Osborne, your
 19 understanding was that as of November 23rd,
 20 2006, that briefing in that month, that he had
 21 the numbers, as it were, the raw numbers given
 22 to him. They had been contained in that
 23 August briefing note that you had received a
 24 copy of, from your perspective, if people then
 25 after the media briefing in December were

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1 complaining about the fact that they weren't
 2 getting certain numbers, are you saying that,
 3 well Mr. Osborne presumably would have known
 4 that, there was complaints about this -
 5 MR. WILLIAMS:
 6 A. And his officials, I mean, his people, senior
 7 people, deputy minister would know it, right.
 8 COFFEY, Q.C.:
 9 Q. - and the people around him, would have known
 10 people were still continuing to complain about
 11 this and from your perspective the Department
 12 then should have taken whatever steps were
 13 required to make sure that those numbers got
 14 out?
 15 MR. WILLIAMS:
 16 A. Well, you know, I think the biggest problem
 17 there is that there wasn't at that point an
 18 oversight and monitoring, like Eastern Health
 19 were having a press conference--now we
 20 shouldn't have to babysit Eastern Health, I
 21 need to make that really clear, you know, we,
 22 as a government and ministers are getting
 23 drawn, officials are getting drawn into this
 24 because we're coming in after the fact and
 25 we're trying to do damage control and, you

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1 know, sometimes doing damage control, people
 2 make mistakes. Having said that, you know,
 3 Eastern Health at that point, you know, had
 4 provided information and had briefed the
 5 minister and were then going to the mikes and
 6 having a press conference and information was
 7 being rolled out. Now when certain
 8 information is being withheld, there comes a
 9 greater priority and that greater priority in
 10 my opinion is the sustaining of confidence in
 11 the health care system. I'm not saying for
 12 one minute that there's any deliberate attempt
 13 here, you know, within the Department of
 14 Health by a minister or by officials to put
 15 this under the carpet or anything like that at
 16 all, it's just a question of if you go the
 17 step further, at least you could follow up and
 18 then deal with the fact that, in fact, this
 19 was not disclosed and could have and should
 20 have been disclosed and ended up, you know,
 21 then making this into a much bigger issue five
 22 months later.
 23 COFFEY, Q.C.:
 24 Q. Have you made any inquiries about why the
 25 Department did not disclose the numbers itself

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1 and in fact what it knew about the, if
 2 anything, about the causes?
 3 MR. WILLIAMS:
 4 A. Well now we know that the Department knew the
 5 numbers, as to what the extent of the causes
 6 was, just to understand from what I read and
 7 seen and heard is that the reviews weren't
 8 available to the Department for a considerable
 9 period of time, so they wouldn't have been
 10 privy, I don't think to that information.
 11 COFFEY, Q.C.:
 12 Q. Well why they didn't disclose them?
 13 MR. WILLIAMS:
 14 A. You know, I don't know why those numbers
 15 weren't disclosed, you know, if you're acting
 16 on the basis of the people who are directly
 17 affected need to know, those are the people
 18 who have been retested, then you make sure
 19 that's out there. But again, you know, you
 20 have to come back to the fact you can't take
 21 away the option from a patient who has been
 22 involved in this process who either avoided
 23 the problem or didn't require--required new
 24 treatment but then there's a group in the
 25 middle who had the problem, had the mis-test

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1 but didn't require treatment, but they also
 2 have a right to second guess and if they have
 3 to go back into the system and go get
 4 different opinions or second opinions, they
 5 need a right to know because if it was me and
 6 I was a patient in the middle of that, no
 7 matter what I was being told at that stage of
 8 the game, I'd want to know all of the facts so
 9 that I could go and find out for myself
 10 whether what was being said to me was
 11 accurate.
 12 COFFEY, Q.C.:
 13 Q. And I take it then, Mr. Williams, with that in
 14 mind this was all going on, literally in
 15 public through the media.
 16 MR. WILLIAMS:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. And yet no one on behalf of the government
 20 intervened to kind of grab the bull by the
 21 horns and say, listen, give the patients and
 22 the public this information.
 23 MR. WILLIAMS:
 24 A. And there's this point in time which is even
 25 just hard to even rationalize, like this

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1 December 12th time to May 16th, 17th, when the
 2 issue was there front and centre, the House is
 3 in session, the media are looking at it, the
 4 issues are there and then it just kind of
 5 dies, and then, you know, five months later as
 6 a result of the intervention I think of Mark
 7 Quinn or the reporter who got the information
 8 through the legal process, and then it gets
 9 resurrected and then it comes to the surface
 10 and then at that point in time and of course,
 11 the minister, the new minister, Minister
 12 Wiseman gets involved and then he brings it to
 13 a whole other level.
 14 COFFEY, Q.C.:
 15 Q. Yes. In terms of the relationship between the
 16 government, the ministry and the Premier's
 17 office, particularly the ministry in this
 18 context, and an organization such as Eastern
 19 Health in relation to and we've heard--Mr.
 20 Ottenheimer has told the Commissioner in
 21 answer to a question he was asked, well, he
 22 had a lot of information or certain
 23 information in the fall of '05, he was
 24 prepared to say it to the House of Assembly,
 25 but no one asked him the question.

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1 MR. WILLIAMS:
 2 A. Uh-hm.
 3 COFFEY, Q.C.:
 4 Q. You recall that occurred.
 5 MR. WILLIAMS:
 6 A. That's kind of just an unfortunate answer, an
 7 honest answer, but an unfortunate answer, but
 8 -
 9 COFFEY, Q.C.:
 10 Q. But in terms of, what I'm more focused on is
 11 this, is in terms of the government's role
 12 from your perspective, in terms of providing
 13 information of public interest, but the chief
 14 actor in it is Eastern Health, have you asked--
 15 the Commissioner's perspective in terms of
 16 the interaction, when do you intervene and
 17 what causes you to intervene?
 18 MR. WILLIAMS:
 19 A. Well the operational line authority is the
 20 responsibility of Eastern Health and then
 21 there's an accountability through the
 22 Department of Health and there is also a
 23 budgetary alignment with the Department of
 24 Health and/or government generally and/or
 25 Cabinet and caucus, so there's that financial

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1 accountability is probably the direct
 2 accountability. I would suggest to you that
 3 even though I may not have any statutory
 4 authority that if something, if there's a--
 5 what would be the term, some kind of a plague
 6 for want of a better term, that arose and it
 7 came to my attention as the head of the
 8 government, well then obviously there's a
 9 point where certain things supersede other
 10 things and, you know, you have to try and get
 11 it out in the public domain as you can. This
 12 throughout, as I said before, was like a false
 13 sense of security here on the way through, you
 14 know, everything is okay, we can manage,
 15 patients know, testing is being done, you
 16 know, people who are requiring new treatment
 17 are getting new treatment, everything is okay,
 18 everything is going to be okay. And that's
 19 kind of the way it was happening, but then as
 20 it started to build to a crescendo then
 21 around, you know, once we got into May which
 22 I'm sure you'll get through, but -
 23 COFFEY, Q.C.:
 24 Q. What was different about May 15th and December
 25 11th?

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1 MR. WILLIAMS:
 2 A. Good question, good question. It's, you know,
 3 the same issue is there, the difference is now
 4 I think that as a result of what I termed
 5 before as some investigative journalism which
 6 can be a very good thing, done properly and
 7 fair and balanced, that a check was done to
 8 see, in an affidavit exactly what the error
 9 rate was and that error rate, if I remember
 10 correctly went up to as high as 42 percent
 11 from just double digit ten or 11 percent which
 12 was portrayed before. So that then became a
 13 significant information, piece of information
 14 and, like I said, when that arose, like then
 15 the minister, Mr. Wiseman just came and said,
 16 look -
 17 COFFEY, Q.C.:
 18 Q. Perhaps you could tell us things, I'll go into
 19 this then, what happened then in May, from
 20 your perspective, what do you recall?
 21 MR. WILLIAMS:
 22 A. Well, you know, this came very much to the
 23 surface and as it came to the surface and as
 24 it appeared, I believe it was a CBC story, I
 25 just can't tell you exactly how that all

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1 unfolded, but I believe it was a CBC story and
 2 then it came out and this became an issue and,
 3 I guess the implication or the concern was,
 4 was information deliberately concealed? And
 5 I'm not here to pass judgment on that because
 6 I can't tell you whether it's deliberately
 7 concealed or not, I would like to think not,
 8 but it was not provided. So on that basis
 9 then -
 10 COFFEY, Q.C.:
 11 Q. So if I could, Mr. Williams, so you're sitting
 12 at, are you sitting at home when you first
 13 hear this, in your car or at the office or
 14 what?
 15 MR. WILLIAMS:
 16 A. I can't tell you, I don't know, when this
 17 became an issue, I was probably at the office
 18 to be quite honest.
 19 COFFEY, Q.C.:
 20 Q. And so what do you recall then about your
 21 first hearing of this in May?
 22 MR. WILLIAMS:
 23 A. Well if I get a situation in government where
 24 I hear that something is probably being
 25 deliberately concealed and that information is

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1 not being provided forthright, I get very
 2 concerned because again I say to you, the buck
 3 stops here, so then it's, you know, so you
 4 don't have an open accountable--we all hear
 5 all this open accountable, transparent
 6 government. We do our best to do that to the
 7 best of our ability, so then you don't have
 8 that, so therefore, information is being kept
 9 from the public and more importantly, it's
 10 being kept from the public when we're talking
 11 about lives here. And if you're not providing
 12 information where patients' lives are being
 13 affected and now it's coming home to me
 14 because of a situation where I know Abbey's
 15 little friend's mom died as a result of this,
 16 now information is being concealed, what's
 17 going on here? So, now we have to get, that's
 18 when it hits the fan for want of a better
 19 term, so we have to get as much information as
 20 we can, get it into Cabinet, let's get a full
 21 briefing and let's deal with this.
 22 COFFEY, Q.C.:
 23 Q. So on May 15th--I gather it was May 15th is
 24 the CBC story or stories that morning about
 25 the information in the affidavit, the 42

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1 percent, if you do the arithmetic, what do you
 2 recall about who told you first, do you recall
 3 who you met with--how did it unfold, do you
 4 recall, as best as you can?
 5 MR. WILLIAMS:
 6 A. I got to tell you, I'd be guessing, you know,
 7 I haven't really tried to recap that with
 8 anyone to try and bring that together, I just
 9 know it became a big issue and whether that
 10 would have been having heard the story in the
 11 morning, if that's where it came out--I don't
 12 know where that story appeared, to be quite
 13 honest with you, but I knew that all of a
 14 sudden it just came together and then the
 15 Minister was expressing concern.
 16 COFFEY, Q.C.:
 17 Q. Yeah, I was going--okay, I'll ask you about
 18 that, Mr. Wiseman -
 19 MR. WILLIAMS:
 20 A. Yes, he would make the contact into the office
 21 through, very likely, Brian Crawley and
 22 indicate that he would want to talk about that
 23 and -
 24 COFFEY, Q.C.:
 25 Q. What do you recall about that?

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1 MR. WILLIAMS:
 2 A. I can't--I can't recall minute detail. I can
 3 just recall that this was an issue, so that
 4 now I was reacting internally as well, and I'm
 5 just basically saying, okay, let's get more
 6 information on this, what's going on here,
 7 what went on on December 11th and December
 8 12th, was there information held, why did
 9 someone have to go to court and get an
 10 affidavit, which they have every right to do,
 11 which is information that's going to be in the
 12 public domain, anyway, so why would someone
 13 make the decision back in December not to
 14 provide this information. You know, we're
 15 into a very delicate sensitive life and death
 16 situation here and people aren't being
 17 forthcoming. So that would have been my
 18 reaction. So then--what happens then,
 19 everything kind of kicks in, my staff kick in,
 20 the clerk kicks in, and people then start to
 21 try and get information together, and, of
 22 course, then within a very short period of
 23 time, the Cabinet are briefed on it.
 24 COFFEY, Q.C.:
 25 Q. Now it did arise, I gather, in the House of

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1 Assembly on May 15th, then, and the days
 2 afterward.
 3 MR. WILLIAMS:
 4 A. That would have been--that would have taken it
 5 up another notch.
 6 COFFEY, Q.C.:
 7 Q. And Hansard is there on that.
 8 MR. WILLIAMS:
 9 A. That would have been with the minister, I
 10 would think. I don't think it was with me.
 11 COFFEY, Q.C.:
 12 Q. And do you recall what Mr. Wiseman's reaction
 13 at least to you was; if not the initial one,
 14 then in the first day or two? What was he
 15 telling you about -
 16 MR. WILLIAMS:
 17 A. Well, it would be concern, I mean, just
 18 basically that he is concerned about what is
 19 going on over at Eastern Health from the
 20 perspective of, you know, information being
 21 provided, and again in his role as minister,
 22 he is responsible for that public confidence
 23 side. You know, at the best of times, the
 24 Health Department is the most difficult to run
 25 by far. It has the biggest budget, it's 2.3

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1 billion, as I said to you this morning, but
 2 the issues are extremely complex. For
 3 example, in that period of time when I talked
 4 to you before about the top five issues that
 5 would have been on the plate and on the table
 6 from the minister's perspective in an overall-
 7 -Turner would have been one of them, the Bagby
 8 situation, the Turner report, a huge issue
 9 which was dominating the department at that
 10 time. Some of the other ones that were
 11 actually listed were the issues of
 12 pharmaceuticals and catastrophic drugs, long
 13 term care, drugs for MS, low income drug
 14 program, so there would be a lot of--there's
 15 32--there's 37 issues in all that were
 16 actually of concern to the minister. So this
 17 is not an easy department to run, and like the
 18 role of a doctor or a nurse when you're
 19 dealing with people who are sick, you're
 20 dealing with their health and their wellbeing,
 21 and ultimately their lives in some situations.
 22 So it's a difficult department and he did have
 23 a lot on his plate, but, of course, once this
 24 came to a head, then this basically took over
 25 his attention and our attention.

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1 COFFEY, Q.C.:
 2 Q. And do you recall then--I'll ask the
 3 Registrar, please, to bring up an exhibit, P-
 4 0827, please. Mr. Williams, this is a copy
 5 that's entitled "Briefing for Cabinet, May
 6 17th, 2007, ER/PR testing". It's by the
 7 Department of Health and Community Services.
 8 It's--a heading on it "confidential". I take
 9 it that there was a briefing of the Cabinet on
 10 this issue on May 17th?
 11 MR. WILLIAMS:
 12 A. That's correct.
 13 COFFEY, Q.C.:
 14 Q. You attended that?
 15 MR. WILLIAMS:
 16 A. Uh-hm.
 17 COFFEY, Q.C.:
 18 Q. And can you tell the Commissioner, please, who
 19 made the presentation? Do you recall who it
 20 was?
 21 MR. WILLIAMS:
 22 A. I would think it would have been Minister
 23 Wiseman, and--I'm pretty certain of that, but
 24 I stand to be corrected.
 25 COFFEY, Q.C.:

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1 Q. Might John Abbott have done it?
 2 MR. WILLIAMS:
 3 A. He could have been in the room to assist him.
 4 What happens when we get a presentation comes
 5 to Cabinet, the minister is lead on the
 6 presentation, and then sometimes on detail
 7 will defer to a senior official or a deputy
 8 minister. John Abbott could have been part of
 9 that as well. John has been in Cabinet before
 10 on other matters, so at that particular point
 11 in time whether he was in on that particular
 12 one, I can't tell you for certain.
 13 COFFEY, Q.C.:
 14 Q. What do you recall--prior to the Cabinet
 15 briefing on May 17th, do you recall anything
 16 else about what happened in relation to this
 17 between the 15th and the 17th?
 18 MR. WILLIAMS:
 19 A. No, just, you know, really a more just gearing
 20 up and trying to put information together as
 21 best we can and pulling together whatever
 22 records would be available from a briefing
 23 note perspective, what information I have,
 24 what information others have.
 25 COFFEY, Q.C.:

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1 Q. Were you made aware at the time that on the
 2 15th and 16th of May that apparently Eastern
 3 Health was telling the media "no comment"?
 4 MR. WILLIAMS:
 5 A. Was telling the media -
 6 COFFEY, Q.C.:
 7 Q. "No comment".
 8 MR. WILLIAMS:
 9 A. No, it's not something that would have
 10 registered with me. I mean--no.
 11 COFFEY, Q.C.:
 12 Q. Then on the 17th -
 13 MR. WILLIAMS:
 14 A. No comment on that specific issue?
 15 COFFEY, Q.C.:
 16 Q. No comment on the issue, on the ER/PR, no.
 17 MR. WILLIAMS:
 18 A. Not really--I can't say for sure.
 19 COFFEY, Q.C.:
 20 Q. Okay, and in the meantime, you're briefed on
 21 the 17th. What do you recall then about a
 22 briefing?
 23 MR. WILLIAMS:
 24 A. Well, I went through the detail. I have it
 25 here in front of me, as you have it on the

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1 screen, and -
 2 COFFEY, Q.C.:
 3 Q. And the Commissioner has actually seen the
 4 details of it.
 5 MR. WILLIAMS:
 6 A. Yes.
 7 COFFEY, Q.C.:
 8 Q. But you can use that if you like as an aide
 9 memoire.
 10 MR. WILLIAMS:
 11 A. Well, the outline is, as the Commissioner
 12 knows, about the background, what the
 13 department knew and when, because we needed to
 14 know what we knew as a government. Talked
 15 about communications issues, and then there
 16 was a discussion on quality assurance, but
 17 what we did do was go through a chronology as
 18 to what happened from the start, what we had
 19 from a briefing note perspective, you know,
 20 what ministers knew and what ministers didn't
 21 know, and that was an issue, and everybody was
 22 brought up to speed.
 23 COFFEY, Q.C.:
 24 Q. Would you tell the Commissioner what, in terms
 25 of what the ministers did--ministers from time

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1 to time did or didn't know, what were you told
 2 about that?
 3 MR. WILLIAMS:
 4 A. Well, you know, this goes back over really
 5 what we said this morning. I mean, there were
 6 briefing notes provided to ministers through
 7 meetings with Eastern Health in getting ready
 8 for the House of Assembly, updates--you know,
 9 in fairness to Minister Ottenheimer, you know,
 10 he was meeting with Eastern Health, he was
 11 trying to get as much information as he can,
 12 he was moving through that very critical
 13 July/October period and staying on top of it.
 14 Particularly on the basis of what he said
 15 originally too that he initially wanted to go
 16 public with this, his first reaction, which in
 17 hindsight was probably the right reaction, but
 18 I don't think I would have done any
 19 differently, as I said to you before, if a
 20 doctor had told me don't do this, I probably
 21 would have said, okay, you know the patient
 22 and the patients better than I do, and if
 23 stress affects cancers, and we all think it
 24 does, then I'm not going there, I'm not going
 25 to just go public for the sake of getting this

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1 out and getting it kind of out there and
 2 having a negative influence on people. So
 3 that was being done. And, you know, so they
 4 were trying to perform oversight to the best
 5 of their ability.
 6 COFFEY, Q.C.:
 7 Q. So that's what they're telling the Cabinet, I
 8 take it?
 9 MR. WILLIAMS:
 10 A. Yes, and, but too--but on an authority, of
 11 course, that has the authority to act on this
 12 and is dealing with it.
 13 COFFEY, Q.C.:
 14 Q. What were you told about Mr. Osborne's
 15 knowledge of this? You've raised the issue of
 16 the August 18th, 2006, briefing note, him not
 17 having seen that.
 18 MR. WILLIAMS:
 19 A. Well, that was an issue, I can tell you.
 20 COFFEY, Q.C.:
 21 Q. What happened? Can you tell the Commissioner
 22 about that?
 23 MR. WILLIAMS:
 24 A. Well, the briefing note came up, the August
 25 18th briefing note.

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1 COFFEY, Q.C.:
 2 Q. In the course of this presentation.
 3 MR. WILLIAMS:
 4 A. In the course of the presentation and the
 5 conversation, and at some point during the
 6 course of the meeting, Minister Osborne
 7 indicated to me that he'd never seen it, and I
 8 looked at him with incredulity, quite frankly,
 9 as if to say, like, this is coming from your
 10 department, obviously there was input from
 11 people at Eastern Health, your deputy minister
 12 signed off on it, and it has come to my office
 13 and you're telling me in a matter of this
 14 urgency, you haven't seen it, and he said, no,
 15 he hadn't seen it. I got to tell you, in all
 16 fairness to Tom, my first reaction was I
 17 didn't believe him. I just couldn't see how
 18 this could happen. I thought he was just
 19 concerned about the impact or something, and,
 20 anyway, I challenged him on it and he said,
 21 no, he hadn't seen it. So that was an issue
 22 at the time. Then I got his officials up
 23 immediately. I think it was probably the same
 24 afternoon, if I remember correctly, and I
 25 brought John Abbott and Moira Hennessey in,

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1 and they confirmed for me that they had not
 2 shown it to him. So now we're in the middle
 3 of all this becoming public and now I've got
 4 officials who are not sharing information with
 5 the minister. You've got Eastern Health now
 6 who are not sharing all the information with
 7 the public, you've got to start--I've got to
 8 start to get very concerned and am very
 9 concerned because if that's there, what else
 10 is there; is this the tip of the iceberg, you
 11 know. I guess, all kinds of minds kick in
 12 place here. First of all, again if it was me
 13 and I was basing it on what would I think, I'm
 14 a lawyer, what do I think is going on here,
 15 and I'm also head of the Cabinet, you know,
 16 and got an oversight responsibility here. So
 17 I've got to say I was concerned and I wasn't
 18 happy is probably the nicest way I can put it.
 19 COFFEY, Q.C.:
 20 Q. And did you tell people that you weren't
 21 happy?
 22 MR. WILLIAMS:
 23 A. Yeah, well, you know, when John and Moira came
 24 up, you know, I questioned them on it, and
 25 then you kind of wonder, you know, well, are

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1 they really just trying to provide cover for
 2 the minister, you know, is this just a
 3 situation where they're going to take the heat
 4 off the minister. I found out pretty quickly
 5 after talking to them that the situation quite
 6 clearly was that they just had decided that
 7 they weren't going to give it to him. Now
 8 again I have a lot of difficulty with that
 9 when you've got the head of a department who's
 10 running the biggest budget within government,
 11 and he or she, whoever it happened to be, is
 12 not getting that kind of information.
 13 COFFEY, Q.C.:
 14 Q. What was the upshot then or the outcome of
 15 the--do you recall anything else perhaps the
 16 Commissioner should know about from the
 17 Cabinet meeting?
 18 MR. WILLIAMS:
 19 A. No, it was just--it was just a general
 20 discussion on where do we go from here because
 21 at this point this was all surfacing fast and
 22 hard and, you know, the information is coming
 23 and so then we have to deal with it. We have
 24 a situation here where we've got to deal with
 25 this, now there's, you know, there's

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1 alternatives you can do as to how you
 2 investigate or how you go at it and, of
 3 course, then the question came up of whether
 4 we need to do a review, whether we should, in
 5 fact, do a full inquiry, you know, where are
 6 you going from here. Over the course of a
 7 period of time that was discussed and
 8 ultimately we did what we felt was necessary
 9 to do, which is the right thing to do.
 10 COFFEY, Q.C.:
 11 Q. And here we are.
 12 MR. WILLIAMS:
 13 A. Which is to call a judicial--and here we are.
 14 COFFEY, Q.C.:
 15 Q. Mr. Williams, we understand that on October
 16 18th, which is the day after the Cabinet
 17 briefing--I'm sorry, on May 18th, I apologize,
 18 2007, Eastern Health held a news conference.
 19 The day after the Cabinet briefing, Eastern
 20 Health held another news conference. Mr.
 21 Tilley was there. Do you recall whether or
 22 not Cabinet gave any kind of directive or the
 23 minister to Eastern Health to go out and -
 24 MR. WILLIAMS:
 25 A. No, I don't. You know, at that point they

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1 could probably be reading between the lines.
 2 Whether there was a specific directive, I
 3 don't think so, but I can't say for sure, but
 4 I got to tell you, if they were making "no
 5 comment" before and all of a sudden this is
 6 becoming a big issue in Cabinet and in the
 7 House of Assembly, then they're getting out
 8 there.
 9 COFFEY, Q.C.:
 10 Q. Exhibit P-3684. Mr. Williams, this is a
 11 draft--it's a redacted version of a letter
 12 that was a draft for your signature. There's
 13 no indication it was ever sent. It's dated
 14 May 18th, 2007. I gather because of the name--
 15 the wife's name you'll see there in the top
 16 right hand side is redacted right here, a
 17 short name redacted.
 18 MR. WILLIAMS:
 19 A. Uh-hm.
 20 COFFEY, Q.C.:
 21 Q. "Your wife" is redacted. Again we haven't
 22 included the wife's name here. If we could
 23 look up, please, Exhibit P-3689, and this is
 24 apparently again, because of the piecing
 25 together of the names, this is--and the names

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1 at the bottom too.
 2 MR. WILLIAMS:
 3 A. I think I remember this. I think this was a -
 4 COFFEY, Q.C.:
 5 Q. Without naming, of course, the individual and
 6 that's why we redacted it, but -
 7 MR. WILLIAMS:
 8 A. Yeah, a person from the west coast who I knew.
 9 COFFEY, Q.C.:
 10 Q. I gather from some of the tone here, it's
 11 apparent perhaps that the individual who wrote
 12 this letter had met you before.
 13 MR. WILLIAMS:
 14 A. I had met him, yeah.
 15 COFFEY, Q.C.:
 16 Q. And here looking at P-3689, do you recall--it
 17 begins by saying, "During the past several
 18 weeks I've been on vacation out of the
 19 province, but I have been in touch about local
 20 happenings via the internet", and it's
 21 addressed to you as Dear Premier
 22 Williams/Danny. "There were several issues
 23 that caught my interest over that period which
 24 would have prompted me to contact you through
 25 your office. However, this is a very personal

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1 one that has surfaced in the last several days
 2 that I am compelled to address to your
 3 attention, the cancer testing fiasco at
 4 Eastern Health".
 5 MR. WILLIAMS:
 6 A. Uh-hm.
 7 COFFEY, Q.C.:
 8 Q. And he goes on to talk about his wife's
 9 circumstances and his own.
 10 MR. WILLIAMS:
 11 A. Uh-hm, she died, if I remember correctly.
 12 COFFEY, Q.C.:
 13 Q. Yes, and he does indicate in the third
 14 paragraph, "I wish to inform you that she was
 15 one of the 36 women who was misdiagnosed as
 16 regards the receptor issue, and subsequently
 17 died", and goes on to express some detailed
 18 concerns here. Do you recall when it was that
 19 this would have come in in this whole
 20 scenario? Was this -
 21 MR. WILLIAMS:
 22 A. When that actually took place?
 23 COFFEY, Q.C.:
 24 Q. Yes.
 25 MR. WILLIAMS:

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1 A. I can't tell you. I'm sure we can--I'm sure
 2 we can recreate it as to when it came in, but
 3 as to what point in time in the entire process
 4 that came in, I can't tell you off the top of
 5 my head. Would that not be in the materials
 6 or has the date actually been redacted?
 7 COFFEY, Q.C.:
 8 Q. There's no date on the actual letter itself
 9 and perhaps Ms. Brazil or Mr. Pritchard might
 10 be able to locate that. In which case, fine,
 11 we'll do it.
 12 BRAZIL, Q.C.:
 13 Q. I was just wondering in an attempt to be
 14 helpful, the letter that responded to this, is
 15 there a date on that one?
 16 COFFEY, Q.C.:
 17 Q. Yes, there is, and in terms of that, if we
 18 look back at 3684, Mr. Williams, and that's
 19 why I had said--this is May 18th.
 20 MR. WILLIAMS:
 21 A. Okay.
 22 COFFEY, Q.C.:
 23 Q. The draft, and in the context here, if it's
 24 answering a letter, I take it, it would have
 25 been May 18th or the day before, or days

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1 before. What I'm asking about really is this,
 2 trying to get to is, was that letter prior to
 3 May 15th?
 4 MR. WILLIAMS:
 5 A. I would say definitely, yeah.
 6 COFFEY, Q.C.:
 7 Q. This letter to -
 8 MR. WILLIAMS:
 9 A. This letter that he sent in?
 10 COFFEY, Q.C.:
 11 Q. Yes.
 12 MR. WILLIAMS:
 13 A. Probably before that, I would say so, yeah.
 14 COFFEY, Q.C.:
 15 Q. Now here, if we could, please, if inquiries
 16 could be made, that might be of some
 17 assistance to know when--if there is any
 18 record of when that letter came in, the one
 19 addressed to yourself.
 20 MR. WILLIAMS:
 21 A. There would be a record of that. There would
 22 have to be.
 23 COFFEY, Q.C.:
 24 Q. In your draft response, 3684, please, you've
 25 indicated, "Thank you for contacting me about

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1 the impact on your family of serious errors in
 2 breast cancer testing over the past several
 3 years. It grieves me to know that you and
 4 your wife", her name is redacted, "were
 5 affected by this. I'm so sorry that after
 6 facing the tragic loss of your wife, you must
 7 also deal with this. I'm determined to get to
 8 the bottom of what went wrong here, so that I
 9 and everyone can have a clear picture of how
 10 the testing failed and how the issue was
 11 handled by the health care system. I agree
 12 with you there are serious questions that we
 13 need answered. Getting to the bottom of this
 14 is the only way to restore people's
 15 confidence, so you have my word that we will
 16 find out, and once we find out what went
 17 wrong, I intend to see that steps are taken to
 18 reduce the prospect of something like this
 19 happening again". Mr. Williams, I've read
 20 that out, identified it and read it out
 21 because I wanted to ask you, does that
 22 summarize your views as of May 18th, 2007?
 23 MR. WILLIAMS:
 24 A. Let me just reread it.
 25 COFFEY, Q.C.:

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1 Q. Take your time.
 2 MR. WILLIAMS:
 3 A. I think that that's a fair comment, but I just
 4 need to reread it. Yes.
 5 COFFEY, Q.C.:
 6 Q. Okay, by or on May 22nd, 2007, the appointment
 7 of a Commission--establishment or appointment
 8 of a Commission of Inquiry was announced by
 9 government. It's a matter of public record and
 10 there are a lot of exhibits that the
 11 Commissioner has seen in relation to it. Up
 12 to the decision by Cabinet to establish the
 13 inquiry, I take it that that would have
 14 occurred at the latest by May 21st?
 15 MR. WILLIAMS:
 16 A. uh-hm.
 17 COFFEY, Q.C.:
 18 Q. If it's announced the next day, certainly--
 19 that Monday was a long weekend.
 20 MR. WILLIAMS:
 21 A. Uh-hm.
 22 COFFEY, Q.C.:
 23 Q. What do you recall about that?
 24 MR. WILLIAMS:
 25 A. I'm just trying to actually, to be quite

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1 honest with you, remember when I actually
 2 spoke to the Commissioner to ask her to
 3 consider it, and I don't have that chronology
 4 in my mind.
 5 COFFEY, Q.C.:
 6 Q. If I could, in terms of--the announcement of
 7 the inquiry was made before--was first done,
 8 the announcement of inquiry was made, and that
 9 was made May 22nd.
 10 MR. WILLIAMS:
 11 A. Yeah.
 12 COFFEY, Q.C.:
 13 Q. I wanted to ask you about your contact with
 14 Mr. Wiseman in relation to that. I take it
 15 Mr. Wiseman was in favour of it too?
 16 MR. WILLIAMS:
 17 A. Uh-hm.
 18 COFFEY, Q.C.:
 19 Q. You know, I mean, any time you call an
 20 inquiry, obviously there's a discussion and
 21 there's a discussion in Cabinet as to the
 22 implications of it, is it the right thing to
 23 do, should it be a review, do you go to a full
 24 judicial inquiry, because obviously as you can
 25 see a judicial inquiry is a big step, a big

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1 process. So that discussion was certainly
 2 clearly held, and it was concluded to be the
 3 right decision.
 4 COFFEY, Q.C.:
 5 Q. Up to the point that the inquiry--that the
 6 decision was made, the step taken, had you
 7 been advised by anyone that inquiries had been
 8 made as to what if any role the external
 9 reviews might play in an inquiry?
 10 MR. WILLIAMS:
 11 A. No.
 12 COFFEY, Q.C.:
 13 Q. So Mr. Wiseman -
 14 MR. WILLIAMS:
 15 A. And that's sort of getting to the issue of
 16 whether ultimately they would be involved in
 17 the inquiry, whether they would be evidence?
 18 COFFEY, Q.C.:
 19 Q. Yes.
 20 MR. WILLIAMS:
 21 A. No, no.
 22 COFFEY, Q.C.:
 23 Q. That wasn't brought to your attention?
 24 MR. WILLIAMS:
 25 A. No.

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1 COFFEY, Q.C.:
 2 Q. If we could, Exhibit P-1477. Now this is
 3 2008, I point out to you. This letter is
 4 addressed to myself and Ms. Chaytor, but it's
 5 from Mr. Pritchard, and it deals with a number
 6 of things, but in particular it forwards
 7 attached additional diary entries for Mr.
 8 Hynes and so on. As I said, it deals with a
 9 number of things, but in addition, "Please
 10 note that Moira Hennessey wishes to make the
 11 following statements. In relation to whether
 12 she ever discussed the external reviews with
 13 the minister, she states, I was in a meeting
 14 with the minister and deputy minister, May 21,
 15 2007, in the executive boardroom, Department
 16 of Health. Based on my recall, the purpose of
 17 the meeting was to discuss the options that
 18 government was considering for a review of
 19 ER/PR. The minister asked me to telephone a
 20 solicitor working with the department to ask
 21 about disclosure of quality review reports and
 22 the Evidence Act and the Public Inquiries Act.
 23 I communicated this information back to the
 24 minister. The minister then asked the deputy
 25 minister to telephone the CEO at Eastern

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1 Health. Shortly after the call commenced, I
 2 took a phone call related to something and
 3 left the meeting", and Ms. Hennessey had left
 4 apparently the building. So, Mr. Williams,
 5 the fact that apparently the minister had
 6 asked Ms. Hennessey to check and get legal
 7 advice on the issue of disclosure of quality
 8 review reports under the Evidence Act and
 9 Public Inquiries Act, you weren't made aware
 10 of either the fact that that had happened, nor
 11 what the advice was?
 12 MR. WILLIAMS:
 13 A. No, and I wouldn't read anything into that
 14 either. You know, that's a discussion they
 15 had, they were closer to it. Someone might
 16 have brought that issue to the minister's
 17 attention and he subsequently responded to it,
 18 but that's a level of detail that I wouldn't
 19 see myself being involved in. Now if it had
 20 been brought to my attention, I'd be
 21 interested because it becomes an interesting
 22 legal question, but having said that, I don't
 23 have any recollection whatsoever of having
 24 considered that.
 25 COFFEY, Q.C.:

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1 Q. Prior to May 22nd, 2007, when the
 2 establishment of the Commission of Inquiry was
 3 announced publicly, had anyone brought to your
 4 attention the fact that Mr. Wiseman or Mr.
 5 Abbott, on his behalf, had asked Mr. Tilley to
 6 provide those reports?
 7 MR. WILLIAMS:
 8 A. No.
 9 COFFEY, Q.C.:
 10 Q. To the department, and Mr. Tilley did agree to
 11 do so?
 12 MR. WILLIAMS:
 13 A. No, no, that's something I've subsequently
 14 discovered in my own research.
 15 COFFEY, Q.C.:
 16 Q. And so--when is that, since the hearing?
 17 MR. WILLIAMS:
 18 A. That would be very recently, very recently
 19 actually.
 20 COFFEY, Q.C.:
 21 Q. Do you know when the reports were, in fact,
 22 made available to the government?
 23 MR. WILLIAMS:
 24 A. No, I couldn't tell you the exact date. I
 25 know the actual time that I kind of addressed

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1 myself to it was when we met for my pre-
 2 evidence interview, my pre sworn evidence
 3 interview, and the issue came up then in the
 4 matter of discussion at the end of that
 5 process.
 6 COFFEY, Q.C.:
 7 Q. But that was--that would be in 2008?
 8 MR. WILLIAMS:
 9 A. That's correct, and it was becoming topical
 10 before that.
 11 COFFEY, Q.C.:
 12 Q. Sure.
 13 MR. WILLIAMS:
 14 A. There had to be some general discussion at
 15 some level on it.
 16 COFFEY, Q.C.:
 17 Q. There had been an application made in court
 18 and so on about it by then, but -
 19 MR. WILLIAMS:
 20 A. Yes, of course, why it would because we, in
 21 fact--it was a question of whether government
 22 should be intervening and taking a position,
 23 and I think my consideration of that at the
 24 time from my own perspective was the two
 25 parties were being represented on both sides.

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1 There wasn't a role for Government to get
 2 involved, and I was also taking some comfort
 3 in the fact that those reviews were actually
 4 in the hands of the Commissioner, even though
 5 her hands were tied with regard to exactly how
 6 she could deal with them. She did, to the
 7 best of my knowledge, have them in her
 8 possession, if that's correct. That was my
 9 understanding.
 10 COFFEY, Q.C.:
 11 Q. At that time, when that discussion was going
 12 on, in presumably December of '07 or January
 13 of '08, did anyone in Government, do you
 14 recall, bring to your attention the fact that
 15 apparently Mr. Tilley had gotten his hands on
 16 the reports, packaged them to go to the
 17 Department? Did anyone ever tell you, you
 18 know, "Premier Williams, look, on this whole
 19 topic about these reports, sure, they agreed
 20 to give them to us six or seven months ago."
 21 Anybody ever -
 22 MR. WILLIAMS:
 23 A. That, at that point, would not have been a big
 24 deal for me. You know, that may sound wrong,
 25 because they're obviously a big deal because

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1 there's important information in them, but no,
 2 that's not something I remember, and I'm also
 3 saying that it's not something that I probably
 4 would remember anyway.
 5 COFFEY, Q.C.:
 6 Q. If you had been told that they had, in fact,
 7 agreed to send the reports over -
 8 MR. WILLIAMS:
 9 A. I didn't know -
 10 COFFEY, Q.C.:
 11 Q. - and never did -
 12 MR. WILLIAMS:
 13 A. I didn't know that they hadn't disagreed to
 14 send it. I wasn't even aware, at that point
 15 in time, that they'd said no, they weren't
 16 going to send them over. So the actual
 17 sending of them over would have been, at that
 18 point, inconsequential to me.
 19 COFFEY, Q.C.:
 20 Q. In relation to the reports, were you ever made
 21 aware, after the establishment--the
 22 announcement of the establishment of the
 23 Commission of Inquiry, that anyone from the
 24 Government, government department that is, had
 25 gone looking for the reports?

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1 MR. WILLIAMS:
 2 A. No, no.
 3 COFFEY, Q.C.:
 4 Q. So, and the terms of reference are fairly self
 5 evident, anybody can read them. Mr. Williams,
 6 when the Inquiry was established, I take it
 7 that it was your understanding as to what
 8 about the causes? That they weren't known?
 9 MR. WILLIAMS:
 10 A. That they weren't known.
 11 COFFEY, Q.C.:
 12 Q. They weren't known, is that what your
 13 understanding was at the time?
 14 MR. WILLIAMS:
 15 A. Yes, yeah, because like I said before, there
 16 was even a period where I had thought that it
 17 was equipment. In fact, we'd gone from DAKO
 18 to Ventana and there was some problem with
 19 equipment. Subsequently, obviously, realized
 20 that that wasn't the case.
 21 COFFEY, Q.C.:
 22 Q. So at the time the Commission was announced,
 23 the idea that "look, I can phone and get
 24 copies of two or three or four reports,
 25 perhaps read them, and actually have the

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1 answer to that question arguably spelt right
 2 out," that didn't come up?
 3 MR. WILLIAMS:
 4 A. No, and you know, there was--at that point,
 5 there was a public and I think a private
 6 outcry that was happening. Private in the
 7 sense that, you know, I was getting very
 8 concerned then about what I was seeing with
 9 regard to failure to disclose information and
 10 the things that were happening. As well, it
 11 was now very much in the public domain. So
 12 if, for example, we had not called an inquiry
 13 and we just gone and just dealt with this and
 14 gone through the report and gone through the
 15 recommendations, and of course, a lot of these
 16 things were actually being done and were
 17 effectively being done and they were good
 18 procedures, and had taken money and put it
 19 into automation and data management and peer
 20 reviews and training and higher education, we
 21 could have done all those things. I still
 22 think there would have been a perception in
 23 the public that, yeah, okay, they're dealing
 24 with all that internally. It's all being
 25 handled by them. So now, it's, you know, the

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1 Government are going to deal with this on an
 2 internal basis. Eastern Health have been
 3 working, you know, with the Department of
 4 Health. So then people get concerned that
 5 there's not full and open disclosure.
 6 The one good thing--not the one good
 7 thing, one of many good things that comes out
 8 of a process like this is that even after all
 9 the badness and the warts are exposed, that
 10 there's a cleansing feeling by people that
 11 have been through the process. There's also a
 12 sense of closure that comes from people who
 13 are affected and patients who are affected,
 14 and okay, this has been turned upside down,
 15 turned inside out, and it's been done
 16 properly, and that's a good thing, and I think
 17 that's something that has to happen in a
 18 situation like this, especially where lives
 19 are being affected.
 20 COFFEY, Q.C.:
 21 Q. If we could, Registrar, please, Exhibit P-
 22 0111, 111 please? Now Mr. Williams, this is a
 23 fax transmission cover sheet from Eastern
 24 Health. It's to John Abbott from Dr. Oscar
 25 Howell. It's May 24th 2007.

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1 MR. WILLIAMS:
 2 A. If I could just--can I just take a minute?
 3 COFFEY, Q.C.:
 4 Q. Yes.
 5 MR. WILLIAMS:
 6 A. I just want to get the chronology that I've
 7 got here somewhere, so I just got, as the date
 8 going through.
 9 COFFEY, Q.C.:
 10 Q. Sure.
 11 MR. WILLIAMS:
 12 A. Here it is. Forgive me, Mr. Coffey. It's
 13 just -
 14 COFFEY, Q.C.:
 15 Q. Oh no, no.
 16 MR. WILLIAMS:
 17 A. - just trying to keep all these dates in
 18 perspective. Actually, I don't have that
 19 here. If there's a copy of a chronology
 20 available, I wouldn't mind -
 21 BRAZIL, Q.C.:
 22 Q. I have a copy here that I can provide to the
 23 Premier.
 24 COFFEY, Q.C.:
 25 Q. Sure. Thank you.

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1 MR. WILLIAMS:
 2 A. Thanks, Jackie. I thought I had it there, but
 3 it don't seem to be in that file. Thank you.
 4 Okay, Bern, go ahead.
 5 COFFEY, Q.C.:
 6 Q. This is, Mr. Williams, just looking at the
 7 page of it again, this is May 24th.
 8 MR. WILLIAMS:
 9 A. Yeah.
 10 COFFEY, Q.C.:
 11 Q. It comes over to the Department. John Abbott
 12 receives it. It's received in his office May
 13 25th. You'll see that there, stamped, and
 14 then it's distributed. There's a distribution
 15 list here, including the Department of
 16 Justice, Ms. Gerri Smith, and then the actual
 17 attachment, of course, says "as discussed with
 18 Dr. Howell" and the attachment is June 19th,
 19 2003 memo from Dr. Ejeckam to Terry Gulliver.
 20 I take it that this is the Dr. Ejeckam memo
 21 that you referred to in the House of Assembly.
 22 Would I be correct on that?
 23 MR. WILLIAMS:
 24 A. Um-hm.
 25 COFFEY, Q.C.:

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1 Q. When did you first become aware of this?
 2 MR. WILLIAMS:
 3 A. I was given this by the Minister, Minister
 4 Wiseman, at a Cabinet meeting, and I got to
 5 tell you, when I read it, I was--horrified
 6 might be a stretch, but I was pretty
 7 flabbergasted at the contents of it. First of
 8 all, that it was there. It was in writing.
 9 It was clearly put to someone back in June of
 10 2003. It talked about, and I've just got some
 11 of them underlined here, talked about
 12 persistent, erratic results. It talked about
 13 the state of immunostain, etcetera, being
 14 unsatisfactory. Physical location,
 15 unsatisfactory. An extremely sensitive
 16 procedure and a haphazard and laissez-faire
 17 approach to it is not the way to go. Staff
 18 arrangement is now grossly inadequate and
 19 unacceptable for problem free or minimum
 20 problem operations. And then it goes on to
 21 say that "diagnosis based on inappropriate
 22 immunostain will surely jeopardize patient
 23 care and may even expose the corporation to
 24 litigation. Therefore it will be ill-advised
 25 to operate an unreliable and erratic

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1 immunohistochemical procedure in our
 2 laboratory."
 3 Now, you know, that's pretty damning,
 4 quite frankly, and it's on the record there
 5 and it's given to somebody. So back in June
 6 of 2003, somebody is saying, who's in the
 7 system, that there's something very seriously
 8 wrong here that's going to jeopardize patient
 9 care. So what I did with this immediately was
 10 table it in the House of Assembly. Just took
 11 it and made it public right away, within
 12 hours. And that wasn't, to be quite honest
 13 with you, that wasn't a political move. That
 14 was a disclosure move, and I can tell you why,
 15 and we talked about it before, that as a civil
 16 litigation lawyer, you know, these are the
 17 kind of things that sometimes you don't even
 18 get your hands on, and when these are in our
 19 possession and they are important documents,
 20 then I think patients have a right to know.
 21 COFFEY, Q.C.:
 22 Q. And by that point in time, this would be
 23 sometime after May 24th and I believe it was
 24 May 30th, I stand to be corrected, but May
 25 30th-May 31st is the day that it was raised in

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1 the House of Assembly. Hansard will bear out
 2 the exact date. By the time you received
 3 this, Mr. Williams, you would have looked at,
 4 by then, a number of different briefing notes,
 5 you know, not only the ones you received, the
 6 two you'd received over the years, but other
 7 ones.
 8 MR. WILLIAMS:
 9 A. Um-hm.
 10 COFFEY, Q.C.:
 11 Q. In connection with this, some of the ones the
 12 Ministers had gotten over the years?
 13 MR. WILLIAMS:
 14 A. Um-hm.
 15 COFFEY, Q.C.:
 16 Q. Were you aware, when you got this and looked
 17 at it, that there had only been one very brief
 18 reference to Dr. Ejeckam in the earlier
 19 briefing notes?
 20 MR. WILLIAMS:
 21 A. I subsequently found that out, that there was
 22 actually a reference.
 23 COFFEY, Q.C.:
 24 Q. One, two or three lines.
 25 MR. WILLIAMS:

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1 A. And a reference which was subsequently
 2 redacted by a person in a senior position at
 3 Eastern Health, for whatever reasons.
 4 COFFEY, Q.C.:
 5 Q. Yes. Did you make--have you ever made any
 6 inquiries about how it was that Dr. Ejeckam's,
 7 and the nature of it, his intervention in
 8 2003, never made it into any of the 2005 and
 9 '06 and '07 briefing notes?
 10 MR. WILLIAMS:
 11 A. There's no legitimate answer. It's just--I
 12 mean, first of all, I had asked--the Minister
 13 provided it to me and just like, you know,
 14 "where'd you get this?" and it came through
 15 the system, and "well, how come this hasn't
 16 surfaced before? Didn't anybody respond?
 17 Didn't anybody react? Didn't anybody do
 18 anything?" "Well, yes, certain things were
 19 done. They have the--the lab was actually
 20 closed down for a period of time" and I guess
 21 then an assumption, and the assumption becomes
 22 that, in fact, things are corrected or
 23 straightened out. But you know, that's a
 24 really strong letter, and I would think that
 25 any time that a doctor or a person in

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1 authority puts that kind of a letter on the
 2 record, they got to be pretty seriously
 3 concerned about what's going on. And it just
 4 came, it came out of nowhere, quite frankly.
 5 COFFEY, Q.C.:
 6 Q. Now, Mr. Williams, we have as well, we've
 7 heard from a number of witnesses to the effect
 8 that certainly beginning May 18th, 2007, and
 9 some public advertisements afterward that
 10 Eastern Health was telling people that all the
 11 patients who were affected by this had been
 12 notified. You'll recall that, and you're
 13 nodding yes?
 14 MR. WILLIAMS:
 15 A. Oh yeah. I'm sorry, yes.
 16 COFFEY, Q.C.:
 17 Q. And what do you recall about that issue? I
 18 take it when the Commission of Inquiry was
 19 announced, which is May 22nd, at that point,
 20 would it be fair to say that you, as Premier,
 21 were under the understanding that everyone had
 22 been contacted who should be contacted?
 23 MR. WILLIAMS:
 24 A. Yeah, and were, you know, probably even from
 25 the beginning, if you'd even go back to The

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1 Independent story back in those days, we
 2 certainly had an assurance that things were
 3 being handled right and handled properly,
 4 people were being notified, and all the right
 5 things were being done. Then it appeared,
 6 over time, that things dragged on and that's
 7 not to say that anyone was doing any
 8 wrongdoing, but the processes weren't
 9 complete. The circles weren't being fully
 10 enclosed. Then when we got into that May
 11 period, and I can't give you the exact dates,
 12 but then I started to question the numbers.
 13 Any time, you know, I was getting a number
 14 from anybody, I was trying to compare them to
 15 previous numbers and see where we are, and I
 16 did keep saying to my staff and to Brian
 17 Crawley, chief of staff, and to him to the
 18 clerk, basically, this figures just seem to be
 19 oscillating. There doesn't seem to be
 20 consistency.
 21 And of course, that went on over a period
 22 of time, and you know, as a result, I think,
 23 of probably those concerns, we then decided
 24 that we should also put a Task Force in place,
 25 and that's when Robert Thompson, you know,

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1 former Clerk--the clerk at the time and a
 2 senior civil servant, was put in place on the
 3 basis that he was the best person to handle
 4 it, and that was not only to deal with this
 5 major adverse health event which we were
 6 dealing with, but also to look at the system
 7 on a go-forward basis, because at this point,
 8 the picture is starting to shape up and there
 9 are people dropping the ball in certain areas,
 10 and I mean, you know, when I can't rely on
 11 senior officials in Health and I can't rely on
 12 senior officials at the health authority and
 13 then numbers keep changing, and information
 14 keeps shifting, I mean, you can't have it.
 15 So he was asked to do it for a couple of
 16 reasons. First of all, from an adverse health
 17 perspective, on this event, also on a go-
 18 forward basis on major adverse health events,
 19 and also as probably the best person in
 20 government to be able to liaise with this
 21 Inquiry in order to produce and provide
 22 accurate information, and that's been a tough
 23 process, not because he hasn't been doing it
 24 right, it's because it's been difficult trying
 25 to get all the information due to database

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1 management issues and pitfalls and poor record
 2 keeping, and these are--you know, these are
 3 after the fact situations.
 4 I mean, there's a clear line, I think,
 5 Madam Commissioner, that we have to divide
 6 here. It's, you know, the problem, how it
 7 happened, when it happened and then when we
 8 move into damage control mode, and there are
 9 two completely different scenarios that are
 10 probably pretty clearly delineated from a time
 11 perspective, you know, and a lot of emphasis
 12 has been put on who did what after the fact.
 13 But of course, obviously we can't lose sight
 14 of the fact that a lot of these people were
 15 dealing with a situation that had already
 16 arisen and it had been happening since 1997,
 17 had gone through to 2003 and up by about 2004.
 18 Presumably at that point in time, it was
 19 starting to arrest and we've now moved to
 20 Ventana. Even though that wasn't the
 21 solution, at least it helped discover it.
 22 But there's a clear divide, I think, that
 23 really has to be made. It's like, you know, a
 24 lot of this had already happened. Now we're
 25 trying to figure out how to control it, how to

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1 properly handle the patients with the
 2 information and then also how to get accurate
 3 information, how to find out what the problems
 4 were and how to clean them up, and how to make
 5 sure that hopefully this didn't happen again,
 6 bearing in mind that there are uncertainties
 7 in the system. I think Dr. Parfrey, Pat
 8 Parfrey wrote a very interesting letter to the
 9 paper at one point, which I read, and he
 10 talked about his own wife who had had, I
 11 believe it was breast cancer, had cancer of
 12 some form, and then also talked about the
 13 frailties and the uncertainties that are
 14 actually inherent in the system, and that's
 15 not to say that they shouldn't be prevented,
 16 but I'm not--I don't think we can achieve
 17 utopia either. That's the problem.
 18 COFFEY, Q.C.:
 19 Q. If we could -
 20 MR. WILLIAMS:
 21 A. Bit of a long-winded answer. I'm sorry, but -
 22 COFFEY, Q.C.:
 23 Q. If we could bring up Exhibit P-0226? I take
 24 it though that--I'm just going to show you
 25 something here and ask you a question. This

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1 is an exchange of e-mails, June 1, 2007, which
 2 is ten days approximately after the
 3 announcement of the Commission of Inquiry, and
 4 actually it's three e-mails.
 5 MR. WILLIAMS:
 6 A. The Task Force is announced by then as well,
 7 yeah.
 8 COFFEY, Q.C.:
 9 Q. Yes, it has been. Tansy Mundon sent Elizabeth
 10 Matthews an e-mail on June 1 saying "please
 11 see attached ad developed by Eastern Health
 12 which they plan to put in Saturday's Telegram,
 13 along with community newspapers next week.
 14 Their purpose is to advise the public that
 15 patients were informed of ER/PR testing
 16 throughout the process." See that, it's right
 17 there on the bottom?
 18 MR. WILLIAMS:
 19 A. Um-hm.
 20 COFFEY, Q.C.:
 21 Q. "Please advise if you have any concerns ASAP."
 22 Ms. Matthews, the same morning, in fact nine
 23 minutes later, responded saying "my only
 24 comment would be in the second paragraph, I
 25 would add 'tests helped determine treatment

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1 options for breast cancer patients after
 2 diagnosis has been given'" she's adding
 3 emphasis, "or some words to that effect.
 4 Second, I don't know if this is possible, but
 5 is there some way of saying that 'although the
 6 media were not given information about the
 7 patients whose treatments was not affected, we
 8 did ensure that all patients were fully
 9 informed.' I think this is a very solid point
 10 that is being lost. Otherwise, I think it's a
 11 very good ad."
 12 MR. WILLIAMS:
 13 A. Um-hm.
 14 COFFEY, Q.C.:
 15 Q. So Ms. Matthews' comments there, as of June 1,
 16 was that also your understanding as of June 1?
 17 MR. WILLIAMS:
 18 A. That all patients were fully informed?
 19 COFFEY, Q.C.:
 20 Q. Yes.
 21 MR. WILLIAMS:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. As of that point?
 25 MR. WILLIAMS:

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1 A. Yeah.
 2 COFFEY, Q.C.:
 3 Q. So that was also then your understanding at
 4 the time the Commission of Inquiry was even
 5 announced?
 6 MR. WILLIAMS:
 7 A. Yes.
 8 COFFEY, Q.C.:
 9 Q. Okay, so because it had been ten days before.
 10 MR. WILLIAMS:
 11 A. And even as you go on through the next 12
 12 months, it was still an understanding, and it
 13 kept changing from time to time too.
 14 COFFEY, Q.C.:
 15 Q. Okay, changing. In terms of the change in
 16 this, and I'm going to refer you to something
 17 now, if we could look, please at Exhibit P-
 18 0013?
 19 MR. WILLIAMS:
 20 A. And I also think, Mr. Coffey, I think Minister
 21 Wiseman was on the record as having said that
 22 himself.
 23 COFFEY, Q.C.:
 24 Q. Oh yes, in the House of Assembly and publicly,
 25 and in fact, he's explained to the

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1 Commissioner, with hindsight now, looking back
 2 on it, the fact that his misgivings about it
 3 now. Of course, he understood it to be--now
 4 he understands it to have been inaccurate, and
 5 for the reason -
 6 MR. WILLIAMS:
 7 A. But you wouldn't know though. You know,
 8 because you're getting this information from a
 9 body that's saying that we've contacted
 10 everybody. Now that should be a relatively
 11 straightforward procedure, and if they tell
 12 you, I would think that we would have a right
 13 to rely on that or we should rely on it. Not
 14 a right to, but -
 15 COFFEY, Q.C.:
 16 Q. And here, there's a series of e-mails
 17 involving George Tilley, Heather Predham,
 18 Robert Thompson. You'll look here at the one,
 19 this is June 7th, 2007. It's an e-mail from
 20 Heather Predham to a number of individuals
 21 within Eastern Health and she says "all
 22 patients that were identified--in October
 23 2005, all patients that were identified at
 24 that time as part of the retesting were
 25 contacted by our department. These were calls

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1 that were to inform them that they were
 2 identified as ER negative and would be
 3 retested." She goes on then to talk about the
 4 process at the time.
 5 The bottom, second last paragraph, she
 6 says "I must note that we still get calls from
 7 people who say they weren't called, but who
 8 were always ER positive and not part of the
 9 retesting" and then she talks about "when the
 10 results came back, the patients who were
 11 confirmed negative were notified by their
 12 particular region, while the patients whose
 13 tests were changed by notified by letter
 14 through their physician. I hope this
 15 clarifies it." And then -
 16 MR. WILLIAMS:
 17 A. The sad thing about it, some of the people
 18 that were coming forward on this were coming
 19 forward to the media. They were actually
 20 being disclosed--they'd contact the media and
 21 say "I was never contacted."
 22 COFFEY, Q.C.:
 23 Q. And here, Mr. Tilley apparently sent this e-
 24 mail, that e-mail along to Mr. Thompson.
 25 "Attached is a reply from our risk manager on

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1 the question you raised. With respect to
 2 Burin, we are in the process of preparing a
 3 release for tomorrow" and I should put it into
 4 context. The question raised had been, by Mr.
 5 Thompson earlier that day, "we keep on hearing
 6 through the media -
 7 MR. WILLIAMS:
 8 A. Yeah.
 9 COFFEY, Q.C.:
 10 Q. - about patients who say they were not
 11 contacted in 2005 about their retest, yet your
 12 media material is clear" and it goes on to
 13 talk about it from there. "How do you
 14 reconcile this?" And then Mr. Thompson
 15 responds the same day to Mr. Tilley saying
 16 "the return e-mail has unnerved us. Let me
 17 explain" and he goes on to talk about why, and
 18 he's told the Commissioner -
 19 MR. WILLIAMS:
 20 A. It's an understatement.
 21 COFFEY, Q.C.:
 22 Q. And that is exactly the point I want to raise
 23 with you. It is--in fact, it is almost an
 24 understatement. In fact, is that -
 25 MR. WILLIAMS:

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1 A. Not that he's trying to understate it, but for
 2 me it's an understatement because at this
 3 point, you're getting very unnerved, because
 4 now even the information on patient contact,
 5 which should be the very simplest, basic
 6 information, because you know, you're dealing
 7 with--you've already made the errors and
 8 mistakes. Now you're trying to basically help
 9 people get through this and provide them with
 10 accurate information and that's not happening.

11 COFFEY, Q.C.:

12 Q. So was that conveyed to you then in the
 13 immediate aftermath of this?

14 MR. WILLIAMS:

15 A. I think, you know, once we were involved here,
 16 then we were very actively involved, from a
 17 perspective, as much as we could. So you
 18 know, as numbers were changing or people were
 19 coming out in the media, then the eighth floor
 20 was very close to this file and working and
 21 liaising through Mr. Thompson as chair of that
 22 task force.

23 COFFEY, Q.C.:

24 Q. Now sir, do you recall when it was that you
 25 first became aware of the idea that perhaps

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1 not all patients had even been identified to
 2 be retested?

3 MR. WILLIAMS:

4 A. What I remember about it is that there were
 5 various points in time when I became aware
 6 that people weren't being contacted. If I
 7 didn't hear it in the media or I didn't--
 8 something didn't come from the Opposition,
 9 because if I remember correctly, I think some
 10 people actually contacted Ms. Jones directly,
 11 or I didn't hear it coming back through my
 12 staff from Robert, but that was a process that
 13 I can't pin down the time lines, but I can
 14 tell you, it just kept happening, and it was a
 15 frustrating exercise for Mr. Thompson, just to
 16 try and kind of do information retrieval and
 17 try and--because we were constantly, at that
 18 point, you know, "get the exact number. Give
 19 us the exact numbers" and of course, that went
 20 on over a period of time because he was
 21 legitimately trying to piece it together.

22 COFFEY, Q.C.:

23 Q. You referred to numbers kept changing as being
 24 one of the things that caused you to--
 25 motivated you to create the Task Force, Mr.

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1 Thompson. Which numbers are they? Do you
 2 recall -

3 MR. WILLIAMS:

4 A. No, I remember just going back, as we were
 5 going through this and as we were in the House
 6 of Assembly, I remember going back then and
 7 trying just to compare numbers that were in
 8 our possession, our domain, through then what
 9 information we had. So whether it was
 10 previous briefing notes or subsequent briefing
 11 notes that had been provided that I hadn't
 12 seen before, plus information that we were
 13 getting, there were times that things weren't
 14 adding up for me. Now that could have been my
 15 mistake, but I don't think so, at the time.
 16 Just things weren't working for me.

17 COFFEY, Q.C.:

18 Q. And I ask you that, Mr. Williams, because I'm
 19 going to suggest to you that in fact, you were
 20 doing a bit of detective work yourself.
 21 You're a lawyer and -

22 MR. WILLIAMS:

23 A. Yeah, because then the suspicious mind comes
 24 in, what's going on here.

25 COFFEY, Q.C.:

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1 Q. If we could, please, Exhibit P-0236? Now this
 2 is a couple of e-mails. The first one, the
 3 one below here is from Robert Thompson to Mr.
 4 Wiseman, June 11th this is, it's been
 5 identified as, and he writes "regarding what
 6 the Department knew in the months after
 7 October 2005, I can confirm that we knew the
 8 following about the number of retests, based
 9 on briefing notes. I have not yet seen the
 10 Eastern Health briefing material" and he goes
 11 on with some numbers, dates and numbers. Mr.
 12 Thompson concludes or continues "from this
 13 information, we can conclude that we had
 14 corporate memory that the 763 living patients
 15 could not have all been called in October
 16 2005. The question thus moves to whether all
 17 people were called at the time they were added
 18 to the list or if timing considerations were
 19 such that they were called by their doctor
 20 with results. Eastern Health will be
 21 providing us with their records today to show
 22 when the calls were made. It may take a day
 23 or so to validate the issue."

24 Now I point out, this is the day before
 25 that June 7th memo or e-mail we just looked

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1 at, where the unnerving comment occurs. Is
 2 this the sort of calculation that you're
 3 talking about -
 4 MR. WILLIAMS:
 5 A. Um-hm.
 6 COFFEY, Q.C.:
 7 Q. - perhaps that you were doing, in terms of
 8 yourself going through this?
 9 MR. WILLIAMS:
 10 A. Because taking different pieces of numbers
 11 that were being provided to us and comparing
 12 them and once you did it, it wasn't adding up,
 13 quite simply. And you know, I think this is
 14 more--in hindsight now looking at it, it's
 15 more sloppiness than it is deliberate, I
 16 think, attempt. I don't want to imply here
 17 that there's any kind of deliberate attempt by
 18 anybody at Eastern Health to fudge the numbers
 19 during this process here. I think it's just
 20 sloppy records or sloppy database management
 21 or no database management, but I don't see it
 22 as being something deliberate, but it causes
 23 me concern when we're not able to tell people
 24 who are very seriously affected by this as to
 25 what the accurate situation is.

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1 COFFEY, Q.C.:
 2 Q. Here, Mr. Thompson does tell Mr. Wiseman that
 3 "Eastern Health will be providing us with
 4 their records today." That would be June 6th,
 5 to show when the calls were made. Mr.
 6 Thompson has already told the Commissioner
 7 about what he was told about what was found
 8 when these people came back. Were you told--
 9 what were you told at that time about the
 10 state of the record keeping at Eastern Health?
 11 Do you recall?
 12 MR. WILLIAMS:
 13 A. It's a question of at what point that Mr.
 14 Thompson indicated to us, the exact time he
 15 did, but we were moving the Health and moving
 16 Mr. Thompson to see what--to get us accurate
 17 numbers, because we're out there. Necks are
 18 out a mile saying everybody has been
 19 contacted, and all of a sudden, that's not the
 20 case. So now we're upset and we want to know
 21 what the real numbers are. So we're pushing
 22 and as I said, over a period of time, the
 23 numbers changed and kept changing.
 24 COFFEY, Q.C.:
 25 Q. What did Mr. Thompson tell you about the state

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1 of records at Eastern Health?
 2 MR. WILLIAMS:
 3 A. You know, he didn't use the word "sloppy" but
 4 I don't think he felt they were adequate,
 5 let's put it that way, and Eastern Health, I
 6 think, probably were reacting on the fly here.
 7 There's a question of are patients being told,
 8 are physicians being told? Were physicians
 9 being expected to tell patients? Are some
 10 people not contacted? Were the deceased
 11 families being contacted? There was a whole
 12 pile of things, I think, that contributed to
 13 them, but that's not an excuse for Eastern
 14 Health, because in fact, they should have been
 15 clearly documenting who was being contacted
 16 when.
 17 COFFEY, Q.C.:
 18 Q. At the time, Mr. Williams, that you
 19 established the Commission of Inquiry, did it
 20 ever cross your mind, at the time, that Mr.
 21 Thompson and his staff might be still trying
 22 to figure out who should be retested?
 23 MR. WILLIAMS:
 24 A. When? Now?
 25 COFFEY, Q.C.:

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1 Q. Yes, would still be at it.
 2 MR. WILLIAMS:
 3 A. I got to tell you, I would have thought that
 4 that would certainly have cleared up by now,
 5 but obviously, he's had a heck of a job trying
 6 to just piece this together, and they're still
 7 trying to determine those numbers.
 8 COFFEY, Q.C.:
 9 Q. Mr. Williams, we've heard evidence, the
 10 Commission has, from Mr. Coates and Ms.
 11 Pendergast, I believe, Renee Pendergast,
 12 concerning a response to an Evening Telegram--
 13 I keep--I'm showing my age--The Telegram's
 14 ATIPPA request in--actually, there were three
 15 of them in the summer of 2007. They're
 16 looking for records from each of the three
 17 ministers' offices, I believe.
 18 What, if anything, do you know about
 19 that? Mr. Coates has talked about the
 20 application of--mandatory application of a
 21 discretionary provision in Section 20.1(a) of
 22 the ATIPP Act, in relation to responses to
 23 this, and he says he understood there was an
 24 unwritten approach here that it would be
 25 interpreted as mandatory.

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1 MR. WILLIAMS:
 2 A. I can tell you, from ATIPPA, I have virtually
 3 no involvement in ATIPPA. Perhaps I should.
 4 It's just not somewhere where I go. Someone
 5 in my office--I got someone, I think it's
 6 Brian Taylor actually, deals with it on a
 7 regular basis. I'm only, on a very rare
 8 occasion, even talked to about ATIPPA
 9 requests. There's a set of rules that are in
 10 place there. There's interpretation that's
 11 placed on it, and my staff or my officials or
 12 Department officials, if it's their
 13 correspondence, deal with it. So you know,
 14 for example, with regard to any relation I
 15 might have with Mr. Coates or the other lady
 16 which was mentioned, no direct relation
 17 whatsoever. It's just that's a process that
 18 takes place. Now that's not to say that I
 19 have never been asked. Someone from my staff
 20 would come and say "here's the situation.
 21 Here's what the rule says. Here's what we're
 22 doing. Is that okay?" and I'll just, sure, if
 23 that's what the rule says, and that's the
 24 interpretation, do it. But it's not something
 25 that I get directly involved in in any detail

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1 whatsoever.
 2 COFFEY, Q.C.:
 3 Q. Were you aware, in the summer of 2007, of the
 4 notion that, in this particular instance
 5 involving ER/PR and ATIPP requests in relation
 6 to that, that the Government's approach was to
 7 be, by Government staff in responding to such
 8 requests, was to be to interpret 21.1(a) -
 9 MR. WILLIAMS:
 10 A. No.
 11 COFFEY, Q.C.:
 12 Q. - in a mandatory way? You wouldn't -
 13 MR. WILLIAMS:
 14 A. I wouldn't know if 21.1(a) was fit to eat.
 15 BRAZIL, Q.C.:
 16 Q. And that's what I was going to suggest,
 17 Commissioner. Maybe if Mr. Coffey is asking
 18 the Premier to express an opinion about the
 19 legislation, he -
 20 COFFEY, Q.C.:
 21 Q. Oh no, not -
 22 BRAZIL, Q.C.:
 23 Q. - he should put it to him.
 24 COFFEY, Q.C.:
 25 Q. No, not--I'm not asking him to interpret it

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1 for us.
 2 MR. WILLIAMS:
 3 A. I couldn't. Like I said to you, 21.1(a) I
 4 wouldn't know if it's fit to eat. I don't
 5 think I've ever read it.
 6 COFFEY, Q.C.:
 7 Q. And within your office, it would be Mr. Taylor
 8 at the time would have been the one who would
 9 be tasked with -
 10 MR. WILLIAMS:
 11 A. Yes.
 12 COFFEY, Q.C.:
 13 Q. - with overseeing whatever was going on in
 14 relation to that?
 15 MR. WILLIAMS:
 16 A. Yeah.
 17 COFFEY, Q.C.:
 18 Q. Okay. Mr. Williams, there was--you referred
 19 to briefing notes and the issue of them being
 20 signed off by ministers or at least being
 21 brought to ministers' attention and you've
 22 indicated that perhaps this whole circumstance
 23 involving ER/PR has maybe changed that. Could
 24 you tell the Commissioner how that's changed?
 25 MR. WILLIAMS:

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1 A. We now require ministers to sign off on
 2 briefing notes, and in fact, there's been
 3 times since where briefing notes have come
 4 over and we've actually sent them back. So
 5 we're now forcing ministers and their senior
 6 officials to make sure that what happened in
 7 the August 18th briefing note doesn't happen
 8 again. I hope it doesn't happen again.
 9 That's not to say it couldn't happen, but
 10 certainly trying to prevent that.
 11 COFFEY, Q.C.:
 12 Q. And Mr. Williams, there is finally a question
 13 I have about something that Mr. Thompson was
 14 back yesterday--yesterday, the day--last week,
 15 Friday. It's all running together.
 16 MR. WILLIAMS:
 17 A. I know the feeling.
 18 COFFEY, Q.C.:
 19 Q. To tell the Commissioner about what has
 20 happened since he was here in May of this
 21 year, and one of the topics he talked about
 22 was this effort that had been suggested, he
 23 and the NLCHI staff had suggested back -
 24 MR. WILLIAMS:
 25 A. What's that?

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1 COFFEY, Q.C.:

2 Q. - in March of 2008. I'll explain it to you.

3 He told the Commissioner that back in March

4 2008, he became aware of one patient who had

5 self-identified just around that time and the

6 possibility occurred to him certainly, well,

7 we've missed--there's a possibility we've

8 missed other, and NLCHI staff came up with

9 three possible approaches and they were put to

10 Eastern Health, back around April-May of 2008.

11 Were you aware that that was going on? The

12 fact that there was still the potential for

13 people not having been identified?

14 MR. WILLIAMS:

15 A. Yes.

16 COFFEY, Q.C.:

17 Q. You were aware of that?

18 MR. WILLIAMS:

19 A. Yeah, as these discrepancies came up, we were

20 being notified by Mr. Thompson, within a

21 reasonable time period.

22 COFFEY, Q.C.:

23 Q. Yes, and was it made known to you in May or

24 June of 2008 that Eastern Health didn't want

25 to do what was being suggested?

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1 MR. WILLIAMS:

2 A. It was made known to me. Whether it was then

3 or not, I can't say for sure.

4 COFFEY, Q.C.:

5 Q. I'm sorry, you say it was made known?

6 MR. WILLIAMS:

7 A. It was made known to me, and it has been made

8 known to me up to now, at some point. The

9 exact timing, I can't tell you, but it was

10 certainly made known to me, so yes.

11 COFFEY, Q.C.:

12 Q. Okay, do you recall when--you don't recall

13 when, but do you recall what you were told

14 about that and what your response was?

15 MR. WILLIAMS:

16 A. It would have been, you know, knowing Mr.

17 Thompson, I can tell you, it would have been

18 around the time it was happening, quite

19 frankly. He's been very open with us and, you

20 know, has provided all the information on the

21 basis that we've requested that we know and

22 he's certainly provided that information.

23 COFFEY, Q.C.:

24 Q. And I take it, most recently, in August and

25 September of this year, what has the

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1 Government--to your knowledge, what has the

2 Government's response been in relation to

3 that, requiring Eastern Health and the other

4 boards for that matter?

5 MR. WILLIAMS:

6 A. We would require them to provide any

7 information that would be--within our

8 limitations, but you know, obviously when a

9 message comes down that we want this

10 information, you know, I assume they give it

11 to us.

12 COFFEY, Q.C.:

13 Q. And is there, Mr. Williams, anything else that

14 you--you established, you and your Cabinet

15 established the terms of reference. Is there

16 anything else that you're aware of that we

17 haven't covered that you think the

18 Commissioner should know?

19 MR. WILLIAMS:

20 A. No, I don't think. I think, you know,

21 certainly from my involvement, I think, you

22 know, chronologically you've gone through

23 everything that I'm certainly aware of,

24 there's no doubt about that. I don't know if

25 there's anything else. Obviously the

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1 Commissioner will have her own questions. I

2 do want to say though, if I can -

3 COFFEY, Q.C.:

4 Q. And -

5 MR. WILLIAMS:

6 A. - this is not a summation or any kind of a

7 statement or anything, but I do, and I think

8 it's right that I do so, is that I want to

9 apologize to the patients and to their loved

10 ones and to their families for what has

11 happened here, and I apologize as the current

12 Premier, and I apologize on behalf of previous

13 governments and premiers and cabinets that

14 have been involved in this process, because it

15 goes back through, I guess, three previous

16 governments, Premier Grimes, Premier Tulk,

17 Premier Tobin.

18 If, you know, we've hurt these people in

19 some way, that they've suffered, that I can

20 certainly assure them that it was not

21 deliberate, that there was no intention to

22 harm anybody under any circumstances. I think

23 I can give the Commissioner comfort that

24 there's not a single person who has come

25 before you, Commissioner, that had any

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1 intention whatsoever to deliberately harm
 2 people, to cause them any further grief or
 3 anguish or to suffer or any further extension
 4 of their existing problems but, you know,
 5 there are things that have happened along the
 6 way, there's things that have happened since
 7 the errors were committed whereby people were
 8 put through more grief on the basis that the
 9 follow up wasn't handled properly. We just
 10 talked just very briefly about the improper
 11 contact, putting people through more strain,
 12 what originally was intended as an attempt to
 13 take some of that stress away from them with
 14 certainly good intentions by, I would suggest
 15 to you, Minister Ottenheimer. Subsequent to
 16 that, some of the things that have gone wrong
 17 through the system have, in fact, probably
 18 added to their grief and that's certainly not
 19 a good thing. I do say from my own
 20 perspective, we take this personally. You
 21 know, I mentioned to you before the situation
 22 about the mother of a friend of my
 23 granddaughter, when she came home and told us
 24 the story of, I'll use Johnny as the term,
 25 Johnny's mom had died, that was a huge thing

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1 of emotion in the family because until it
 2 comes home like that, you don't fully
 3 appreciate that a mistake in a laboratory or a
 4 procedure, or a piece of equipment, can
 5 actually result in the death of someone's
 6 mother or loved one. So having said that, you
 7 know, we certainly take responsibility, full
 8 responsibility for any actions that have been
 9 taken --that have been taken by anyone in
 10 government at any point in time that might
 11 have contributed to this problem. I also
 12 acknowledge that mistakes were made,
 13 significant errors were made. I can tell you
 14 that we have done as much as we can from a
 15 government perspective to try and correct
 16 these as soon as possible, waiting, you know,
 17 for your report, and when your report comes
 18 out and your recommendations come in, they
 19 will be acted upon, obviously within financial
 20 limits as we can phase things in that need to
 21 be done, but I understand that we have taken--
 22 you know, as a result of the quality reviews,
 23 some 52 odd actions, we've done a lot of
 24 things from cancer centres, to mammography
 25 units, to PET scans, which are sophisticated

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1 pieces of equipment. We've put Herceptin in
 2 place. Money is not the answer. I can sit
 3 here and add up for you a fortune in money
 4 that we have put in by just increasing the
 5 health care budget by 10 percent, which is
 6 nearly 300 million dollars, but that doesn't
 7 help the people in the back of the room who
 8 have lost something. They've lost time,
 9 they've lost part of their lives, and that's
 10 priceless, money can't replace that, we can't
 11 replace that for them, and on the basis that
 12 that has happened by anybody who was involved
 13 in the government organization or any
 14 organization, being it Eastern Health or any
 15 other regional health authority, we sincerely
 16 apologize and take full responsibility. The
 17 other thing I want to say is I do want to
 18 thank health care professionals who've gone
 19 through this and have come before you under
 20 great stress. It's a difficult process. It
 21 may be somewhat easier for me, having been in
 22 a courtroom, for want of a better term,
 23 before, but for people who have to come in and
 24 testify here, it's a difficult procedure, it's
 25 stressful, we've seen their genuine emotion

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1 and I think that reflects how they feel. For
 2 the patients and for their families and their
 3 loved ones, again I just want to thank them
 4 for coming through this process with us.
 5 Again that's an extremely difficult thing to
 6 do because they have to go through hearing all
 7 the details and actually finding out some of
 8 the things that went wrong that have actually
 9 affected their lives and their health, and
 10 that is not easy, but they have been very
 11 graceful and they've been very--what's the
 12 term, I guess they've been sensitive to others
 13 when, in fact, they're the ones that are the
 14 victims here. There hasn't been any
 15 overreaction by the people who have been very
 16 seriously affected here, and that says a lot
 17 about them and their character. So I just
 18 want to thank them. You know, we can never
 19 give you back what you've lost. If there's
 20 any comfort on a go forward basis, there are a
 21 lot of lessons learned here, and I could go
 22 down through them, but I won't do that, just
 23 in the interest of time here today, but a lot
 24 of lessons have been learned and hopefully it
 25 will make it better for people who come into

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1 the system down the road. I don't think--I
 2 hate to say it, but I don't think we can ever
 3 make it perfect. The other thing is I don't
 4 think we're alone in this. I don't think
 5 Newfoundland and Labrador is the only province
 6 in the country that has these problems. I
 7 think we're wearing this on our sleeve, and I
 8 think that's a good thing for everybody, but
 9 by the same token, these people have been
 10 involved--the patients who have been involved
 11 in this unfortunate process are the pioneers
 12 and the martyrs who are paving the way, I
 13 think, for a better health care system at the
 14 end of the day. Finally, I want to do this
 15 quite sincerely, I want to thank yourself and
 16 your staff. I know there have been words, I'm
 17 not going to go there. From my perspective, I
 18 hope you just understand that what I'm trying
 19 to do is with the best of intentions, but I
 20 fully realize that you and your counsel and
 21 your staff have an extremely difficult job to
 22 do under extremely difficult circumstances
 23 with volumes and volumes of information to
 24 deal with, and you're doing a very fine job,
 25 and, you know, hopefully we're--and we will be

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1 a lot better off when this process is
 2 completed. Thank you.
 3 COFFEY, Q.C.:
 4 Q. Those are the questions I have, Commissioner.
 5 THE COMMISSIONER:
 6 Q. Mr. Simmons, do you have any questions?
 7 MR. SIMMONS:
 8 Q. Thank you, Commissioner. I don't have any
 9 questions for Mr. Williams.
 10 THE COMMISSIONER:
 11 Q. Mr. Browne.
 12 BROWNE, Q.C.:
 13 Q. Thank you, Commissioner. No questions. Thank
 14 you very much, Mr. Williams.
 15 THE COMMISSIONER:
 16 Q. Mr. Eaton.
 17 EATON, Q.C.:
 18 Q. No questions, Commissioner.
 19 THE COMMISSIONER:
 20 Q. Ms. Newbury.
 21 MS. NEWBURY:
 22 Q. No questions, Commissioner.
 23 PIKE, Q.C.:
 24 Q. No questions, thank you.
 25 THE COMMISSIONER:

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1 Q. Mr. Crosbie.
 2 CROSBIE, Q.C.:
 3 Q. Thank you.
 4 MR. DANNY WILLIAMS - EXAMINATION BY CHESLEY CROSBIE, Q.C.
 5 CROSBIE, Q.C.:
 6 Q. Very briefly, Mr. Williams, I was--I guess I
 7 don't have to introduce myself, Ches Crosbie.
 8 MR. WILLIAMS:
 9 A. No.
 10 CROSBIE, Q.C.:
 11 Q. I represent a number of the affected patients.
 12 If I can take you back to the Cabinet meeting
 13 of May 17th, 2007, I think you explained that
 14 you asked the two officials to come up and see
 15 you afterwards, that's Hennessey and -
 16 MR. WILLIAMS:
 17 A. That's correct.
 18 CROSBIE, Q.C.:
 19 Q. And Abbott. And I believe your answer was
 20 that they told you that they had decided they
 21 just weren't going to give the briefing note
 22 to the minister, that was Osborne?
 23 MR. WILLIAMS:
 24 A. I think--if I said that, Mr. Crosbie, that's
 25 incorrect. I can't say that they actually

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1 decided that they didn't do it, but they
 2 certainly didn't do it. So I was implying
 3 that a decision had to be made not to do it,
 4 but I--that would be a stretch. If I said
 5 that, that's not perfectly accurate, but they
 6 omitted to do it, whether deliberately or not.
 7 CROSBIE, Q.C.:
 8 Q. Yes, because I was going to ask you if you
 9 asked them for an explanation of their
 10 behaviour that way?
 11 MR. WILLIAMS:
 12 A. Yes. How I said it to them, I can't remember,
 13 but I'm sure it was in the strongest of terms.
 14 I didn't get a satisfactory explanation. It's
 15 just that it wasn't done and there was no
 16 explanation, and, you know, I guess in
 17 hindsight I wonder how an official could
 18 possibly explain that he or she decided to
 19 circumvent the minister on a briefing note
 20 that was coming to my attention on such an
 21 important matter.
 22 CROSBIE, Q.C.:
 23 Q. Were you able to draw a conclusion as to
 24 whether this was simply inadvertent or was it
 25 deliberate because the importance of it being

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1 that some people would think that if
 2 deliberate, it was a significant infringement
 3 of a principle of ministerial responsibility?
 4 MR. WILLIAMS:
 5 A. Yeah, I can't say--it would be unfair to say
 6 it was deliberate. On the other hand, it
 7 would be also a stretch to say it was complete
 8 inadvertence. You know, why would you forget
 9 to give a briefing note to your minister when
 10 that briefing note is coming up to my office.
 11 So it was an omission, from my perspective,
 12 that was unacceptable, there's no doubt about
 13 that.
 14 CROSBIE, Q.C.:
 15 Q. That's the only question I had, and simply
 16 other than to say on behalf of the class
 17 members, to thank you for your second opinion
 18 on the merits of the lawsuit. Thank you.
 19 MR. WILLIAMS:
 20 A. Good luck, Mr. Crosbie.
 21 THE COMMISSIONER:
 22 Q. Anything arising, Mr. Coffey?
 23 COFFEY, Q.C.:
 24 Q. Nothing, Commissioner.
 25 THE COMMISSIONER:

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1 Q. Actually, Mr. Williams, Mr. Coffey, as he
 2 often does, covers everything thoroughly and
 3 there's nothing left for me to ask, so I don't
 4 have any specific questions of you. Thank you
 5 very much for your contribution to the
 6 process.
 7 MR. WILLIAMS:
 8 A. Thank you.
 9 THE COMMISSIONER:
 10 Q. Mr. Coffey, may I suggest we take the
 11 afternoon break and then continue with the
 12 next witness.
 13 COFFEY, Q.C.:
 14 Q. Thank you, Commissioner.
 15 THE COMMISSIONER:
 16 Q. Once again, thank you, Mr. Williams.
 17 MR. WILLIAMS:
 18 A. Thank you, Commissioner.
 19 (BREAK)
 20 THE COMMISSIONER:
 21 Q. Please be seated. Mr. Coffey.
 22 COFFEY, Q.C.:
 23 Q. Thank you, Commissioner. The next witness is
 24 Pamela Elliott.
 25 MS. PAMELA ELLIOTT (SWORN) EXAMINATION BY BERNARD COFFEY,

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1 Q..C.
 2 REGISTRAR:
 3 Q. Would you please state and spell your complete
 4 name for the Commission?
 5 MS. ELLIOTT:
 6 A. Okay, Pamela Elliott, P-A-M-E-L-A E-L-L-I-O-
 7 T-T.
 8 REGISTRAR:
 9 Q. Thank you.
 10 COFFEY, Q.C.:
 11 Q. Commissioner, please, some new exhibits,
 12 Commissioner, if you would, please. Exhibits
 13 P-3469 through P-3471 inclusive, P-3474
 14 through P-3484 inclusive, and P-3691 through
 15 P-3695 inclusive.
 16 THE COMMISSIONER:
 17 Q. Entered.
 18 EXHIBITS MARKED AND ENTERED--P-3469 THROUGH P- 3471
 19 EXHIBITS MARKED AND ENTERED--P-3474 through P- 3484
 20 EXHIBITS MARKED AND ENTERED--P-3691 THROUGH P- 3695
 21 COFFEY, Q.C.:
 22 Q. Ms. Elliott, could you give the Commissioner,
 23 please, an overview of your educational and
 24 professional background, please?
 25 MS. ELLIOTT:

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1 A. Okay, I've been working in the health system
 2 for 30 years. I graduated from nursing back
 3 in 1978 from Western Memorial, and subsequent
 4 to that I did a number of continuing education
 5 health services management programs, long term
 6 care management, specialty in psychiatric
 7 nursing, and MBA, and I'm currently part time
 8 in a PhD program. That's my education. From
 9 an experience point of view, I've worked in
 10 varying positions all in the health system and
 11 all in the province, but again in different
 12 places; in Western, at the Waterford, out in
 13 Bonavista, Department of Health, the Nursing
 14 Association, so I've had a widespread
 15 experience over the 30 years, but it's all
 16 been in the provincial health system.
 17 COFFEY, Q.C.:
 18 Q. If I could, please, you have, I understand, a
 19 Bachelor of Nursing Degree?
 20 MS. ELLIOTT:
 21 A. Yes, I do.
 22 COFFEY, Q.C.:
 23 Q. And when would you have received that, do you
 24 recall?
 25 MS. ELLIOTT:

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1 A. 1983.
 2 COFFEY, Q.C.:
 3 Q. '83, and you have an MBA as well. When did
 4 you receive that?
 5 MS. ELLIOTT:
 6 A. 1991.
 7 COFFEY, Q.C.:
 8 Q. And that's from Memorial University?
 9 MS. ELLIOTT:
 10 A. Yes, it is.
 11 COFFEY, Q.C.:
 12 Q. Any particular area of focus?
 13 MS. ELLIOTT:
 14 A. No, just--they have a general program.
 15 COFFEY, Q.C.:
 16 Q. General degree. As well, you're enrolled in a
 17 PhD locally?
 18 MS. ELLIOTT:
 19 A. Yes, at the Faculty of Medicine at Memorial
 20 University in the Community Health Program.
 21 COFFEY, Q.C.:
 22 Q. Okay, in Community Health is the -
 23 MS. ELLIOTT:
 24 A. Yeah.
 25 COFFEY, Q.C.:

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1 Q. General area.
 2 MS. ELLIOTT:
 3 A. Uh-hm.
 4 COFFEY, Q.C.:
 5 Q. You've also indicated that you worked at one
 6 point with the Department of Health and
 7 Community Services?
 8 MS. ELLIOTT:
 9 A. Yes.
 10 COFFEY, Q.C.:
 11 Q. And do you recall when that was?
 12 MS. ELLIOTT:
 13 A. In 1997 to 1998--1999, sorry, two years.
 14 COFFEY, Q.C.:
 15 Q. What was your position?
 16 MS. ELLIOTT:
 17 A. I was the Assistant Deputy Minister of Board
 18 Services. Initially I was hired as
 19 Institutional Services, but later with
 20 regionalization the title has changed to Board
 21 Services.
 22 COFFEY, Q.C.:
 23 Q. And what does that mean in--what did that mean
 24 in practice?
 25 MS. ELLIOTT:

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1 A. Okay, well, as an Assistant Deputy Minister,
 2 you report to the Deputy Minister. A big part
 3 of the position was related to responding to
 4 complaints, dealing with advocacy groups,
 5 writing briefing notes, dealing with budgeting
 6 issues, dealing with policy issues, as well as
 7 doing, you know, some of the public
 8 appearances on behalf of a minister or deputy
 9 minister to give greetings and things like
 10 that.
 11 COFFEY, Q.C.:
 12 Q. What was Board Services?
 13 MS. ELLIOTT:
 14 A. With the Board Services, I would liaise with
 15 the regional health authorities in the
 16 province that if there was an issue came up,
 17 for example, like the cardiac surgery, well, I
 18 would interface with the people at the Health
 19 Care Corp for that to get information.
 20 COFFEY, Q.C.:
 21 Q. So you deal with the Health Care Corporation
 22 of St. John's, as it then was, on behalf of
 23 the department, the health authority in Corner
 24 Brook at the time -
 25 MS. ELLIOTT:

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1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. The one in Gander, the one in Grand Falls, and
 4 so on?
 5 MS. ELLIOTT:
 6 A. Yes, it was a provincial position, so I dealt
 7 with different people in the different
 8 authorities, depending on the issue that I
 9 happened to be working on.
 10 COFFEY, Q.C.:
 11 Q. And I take it, Ms. Moira Hennessey, do you
 12 know who she is?
 13 MS. ELLIOTT:
 14 A. Yes, I do.
 15 COFFEY, Q.C.:
 16 Q. So you would have been one of her
 17 predecessors?
 18 MS. ELLIOTT:
 19 A. Yes.
 20 COFFEY, Q.C.:
 21 Q. She had effectively--you had in 1997 through
 22 1999 the equivalent position back then. Who
 23 did you report to, who was the DM of the day?
 24 MS. ELLIOTT:
 25 A. Joan Dawe--no, Bob Williams, actually, first

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1 when I came in, and then it was Joan Dawe, and
 2 Debbie Fry. I had deputy ministers in two
 3 years, but Dr. Williams was the first.
 4 COFFEY, Q.C.:
 5 Q. And in 1999--from 1999 through to 2004, you
 6 were what?
 7 MS. ELLIOTT:
 8 A. I was Vice President at the Health Care
 9 Corporation of St. John's.
 10 COFFEY, Q.C.:
 11 Q. And Vice President for what?
 12 MS. ELLIOTT:
 13 A. Again I had three different titles in five
 14 years, but the one that was the predominant
 15 title was Vice President of Quality and
 16 Planning.
 17 COFFEY, Q.C.:
 18 Q. And at the time when you began there in 1999,
 19 I take it this would have been in St. John's?
 20 MS. ELLIOTT:
 21 A. Yes.
 22 COFFEY, Q.C.:
 23 Q. Who did you report to at that time?
 24 MS. ELLIOTT:
 25 A. Sister Elizabeth Davis.

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1 COFFEY, Q.C.:
 2 Q. And as time went on?
 3 MS. ELLIOTT:
 4 A. Mr. George Tilley.
 5 COFFEY, Q.C.:
 6 Q. And what during your tenure there did a Vice
 7 President of Quality and Planning do?
 8 MS. ELLIOTT:
 9 A. Okay, quality was just one part of my
 10 portfolio. I had different programs at
 11 different times. For example, the emergency
 12 department at one point reported to me and the
 13 Ambulance Services, the Cardiac--Cardiology
 14 Program, the Allied Health Services Program,
 15 are the ones to mind right now, but I had a
 16 varied portfolio over time.
 17 COFFEY, Q.C.:
 18 Q. If we could bring up, please, Registrar,
 19 Exhibit P-3470. This, I take it, Ms. Elliott,
 20 is your CV, as it were?
 21 MS. ELLIOTT:
 22 A. Yes, it is.
 23 COFFEY, Q.C.:
 24 Q. And it's--look at the second page, 1999
 25 through 2004, there's a description there and

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1 five bullets.
 2 MS. ELLIOTT:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. Of what VP Quality and Planning did. The
 6 first one, "Served in an executive management
 7 capacity to programs, such as Planning and
 8 Research, Quality Initiatives", and there's a
 9 listing of others including Information
 10 Management and Technology.
 11 MS. ELLIOTT:
 12 A. Yes.
 13 COFFEY, Q.C.:
 14 Q. And as well the last bullet says, "Chaired
 15 several key committees". Examples, Quality
 16 Initiatives is the first one, and the last
 17 listed there is Information Management.
 18 MS. ELLIOTT:
 19 A. Yes.
 20 COFFEY, Q.C.:
 21 Q. Two particular things I would like to discuss
 22 with you. What then happened in--I'm sorry,
 23 yes, 2004?
 24 MS. ELLIOTT:
 25 A. What happened in 2004?

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1 COFFEY, Q.C.:
 2 Q. Yes.
 3 MS. ELLIOTT:
 4 A. I decided to take a leave of absence. I had
 5 two things on my agenda that I wanted to deal
 6 with. One was a personal project that I knew
 7 would take up a significant amount of time,
 8 and another one was I had an opportunity to do
 9 just a part time special project with the
 10 Nursing Association, and I had worked there
 11 three years before in my career, so I thought,
 12 well, this will work nicely with the personal
 13 project because I knew from being in an
 14 executive position, that there was no way that
 15 I could do the personal project as well as do
 16 justice to an executive level position at the
 17 same time, so I asked for a leave of absence.
 18 COFFEY, Q.C.:
 19 Q. And I'm going to suggest that began in May of
 20 2004?
 21 MS. ELLIOTT:
 22 A. Yes, it did.
 23 COFFEY, Q.C.:
 24 Q. And you returned to--well, not to the Health
 25 Care Corporation, you returned to Eastern

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1 Health.
 2 MS. ELLIOTT:
 3 A. October 31st, Halloween.
 4 COFFEY, Q.C.:
 5 Q. 2005.
 6 MS. ELLIOTT:
 7 A. Of 2005, was my first day, in a different
 8 capacity.
 9 COFFEY, Q.C.:
 10 Q. And that capacity, if we look here, Ms.
 11 Elliott, is I take it the one described here
 12 first on the first page of your CV?
 13 MS. ELLIOTT:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. October, 2005, to the present, Director of
 17 Quality and Risk Management at Eastern Health?
 18 MS. ELLIOTT:
 19 A. Yes.
 20 COFFEY, Q.C.:
 21 Q. And I want to ask you about that in a moment,
 22 but I want to ask you about two aspects of
 23 your days as VP, Quality and Planning, but
 24 before I get into that, while you were VP
 25 Quality and Planning, did it ever come to your

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1 attention any problems, a whisper of any
 2 problems in the clinical laboratory at the
 3 General Hospital in relation to the issue of
 4 IHC testing?
 5 MS. ELLIOTT:
 6 A. Never.
 7 COFFEY, Q.C.:
 8 Q. And I'm particularly referring to the Dr.
 9 Ejeckam 2003 letter?
 10 MS. ELLIOTT:
 11 A. I had never heard of Dr. Ejeckam until May of
 12 2007, I think it was, when those documents
 13 were public, and my first question was who is
 14 Dr. Ejeckam.
 15 COFFEY, Q.C.:
 16 Q. And leaving Dr. Ejeckam aside, the issue which
 17 he raised in 2003 in his memos, the
 18 Commissioner has seen them a number of times,
 19 that back in 2003/2004 wasn't brought to your
 20 attention?
 21 MS. ELLIOTT:
 22 A. No, not that I recall because that's an
 23 unusual name, so that's--not that unusual
 24 names would stick out, but certainly like I
 25 said in May when I first heard about them in

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1 2007, that was my initial reaction, what is
 2 this all about.
 3 COFFEY, Q.C.:
 4 Q. And leaving aside Dr. Ejeckam's name, the
 5 issue of ER/PR and the six other IHC stains
 6 that he stopped utilizing beginning on April
 7 4th, 2003, the fact that there was a temporary
 8 suspension of IHC testing or certain IHC tests
 9 in St. John's, you didn't become aware of that
 10 at the time?
 11 MS. ELLIOTT:
 12 A. No, I certainly would have absolutely no
 13 memory of that.
 14 COFFEY, Q.C.:
 15 Q. What at the time then did a chair of--the
 16 Quality Initiatives Committee and the chair of
 17 it, which you did chair, I gather, for a
 18 number of years, and you oversaw it in your
 19 executive management capacity, the program of
 20 Quality Initiatives, what did they do at the
 21 time? During the time that you were VP, what
 22 was Quality Initiatives about?
 23 MS. ELLIOTT:
 24 A. Quality Initiatives had a staff of people,
 25 just a very small staff, I might add, that

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1 served as support to the rest of the
 2 organization. For example, they were people
 3 that you would look to when you're looking at
 4 client satisfaction, consumer feedback, help
 5 them with the accreditation processes, the
 6 infection control, the risk management, ATIPP
 7 requests, different things like that. So they
 8 were support to the rest of the organization
 9 and would facilitate such things as process
 10 improvement teams. Also at that time,
 11 utilization was within the Quality Initiatives
 12 Department because we had a big thrust on
 13 always trying to be more efficient because
 14 efficiency is one of the--mentions quality,
 15 and particularly when I think back to that
 16 time around the HAY review, there was a lot of
 17 pressure on the organization and we were
 18 really looking at in detail some of our
 19 services, the volumes, and how we were
 20 delivering them.
 21 COFFEY, Q.C.:
 22 Q. And Ms. Pilgrim has told us about a certain
 23 period that she was involved when she was--I
 24 don't remember the exact words, but the term
 25 she used for the position she occupied at the

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1 time was not very complimentary in her own
 2 view in terms of the way she was viewed
 3 because efficiencies were was what she was
 4 about.
 5 MS. ELLIOTT:
 6 A. Yes.
 7 COFFEY, Q.C.:
 8 Q. Was she on the staff at the time, did she
 9 report to you?
 10 MS. ELLIOTT:
 11 A. Ms. Pilgrim?
 12 COFFEY, Q.C.:
 13 Q. Ms. Pilgrim.
 14 MS. ELLIOTT:
 15 A. Yes, she did.
 16 COFFEY, Q.C.:
 17 Q. She did. How about Ms. Predham, Heather
 18 Predham?
 19 MS. ELLIOTT:
 20 A. Heather, no, didn't report to me. Sharon
 21 Smith was Director of Quality Initiatives.
 22 She reported to me.
 23 COFFEY, Q.C.:
 24 Q. And was Ms. Predham working in the department
 25 that you oversaw?

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1 MS. ELLIOTT:
 2 A. Yes, she was, she was in Quality Initiatives.
 3 COFFEY, Q.C.:
 4 Q. Who did she report to?
 5 MS. ELLIOTT:
 6 A. She reported to Sharon Smith.
 7 COFFEY, Q.C.:
 8 Q. Okay, Sharon Smith, who is currently the head
 9 of the Cancer Care Program?
 10 MS. ELLIOTT:
 11 A. Yes.
 12 COFFEY, Q.C.:
 13 Q. And you say a small staff in QI. What is
 14 that--what's small?
 15 MS. ELLIOTT:
 16 A. It might have only been five or six people,
 17 plus where they had Infection Control, you
 18 also had, you know, six infection control
 19 nurses, but for all the other components of
 20 the service within Quality, you only had about
 21 five or six people.
 22 COFFEY, Q.C.:
 23 Q. So five or six Infection Control staff, and
 24 about five or six others -
 25 MS. ELLIOTT:

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1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. Who handled everything else?
 4 MS. ELLIOTT:
 5 A. Yes, and Infection Control were very much just
 6 focused on the Infection Control component.
 7 COFFEY, Q.C.:
 8 Q. And I take it then that Quality Initiatives
 9 Department of the day, such as it was, wasn't
 10 expected to actually oversee quality assurance
 11 measures within -
 12 MS. ELLIOTT:
 13 A. No. In fact, the Health Care Corp quality
 14 planner approach to quality was quite similar
 15 to what it is in Eastern Health, which is that
 16 you had your program and departmental
 17 leaderships. Program leaderships tend to be
 18 the clinical services, you know, i.e. you'd
 19 have a director and a clinical chief, and
 20 sometimes you'd have an academic discipline
 21 chair which is from the university. So that
 22 would be your leadership for clinical
 23 services. Then you would have non-clinical
 24 services departments such as your finance,
 25 human resources, and that would be just the

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1 director. So the departmental and program
 2 leaderships were expected to be responsible
 3 for their own quality, i.e. in terms of
 4 monitoring it, identifying issues that needed
 5 to be addressed, and developing the action
 6 plans, but where Quality Initiatives staff
 7 would come into play, for example, you know,
 8 with the occurrences, if there were
 9 occurrences that needed help in investigation,
 10 following up, and helping in tracking and
 11 trending, to come over. If part of the action
 12 plan was to say we really need to look at this
 13 process and how to improve it, they would
 14 facilitate it, they facilitated things like
 15 planning days, but the actual responsibility
 16 for quality within a program belonged to the
 17 leadership and that's not unusual in health
 18 care because we're so specialized, you have t
 19 have the expertise in the area to be looking
 20 at the quality measures.
 21 COFFEY, Q.C.:
 22 Q. So, in effect, they were a--would act in an
 23 assistance role to the people in the line
 24 departments who were actually responsible for
 25 their own QA?

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1 MS. ELLIOTT:
 2 A. Yeah, consulting or facilitation kind of role.
 3 COFFEY, Q.C.:
 4 Q. But they wouldn't have performed any kind of
 5 an audit function in terms of ensuring that a
 6 particular place, such as the pathology
 7 section of the clinical laboratory, had a QA
 8 Program?
 9 MS. ELLIOTT:
 10 A. No, they wouldn't have the skillset for that,
 11 but what they would do is if a program -
 12 COFFEY, Q.C.:
 13 Q. If I could, the skillset is two things. One
 14 is to actually run a QA Program, which would
 15 be a particular skillset?
 16 MS. ELLIOTT:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. And another entirely skillset involved in
 20 saying to somebody, well, do you even have
 21 one; if so, outline it for me?
 22 MS. ELLIOTT:
 23 A. Yeah.
 24 COFFEY, Q.C.:
 25 Q. Did they do that, going around and ensuring

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1 that there is QA going on here?
 2 MS. ELLIOTT:
 3 A. The lab had a QA person assigned to them, but
 4 I wasn't at that level to be able to say that
 5 they actually worked with the program in doing
 6 any auditing, but what they certainly would be
 7 expected to do is if a program wanted to get
 8 into auditing because we would certainly
 9 promote the use of auditing -
 10 COFFEY, Q.C.:
 11 Q. Yes.
 12 MS. ELLIOTT:
 13 A. And if a program wanted help in trying to find
 14 auditing tools, they would certainly help in
 15 that way.
 16 COFFEY, Q.C.:
 17 Q. But ensuring the--from your perspective
 18 looking back at it, the QI's role at the time
 19 was in that era not to go around and ensure
 20 that line departments actually had a QA
 21 Program, and actually pursued it?
 22 MS. ELLIOTT:
 23 A. Yeah, we do not--quality in health care
 24 doesn't function as internal auditors, or
 25 monitoring. It was not that kind of a role.

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1 COFFEY, Q.C.:
 2 Q. I appreciate that, but even asking somebody to
 3 certify, like, the laboratory program to
 4 certify that there's QA in all the different
 5 divisions in the lab, and kind of check them
 6 off and somebody signs off on them, there's
 7 no--that wasn't being done?
 8 MS. ELLIOTT:
 9 A. No.
 10 COFFEY, Q.C.:
 11 Q. In those--that era, and that's about a five
 12 year period, 1999 through 2004, do you ever
 13 recall it ever being raised with you or to
 14 your knowledge in relation to your portfolio,
 15 any concern ever being raised about a lack of
 16 QA in the lab, or in particular aspects of the
 17 lab?
 18 MS. ELLIOTT:
 19 A. No, it never came to my attention, but I do
 20 remember, you know, being at things like
 21 executive committee, especially around budget
 22 time, of course, people would be requesting
 23 all kinds of new positions for the work that
 24 they felt needed to be done, so I would have
 25 heard then that the lab would be looking for

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1 new people. Not only the lab, but we would
 2 have meetings on the whole organization. So
 3 the lab would be one piece of your budgeting
 4 discussions.
 5 THE COMMISSIONER:
 6 Q. I'm not sure I understand that, Mr. Coffey.
 7 Are you saying that the new people that were
 8 being sought for particular kinds of
 9 positions, which--or what?
 10 MS. ELLIOTT:
 11 A. What I'm saying is that at an executive level
 12 at a meeting when it came to budget time -
 13 THE COMMISSIONER:
 14 Q. Uh-hm.
 15 MS. ELLIOTT:
 16 A. All programs and departments would submit a
 17 budget, and in that budget they would be
 18 looking for extra positions or new equipment
 19 or--so certainly at the time of budget
 20 discussions, you might hear about different
 21 needs that would come up in the lab, or any
 22 program really.
 23 THE COMMISSIONER:
 24 Q. So you're saying in the context of budgets,
 25 there might be requests which would relate to

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1 that area?

2 MS. ELLIOTT:

3 A. Yes.

4 THE COMMISSIONER:

5 Q. As opposed to your actually having learned in

6 your position -

7 MS. ELLIOTT:

8 A. Yeah.

9 THE COMMISSIONER:

10 Q. That there was an absence?

11 MS. ELLIOTT:

12 A. No, the lab would never have reported to me.

13 If they had issues related to their service

14 delivery, they would have reported that

15 through to Dr. Williams.

16 COFFEY, Q.C.:

17 Q. And information management, which was one of

18 your other hats that you wore?

19 MS. ELLIOTT:

20 A. Yes.

21 COFFEY, Q.C.:

22 Q. What do you recall about that, how involved

23 were you with that?

24 MS. ELLIOTT:

25 A. I used to co-chair a committee with Kent

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1 Decker, who was Vice President of

2 Administrative Services. So my only role

3 there was that we would have monthly meetings

4 and we had different stakeholders at the

5 table, internal stakeholders, as well as the

6 Centre for Health Information. We had invited

7 them to become part of our group, and the

8 whole premise of that committee was to look at

9 what are our information needs, what are the

10 things we need in this organization, and that

11 can be a whole range, from things like library

12 services, our e-mail systems, consolidation of

13 clinical systems and Meditech, consolidation

14 of administrative systems. So it was a very

15 broad ranging type of topics that we would

16 discuss in those meetings.

17 COFFEY, Q.C.:

18 Q. And do you recall in relation to information

19 management ever any concerns ever having been

20 brought to your attention about inadequacies

21 in the information management capacity of the

22 laboratory?

23 MS. ELLIOTT:

24 A. Not in the laboratory specifically. I mean,

25 you know, every meeting we had was about the

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1 problems that we have and all the needs that

2 we have, and people trying to lobby to get

3 their needs taken care of first, but I don't

4 remember specifically dealing with any

5 particular issue on the lab itself.

6 COFFEY, Q.C.:

7 Q. Okay. You have indicated to the Commissioner

8 that certainly in May of 2007, you became

9 aware of Dr. Ejeckam in the sense of his name

10 certainly.

11 MS. ELLIOTT:

12 A. Yes.

13 COFFEY, Q.C.:

14 Q. And the topic.

15 MS. ELLIOTT:

16 A. And the memo, yes.

17 COFFEY, Q.C.:

18 Q. And you've had some time since then presumably

19 to reflect upon it. Are you able to advise

20 the Commissioner--provide the Commissioner

21 with any explanation as to what it was about

22 the structure of the Health Care Corporation

23 at the time in 2003, in the spring of 2003,

24 April, May, and June, 2003, that allowed

25 apparently Dr. Ejeckam's actions and memos to

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1 come and go, and it never got to--it was never

2 brought to your attention as the VP

3 responsible for Quality Initiatives?

4 MS. ELLIOTT:

5 A. Uh-hm.

6 COFFEY, Q.C.:

7 Q. What was it about that structure?

8 MS. ELLIOTT:

9 A. Well, the structure was set up that we had

10 numerous different programs and departments

11 and that with our quality, the actual

12 leadership would have responsibility for

13 quality. What got reported through to the

14 quality committee of which I chaired would

15 have been like, say, for example, they were

16 expected to provide an annual report and

17 identify their top three areas of concern when

18 it comes to quality and the action plan they

19 were going to do. And having said that, that

20 daily--on a daily basis regardless of what

21 program you're in, there are always numerous

22 issues that people are trying to deal with.

23 So, there are times that if there's an issue

24 or problem, a leadership team might say, okay,

25 we have this problem, let's deal with it and

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1 fix it and then that might never, ever get to
 2 a quality committee. But if there was things
 3 that required the attention of the executive,
 4 you would expect things that were a problem in
 5 a department to get to their vice president
 6 for the lab, for example. So, you would have
 7 expected an issue like that to at least have
 8 been brought through to Dr. Williams'
 9 attention because my understanding when I did
 10 learn, in May, one of the first questions you,
 11 of course, would ask is, why did we not hear
 12 of this before?
 13 COFFEY, Q.C.:
 14 Q. Um-hm.
 15 MS. ELLIOTT:
 16 A. And the response I was told was that, well, it
 17 was an issue, we dealt with it and it was
 18 fixed.
 19 THE COMMISSIONER:
 20 Q. This annual report should it have then
 21 included a reference to that?
 22 MS. ELLIOTT:
 23 A. It's not really a yes or not because depending
 24 on the issue, some programs have had problems
 25 and they deal with it and wouldn't put it in

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1 because they feel that it's no problem now.
 2 So, we would ask them to focus on their
 3 priority issues. And like I say, most
 4 programs do have loads of issues that they're
 5 dealing with. So, I think that would be more
 6 of a director's discretion, whether or not
 7 they put that in their annual report, but
 8 certainly at a minimum, you would have
 9 expected an issue like that, particularly of
 10 stoppage and concern, that it should, at a
 11 minimum have gone to an executive level.
 12 COFFEY, Q.C.:
 13 Q. Executive, in this context means the executive
 14 of the Health Care Corporation.
 15 MS. ELLIOTT:
 16 A. Yes, the vice president for that particular
 17 program.
 18 THE COMMISSIONER:
 19 Q. (Inaudible) Dr. Williams.
 20 MS. ELLIOTT:
 21 A. Yes. And some directors probably would make
 22 mention of that, I can't think of any example
 23 off the top of my head about we did have this
 24 issue, but we fixed it, it's okay now and it
 25 might be just a few sentences. So, some

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1 directors might do something like that where
 2 others might, if they're doing their annual
 3 report and if it was an issue that happened
 4 six, seven months before that, they might not
 5 even think to mention it.
 6 COFFEY, Q.C.:
 7 Q. So, there was no mechanism in place to ensure
 8 that the type of activity that's evidenced or
 9 referred in Dr. Ejeckam's three memos,
 10 particularly the first and third one, was
 11 brought to the VP's attention who's
 12 responsible for quality initiatives in that
 13 organization, there wasn't.
 14 MS. ELLIOTT:
 15 A. No, you would expect it to go there first
 16 before--you wouldn't expect the issue to come
 17 to a quality initiatives committee, you would
 18 expect -
 19 COFFEY, Q.C.:
 20 Q. Go to Dr. Williams first.
 21 MS. ELLIOTT:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. And Dr. Williams to let you know.

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1 MS. ELLIOTT:
 2 A. Again, depending on if they felt they had the
 3 problem taken care of.
 4 COFFEY, Q.C.:
 5 Q. Why would that matter? I mean, why would it
 6 matter about--if the problem comes up, even if
 7 it's a huge problem, but it comes up and we
 8 deal with it within a month -
 9 MS. ELLIOTT:
 10 A. Yes.
 11 COFFEY, Q.C.:
 12 Q. - why wouldn't it be important or wasn't that
 13 important at the time for yourself as VP
 14 responsible for quality initiatives to be
 15 brought into the loop?
 16 MS. ELLIOTT:
 17 A. Most directors probably would put some--we had
 18 this problem, it's now fixed--because I guess
 19 one of the things is that we're working with
 20 people, initially when people were doing up
 21 their reports, you'd get reports in that were
 22 two and three inches thick. And we were
 23 trying to streamline the amount of information
 24 coming through because there was some programs
 25 wanted a report on every single thing that

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1 they did and every single issue. So, we were
 2 trying to get people to focus on the
 3 priorities. In particular, what we were
 4 interested in was things that crossed
 5 portfolios. So, there was an issue that you
 6 were dealing with in your program, but it
 7 required collaborating with other programs.
 8 You certainly would expect that to come
 9 through.
 10 COFFEY, Q.C.:
 11 Q. Where was your office located while you were
 12 VP?
 13 MS. ELLIOTT:
 14 A. At the Health Science Centre.
 15 COFFEY, Q.C.:
 16 Q. So, you were in the same building, in effect,
 17 with Dr. Ejeckam apparently.
 18 MS. ELLIOTT:
 19 A. Yes.
 20 COFFEY, Q.C.:
 21 Q. In the General Hospital site, as it turns out.
 22 MS. ELLIOTT:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. At the time that you were VP, was there any

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1 policy in relation to the reporting of adverse
 2 events?
 3 MS. ELLIOTT:
 4 A. Yes, there was. I--we called it occurrence
 5 reporting, critical incident, critical
 6 occurrence, sentinel events was only a term
 7 now that's come in the last couple of years.
 8 COFFEY, Q.C.:
 9 Q. And how did that work? Were they supposed to
 10 come to your attention or to your staff's
 11 attention?
 12 MS. ELLIOTT:
 13 A. Okay, if they were occurrence, it would be
 14 reported to the manager of the program
 15 regardless of what that occurrence took place.
 16 Then they're expected to complete a form and
 17 send it to the quality initiatives department.
 18 As a VP, I wouldn't get copies of the
 19 occurrence reports. Even as a director now, I
 20 don't get copies of the occurrence reports.
 21 What would happen then, the quality people do
 22 the tracking and trending, but certainly any
 23 occurrences back then were expected to be
 24 reported.
 25 COFFEY, Q.C.:

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1 Q. And you've had a chance to see Dr. Ejeckam's
 2 memo, certainly, since, I take it.
 3 MS. ELLIOTT:
 4 A. Yes.
 5 COFFEY, Q.C.:
 6 Q. And he wrote three of them. Would the subject
 7 matters of those qualify under the policy back
 8 in '03 as requiring an occurrence report?
 9 MS. ELLIOTT:
 10 A. I think so, you know, it was an issue that was
 11 affecting service, yeah, I would think that
 12 that should have been and a lot of people, I
 13 mean, you've probably heard people that came
 14 before me, you know, this is a whole growth
 15 area. We've identified it, not only in our
 16 province, but nationally and internationally
 17 there is gross under-reporting of events in
 18 health care that need attention.
 19 COFFEY, Q.C.:
 20 Q. Now, were you involved with the MAC, did you
 21 sit on the Medical Advisory Committee?
 22 MS. ELLIOTT:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. Can you bring up, please, Exhibit P-3469? And

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1 was that part of your occupation as the VP?
 2 MS. ELLIOTT:
 3 A. Yes, to attend MAC.
 4 COFFEY, Q.C.:
 5 Q. Okay, so that would go back to 1999, I take
 6 it?
 7 MS. ELLIOTT:
 8 A. Yes.
 9 COFFEY, Q.C.:
 10 Q. And continue through '04. Here, this is
 11 December 10, 2003, you'll see your name there
 12 on the top, I apologize, page 11, December 10,
 13 2003, yours is the third on the top right.
 14 And if we could go please to--actually what
 15 I'll do is I'll turn the pages here myself--
 16 it's page two of the minutes and you'll notice
 17 here it's "clinical chief/program reports".
 18 MS. ELLIOTT:
 19 A. Yes.
 20 COFFEY, Q.C.:
 21 Q. "Laboratory medicine program, Dr. Donald Cook
 22 presented the report of the laboratory
 23 medicine program highlighting the following".
 24 The next page is the surgical pathology review
 25 committee and it goes on to talk at some

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1 length about that report and there is a
 2 reference there, you'll notice here, to Dr.
 3 Ejeckam.
 4 MS. ELLIOTT:
 5 A. Yes.
 6 COFFEY, Q.C.:
 7 Q. And I gather this related to Dr. Ejeckam's
 8 campaign to--I don't know if the Commissioner
 9 has heard about this--to get physicians to
 10 fill out requisition forms or portions of
 11 forms that were going to the lab. He spent a
 12 lot of time trying to convince his fellow
 13 physicians to do that. So, in relation then
 14 to the topic of ER and PR and breast cancer -
 15 MS. ELLIOTT:
 16 A. Yes.
 17 COFFEY, Q.C.:
 18 Q. - in the whole time then that you were
 19 attending these MAC reports, while you were
 20 VP, ER/PR never got mentioned that you can
 21 recall?
 22 MS. ELLIOTT:
 23 A. No, not that I can remember.
 24 COFFEY, Q.C.:
 25 Q. If we could, please, same minutes, under New

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1 Business, Peer Review. "The draft peer review
 2 policy has being given to clinical chiefs and
 3 now to the MAC. Dr. Williams requested the
 4 members review this policy over the next month
 5 and prepare to discuss it at the January
 6 meeting. Once there is discussion and
 7 feedback on this policy, it will then be
 8 forwarded to the quarterly medical staff for
 9 approval, as per the medical staff bylaws
 10 rules and regulations".
 11 Now, Ms. Elliott, during your time as VP,
 12 what's your recollection of how peer review or
 13 quality review was handled.
 14 MS. ELLIOTT:
 15 A. Okay. Peer review guidelines, I remember they
 16 were a long time coming. There had to be a
 17 lot of consultation and if I remember
 18 correctly, I think Jeff Benson was involved in
 19 helping them develop those guidelines, as well
 20 as I think people from the quality initiatives
 21 department. So, yeah, it did result in a
 22 policy, three years in the making and we did
 23 use it when we had to do peer reviews. Most
 24 often peer reviews that were done, were done
 25 on physicians. So, that's why there was a lot

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1 of medical leadership here.
 2 COFFEY, Q.C.:
 3 Q. How about quality review?
 4 MS. ELLIOTT:
 5 A. Quality review. I don't think it was as
 6 formalized, if I remember correctly. There
 7 were certain done, quality reviews. And that
 8 was a big part of where the staff and the
 9 quality initiative department would help to go
 10 out to a team if there was an occurrence and
 11 it tended to be a little bit broader than peer
 12 review. Peer review tended to be mostly
 13 looking at the practice of another individual
 14 whereas the quality review was much broader
 15 than that. It would look at more the systems
 16 issue, the equipment, the policies, the people
 17 and the drugs and all that sort of thing.
 18 COFFEY, Q.C.:
 19 Q. And did you have any understanding while you
 20 were VP of what might be required to clothe a
 21 particular activity with the character of
 22 being a quality review? What had to happen in
 23 order for something to be characterized as a
 24 quality review?
 25 MS. ELLIOTT:

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1 A. Usually there was some kind of occurrence or
 2 event that would say we have to look at things
 3 here.
 4 COFFEY, Q.C.:
 5 Q. Was there any process in place, like label
 6 that would be assigned to it or, like how
 7 would you know that something was a quality
 8 review as opposed to any other investigation?
 9 MS. ELLIOTT:
 10 A. It, well it would tend to involve more of the
 11 team members, like a follow up on an
 12 occurrence, for example a fall, that's
 13 considered an occurrence if a patient fell, so
 14 that would be very simple, you would go over
 15 or just chat sometimes to the manager, but
 16 things that we knew that involved more of the
 17 team or more of the systems issues would spark
 18 a quality review and not every occurrence
 19 would spark it, it would only be deemed, I
 20 guess there would be discussion in the
 21 management team as to whether or not that
 22 warranted a quality review.
 23 COFFEY, Q.C.:
 24 Q. But if it warranted a quality review, was
 25 there any kind of signal, as it were, or bell

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1 rang saying, okay, now it's a quality review
 2 or was it just very informal? Did it become a
 3 quality review simply because somebody called
 4 it a quality review?
 5 MS. ELLIOTT:
 6 A. The quality review term was used loosely and I
 7 think that most often it was more about for
 8 more serious events, I mean, as you know, the
 9 goal of quality review is to look and making
 10 sure well what went on here, how can we make
 11 sure that it doesn't happen again, so
 12 certainly things that were adverse, patients
 13 who were adversely affected you would want
 14 quality reviews done on, but then sometimes,
 15 like if an issue happened and they just wanted
 16 to look at how they were managing, for
 17 example, you know, their wait list or
 18 something, you could also do some quality
 19 reviews on that, but it was used, a very loose
 20 term, in fact, one of the things we're doing
 21 now is developing a document so that it gives
 22 people more structure and formalized guidance
 23 as to when you do a quality review.
 24 COFFEY, Q.C.:
 25 Q. What was the effect of calling something a

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1 quality review?
 2 MS. ELLIOTT:
 3 A. The intent was that if you're doing it for
 4 quality review purposes, that it would be
 5 protected under the Evidence Act as how we
 6 historically worked, so that then people could
 7 feel free to give their opinions and, you
 8 know, because that's one of the things you
 9 want in health care, you want people--when
 10 things go wrong, you want people to come
 11 forward and give their thoughts as to how we
 12 can make it better.
 13 COFFEY, Q.C.:
 14 Q. And what about, I take it if something
 15 happened and there was a quality review
 16 conducted, would there be any parallel review
 17 conducted that could be disclosed, the
 18 opinions could be disclosed to the patient who
 19 is affected? See, if you only conduct one
 20 investigation and call it a quality review,
 21 then the patient is never finding out the
 22 opinions that are expressed.
 23 MS. ELLIOTT:
 24 A. Yeah.
 25 COFFEY, Q.C.:

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1 Q. So was there any such process?
 2 MS. ELLIOTT:
 3 A. Well for example with an occurrence, like the
 4 facts should be in the chart, like if someone
 5 fell at 2:00 in the morning, that's a fact,
 6 that should be in the chart and even things
 7 like with quality reviews, most of what you
 8 were dealing with--the majority of things are
 9 facts, very few, little of it is all opinion
 10 and certainly in disclosures that you would
 11 share the facts with the family or the
 12 patient.
 13 COFFEY, Q.C.:
 14 Q. Including, for example, the reasons for
 15 something like the patient fell, there was
 16 water on the floor, the patient slipped?
 17 MS. ELLIOTT:
 18 A. Yes, yes, you would expect that they would
 19 tell that.
 20 COFFEY, Q.C.:
 21 Q. Was there any process in place, you know,
 22 while you were VP that you were aware of to
 23 ensure that the factual end of a quality
 24 review actually ended up on a patient's chart?
 25 MS. ELLIOTT:

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1 A. That was sort of the understanding and
 2 expectations that if an event happened and
 3 again--or whether there was a medication error
 4 or a fall, that you would expect those facts
 5 to be in the chart. But what you wouldn't see
 6 and then I think then when you look at some of
 7 the opinions, sometimes you can be involved in
 8 a quality review and you'll have one physician
 9 say, oh, now if I had of been that patient's
 10 doctor, I don't think I would have did this,
 11 like that's the kind of opinion, because
 12 they're not always accurate. I mean, I've
 13 seen times where a physician blurted out to a
 14 family that the patient had died from some
 15 cause and then the autopsy comes back and
 16 finds out it was a different cause. So the
 17 thing is you want to make sure that when you
 18 do disclose to a patient that you actually
 19 have facts and not just speculation.
 20 COFFEY, Q.C.:
 21 Q. Was there any process in place that you were
 22 aware of within that organization, the Health
 23 Care Corporation as it then was, that ensured
 24 that the factual part of a quality review
 25 report or investigation actually made it to a

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1 chart, the facts?
 2 MS. ELLIOTT:
 3 A. Yeah, there was an expectation, but it was no
 4 auditing of that.
 5 COFFEY, Q.C.:
 6 Q. You returned to, well what was then Eastern
 7 Health in the last day of October, 2005 as the
 8 director of quality assurance?
 9 MS. ELLIOTT:
 10 A. I think the title I was hired with was
 11 director of quality enhancement.
 12 COFFEY, Q.C.:
 13 Q. Quality enhancement, okay, and certainly -
 14 MS. ELLIOTT:
 15 A. That has changed again.
 16 COFFEY, Q.C.:
 17 Q. Director of quality enhancement and in your
 18 C.V. now, it's called the director of quality
 19 and risk management.
 20 MS. ELLIOTT:
 21 A. Yes.
 22 COFFEY, Q.C.:
 23 Q. So I take it it's changed even more.
 24 MS. ELLIOTT:
 25 A. We changed the title again in February of

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1 2006.
 2 COFFEY, Q.C.:
 3 Q. So as the director of quality enhancement when
 4 you returned to work with Eastern Health, what
 5 was your role at that time?
 6 MS. ELLIOTT:
 7 A. Okay. I was the first person to hold the
 8 position because it was a regional position.
 9 We were one of the last departments to be
 10 established within Eastern Health, so when I
 11 came into it, my main priority was to be able
 12 to sort out how we were going to structure and
 13 organize quality throughout the region because
 14 when I came into it, Health Care Corp were the
 15 only people that still had a few people in
 16 place. I think there were four staff there at
 17 the Health Care Corp piece of it and Heather
 18 had been acting for just the Health Care Corp
 19 piece, but not for the regions, so there were
 20 four there. Avalon had one person,
 21 Peninsulas, which is Bonavista, Clarenville
 22 and Burin had nobody working in quality
 23 because of regionalization restructuring,
 24 people had moved out of these positions into
 25 other positions and they had been left vacant

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1 for quite some time. Long-term care which had
 2 over a thousand residents and two or three
 3 thousand staff had not had anybody working in
 4 quality for well over a year. Community
 5 Health Services in the St. John's region, who
 6 had had three people work in quality, they all
 7 had moved on to different jobs, so when I came
 8 in, what I was faced with was trying to set up
 9 a quality department in the region with a very
 10 small number of staff. I had a total of five
 11 staff which is really 25 percent of what we
 12 have now and we still don't have all our
 13 vacancies filled. So it was a skeleton staff
 14 trying to set up in a whole new area, so I was
 15 charged with finding out, well what did people
 16 do in quality and we used to call them the
 17 legacy organizations? I had been familiar
 18 with the Health Care Corp quality program
 19 because I had spent five years there, but I
 20 didn't know what they do in the nursing homes
 21 or out in Burin, Bonavista, so a big part of
 22 the main responsibility was trying to figure
 23 out how we were going to organize quality in
 24 this new regional organization.
 25 COFFEY, Q.C.:

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1 Q. And Ms. Predham had been the acting director
 2 before -
 3 MS. ELLIOTT:
 4 A. Just for the Health Care Corp piece, yeah, she
 5 wasn't for the region.
 6 COFFEY, Q.C.:
 7 Q. - just before you were hired. So you arrive
 8 at work, you take over as the director.
 9 MS. ELLIOTT:
 10 A. Yes.
 11 COFFEY, Q.C.:
 12 Q. If we could look, please, at Exhibit P-2982?
 13 At the top of the page here, an e-mail from
 14 Heather Predham to yourself, "current tally
 15 for ER/PR, November 1, 2005, 4:55 p.m."
 16 "Here's my last "formal" update, we still have
 17 about 20 people who we aren't getting an
 18 answer or we can't locate and there are only
 19 22 left to panel. Signed Heather." And she's
 20 forwarding you an e-mail that she had sent on
 21 October 26th, the week before to Dr. Williams
 22 and Patricia Pilgrim and the Commissioner has
 23 already seen that e-mail. So you arrive, Ms.
 24 Predham becomes what? She is then the -
 25 MS. ELLIOTT:

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1 A. I think she moved back into her old position
 2 then which was manager of quality and risk
 3 management at the Health Care Corp because she
 4 had only been acting for two years because
 5 everybody knew restructuring is coming, Sharon
 6 Smith had moved into a clinical efficiency
 7 position, so she had been acting because of
 8 that reason and then she moved back into her
 9 permanent position.
 10 COFFEY, Q.C.:
 11 Q. So in terms of ER and PR, what, if anything,
 12 did you know when you went to work about that
 13 on October 31st?
 14 MS. ELLIOTT:
 15 A. Nothing. In fact, when I got this e-mail and
 16 one of the first questions I had was what is
 17 ER/PR? When I got this e-mail, of course,
 18 before that I never asked.
 19 COFFEY, Q.C.:
 20 Q. And who was it that briefed you about the
 21 topic and its status at the time?
 22 MS. ELLIOTT:
 23 A. Heather Predham.
 24 COFFEY, Q.C.:
 25 Q. And if we could look, please, at Exhibit P-

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1 0149? This is a series of e-mails, the last
 2 of them is Monday, November 7th, 2005, it's
 3 from Ms. Predham to yourself, copied to Ms.
 4 Pilgrim. She says, "For your information, I
 5 had to send this Friday afternoon to Moira
 6 Hennessey for Dr. Williams. Signed Heather."
 7 MS. ELLIOTT:
 8 A. Uh-hm.
 9 COFFEY, Q.C.:
 10 Q. And then the e-mail she had forwarded to you
 11 was from Friday, November 4th, to Moira
 12 Hennessey and Dr. Williams. It's re: ER/PR
 13 update, a whole breakdown of a lot of numbers
 14 and then she concludes by saying, "I
 15 understand that Dr. Williams has attempted to
 16 reach you to discuss the quality review. He
 17 will be following up with you on Monday." And
 18 this is addressed to Ms. Hennessey, who was
 19 the board service's ADM of the day.
 20 MS. ELLIOTT:
 21 A. Yes, she followed me.
 22 COFFEY, Q.C.:
 23 Q. What do you recall then being told about the
 24 quality review? What did you learn about it,
 25 about the situation at the time you first went

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1 to work, that first week?
 2 MS. ELLIOTT:
 3 A. Okay, my recall on the first, like I said, the
 4 question I had was what is ER/PR and it took
 5 me months to truly understand all the
 6 intricacies of this, but I had understood that
 7 what had happened at the lab in May of 2005
 8 had discovered--or oncology had discovered
 9 that a patient's condition had changed and
 10 they looked at the lab testing because they
 11 had been using a DAKO system, went to Ventana
 12 and when they took the specimen and retested
 13 it on the Ventana, that there was a change and
 14 they decided to look at some more. So what I
 15 was told was that they looked at several
 16 patient slides and saw that there was a change
 17 and they thought, oh, we have an issue here,
 18 we need to deal with this. So what I was told
 19 is that they had stopped doing the testing,
 20 that they had made arrangements for the
 21 testing to be done in Mount Sinai for
 22 certainly on a go-forward basis for new
 23 people, as well as they were going to go back
 24 several years to identify people who had been
 25 negative just to check them again in the event

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1 that they could be offered a treatment change,
 2 such as Tamoxifen which the history shows that
 3 even if there's a delay in offering it, so
 4 they had made a conscious decision that we
 5 have a problem here, there could be people
 6 affected, so we need to go back and review
 7 this. So I was given the assurance that
 8 testing has stopped, the were using the gold
 9 standard lab to do the testing, that they had
 10 already had external reviews done, that they
 11 had the pathology and external review done by
 12 a pathologist, as well as a technologist.
 13 COFFEY, Q.C.:
 14 Q. So that's your introduction to it.
 15 MS. ELLIOTT:
 16 A. That was it, yeah.
 17 COFFEY, Q.C.:
 18 Q. And if we could look, please, at Exhibit P-
 19 1763? Because this is a sheet of paper saying
 20 "immunohistochemistry review, Trish
 21 Wegrynowski, pathology consultant, four copies
 22 provided". The third one, three of four is
 23 Heather Predham/Pam Elliott.
 24 MS. ELLIOTT:
 25 A. Uh-hm.

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1 COFFEY, Q.C.:

2 Q. So did you receive a copy of Ms. Wegrynowski's

3 report?

4 MS. ELLIOTT:

5 A. Not at that time.

6 COFFEY, Q.C.:

7 Q. Despite the fact that -

8 MS. ELLIOTT:

9 A. I know and that came from--Bob tended to put,

10 you know, HP/PE but it was months and months

11 later before I knew that the copy was in the

12 office.

13 COFFEY, Q.C.:

14 Q. Okay, so when did you first become aware of

15 the existence of Dr. Banerjee's and Trish

16 Wegrynowski's reports, and their separate

17 reports, 2005 reports?

18 MS. ELLIOTT:

19 A. Yeah, I think they wrote two each, was it, was

20 my understanding.

21 COFFEY, Q.C.:

22 Q. It was two each, but initially October 17th,

23 2005 is Dr. Banerjee's.

24 MS. ELLIOTT:

25 A. Yeah.

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1 COFFEY, Q.C.:

2 Q. November 9th, 2005 is Trish Wegrynowski's

3 report.

4 MS. ELLIOTT:

5 A. Yes.

6 COFFEY, Q.C.:

7 Q. When did you first become aware that they were

8 in the quality office?

9 MS. ELLIOTT:

10 A. I can't recall the exact date, but I know it

11 was a long time after. I knew they were in

12 the organization, but that wasn't unusual that

13 a peer review report would be in the

14 organization and a copy not be in quality,

15 because sometimes there were peer reviews done

16 even when I was at the Health Care Corp that I

17 would never have been party to or quality to.

18 What I had been told is that the lab had the

19 reports, that they were looking at the

20 recommendations and they were developing a

21 spreadsheet and action plan and they were

22 trying to implement them. There were a couple

23 of, what I was told that there was just a

24 couple of things that they think they couldn't

25 implement, so from a director of quality and

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1 risk management point of view, I was thinking,

2 okay, so they've had reviews, the experts were

3 in, the problems have been identified and

4 they're taking action to fix them.

5 COFFEY, Q.C.:

6 Q. And how about asking the question, well why

7 did this happen? Did that occur to you?

8 MS. ELLIOTT:

9 A. Yes, and it has been asked on a number of

10 times -

11 COFFEY, Q.C.:

12 Q. Well at the time when you were first

13 introduced to this and you go to work October,

14 the end of October, you're there early

15 November, you're told in an e-mail, if we go

16 back to P-0149 please? Looking through that

17 e-mail that was forwarded to you that Monday

18 morning, November 7th, by Ms. Predham. She

19 refers to, "Dr. Williams has attempted to

20 reach you. He will be following up with you

21 on Monday." And that's concerning the quality

22 review, to discuss the quality review.

23 MS. ELLIOTT:

24 A. Yeah.

25 COFFEY, Q.C.:

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1 Q. I mean, were you surprised, for example, to

2 see that? You didn't know what the results

3 were.

4 MS. ELLIOTT:

5 A. No.

6 COFFEY, Q.C.:

7 Q. And that didn't--I mean, this lady occupied

8 the position you used to occupy, responsible

9 for board services, Ms. Hennessey did.

10 MS. ELLIOTT:

11 A. Oh yes, yes, okay.

12 COFFEY, Q.C.:

13 Q. Right?

14 MS. ELLIOTT:

15 A. Yeah.

16 COFFEY, Q.C.:

17 Q. And this is an e-mail that Heather Predham is

18 sending to her saying Dr. Williams has tried

19 to reach you to discuss the quality review and

20 he'll get back to you on Monday.

21 MS. ELLIOTT:

22 A. Yeah, you mean Dr. Williams through Moira

23 Hennessey, yes.

24 COFFEY, Q.C.:

25 Q. Yes.

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1 MS. ELLIOTT:
 2 A. No, that wouldn't have triggered me because as
 3 a matter of fact in my briefing from Heather
 4 that first week, I had asked, does the
 5 Department of Health know? And she said, yes.
 6 COFFEY, Q.C.:
 7 Q. But know what?
 8 MS. ELLIOTT:
 9 A. That there was an issue with the testing in
 10 the lab. When she briefed me on it and that
 11 we would have to retest these people, then I
 12 asked, I said does the Department of Health
 13 know because I had worked at the Department of
 14 Health and I would have thought that would
 15 have been an issue that the Department of
 16 Health would know and obviously they did.
 17 COFFEY, Q.C.:
 18 Q. Oh the Department certainly knew about the
 19 issue, it had been in the media for a month or
 20 more, actually.
 21 MS. ELLIOTT:
 22 A. Uh-hm.
 23 COFFEY, Q.C.:
 24 Q. But the Department receiving or being told
 25 about to discuss the quality of review with

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1 the Department, did that surprise you that Dr.
 2 Williams, according to this e-mail was
 3 intending to or purporting to potentially
 4 discuss this with Ms. Hennessey?
 5 MS. ELLIOTT:
 6 A. Yeah. I didn't take that as he was going to
 7 discuss the reports of the specialist. I took
 8 that to read and again, quality review is used
 9 very loosely sometimes, that he would be
 10 talking with Moira about what we were doing
 11 about it and what were the problems
 12 identified.
 13 COFFEY, Q.C.:
 14 Q. Exactly, the problems identified.
 15 MS. ELLIOTT:
 16 A. Yes.
 17 COFFEY, Q.C.:
 18 Q. And i.e. the reason for it.
 19 MS. ELLIOTT:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. And if he had been talking to her about it,
 23 unless he knew something about it himself in
 24 the sense that he knew pathology, he would
 25 have only gotten that from the external

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1 reviews. Did you discuss that -
 2 MS. ELLIOTT:
 3 A. Yes, or I would assume that his own leadership
 4 team would have given him some information
 5 about the issues they were experiencing in the
 6 lab, so the external reviews would be one
 7 piece, I would think, of the quality review,
 8 so again, I don't know exactly what would have
 9 been meant to Moira in that e-mail for the
 10 quality review.
 11 COFFEY, Q.C.:
 12 Q. And when did you actually learn that copies of
 13 those reports were in your office, not your
 14 own office but in your office complex?
 15 MS. ELLIOTT:
 16 A. I would think it was probably, oh, you know,
 17 it's hard to remember last week, but if I were
 18 to guess at it, it probably have been the
 19 spring of 2006, maybe May or June because if I
 20 recall, I think they were going to a meeting
 21 to talk about the update and I remember
 22 saying, sure I haven't even seen the reports
 23 and Heather said, oh, I got one in my office,
 24 but she said, I can't copy it because we don't
 25 copy these reports and I said well just let me

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1 peruse it to get a sense.
 2 COFFEY, Q.C.:
 3 Q. And did you do so?
 4 MS. ELLIOTT:
 5 A. I did peruse it, yes.
 6 COFFEY, Q.C.:
 7 Q. And that would be Dr. Banerjee's and Trish
 8 Wegrynowski's original report, the first
 9 reports from each of them?
 10 MS. ELLIOTT:
 11 A. Yes, some of the terminology didn't mean a lot
 12 to me, but what it did, it would certainly
 13 reflect that what I was being told said there
 14 were a number of contributing factors to this
 15 issue.
 16 COFFEY, Q.C.:
 17 Q. And this meeting that you were going to, you
 18 recall in the spring of '06, I take it that
 19 was to discuss their return visit, the reports
 20 from their return visits?
 21 MS. ELLIOTT:
 22 A. Yeah, I think it was the status, you know,
 23 update about where they were with the
 24 recommendation, if I recall.
 25 COFFEY, Q.C.:

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1 Q. It would be around June 1 or June 30th, '06.
 2 MS. ELLIOTT:
 3 A. Yeah, I mean, I can count on one hand the
 4 number of meetings that I went to with Dr.
 5 Williams in terms of and with the lab people
 6 itself, because, you know, my understanding is
 7 that the leadership had it in hand and
 8 Heather, from our department, we had made the
 9 conscious decision that she would stay
 10 managing this file while I focused on the
 11 other regional aspects.
 12 COFFEY, Q.C.:
 13 Q. Now did you and Ms. Predham discuss that
 14 explicitly?
 15 MS. ELLIOTT:
 16 A. Yes.
 17 COFFEY, Q.C.:
 18 Q. And what was said? When was it discussed and
 19 what was said?
 20 MS. ELLIOTT:
 21 A. We discussed it on a number of occasions
 22 actually because I know, and in fact I offered
 23 in the first, I guess, six, seven months to,
 24 did she want me to take over that file and she
 25 said no because it wasn't--and understandably

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1 so, was that it would take her too long to get
 2 me up to scratch on everything that has been
 3 done and then two of us would have been tied
 4 up for that--then plus the other things, like
 5 someone had to keep their eye on the balls
 6 that were in the air in the other parts of the
 7 region because we had a lot of demands and
 8 expectations on us, like we had an
 9 accreditation survey coming next year and we
 10 had no one in accreditation. I had no manager
 11 for infection control, the nurses were
 12 reporting directly to me. At the time we
 13 still hadn't had an ATIPP co-ordinator. There
 14 were places in the region had absolutely
 15 nobody, so I was fielding calls from those
 16 other organizations, so we had so many demands
 17 that we sat down and we said, okay, who was
 18 going to do what and she wanted to keep on
 19 with that file. She felt and I remember her a
 20 number of times saying, this is all soon going
 21 to be over and we're soon going to be finished
 22 with this, so it's just as well because it
 23 would have wasted too much of our time getting
 24 me involved in all the detail.
 25 COFFEY, Q.C.:

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1 Q. Did you understand when you first arrived and
 2 really got settled in November of 2005, did
 3 you understand the amount of pressure she was
 4 under in relation to this matter? She has
 5 told the Commissioner she was under, anyway,
 6 in terms of the stress it was causing her.
 7 MS. ELLIOTT:
 8 A. I had understood that the summer had been very
 9 difficult for her and that was before I came
 10 on and I guess even just having a body, but
 11 where the bulk of the work had to be done that
 12 summer about the identifying the people,
 13 retesting, that had to be done by the lab, of
 14 course, but trying to identify about the
 15 contacts and getting--the decisions around
 16 like the panelling and the communications and
 17 all of that had to be done up and I knew she
 18 had had a very busy difficult summer, but by
 19 the time I came on board, she said that it was
 20 winding down, that it wasn't every day, all
 21 day, that it would just come in bits and
 22 pieces kind of thing.
 23 COFFEY, Q.C.:
 24 Q. And from the time you arrived then, was that
 25 your observation that it was taking up some of

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1 her time, but not all of it?
 2 MS. ELLIOTT:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. If we could look, please, at Exhibit P-3691?
 6 Do you recognize the handwriting?
 7 MS. ELLIOTT:
 8 A. No, it's too neat to be Dr. Williams, I think.
 9 No, I can't -
 10 COFFEY, Q.C.:
 11 Q. Debbie Parsons?
 12 MS. ELLIOTT:
 13 A. Okay.
 14 COFFEY, Q.C.:
 15 Q. Debbie Parsons works in what department?
 16 MS. ELLIOTT:
 17 A. Well she used to work in our department, but
 18 she now works in Medical Services.
 19 COFFEY, Q.C.:
 20 Q. And when you arrived I take it in November of
 21 2005, that's where she worked, in your
 22 department?
 23 MS. ELLIOTT:
 24 A. Yes, she did.
 25 COFFEY, Q.C.:

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1 Q. And she worked for whom? Like she reported to
 2 whom?
 3 MS. ELLIOTT:
 4 A. She reported directly to me, but she worked
 5 for all our department--we only had two
 6 secretarial staff for the whole department.
 7 COFFEY, Q.C.:
 8 Q. Now these, apparently, are her handwritten
 9 notes of a number of meetings of this
 10 physician review panel.
 11 MS. ELLIOTT:
 12 A. Yes.
 13 COFFEY, Q.C.:
 14 Q. We received these, the Commission received
 15 these, I believe, only after Ms. Predham had
 16 testified, after she concluded testifying.
 17 What was your understanding about the
 18 physician review panel? Who was responsible
 19 for it, how it was working?
 20 MS. ELLIOTT:
 21 A. My understanding is that they were trying to
 22 meet every week, they were reviewing--the main
 23 purpose was to take the cases of people who
 24 had changed from negative to positive to do a
 25 clinical review and to see if they warranted a

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1 change in treatment and that the oncologist
 2 and the pathologist would be at those meetings
 3 to review the chart. My understanding is that
 4 Debbie was providing the admin support and
 5 Heather was providing the co-ordination around
 6 making sure, you know, about the names getting
 7 on the list and getting the charts from the
 8 Cancer Foundation.
 9 COFFEY, Q.C.:
 10 Q. Now how much were you being kept in the loop
 11 in relation to the physician review panel
 12 matter?
 13 MS. ELLIOTT:
 14 A. You know, I would get those summaries that
 15 Heather would do up and the numbers, like
 16 number of people panelled to date, I would get
 17 those, but I wasn't getting like the detail
 18 that -
 19 COFFEY, Q.C.:
 20 Q. Why were you getting those?
 21 MS. ELLIOTT:
 22 A. Well I had asked if Heather could keep me in
 23 the loop, I said after, you know, we talked
 24 about how she was going to stay on with this
 25 file that I would like to at least be kept in

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1 the loop, for a couple of reasons, you know,
 2 one I suppose to support them wherever I could
 3 because I knew there was a couple of people in
 4 my department involved in that, so support
 5 them where I could and to gain an
 6 understanding of what it is that they were at
 7 because we were at a time in our beginning, we
 8 had so many demands in our department and I
 9 was trying to share out the workload and I
 10 didn't want to over burden them if they had so
 11 much activity on the go. You know, I do
 12 remember the one thing that they came to me
 13 about the panelling and it would have been
 14 several months after I was in the job, they
 15 were concerned that it was taking too long
 16 because one of the things I did offer, if
 17 there's anything you feel that I can do, ask
 18 me and I will try to help where I can. And
 19 they did come to me and say they felt the
 20 panelling was taking too long, so I did bring
 21 that to Dr. Williams' attention and at the
 22 time and then he made arrangements for them to
 23 do some Saturdays to do some extra panelling.
 24 COFFEY, Q.C.:
 25 Q. Exhibit P-0684? Now this is an e-mail of

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1 November 24th, 2005 from Ms. Predham to Dr.
 2 Williams, you're copied on it, as are others.
 3 The second paragraph says, "Dr. Kwan made a
 4 suggestion at the last panel, I should track
 5 those who we may have potentially harmed."
 6 And she goes on then to talk about, she says,
 7 "We had agreed to classify patients as being
 8 converted with or without recommendations, but
 9 Dr. Kwan, and rightly so, felt it didn't
 10 accurately reflect those who had been
 11 impacted." And she goes on then to describe
 12 what that means. I wanted to ask you about
 13 this now, Ms. Predham was the risk manager.
 14 MS. ELLIOTT:
 15 A. Yes.
 16 COFFEY, Q.C.:
 17 Q. And she reported to you.
 18 MS. ELLIOTT:
 19 A. Yes.
 20 COFFEY, Q.C.:
 21 Q. Was there some aspects of her occupation as
 22 risk manager that it was understood that you
 23 were not to know about? For example, the
 24 contents of an external review?
 25 MS. ELLIOTT:

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1 A. I'm going to need you to ask me that again. I
 2 missed the first part.
 3 COFFEY, Q.C.:
 4 Q. Okay, was there some aspects of Ms. Predham's
 5 job as a risk manager--and she did report to
 6 you, any aspects of her job that she was not
 7 to share with you, it was understood that she
 8 would not tell you the contents of, for
 9 example, an external review?
 10 MS. ELLIOTT:
 11 A. No, I don't think so. I remember when we
 12 talked about the reviews, even though I did
 13 know there was a copy in the department, that
 14 I had said to, you know, she would brief me
 15 and she would say, well there were a number of
 16 problems and things, you know, there were
 17 things like about the number of pathologists,
 18 the specialists and how they were organized,
 19 you know, some of the technical piece, but
 20 what I had always been told was that even if
 21 there were issues on the technical side of
 22 things, like for a particular preparation of
 23 slides, that it would be very difficult to
 24 ascertain where the problem lay in a
 25 particular slide because they had poor

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1 documentation. So, even though I didn't see
 2 the reports, she would articulate to me in
 3 order to describe to me what the contents were
 4 and what the program were doing.
 5 COFFEY, Q.C.:
 6 Q. Were you kept apprised from time to time of
 7 who and the number of people potentially
 8 harmed?
 9 MS. ELLIOTT:
 10 A. I would have gotten those charts, like that
 11 you see where the numbers and different
 12 groups, but the number that rings out to me is
 13 the 117, that there were potentially 117
 14 people who could have had their treatment
 15 changed.
 16 COFFEY, Q.C.:
 17 Q. So in looking at this because there's a
 18 distinction made here by Ms. Predham between
 19 those converted with recommendations, is the
 20 second line of that paragraph -
 21 MS. ELLIOTT:
 22 A. Yeah.
 23 COFFEY, Q.C.:
 24 Q. Agreed to classify patients as being converted
 25 with or without recommendations, but she

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1 distinguishes that from those potentially
 2 harmed, which is seemingly a different
 3 category that her and Dr. Kwan were thinking
 4 about. I'm asking you, were you kept apprised
 5 of how many and who was potentially harmed?
 6 MS. ELLIOTT:
 7 A. No.
 8 COFFEY, Q.C.:
 9 Q. Did you understand that Ms. Predham was
 10 keeping track of that?
 11 MS. ELLIOTT:
 12 A. I knew she had the records for our department
 13 on it and was keeping track of who was
 14 panelled and, you know, like whose results had
 15 changed and the negative, reconfirmed
 16 negatives. She was doing coordination around
 17 that piece.
 18 COFFEY, Q.C.:
 19 Q. Did you ever get involved in what I'll refer
 20 to as the nitty gritty then of ER/PR?
 21 MS. ELLIOTT:
 22 A. Never. I didn't have the files in my office,
 23 but that's not unusual for our department.
 24 We're dealing with so many issues and we have
 25 so few staff that--you know, and they're all

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1 seasoned managers who work in our department.
 2 Everyone there has at least 20 years
 3 experience and they are managers and they do
 4 take files, whether that's working on, you
 5 know, hospitalized standardized mortality
 6 ratios or whether it's working on
 7 accreditation or the information management or
 8 process improvement team. That's--like I
 9 don't even get to see occurrence reports. I
 10 just get summaries of the tracking and the
 11 trending reports. I don't even have access to
 12 patient files on my computer, and no more is
 13 it necessary because I'm more involved in
 14 structures and processes.
 15 COFFEY, Q.C.:
 16 Q. If we can bring up, please, Exhibit P-1154?
 17 Now this is a series of e-mails of August 1st
 18 and 2nd, 2006. The one right here from Ms.
 19 Bonnell, August 1, it's to, amongst other
 20 individuals, yourself, Ms. Predham and others.
 21 The subject is a lawsuit against Eastern
 22 Health, "another lawsuit has been launched
 23 against Eastern Health over the work of its
 24 pathology lab" and this lawsuit is the one
 25 that ends up being the class action. That's

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1 what the story is about.
 2 MS. ELLIOTT:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. Okay, and it's a reference, Mr. Butt in a
 6 return e-mail of August 2nd, 2006, to Dr.
 7 Williams saying "has there been discussion
 8 with HIROC as to whether these are viewed as
 9 multiple occurrences or as a single
 10 occurrence? The insurance impact is
 11 significant, to say the least." Now as Ms.
 12 Predham's supervisor, when she's acting in her
 13 capacity as risk manager, I take it that you
 14 then would have responsibility for risk
 15 management, which is, in effect, liaisoning
 16 with the insurer.
 17 MS. ELLIOTT:
 18 A. I don't do any liaise with the insurer.
 19 COFFEY, Q.C.:
 20 Q. No, I'm sorry, I appreciate you don't.
 21 MS. ELLIOTT:
 22 A. No.
 23 COFFEY, Q.C.:
 24 Q. She does.
 25 MS. ELLIOTT:

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1 A. Oh yes, yes.
 2 COFFEY, Q.C.:
 3 Q. But she reported to you?
 4 MS. ELLIOTT:
 5 A. Yes.
 6 COFFEY, Q.C.:
 7 Q. So you're responsible for her when she acted
 8 in that capacity?
 9 MS. ELLIOTT:
 10 A. Yes, I would be responsible for the department
 11 for sure.
 12 COFFEY, Q.C.:
 13 Q. And I take it that's one of the reasons that
 14 you'd be copied on an e-mail such as the
 15 August 1 one, because it's--this is a public
 16 matter.
 17 MS. ELLIOTT:
 18 A. Yeah, and even now, we have a claims manager.
 19 Whenever we get a statement of claim come in,
 20 they'll just copy me and say "received
 21 statement of claim today." So that would be
 22 no different.
 23 COFFEY, Q.C.:
 24 Q. Exhibit P-3039?
 25 THE COMMISSIONER:

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1 Q. I'm sorry, Mr. Coffey, but before--you say you
 2 now have a claims manager?
 3 MS. ELLIOTT:
 4 A. Yes, we do.
 5 THE COMMISSIONER:
 6 Q. What does that person do?
 7 MS. ELLIOTT:
 8 A. A little bit of everything, but what we
 9 wanted, again with the region, we had gotten
 10 so big, you know, we're now an organization
 11 12,000 employees and 600 physicians and
 12 numerous issues, but with claims management,
 13 we wanted to centralize. Like if a statement
 14 of claim came in, well then, you got a file
 15 there that you're probably still doing follow
 16 up work on, or if there was an occurrence that
 17 occurred in any part of the region, if we felt
 18 that there would be a possibility of
 19 litigation, then we would set up a file. So
 20 we have one person actually who focuses mainly
 21 on that. Now she also helps out in other
 22 things, like if there has to be an
 23 investigation done and we're short staffed,
 24 she'll go over and help with that, or right
 25 now, she's helping work on the quality review

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1 and peer review documents. But her primary
 2 role is managing the claims files in the
 3 department.
 4 THE COMMISSIONER:
 5 Q. So does that mean Ms. Predham's job no longer
 6 has anything to do with claims?
 7 MS. ELLIOTT:
 8 A. No. It just means that there's help for the
 9 kind of job that she's doing. We called her
 10 risk management consultant because in the
 11 department, she has the most experience
 12 dealing with risk management issues. So what
 13 we often have, we have a model now where we
 14 have quality and clinical safety leaders in
 15 different parts of the organization, and they
 16 all have some--they have some partial risk
 17 management role, because risk management is
 18 pretty big in the range, wide range of
 19 activities. So they need someone who they can
 20 consult with if they're dealing with an issue,
 21 for example, over in the nursing home boards.
 22 If something's happened over there with one of
 23 the residents and they'd like to have some
 24 consultation on risk management, they would
 25 call Heather to get her advice. Before that,

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1 Heather was also taking care of the claims
 2 too. So it's just like taking that piece of
 3 risk management off. But it hasn't -
 4 THE COMMISSIONER:
 5 Q. Wait now. I'm not sure I'm following, and I
 6 want to make sure that -
 7 MS. ELLIOTT:
 8 A. Sure.
 9 THE COMMISSIONER:
 10 Q. - I do understand just the functions.
 11 MS. ELLIOTT:
 12 A. Okay.
 13 THE COMMISSIONER:
 14 Q. So I assume this person who now is the
 15 liaison, I understand that that person would
 16 deal with any claims that came through the
 17 door or occurrences which you could identify
 18 as likely to deal with claims. So when that
 19 comes through the door, presumably the report
 20 goes through to that individual. Now Ms.
 21 Predham's current job as a risk management
 22 consultant, does that just sort of mean that
 23 if somebody in any of the massive number of
 24 divisions of Eastern Health has a question
 25 which falls into the broad category of risk

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1 management, then instead of talking to their
 2 colleague who happens to have the job in
 3 Eastern Health of dealing with these things,
 4 they would call Ms. Predham because she's got
 5 more experience?
 6 MS. ELLIOTT:
 7 A. Yes. Well, they would call either one of
 8 them, like really now what we have is two
 9 people and they call themselves, you know, the
 10 claims management division kind of thing. So
 11 that's one person. That's what she refers
 12 herself to, but she works in concert with
 13 Heather. In fact, she reports to Heather. So
 14 Debbie Perry is her name. She has a lot to do
 15 with the insurance companies. Like for
 16 example, if we get an occurrence come in and
 17 we think there could be a potential claim,
 18 then she will notify the insurance company.
 19 Heather used to do most of that in the past,
 20 just by virtue of being the only person there.
 21 A lot of that now has gone to Debbie Perry,
 22 but it doesn't mean that Heather would not
 23 have any contact with the insurers now.
 24 THE COMMISSIONER:
 25 Q. Okay. So -

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1 MS. ELLIOTT:
 2 A. A shared function, I guess.
 3 THE COMMISSIONER:
 4 Q. - so basically, what used to be Ms. Predham--
 5 Ms. Predham's job has gotten wider because
 6 she's now across the whole of the
 7 organization, in the sense of she's available
 8 as a consultant to other aspects. But in
 9 addition, you have brought in Ms. Perry who
 10 effectively does what Ms. Predham used to do
 11 regarding ongoing claims and likely claims?
 12 MS. ELLIOTT:
 13 A. Yes.
 14 THE COMMISSIONER:
 15 Q. Or have I got it wrong again?
 16 MS. ELLIOTT:
 17 A. No, no, the role has expanded. Heather is a
 18 risk management consultant for the whole
 19 region, but what we've done is add resources,
 20 because keep in mind that when Heather had
 21 that job, it was just the Health Care Corp
 22 piece. But now we have all of these other
 23 pieces, all the nursing homes, all the
 24 community health centres from here to
 25 Bonavista. So with that increase in regional

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1 responsibility also comes an increase in
 2 volume of work. So one of the things that I
 3 quickly identified in my first few months
 4 there is that we needed more resources. So we
 5 looked across the country. We didn't travel
 6 across the country. We just, you know, phoned
 7 and checked the webs and tried to get a sense
 8 of how we were going to set up, and one of the
 9 things we clearly identified is that we do--we
 10 did need more people. Like we were so big now
 11 with so many volumes that we needed a special
 12 claims manager. We also put in an infection
 13 control manager, because at the time that I
 14 went into the job, I actually had the
 15 infection control frontline nurses reporting
 16 to me and there was no manager for the whole
 17 region. And at that time, we were faced with
 18 the Auditor General's report on infection
 19 control. So there was a lot of issues there.
 20 The ATIPP coordinator, you know, with the
 21 new legislation coming in, office of Citizen's
 22 Rep and the Child and Youth Advocate Office,
 23 and the ATIPPA, we were starting to see an
 24 increase in requests coming in looking for
 25 information for that. So I quickly identified

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1 that we needed a person in our department who
 2 could take on that role. And again,
 3 accreditation was another one. We had nobody
 4 doing that. So within the first few months of
 5 getting into the new region, it was every
 6 evident that there was significant volumes of
 7 work and that we needed to find people to help
 8 out with that. So that's how we ended up with
 9 a claims manager. So you can't--it's hard to
 10 compare what either of the four people who
 11 were in Quality at the Health Care Corp, it's
 12 very hard to compare what their workload is to
 13 now being in the big region.
 14 THE COMMISSIONER:
 15 Q. Okay. Mr. Coffey, it's five after five.
 16 COFFEY, Q.C.:
 17 Q. Commissioner, perhaps--well, of course, I'm
 18 prepared to go on. I'm always prepared to go
 19 on. But in the sense of there are a couple of
 20 other topics in August, this particular e-mail
 21 I wanted to discuss, and December as well of
 22 '06.
 23 THE COMMISSIONER:
 24 Q. Um-hm.
 25 COFFEY, Q.C.:

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1 Q. The media briefing. So I'm in your hands,
 2 Commissioner.
 3 THE COMMISSIONER:
 4 Q. Well, I think you got to talk to the other
 5 people in the room.
 6 COFFEY, Q.C.:
 7 Q. As well, exactly, in the sense that you'll ask
 8 -
 9 MR. SIMMONS:
 10 Q. It depends on how long Mr. Coffey is going to
 11 be. I know Ms. Elliott is relatively fresh
 12 for a witness at 5:00 here, and personally,
 13 I'm -
 14 THE COMMISSIONER:
 15 Q. Well, do counsel want to put their heads
 16 together and figure out or are you all
 17 prepared at this moment to say press on, or do
 18 you--anyone in the room want to suggest we
 19 don't? Mr. Coffey, do you want to give these
 20 people an estimate, because I have a feeling
 21 they don't want to commit that to you without
 22 having that.
 23 COFFEY, Q.C.:
 24 Q. Commissioner, it's difficult for me to know.
 25 Many of these exhibits--not many, but some of

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1 them we got more recently and we didn't have a
 2 chance to canvas with Ms. Elliott before. So
 3 if I could just press on a bit and we'll see.
 4 I mean, I may be able to wrap this up in half
 5 an hour, from my perspective. I may not. It
 6 depends. It depends on what the answers are.
 7 THE COMMISSIONER:
 8 Q. Can I get the concurrence of the room to press
 9 on for half an hour, and if Mr. Coffey doesn't
 10 clue up by then, we'll halt him and look at
 11 the situation?
 12 COFFEY, Q.C.:
 13 Q. Okay. Thank you, Commissioner, I appreciate
 14 that.
 15 THE COMMISSIONER:
 16 Q. Thank you.
 17 COFFEY, Q.C.:
 18 Q. Counsel, thank you.
 19 MS. ELLIOTT:
 20 A. So is that a hint for me to keep my answers
 21 short?
 22 COFFEY, Q.C.:
 23 Q. No. This is, looking at this e-mail, Ms.
 24 Predham wrote to you and it's just you, and in
 25 fact, I take it that that's your personal

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1 account?
 2 MS. ELLIOTT:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. Okay, and it's regarding a briefing note of
 6 August 10th, find attached. "I made the
 7 changes to the first part. I have qualms
 8 about the concerns section and the factors
 9 affecting the time lines, but I'll let you
 10 decide. How do you want me to address it at
 11 the beginning? Also, I didn't include the
 12 information about the reviews. I think we can
 13 tell them that, but I don't want to write it
 14 down. I'm here all afternoon. Heather."
 15 MS. ELLIOTT:
 16 A. Okay.
 17 COFFEY, Q.C.:
 18 Q. And then this is this briefing note, or the
 19 beginnings of it. So could you tell the
 20 Commissioner, please, what you recall about
 21 this?
 22 MS. ELLIOTT:
 23 A. Well, first when I saw this exhibit, I
 24 thought--first thing struck me is why was
 25 Heather sending me this e-mail to my home

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1 address in the middle of the day. I'm not
 2 ever home at 1:14 in the day. And so then I
 3 went checking through my calendar to find out
 4 what was going on and in fact, I would not
 5 have seen that e-mail either Thursday or
 6 Friday, August 10th tweaked with me, that was
 7 my wedding anniversary and I had taken the
 8 afternoon off and Friday as well, because my
 9 husband and I had something special planned
 10 for the night that took us away from our home.
 11 I had left home 7:00 Thursday morning, left
 12 work quarter past 12. I had two personal
 13 appointments that afternoon, one at 12:30 that
 14 took me to 2:30 and the nature of that
 15 appointment is that I wouldn't have been able
 16 to even answer a cell phone or a Blackberry.
 17 Then I had another appointment at three. So
 18 in fact, I never got to my home until the next
 19 afternoon and I don't even recall seeing -
 20 COFFEY, Q.C.:
 21 Q. Which afternoon would that be?
 22 MS. ELLIOTT:
 23 A. Friday afternoon.
 24 COFFEY, Q.C.:
 25 Q. That would be Friday?

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1 MS. ELLIOTT:
 2 A. The 11th.
 3 COFFEY, Q.C.:
 4 Q. Okay, go ahead.
 5 MS. ELLIOTT:
 6 A. So I said that I would not have seen that e-
 7 mail on Thursday or Friday, and in fact, I
 8 checked -
 9 COFFEY, Q.C.:
 10 Q. So when would you have first seen it then?
 11 MS. ELLIOTT:
 12 A. The earliest, I guess, would have been the
 13 weekend, and that's if it had gotten to my
 14 computer, because I checked my computer and I
 15 never saw any ER/PR. It would be very unusual
 16 for issues like this to come to my home
 17 computer.
 18 COFFEY, Q.C.:
 19 Q. If we could bring up, please, Exhibit P-3041?
 20 3041. This is an e-mail from Ms. Predham to
 21 yourself the next morning at 8:15 in the
 22 morning, Friday morning. The attachment is
 23 note.doc and she says "I'm trying again. Let
 24 me know if there is any success. Maybe if
 25 Debbie sent it," number of question marks. "I

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1 renamed the file. Maybe it was too long. Who
 2 knows the mysteries of computers." Signed
 3 Heather.
 4 MS. ELLIOTT:
 5 A. Yeah.
 6 COFFEY, Q.C.:
 7 Q. And this is another version of her draft of
 8 that note that we looked at earlier.
 9 MS. ELLIOTT:
 10 A. Yeah, and that was on -
 11 COFFEY, Q.C.:
 12 Q. That's attached to that earlier e-mail.
 13 MS. ELLIOTT:
 14 A. Yeah, and I was on vacation day that day.
 15 COFFEY, Q.C.:
 16 Q. Yes.
 17 MS. ELLIOTT:
 18 A. But I do remember--I remember the issue and
 19 you know, because having looked at this -
 20 COFFEY, Q.C.:
 21 Q. So did she speak with you on Thursday evening,
 22 Friday morning? She says "I'm trying again,"
 23 telling you.
 24 MS. ELLIOTT:
 25 A. Yeah, not that I can recall. On Thursday,

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1 there would absolutely have only been a half
 2 hour window while I was driving from one
 3 appointment to another that there would have
 4 been a call. So I can't remember a telephone
 5 call on this e-mail, but what I do remember
 6 about the issue, and whether it took place
 7 days before or a couple of weeks before, we
 8 had a discussion in my office one day about
 9 these briefing notes that were going to
 10 Department of Health, because I couldn't do a
 11 lot on--help them out with much on the detail
 12 about ER/PR, but I felt that I could at least
 13 give them some guidance on the formatting of
 14 briefing notes, because my two years as ADM, I
 15 had read a lot of briefing notes and I wrote a
 16 lot of briefing notes. So I said, you know,
 17 that's one thing I could probably give you
 18 help.
 19 So I would have given her direction on
 20 things like, you know, you try to keep it non-
 21 technical. You try to keep it to one page.
 22 Don't put anything in it that you can't back
 23 up because you don't know where these notes
 24 are going to show up, and I had had personal
 25 experiences where notes are wrote where they

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1 showed up word for word in the newspaper
 2 signed by a minister. So I would have given
 3 her guidance of the formatting, and the
 4 particular issues around the concerns and
 5 delays, because you're getting now up until
 6 August of 2006, and I'm saying from a
 7 Department of Health perspective, one of the
 8 things to get the numbers and I said "are they
 9 looking for anything other than numbers?"
 10 because if I remember correctly, on this one,
 11 that's the one Marilyn McCormack spoke
 12 directly to Heather on the telephone. I said
 13 "are they asking any other questions, like you
 14 know, are they asking why is this taking so
 15 long?" Because that's a logical question to
 16 ask now that we've been at this a year and we
 17 haven't got anybody done. So I said, like
 18 we're going to be in a position soon where we
 19 need to articulate why all these delays are
 20 occurring, and also too, like with the numbers
 21 going in in the charts, what would be some of
 22 those concerns.
 23 I remember that discussion because, you
 24 know, one, she was concerned of the fact that
 25 we did have a statement of claim and where

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1 these things, reports could end up. But more
 2 what I remember is that she--that was her own
 3 opinion, that she wasn't speaking from the
 4 team, and I can remember saying, you know,
 5 "the team needs to have a discussion now.
 6 Like we need to come to grips with what are--
 7 what has caused these delays and what are our
 8 biggest concerns?" So I do remember a
 9 discussion on that, but it had nothing to do
 10 with this note, and I can say--feel very
 11 comfortable in saying that I never saw that
 12 note during those couple of days because my
 13 records show I was off and what I was doing.
 14 COFFEY, Q.C.:
 15 Q. Well, when did you see it? Because there's a
 16 series of e-mails that day.
 17 MS. ELLIOTT:
 18 A. Yes.
 19 COFFEY, Q.C.:
 20 Q. So you can't explain the August 11th, 8:15 in
 21 the morning roughly.
 22 MS. ELLIOTT:
 23 A. I was not at home. I know where I was, and I
 24 wasn't at -
 25 COFFEY, Q.C.:

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1 Q. I appreciate that.
 2 MS. ELLIOTT:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. But in terms of this seemingly suggests she's
 6 had some contact with you. "I'm trying again.
 7 Let me know if there's any success."
 8 MS. ELLIOTT:
 9 A. Yeah.
 10 COFFEY, Q.C.:
 11 Q. Maybe if someone else sent you the file. Were
 12 you using a Blackberry at the time?
 13 MS. ELLIOTT:
 14 A. I had--yes, I do think I had my Blackberry at
 15 the time, yes.
 16 COFFEY, Q.C.:
 17 Q. Because that would perhaps potentially relate
 18 to the naming of the file, the file being too
 19 long.
 20 MS. ELLIOTT:
 21 A. Yeah, and sometimes -
 22 COFFEY, Q.C.:
 23 Q. Might affect the ability to utilize it on a
 24 Blackberry.
 25 MS. ELLIOTT:

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1 A. Yeah, and sometimes I can't open attachments
 2 on Blackberry. But I certainly know that when
 3 I'm driving, I can't operate a Blackberry. I
 4 mean, one of the things you'll know, it's not
 5 a lot of e-mails from me because I don't
 6 really like keyboarding.
 7 COFFEY, Q.C.:
 8 Q. And the first of those e-mails is P-3039.
 9 MS. ELLIOTT:
 10 A. I think by the time I saw this e-mail though
 11 that the briefing note had already gone to the
 12 Department. I think it went out Friday
 13 morning.
 14 COFFEY, Q.C.:
 15 Q. So this P.Elliott here, that would go to a
 16 Blackberry?
 17 MS. ELLIOTT:
 18 A. No, that would be home.
 19 COFFEY, Q.C.:
 20 Q. Okay. The Blackberry though, if she had tried
 21 you on the Blackberry and had a problem with
 22 it, that might account for the reference to
 23 renaming the file or the file being too big.
 24 MS. ELLIOTT:
 25 A. Probably, yeah. My Blackberry would show, I

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1 guess, my Eastern Health e-mail.
 2 COFFEY, Q.C.:
 3 Q. Did you discuss with her the idea of "I didn't
 4 include the information about the reviews. I
 5 don't want to write it down"? Did that topic
 6 come up between you and Heather Predham vis-a-
 7 vis her dealing with the Department of Health?
 8 MS. ELLIOTT:
 9 A. Maybe not at this briefing note, but the
 10 discussion around external reviews and the
 11 protection of them certainly would have come
 12 up.
 13 COFFEY, Q.C.:
 14 Q. When?
 15 MS. ELLIOTT:
 16 A. I wouldn't be able to tell you the exact time
 17 frame, but I would say it came up more than
 18 once.
 19 COFFEY, Q.C.:
 20 Q. Well, was it before this?
 21 MS. ELLIOTT:
 22 A. I would think, because like this wasn't one of
 23 the first briefing notes that had gone to the
 24 Department of Health. They certainly knew
 25 there were reviews done, but I know that, you

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1 know, any discussion we'd had, Heather would
 2 have been coming from the view that we have
 3 always guaranteed that these were protected,
 4 that people came to our organization, did
 5 these reviews and knowing that they would not
 6 be distributed. So there certainly would have
 7 been discussions, but whether or not it was on
 8 this day would be--well, I know it wasn't on
 9 this day.
 10 COFFEY, Q.C.:
 11 Q. Well, the following day?
 12 MS. ELLIOTT:
 13 A. No, I was off the following day too. I didn't
 14 actually go back in the office until I guess
 15 the 14th.
 16 COFFEY, Q.C.:
 17 Q. And I'm asking you, did you discuss it with
 18 her? Whether you were back in the office or
 19 not, I'm just asking you, as you recall.
 20 MS. ELLIOTT:
 21 A. I don't recall, because the window was so
 22 small where I would have had a call, and it
 23 would have had been while I was driving.
 24 COFFEY, Q.C.:
 25 Q. And if you she had told you, "look, I don't

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1 want to--I can tell somebody verbally, but I
 2 don't want to write it down." If Ms. Predham
 3 told you that, in writing or verbally, would
 4 you recall that? In particular, when we look
 5 at the e-mail itself, not the e-mail but the
 6 actual draft of the text here, if we could at
 7 page four, please?
 8 MS. ELLIOTT:
 9 A. What I do remember, she said she didn't feel
 10 comfortable with what she was saying was
 11 causing delays. She felt that she wanted to
 12 have discussion with the core team first.
 13 COFFEY, Q.C.:
 14 Q. Well, here, in the text here, and you would
 15 have gotten this eventually.
 16 MS. ELLIOTT:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. It says "Pam, I'm not sure about these two
 20 sections as we still don't know how Ches
 21 Crosbie found out this information. Also DOH
 22 has already released our briefing notes in
 23 that ATIPP request last time. What do you
 24 think?" Now I'm going to suggest to you that
 25 that involves an assertion by her that she had

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1 misgivings about what she put in a briefing
 2 note that went to the Department because it
 3 might end up in, for example, Ches Crosbie's
 4 hands.
 5 MS. ELLIOTT:
 6 A. Yeah, that was one of her concerns, and I
 7 remember in our discussion, you know, one of
 8 my concerns would be that you say something
 9 and then you're saying something that you
 10 can't really back up. That's not really fact,
 11 and that's when she said "well, I have not
 12 discussed this with the team."
 13 COFFEY, Q.C.:
 14 Q. So -
 15 THE COMMISSIONER:
 16 Q. I'm sorry, I didn't follow that.
 17 MS. ELLIOTT:
 18 A. I know that Heather, on a number of occasions,
 19 expressed concern about sharing the results of
 20 a review with the Department of Health because
 21 of historically we've always tried to protect
 22 peer reviews.
 23 THE COMMISSIONER:
 24 Q. Yes.
 25 MS. ELLIOTT:

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1 A. But in my guidance to her and discussion and
 2 chats around what we should be telling the
 3 Department of Health, and again, I was just
 4 putting on my old ADM hat about one of the
 5 logical questions would be why is this taking
 6 so long, and so we're sending people these
 7 numbers, but what are we really saying to
 8 them. What does it matter? So and then we
 9 had discussion about what she thought were
 10 some of the factors. Again, not this note,
 11 because I didn't see that then, but and I
 12 remember her saying "well, that's only my
 13 opinion. I don't really know" and I said
 14 "well has the core team ever discussed about
 15 what it has--how they're going to explain that
 16 this has taken so long?" and she said "no, we
 17 haven't had a formal discussion. It's just
 18 comments here and there." So she wanted to
 19 make sure that she had that, that all the team
 20 were on board with what are the concerns here
 21 and what are the delays.

22 COFFEY, Q.C.:
 23 Q. These are the factors contributing to review
 24 time line. I mean, they're spelled out there,
 25 frankly.

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1 MS. ELLIOTT:
 2 A. Yes.

3 COFFEY, Q.C.:
 4 Q. At least there's a number of factors spelled
 5 out, quite explicitly. They do not end up
 6 going to the Department in the briefing note,
 7 nor do the concerns in the paragraph above
 8 that. So did you have anything to do with,
 9 that you recall, the removal of the paragraph
 10 "concerns" or the paragraph "factors
 11 contributing to review time line"?

12 MS. ELLIOTT:
 13 A. No, other than I would have cautioned her not
 14 to put anything in it that she didn't feel
 15 that it was accurate. But I said at some
 16 point we're going--as an organization, we're
 17 going to need to be prepared to deal with
 18 this. But like I say, my contact with her in
 19 that day and a half would have been very
 20 minimal, even a chance for it.

21 COFFEY, Q.C.:
 22 Q. And even afterward, because you got these e-
 23 mails, a whole series of them afterward in
 24 August?

25 MS. ELLIOTT:

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1 A. Yes.

2 COFFEY, Q.C.:
 3 Q. 2006.

4 MS. ELLIOTT:
 5 A. Similar to that except the concerns and time
 6 lines weren't in it.

7 COFFEY, Q.C.:
 8 Q. Did you ever take it up with anyone? This
 9 notion, for example, that "I will talk to
 10 people, but I won't put it down in writing,"
 11 did you ever take that up with Heather
 12 Predham?

13 MS. ELLIOTT:
 14 A. No.

15 COFFEY, Q.C.:
 16 Q. As her boss.

17 MS. ELLIOTT:
 18 A. But I guess I kind of understood, rightfully
 19 or wrongfully, that there was discussion going
 20 on at an executive level and the Department of
 21 Health. Like there was sharing of things,
 22 without the actual report being up there, that
 23 my understanding that there were discussions
 24 between people in Department of Health. Now I
 25 did not connect directly with the Department

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1 of Health on the ER/PR issue, but my
 2 understanding is that they did share some of
 3 the issues.

4 COFFEY, Q.C.:
 5 Q. And what does that mean, share the issues?

6 MS. ELLIOTT:
 7 A. Well, because originally, we were told it was
 8 the change in technology, but it came to find
 9 out that it wasn't that, that there was a
 10 number of factors and what I have always
 11 understood is a multitude of factors. One,
 12 yes, a change in technology, but then with the
 13 change in technology, there's also less steps
 14 and opportunities for people to make error.
 15 Poor documentation, you can't find out exactly
 16 where the problem went because of the
 17 documentation. That they didn't have as many
 18 controls in the lab as what we thought, that
 19 there was a pathology issue in terms of
 20 numbers and specialization and that even with
 21 this test that--how it was explained to me is
 22 that if three pathologists were to look at the
 23 same slide, that they could all have a
 24 different interpretation. That even if they
 25 had the same interpretation, that two

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1 oncologists could take the information and
 2 make different decisions about treatment. So
 3 I had understood that this was a very
 4 complicated issue with a number of factors,
 5 but I also had--you know, I wasn't party to
 6 discussions with Department of Health, but I
 7 certainly had thoughts that they were sharing
 8 with -
 9 COFFEY, Q.C.:
 10 Q. Who did you get that impression from?
 11 MS. ELLIOTT:
 12 A. Most of my--the bulk of my information came
 13 from Heather Predham, with some coming from--
 14 you know, if I happened to be in a meeting
 15 where Dr. Williams or Dr. Denic was, which
 16 were few, but you know, I did get a sense that
 17 they knew there was more to this.
 18 COFFEY, Q.C.:
 19 Q. That the Department already knew?
 20 MS. ELLIOTT:
 21 A. Yeah, I don't know if they knew everything,
 22 but I certainly had the impression that they
 23 knew that it was more than just the equipment.
 24 COFFEY, Q.C.:
 25 Q. And that was from--you would have gotten this

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1 from Ms. Predham, from Dr. Denic?
 2 MS. ELLIOTT:
 3 A. Probably in a meeting, you know, I was only in
 4 a few meetings related to this, but I
 5 certainly didn't have the sense that they
 6 weren't sharing it, or you know, that Bob was
 7 in frequent contact with the Department.
 8 COFFEY, Q.C.:
 9 Q. So did you ever discuss it then with her, this
 10 notion that "look, I'll tell them, but I won't
 11 write it down," i.e. there'll be no written
 12 evidence anywhere that I told somebody?
 13 MS. ELLIOTT:
 14 A. Yeah.
 15 COFFEY, Q.C.:
 16 Q. Did you discuss that with her afterward? I
 17 appreciate you didn't see this at the time,
 18 but did you discuss it with her afterward, or
 19 anyone else for that matter?
 20 MS. ELLIOTT:
 21 A. Like I said, there were a number of times we
 22 discussed this, because it was, you know, felt
 23 that they wanted to protect the peer review,
 24 but they would have no trouble telling it, and
 25 her concern was that this could be out

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1 anywhere in the media.
 2 COFFEY, Q.C.:
 3 Q. Once it was typed down -
 4 MS. ELLIOTT:
 5 A. Yeah.
 6 COFFEY, Q.C.:
 7 Q. - typed or written down and sent to the
 8 Confederation Building -
 9 MS. ELLIOTT:
 10 A. And my understanding -
 11 COFFEY, Q.C.:
 12 Q. - ATIPP request might result in it being
 13 released?
 14 MS. ELLIOTT:
 15 A. Yeah.
 16 COFFEY, Q.C.:
 17 Q. Is that the -
 18 MS. ELLIOTT:
 19 A. That was one of her concerns, and more my
 20 concern was like, well, is this accurate what
 21 we're saying. But the other thing, if I
 22 understood at this time frame, that I was
 23 always under the impression that they had not
 24 done a full analysis and no one had yet
 25 articulated what it is that was causing this

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1 problem.
 2 COFFEY, Q.C.:
 3 Q. Now, ma'am -
 4 THE COMMISSIONER:
 5 Q. What time frame are we talking about now?
 6 COFFEY, Q.C.:
 7 Q. Yes.
 8 THE COMMISSIONER:
 9 Q. You're saying that nobody had articulated the
 10 cause of the problem?
 11 MS. ELLIOTT:
 12 A. Yeah, that my understanding, at that time
 13 frame, in 2006, matter of fact, I think going
 14 into 2007, I was still under the impression
 15 that people were saying that they would
 16 probably never know the exact true cause, that
 17 there were a lot of contributing factors.
 18 COFFEY, Q.C.:
 19 Q. Who's the people?
 20 MS. ELLIOTT:
 21 A. Well, again, most of my information would have
 22 come from Heather Predham.
 23 COFFEY, Q.C.:
 24 Q. So Ms. Predham was telling you this?
 25 MS. ELLIOTT:

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1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. You've indicated to the Commissioner probably
 4 on your way to a meeting, because you were
 5 going to a meeting in the spring of 2006,
 6 which would be May/June, to discuss kind of
 7 where they were with the recommendations, and
 8 that was probably June then?
 9 MS. ELLIOTT:
 10 A. Yes.
 11 COFFEY, Q.C.:
 12 Q. Based upon the documents. That you became
 13 aware that there were new reports from Dr.
 14 Banerjee and Ms. Wegrynowski, and you asked to
 15 see the original ones.
 16 MS. ELLIOTT:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. The original in the sense of the first ones,
 20 and you read them?
 21 MS. ELLIOTT:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. So before August of 2006, you would have read
 25 those four reports?

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1 MS. ELLIOTT:
 2 A. Yes, I would have certainly perused them, for
 3 sure.
 4 COFFEY, Q.C.:
 5 Q. And are you telling the Commissioner that then
 6 you accepted that no one really understood
 7 what the causes were?
 8 MS. ELLIOTT:
 9 A. No, because I had always understood there was
 10 a number of factors, but what I had always
 11 understood is that they wouldn't be able to
 12 pinpoint which factors were with which test,
 13 where the problem, you know -
 14 COFFEY, Q.C.:
 15 Q. For which patient?
 16 MS. ELLIOTT:
 17 A. Yes, yeah, so that's what I had always
 18 understood.
 19 COFFEY, Q.C.:
 20 Q. What difference would that make here? What
 21 possible difference would that make? If
 22 patient A, you were or weren't able to say
 23 what exactly caused the problem with patient
 24 A's slides, what difference would that make
 25 here?

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1 MS. ELLIOTT:
 2 A. Make a difference to Department of Health. It
 3 really wouldn't matter there, but my
 4 understanding is that some of this information
 5 had already been shared with the Department of
 6 Health, rightfully or wrongfully, I don't
 7 know, but that was my impression that they
 8 were being kept apprised.
 9 COFFEY, Q.C.:
 10 Q. But what difference would it--whether or not
 11 you could articulate or prove, perhaps in a
 12 Court of law, why patient A's slides
 13 originally, original slides weren't the
 14 correct result, what difference would that
 15 possibly make, if you knew that the following
 16 list of factors, according to Dr. Banerjee and
 17 Ms. Wegrynowski likely has not contributed to
 18 the problems for patients A through ZZZ -
 19 MS. ELLIOTT:
 20 A. Yeah.
 21 COFFEY, Q.C.:
 22 Q. - what difference would that make?
 23 MS. ELLIOTT:
 24 A. I guess the biggest difference would be if
 25 you're talking about individual patients,

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1 about wanting to know, you know, "what
 2 happened to my slide?" to be able to say this
 3 is what happened to your slide. That would
 4 certainly make a difference there. But in
 5 terms of like my understanding too is that
 6 these external reviews, that was sort of their
 7 opinions at a certain point in time and that
 8 the intent was to do a more detailed analysis
 9 to get a handle on are there other things that
 10 were missing or, for example, was it by month,
 11 what was going on in the lab at the time? Was
 12 it a certain pathologist? So there was other
 13 things that needed to occur before a full
 14 analysis is done. But in terms of the issues
 15 identified, I had understood that that had
 16 been communicated informally through people
 17 who were dealing with the Department of
 18 Health.
 19 COFFEY, Q.C.:
 20 Q. Okay. When you got these series of e-mails of
 21 August 10th and 11th, and in fact, for that
 22 matter, if we could--did you discuss with
 23 anybody the omission of the concerns and the
 24 factors paragraphs?
 25 MS. ELLIOTT:

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1 A. No, I think as an organization, we had always
 2 said that we're going to have to do a
 3 debriefing, that we're all going to have to
 4 sit down and look at what went wrong here,
 5 what can we do to prevent it in the future,
 6 and you know, outline the things. I don't
 7 think there was any sort of thing about we
 8 weren't ever going to look at it.
 9 COFFEY, Q.C.:
 10 Q. No, I didn't ask you that, ma'am.
 11 MS. ELLIOTT:
 12 A. I'm sorry.
 13 COFFEY, Q.C.:
 14 Q. I'm asking you, did you discuss, at the time,
 15 when you got this series of e-mails, arguably
 16 presumably the next week -
 17 MS. ELLIOTT:
 18 A. Yeah.
 19 COFFEY, Q.C.:
 20 Q. - with anyone, the fact that your subordinate
 21 and Ms. Pilgrim, who was by then, I take it,
 22 your boss?
 23 MS. ELLIOTT:
 24 A. Yeah.
 25 COFFEY, Q.C.:

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1 Q. Had apparently caused to be forwarded an e-
 2 mail to the Department which omitted the
 3 reference to concerns and the factors?
 4 MS. ELLIOTT:
 5 A. Yeah.
 6 COFFEY, Q.C.:
 7 Q. Did you discuss that with anyone?
 8 MS. ELLIOTT:
 9 A. By the time I came back to work here, the
 10 briefing note had gone on and it had actually
 11 gone to Dr. Denic and Dr. Williams was still
 12 around at the time, and I know we did have
 13 discussions on that we need to get this down
 14 on paper some day. Like yeah, there were a
 15 number of discussions where we chatted about
 16 that. In the briefing notes, the Department
 17 though had been focusing asking for the
 18 numbers, and I do remember cautioning Heather
 19 on numbers because I had my own experiences
 20 with it. They compare briefing note to
 21 briefing note.
 22 COFFEY, Q.C.:
 23 Q. So it's your recollection that Dr. Williams,
 24 Dr. Denic, Ms. Pilgrim, Ms. Predham and
 25 yourself were aware that the subject matters

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1 set out in the concerns paragraph and the
 2 factors paragraph had not been communicated to
 3 a briefing note that was going to end up in
 4 the Cabinet Secretariat?
 5 MS. ELLIOTT:
 6 A. Yeah, it would be my understanding that we all
 7 would know that it wasn't in a briefing note,
 8 but it would also be my understanding is that
 9 there was communication between the--you know,
 10 Dr. Williams and the Department and that he
 11 would have shared, if not all of it, I'm sure
 12 some of this with them.
 13 COFFEY, Q.C.:
 14 Q. So I take it -
 15 THE COMMISSIONER:
 16 Q. Let me (inaudible) on this.
 17 COFFEY, Q.C.:
 18 Q. Sure.
 19 THE COMMISSIONER:
 20 Q. Maybe it is the time, but you seem to be
 21 saying that while this information came out,
 22 that didn't seem--that was not a concern of
 23 you because you believed that Dr. Williams had
 24 shared this information with the Department in
 25 any event?

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1 MS. ELLIOTT:
 2 A. I guess I can summarize, first of all, this
 3 particular e-mail, I know I wasn't involved
 4 with it -
 5 THE COMMISSIONER:
 6 Q. Yes, I understand that.
 7 MS. ELLIOTT:
 8 A. Because I was off.
 9 THE COMMISSIONER:
 10 Q. Uh-hm.
 11 MS. ELLIOTT:
 12 A. But the actual issues, I know we had discussed
 13 them prior.
 14 THE COMMISSIONER:
 15 Q. Uh-hm.
 16 MS. ELLIOTT:
 17 A. Outside of a briefing note.
 18 THE COMMISSIONER:
 19 Q. Okay.
 20 MS. ELLIOTT:
 21 A. We had had a discussion in my office, I
 22 remember, about how--like, I remember saying
 23 I'm shocked that nobody is asking about why is
 24 this taking so long because that's a logical
 25 question, and what does this all mean. So we

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1 had a discussion about that.
 2 THE COMMISSIONER:
 3 Q. Uh-hm.
 4 MS. ELLIOTT:
 5 A. And I know Heather expressed concern about us
 6 putting things in writing given the fact that
 7 we had a class action lawsuit and that it
 8 could be out in the media.
 9 THE COMMISSIONER:
 10 Q. Yes, I understood that part.
 11 MS. ELLIOTT:
 12 A. And I said to her, I said, okay, outside of
 13 that, though, okay, like, regardless of that,
 14 if it's fact, it's fact, but her--she
 15 expressed to me concern that this was just the
 16 point she had jotted down and she would feel
 17 more comfortable if the whole core team that
 18 had been involved in this issue all along had
 19 seen them because I said, you know, you can't
 20 put down anything that you can't--don't put
 21 anything in a briefing note that you can't
 22 back up and know to be so.
 23 THE COMMISSIONER:
 24 Q. Yeah, I followed that part.
 25 MS. ELLIOTT:

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1 A. Okay, and then so following all this,
 2 obviously the note went out with just the
 3 numbers in.
 4 THE COMMISSIONER:
 5 Q. Uh-hm.
 6 MS. ELLIOTT:
 7 A. Which was all that was requested, but I do
 8 know that there were discussions throughout
 9 about -
 10 THE COMMISSIONER:
 11 Q. But the--but the part I'm not quite getting is
 12 the impression at least that you're giving me,
 13 that one should not be concerned with the
 14 absence of some information in these briefing
 15 notes, which one would think the department
 16 might be interested in -
 17 MS. ELLIOTT:
 18 A. Yeah.
 19 THE COMMISSIONER:
 20 Q. Because there were conversations between Dr.
 21 Williams and the department?
 22 MS. ELLIOTT:
 23 A. Yes, they would--they -
 24 THE COMMISSIONER:
 25 Q. In which information would be passed from Dr.

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1 Williams to the department?
 2 MS. ELLIOTT:
 3 A. That's what I would think. I mean, I don't
 4 like to speak for Bob, but -
 5 THE COMMISSIONER:
 6 Q. Well, that's my -
 7 THE COMMISSIONER:
 8 Q. I would have -
 9 THE COMMISSIONER:
 10 Q. But that's my point. Frankly, I'm trying to
 11 understand whether you are assuming that Dr.
 12 Williams would have had this kind of
 13 conversation with somebody in the department,
 14 or whether some--in the middle of these
 15 conversations in which you are a participant,
 16 you heard something which led you to believe
 17 that information was going from Dr. Williams,
 18 or indeed any of the others within the
 19 conversation to the department, and if such
 20 information was going, to whom in the
 21 department was it going, number one.
 22 MS. ELLIOTT:
 23 A. Yeah.
 24 THE COMMISSIONER:
 25 Q. And number two, what kinds of information were

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1 going from Dr. Williams to the department.
 2 MS. ELLIOTT:
 3 A. I can't speak exactly for what would have gone
 4 from him to them.
 5 THE COMMISSIONER:
 6 Q. Okay.
 7 MS. ELLIOTT:
 8 A. But what I can say is that I know that he made
 9 comments that he was keeping the department
 10 apprised, and that he did share information.
 11 While the exact review might not have been
 12 shared, I have certainly heard him say that he
 13 shared with them some of the things that these
 14 reviews had shown and what we were doing as a
 15 result of it.
 16 THE COMMISSIONER:
 17 Q. And did he say who the mysterious person--you
 18 know, the department is a very large
 19 institution. Do you know -
 20 MS. ELLIOTT:
 21 A. I don't know if it would have been Moira at
 22 the time or John because this is going back to
 23 2006, so I probably wouldn't--but I know it
 24 would have had to have been at a minimum at an
 25 ADM or a DM level, and Dr. Williams was really

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1 good at that, of trying to keep people in the
 2 loop.
 3 THE COMMISSIONER:
 4 Q. Mr. Coffey. By my reckoning, you have another
 5 five minutes on the clock.
 6 COFFEY, Q.C.:
 7 Q. Actually, I stopped talking about four minutes
 8 ago.
 9 THE COMMISSIONER:
 10 Q. Point taken. That's why I'm giving you five
 11 instead of two.
 12 COFFEY, Q.C.:
 13 Q. Thank you, Commissioner. Touche. If I could,
 14 please, Ms. Elliott, you do--in fact, because
 15 of the peculiar background that you have--
 16 peculiar in the sense of you had worked in the
 17 department responsible for health boards, Ms.
 18 Hennessey's position. Dr. Williams had, in
 19 fact, been the DM of the day at one point.
 20 MS. ELLIOTT:
 21 A. Yes.
 22 COFFEY, Q.C.:
 23 Q. You bring a certain perspective here in terms
 24 of what you thought or understood at the time
 25 the department might want to know. If we

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1 could look, please, at Exhibit--just one
 2 second, please, Commissioner. If we could
 3 look, please, at Exhibit P-3054. This is an
 4 e-mail from Ms. Predham to yourself and Ms.
 5 Parsons, November 23rd, 2006, a summary of
 6 numbers, "Here are the latest numbers for
 7 ER/PR. This is around the time that there was
 8 a briefing for the executive and otherwise
 9 that eventually turned into a media -
 10 MS. ELLIOTT:
 11 A. Yes.
 12 COFFEY, Q.C.:
 13 Q. Turned into a media briefing in December.
 14 Were you involved in the preparations to brief
 15 people internally in November, or the media in
 16 December of 2006?
 17 MS. ELLIOTT:
 18 A. No, I wasn't involved in the executive
 19 briefing or the media, or the one with the
 20 MHAs. I wasn't any value added to that
 21 process.
 22 COFFEY, Q.C.:
 23 Q. Were you kept apprised of the fact, though, or
 24 the development of it?
 25 MS. ELLIOTT:

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1 A. I knew there was going to be a technical
 2 briefing that was being arranged, but I didn't
 3 have any input into it.
 4 COFFEY, Q.C.:
 5 Q. Bring up, please, Exhibit P-2663. I take it
 6 then this e-mail of November 23rd to yourself
 7 from Ms. Predham, see below, "It'll cut into
 8 our meeting time. I'm going to ask Sharon
 9 Smith to chair pharmacy monitoring for me". I
 10 take it then this is the one where Ms. Predham
 11 and others get advised of Mr. Osborne's
 12 request for a briefing?
 13 MS. ELLIOTT:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. You weren't involved in the actual briefing or
 17 preparation.
 18 MS. ELLIOTT:
 19 A. No.
 20 COFFEY, Q.C.:
 21 Q. For Mr -
 22 MS. ELLIOTT:
 23 A. And I wasn't invited to the meeting. Again
 24 my--you know, I was very much on the
 25 peripheral, the actual detail, the ER/PR, but

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1 I did try to support or see what they were up
 2 to so I could do the staffing priorities
 3 because every day in our department we're
 4 juggling priority assignments.
 5 COFFEY, Q.C.:
 6 Q. And -
 7 MS. ELLIOTT:
 8 A. And I certainly knew she was going to the
 9 Minister of Health, but I didn't participate
 10 in it.
 11 COFFEY, Q.C.:
 12 Q. Exhibit P-1179. This is an e-mail of October
 13 4th, 2006, and it's from Ms. Predham to
 14 yourself. She writes, "Please read below. I
 15 have no idea how we could have missed this
 16 lady so completely, unless she was a consult
 17 and request by her physician, but if so, the
 18 physician should have told her, and I'll keep
 19 you updated". This is one of the missed
 20 patients in the fall of '06.
 21 MS. ELLIOTT:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. And there are a number of such--not a lot, but
 25 some such -

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1 MS. ELLIOTT:
 2 A. Some.
 3 COFFEY, Q.C.:
 4 Q. Some such patients and number of e-mails that
 5 you were sent or copied on.
 6 MS. ELLIOTT:
 7 A. Yes.
 8 COFFEY, Q.C.:
 9 Q. Ms. Elliott, did you ever--bearing in mind
 10 your prior experience, in particular, your
 11 concern about numbers -
 12 MS. ELLIOTT:
 13 A. Yeah.
 14 COFFEY, Q.C.:
 15 Q. Did you ever bring to the executives attention
 16 and Ms. Predham's attention any misgivings you
 17 might have had about, you know, have we
 18 identified everybody, number one, or number
 19 two, have we contacted everyone?
 20 MS. ELLIOTT:
 21 A. My understanding is Heather was bringing those
 22 issues herself. Like, there was always a
 23 thing of "do we know everybody", but I had
 24 always been given assurance that everybody
 25 that we knew about had been contacted, but

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1 that there were people who I think what have
 2 now become known as the late identifiers,
 3 because they weren't in the database. So my
 4 understanding is that that was known at the
 5 executive--because with ER/PR, Heather did
 6 keep me in the loop at lot, but she still had
 7 a direct reporting to the executive because
 8 there was a core team that was looking at all
 9 of this, you know, Terry Gulliver, Dr. Cook,
 10 and all that.
 11 COFFEY, Q.C.:
 12 Q. So we're clear on this then, certainly--I'll
 13 just ask you this, when did you first become
 14 aware that patients may have been missed for
 15 retesting?
 16 MS. ELLIOTT:
 17 A. I can't recall the frame time, but I do
 18 remember hearing about, I think--I might be
 19 off on my memory here, but there was an ad out
 20 in the paper, some news story that someone
 21 might call up and say I was tested, but I had
 22 also been told that sometimes people called
 23 up, but they weren't really affected by it
 24 because these were people who had been
 25 positive, so they wouldn't have been part of

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1 the retesting, or that sometimes from another
 2 region. So I had known that they had
 3 identified everybody they could from our
 4 database, but what they weren't sure is is
 5 there someone out there who's not in the
 6 database.
 7 COFFEY, Q.C.:
 8 Q. In relation to that, was that before or after
 9 the Commission was announced?
 10 MS. ELLIOTT:
 11 A. I think there might have been some had come up
 12 before the Commission was announced. Well,
 13 obviously, this one would have--yeah, someone
 14 who came that they didn't know about.
 15 THE COMMISSIONER:
 16 Q. They had identified everybody they could from
 17 our database, but what they didn't know was
 18 whether there was people out there that were
 19 not in the database?
 20 MS. ELLIOTT:
 21 A. Well, my understanding, and I'm not a
 22 technical person, is that when they said that
 23 they were going to look back, and again that
 24 was before my time, but I had understood that
 25 the lab people went in and did a search.

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1 THE COMMISSIONER:
 2 Q. Uh-hm.
 3 MS. ELLIOTT:
 4 A. Through the Meditech, that they had talked to
 5 the IT people, but that, in fact, it was the
 6 lab people themselves who understood the
 7 Meditech lab module better than the IT people,
 8 and so that they did a search based on using
 9 things like estrogen, ER/PR.
 10 THE COMMISSIONER:
 11 Q. Uh-hm, yeah.
 12 MS. ELLIOTT:
 13 A. So in their mind they had identified--they
 14 thought they had identified everybody is what
 15 I was told, but when you had someone come
 16 forward, it was obvious that they weren't, and
 17 then I understood that things like, well, the
 18 Cancer Foundation have their own records.
 19 THE COMMISSIONER:
 20 Q. Okay.
 21 MS. ELLIOTT:
 22 A. And then some had slipped through in other
 23 regions.
 24 THE COMMISSIONER:
 25 Q. All right.

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1 MS. ELLIOTT:
 2 A. And I'm sure you've heard this story.
 3 THE COMMISSIONER:
 4 Q. And do you distinguish between identification
 5 and contact?
 6 MS. ELLIOTT:
 7 A. Yes, there's a--to me if someone gets
 8 identified -
 9 THE COMMISSIONER:
 10 Q. So -
 11 MS. ELLIOTT:
 12 A. Now what you would assume is that they're
 13 identified, they'd be retested and contacted.
 14 COFFEY, Q.C.:
 15 Q. Okay, in terms of that, the contact issue, if
 16 I could, Commissioner -
 17 THE COMMISSIONER:
 18 Q. Yes.
 19 COFFEY, Q.C.:
 20 Q. What did you understand about that in terms of
 21 whether everybody had been contacted?
 22 MS. ELLIOTT:
 23 A. I had been--understood and been told that
 24 everybody who they knew about, that there
 25 might be people who they didn't know about

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1 from the database, but that the ones they knew
 2 about had been contacted.
 3 COFFEY, Q.C.:
 4 Q. Who did you receive that from? Who told you
 5 that?
 6 MS. ELLIOTT:
 7 A. It would have been from Heather.
 8 COFFEY, Q.C.:
 9 Q. And when was that?
 10 MS. ELLIOTT:
 11 A. On a couple of occasions.
 12 COFFEY, Q.C.:
 13 Q. Can you tell the Commissioner, please, about
 14 that?
 15 MS. ELLIOTT:
 16 A. I remember one, in particular, that was very
 17 difficult. There's a lot of things about
 18 ER/PR that are very vague in my mind, but I
 19 remember one, in particular, I got a call from
 20 George Tilley, who--George very seldom called
 21 me on this issue because he would deal
 22 directly with Bob and Heather, but he did call
 23 me one day and he was visibly upset. He was
 24 talking to me about the Department of Health,
 25 and George and I go way back, we worked

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1 together since the early 80s, and he said,
 2 Pam, you know, he said, we need to know if
 3 everybody who is contacted--that we have
 4 contacted everybody, because I think they had
 5 said it in some press releases, or some
 6 correspondence, they had identified that
 7 everybody who needed to be contacted had been
 8 contacted. I remember saying to him, George,
 9 like, I can only go by what I'm being told
 10 because I don't have any of the records and
 11 the records were in just boxes, and so many
 12 records. I said, you know, but what I will
 13 do, I will go back to Heather again and get
 14 that confirmed. And he had been talking to
 15 Heather, I think earlier that day because it
 16 struck me odd about why, you know, he was
 17 calling me in the afternoon when he had talked
 18 to her earlier, so I remember going to her
 19 office and, you know, and I knew that she was
 20 not feeling the best herself and, you know, I
 21 did say, "Heather, George is on the phone to
 22 me and he wants to know have we contacted
 23 everybody of that we know of, what will I tell
 24 him?" And she said, "Well everybody that we
 25 know of, we have, yes." And so I went back

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1 and that's the only time I ever remember being
 2 the relayer of the message, but I also
 3 remember point blank saying--asking the
 4 question, particularly ones for our
 5 department, we did the negatives, reconfirmed
 6 negatives, and I had been given the assurance
 7 a number of times that they were all--they
 8 were taken care of in terms of communicated
 9 with.
 10 COFFEY, Q.C.:
 11 Q. Told Mount Sinai had, on retest, reported
 12 negative that your department had contacted
 13 all of those people.
 14 MS. ELLIOTT:
 15 A. Yes, and those contacts had started before I
 16 even got in the position, so I had been given,
 17 you know, confirmation, assurance that that
 18 was done, but then the other times about, I
 19 think the words that were used--and I know
 20 Heather would always qualify "we don't know if
 21 we have everybody, we only know what's in our
 22 database" but, you know, the assurance would
 23 be given that everybody that we know of has
 24 been contacted.
 25 COFFEY, Q.C.:

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1 Q. And this conversation with Mr. Tilley would
 2 have been when?
 3 MS. ELLIOTT:
 4 A. It was a sunny day, I can't tell you when, it
 5 might have been -
 6 THE COMMISSIONER:
 7 Q. We ought to be able to identify that, it was a
 8 sunny day.
 9 MS. ELLIOTT:
 10 A. Yes, because it's one of my vivid memories
 11 because I knew George and I knew Heather and
 12 both people were--in my mind, I knew them well
 13 enough to know that both were upset.
 14 COFFEY, Q.C.:
 15 Q. Would this be around the time, would this have
 16 been around May of 2007 when this was -
 17 MS. ELLIOTT:
 18 A. Oh it was when it was heating up because I
 19 remember the conversation, George's comments
 20 to me about the pressure he was feeling from
 21 the Department of Health and his words along,
 22 "well, Pam, I think they're planning my
 23 demise" and I remember Heather's comments,
 24 "Pam, George talked to me earlier today and
 25 he's worried that his job is on the line." So

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1 that's why I would remember that particular
 2 call.
 3 THE COMMISSIONER:
 4 Q. Mr. Coffey, I think we have to break for the
 5 afternoon.
 6 COFFEY, Q.C.:
 7 Q. Yes, and just in terms of this, if I could
 8 Commissioner, did Heather ever tell you that
 9 there were people that she couldn't contact,
 10 no answers?
 11 MS. ELLIOTT:
 12 A. Yes, there were some there and I remember one
 13 person in particular who, they were from out
 14 of country or something like that, and they
 15 had gotten a legal opinion and the others we
 16 had suggested about letters, but I think they
 17 found them afterwards or something.
 18 COFFEY, Q.C.:
 19 Q. If we could then, thank you, Commissioner. I
 20 will be brief when we come back, whenever Ms.
 21 Elliott -
 22 THE COMMISSIONER:
 23 Q. I assume you and Mr. Simmons will have that
 24 conversation about when we continue with this
 25 witness.

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1 COFFEY, Q.C.:
 2 Q. Thank you.
 3 THE COMMISSIONER:
 4 Q. 9:30 in the morning.

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1 CERTIFICATE
 2 I, Judy Moss, hereby certify that the foregoing is
 3 a true and correct transcript in the matter of the
 4 Commission of Inquiry on Hormone Receptor Testing,
 5 heard on the 28th day of October, A.D., 2008 before
 6 the Honourable Justice Margaret A. Cameron,
 7 Commissioner, at the Commission of Inquiry, St.
 8 John's, Newfoundland and Labrador and was
 9 transcribed by me to the best of my ability by
 10 means of a sound apparatus.
 11 Dated at St. John's, Newfoundland and Labrador
 12 this 28th day of October, A.D., 2008
 13 Judy Moss

Inquiry on Hormone Receptor Testing

<p style="text-align: center;">-?-</p> <p>'^[4] 141:24,25 142:2 264:9</p> <p>'03^[1] 327:8</p> <p>'04^[1] 328:10</p> <p>'05^[7] 111:9 141:7 146:21 150:21 153:1,1 214:23</p> <p>'06^[14] 152:17,22 153:14 155:4,13 161:17 179:24 180:15 181:14 257:9 352:18 353:1 373:22 412:20</p> <p>'07^[6] 112:2 129:1,18 186:24 247:12 257:9</p> <p>'08^[3] 112:6,14 247:13</p> <p>'72^[2] 6:17,17</p> <p>'83^[1] 297:3</p> <p>'90s^[1] 30:16</p> <p>'97^[1] 191:18</p> <p>'although^[1] 264:5</p> <p>'expressed^[1] 130:6</p> <p>'how^[1] 141:23</p> <p>'Ms^[1] 130:4</p> <p>'relatively^[1] 141:25</p> <p>'tests^[1] 263:25</p> <p>'the^[1] 141:25</p>	<p>111^[1] 251:22</p> <p>117^[3] 191:19 362:13,13</p> <p>11:00^[3] 41:10 44:10,11</p> <p>11th^[8] 181:15 203:7 216:25 221:7 272:4 378:2 382:20 400:21</p> <p>12^[7] 54:4 77:10,13 82:3 83:5 265:11 377:12</p> <p>12,000^[1] 367:11</p> <p>1200^[2] 17:1 48:6</p> <p>125,000^[1] 17:4</p> <p>12:30^[2] 185:22 377:13</p> <p>12:34^[1] 183:20</p> <p>12th^[6] 183:20 184:9 199:6 203:7 214:1 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