

<p style="text-align: center;">COMMISSION OF INQUIRY ON HORMONE RECEPTOR TESTING</p> <p style="text-align: center;">BEFORE THE HONOURABLE JUSTICE CAMERON - COMMISSIONER</p> <p style="text-align: center;">APRIL 7, 2008</p> <p>Appearances:</p> <p>Bernard Coffey, Q.C. Commission Co-counsel Sandra Chaytor, Q.C. Commission Co-counsel Mandy Woodland Commission Co-counsel</p> <p>Rolf Pritchard/Jenny Chair Her Majesty in Right of NL</p> <p>Peter Browne/Jane Hennebury Doctors Kara Laing et al</p> <p>Daniel Simmons Eastern Regional Integrated Health Authority</p> <p>Pamela Taylor. Members of the Breast Cancer Testing Class Action</p> <p>Mark Pike NL Medical Association Jennifer Newbury Canadian Cancer Society (NL Division) Stacey O’Dea Central, Western and Labrador-Grenfell Regional Integrated Health Authorities</p>	<p style="text-align: center;">LIST OF EXHIBITS</p> <p>EXHIBITS P-0163 THROUGH P-0165 Pg. 6</p> <p>EXHIBITS ENTERED AND MARKED P-0301, P-0302, P-0303, P-0304, P-0305, P-0306, P-0307, P-0308, P-0310, P-0311, P-0312, P-0313 . . Pg. 6</p> <p>EXHIBIT ENTERED AND MARKED P-0161 Pg. 302</p>
<p style="text-align: center;">TABLE OF CONTENTS</p> <p>Discussion and entering of exhibits Pgs. 1 - 7</p> <p>MR. JOHN OTTENHEIMER - RESUMES THE STAND</p> <p>Examination by Bernard Coffey, Q.C. Pgs. 7 - 243 Examination by Mr. Daniel Simmons Pg. 243 - 285 Examination by Mr. Peter Browne Pg. 285 - 305 Examination by Ms. Jennifer Newbury Pg. 305 - 325 Examination by Ms. Pamela Taylor Pg. 325 - 331</p> <p>Discussion Pg. 331 - 332</p> <p>Certificate</p>	<p style="text-align: right;">Page 4</p> <p>1 THE COMMISSIONER: 2 Q. Please be seated. Good morning. 3 MR. PIKE: 4 Q. Good morning. 5 THE COMMISSIONER: 6 Q. Now we have a preliminary matter before we 7 proceed with the evidence today. 8 MR. PIKE: 9 Q. Mark Pike is my name, and I appear on behalf 10 of the Newfoundland and Labrador Medical 11 Association. On Friday last I forwarded to 12 the Commission for your attention my 13 application to participate in Part I of this 14 inquiry, and I forwarded copies of my 15 application to other counsel as well and I’ll 16 outline briefly in the correspondence the 17 basis for my application, so I ask that you 18 give your consideration and to grant our 19 request. 20 THE COMMISSIONER: 21 Q. Mr. Pike, as I understand it, you are seeking 22 in effect a limited status for this part. 23 MR. PIKE: 24 Q. That’s correct. 25 THE COMMISSIONER:</p>

Page 5

1 Q. To deal with just one issue, and that is any
 2 matters relating to LNMA's role in responding
 3 to the information about the high rate of
 4 conversion.
 5 MR. PIKE:
 6 Q. At this stage, that's correct.
 7 THE COMMISSIONER:
 8 Q. Okay. Yes, I'm satisfied that in fairness
 9 that application should be granted on the
 10 understanding that it is, of course, the
 11 limited role that you have outlined and that
 12 the role that you have enunciated is an
 13 appropriate with appropriate limits. So
 14 welcome to the group, Mr. Pike.
 15 MR. PIKE:
 16 Q. Thank you, Commissioner. Relinquishing the
 17 chair to Mr. Coffey.
 18 THE COMMISSIONER:
 19 Q. Uh-hm. Mr. Coffey.
 20 COFFEY, Q.C.:
 21 Q. Thank you. Commissioner, Mr. Ottenheimer is
 22 back today.
 23 THE COMMISSIONER:
 24 Q. It's with our apologies for the delay, Mr.
 25 Ottenheimer.

Page 6

1 MR. OTTENHEIMER:
 2 A. I understood, Madam Commissioner.
 3 COFFEY, Q.C.:
 4 Q. And, Commissioner, there are certain other
 5 exhibits that I want to ask to be entered.
 6 Could I be advised as to how far up we've gone
 7 before? I just wanted to double check. My
 8 numbering takes me up to P-0162 where we were
 9 on the last day. Madam Commissioner, if we
 10 could, P-0163 through 0165, if I could have
 11 those entered, please.
 12 EXHIBITS ENTERED AND MARKED P-0163 THROUGH P-0165
 13 THE COMMISSIONER:
 14 Q. 0163 to 0165?
 15 COFFEY, Q.C.:
 16 Q. Yes. Okay. Commissioner, exhibit P-0300 to
 17 P-0308 - that's 0301, 0302, 0303, 0304, 0305,
 18 0306, 0306, 0307 and 0308.
 19 THE COMMISSIONER:
 20 Q. Yes.
 21 COFFEY, Q.C.:
 22 Q. Exhibit P-0310, 0311, 0312, 0313.
 23 THE COMMISSIONER:
 24 Q. So that would be P-0310, 0311 and 0313?
 25 COFFEY, Q.C.:

Page 7

1 Q. 0312 and 0313.
 2 THE COMMISSIONER:
 3 Q. So it's 0310 through 0313, respectively.
 4 COFFEY, Q.C.:
 5 Q. Yes, Commissioner. Yes, excluding P-0309.
 6 THE COMMISSIONER:
 7 Q. Okay. All other counsel has received copies
 8 of these documents, have they?
 9 COFFEY, Q.C.:
 10 Q. I certainly understand, Commissioner, that
 11 they have. I don't hear anything to the
 12 contrary.
 13 THE COMMISSIONER:
 14 Q. Those documents are entered.
 15 EXHIBITS ENTERED AND MARKED P-0301, P-0302, P-0303, P-
 16 0304, P-0305, P-0306, P-0307, P-0308, P-0310, P-0311, P-
 17 0312, P-0313
 18 MR. JOHN OTTENHEIMER, EXAMINATION BY BERNARD COFFEY, Q.C.
 19 - CONTINUED
 20 COFFEY, Q.C.:
 21 Q. Thank you. Now, well, if we could have--the
 22 last day, Mr. Ottenheimer, we were at P-0046
 23 when we ended. So if we just--Registrar,
 24 please bring that up. This is the report of
 25 Dr. Banerjee of October 17, 2005, and the

Page 8

1 report and the covering letter are dated the
 2 same date. When we were here last day, we
 3 were looking at--and I showed you on Page 4 of
 4 the exhibit P-0046 - say Page 4 of the exhibit
 5 P-0046 - under the heading, "Conclusions About
 6 the Reasons for Test Failure," and there are
 7 actually seven such reasons and we looked at a
 8 number of those. What we didn't get to is
 9 "Other System Flaws Observed," and that's by
 10 Dr. Banerjee, and he lists seven. And the
 11 first one of those is "A lack of dedicated
 12 immunohistochemistry technologists" and he
 13 goes on about that. "A lack of an officially
 14 designated pathologist as director of
 15 immunohistochemistry service." That's number
 16 two. Number three, "A lack of standard
 17 operating procedures from grossing fixation
 18 tissue processing block selection, positive
 19 control block selection, method optimization
 20 through systematic titration, incubation time
 21 and antigen retrieval time for each analite"
 22 and, four, "lack of sub-specialization among
 23 pathologists." And then it goes on about--
 24 five, "Disconnect between the Laboratory
 25 Program Direction, Division Manager, Clinical