

1 COMMISSION OF INQUIRY
 2 ON HORMONE RECEPTOR TESTING
 3 BEFORE THE HONOURABLE JUSTICE CAMERON - COMMISSIONER
 4 MARCH 24, 2008
 5 Appearances:
 6 Bernard Coffey, Q.C. Commission Co-counsel
 7 Sandra Chaytor, Q.C. Commission Co-counsel
 8 Rolf Pritchard Her Majesty in Right of NL
 9 Daniel Simmons Eastern Regional Integrated
 10 Health Authority
 11 Chesley Crosbie, Q.C. . . Members of the Breast Cancer
 12 Testing Class Action
 13 Ms. Darlene Russell Co-counsel
 14 Jennifer Newbury Canadian Cancer Society (NL Division)
 15 David Eaton, Q.C. Central, Western and Labrador-Grenfell
 16 Regional Integrated Health Authorities

1 EXHIBIT LIST
 2 MARCH 24, 2008
 3 EXHIBIT C-0072 TO EXHIBIT C-0084 ENTERED INTO
 4 EVIDENCE. Pg. 4
 5 EXHIBIT P-0007 ENTERED INTO EVIDENCE. Pg. 4
 6 EXHIBITS ENTERED AND MARKED C-0096 THROUGH C-0115 Pg. 96
 7 EXHIBITS ENTERED AND MARKED EXHIBITS C-0085 THROUGH C-
 8 0095 Pg. 187
 9 EXHIBIT ENTERED AND MARKED EXHIBIT P-0008 . . . Pg. 187

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1 THE COMMISSIONER:
 2 Q. Good morning. Please be seated. Mr. Coffey,
 3 are we ready to begin?
 4 COFFEY, Q.C.:
 5 Q. Yes, Commissioner. Good morning. The first
 6 witness is Rosalind Jardine.
 7 MS. ROSALIND JARDINE (SWORN) EXAMINATION BY BERNARD
 8 COFFEY, Q.C.
 9 REGISTRAR:
 10 Q. Would you state and spell your complete name
 11 for the Commission, please?
 12 MS. JARDINE:
 13 A. Rosalind Jardine, R-O-S-A-L-I-N-D, J-A-R-D-I-
 14 N-E.
 15 REGISTRAR:
 16 Q. Thank you.
 17 COFFEY, Q.C.:
 18 Q. Ms. Jardine, before we begin, Commissioner,
 19 Exhibits C-0072 through C-0084 and Exhibit P-
 20 0007, I move to have those entered, please?
 21 THE COMMISSIONER:
 22 Q. Entered.
 23 EXHIBIT C-0072 TO EXHIBIT C-0084 ENTERED INTO EVIDENCE.
 24 EXHIBIT P-0007 ENTERED INTO EVIDENCE.

Page 5

1 COFFEY, Q.C.:

2 Q. Thank you, Commissioner. Ms. Jardine, would

3 you tell us, please, how old are you?

4 MS. JARDINE:

5 A. I'm 60.

6 COFFEY, Q.C.:

7 Q. And where are you from?

8 MS. JARDINE:

9 A. Topsail, Paradise.

10 COFFEY, Q.C.:

11 Q. Okay. And you're still living there?

12 MS. JARDINE:

13 A. Yes, I am.

14 COFFEY, Q.C.:

15 Q. Could you tell us, please, what your

16 occupation is or was?

17 MS. JARDINE:

18 A. I'm a retired teacher and I'm self employed

19 now.

20 COFFEY, Q.C.:

21 Q. And you were self employed as what? You were

22 self employed as what?

23 MS. JARDINE:

24 A. In the service industry, yes.

25 COFFEY, Q.C.:

Page 6

1 Q. Okay, in the service industry. And you were a

2 teacher for how long?

3 MS. JARDINE:

4 A. Twenty-five years.

5 COFFEY, Q.C.:

6 Q. Okay. I understand that you're a cancer

7 patient?

8 MS. JARDINE:

9 A. Yes, I am.

10 COFFEY, Q.C.:

11 Q. Could you tell us, please, about your

12 experience with cancer?

13 MS. JARDINE:

14 A. I was diagnosed in '99 with breast cancer,

15 followed with a lumpectomy and followed then

16 with chemotherapy and radiation.

17 COFFEY, Q.C.:

18 Q. And where were you treated?

19 MS. JARDINE:

20 A. I was treated at the Bliss Murphy Cancer

21 Centre.

22 COFFEY, Q.C.:

23 Q. And it's here in St. John's?

24 MS. JARDINE:

25 A. Yes, here in St. John's.

Page 7

1 COFFEY, Q.C.:

2 Q. And now at the time you were diagnosed and had

3 surgery, you've just indicated you had

4 chemotherapy and radiation. Do you recall how

5 many sessions of radiation you had?

6 MS. JARDINE:

7 A. I had 30.

8 THE COMMISSIONER:

9 Q. I'm sorry, did you say 30?

10 MS. JARDINE:

11 A. Thirty.

12 THE COMMISSIONER:

13 Q. Thank you.

14 COFFEY, Q.C.:

15 Q. Okay. And who was your oncologist?

16 MS. JARDINE:

17 A. Dr. Kara Laing.

18 COFFEY, Q.C.:

19 Q. At the time you were first diagnosed and after

20 your surgery you went to see Dr. Laing?

21 MS. JARDINE:

22 A. Yes.

23 COFFEY, Q.C.:

24 Q. You had seen her after your surgery?

25 MS. JARDINE:

Page 8

1 A. Yes, I did.

2 COFFEY, Q.C.:

3 Q. Initially. Was there ever any discussion

4 about estrogen receptors or progesterone

5 receptors, ER and PR and Tamoxifen, things

6 like that?

7 MS. JARDINE:

8 A. Yes, Dr. Laing discussed the readings, the,

9 you know, ER negative, PR positive at that

10 time, in '99.

11 COFFEY, Q.C.:

12 Q. And what were you told about that at the time?

13 MS. JARDINE:

14 A. Had it been a certain percentage, I was ER

15 negative, zero, and the progesterone, I

16 understand, at that time was 25 to 30 percent.

17 COFFEY, Q.C.:

18 Q. Okay.

19 MS. JARDINE:

20 A. And I was not a candidate for Tamoxifen.

21 COFFEY, Q.C.:

22 Q. And who advised you you were not a candidate

23 for Tamoxifen?

24 MS. JARDINE:

25 A. Dr. Laing in consult with Dr. Ganguly.

Page 9

1 COFFEY, Q.C.:

2 Q. And Dr. Ganguly, I take it, would have been

3 the radiation oncologist?

4 MS. JARDINE:

5 A. Yes, he was.

6 COFFEY, Q.C.:

7 Q. And then how did your treatment progress then,

8 as time went on?

9 MS. JARDINE:

10 A. It went very well. I was one of the very

11 fortunate ones, had no side effects other than

12 the usual tiredness and it went well.

13 COFFEY, Q.C.:

14 Q. And did you continue then to periodically see

15 Dr. Laing?

16 MS. JARDINE:

17 A. Yes, I went the regular three months, then

18 six, then graduate to a year, um-hm.

19 COFFEY, Q.C.:

20 Q. Okay, and had you ever been discharged from

21 the care of the Bliss Centre, had you gotten

22 that far?

23 MS. JARDINE:

24 A. No. I did reach the point of that thereby

25 where you would return to your family

Page 10

1 physician, however, I kept seeing Dr. Laing

2 once a year.

3 COFFEY, Q.C.:

4 Q. I understand that you became ill again. Can

5 you tell us, please, about that?

6 MS. JARDINE:

7 A. In 2005 I was admitted as an emergency and

8 underwent surgery of the bowel.

9 COFFEY, Q.C.:

10 Q. And that would have been in, I understand -

11 MS. JARDINE:

12 A. September the 22nd, actually, 2005.

13 COFFEY, Q.C.:

14 Q. Okay, and who was your surgeon, do you recall?

15 MS. JARDINE:

16 A. Dr. Kwan.

17 COFFEY, Q.C.:

18 Q. And could you tell us, please, about your

19 experience in hospital at that time and what

20 you were told about the nature of that cancer?

21 MS. JARDINE:

22 A. Well, the pathology was sent to Toronto and it

23 came back that, yes, it--the cancer had

24 metastasized to the bowel and I had some, you

25 know, several feet of it removed from the

Page 11

1 large bowel.

2 COFFEY, Q.C.:

3 Q. And you recovered from your surgery, I take

4 it, over a period of weeks?

5 MS. JARDINE:

6 A. Yes, I did.

7 COFFEY, Q.C.:

8 Q. Or so?

9 MS. JARDINE:

10 A. Yes.

11 COFFEY, Q.C.:

12 Q. And were discharged from the hospital?

13 MS. JARDINE:

14 A. Um-hm.

15 COFFEY, Q.C.:

16 Q. What happened then?

17 MS. JARDINE:

18 A. Of course, when it was confirmed by Dr. Kwan

19 that, yes, indeed, the bowel was, the

20 pathology was cancer, it had returned, then my

21 oncologist, he contacted Dr. Laing and the

22 oncologist came on board then. Then, shall I

23 continue with it?

24 COFFEY, Q.C.:

25 Q. Sure, go right ahead, yes.

Page 12

1 MS. JARDINE:

2 A. Okay. So that was around the same time that

3 it was getting circulated that, of this whole

4 scenario with the misdiagnosis of some of the

5 cancer patients within a time frame of those

6 years.

7 COFFEY, Q.C.:

8 Q. And that's the ER/PR had become public?

9 MS. JARDINE:

10 A. ER/PR positive, the receptor. And mine,

11 because it fell within those years, was being

12 sent to Mount Sinai and because of me being

13 hospitalized and what had resulted Dr. Laing

14 informed me that she was sending mine within

15 the next batch, which would be, you know,

16 pretty, pretty, right away, almost, and would

17 be in touch with me about the results, which

18 she did. I went in and met with her in

19 October and, yes, she then said, told me that

20 I was one of the unfortunate that had been

21 misdiagnosed with ER and that there were

22 changes.

23 COFFEY, Q.C.:

24 Q. Were you told the numbers, what the new

25 numbers were for the ER?

Page 13

1 MS. JARDINE:
 2 A. Yes.
 3 COFFEY, Q.C.:
 4 Q. Okay.
 5 MS. JARDINE:
 6 A. Yes.
 7 COFFEY, Q.C.:
 8 Q. And so you were now considered ER positive?
 9 MS. JARDINE:
 10 A. Yes, I was ER positive.
 11 COFFEY, Q.C.:
 12 Q. And was it then your understanding that the
 13 original tissue sample, tumor tissue sample,
 14 that from the operation back in nineteen,
 15 ninety -
 16 MS. JARDINE:
 17 A. Nine.
 18 COFFEY, Q.C.:
 19 Q. - nine, I believe, had been retested at Mount
 20 Sinai and Mount Sinai was reporting it as
 21 positive?
 22 MS. JARDINE:
 23 A. Yes, that's correct.
 24 COFFEY, Q.C.:
 25 Q. ER positive. Did you discuss then with Dr.

Page 14

1 Laing the implications for your treatment of
 2 this change of status as to what should be
 3 done?
 4 MS. JARDINE:
 5 A. Yes, we did. She was very empathetic with me.
 6 I had nothing but the utmost respect for how
 7 Dr. Laing handled it with me. I cried, she
 8 cried. She apologized to me. She said, "I am
 9 very, very sorry." And we talked a little
 10 about that and I, you know, my shock with it,
 11 yadda, yadda, and I said, "Okay, where do we
 12 go from here?" And because I was out of the
 13 time frame where Tamoxifen would have been
 14 affected--effective for me she recommended
 15 that I go on Femara and also Aredia, because
 16 it was also discovered that now the cancer had
 17 metastasized as well into the bone.
 18 COFFEY, Q.C.:
 19 Q. Okay. You had some kind of a bone scan in the
 20 meantime done?
 21 MS. JARDINE:
 22 A. Yes, I did, yeah.
 23 COFFEY, Q.C.:
 24 Q. And it had metastasized to your bones?
 25 MS. JARDINE:

Page 15

1 A. As well, yes.
 2 COFFEY, Q.C.:
 3 Q. Okay, so she discussed with you using these
 4 Femara and, I'm sorry?
 5 MS. JARDINE:
 6 A. Aredia.
 7 COFFEY, Q.C.:
 8 Q. Aredia?
 9 MS. JARDINE:
 10 A. Um-hm.
 11 COFFEY, Q.C.:
 12 Q. And what did you do, you listened to her and?
 13 MS. JARDINE:
 14 A. Yes, we talked, we talked about it and she
 15 gave me the prescription for the Femara and
 16 set up my, I'm on the 28-day cycle for the
 17 Aredia at the cancer clinic.
 18 COFFEY, Q.C.:
 19 Q. And how have you been since? That would be
 20 the fall of 2005?
 21 MS. JARDINE:
 22 A. 2005.
 23 COFFEY, Q.C.:
 24 Q. So it's about a year and a half ago, that
 25 would be about, yeah, the fall--no, two and a

Page 16

1 half years ago.
 2 MS. JARDINE:
 3 A. It's about two and a half years ago.
 4 COFFEY, Q.C.:
 5 Q. Time flies, time flies, it's two and a half
 6 years, yes.
 7 MS. JARDINE:
 8 A. Yeah.
 9 COFFEY, Q.C.:
 10 Q. Go ahead.
 11 MS. JARDINE:
 12 A. I'm doing very well.
 13 COFFEY, Q.C.:
 14 Q. Okay.
 15 MS. JARDINE:
 16 A. I'm doing very well. My reports and my scans,
 17 I'm in every three months, and so far the
 18 drugs are doing what they should be doing and
 19 there's no new surprises or new lesions, so
 20 it's been effective.
 21 COFFEY, Q.C.:
 22 Q. When you met with Dr. Laing in October of 2005
 23 and were told that your ER status had changed?
 24 MS. JARDINE:
 25 A. Yes.

Page 17

1 COFFEY, Q.C.:

2 Q. Okay, was there any discussion with her about,

3 like, how the--her understanding of how this

4 had come about, like, what had caused this?

5 MS. JARDINE:

6 A. Other than both of us, I saying, "Oh, my gosh,

7 it just cannot be," and "what do you think

8 happened?", no, not at that point. It was

9 just a whole lot of little pockets of things

10 that had to be contributing to this. No,

11 there was nothing definite.

12 COFFEY, Q.C.:

13 Q. Okay. That's what she was--she had told you?

14 MS. JARDINE:

15 A. Well, at that time.

16 COFFEY, Q.C.:

17 Q. At the time?

18 MS. JARDINE:

19 A. Yes, there were many things that contributed.

20 And I didn't--I was so emotional, nearly

21 knocked off my feet that I didn't, I was just

22 concerned with me, let's get on with what we

23 can do positively here with me.

24 COFFEY, Q.C.:

25 Q. And have you discussed it with her since?

Page 18

1 MS. JARDINE:

2 A. No, I can honestly say, other than we hope it

3 kicks off and, you know, it gets started and

4 gets addressed and improvements made. And

5 some of the improvements have been

6 implemented, I understand, now.

7 COFFEY, Q.C.:

8 Q. Ma'am, have you discussed the ER/PR issue with

9 anyone else in terms of any other physician?

10 And I understand, I should say, I understand

11 that your husband is a physician?

12 MS. JARDINE:

13 A. Yeah.

14 COFFEY, Q.C.:

15 Q. Okay, but leaving aside your husband.

16 MS. JARDINE:

17 A. Okay. My general practitioner, when I go

18 back, you know, periodically, that's Susan

19 Furlong.

20 COFFEY, Q.C.:

21 Q. And has Ms. Furlong been able to, you know,

22 provide any further information or

23 enlightenment about the nature of the problem,

24 why these problems occurred?

25 MS. JARDINE:

Page 19

1 A. No, she hasn't.

2 COFFEY, Q.C.:

3 Q. Ma'am, I'm going to show you some--ask you to

4 look at some documents. If I could, please,

5 Registrar, Exhibit C-0072, page 1. And, Ms.

6 Jardine, in fact, to locate them, the top

7 centre of the page you'll see that there's a

8 stamp.

9 MS. JARDINE:

10 A. Oh, yes, okay.

11 COFFEY, Q.C.:

12 Q. With the exhibit number and the page number.

13 Thank you, Registrar. This is, Ms. Jardine,

14 these--is a pathology report or it's entitled

15 a "Supplementary Pathology Report, Doctor's

16 copy" from St. Clare's Mercy Hospital for

17 yourself. Your surgeon is indicated to be Dr.

18 Felix?

19 MS. JARDINE:

20 A. That's correct.

21 COFFEY, Q.C.:

22 Q. And the specimen number is 99:SS4355,

23 originally received October 21st, 1999. Now,

24 I'm going to, for now, ignore the addendum 1,

25 okay.

Page 20

1 MS. JARDINE:

2 A. Um-hm.

3 COFFEY, Q.C.:

4 Q. That's the immediate entry.

5 MS. JARDINE:

6 A. Okay.

7 COFFEY, Q.C.:

8 Q. But toward the bottom of the page there's a

9 pathology interpretation.

10 MS. JARDINE:

11 A. Um-hm.

12 COFFEY, Q.C.:

13 Q. "Left breast, segmental mastectomy, moderately

14 differentiated, infiltrating ductal carcinoma.

15 And return to page 2. Just come over here.

16 Under "Continuation of Pathological

17 Interpretation" "Immunohistochemical stain for

18 estrogen and progesterone receptors show tumor

19 cells negative for estrogen receptors,

20 positive for progesterone receptors in 25-30

21 percent of tumor cells." So that apparently

22 is the original report for yourself?

23 MS. JARDINE:

24 A. Yes, that's correct.

25 COFFEY, Q.C.:

Page 21

1 Q. And it's, if we go to page 3 of Exhibit C-
 2 0072, it's signed out by Dr. Denic, October
 3 27th, 1999. Now, ma'am, I'm going to ask if
 4 we could, please, I'll come back to that
 5 eventually in time, but if we could turn,
 6 Registrar, please, to Exhibit C-0074, page 1?
 7 That's right, you have the right page.
 8 MS. JARDINE:
 9 A. Um-hm.
 10 COFFEY, Q.C.:
 11 Q. Now this is a first assessment summary dated
 12 November 16th, 1999 for yourself in the
 13 medical oncology clinic. And go to page 2,
 14 you'll note that it's signed off by a Dr.
 15 Curtis as a resident and Dr. Laing, your
 16 oncologist, medical oncologist. And here
 17 under "History of Present Illness" it begins
 18 indicating, "This is a 51-year-old lady from
 19 Bell Island who had a routine mammography in
 20 September, 1999. And she had previously
 21 normal mammograms, however, her last one prior
 22 to September was at least four years ago. An
 23 abnormality on her mammogram was found and she
 24 went to have an ultrasound in October. This
 25 revealed intraductal carcinoma." And "Dr.

Page 22

1 Felix performed a left segmental mastectomy on
 2 October 21st." So is that your medical
 3 history?
 4 MS. JARDINE:
 5 A. Yes, that is correct.
 6 COFFEY, Q.C.:
 7 Q. Okay. "Initial Investigations" reads,
 8 "Pathology showed modified differentiated
 9 infiltrative ductal carcinoma." And it goes
 10 on about the 13 nodes being biopsied, all
 11 being negative. The third line has a sentence
 12 that reads, "Tissue was estrogen receptor
 13 negative and 30 percent of the cells were
 14 progesterone receptor positive." And then if
 15 we turn to page 2, under "Assessment and
 16 Discussion" it reads, "Assessment and
 17 Discussion. This is a 51-year-old lady with
 18 left-sided breast cancer. It was our opinion
 19 that she would benefit from chemotherapy.
 20 These benefits along with side effects and
 21 chemotherapy options were discussed both with
 22 her and her husband." So looking back on it,
 23 and I appreciate now it's almost ten years
 24 ago, okay, does that about summarize your
 25 first encounter with Dr. Laing?

Page 23

1 MS. JARDINE:
 2 A. Yes, it does.
 3 COFFEY, Q.C.:
 4 Q. If I could, Registrar, Exhibit C-0075, page 1,
 5 please?
 6 THE COMMISSIONER:
 7 Q. C-0075, was it?
 8 COFFEY, Q.C.:
 9 Q. Yes.
 10 THE COMMISSIONER:
 11 Q. Thank you.
 12 COFFEY, Q.C.:
 13 Q. This is--I'm sorry, Bliss Murphy Cancer Centre
 14 letterhead, it's for yourself, Rosalind
 15 Jardine. It's progress notes, 3rd, December,
 16 1999. It's indicated to be a consultation
 17 note. And this is, in fact, three pages long.
 18 Go to the third page you'll see it's a note by
 19 Dr. Ganguly, radiation oncologist. Back up.
 20 MS. JARDINE:
 21 A. Um-hm.
 22 COFFEY, Q.C.:
 23 Q. And with respect to Dr. Ganguly do you recall
 24 much about your interaction with Dr. Ganguly?
 25 MS. JARDINE:

Page 24

1 A. Other than meeting him to discuss the
 2 radiation and the number I would require and
 3 the process and the markings, no.
 4 COFFEY, Q.C.:
 5 Q. Okay.
 6 MS. JARDINE:
 7 A. That would be it.
 8 COFFEY, Q.C.:
 9 Q. That was it. He as a radiation oncologist, I
 10 take it, he met you before the radiation
 11 treatment, discussed with you what would
 12 happen?
 13 MS. JARDINE:
 14 A. Um-hm. Yes, it is, yeah, that's correct.
 15 COFFEY, Q.C.:
 16 Q. And all that?
 17 MS. JARDINE:
 18 A. Yes, he -
 19 COFFEY, Q.C.:
 20 Q. And would have seen you throughout your
 21 radiation treatments?
 22 MS. JARDINE:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. And then effectively -

Page 25

1 MS. JARDINE:
 2 A. Yes, he did, he followed through with me.
 3 COFFEY, Q.C.:
 4 Q. - left you in the hands then of Dr. Laing
 5 afterwards?
 6 MS. JARDINE:
 7 A. Yes. And I was aware of any major things that
 8 needed to be discussed with Dr. Ganguly
 9 because Dr. Laing would mention that she
 10 discussed it, her and Dr. Ganguly, and would
 11 decide whatever needed to be at that time.
 12 COFFEY, Q.C.:
 13 Q. Ma'am, your approach to your treatment by this
 14 point, because this would be, this is the
 15 beginning of December of 1999?
 16 MS. JARDINE:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. And your surgery is over and as we just saw
 20 midway through November you had met, I gather,
 21 for the first time with Dr. Laing and
 22 beginning of December you were meeting with
 23 Dr. Ganguly. What was your approach to
 24 decisions about what treatment you would
 25 accept and how your treatments would go?

Page 26

1 MS. JARDINE:
 2 A. I was very trustworthy. I knew I was in good
 3 hands. I highly respect Dr. Laing and her
 4 qualifications and her professionalism, her
 5 openness with me. And I--she was the
 6 specialist that would be suggesting the best
 7 route for my treatment. And with that and
 8 with what I could do, I felt we both worked as
 9 a team with that. And like I said, trust was
 10 utmost with me and I had all the confidence in
 11 the world that what I could be offered at that
 12 time I was receiving.
 13 COFFEY, Q.C.:
 14 Q. Okay.
 15 MS. JARDINE:
 16 A. And I also did say to her at that point and
 17 other points along the way, like, early in
 18 that process, that, "Look, Dr. Laing, what do
 19 you think if I went out for a second opinion?"
 20 I was prepared to go anywhere if it meant a
 21 treatment that wasn't here in Newfoundland or
 22 Canada that could give me a higher percentage
 23 of assurance that cancer would not reoccur.
 24 And I even would say to her, you know, "If I
 25 were your mom, what would you suggest?" And

Page 27

1 she was quite honest and open and the nature
 2 of my cancer, she said that given what she was
 3 presented with, with the facts there that what
 4 I was receiving was no more or less than what
 5 would be in Toronto or the States.
 6 COFFEY, Q.C.:
 7 Q. Offered elsewhere? And I'll come back to that
 8 because there are references to this later on,
 9 actually, in the notes themselves, okay, and
 10 I'm going to ask you about some experiences
 11 some friends of yours had.
 12 MS. JARDINE:
 13 A. Sure.
 14 COFFEY, Q.C.:
 15 Q. So I'll come back to that.
 16 MS. JARDINE:
 17 A. Um-hm.
 18 COFFEY, Q.C.:
 19 Q. But right from beginning the nature of your
 20 relationship with her was such that you talked
 21 openly about the idea of, if necessary, you
 22 could go and have a second opinion?
 23 MS. JARDINE:
 24 A. Very much, very much, yeah. I felt very
 25 comfortable.

Page 28

1 COFFEY, Q.C.:
 2 Q. Again, looking at C-0075, page 1, I look, it's
 3 a--okay?
 4 MS. JARDINE:
 5 A. Um-hm, yes.
 6 COFFEY, Q.C.:
 7 Q. December 3rd, 1999, diagnosis is carcinoma of
 8 left breast its stage there. The reason seen,
 9 "Referred to the clinic by Dr. Felix and Dr.
 10 Kara Laing." And then the history of the
 11 present illness, after describing who you are,
 12 the second line, first full sentence,
 13 "Following suspicion of diagnosis for
 14 carcinoma of breast she was referred to Dr.
 15 Felix and needle biopsy confirmed intraductal
 16 carcinoma. This was followed by a segmental
 17 mastectomy and left axillary dissection. This
 18 was carried out on October 21st, 1999. The
 19 histopathology," and it goes on and describes
 20 ten different aspects of the histopathology,
 21 but number ten, "ER/PR status, ER negative, PR
 22 positive, 25-30 percent of tumor cells which
 23 according to old standard will be called
 24 equivocal or borderline positive." You see
 25 that?

Page 29

1 MS. JARDINE:
 2 A. Yes, I do.
 3 COFFEY, Q.C.:
 4 Q. And if we could turn then to page 2 of the
 5 same exhibit, under "Discussion and
 6 Recommendation" at the bottom of the page, Dr.
 7 Ganguly has noted, "This 51-year-old patient
 8 is symptomatically post menopausal. Has been
 9 on HRT for four years which she has now
 10 stopped." And it continues on, the third line
 11 he notes--oh, and "also positive for
 12 perineural invasion" and he continues on, "and
 13 also technically ER/PR negative, PR being
 14 equivocal." He continues, "She does require
 15 systematic chemotherapy, which she has already
 16 started. She will also require radiation
 17 therapy to the breast." And then finally
 18 under the same heading on page 3 he ends with
 19 a note, "In terms of Tamoxifen, I am not sure
 20 one way or the other. However, seeing that
 21 the tumor has probably progressed while on HRT
 22 it may not be unreasonable to prescribe
 23 Tamoxifen to this lady following completion of
 24 her chemotherapy." Ms. Jardine, do you recall
 25 back in late 1999 whether you ever with Dr.

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1 Ganguly had any discussion about ER/PR status?
 2 MS. JARDINE:
 3 A. I don't recall, but that doesn't mean that it
 4 didn't. I don't recall.
 5 COFFEY, Q.C.:
 6 Q. Sure. And the reference on page 1 of Exhibit
 7 0075, just come up here, here we are, under
 8 "History of Present Illness, No. 10."
 9 MS. JARDINE:
 10 A. Uh-hm.
 11 COFFEY, Q.C.:
 12 Q. I take it that from Dr. Laing you had
 13 understood that your PR was on the borderline?
 14 MS. JARDINE:
 15 A. Yes, that's correct.
 16 COFFEY, Q.C.:
 17 Q. Positivity, and the idea of or referring to
 18 the phrase that Dr. Ganguly uses is "according
 19 to old standard"
 20 MS. JARDINE:
 21 A. Uh-hm.
 22 COFFEY, Q.C.:
 23 Q. Do you recall back in 1999 whether it was Dr.
 24 Laing or Dr. Ganguly or for that matter,
 25 anyone, any medical professional, there was a

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1 discussion about old standards verses new
 2 standards?
 3 MS. JARDINE:
 4 A. Not at that time in '99. All I recall is Dr.
 5 Laing telling me that she consulted with Dr.
 6 Ganguly about the 25 to 30 percent margin and
 7 that it was decided that Tamoxifen wouldn't be
 8 offered.
 9 COFFEY, Q.C.:
 10 Q. Okay. Were you made aware that, at least
 11 according to his note on page 3, recall being
 12 made aware that Dr. Ganguly, at least had
 13 written on your chart that it may not be
 14 unreasonable to prescribe Tamoxifen to
 15 yourself?
 16 MS. JARDINE:
 17 A. In '99?
 18 COFFEY, Q.C.:
 19 Q. Yes.
 20 MS. JARDINE:
 21 A. No, I was not.
 22 COFFEY, Q.C.:
 23 Q. If we could, Registrar please, Exhibit C-0076,
 24 that's the next page. This is on Bliss Murphy
 25 Cancer Centre letterhead, Rosalind Jardine,

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1 progress notes, 24 of January, 2000, Medical
 2 Oncology Clinic and it's noted to be the note
 3 of Dr. Hong who is a radiation oncologist and
 4 Dr. Hong is noted in the first long,
 5 categorized you or your tumor as ER negative,
 6 PR equivocal tumor. And if you look at the
 7 last paragraph of this note, it's apparent
 8 that you were already on or about to begin
 9 your forth cycle of chemotherapy. So by late
 10 January of 2000, you were well into the chemo?
 11 MS. JARDINE:
 12 A. Yes, I was more than halfway there.
 13 COFFEY, Q.C.:
 14 Q. It also ends with the sentence, "If everything
 15 goes well, patient will come back to see Dr.
 16 Laing in eight to ten weeks time when the
 17 radiation will be finished also." So by then,
 18 I take it, probably your chemo would be over
 19 and your radiation would be -
 20 MS. JARDINE:
 21 A. Well the radiation started after the chemo,
 22 yes.
 23 COFFEY, Q.C.:
 24 Q. Yes. If we could, Registrar, Exhibit C-0077.
 25 This is on Bliss Murphy Cancer Centre

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1 letterhead. It's for Rosalind Jardine, it's
 2 progress notes of March 7, 2000, Medical
 3 Oncology Clinic. Go to the second page, it's
 4 a note by Dr. Laing, medical oncologist and
 5 under "Diagnosis" the second paragraph reads
 6 or begins: "Rosalind returns to clinic today
 7 for review. She finished her chemo at the end
 8 of January and overall tolerated it quite
 9 well. She is now beginning the third week of
 10 radiation and aside from some minimal skin
 11 reaction, has had no difficulties." Under
 12 "Plan" at the bottom of that page, she's noted
 13 "I have reassured Rosalind that what she is
 14 feeling now in terms of her emotions is quite
 15 usual. This often occurs after the completion
 16 of chemotherapy. Her tumor was ER negative
 17 and PR was only 25 to 30 percent; therefore,
 18 she is not a candidate for Tamoxifen
 19 chemotherapy and I have not started this. I
 20 do not believe that the benefit to her in this
 21 case would outweigh the risks." And that,
 22 although the note continues, that's really the
 23 reference to Tamoxifen. So, does that accord
 24 with your memory of your discussions with Dr.
 25 Laing in early 2000?

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1 MS. JARDINE:
 2 A. Yes, it does.
 3 COFFEY, Q.C.:
 4 Q. Did she discuss the pros and cons, benefits
 5 and risks with you or just simply say that you
 6 weren't a candidate or do you recall?
 7 MS. JARDINE:
 8 A. We talked about--she mentioned, I asked about
 9 the, you know, side effects because I was
 10 excited about the Tamoxifen, if you can call
 11 it excited, because of the reassurance it
 12 would provide and I knew, she discussed the
 13 side effects, but given that, I would have
 14 gone on it in a heart beat. I would have
 15 taken the drug in a heart beat and--because of
 16 what it could possibly give me.
 17 COFFEY, Q.C.:
 18 Q. Registrar, Exhibit C-0078 please? Now this
 19 again is Bliss Murphy Cancer Center letterhead
 20 form. It's progress notes for Rosalind
 21 Jardine, right there, and it's for the 30th of
 22 May, 2000, Medical Oncology Clinic. It's a
 23 note by Dr. Laing. And she begins, first full
 24 paragraph under "Diagnosis". "Rosalind
 25 returns to clinic today for review. She has

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1 been doing quite well and her energy is
 2 returning back to normal." And at the bottom
 3 of that page under "Plan", the last two lines
 4 read: "On her last visit, we decided not to
 5 place her on Tamoxifen, as she was ER negative
 6 and PR also essentially negative, with
 7 staining only in 25 percent of the cells."
 8 So, on her last visit, it says, "we decided
 9 not to place her on Tamoxifen".
 10 MS. JARDINE:
 11 A. I'm assuming she's referring to her and Dr.
 12 Ganguly.
 13 COFFEY, Q.C.:
 14 Q. Dr. Ganguly, okay. The "we" wouldn't--from
 15 your perspective, would not include you?
 16 MS. JARDINE:
 17 A. No. I didn't have a say in whether--Dr. Laing
 18 mentioned to me that in consult with Dr.
 19 Ganguly, it was decided, so that's what I'm
 20 assuming the "we" is referring to.
 21 COFFEY, Q.C.:
 22 Q. Okay. If I could, please, Registrar, Exhibit
 23 C-0079 and I just note that that's May of
 24 2000. C-0079 please? This is an H. Bliss
 25 Murphy Cancer Centre form, progress notes for

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1 yourself, 16 of November, 2004, Medical
 2 Oncology Clinic and if we go to the second
 3 page here, it's a note by Dr. Laing and I
 4 would hasten to add that there are a number of
 5 notes that occur between 2000 and 2004, but
 6 I'll just get, Commissioner, of course, I'm
 7 certainly not going to go through them all.
 8 But this goes ahead well toward the end of
 9 2004. Under "Diagnosis" here, the first full
 10 paragraph, last entry is ER/PR negative,
 11 you're described as and the second paragraph
 12 opens with, "Mrs. Jardine returns to clinic
 13 today for review." And under "Impression"
 14 toward the bottom of the page, "No clinical
 15 evidence of recurrent disease, now five years
 16 from diagnosis." And under "Plan", she's
 17 noted "Overall Mrs. Jardine has done well,
 18 She is now five years from diagnosis; in fact,
 19 it was exactly five years ago today that I
 20 first met her. From now on she will need
 21 annual physical exam and will need to continue
 22 with her annual mammography." She refers to
 23 the difficulty of examining your breast
 24 because of earlier medical procedures and then
 25 she says, "She has asked if I would continue

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1 to see her on an annual basis and I would be
 2 more than happy to do so. I will see her back
 3 in November 2005 and we will continue to book
 4 her mammograms in February of this year"--I
 5 apologize, thank you Registrar, it's on to the
 6 second page, "I will see her back in November
 7 2005 and will continue to book her mammograms
 8 in February of each year. She knows to
 9 contact me sooner should problems arise." So
 10 that reflects again, your memory of you would
 11 see her once a year then?
 12 MS. JARDINE:
 13 A. That's correct.
 14 COFFEY, Q.C.:
 15 Q. That was the plan.
 16 MS. JARDINE:
 17 A. Yes, it was.
 18 COFFEY, Q.C.:
 19 Q. And as of the time that this plan was first
 20 set out in the middle of November of 2004, you
 21 expected to see Dr. Laing again in November of
 22 2005?
 23 MS. JARDINE:
 24 A. Yes.
 25 COFFEY, Q.C.:

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1 Q. A full year later.
 2 MS. JARDINE:
 3 A. Uh-hm.
 4 COFFEY, Q.C.:
 5 Q. Now, Registrar please, Exhibit C-0080. Now,
 6 these are progress notes on Bliss Murphy
 7 Cancer Centre letterhead, Rosalind Jardine,
 8 13th of October, 2005, Medical Oncology
 9 Clinic. You can see on page two of them, they
 10 are notes of Dr. Laing, the director of
 11 medical oncology. Ma'am under "Diagnosis".
 12 "Metastatic carcinoma of the breast with bowel
 13 and bone metastases." The last sentence and
 14 first paragraph diagnosis reads "Repeat ER.
 15 PR testing pending." And she continues, "Ms.
 16 Jardine returns to clinic today for review. I
 17 last saw her about a year ago. I received a
 18 call from Dr. Alan Kwan regarding this patient
 19 to say that she had developed a metastatic
 20 disease." And it goes on then to describe
 21 your problems that led to your bowel surgery.
 22 At the bottom of that page, Dr. Laing has
 23 noted "This lady's initial tumor was estrogen
 24 receptor negative and had progesterone
 25 receptor staining in 25 percent, which in

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1 those days was reported as being negative as
 2 well. Her repeat testing has not been done
 3 and I spoke to Dr. Don Cook today, who is
 4 going to send her slides as an urgent referral
 5 to Mount Sinai. I have also asked for her to-
 6 -testing to be done." And then I go then,
 7 finally under "Plan". "This lady now has a
 8 metastatic disease. I have had a long
 9 discussion with her and her husband today
 10 about what this means." And in the middle of
 11 the paragraph, under "Plan" it notes: "If she
 12 is shown to be ER positive, I am going to
 13 treat her with Femara. If she is ER/PR
 14 negative, then I have offered her chemotherapy
 15 and we will start with a Taxane, with
 16 Taxotere. Herceptin will be added if she is
 17 HER-2 over expresser. If she is ER positive,
 18 I have talked to her today about starting her
 19 on Femara. And in either case, she is going
 20 to receive Aredia." So, ma'am, October 13th,
 21 2005 when you met with Dr. Laing, how much of
 22 a discussion at that time did you have or do
 23 you recall having about this whole ER/PR
 24 issue?
 25 MS. JARDINE:

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1 A. As to the difference of the reports from '99
 2 to -
 3 COFFEY, Q.C.:
 4 Q. Yeah, well your own wasn't back even because
 5 it hadn't even been--it was just being ordered
 6 that day.
 7 MS. JARDINE:
 8 A. Yes.
 9 COFFEY, Q.C.:
 10 Q. According to, you know, Dr. Laing made a note
 11 here she is going to have it made on a consult
 12 basis.
 13 MS. JARDINE:
 14 A. Yes, it was.
 15 COFFEY, Q.C.:
 16 Q. Up to that time, when you went to that meeting
 17 that day, how much did you know about the
 18 ER/PR issue at all?
 19 MS. JARDINE:
 20 A. Only what I had heard filtrating in the media.
 21 COFFEY, Q.C.:
 22 Q. In the media.
 23 MS. JARDINE:
 24 A. Yeah.
 25 COFFEY, Q.C.:

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1 Q. And it's a matter of public record I'm saying
 2 to you that the "Independent Newspaper" on
 3 October 2nd, 2005 had published a story and
 4 then it was in the media in the week following
 5 that.
 6 MS. JARDINE:
 7 A. That's right.
 8 COFFEY, Q.C.:
 9 Q. So this would have been about eleven days
 10 after the first story, your meeting with Dr.
 11 Laing.
 12 MS. JARDINE:
 13 A. Yeah, it was just after my surgery, it all
 14 came concurrently and I can remember saying,
 15 "Oh my gosh, I suppose I'm lucky enough to be
 16 one of them." So it was that time.
 17 COFFEY, Q.C.:
 18 Q. When you spoke with Dr. Laing in clinic on
 19 October 13th, was there any discussion, do you
 20 recall, about what had caused the problem or
 21 how big the problem was?
 22 MS. JARDINE:
 23 A. Nothing other than this was an enormous
 24 problem, this was.
 25 COFFEY, Q.C.:

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1 Q. That was, Dr. Laing had indicated to you?
 2 MS. JARDINE:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. Now if we could, Ms. Registrar, look at
 6 Exhibit C-0073 which from your perspective,
 7 Ms. Jardine is toward the front of the book.
 8 MS. JARDINE:
 9 A. Uh-hm.
 10 COFFEY, Q.C.:
 11 Q. This is on--this is pathology on laboratory
 12 medicine report on Mount Sinai Hospital
 13 letterhead, it's for yourself, Rosalind
 14 Jardine. The referring physician is noted to
 15 be Dr. Donald Cook. The date of procedure is
 16 at the top left-hand side of the page, October
 17 31st, 2005, date and time of report is October
 18 27th, 2005 at 1452 hours. It's a final
 19 surgical pathology report with label SP0515974
 20 and it's a report, if you go to the second
 21 page, it's a report by a Dr. Brendan Mullen,
 22 pathologist. Go back to the first page, here
 23 ma'am, you'll see that the specimen is
 24 indicated on the third entry to be a
 25 CONSULTATION, in capital letters, and then the

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1 gross description is received from the
 2 Department of Pathology, St. Clare's site as a
 3 paraffin block, labelled SS4355-99-5, a breast
 4 specimen type and side unspecified, and
 5 microscopic description and he notes,
 6 "Estrogen receptor protein, percent positive
 7 cells 50; progesterone receptor protein,
 8 percent positive cells 20" and then toward the
 9 bottom of the page, the paragraph reads:
 10 "Threshold for positive ER/PR result, staining
 11 of any intensity in greater than one percent
 12 invasive tumor cells" and there's a threshold
 13 indicated for HER2 result. And the third line
 14 says "Positive and negative laboratory
 15 external control stained appropriately. The
 16 normal breast tissue reacted appropriately
 17 with the estrogen and progesterone stains."
 18 And then there's a reference noted on the next
 19 page, page 2 and under "Diagnosis" he
 20 concludes with breast specimen, type and side
 21 unspecified, invasive ductal carcinoma, no
 22 special type, positive for estrogen receptor
 23 protein; positive for progesterone receptor
 24 protein." So that apparently--and if we look
 25 and go back to the first page of this exhibit,

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1 Exhibit 0073, page one, there is a faxed
 2 header at the top of the page and I think you
 3 will find that that's October 28th, 2005,
 4 particular time of Friday and a fax number
 5 that it was faxed from. So that's apparently
 6 the report that was done on yourself by Mount
 7 Sinai?
 8 MS. JARDINE:
 9 A. Yes.
 10 COFFEY, Q.C.:
 11 Q. Not by yourself, but by your tumor tissue.
 12 And if we could, Exhibit C-0072, please, page
 13 1, right back to where we started, we looked
 14 at this earlier but now, if I can draw your
 15 attention to Addendum No. 1, for specimen
 16 99:SS4355 entered October 28th, 2005 at 92
 17 hours by Dr. Donald Cook, who signed off on it
 18 below on the same date. It notes
 19 "Consultation at Mount Sinai Hospital for
 20 immunohistochemical studies, block five, shows
 21 estrogen receptor protein as positive in 50
 22 percent of cells, using a particular antibody
 23 and procedure; and progesterone receptor
 24 protein as positive in 20 percent of cells."
 25 Again, referring to particular antibodies and

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1 procedure. And Dr. Cook concludes by saying,
 2 "Please see consultative report", which
 3 presumably is Dr. Mullen's report. So by the
 4 end of October of 2005, the retest for
 5 yourself has been done, as a consultation?
 6 MS. JARDINE:
 7 A. Yes.
 8 COFFEY, Q.C.:
 9 Q. And it comes back.
 10 MS. JARDINE:
 11 A. Uh-hm.
 12 COFFEY, Q.C.:
 13 Q. If I could please, Registrar, Exhibit C-0081.
 14 This is on Bliss Murphy Cancer Centre
 15 letterhead. It's progress notes for Rosalind
 16 Jardine, 28th of October, 2005, Medical
 17 Oncology Clinic. And it's a report, look down
 18 the page, by Dr. Laing. Diagnosis:
 19 metastatic carcinoma of the breast with bowel
 20 and bone metastases. ER/PR positive on
 21 retesting and it goes on, the second
 22 paragraph, "Rosalind comes back today. I
 23 received her ER/PR result this morning from
 24 Dr. Cook. Mount Sinai has interpreted her to
 25 be 50 percent ER and 20 percent PR positive.

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1 I have let her and her husband know the
 2 results of this today. I am not surprised
 3 that she was ER negative before, but PR just
 4 below our 30 percent cutoff at the time."
 5 Now, with respect to that, when you met with
 6 Dr. Laing on October 28th, 2005 or even since
 7 then, okay, has she ever talked to you about
 8 not having been surprised that you were ER
 9 negative originally?
 10 MS. JARDINE:
 11 A. No, not that I can recall.
 12 COFFEY, Q.C.:
 13 Q. Has she ever spoken to you about the 30
 14 percent cutoff, you know, in recent years, in
 15 '05 and '06, about the fact that there was a
 16 30 percent cutoff back in '99?
 17 MS. JARDINE:
 18 A. Yes, I recall that, just briefly.
 19 COFFEY, Q.C.:
 20 Q. And what was said about that in the later
 21 years? I appreciate back in '99 you knew
 22 there was 25 to 30, but like in the recent
 23 years?
 24 MS. JARDINE:
 25 A. Well yes, in the latter years.

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1 COFFEY, Q.C.:
 2 Q. Yes, the latter years.
 3 MS. JARDINE:
 4 A. That that was the course of treatment back in
 5 those guidelines and then now today, I
 6 understand it's different.
 7 COFFEY, Q.C.:
 8 Q. Okay, and what have you been told about what
 9 the current guidelines are or more recent
 10 ones?
 11 MS. JARDINE:
 12 A. Well that right now, had somebody been with
 13 these readings, they would be on Tamoxifen.
 14 COFFEY, Q.C.:
 15 Q. Someone with?
 16 MS. JARDINE:
 17 A. The readings that I presented in '99.
 18 COFFEY, Q.C.:
 19 Q. In '99, even 25 to 30 -
 20 MS. JARDINE:
 21 A. Yes.
 22 COFFEY, Q.C.:
 23 Q. - on progesterone would now get you on
 24 Tamoxifen.
 25 MS. JARDINE:

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1 A. Uh-hm.
 2 COFFEY, Q.C.:
 3 Q. Under the current regime, that's your
 4 understanding?
 5 MS. JARDINE:
 6 A. Yes, it is my understanding.
 7 COFFEY, Q.C.:
 8 Q. And you got that from whom?
 9 MS. JARDINE:
 10 A. Well I presume it would have to be in talking
 11 with Dr. Laing.
 12 COFFEY, Q.C.:
 13 Q. And I take it she explained to you that views,
 14 though, have changed over time?
 15 MS. JARDINE:
 16 A. That's correct, yeah, she did, yeah.
 17 COFFEY, Q.C.:
 18 Q. Under "Plan" at the bottom of the page, Dr.
 19 Laing has noted "I am going to proceed with
 20 the Femara as previously discussed. I have
 21 reviewed with them again the rationale for
 22 hormonal treatment, given the fact that she
 23 has had a long disease free interval. We know
 24 she is ER positive. She has got low bulk
 25 disease in the bone and the GI disease has

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1 mostly been resected." So the overall
 2 conclusion then at the end of October was you
 3 would have the Femara and move on.
 4 MS. JARDINE:
 5 A. And the Aredia.
 6 COFFEY, Q.C.:
 7 Q. Aredia. Exhibit C-0082, now this is a letter
 8 on Eastern Health letterhead. It's dated
 9 December 18th, 2005. It's from Dr. Laing,
 10 addressed to Dr. Laing at the H. Bliss Murphy
 11 Cancer Centre and she is writing it in her
 12 capacity, in her described capacity as
 13 director of medical oncology at the H. Bliss
 14 Murphy Cancer Centre. It's carboned to Dr.
 15 Felix, Dr. Kwan and Dr. Furlong. So Felix was
 16 your original surgeon and Kwan was your
 17 surgeon on late 2005.
 18 MS. JARDINE:
 19 A. That's right.
 20 COFFEY, Q.C.:
 21 Q. Dr. Furlong is your -
 22 MS. JARDINE:
 23 A. Family physician.
 24 COFFEY, Q.C.:
 25 Q. Family physician. Now this letter--did you

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1 see this in 2005 or 2006? I'm not suggesting
 2 you did, I'm just asking.
 3 MS. JARDINE:
 4 A. No, not to my--I honestly can't recall seeing
 5 that.
 6 COFFEY, Q.C.:
 7 Q. Okay. It reads, "Ms. Jardine was diagnosed
 8 with breast cancer on October 21st, 1999. The
 9 original report of the estrogen and
 10 progesterone receptors showed negative
 11 staining for estrogen and 25-30 percent
 12 staining for progesterone. A repeat report
 13 from Mount Sinai Hospital has shown the tumor
 14 to be estrogen and progesterone receptor
 15 positive at 50 and 20 percent respectively. A
 16 physician review panel recently discussed this
 17 patient. We understand that this lady has
 18 been informed of the above results and treated
 19 appropriately; therefore, there is no
 20 recommendation from the panel at this time."
 21 Signed by Dr. Laing. Now, there's a reference
 22 there to a physician review panel having
 23 recently discussed this patient, that would
 24 be--and it's dated December 18th, 2005. Back
 25 in 2005, were you ever told about a physician

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1 review panel?
 2 MS. JARDINE:
 3 A. No.
 4 COFFEY, Q.C.:
 5 Q. When was the first time you heard any
 6 reference to or learned about a physician
 7 review panel?
 8 MS. JARDINE:
 9 A. It was when this proceeding started and I saw
 10 the documents.
 11 COFFEY, Q.C.:
 12 Q. The documents that we have actually here now?
 13 MS. JARDINE:
 14 A. Yes, yeah.
 15 COFFEY, Q.C.:
 16 Q. And that would be during, I take it, the past
 17 month or so?
 18 MS. JARDINE:
 19 A. That's right. The physician review panel,
 20 given the fact that my bowel surgery happened
 21 around the time that the news was coming out,
 22 no, I didn't--wasn't aware of this panel.
 23 COFFEY, Q.C.:
 24 Q. So I take it Dr. Laing had not told you that
 25 not only had she given you treatment, which

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1 she was, obviously, but that your case was
 2 discussed by some panel or reviewed by some
 3 panel?
 4 MS. JARDINE:
 5 A. I honestly can't recall that, no.
 6 COFFEY, Q.C.:
 7 Q. Okay. Ma'am, again this is a matter of public
 8 record, there have been references in the
 9 media for some period of time to 117 patients
 10 requiring a change in treatment.
 11 MS. JARDINE:
 12 A. Uh-hm.
 13 COFFEY, Q.C.:
 14 Q. And later the Commission is going to hear, I
 15 anticipate much more about it. Has anyone
 16 ever spoken to you about whether you are
 17 listed in those 117?
 18 MS. JARDINE:
 19 A. No.
 20 COFFEY, Q.C.:
 21 Q. You did, as a result of the retest, require a
 22 change in treatment?
 23 MS. JARDINE:
 24 A. Yes, if I could go back to your first
 25 question?

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1 COFFEY, Q.C.:
 2 Q. Sure.
 3 MS. JARDINE:
 4 A. Could you repeat that again for me please?
 5 COFFEY, Q.C.:
 6 Q. Has anyone ever discussed with you about
 7 whether or not you are part of the 117 people?
 8 There's been a number used in public to
 9 indicate that there were, out of all those
 10 retested, there were a total of 117 people
 11 who, as a result of the retesting, required a
 12 change in treatment. I'm just asking you do
 13 you--has anyone ever spoken to you about
 14 whether you are actually a member of that
 15 group of 117?
 16 MS. JARDINE:
 17 A. Numbers are not relevant to me, like the 117,
 18 but I was aware that I was part of the group
 19 that were retested.
 20 COFFEY, Q.C.:
 21 Q. Yes, yes.
 22 MS. JARDINE:
 23 A. And had a change in their results.
 24 COFFEY, Q.C.:
 25 Q. And a change in treatment -

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1 MS. JARDINE:
 2 A. And a change in treatment.
 3 COFFEY, Q.C.:
 4 Q. And you're saying to me, Mr. Coffey, if I'm
 5 part of that 117, no one has ever said it one
 6 way or the other to me?
 7 MS. JARDINE:
 8 A. No.
 9 COFFEY, Q.C.:
 10 Q. Okay, I appreciate that. Effectively you're
 11 telling me that's for you to figure out.
 12 MS. JARDINE:
 13 A. Yes.
 14 COFFEY, Q.C.:
 15 Q. If we could please, Registrar, Exhibit C-0083?
 16 Now this is on Bliss Murphy Cancer Centre
 17 letterhead, it's a progress note by Dr. Laing,
 18 dated April 18th, 2006, Medical Oncology
 19 Clinic and under "Diagnosis" she indicates on
 20 the second line, you're presently, then,
 21 presently on Femara and Aredia. Second
 22 paragraph, "Rosalind comes back today for
 23 review." And in the third paragraph, Dr.
 24 Laing has noted, "I had Dr. Ganguly look at
 25 her films with me and we did not think that

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1 there was anything to suggest possible
 2 impending fracture and no need for any
 3 radiation at this time." I take it that
 4 reference to Dr. Ganguly's involvement is
 5 consistent with your understanding?
 6 MS. JARDINE:
 7 A. Yes, it is.
 8 COFFEY, Q.C.:
 9 Q. Over time. Dr. Laing also continues on,
 10 towards the bottom of the page, "I did not re-
 11 examine her today. We talked again about her
 12 diagnosis and prognosis. She is really doing
 13 a lot better with things now. Her family had
 14 asked her to go outside for a second opinion
 15 and I have offered her that as an option, but
 16 she is not interested right now, but certainly
 17 down the road, we can consider that.
 18 Impression, good tolerance to Femara.
 19 Symptomatic improvement, and plan, I will see
 20 her back after her scans are done in a month.
 21 We will continue on with the Femara and Aredia
 22 for now." This, the reference there to the
 23 "outside for a second opinion," that's the
 24 reference I was going to --
 25 MS. JARDINE:

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1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. -- I indicated I'd be bringing you back to.
 4 So since the reoccurrence of the cancer in
 5 2005, this at least indicates that as of April
 6 2006, you had raised the issue or topic with -
 7 MS. JARDINE:
 8 A. Yes.
 9 COFFEY, Q.C.:
 10 Q. - Dr. Laing and she's remained open to that
 11 throughout?
 12 MS. JARDINE:
 13 A. She was open all the way. She said
 14 "absolutely. You have every right to do
 15 that," and then I talked, because of past
 16 experience with a couple of friends, I had
 17 talked about that with her, where I recently
 18 had lost a friend and another girlfriend some
 19 years prior where they'd both felt that the
 20 ultimate resolve and the cure was outside the
 21 province and they did go, and came back and
 22 they did go only to be reconfirmed that what
 23 they were receiving was exactly no more no
 24 less than what they would do up in Toronto or
 25 Boston, and they came back really deflated.

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1 They had lost hope, and I saw that a
 2 spiralling down. So I gave an awful lot of
 3 consideration to that, and where I wanted to
 4 be mentally with it because I really--you
 5 know, science and technology does so much, but
 6 then you do the rest with your hope and your
 7 mind. But Dr. Laing was always open to me
 8 going and I asked her, like I just said
 9 previous, "if I were your Mom, what would you
 10 do?" But she reconfirmed to me that I was
 11 receiving--and I trusted her and I knew that a
 12 specialist in her position, who was quite
 13 aware, quite up on everything, I trusted. So
 14 I decided not to go.
 15 COFFEY, Q.C.:
 16 Q. Ma'am, while you were in hospital in September
 17 of 2005 for your bowel surgery, I take it that
 18 at the time, in the lead up to the surgery
 19 itself and the discussion about it, the
 20 question would have arisen about whether it's
 21 a primary bowel tumor or it's the breast
 22 cancer that has spread.
 23 MS. JARDINE:
 24 A. Yes.
 25 COFFEY, Q.C.:

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1 Q. That would be one of the topics certainly.
 2 MS. JARDINE:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. How long were you in hospital during September
 6 of 2005, do you recall?
 7 MS. JARDINE:
 8 A. I think it was about ten days, ten or twelve
 9 days.
 10 COFFEY, Q.C.:
 11 Q. Okay.
 12 MS. JARDINE:
 13 A. Possibly ten days.
 14 COFFEY, Q.C.:
 15 Q. Was there any discussion, while you were in
 16 hospital at that time, that you recall, about
 17 the ER/PR retesting, that you recall?
 18 MS. JARDINE:
 19 A. Not that I recall, no. I was all consumed
 20 with what was currently happening.
 21 COFFEY, Q.C.:
 22 Q. Okay. And this is before it went public in any
 23 case?
 24 MS. JARDINE:
 25 A. Yes.

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1 COFFEY, Q.C.:
 2 Q. We know that.
 3 MS. JARDINE:
 4 A. That's right.
 5 COFFEY, Q.C.:
 6 Q. When you did see Dr. Laing in October of 2005,
 7 just get the dates here, October 13th and in
 8 particular October 28th, 2005, particularly on
 9 October 28th when you realized that your tumor
 10 tissue originally, and that would be Exhibit
 11 C-0081 actually -
 12 MS. JARDINE:
 13 A. Okay.
 14 COFFEY, Q.C.:
 15 Q. - when you realized or had it--Mount Sinai had
 16 reported that your tumor tissue was ER
 17 positive, on October 28th, 2005, was there any
 18 discussion with Dr. Laing about Tamoxifen
 19 itself? I appreciate you ended up on Femara.
 20 MS. JARDINE:
 21 A. That Tamoxifen would not be effective for me,
 22 given the time span right now.
 23 COFFEY, Q.C.:
 24 Q. That was what -
 25 MS. JARDINE:

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1 A. Yes, and Femara would be the choice of
 2 treatment.
 3 COFFEY, Q.C.:
 4 Q. So Dr. Laing indicated that--your
 5 understanding from Dr. Laing was that too much
 6 time had passed from '99, 1999, to 2005 for
 7 Tamoxifen to be effective?
 8 MS. JARDINE:
 9 A. Yes, that was my understanding, that Femara
 10 was the best choice.
 11 THE COMMISSIONER:
 12 Q. Was it your understanding that that was a--or
 13 was it even discussed that the question of the
 14 use of Tamoxifen was, at that stage, was a
 15 question of time or because by then you had
 16 already had cancer of the bowel?
 17 MS. JARDINE:
 18 A. I understood it was a question of time.
 19 THE COMMISSIONER:
 20 Q. Okay, and while I'm at it, was it also your
 21 understanding that when Mount Sinai came back
 22 and said that you were ER positive, that that
 23 was as a result of a re-examination of the
 24 material that had been removed in 1999, not
 25 the material that had been removed from your

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1 bowel?
 2 MS. JARDINE:
 3 A. Yes, that's correct. '99 was, yes, that's the
 4 one that was used.
 5 THE COMMISSIONER:
 6 Q. Mr. Coffey, I'm sure at some point, we're
 7 going to have evidence on this issue, but when
 8 I'm looking at Exhibit C-0072, there's
 9 reference to 99 and then there's a SS number
 10 and a following number. Could one take from
 11 the first numbers being 99 that that's an
 12 indication of the year the specimen was -
 13 COFFEY, Q.C.:
 14 Q. Yes.
 15 THE COMMISSIONER:
 16 Q. Okay.
 17 COFFEY, Q.C.:
 18 Q. That's certainly my understanding.
 19 THE COMMISSIONER:
 20 Q. All right, thank you.
 21 COFFEY, Q.C.:
 22 Q. And sometimes it's before, sometimes the year
 23 is after. It depends on which hospital, and
 24 sometimes even which format is being used, but
 25 in this context that 99 before the colon in

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1 the specimen number does--my understanding is
 2 does indicate the year in which the specimen
 3 was obtained.
 4 THE COMMISSIONER:
 5 Q. All right, thank you.
 6 COFFEY, Q.C.:
 7 Q. Ms. Jardine, in the fall of 1999, after I
 8 suppose you're really just at home recovering
 9 from--just barely out of hospital recovering
 10 from your bowel surgery and you first hear
 11 about this ER/PR -
 12 THE COMMISSIONER:
 13 Q. That would be in 2005.
 14 COFFEY, Q.C.:
 15 Q. I apologize, 2005.
 16 THE COMMISSIONER:
 17 Q. Thank you.
 18 COFFEY, Q.C.:
 19 Q. You have me on the 1999, Commissioner. It's
 20 at 2005, yes.
 21 MS. JARDINE:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. When you're just home from hospital and you
 25 hear about the ER/PR issue in the public, what

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1 was your initial reaction to hearing about it
 2 in the media, the fact that you heard about it
 3 in the media first?
 4 MS. JARDINE:
 5 A. I was shocked that it came in the media first,
 6 rather than to the individual people that may
 7 have been involved with that.
 8 COFFEY, Q.C.:
 9 Q. And why is that?
 10 MS. JARDINE:
 11 A. Well, I felt the correct protocol should have
 12 been the patient with his or her doctor first.
 13 COFFEY, Q.C.:
 14 Q. Did you ever learn or come to any
 15 understanding about all this started?
 16 MS. JARDINE:
 17 A. Yes, I did.
 18 COFFEY, Q.C.:
 19 Q. Okay. Could you tell us please about that?
 20 MS. JARDINE:
 21 A. Well, I was aware that one patient who was not
 22 responding to treatment or had surpassed a
 23 certain time mark in that treatment process
 24 still wasn't progressing as well and I
 25 understand that that's what set the alarm

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1 going first, and then people around that time,
 2 in '99 or earlier, their charts were re-looked
 3 at by their oncologist or an oncologist and
 4 from there, a lot of--it just snowballed. It
 5 just--some of them then were resent and then
 6 the investigation went back further. Now
 7 being around the club in at the Cancer Clinic,
 8 you are--you hear whatever is spinning and
 9 what's going around generally among people.
 10 COFFEY, Q.C.:
 11 Q. Okay, and so where was it then that you would
 12 have received this understanding?
 13 MS. JARDINE:
 14 A. Just in general conversation, I guess. Just
 15 in chatting with other ladies that were -
 16 COFFEY, Q.C.:
 17 Q. Patients or relatives of patients, I take it?
 18 MS. JARDINE:
 19 A. Yes, exactly.
 20 COFFEY, Q.C.:
 21 Q. Okay.
 22 MS. JARDINE:
 23 A. Somebody knew somebody and that's how it -
 24 COFFEY, Q.C.:
 25 Q. Now looking at, and we have looked at Exhibit

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1 C-0079, which was Dr. Laing's--thank you--
 2 progress note for November 16th, 2004. This
 3 indicates that, go down through it, on the
 4 second page that Dr. Laing then expected to
 5 see you again, the next scheduled visit would
 6 be November 2005, a full year later. As of
 7 November 2004, up to November 2005, would you
 8 normally have any occasion to go to the Cancer
 9 Clinic during that year? Or by November 2004,
 10 were you at a stage in your treatment where
 11 you wouldn't be back to the Clinic?
 12 MS. JARDINE:
 13 A. Oh no, I didn't go for treatment. I had
 14 graduated and I was only going in to see Dr.
 15 Laing for my yearly checkup.
 16 COFFEY, Q.C.:
 17 Q. Okay. So this is what I'm getting at, because
 18 you refer to the club. So I take it before
 19 November 2004 though, you would have been -
 20 MS. JARDINE:
 21 A. Oh yes.
 22 COFFEY, Q.C.:
 23 Q. - at periodic points in -
 24 MS. JARDINE:
 25 A. That's right, yes. No, I wasn't in for

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1 treatment. Maybe I was in with a friend. I
 2 had a couple of friends that were in active
 3 treatment and it wasn't unusual for us to
 4 accompany each other and be in there.
 5 COFFEY, Q.C.:
 6 Q. But you -
 7 MS. JARDINE:
 8 A. No, I wasn't in treatment at that time.
 9 COFFEY, Q.C.:
 10 Q. And between then November 2004 and up until
 11 you were admitted to hospital in September
 12 2005, for your bowel surgery, you would--
 13 unless you went along with a friend -
 14 MS. JARDINE:
 15 A. I was in there with a friend, a girlfriend,
 16 that was actively in treatment.
 17 COFFEY, Q.C.:
 18 Q. And then since your bowel surgery in September
 19 2005, I take it you've been back to the Cancer
 20 Clinic a number of times since?
 21 MS. JARDINE:
 22 A. Monthly.
 23 COFFEY, Q.C.:
 24 Q. Okay.
 25 MS. JARDINE:

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1 A. I have to go in every 28 days actually for the
 2 Aredia.
 3 COFFEY, Q.C.:
 4 Q. And between your own visits for your own
 5 treatment and accompanying any friends of
 6 yours -
 7 MS. JARDINE:
 8 A. Yes.
 9 COFFEY, Q.C.:
 10 Q. - so you'd have, over the past two years, two
 11 and a half years, a lot more contact with the
 12 club, as it were?
 13 MS. JARDINE:
 14 A. Oh yes.
 15 COFFEY, Q.C.:
 16 Q. Okay.
 17 MS. JARDINE:
 18 A. Too much.
 19 THE COMMISSIONER:
 20 Q. I suspect you're a full-fledged member.
 21 MS. JARDINE:
 22 A. I think so.
 23 COFFEY, Q.C.:
 24 Q. And I take it, and this is something I just
 25 wanted to explore with you, on any one given

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1 day that you're at the Cancer Clinic, the H.
 2 Bliss Murphy Cancer Centre, and the General
 3 Hospital site here, if your appointment is
 4 for, for example, for the middle of the
 5 morning, say on a Wednesday morning at 10:30
 6 a.m., how crowded is the place?
 7 MS. JARDINE:
 8 A. Oh, it is busy. It is busy. You go in for
 9 your treatment. The seat is well warmed by
 10 you and another one is ready to take it over.
 11 COFFEY, Q.C.:
 12 Q. Okay. So there -
 13 MS. JARDINE:
 14 A. Oh, it's constant.
 15 COFFEY, Q.C.:
 16 Q. How about in terms of--you refer to the club,
 17 I take it then you get to--do you get to know
 18 people, in terms of speaking to them?
 19 MS. JARDINE:
 20 A. That's just my term for the Centre.
 21 COFFEY, Q.C.:
 22 Q. And I appreciate, and I do.
 23 MS. JARDINE:
 24 A. Sometimes I call it the spa.
 25 COFFEY, Q.C.:

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1 Q. But in terms of--what I'm getting at is the
 2 interaction with your fellow patients or their
 3 relatives, I take it -
 4 MS. JARDINE:
 5 A. Yes, you generally get--like if I'm on a 28-
 6 day cycle, then there's other people on 28-day
 7 cycles, not all, but some of them, and you
 8 know, you get chatting and whatever. You make
 9 friendships or maybe it's followed by a phone
 10 call or a coffee.
 11 COFFEY, Q.C.:
 12 Q. So there is a certain amount of routine social
 13 interaction?
 14 MS. JARDINE:
 15 A. Yes, on some days. Some days you go in and
 16 you just don't, you know, feel that way.
 17 COFFEY, Q.C.:
 18 Q. And the idea of exchanging information, for
 19 example, concerning the understanding you have
 20 about how all this started, the situation of
 21 the first patient -
 22 MS. JARDINE:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. - that was retested, you received that from

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1 your interaction with other patients or
 2 relatives there?
 3 MS. JARDINE:
 4 A. Yeah, just as "well, did you hear how this
 5 all"--or you know, "I was talking to my aunt
 6 who knows this," and through the grapevine it
 7 all goes through.
 8 COFFEY, Q.C.:
 9 Q. With respect to the idea of--from your
 10 perspective, and I appreciate it's just one
 11 person's, okay -
 12 MS. JARDINE:
 13 A. Okay.
 14 COFFEY, Q.C.:
 15 Q. - how long do you think something might be
 16 kept relatively confidential or secret if
 17 there was a systemic problem involving
 18 retesting, bearing in mind the Cancer Clinic,
 19 the milieu in which, you know, people are
 20 going for treatment and so on?
 21 MS. JARDINE:
 22 A. Okay. Something very confidential, I would
 23 think it could be a long while. It could be a
 24 long while.
 25 COFFEY, Q.C.:

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1 Q. Okay.
 2 MS. JARDINE:
 3 A. With something--could you be -
 4 COFFEY, Q.C.:
 5 Q. Okay, what I'm getting at is this, if somebody
 6 was to be told, for example, that they were
 7 retested -
 8 MS. JARDINE:
 9 A. Yes.
 10 COFFEY, Q.C.:
 11 Q. - and would have to change your treatment -
 12 MS. JARDINE:
 13 A. Yes.
 14 COFFEY, Q.C.:
 15 Q. - but it wasn't generally known that that--it
 16 wasn't known publicly, it was just somebody
 17 had come to you.
 18 MS. JARDINE:
 19 A. No, on a one to one.
 20 COFFEY, Q.C.:
 21 Q. One on one.
 22 MS. JARDINE:
 23 A. Okay.
 24 COFFEY, Q.C.:
 25 Q. And you were told "there's a reason, your

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1 tissue sample was retested, Ms. Jardine.
 2 There's a different result and we're going to
 3 change your treatment," and you're told
 4 nothing more than that, and again, I
 5 appreciate it may be difficult for you to say,
 6 but without--just confined to yourself, is
 7 that the sort of thing that in your experience
 8 there that you'd go talking to others about?
 9 MS. JARDINE:
 10 A. No. In fact, no, that's not my method.
 11 COFFEY, Q.C.:
 12 Q. Okay, it wouldn't be yours anyway?
 13 MS. JARDINE:
 14 A. Pardon me?
 15 COFFEY, Q.C.:
 16 Q. It wouldn't be yours, from your perspective?
 17 MS. JARDINE:
 18 A. No. No, it's not.
 19 COFFEY, Q.C.:
 20 Q. So you've told us about how you feel about
 21 having to hear about this retesting process
 22 through the media or the fact that you did
 23 hear about it through the media in the first
 24 place. How do you feel about how Eastern
 25 Health has handled the matter overall, from

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1 your perspective, in terms of communications
 2 with patients?
 3 MS. JARDINE:
 4 A. I feel they have not handled it well, in fact,
 5 very poorly.
 6 COFFEY, Q.C.:
 7 Q. And why is that?
 8 MS. JARDINE:
 9 A. Well, if this is, as they say, that it was
 10 2005 that they noticed and things started to
 11 be retesting, the patient seemed to be a long
 12 while before, if ever, they were contacted,
 13 and the method of contact was not even humane.
 14 I feel the patient wasn't considered in this
 15 process initially because had it been, they
 16 would have been more sensitive to the impact
 17 that this meant for the patient because this
 18 communication between oncologist and all the
 19 other players involved and the patient, it
 20 should have been more team, a team effort
 21 here, and personally, I feel that the size of
 22 this was so enormous, they just didn't know
 23 how they were going to handle it, I guess, and
 24 then the line of communication within
 25 themselves, from the lowest player to the

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1 highest, I feel could have been a lot more
 2 effective and quicker on the rebound.
 3 COFFEY, Q.C.:
 4 Q. What's your overall sense of Eastern Health?
 5 MS. JARDINE:
 6 A. What is my overall sense?
 7 COFFEY, Q.C.:
 8 Q. In the sense of -
 9 MS. JARDINE:
 10 A. Based on this?
 11 COFFEY, Q.C.:
 12 Q. Yes.
 13 MS. JARDINE:
 14 A. I think they behaved very poorly. It's very
 15 sad because timing and then diagnose and then
 16 proper treatment is crucial. It is so crucial
 17 that there won't be a reoccurrence. I just
 18 come up with sad. I'm just very sad with how
 19 this has happened, how it's being played out,
 20 how it was played out previous to hitting the
 21 media, how we were informed, and I feel
 22 fortunate, I feel fortunate and blessed that I
 23 was informed as I was. Other stories are not
 24 so fortunate.
 25 COFFEY, Q.C.:

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1 Q. What has the effect been on yourself, in terms
 2 of your own view of the medical system?
 3 MS. JARDINE:
 4 A. I've lost trust. I second guess everything.
 5 I feel the doctors should second guess--not
 6 should, I would suggest that they second guess
 7 themselves more or start to second guess, if
 8 they haven't. I'm always, when I go in for my
 9 three-month overhaul with CAT scans, bone
 10 scans, all of the testing, I'm fearful. I'm
 11 fearful that will this result be as to what is
 12 actually happening within my body. Is it
 13 being read correctly? Is it--I just, my trust
 14 is gone. Anger, my hope goes to despair
 15 sometimes. All of this, but I don't allow
 16 myself to stay there because you have to
 17 survive and you have to do it well, because if
 18 you don't, that's another part of this whole
 19 equation, you know, your signs, your treatment
 20 and the medical do so much. But it's so
 21 important to be honest and have a transparent
 22 system that there's nothing withheld because
 23 that oncologist, that radiologist, that GP and
 24 that patient, unless they're working as a
 25 team, the results are not going to be as

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1 effective or long lasting, as we are seeing
 2 results of from this procedure.
 3 COFFEY, Q.C.:
 4 Q. Just one moment, please. Ms. Jardine, has
 5 anyone from Eastern Health offered you or a
 6 family member any meeting or follow-up meeting
 7 to discuss this matter?
 8 MS. JARDINE:
 9 A. No, they haven't.
 10 COFFEY, Q.C.:
 11 Q. Is anyone from Eastern Health or any of your
 12 physicians outlined to you a plan to rectify
 13 the problems or any problems that may have
 14 caused this problem with your original ER test
 15 to occur, to prevent any reoccurrence?
 16 MS. JARDINE:
 17 A. No.
 18 COFFEY, Q.C.:
 19 Q. Has anyone from Eastern Health, other than Dr.
 20 Laing, told you that they regret what happened
 21 or they apologized for what happened?
 22 MS. JARDINE:
 23 A. My family physician.
 24 COFFEY, Q.C.:
 25 Q. Your family physician would -

1 MS. JARDINE:
 2 A. Dr. Furlong.
 3 COFFEY, Q.C.:
 4 Q. Yes, Dr. Furlong -
 5 MS. JARDINE:
 6 A. Yes, just felt so, so sad.
 7 COFFEY, Q.C.:
 8 Q. Yes, but other than Dr. Furlong or Dr. Laing -
 9 MS. JARDINE:
 10 A. No, no.
 11 COFFEY, Q.C.:
 12 Q. They're the questions I have, Commissioner.
 13 Thank you. Thank you, Ms. Jardine. My fellow
 14 counsel would -
 15 MS. JARDINE:
 16 A. Thank you.
 17 COFFEY, Q.C.:
 18 Q. They're the questions I have. Is there
 19 anything, from your own perspective, because
 20 you've had some time now to think about this
 21 and to reflect upon it, from your perspective,
 22 any thoughts on how this matter was handled
 23 from a patient's perspective? Anything else
 24 that you'd like to add?
 25 MS. JARDINE:

1 Q. Mr. Simmons?
 2 MS. ROSALIND JARDINE, EXAMINATION BY MR. DANIEL SIMMONS
 3 MR. SIMMONS:
 4 Q. Good morning, Ms. Jardine. My name is Dan
 5 Simmons. I'm here representing Eastern Health
 6 and I just have a couple little things that I
 7 want to follow up with you, based on some of
 8 the questions that have already been asked.
 9 So I won't be too long.
 10 MS. JARDINE:
 11 A. That's okay.
 12 MR. SIMMONS:
 13 Q. First of all, you were asked some questions
 14 about the physician review panel, and I
 15 believe that Mr. Coffey showed you a copy of a
 16 letter that referred to that particular panel.
 17 MS. JARDINE:
 18 A. Um-hm.
 19 MR. SIMMONS:
 20 Q. So I had just a couple questions about that
 21 for you.
 22 THE COMMISSIONER:
 23 Q. I'd like to refer the witness to the number.
 24 That would be C-0082.
 25 MR. SIMMONS:

1 A. It wasn't handled from the patient
 2 perspective.
 3 COFFEY, Q.C.:
 4 Q. Okay.
 5 MS. JARDINE:
 6 A. It was poor. It was non-existent. It wasn't
 7 handled from the patient perspective.
 8 COFFEY, Q.C.:
 9 Q. And I take it then that no one has ever
 10 advised you that patients were consulted about
 11 how this--or a group or a representative
 12 sample or whatever, or even any patients were
 13 ever consulted about how this might be
 14 appropriately handled? Certainly no one's
 15 ever suggested that to you?
 16 MS. JARDINE:
 17 A. No.
 18 COFFEY, Q.C.:
 19 Q. Okay. Thank you, Commissioner.
 20 THE COMMISSIONER:
 21 Q. Mr. Pritchard?
 22 MR. PRITCHARD:
 23 A. Thank you for your evidence. Commissioner, I
 24 don't have any questions for this witness.
 25 THE COMMISSIONER:

1 Q. And first of all, Mrs. Jardine, we've heard
 2 your story and you've spent some time back and
 3 forth to the Cancer Clinic. You've dealt with
 4 a number of physicians there, oncologists and
 5 surgeons as well, and I just wanted to ask you
 6 if, through the course of those interactions,
 7 if you formed any impression or had any idea
 8 as to whether those physicians do, from time
 9 to time, consult with each other about their
 10 patients' cases?
 11 MS. JARDINE:
 12 A. Oh yes, I do.
 13 MR. SIMMONS:
 14 Q. So you'd be aware that it's not unusual for
 15 physicians informally even to seek the advice
 16 of others that they work with about the
 17 patients they care for?
 18 MS. JARDINE:
 19 A. No, because Dr. Laing mentioned that, in
 20 consult with Dr. Ganguly, like the decision to
 21 do the Tamoxifen whatever and the borderline.
 22 No, I was aware that they--I just didn't have
 23 a name. If this physician review panel was
 24 the name, I just didn't have the name.
 25 MR. SIMMONS:

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1 Q. And would you have been aware, for example,
 2 that it's not an uncommon part of health care
 3 for physicians to present patients' cases on
 4 rounds that they call it, where they get the
 5 advice of their colleagues and share
 6 information?
 7 MS. JARDINE:
 8 A. Oh no, no, absolutely, I'm aware of that.
 9 MR. SIMMONS:
 10 Q. Okay. Now the physician review panel, I'm
 11 going to suggest that that included
 12 oncologists and surgeons and was put in place
 13 for the purpose of reviewing the results of
 14 retests that had changed following the Mount
 15 Sinai retesting, and my question is, would you
 16 have had any objection to your case being
 17 presented at a panel like that for advice
 18 concerning what was to be done once your
 19 treatment had changed?
 20 MS. JARDINE:
 21 A. Oh absolutely not.
 22 MR. SIMMONS:
 23 Q. Okay, and the only other thing I wanted to ask
 24 you concerned, you described your relationship
 25 with Dr. Laing, which I took to be a very good

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1 one, generally?
 2 MS. JARDINE:
 3 A. That's correct.
 4 MR. SIMMONS:
 5 Q. And you described her as being very open with
 6 you in the discussions that you had, and my
 7 question simply is did you ever, after October
 8 2005, once you learned that retesting was to
 9 be taking place and that your sample was
 10 retested and there was a change, did you ever
 11 have any difficulty getting questions answered
 12 by her or encounter any reluctance for her to
 13 give you the information that you wanted?
 14 MS. JARDINE:
 15 A. No, because I did not go into depth with that.
 16 I was--you have to remember that my bowel
 17 surgery -
 18 MR. SIMMONS:
 19 Q. Yes.
 20 MS. JARDINE:
 21 A. - and the bone metastasism was all happening
 22 around that time, and that was paramount then,
 23 and that's all I, you know, asked about.
 24 MR. SIMMONS:
 25 Q. Right.

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1 MS. JARDINE:
 2 A. Concerned with the treatment, and yaddy,
 3 yaddy, yadda, and the prognosis and all of
 4 that. So because they came concurrently, it
 5 was--I can't say it was secondary, because it
 6 wasn't, but I handled first things first. Me
 7 getting on the road to a good recovery from
 8 all of this, but still wondering and so when
 9 Dr. Laing and I came together, my first thing
 10 wasn't "well, you know, why was this? What
 11 happened?" Yes, it came out, but as a
 12 secondary. It was me and I had to get well
 13 from this and treatments and so where it all
 14 came--two of them concurrently came together.
 15 MR. SIMMONS:
 16 Q. Right, and since then, have you encountered
 17 any reluctance or had any difficulty getting
 18 any questions answered that you presented on
 19 your visits?
 20 MS. JARDINE:
 21 A. No, never.
 22 MR. SIMMONS:
 23 Q. Okay, good. Thank you very much.
 24 MS. JARDINE:
 25 A. You're welcome.

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1 THE COMMISSIONER:
 2 Q. Mr. Browne?
 3 MS. ROSALIND JARDINE, EXAMINATION BY MR. PETER BROWNE
 4 MR. BROWNE:
 5 Q. Good morning, Mrs. Jardine. My name is Peter
 6 Browne. I'm representing a number of
 7 individual physicians who have standing here
 8 today, including Dr. Laing.
 9 MS. JARDINE:
 10 A. Okay.
 11 MR. BROWNE:
 12 Q. Okay. I just have one question for you, for
 13 clarification. When you spoke with Dr. Laing
 14 in October of 2005, Mr. Coffey showed you two
 15 visits.
 16 MS. JARDINE:
 17 A. Yes.
 18 MR. BROWNE:
 19 Q. And there was a discussion about the drug,
 20 Femara, which you are now on?
 21 MS. JARDINE:
 22 A. Um-hm.
 23 MR. BROWNE:
 24 Q. Was there any discussion with Dr. Laing about
 25 the fact that this drug was not available at

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1 the time of your original diagnosis in 1999?

2 MS. JARDINE:

3 A. This drug, Femara?

4 MR. BROWNE:

5 Q. Femara.

6 MS. JARDINE:

7 A. There was no discussion about that back in

8 '99.

9 MR. BROWNE:

10 Q. No, no, my question was -

11 MS. JARDINE:

12 A. Oh, sorry.

13 MR. BROWNE:

14 Q. - were you aware at the time when you met with

15 Dr. Laing in 2005, in October 2005, that this

16 drug, Femara, was not available on the market

17 in 1999?

18 MS. JARDINE:

19 A. No, I wasn't aware of that.

20 MR. BROWNE:

21 Q. Are you aware of that subsequent to this, to

22 being put on that drug?

23 MS. JARDINE:

24 A. No, not that I can recall.

25 MR. BROWNE:

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1 Q. So you don't recall any discussions with Dr.

2 Laing about whether or not the drug, Femara,

3 was available as an option, treatment option,

4 in 1999?

5 MS. JARDINE:

6 A. I honestly, to my knowledge, I can't recall.

7 MR. BROWNE:

8 Q. Okay, thank you very much. I appreciate your

9 evidence.

10 THE COMMISSIONER:

11 Q. Mr. Eaton? Oh, I'm sorry.

12 MS. O'DEA:

13 Q. Stacey O'Dea, Commissioner. We have no

14 questions, thank you.

15 THE COMMISSIONER:

16 Q. Thank you. Ms. Newbury?

17 MS. NEWBURY:

18 Q. I have some questions.

19 THE COMMISSIONER:

20 Q. All right then.

21 MS. ROSALIND JARDINE, EXAMINATION BY MS. JENNIFER NEWBURY

22 MS. NEWBURY:

23 Q. Good morning, Mrs. Jardine. I'm Jennifer

24 Newbury appearing for the Canadian Cancer

25 Society, Newfoundland and Labrador Division.

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1 I just have a couple of questions for you.

2 You indicated earlier this morning that you

3 feel fortunate that you were informed in the

4 manner that you were, and I wonder if you can

5 explain what is it about how you were informed

6 that makes you feel fortunate?

7 MS. JARDINE:

8 A. Well, from what I have heard from others, they

9 were either not informed or informed through a

10 message that was left on a message manager,

11 but generally not informed or had difficulty

12 getting that. I know because I was in

13 hospital for that surgery and, of course, when

14 Dr. Kwan discovered yes, it was metastases

15 from the breast that had invaded the bowel,

16 then my oncologist came on board.

17 MS. NEWBURY:

18 Q. Okay.

19 MS. JARDINE:

20 A. And then, of course, my slides were sent away.

21 So not that metastasism is fortunate, I don't

22 mean that. But I guess because it was

23 concurrently, you know, it happened and it was

24 around the same time. So looking at the

25 blessings in everything -

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1 MS. NEWBURY:

2 Q. Sure. Okay, so you think then it was due to

3 the fact that you were in hospital dealing

4 with another issue from metastasism?

5 MS. JARDINE:

6 A. Yes, I would say, you know I mean.

7 MS. NEWBURY:

8 Q. Okay, and it was a personal meeting that you

9 found this out from your oncologist about the

10 change in your results and the fact that you

11 were being retested?

12 MS. JARDINE:

13 A. When they were sent away then right away,

14 because of after the surgery, then I was

15 called, yes, and went in for the result.

16 MS. NEWBURY:

17 Q. Okay, and from your personal perspective,

18 would you prefer a face-to-face meeting with

19 your physician as opposed to a discussion over

20 the phone or a phone message?

21 MS. JARDINE:

22 A. Oh, absolutely face to face.

23 MS. NEWBURY:

24 Q. Okay. You indicated just then, in response to

25 a question from Mr. Simmons, that you had no

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1 objections about being discussed or having
 2 your case discussed by the physician review
 3 panel. Is that correct?
 4 MS. JARDINE:
 5 A. That's correct.
 6 MS. NEWBURY:
 7 Q. Would you have preferred to have been advised
 8 that a physician review panel either was going
 9 to discuss your case or had discussed your
 10 case, that this had in fact occurred? Perhaps
 11 I can rephrase. It was my understanding that
 12 you didn't know at the time, back in
 13 2005/2006, that your case had been discussed
 14 by a physician review panel. Am I correct?
 15 MS. JARDINE:
 16 A. As I indicated, I didn't have, in my mind, a
 17 name for that.
 18 MS. NEWBURY:
 19 Q. Okay.
 20 MS. JARDINE:
 21 A. But I was aware that dialogue was and had
 22 happened between like Dr. Ganguly and perhaps
 23 Dr. Kwan. I knew there were--yeah, I knew
 24 that.
 25 MS. NEWBURY:

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1 Q. Okay, but you never were told -
 2 MS. JARDINE:
 3 A. But I didn't have a--no.
 4 MS. NEWBURY:
 5 Q. Okay. Thank you, those are all the questions
 6 I have, Ms. Jardine.
 7 MS. JARDINE:
 8 A. You're welcome.
 9 MS. NEWBURY:
 10 Q. Thank you.
 11 MS. RUSSELL:
 12 Q. I have no questions, thank you.
 13 MRS. ROSALIND JARDINE, EXAMINATION BY THE COMMISSIONER
 14 THE COMMISSIONER:
 15 Q. Mrs. Jardine, you, just towards the end of the
 16 questioning from Mr. Coffey, were talking
 17 about what the result of this problem has been
 18 for you and you seemed to emphasize, for me,
 19 the loss of trust, particularly in respect of
 20 tests which one normally goes through as
 21 cancer patient on a regular basis, for the
 22 purpose of determining whether or not there
 23 has been any advancement or a retreat, in
 24 terms of your cancer. Is there something that
 25 can be done which would restore that trust for

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1 you? And if so, what is it? Or have they
 2 irretrievably lost your trust?
 3 MS. JARDINE:
 4 A. I can't afford to have that happen personally
 5 because of my part that I play in my illness.
 6 The ultimate would be a top-notch, efficient,
 7 effective, transparent system whereby
 8 everybody affected with a disease such a
 9 cancer would be privy and would be a part of
 10 that communication system openly, because
 11 that's so important. That gives the patient,
 12 like just speaking from me, that gives us a
 13 power that we still have input and somewhat,
 14 though very limited, control on this disease
 15 process that's happening, and when you're not
 16 informed and it's happening kind of outside of
 17 you, you feel so insignificant. You feel that
 18 your life doesn't count at all. You don't
 19 feel that you're a team. And yes, there's
 20 nothing that can't be repaired, and this is a--
 21 you know, cancer and the whole--and all of
 22 this whole procedure is a wonderful eye
 23 opener. Unfortunate to this magnitude and
 24 what it has caused, but it's a wonderful eye
 25 opener that things do need to be looked at.

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1 Let's get things implemented. Let's do these
 2 mega changes that have not been there from the
 3 person's side of it, to the technology side of
 4 it, to the turnaround time, to the
 5 communication with patient and doctor. Let's
 6 get all that now implemented and get on to a
 7 much, much better improved system, for no
 8 other person will have to experience a loss of
 9 trust, a loss of a longevity. You know, your
 10 life--my life, me, particularly, the greatest
 11 hope a cancer patient has is for non-
 12 reoccurrence, non-recurrence, and that has
 13 happened for me. I would hope that it's very
 14 minimum a reoccurrence in the future. Does
 15 that answer -
 16 THE COMMISSIONER:
 17 Q. Well, I think it does, in part. I suspect
 18 I'll hear different views from different
 19 people, but you do have in common with others
 20 the problem, let us say, of the effect of the
 21 ER/PR problem and its magnitude on your
 22 relationship with the health system in
 23 general, not just confined to this one area.
 24 It snowballs, if you will.
 25 MS. JARDINE:

1 A. Um-hm.
 2 THE COMMISSIONER:
 3 Q. And it makes people question other things.
 4 MS. JARDINE:
 5 A. Very much.
 6 THE COMMISSIONER:
 7 Q. All right. Anything else you want to add?
 8 MS. JARDINE:
 9 A. No, that's about it. Thank you.
 10 THE COMMISSIONER:
 11 Q. Thank you very much for coming.
 12 MS. JARDINE:
 13 A. Thank you.
 14 THE COMMISSIONER:
 15 Q. Now, why don't we take the morning break.
 16 COFFEY, Q.C.:
 17 Q. Commissioner, if I could, just before Ms.
 18 Jardine--because I -
 19 THE COMMISSIONER:
 20 Q. Yes, if there's something arising.
 21 MRS. ROSALIND JARDINE, RE-EXAMINATION BY BERNARD COFFEY,
 22 Q.C.
 23 COFFEY, Q.C.:
 24 Q. Yes, there is something arising. The
 25 physician review panel Mr. Simmons referred

1 THE COMMISSIONER:
 2 Q. Thank you, Mrs. Jardine.
 3 MS. JARDINE:
 4 A. Thank you.
 5 THE COMMISSIONER:
 6 Q. We'll take the morning break.
 7 (BREAK)
 8 THE COMMISSIONER:
 9 Q. Thank you, please be seated. Mr. Coffey?
 10 COFFEY, Q.C.:
 11 Q. Yes. Bryan Purcell or is it Pursell?
 12 MR. PURCELL:
 13 A. Purcell.
 14 COFFEY, Q.C.:
 15 Q. Purcell, Bryan Purcell is the next witness,
 16 Commissioner.
 17 THE COMMISSIONER:
 18 Q. Okay.
 19 MR. BRYAN PURCELL, AFFIRMED, EXAMINATION BY BERNARD
 20 COFFEY, Q.C.
 21 REGISTRAR:
 22 Q. Would you state and spell your complete name
 23 for the Commission, please?
 24 MR. PURCELL:
 25 A. Bryan Purcell, B-R-Y-A-N P-U-R-C-E-L-L.

1 you to, and I asked you about, and I didn't
 2 describe its makeup, and Mr. Simmons referred
 3 to oncologists and surgeons. If you were to
 4 be told that it also included pathologists who
 5 may or may not have been involved in the
 6 original testing and involved Eastern Health's
 7 risk manager--this physician review panel was
 8 made up of a number of different people, and
 9 not confined to physicians, might that change
 10 your view, or do you know?
 11 MS. JARDINE:
 12 A. Yeah, I do know. I would have to question the
 13 benefits that each player on that panel, what
 14 would it serve, what purpose would it serve,
 15 and if it would serve for an improved or like,
 16 you know, I was entertaining going away to get
 17 more opinions or more input and I feel that
 18 there's many players that come in. If it was
 19 beneficial to me or somebody else, I would
 20 have no hesitation, depending on--what's the
 21 word I'm using--the reason why that that
 22 person would be on the panel and how it would
 23 serve for them and me and everybody else.
 24 COFFEY, Q.C.:
 25 Q. Thank you, ma'am.

1 REGISTRAR:
 2 Q. Thank you, sir.
 3 COFFEY, Q.C.:
 4 Q. Commissioner, before I begin with Mr. Purcell,
 5 Exhibit C-0096 through C-0115, might they be
 6 entered please?
 7 THE COMMISSIONER:
 8 Q. There are no P exhibits with this witness?
 9 COFFEY, Q.C.:
 10 Q. No.
 11 THE COMMISSIONER:
 12 Q. All right. Exhibits C-0096 through C-0115
 13 admitted.
 14 EXHIBITS ENTERED AND MARKED C-0096 THROUGH C-0115
 15 COFFEY, Q.C.:
 16 Q. So I understand that one of the reasons
 17 there's no P is that I gather that his wife,
 18 Christine, is not amongst those listed on the--
 19 in the database, at least up until now. Good
 20 morning, sir.
 21 MR. PURCELL:
 22 A. Good morning.
 23 COFFEY, Q.C.:
 24 Q. Could you tell us, please, where you're from?
 25 MR. PURCELL:

1 A. St. John's.
 2 COFFEY, Q.C.:
 3 Q. And Mr. Purcell, I understand that your wife,
 4 Christine, is deceased?
 5 MR. PURCELL:
 6 A. Yes, she is.
 7 COFFEY, Q.C.:
 8 Q. And could you tell us, please, when it was
 9 that you and Christine were married?
 10 MR. PURCELL:
 11 A. August of 1975.
 12 COFFEY, Q.C.:
 13 Q. And I understand that she developed breast
 14 cancer?
 15 MR. PURCELL:
 16 A. Yes.
 17 COFFEY, Q.C.:
 18 Q. Could you tell us, please, what you recall
 19 about that? I'm just going to take you -
 20 MR. PURCELL:
 21 A. She was diagnosed in June of 1998. She had
 22 discovered a very small lump in her breast.
 23 She was tested during the month of June and, I
 24 believe, on around the 24th of June, she was
 25 informed that it was in fact breast cancer.

1 A. She was starting her radiation treatments.
 2 There was discussion of further chemotherapy,
 3 which was not deemed to have very much
 4 prospect of success. I think the indications
 5 were, at that point, that the way the cancer
 6 had spread made it very unlikely that any
 7 chemotherapy intervention would have much
 8 effect. However, there were some
 9 chemotherapies that were, I think, discussed
 10 as having enough possibility of a positive
 11 effect, if not to save her life, then perhaps
 12 to prolong it or to improve her health, that
 13 there were one or two that could be done.
 14 Also, in the spring of 1999, my wife's
 15 sister-in-law, who is a family practitioner
 16 and also practises obstetrics in the Boston
 17 area, offered to have her records reviewed by
 18 one of her colleagues down there. We
 19 approached the Health Care Corporation, asked
 20 for copies of all of her records, both written
 21 and slides, x-rays, things like that, and we
 22 sent them to Boston. Sometime probably in
 23 late May, early June -
 24 COFFEY, Q.C.:
 25 Q. This would be of 1999?

1 COFFEY, Q.C.:
 2 Q. And what happened then, sir?
 3 MR. PURCELL:
 4 A. She started the process of going to the Cancer
 5 Centre, of being seen by oncologists, probably
 6 by various other people. The plan was that
 7 there would be chemotherapy, followed by
 8 radiation. Because it was the summer and
 9 because, I believe, they were having some
 10 difficulty in terms of scheduling staff, her
 11 actual chemotherapy didn't start until August.
 12 It was finished, I believe, in early 1999,
 13 possibly in January. In March or April, I
 14 believe, she commenced radiation treatments.
 15 In the interim, she was advised, on further
 16 testing, that her cancer had spread to her
 17 lungs, I believe, and to her spine. She had
 18 also had an ER receptor test early on in the
 19 process, I'm not sure what the date was, and
 20 had been advised that her test was negative
 21 and she was not a candidate for Tamoxifen.
 22 COFFEY, Q.C.:
 23 Q. What then happened? So you're into the spring
 24 of 1999.
 25 MR. PURCELL:

1 MR. PURCELL:
 2 A. Of 1999, we were informed by my sister-in-law
 3 that the doctor who had re-examined the
 4 records had come back and said that the
 5 estrogen receptor test was incorrect, that it
 6 was positive. I think her terms were
 7 moderately positive. We then approached the
 8 Cancer Centre and we informed the attending
 9 physician. Her oncologist at the time I think
 10 was Dr. Wasil. He had taken over from a Dr.
 11 Maghfoor. We advised him of this fact in the
 12 course of one of the visits that was probably
 13 already scheduled to discuss the further
 14 chemotherapy options. We were also in the
 15 process of my wife completing the radiation,
 16 around the same time. So I'm not sure if the
 17 radiation treatments had been completed.
 18 At any rate, this was reported to the
 19 Cancer Centre. Her records, which I haven't
 20 seen, but I've had--some of it was shared with
 21 me, in terms of the comments that were in the
 22 records by a person at Health Care
 23 Corporation, and it seems to indicate that we
 24 had requested or my wife had requested -
 25 COFFEY, Q.C.:

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1 Q. Okay, if I could, I'll just stop you there,
 2 okay.
 3 MR. PURCELL:
 4 A. Okay.
 5 COFFEY, Q.C.:
 6 Q. So this is back in 1999?
 7 MR. PURCELL:
 8 A. Yes.
 9 COFFEY, Q.C.:
 10 Q. And your wife's chart, as it were, or portions
 11 of the chart has been sent off to the Boston
 12 area?
 13 MR. PURCELL:
 14 A. Right.
 15 COFFEY, Q.C.:
 16 Q. For a look at by somebody in that region.
 17 MR. PURCELL:
 18 A. Yes.
 19 COFFEY, Q.C.:
 20 Q. The result, as you recall it, coming back in
 21 the middle of '99 was, well, the ER is in fact
 22 moderately positive, but other than that, they
 23 really had no further comment?
 24 MR. PURCELL:
 25 A. No.

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1 COFFEY, Q.C.:
 2 Q. And your wife, by the summer of 1999, I take
 3 it, was being seen by Dr. Wasil?
 4 MR. PURCELL:
 5 A. Yes, by the spring in fact.
 6 COFFEY, Q.C.:
 7 Q. Spring, summer, that area.
 8 MR. PURCELL:
 9 A. Yeah.
 10 COFFEY, Q.C.:
 11 Q. And you advised Dr. Wasil of this difference,
 12 in terms of the ER result, and I take it that,
 13 leaving aside what you may have learned
 14 recently, okay, like within the past week,
 15 okay, leaving that aside, because I'll come to
 16 that in a moment, or in several minutes, what
 17 do you recall about '99, mid '99 and so on?
 18 What happened, as your wife's disease
 19 progressed?
 20 MR. PURCELL:
 21 A. Well, during the summer -
 22 COFFEY, Q.C.:
 23 Q. Yes.
 24 MR. PURCELL:
 25 A. - she did have at least one hospitalization,

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1 because she wasn't doing well. She was ill.
 2 I'm not sure when she commenced the
 3 chemotherapy, but I believe it was in the
 4 summer of 1999, that was the second round of
 5 chemotherapy, which followed the completion of
 6 the radiation, which followed the diagnosis
 7 that her cancer had spread, and was described
 8 as a form of chemotherapy that had relatively
 9 little chance of curing anything, but perhaps
 10 might have some effect, positive effect. I
 11 forget the name of the drug. So during the
 12 summer, she was taking chemotherapy. The
 13 report to the Health Care Corporation, to the
 14 Cancer Centre, about the ER test was in June.
 15 The note that I have heard about in the file
 16 from Dr. Wasil, I believe, indicates that the
 17 patient had requested that the ER test be
 18 redone, does not say that we had had a retest
 19 done in Boston, that there was a different
 20 result and that that was--that we had reported
 21 that, and that that was the reason for our
 22 request for the retest. I haven't seen the
 23 complete file, so I'm not sure what other
 24 notes might say, but it says that the patient
 25 had requested the retest, that it would be

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1 done, and it would be done prior to the
 2 commencement of any other chemotherapy.
 3 COFFEY, Q.C.:
 4 Q. Okay.
 5 MR. PURCELL:
 6 A. My recollection of the exact chronology of
 7 events, you know, is somewhat less than
 8 totally, you know, detailed. At the time,
 9 what mattered, I guess, was getting the
 10 treatments as quickly as possible, taking the
 11 advice of the physicians and, you know, moving
 12 on with what could be done. There's some
 13 indication in the file too, which I had
 14 forgotten about, that at some point in the
 15 fall of 1999, only three or four months before
 16 my wife's death, as a result of the ER test
 17 that was redone here and apparently they
 18 discovered the error when it was redone, she
 19 was offered Tamoxifen in the fall of 1999 and
 20 apparently was given some Tamoxifen
 21 treatments. I had not recalled that. That
 22 was very late in her life. I'm not sure what
 23 effect Tamoxifen would have at that point, but
 24 the records seem to indicate that she was
 25 offered that and was given some of it.

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1 COFFEY, Q.C.:

2 Q. When did your wife pass away?

3 MR. PURCELL:

4 A. March 7th, 2000.

5 COFFEY, Q.C.:

6 Q. And so I am going to refer you to a number of

7 these exhibits which I just had the

8 Commissioner enter or agree to enter. Exhibit

9 C-0096, please. This is, and this is for the

10 benefit of my fellow counsel, I just want to

11 advise them that this is something that the

12 Commission received within the past couple of

13 days, so this is something you may or may not

14 have seen before. This is a record of a phone

15 call on March 20th, apparently, by yourself

16 with a representative of Eastern Health, and I

17 will be coming back to this, okay.

18 MR. PURCELL:

19 A. Yes.

20 COFFEY, Q.C.:

21 Q. This just happened within the past week. I

22 take it though that this is the phone call

23 most recently where you were advised about

24 certain things or certain information in your

25 wife's chart?

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1 MR. PURCELL:

2 A. Yes. I contacted the number that had been

3 given for people who had been retested and who

4 were deceased.

5 COFFEY, Q.C.:

6 Q. Okay.

7 MR. PURCELL:

8 A. If we could, Registrar, Exhibit C-0097,

9 please? Mr. Purcell, this is a--it's entitled

10 Final Pathology Report from St. Clare's Mercy

11 Hospital. It's for Christine Purcell. The

12 specimen number is 98:SU2738, received June

13 17th, 1998. The attending doctor is a Dr.

14 Ralph George, which presumably, in this

15 context, likely is not the surgeon, and the

16 tissues are indicated to be: number one,

17 biopsy right breast; and then under micro

18 description, it says "section show at least

19 some in situ ductal carcinoma. There is also

20 an area suspicious of invasion, but it is a

21 bit crushed. I suspect there is invasion in

22 one portion," and then the pathological

23 interpretation, toward the bottom of the page,

24 thank you, reads "section show at least in

25 situ ductal carcinoma. There is"--I'm sorry,

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1 "right breast biopsy, at least areas of ductal

2 carcinoma in situ, and probably infiltrating

3 ductal carcinoma," and it's signed off by, if

4 I could, Dr. Miriam Griffin. So that accords

5 with your memory of June of 1998?

6 MR. PURCELL:

7 A. Yes, that's June of 1998 or '99?

8 COFFEY, Q.C.:

9 Q. This is 1998.

10 MR. PURCELL:

11 A. Okay, that's the original test then.

12 COFFEY, Q.C.:

13 Q. Yes, the original. It's a biopsy of the--

14 indicated to be a biopsy of the right breast.

15 If we could, Registrar, please, Exhibit C-

16 0098, which for your purposes, Mr. Purcell, of

17 course, is just the next page.

18 MR. PURCELL:

19 A. Yes.

20 COFFEY, Q.C.:

21 Q. Again, this is a final pathology report, St.

22 Clare's Mercy Hospital for your wife. The

23 specimen number here is 98:SU3056. This is

24 toward the top left-hand side of the page.

25 It's received July 7th, 1998 and the tissues

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1 here, number one, breast, right breast tissue,

2 and that's the one I--and there's some other

3 tissues, but that's the one I'm going to be

4 referring to. So we go down through the page,

5 please, Registrar, scroll towards the bottom

6 of the page. You'll see under micro

7 description, Mr. Purcell, there's "sections

8 confirm the frozen section diagnosis of

9 infiltrating ductal carcinoma," first line of

10 that, and then the next page, page two of

11 this, under pathological interpretation, see a

12 reference to, number one, "right breast

13 tissue, infiltrating ductal carcinoma with

14 tumor extending very close to the superior

15 margin with extensive vascular invasion," and

16 it says, in brackets, "please see tumor

17 summary." And then, as you go further down

18 the page, this is a report by Dr. Miriam

19 Griffin again, under tumor summary, "breast,

20 right specimen, excisional biopsy, tumor

21 infiltrating ductal carcinoma," and the last

22 two lines there, Mr. Purcell, are "estrogen

23 receptors positive, faint, (five percent of

24 cells). Progesterone receptors negative."

25 See that?

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1 MR. PURCELL:
 2 A. Yes.
 3 COFFEY, Q.C.:
 4 Q. That, I take it, accords with your memory of
 5 what you were told in '98?
 6 MR. PURCELL:
 7 A. Yes.
 8 COFFEY, Q.C.:
 9 Q. And was there any understanding you had at the
 10 time then in terms of that status meant what
 11 for your wife's ability to have Tamoxifen?
 12 MR. PURCELL:
 13 A. That that meant she was not a candidate for
 14 Tamoxifen. I believe that was the terminology
 15 that was used.
 16 COFFEY, Q.C.:
 17 Q. If we could, please, that was July 7th, 1998,
 18 if we could go, please, to Exhibit C-0101?
 19 Again, it's several pages further along. It's
 20 entitled--it's on Newfoundland Cancer
 21 Treatment and Research Foundation, Dr. H.
 22 Bliss Murphy Cancer Centre letterhead. It's a
 23 first assessment summary. It's dated 17th of
 24 July, 1998. You have that, Mr. Purcell?
 25 MR. PURCELL:

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1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. Okay, and it's for your wife, and again, this
 4 is then about ten days after the July 7th
 5 reference to the surgery. "Diagnosis, breast
 6 cancer, stage II, final pathology still
 7 pending," and the history of present illness
 8 reads, "this 45-year-old woman presented with
 9 a palpable lump in her right breast in the
 10 upper inner aspect. Fine needle aspiration
 11 confirmed the presence of cancer. She
 12 underwent a lumpectomy and axillary
 13 dissection. We do not have the final
 14 pathology on that so we can't comment at this
 15 time on the margins," and it goes on from
 16 there.
 17 And then, if we go to the next page, page
 18 two of this exhibit, under assessment and
 19 discussion, "this is a stage II breast cancer.
 20 We need to get the final report and we are
 21 arranging for consultations with radiation
 22 oncology and medical oncology." Signed by Dr.
 23 George, R. George, as surgical oncologist.
 24 If we could go, and then, so go to,
 25 please, Exhibit C-0100. Again, back toward

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1 the beginning of the binder, and this is a
 2 pathology report, C-0100. C-0100, you have
 3 that, Mr. Purcell?
 4 MR. PURCELL:
 5 A. Yes, I do.
 6 COFFEY, Q.C.:
 7 Q. Thank you. And this is a final pathology
 8 report, St. Clare's Mercy Hospital, for
 9 Christine Purcell. Specimen number is
 10 98:SU3587. It's August 11th, 1998. Tissues
 11 are one, lump, right breast lumpectomy, re-
 12 excision, and we scroll down through the page,
 13 under micro description, there's a detailed
 14 description of it there, but the second last
 15 line, the doctor notes "no invasive carcinoma
 16 is seen." This is in this particular tissue,
 17 and then we go on then to pathological
 18 interpretation, and the second page, "right
 19 breast lumpectomy, a few small foci of
 20 residual carcinoma in situ. No invasive
 21 carcinoma seen. Margins free of tumor," and
 22 that's a report by a Dr. Vaze, entered or
 23 signed off on August 17th, 1998. So your wife
 24 apparently had a number of operations that
 25 summer.

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1 If we could go to C-0102, please,
 2 Registrar? This is again in August,
 3 apparently three days after the surgery,
 4 August 14th, 1998. It's a progress notes for
 5 your wife. It's by a Dr. Jabowski, who's a
 6 resident, and Dr. Maghfoor, a medical
 7 oncologist. It's in the--go back at bit to
 8 page one of this. It's in the Medical
 9 Oncology Clinic, and under diagnosis,
 10 "infiltrating ductal carcinoma of the right
 11 breast. Mrs. Purcell is a 45-year-old pre-
 12 menopausal woman who noticed a growing lump in
 13 the right breast at the end of May 1998.
 14 Subsequently, she was referred to Dr. George,
 15 who did a lumpectomy and lymph node dissection
 16 on July 7th. The histopathology showed
 17 infiltrating ductal carcinoma with extensive
 18 vascular invasion," and it goes on from there.
 19 Second last line of the first paragraph, "ER
 20 and PR status is negative. Section margins
 21 were close to tumor tissue and subsequently,
 22 in August 11th, she underwent a right excision
 23 with extension of resection." And that, I
 24 think, covers the pathology reports we've
 25 looked at so far.

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1 Toward the bottom of the page, page one
 2 of C-0102, last paragraph, "in summary, Mrs.
 3 Purcell"--do you have that first page there of
 4 C-0102, sir?
 5 THE COMMISSIONER:
 6 Q. First page?
 7 COFFEY, Q.C.:
 8 Q. Page 102--C-0102, page one.
 9 THE COMMISSIONER:
 10 Q. The last paragraph beginning, "in summary?"
 11 COFFEY, Q.C.:
 12 Q. In summary, do you have that?
 13 MR. PURCELL:
 14 A. Yes, I do.
 15 COFFEY, Q.C.:
 16 Q. Okay, thank you. "In summary, Mrs. Purcell
 17 has a newly diagnosed stage II A infiltrating
 18 ductal carcinoma of the right breast with
 19 extensive vascular invasion, lymph nodes neck
 20 positive, and ER and PR negative. The tumor
 21 was removed by a lumpectomy and subsequently
 22 patient requires adjuvant chemotherapy
 23 followed radiation therapy. We discussed with
 24 her treatment options and a decision was made
 25 to proceed with CEF based chemotherapy.

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1 Benefits, risks and side effects of this
 2 treatment were explained to patient." And
 3 they go on on the next page to note, "the
 4 current Canadian standard for node positive
 5 breast cancer"--thank you--"is CEF
 6 chemotherapy."
 7 At the last paragraph, and the doctor's
 8 note, "she will return to Cancer Centre
 9 following a CAT scan of abdomen and pelvis and
 10 x-ray of the thoracic spine, which were
 11 arranged for next week." So that was as of
 12 middle of August, August 14th, 1998.
 13 If we could go, please, to C-0103? Thank
 14 you, Registrar. This is a report, progress
 15 notes of Dr. Maghfoor for your wife dated
 16 August 25, 1998, and Medical Oncology Clinic,
 17 and notes "this is a 45-year-old lady with a
 18 diagnosis of right breast cancer," and
 19 particularizes it, and then says "her ER/PR
 20 status is negative," and then, sir, when we go
 21 down to right here, right there on the page,
 22 it begins about the fifth last line, "she will
 23 be starting on CEF based chemotherapy starting
 24 Thursday, August 27th." So apparently by the
 25 end of August of 1998, your wife was started

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1 on chemo?
 2 MR. PURCELL:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. Registrar, Exhibit C-0104, please. This is,
 6 again, a progress note of Dr. Maghfoor for
 7 your wife dated 10 September 1998 in the
 8 Medical Oncology Clinic, and again, I just
 9 have included this because the second line,
 10 the doctor repeats the notation that her ER/PR
 11 status is negative. On the second line, do
 12 you see that, sir?
 13 MR. PURCELL:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. Okay, and there's a very, fairly detailed
 17 recounting of bone scans and so on. I'm not
 18 going to take you through that at this point.
 19 If we could, Exhibit C-0105, please.
 20 This is a progress notes of Dr. Maghfoor for
 21 Christine Purcell dated 15 March 1999, Medical
 22 Oncology Clinic, and identifies your wife, and
 23 then at the last sentence of the first
 24 paragraph reads "she is going to start on

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1 radiation to the breast on March 29th. Before
 2 that, she is going for a visit to her brother
 3 in Boston." See that?
 4 MR. PURCELL:
 5 A. Yes.
 6 COFFEY, Q.C.:
 7 Q. And do you know if that visit occurred?
 8 MR. PURCELL:
 9 A. Yes, it did. I accompanied her.
 10 COFFEY, Q.C.:
 11 Q. Okay. Now under assessment, on the same page,
 12 it refers to "stage II breast cancer, status
 13 post adjuvant CEF. Now she is waiting to
 14 start her radiation therapy. Since she was ER
 15 and PR negative, we have decided not to start
 16 her on any hormonal treatments," and it goes
 17 on from there. So this seems to accord with
 18 your memory that it was chemo first and then
 19 in the spring of 1999, radiation.
 20 MR. PURCELL:
 21 A. Yes.
 22 COFFEY, Q.C.:
 23 Q. And hormonal treatments were not an option
 24 because she was ER/PR negative, and you're
 25 nodding yes, yes?

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1 MR. PURCELL:
 2 A. That's correct, yes.
 3 COFFEY, Q.C.:
 4 Q. Exhibit C-0106, please. Now Mr. Purcell, this
 5 is again--and these are progress notes of Dr.
 6 Maghfoor. I'm just going to bring it up here,
 7 on Bliss Murphy Cancer Centre letterhead, 28th
 8 of May 1999, Medical Oncology Clinic. Certain
 9 portions of this I'm going to take you
 10 through, okay. The first two lines read "Mrs.
 11 Purcell, who's a 46-year-old lady with a
 12 diagnosis of metastatic breast carcinoma, was
 13 seen today to discuss further management
 14 options and to discuss the results of her MRI
 15 scan." So apparently at this point in time,
 16 your wife is in a position where she's being
 17 seen by her oncologist and she has an MRI
 18 results.
 19 MR. PURCELL:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. If we go down through this, he continues on
 23 "Mrs. Purcell has been under my care since
 24 July of last year." That's the second and
 25 third line. Beginning around the sixth line,

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1 "However, unfortunately in April of this year
 2 when she was undergoing chest wall
 3 radiotherapy, she developed severe back pain
 4 and a bone scan showed progressive bone
 5 neoplastic disease. An MRI was done following
 6 this." And it goes on about the treatment for
 7 further pain management. And he then
 8 continues, "Today's clinic visit was to
 9 discuss the findings of the MRI and
 10 possibility of disease progression and
 11 possibility of further management options.
 12 Her husband also had some questions regarding
 13 her management options. In essence, I told
 14 Mr. and Mrs. Purcell that according to our
 15 previous discussion stage 4 breast cancer is
 16 incurable." And he goes on from there about
 17 the various potential drug treatments. And
 18 Aredia is referred to further down the page.
 19 And then the fifth-last line he notes, "She is
 20 also considering sending her x-rays and
 21 pathology report to a physician in Boston."
 22 I'm just going to go down through that. It's
 23 right there. "I do not know the name of this
 24 physician, however, we will arrange the copies
 25 of the films to be made and the slides

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1 possibility to be sent over to Boston." And
 2 "I also told Mrs. Purcell in the event her
 3 pain progresses, she should give us a call and
 4 we will arrange either pain management or
 5 radiotherapy, whatever may be required." And
 6 then he continues on on the next page, "I will
 7 also transfer her care as soon as possible to
 8 one of our new colleagues. In my opinion,
 9 Mrs. Purcell appears to have lost her trust in
 10 me even though I've been very honest with her
 11 all along this process. As soon as Dr. Wasil
 12 joins I will ask Mrs. Purcell to start seeing
 13 him and I will request Dr. Wasil to transfer
 14 the care of Mrs. Purcell. In the meantime
 15 Mrs. Purcell knows to give me a call if there
 16 are new symptoms. Additionally, Mr. Purcell
 17 had requested a full body MRI scan to look for
 18 disease elsewhere. I told Mr. Purcell that
 19 whole body MRIs are not done to look for bone
 20 disease and they are not effective in looking
 21 for bony neoplastic disease. However, we will
 22 certainly do x-rays of her weight-bearing
 23 bones to make sure she does not impending
 24 pathological fractures." I'm reading exactly
 25 what's literally there.

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1 MR. PURCELL:
 2 A. Yes.
 3 COFFEY, Q.C.:
 4 Q. Now as of May 28th, 1999 can you tell us,
 5 please, how the idea of consulting or doing a
 6 consultation with Boston came about?
 7 MR. PURCELL:
 8 A. My recollection, it was an offer made by my
 9 wife's sister-in-law. When we were there in
 10 mid March, we already knew that the cancer had
 11 spread and she simply offered to have all of
 12 my wife's records reviewed to see if there
 13 were any other possibilities for treatment,
 14 and that's how that, you know--and in light of
 15 the fact that, you know, the disease has
 16 spread and we were into a different stage in
 17 terms of our perception of the disease. While
 18 we were going through the standard
 19 chemotherapy and the standard radiation, you
 20 know, we had been told initially that there's
 21 a 75 percent chance of a cure. Now, we
 22 weren't living on that, however, you know,
 23 when the chemotherapy had been completed, the
 24 radiation was in process. The further testing
 25 was what revealed that the cancer had already

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1 spread and therefore we were in two different
 2 stage. So that was offered and we decided to
 3 pursue it. I'm not sure where Dr. Maghfoor's
 4 comment about my wife losing trust in him came
 5 from. My recollection is that he indicated to
 6 us that he would soon be leaving and that he
 7 was transferring. Other than asking the
 8 questions that one might expect a patient to
 9 ask when she's been told that she's probably
 10 going to die, we had not said anything to Dr.
 11 Maghfoor, in my recollection, and I was always
 12 with my wife when she visited the clinic, to
 13 indicate that we lost trust. We were
 14 certainly upset that the cancer had spread.
 15 At that point we believed that the health care
 16 system was doing a reasonably good job of
 17 treating.

18 COFFEY, Q.C.:
 19 Q. So at that point in time, of course, you were
 20 first told the cancer had spread. Nothing had
 21 been sent to Boston at that point?

22 MR. PURCELL:
 23 A. Pardon?

24 COFFEY, Q.C.:
 25 Q. Nothing had been sent down to Boston at that

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1 point?

2 MR. PURCELL:
 3 A. No, no.

4 COFFEY, Q.C.:
 5 Q. No.

6 MR. PURCELL:
 7 A. And that's consistent with Dr. Maghfoor's
 8 notes.

9 COFFEY, Q.C.:
 10 Q. And the idea, the reference to your wife
 11 having lost trust, I take it that until you
 12 read this within the past, well, today -

13 MR. PURCELL:
 14 A. Right now, yes.

15 COFFEY, Q.C.:
 16 Q. That you've never, you didn't realize that he
 17 had held that view?

18 MR. PURCELL:
 19 A. No.

20 COFFEY, Q.C.:
 21 Q. Or had written it down?

22 MR. PURCELL:
 23 A. No. In fact, Dr. Maghfoor, my wife had a very
 24 high opinion of him and was very disappointed
 25 when she found that he would be leaving.

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1 COFFEY, Q.C.:
 2 Q. Now there was certainly cooperation in terms
 3 of having materials that were required to be
 4 gathered up to be sent to Boston, that
 5 occurred?

6 MR. PURCELL:
 7 A. Yes, and we dealt with probably a records
 8 department and it took some time to get the
 9 copies, but you know, within what we thought
 10 was an acceptable time the materials were
 11 provided.

12 COFFEY, Q.C.:
 13 Q. Okay. They got sent off to the Boston area.
 14 What do you recall about being told, do you
 15 recall who the physician was you were dealing
 16 with?

17 MR. PURCELL:
 18 A. In the Boston area?

19 COFFEY, Q.C.:
 20 Q. Yes.

21 MR. PURCELL:
 22 A. We didn't deal directly with the physician.
 23 My sister-in-law dealt with her. She was a
 24 Dr. Caroline Block. She was associated with
 25 one of the hospitals that my sister-in-law did

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1 part of her practice in. The information
 2 about the ER test was conveyed to my sister-
 3 in-law, and in turn to us by her.

4 COFFEY, Q.C.:
 5 Q. And having learned that, yourself and your
 6 wife having learned of the difference of view
 7 about the ER status, you conveyed that to Dr.
 8 Wasil, in fact, who was -

9 MR. PURCELL:
 10 A. Yes, either on the next scheduled visit or on
 11 a visit that we might have requested, I don't
 12 recall, but it was shortly after we found out.
 13 It was quite a shock to find out. And you
 14 know, I think it's fair to say, as well, that
 15 we were new to the whole cancer care scene, it
 16 wasn't something that we were very familiar
 17 with, so we didn't know how often an ER test
 18 would come back incorrect. However, the
 19 comments from the physician in Boston
 20 suggested that this wasn't a common occurrence
 21 and that this was something serious.

22 COFFEY, Q.C.:
 23 Q. You said that when you were advised of what
 24 you were from Boston, you conveyed that, you
 25 recall, you believe, to Dr. Wasil?

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1 MR. PURCELL:
 2 A. Yes.
 3 COFFEY, Q.C.:
 4 Q. What was his reaction?
 5 MR. PURCELL:
 6 A. There was no reaction that I can recall.
 7 There--and that's to say that there certainly
 8 wasn't a reaction of strong surprise, there
 9 wasn't a reaction of, at least visibly, of
 10 strong concern. We presented it and requested
 11 that in light of this finding that it be
 12 retested, further retested locally to confirm.
 13 Obviously we didn't expect them to take the
 14 word of another physician 1500 miles away. We
 15 were also, even though we were upset by the
 16 result, we were very keenly aware that we were
 17 relying on this cancer centre and these
 18 physicians to find further treatment options
 19 for my wife who by then had metastatic cancer
 20 and a very poor prognosis. So we didn't
 21 express perhaps the indignation, the concern
 22 that we had over this incorrect test.
 23 However, we did express concern that the test,
 24 this alternate test result that we had gotten
 25 from Boston was a cause for great concern and

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1 we asked that the test be repeated here to
 2 confirm or refute what had been found in
 3 Boston. Now, we had--we were aware that the
 4 samples were a year old, we were aware that
 5 the samples had been sent to Boston. We
 6 weren't in the position to assess whether that
 7 could have caused them to deteriorate or could
 8 have effected the results, so we asked for the
 9 retest. And his reaction, and that was your
 10 question, I'm sorry, his reaction was, "Yes,
 11 we will get them retested," but I don't recall
 12 much else in terms of a reaction to the fact
 13 that we were presenting to him.
 14 COFFEY, Q.C.:
 15 Q. Did you speak or do you recall whether or not
 16 you spoke with anyone else about it?
 17 MR. PURCELL:
 18 A. I think prior to, prior to seeing Dr. Wasil it
 19 was not uncommon to see a nurse at the clinic
 20 on the same visit. She would tend to come in
 21 and do, you know, some of the standard things
 22 like blood pressure and those types of things.
 23 We mentioned it to her and her reaction was
 24 not very strong, either. It was perhaps to
 25 say, "Well, those things happen occasionally."

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1 So that's what I recall. And if there had
 2 been any kind of stronger reaction, I would
 3 certainly recall it.
 4 COFFEY, Q.C.:
 5 Q. Exhibit C-0107. This is a progress note by
 6 Dr. Maghfoor, Maghfoor on 22nd, June, 1999 on
 7 Bliss Murphy Cancer Centre letterhead,
 8 progress note for your wife, medical oncology
 9 clinic. And he notes that "Mrs. Purcell came
 10 in today to decide about chemotherapy." And
 11 he notes "We had a fairly lengthy discussion
 12 again." And he goes on about it. About the
 13 fifth line down he notes, "She gave us
 14 informed consent and will be starting
 15 chemotherapy next Monday." And "Since the
 16 tumor was only visible on MRI scan, we will be
 17 doing an MRI scan after three cycles of
 18 chemotherapy are finished. Dr. Wasil has
 19 kindly agreed to continue the care of this
 20 patient." So it must have been just after
 21 the--or sometime after the June 22nd, 1999 -
 22 MR. PURCELL:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. - meeting that Dr. Wasil first became involved

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1 directly with your wife. If I could, please,
 2 Registrar, if we could go, please, to Exhibit
 3 C-0099? This goes back toward the beginning
 4 of the book for yourself, Mr. Purcell. You
 5 got it?
 6 MR. PURCELL:
 7 A. Yeah.
 8 COFFEY, Q.C.:
 9 Q. Good. This is a report on St. Clare's Mercy
 10 Hospital, top middle of the page. Don't be
 11 put off by the run date on the top left-hand
 12 side of the page, the run date there is
 13 14/03/2008, which presumably has something to
 14 do with the date that it was run off this
 15 year, off the computer system. We'll have
 16 somebody else explain that. It's for your
 17 wife, Christine Purcell. The specimen number
 18 is 98, it's right here, 98:SU3056, received
 19 date, it was originally received July 7th,
 20 1998 there. And it again, tissue is No. 1,
 21 right there, right breast tissue. And we, in
 22 fact, looked at an earlier version of this
 23 earlier in my examination of yourself. If we
 24 go to page 2 under "Tumor Summary", again,
 25 this is--you recall, Mr. Purcell, I referred

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1 you to this earlier, "Breast, right specimen,
 2 excisional biopsy, tumor infiltrating ductal
 3 carcinoma. Estrogen receptors," which is
 4 right here, the second, last two entries,
 5 "Estrogen receptors positive. Faint, five
 6 percent of cells. Progesterone receptors
 7 negative."
 8 MR. PURCELL:
 9 A. Yes.
 10 COFFEY, Q.C.:
 11 Q. Now below that you'll see that there's in caps
 12 the word "ADDENDUM"?
 13 MR. PURCELL:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. Okay. And there's a bunch of stars or
 17 asterisks, I suppose.
 18 MR. PURCELL:
 19 A. Um-hm.
 20 COFFEY, Q.C.:
 21 Q. To be technically correct. "Please note," and
 22 caps, "THIS IS A SUPPLEMENTARY REPORT." It's
 23 dated July 15th, '99, "Immunohistochemical
 24 hormone receptor analysis (repeat) Her-2-neu
 25 analysis with appropriate positive controls.

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1 Estrogen receptors, weakly positive,
 2 approximately 50 percent of invasive tumor.
 3 Progesterone receptors, weakly to moderately
 4 positive, 10-15 percent of invasive tumor."
 5 And "Her-2-neu oncogene" and describes that,
 6 as well. And the addendum is signed by Dr.
 7 Jessica Sheppard, July 15th, 1999. So
 8 apparently this is the report on a retest that
 9 was done on your wife's tumor sample, breast
 10 tissue tumor sample, reporting weakly
 11 positive, approximately 50 percent of invasive
 12 tumor for ER and 10 to 15 percent weakly to
 13 moderately positive progesterone. Okay?
 14 MR. PURCELL:
 15 A. Yes.
 16 COFFEY, Q.C.:
 17 Q. I take it this would be the retest then that -
 18 MR. PURCELL:
 19 A. That would be my understanding, yes.
 20 THE COMMISSIONER:
 21 Q. Mr. Coffey, can you help me just -
 22 COFFEY, Q.C.:
 23 Q. Yes.
 24 THE COMMISSIONER:
 25 Q. - with the sequence of events here? As I

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1 understood the evidence of this witness at the
 2 request, at his and his wife's request certain
 3 material from her chart, certain tests were
 4 made available to them so that they could be
 5 examined in Boston. Now, do we know whether
 6 the original slide went to Boston, do we know
 7 what went to Boston in terms of the
 8 examination of ER/PR?
 9 COFFEY, Q.C.:
 10 Q. That, I'm not in position to say right now.
 11 Inquiries have been and will be made further
 12 in relation to that.
 13 THE COMMISSIONER:
 14 Q. Okay. And in respect of what was done within
 15 Newfoundland?
 16 COFFEY, Q.C.:
 17 Q. Yes.
 18 THE COMMISSIONER:
 19 Q. Which results in this addendum.
 20 COFFEY, Q.C.:
 21 Q. Yes.
 22 THE COMMISSIONER:
 23 Q. Do we know that that was a different slide
 24 taken perhaps from the original material,
 25 specimen, or do we know whether that was a

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1 reread of original slide?
 2 COFFEY, Q.C.:
 3 Q. Well, that's -
 4 THE COMMISSIONER:
 5 Q. Is there something that we, in the--I mean,
 6 I'm sure that there are--well, there will be
 7 people further along the way who can clarify
 8 this?
 9 COFFEY, Q.C.:
 10 Q. Yes.
 11 THE COMMISSIONER:
 12 Q. But I'm just wondering if there is something
 13 in the material that I have in front of me
 14 that might readily suggest that?
 15 COFFEY, Q.C.:
 16 Q. My understanding, and again, it may be
 17 imperfect, but if you look at the two pages
 18 that make up Exhibit C-0099.
 19 THE COMMISSIONER:
 20 Q. Yes.
 21 COFFEY, Q.C.:
 22 Q. One thing one can tell about this is it's
 23 from, this pathology report and what's
 24 contained in it relates to specimen No.
 25 98:SU3056.

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1 THE COMMISSIONER:
 2 Q. Yes.
 3 COFFEY, Q.C.:
 4 Q. Throughout.
 5 THE COMMISSIONER:
 6 Q. Okay.
 7 COFFEY, Q.C.:
 8 Q. That specimen number involved three types of
 9 tissue, which are noted on the first page,
 10 tissues 1, 2, 3, which are right breast
 11 tissue, axillary lymph node, right axilla,
 12 right apical lymph node. The pathology
 13 interpretation at the bottom of that first
 14 page--let's back up here so people can follow
 15 this. It's right here.
 16 THE COMMISSIONER:
 17 Q. Yes.
 18 COFFEY, Q.C.:
 19 Q. Is No. 1, right breast tissue, and it
 20 describes it, and it says "Please see the
 21 tumor summary." And the tumor summary then,
 22 Commissioner, is on the next page, that little
 23 heading right there, "Tumor Summary."
 24 THE COMMISSIONER:
 25 Q. Yes.

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1 COFFEY, Q.C.:
 2 Q. And this is your estrogen and progesterone
 3 original report, which is right here, ER
 4 faint, five percent of cells, PR negative.
 5 And that would have been, I gather, if you
 6 look at the bottom of the page it's entered,
 7 probably, and signed off on any way, July
 8 20th, 1998.
 9 THE COMMISSIONER:
 10 Q. Yes.
 11 COFFEY, Q.C.:
 12 Q. By Dr. Griffin. The addendum is entered July
 13 15th, '99, supplementary report and signed off
 14 by Dr. Sheppard.
 15 THE COMMISSIONER:
 16 Q. Yes.
 17 COFFEY, Q.C.:
 18 Q. I would presume, and subject to further
 19 evidence, that this addendum and supplementary
 20 report relates to tissue sample SU--98, I'm
 21 sorry, SU3056 and would be, and I--as my
 22 perhaps imperfect understanding, that this
 23 would relate to the right breast tissue
 24 described earlier and the report, ie, will be
 25 the same, the same tissue. Now, whether it's

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1 the same block, we'll hear about that, the
 2 difference between different blocks.
 3 THE COMMISSIONER:
 4 Q. But as far as we know at the moment there's
 5 nothing on that particular document -
 6 COFFEY, Q.C.:
 7 Q. No.
 8 THE COMMISSIONER:
 9 Q. - which would indicate what was being--what
 10 precisely was being read by, I assume, Dr.
 11 Sheppard, whose signature is immediately
 12 following -
 13 COFFEY, Q.C.:
 14 Q. Yes.
 15 THE COMMISSIONER:
 16 Q. - the addendum, other than it would appear
 17 that the material which was used to create the
 18 slide which would have been read by Dr.
 19 Sheppard would have come from the same block
 20 that originally was used?
 21 COFFEY, Q.C.:
 22 Q. That's -
 23 THE COMMISSIONER:
 24 Q. Or do you know that?
 25 COFFEY, Q.C.:

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1 Q. - hard--I shouldn't say that; I can't say
 2 that. There's nothing to indicate where it
 3 came from except that it's from the same
 4 surgical specimen.
 5 THE COMMISSIONER:
 6 Q. I see, okay.
 7 COFFEY, Q.C.:
 8 Q. And that's really a--Mr. -
 9 THE COMMISSIONER:
 10 Q. Well, I'm sure -
 11 MR. SIMMONS:
 12 Q. Commissioner, if I might, I might help with
 13 that. We've been asked just over the last few
 14 days to try to clarify that very question.
 15 THE COMMISSIONER:
 16 Q. Um-hm.
 17 MR. SIMMONS:
 18 Q. And you'll also note on the same report on the
 19 first page it says there are something like 31
 20 blocks prepared there.
 21 THE COMMISSIONER:
 22 Q. Um-hm.
 23 MR. SIMMONS:
 24 Q. And without being able to confirm with
 25 certainty, the indication as far as we know is

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1 that the retest may have been done on a
 2 different block than the original test was,
 3 although they were all blocks that came from
 4 the same set of samples that are reported on
 5 these pathology reports.
 6 THE COMMISSIONER:
 7 Q. So, what you're suggesting, however, is that a
 8 new slide was created -
 9 MR. SIMMONS:
 10 Q. Yes, new -
 11 THE COMMISSIONER:
 12 Q. - from a block which came from the tissue
 13 removed at some point from the patient during
 14 the original surgery and somebody would have
 15 created a new slide, perhaps from a different
 16 block than the original slide, which had been
 17 read and the result was faint, five percent to
 18 arrive at a test result which says 50 percent?
 19 MR. SIMMONS:
 20 Q. We do know that there are two sets of slides
 21 available, one from '98 and one from '99.
 22 THE COMMISSIONER:
 23 Q. Okay.
 24 MR. SIMMONS:
 25 Q. There were a (phonetic) set of slides prepared

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1 and the question, to be certain, is whether
 2 the second set came from exactly the same
 3 block as the first one.
 4 THE COMMISSIONER:
 5 Q. All right, that's helpful. Thank you, very
 6 much.
 7 COFFEY, Q.C.:
 8 Q. There is--and initially, you know, I was given
 9 to understand perhaps that the retest, leaving
 10 the Americans out of it entirely, that the
 11 retest, that there was a retest in '99 that's
 12 reflected in Dr. Sheppard's note at C-0099
 13 page 2, that perhaps, in fact, that was done
 14 in Toronto. That was initially what we were
 15 advised. Now, I gather since I've been
 16 advised in writing perhaps that's incorrect.
 17 THE COMMISSIONER:
 18 Q. Okay.
 19 COFFEY, Q.C.:
 20 Q. And I'm now given to understand, which is what
 21 Mr. Simmons has told me, that--and again, I'm
 22 getting this from Eastern Health.
 23 MR. SIMMONS:
 24 Q. Yes, this is discussed back and forth between
 25 counsel to try and resolve the issue as we're

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1 discussing it.
 2 THE COMMISSIONER:
 3 Q. Um-hm, okay.
 4 MR. SIMMONS:
 5 Q. Initially because there was a urgent new
 6 (phonetic) test done and also there was
 7 speculation that that might have been done as
 8 part of a package in Toronto (unintelligible).
 9 THE COMMISSIONER:
 10 Q. Okay, so at this point were her two tests
 11 being done in St. John's?
 12 MR. SIMMONS:
 13 Q. Apparently at this point they were being done,
 14 yes.
 15 THE COMMISSIONER:
 16 Q. Okay. So -
 17 COFFEY, Q.C.:
 18 Q. As best we can tell now -
 19 THE COMMISSIONER:
 20 Q. - can we agree as of the moment all we know is
 21 that there are two slides, therefore the
 22 second test was not a reread of the first
 23 slide, it would have been a separately
 24 prepared slide. What we do not know is
 25 whether or not both of those slides came from

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1 the same block?
 2 MR. SIMMONS:
 3 Q. That's correct.
 4 COFFEY, Q.C.:
 5 Q. That's -
 6 THE COMMISSIONER:
 7 Q. Okay, thank you.
 8 MR. PURCELL:
 9 A. Commissioner, if I could clarify my
 10 recollection, and that is that we were advised
 11 that it was possible to get actual slides
 12 because they could give us a portion of the
 13 original specimen and would not have to, you
 14 know, give us the whole of the specimen. I
 15 also should say that my recollection is that
 16 while things like written reports may have
 17 been copied and give to us, there was at least
 18 some of the material that was forwarded
 19 directly to the physician in Boston, Dr.
 20 Block, by the Health Care Corporation. And I
 21 don't have any records to indicate that,
 22 that's my recollection. But certainly on the
 23 slides they told us, because we had a question
 24 as to whether they would allow us to take
 25 things like slides that couldn't be copied,

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1 you know, specimens, and they came back and
 2 told us that, "No, we can give you a portion
 3 of the specimen without degrading the specimen
 4 that we have on hand ourselves."
 5 THE COMMISSIONER:
 6 Q. Now, okay. Can I take it from that, then, it
 7 was your understanding that you were not being
 8 given the original slide which had been read
 9 locally, but something else having come from
 10 the same specimen?
 11 MR. PURCELL:
 12 A. That would be my understanding.
 13 THE COMMISSIONER:
 14 Q. All right.
 15 COFFEY, Q.C.:
 16 Q. Exhibit C-0108, please? This is progress
 17 notes on Christine Purcell from the Bliss
 18 Murphy Cancer Centre dated 12, August, 1999,
 19 medical oncology clinic notes. This is Dr.
 20 Wasil's two-page note. And the first line
 21 indicates, "Mrs. Purcell is a 48-year-old
 22 female with metastatic breast cancer to the
 23 bones and possibly to the liver." And it goes
 24 on about the current treatment. And on the
 25 fourth paragraph beginning with the words, "We

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1 have the report of original biopsy tested for
 2 estrogen receptor, progesterone receptor" and
 3 it reads, 2-new oncogene bag." That's what's
 4 written here. "Estrogen receptor has been
 5 reported as weakly positive on approximately
 6 50 percent of the invasive tumor.
 7 Progesterone receptors are weakly to
 8 moderately positive in only 10 to 15 percent
 9 of invasive tumor. Her-2-neu is strongly
 10 positive in more than 80 percent of the
 11 invasive carcinoma." And describes the white
 12 counts, a white count. Go on then to the
 13 second page, Dr. Wasil notes, "I discussed
 14 about the results of the biopsy," "results,"
 15 I'm sorry, "of the biopsy about various
 16 receptors. I discussed in detail about her-2-
 17 neu oncogene. Patient was told that in
 18 patients that are Her-2-neu oncogene positive
 19 medication called Herceptin which is a
 20 monoclonal antibody against a Her-2-neu
 21 oncogene has shown a response rate at 16
 22 percent in a single medication. This was
 23 discussed because the patient had asked all
 24 these questions. We will continue with
 25 chemotherapy at this time. Because the

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1 patient is estrogen receptor weakly positive
 2 in almost 50 percent of invasive tumor cells I
 3 will start her on Tamoxifen after we finish
 4 with the Taxotere chemotherapy. I will see
 5 her back here in three weeks for the next
 6 cycle of Taxotere." So I take it then by the
 7 summer, then, of--by the end of--by Labour
 8 Day, 1999 your wife was, would have understood
 9 that she was ER/PR positive both in Boston and
 10 locally here in St. John's?
 11 MR. PURCELL:
 12 A. Yes.
 13 COFFEY, Q.C.:
 14 Q. And ER positive and according to this she's
 15 going to be placed on Tamoxifen?
 16 MR. PURCELL:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. At some point. If we could, Exhibit C-0109,
 20 please? This is a report again by Dr. Wasil,
 21 of September 2nd, 1999, medical oncology
 22 clinic progress notes. Your wife was
 23 apparently in, was examined by him. And just
 24 want to go to the--I'm going to take you
 25 through the details of that, but on the second

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1 page and the sixth-last line Dr. Wasil has
 2 noted, six lines up, "Patient is also weakly
 3 positive for ER receptor on repeat staining of
 4 her blocks. After she shows the response to
 5 some chemotherapy, I will start her on
 6 Tamoxifen, as well." And there's a reference
 7 then to potentially starting Herceptin
 8 depending upon test results. If we could,
 9 Registrar, please, Exhibit C-0110, 110? This
 10 is a progress note by a Dr. F. O'Shea,
 11 palliative care consultant. That's a progress
 12 note for Christine Purcell, September 28th,
 13 1999. And Dr. O'Shea describes your wife as
 14 follows, "Christine is a 46-year-old lady who
 15 was reviewed today as an unscheduled visit at
 16 the cancer clinic. She is known to have
 17 metastatic carcinoma of the breast which was
 18 diagnosed in 1998." The fifth line it's
 19 noted, "Initially ER and PR were both
 20 negative." And then she goes on about
 21 potential steps to treat the problems your
 22 wife was then presenting with. And Dr. O'Shea
 23 concludes with, "Christine will be seen in
 24 follow-up once she comes to see Dr. Wasil for
 25 her appointment in one week." That's at the

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1 very bottom of the page there. Before we do
 2 leave this particular page, in the middle of
 3 the page, and I'm just--I want to, if I can,
 4 put this somewhat in context. Your wife had
 5 just, well, not just learned, but during the
 6 past then couple of months had learned from
 7 Boston that her ER status had changed and now
 8 locally had been advised in July that it had
 9 changed. In the middle of the page about
 10 eight lines down it says, "Her recent bone
 11 scan on the 7th of September has revealed,
 12 unfortunately, again progressive bone
 13 metastases. Today Christine's symptoms are
 14 mainly psychological stress associated with
 15 her indecision concerning which chemotherapy
 16 modality she should choose of the ones that
 17 have been offered to her. She has not found
 18 the patient information pamphlets helpful in
 19 trying to make this decision. Most of the
 20 time today was spent in discussing the
 21 approach that she should to take to making
 22 this decision. I will arrange to get more
 23 information for her on the various drugs and
 24 also I will ask Dr. Wasil to meet her prior to
 25 her next scheduled appointment on the 7th of

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1 October during which she will receive the
 2 first course of chemotherapy so that her
 3 questions may be answered at this time." So
 4 and your wife at this point in time, I take
 5 it, was of--was uncertain?
 6 MR. PURCELL:
 7 A. Yes, the chemotherapy that was offered was
 8 clearly being offered with the proviso that it
 9 had very little chance of having any positive
 10 effect, that it was described as being very
 11 strong chemotherapy that would have
 12 potentially severe side effects and really no
 13 guarantee of any benefit at all. As well,
 14 there were two or three options being offered
 15 which appeared to the lay person to be very
 16 similar. So therefore the indecision was
 17 around which one to choose. And as well,
 18 although she had never seriously considered
 19 not taking any of them, but it was the
 20 question of will the immediate side effects,
 21 and she had been ill during the summer, she
 22 had at least one hospital admission during the
 23 summer, in July I believe it was, and she was
 24 concerned that the chemotherapy itself in her
 25 weakened condition could make her so sick that

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1 it could kill her. She was also at that time
 2 her blood, I think it was during that time
 3 that her blood was very low and, you know, she
 4 just was not feeling very well.
 5 COFFEY, Q.C.:
 6 Q. Sir, how did your--looking back on it and
 7 what's your recollection of how your wife felt
 8 about being told over the summer of 1999 that
 9 her ER status had changed?
 10 MR. PURCELL:
 11 A. It had a great impact upon her confidence in
 12 the system. She had been very positive, she
 13 had been very ready and very willing to and
 14 enthusiastically, even though she was ill at
 15 times, to do whatever the doctors were
 16 recommending, to take a positive approach, to,
 17 even though she had a realistic awareness of
 18 how ill she was and how the cancer had, you
 19 know, a good chance of spreading, she was
 20 embracing the chemotherapy, she was ready and
 21 willing to do anything possible. She had
 22 confidence in the system. As I said earlier,
 23 she had a very positive experience, at least
 24 she felt she did, with the cancer centre up to
 25 that point. When she found this out, that was

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1 on the heels of finding out that her cancer
 2 had spread and that her prognosis was not
 3 good. It was extremely difficult for her.
 4 She lost confidence in the system. She said
 5 "If they're wrong on this, clearly they could
 6 be wrong on any other decision they made. Have
 7 they recommended the proper chemotherapy?
 8 Have they done the proper radiotherapy? Have
 9 the delays that I've experienced with getting
 10 the chemo and the radiation, have they had an
 11 impact upon my health?" So, while she was not
 12 angry to the point where, you know, she was
 13 not prepared to engage with people and she
 14 continued to be quite positive and pleasant
 15 with everyone, it had shaken her confidence in
 16 the system greatly, as it did mine.
 17 COFFEY, Q.C.:
 18 Q. Did some--did anyone from what would have then
 19 been the Health Care Corporation of St.
 20 John's, that's what it would have been called
 21 then, okay, back at that time.
 22 MR. PURCELL:
 23 A. Um-hm, yes.
 24 COFFEY, Q.C.:
 25 Q. The organization, did anyone back in 1999 or

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1 into early 2000 ever offer an explanation to
 2 you or your wife?
 3 MR. PURCELL:
 4 A. No, absolutely not.
 5 COFFEY, Q.C.:
 6 Q. About why the different results had occurred?
 7 MR. PURCELL:
 8 A. No. Except for the offhand comment, which I
 9 attributed to one of the nurses who said,
 10 "Well, those things happen."
 11 COFFEY, Q.C.:
 12 Q. There was never any explanation?
 13 MR. PURCELL:
 14 A. No. And I believe that the written reports
 15 are a fair reflection of what was said and
 16 what wasn't said because they talk about tests
 17 being redone. At no point do they say "This
 18 was redone at the patient's request because
 19 she had an alternate opinion, professional
 20 opinion and it was found that the test was
 21 incorrect," or, you know, "We had this other
 22 result." Constantly it just says that this is
 23 a retest and they move on.
 24 COFFEY, Q.C.:
 25 Q. Exhibit C-0111. These are progress notes for

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1 your wife, Christine Purcell. It's three
 2 pages long. You look carefully behind the
 3 "Dictated but not read" you'll see Dr. Wasil's
 4 name?
 5 MR. PURCELL:
 6 A. Yes.
 7]COFFEY, Q.C.:
 8 Q. And this is dated 5, October, 1999, the first
 9 page of C-0111. And it begins, Dr. Wasil
 10 begins by noting, "This 46-year-old female
 11 with metastatic"--I'm sorry, I got to get that
 12 right, "breast cancer comes in for some
 13 questions to be answered." And it refers to
 14 some pain then your wife was suffering. And
 15 the second paragraph, the last line reads,
 16 "Patient has several questions related to next
 17 course of action and she wanted to clarify
 18 those issues today." See that in the -
 19 MR. PURCELL:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. - paragraph? And then in the last full
 23 paragraph on the first page beginning with the
 24 words, "I told", and it says, "I told about
 25 the findings on CT scan of the chest, abdomen

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1 and pelvis, the x-rays and MUGA scan to the
 2 patient and her husband. I told them that
 3 given all this picture, she had disease only
 4 in the bones at this time and there is no
 5 evidence of disease in the lungs or the liver
 6 or anywhere else in the body." And goes on--
 7 doctor makes note of the treatment and then
 8 says on the sixth line, "In the meantime, the
 9 patient also had her ER/PR status looked at
 10 along with HER-2-neu status looked at on the
 11 original biopsy. It was reported as ER to be
 12 positive, it was reported to be weakly
 13 positive on 50 percent of the cells while PR
 14 was positive in approximately 10 percent of
 15 the cells, but HER-2-neu was strongly
 16 positive." And then the last three lines
 17 read, "However, given the picture of bony only
 18 disease and ER to be weakly positive on 50
 19 percent of the cells, I will consider
 20 Tamoxifen as well as an option." So
 21 apparently Dr. Wasil at that point was
 22 considering Tamoxifen. And he then notes, "I
 23 asked the patient about her questions.
 24 Patient wanted to know about her extent of
 25 disease, which I told her that she had disease

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1 only in the bones at this time on the current
 2 imaging studies. She had several questions
 3 related to the chemotherapy options and she
 4 told me that she would not be able to choose
 5 amongst all these and she wants me to decide
 6 on what to do next. She also asked several
 7 questions on alternative and complimentary
 8 measures such as vitamins, herbal medications,
 9 antiangiogenesis drugs and others."
 10 Angiogenesis, I'm sorry, "drugs and others. I
 11 discussed with her that so far as
 12 complimentary measures are concerned I would
 13 advocate her to take a--have a positive
 14 attitude and also learn to meditate. She can
 15 also eat fresh fruits and vegetables to get
 16 enough minerals and vitamins." And goes on
 17 from there. In the middle of the paragraph
 18 here he notes, "I also told her that given the
 19 change in picture, that is bony only disease
 20 and ER to be weakly positive on 50 percent of
 21 the cells and the patient to be in a
 22 menopausal state since the beginning of
 23 chemotherapy Tamoxifen is also an option. I
 24 discussed in detail about the risks, benefits
 25 and the side effects of Tamoxifen in detail.

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1 I told her that the advantages of Tamoxifen
 2 are to control breast cancer in her case as
 3 well good effect on the bones and maybe some
 4 beneficial effects on the heart, as well. The
 5 major side effects related to Tamoxifen are
 6 weight gain and hot flashes and these are
 7 bothersome but not serious side effects. The
 8 serious side effects with Tamoxifen are
 9 thrombo-embolic phenomena which have been
 10 reported in about seven per 1000 women over
 11 five years. The other serious side effect is
 12 endometrial carcinoma, which was also seen in
 13 approximately seven per 1000 women studied on
 14 P-1 trial." And Dr. Wasil then in the next
 15 page notes, "I mentioned it to her that if she
 16 has any acute problems, she should always seek
 17 medical attention while on Tamoxifen and also
 18 she should have a regular follow up." And he
 19 goes on to say, "I discussed her case with Dr.
 20 Laing in my division who is expert in breast
 21 cancer. She also agreed with me that we
 22 should give her a chance with the Tamoxifen
 23 only. I will continue to follow her
 24 periodically with a bone scan to evaluate the
 25 response to the Tamoxifen." So do you recall

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1 whether or not you ever met Dr. Laing? You
 2 indicated you used to go to your wife's
 3 medical appointments.
 4 MR. PURCELL:
 5 A. Yes. Yeah, we met Dr. Laing. Dr. Laing at
 6 that time, I believe, was relatively new to
 7 the clinic. She had relatively recently
 8 finished her training, I believe. And she was
 9 on the scene and we saw her fairly actively
 10 into the late fall and afterward. It was
 11 around that time, too, I think that my wife
 12 was referred to Dr. Popadiuk.
 13 COFFEY, Q.C.:
 14 Q. Yes.
 15 MR. PURCELL:
 16 A. But, yes, Dr. Laing was the one who attended
 17 her most frequently, you know, starting at
 18 around this point, although, Dr. Wasil was
 19 still there and we'd see her occasionally.
 20 COFFEY, Q.C.:
 21 Q. If we could, Exhibit C-0112? Dr. Popadiuk.
 22 Have I got that right, Mr. Purcell?
 23 MR. PURCELL:
 24 A. Yes, or Popadiuk.
 25 COFFEY, Q.C.:

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1 Q. Popadiuk, I'm sorry, Popadiuk, okay. And this
 2 is a progress note for your wife of 26,
 3 October, 1999. Oncology clinic, the second
 4 line, "The patient has since her last visit
 5 here in May have been diagnosed with bony
 6 metastasis of breast cancer. She was put on
 7 Taxotere, however did not respond. She has
 8 been on Tamoxifen for one month now." So
 9 apparently your wife by this point, the doctor
 10 understood that she was, had been receiving
 11 Tamoxifen then for about a month?
 12 MR. PURCELL:
 13 A. Yes.
 14 THE COMMISSIONER:
 15 Q. I wonder would this be a convenient time to
 16 take the luncheon break?
 17 COFFEY, Q.C.:
 18 Q. It would be and we'll come back and finish the
 19 last couple of exhibits, then I have some
 20 final questions. Thank you.
 21 THE COMMISSIONER:
 22 Q. Thank you, very much. 2:00.
 23 (RECESS)
 24 THE COMMISSIONER:
 25 Q. Thank you. Please be seated. Mr. Coffey?

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1 COFFEY, Q.C.:
 2 Q. Thank you, Commissioner. Registrar, Exhibit
 3 C-0112. I apologize, 0113. I'm sorry, we had
 4 finished 0112. Mr. Purcell, these are the
 5 progress notes of Dr. O'Shea from the Bliss
 6 Murphy Cancer dated November 19th, 1999. This
 7 is a pain, I'm sorry, and symptom control
 8 clinic. And the clinical diagnosis is ductal
 9 carcinoma, right breast with metastatic
 10 disease to bone. And it indicates "Mrs.
 11 Purcell is a 46-year-old lady who was reviewed
 12 today as an unscheduled visit because of
 13 increasing back pain." And it goes on to say
 14 in the third line, "At this time the high-risk
 15 factors, including ER/PR negative lymphatic
 16 and vascular invasion present on a surgical
 17 specimen." I take it by this point in time of
 18 course your wife was known to be ER/PR
 19 positive, certainly ER positive?
 20 MR. PURCELL:
 21 A. Yes.
 22 COFFEY, Q.C.:
 23 Q. The last four lines read, "However, her
 24 metastatic bone disease has progressed on this
 25 and she is currently on Tamoxifen following

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1 review of the ER/PR receptor status. The ER
 2 status following review was positive. She has
 3 been treated with radiotherapy with metastatic
 4 bone disease." Suggesting that Dr. O'Shea in
 5 the first reference to ER/PR negative was
 6 referring to the original diagnosis or
 7 original testing results. If we could,
 8 Registrar, please, C-0114? This is a report,
 9 progress notes of November 25th, '99, medical
 10 oncology clinic by Dr. Wasil and refers to
 11 your wife, Christine. And the last paragraph
 12 Dr. Wasil notes, "46-year-old female with
 13 possible progression of bony disease due to
 14 metastatic breast cancer. Patient is already
 15 on Aredia and was started on Tamoxifen last
 16 time because her ER was weakly positive and
 17 patient did not want any chemotherapy at this
 18 time." And it goes on to note in the last
 19 four lines, "At this point patient is going to
 20 be receiving radiation to the lower spine and
 21 has to see the orthopaedic surgeon." And
 22 she's needing at this point treatment for
 23 acute management issues. So I take it that
 24 this is your wife then by this point the
 25 cancer had spread significantly throughout her

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1 bones?
 2 MR. PURCELL:
 3 A. Yes, it had. That's my understanding.
 4 COFFEY, Q.C.:
 5 Q. And finally, Exhibit C-0115, please? These
 6 are progress notes again for Christine by Dr.
 7 Wasil of January 26, 2000. And it notes,
 8 "This 46-year-old female with metastatic
 9 breast cancer to the bones comes in for a
 10 follow-up and possible of starting her
 11 chemotherapy." And the third paragraph ends
 12 with the line, "And I had started her on
 13 Tamoxifen in the beginning of October because
 14 of her ER receptor status being positive."
 15 See that?
 16 MR. PURCELL:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. And finally in the last paragraph about the
 20 fifth last line, "In view of these new
 21 symptoms and also because her last scans were
 22 in September and she has been on Tamoxifen
 23 since then I will wait until the scan are done
 24 to start her on any form of chemotherapy at
 25 this point. That will tell us if the disease

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1 is responding to Tamoxifen or not." And
 2 "Clinically patient seems to be doing
 3 relatively better at this point. I will bring
 4 her back in three weeks time." And by that
 5 time the scans would have been done. And I
 6 take it that it was in March that year that
 7 your wife died?
 8 MR. PURCELL:
 9 A. Yes. And, in fact, if that's January 26th, my
 10 wife was not feeling well. She--we returned
 11 to the clinic on very early February, February
 12 2nd, 3rd, she was admitted to the hospital and
 13 she didn't return home.
 14 COFFEY, Q.C.:
 15 Q. Okay.
 16 MR. PURCELL:
 17 A. She died.
 18 COFFEY, Q.C.:
 19 Q. Sir, if we could, please, turn to, Registrar,
 20 please, Exhibit C-0096? It's right at the
 21 beginning of your book, Mr. Purcell.
 22 Actually, the first two pages are a listing of
 23 the exhibits. If you just turn past those,
 24 it's the first actual exhibit. There you have
 25 it right there in front of you, okay. Now,

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1 sir, before I get into this particular
 2 exhibit, after your wife's death in March of
 3 2000 in terms of ER/PR and the whole issue of
 4 ER/PR, when did you first become aware of it
 5 again?
 6 MR. PURCELL:
 7 A. You mean of the controversy and -
 8 COFFEY, Q.C.:
 9 Q. Yes.
 10 MR. PURCELL:
 11 A. - the problems? Just recently when it was,
 12 when it hit the news.
 13 COFFEY, Q.C.:
 14 Q. And when that happened, that would be in late
 15 2005 all through 2006, into 2007, did you ever
 16 contact Eastern Health?
 17 MR. PURCELL:
 18 A. No, I didn't.
 19 COFFEY, Q.C.:
 20 Q. Is there any reason, and I say contact them,
 21 but that would be concerning your wife's
 22 situation. Is there any reason you didn't,
 23 any reason you did not?
 24 MR. PURCELL:
 25 A. Because we had already had the test redone,

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1 both in Boston and here. I assumed that the
 2 test the second time around was correct and
 3 that while I was disturbed to hear that there
 4 were still problems going on, I did not think
 5 that there was anything with respect to my
 6 wife's case that would be--that would change.
 7 She was dead by that time for five years. So
 8 that's the reason I didn't make any contact.
 9 COFFEY, Q.C.:
 10 Q. Okay. Now I understand that recently you
 11 contacted Eastern Health, and I say recently,
 12 I mean within the past week?
 13 MR. PURCELL:
 14 A. Just in the past few days, yes.
 15 COFFEY, Q.C.:
 16 Q. Few days. And before your contact with
 17 Eastern Health during the past week, and I
 18 gather it was probably March 20th, up until
 19 that time, since your wife's death had anybody
 20 been in contact with you about ER/PR from
 21 Eastern Health?
 22 MR. PURCELL:
 23 A. No.
 24 COFFEY, Q.C.:
 25 Q. How did you come to contact Eastern Health

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1 then during the past week?
 2 MR. PURCELL:
 3 A. I became aware--I was away for about five
 4 weeks and apparently there was a press
 5 conference and some news releases about the
 6 results of retesting of people who had died.
 7 I became aware of a number that one could call
 8 to get further information and when I came
 9 back in town on the 17th of March, I started
 10 attempting to call that number and on the 20th
 11 I got through to it.
 12 COFFEY, Q.C.:
 13 Q. And who did you speak with?
 14 MR. PURCELL:
 15 A. Initially I don't know who I was spoke with,
 16 but I was calling Sharon Smith, she was not
 17 in. She called me back later in the day, I
 18 think, that same day.
 19 COFFEY, Q.C.:
 20 Q. And did you have any understanding about who
 21 Sharon Smith was in terms of her position?
 22 MR. PURCELL:
 23 A. Yes, I had been told that she was the contact
 24 person and may have been by someone from the
 25 Commission or it may have been from Ms.

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1 Russell, who is acting on behalf of the class
 2 action. So when I called the number, I asked
 3 for Sharon Smith.
 4 COFFEY, Q.C.:
 5 Q. And eventually yourself and Ms. Smith spoke?
 6 MR. PURCELL:
 7 A. Yes.
 8 COFFEY, Q.C.:
 9 Q. And there is a typed summary of contact here,
 10 and this is, Commissioner, this exhibit
 11 originated with Eastern Health -
 12 THE COMMISSIONER:
 13 Q. This is Exhibits 96?
 14 COFFEY, Q.C.:
 15 Q. C-0096.
 16 THE COMMISSIONER:
 17 Q.
 18 Q. All right.
 19 COFFEY, Q.C.:
 20 Q. I'm just going to read out the summary of
 21 contact, sir, and then I'm going to ask you
 22 some questions. "Mr. Purcell called me to ask
 23 what the ER/PR results were for his wife,
 24 Christine." Thank you, Registrar. "I told
 25 him she had originally tested negative but a

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1 repeat had been done a year later and she was
 2 tested positive and placed on Tamoxifen. He
 3 told me I must have the wrong patient as his
 4 wife was never on Tamoxifen, so I asked him if
 5 I could confirm my information and call him
 6 back. I did check and reviewed notes in OPIS
 7 where it was clearly written that her ER/PR
 8 came back positive and she was put on
 9 Tamoxifen and there were a number of
 10 references to this fact. I called Mr. Purcell
 11 and informed him of that. He then asked if
 12 there was any reference to a request he and
 13 his wife had made to have her samples
 14 retested. He thought that may have been in
 15 June of '99 to Dr. Maghfoor. I could not find
 16 any reference made by Dr. Maghfoor but did
 17 find a reference from Dr. Wasil in July and
 18 explained that to him. It appears that the
 19 retest was done at the General Hospital and
 20 included HER-2-neu as well as ER/PR results
 21 which were positive. Mrs. Purcell was started
 22 on Tamoxifen in October, which would have been
 23 following the completion of her chemotherapy.
 24 Mr. Purcell asked why the doctor put her on
 25 Tamoxifen then as she was dying and I told him

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1 I was not a physician. I would assume it was
 2 to slow the progression of her disease. He
 3 asked for copies of her records. I told him
 4 to send me a request and I would see to it. I
 5 again apologized for the initial confusion, at
 6 which point he told me he wasn't surprised as
 7 Eastern Health can't seem to get its act
 8 together and he wasn't surprised at all." And
 9 in summary, a further follow-up is, "Will
 10 forward a copy of chart when request is
 11 received." So that is an account presumably
 12 recorded by Ms. Smith of your conversation.
 13 How does that compare with your own
 14 recollection?
 15 MR. PURCELL:
 16 A. Generally it's consistent. However, there's
 17 one very important point that she leaves out
 18 at the beginning. She states that she told me
 19 she had originally tested negative but a
 20 repeat had been done a year after and she was
 21 tested positive and place on Tamoxifen, and
 22 that of course her diagnosis was in 1998.
 23 When I contacted Ms. Smith, what she said very
 24 clearly was, "Oh, yes, she was tested in 1997
 25 and she tested positive." It was at that

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1 point that I said to her that she must have
 2 the wrong patient.
 3 COFFEY, Q.C.:
 4 Q. Okay.
 5 MR. PURCELL:
 6 A. And she said she would go and reexamine her
 7 records. When she came back, she again said
 8 that my wife was tested in 1997 and I
 9 corrected her. The rest of it is
 10 substantively accurate. I did tell her that I
 11 didn't recall my wife being placed on
 12 Tamoxifen because that was very late in my
 13 wife's treatment and I had no recollection of
 14 that because at the time it was a very minor
 15 detail, Tamoxifen was of questionable, if any,
 16 value at that point. So that was the--that's
 17 the major inaccuracy in that report.
 18 COFFEY, Q.C.:
 19 Q. Sir, thinking back upon what you were advised
 20 about from the Boston area in terms of at
 21 least what you were told, could you tell us,
 22 please, you said that your recollection of it
 23 is is that an American physician came back
 24 through your sister-in-law this would be?
 25 MR. PURCELL:

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1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. The physician herself said that the one
 4 difference of opinion or one thought that they
 5 had on it was was that her ER was, in fact,
 6 your wife's ER was, in fact, moderately
 7 positive?
 8 MR. PURCELL:
 9 A. Yes.
 10 COFFEY, Q.C.:
 11 Q. Did the issue of Tamoxifen come up in that
 12 context at that time?
 13 MR. PURCELL:
 14 A. Not from the doctor in Boston, that I recall.
 15 However, we were aware, as everybody else was
 16 aware, that the ER status was a determining
 17 factor in whether Tamoxifen was to be used,
 18 and at the time that my wife was diagnosed and
 19 a little before that, Tamoxifen had hit the
 20 press and it was considered to have great
 21 potential. So the whole question of whether
 22 you were a candidate for Tamoxifen was
 23 considered to be a fairly important factor.
 24 COFFEY, Q.C.:
 25 Q. And when you learned or first learned that

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1 your wife's tumor's ER status was in fact
 2 moderately positive, from the American
 3 perspective anyway -
 4 MR. PURCELL:
 5 A. Yes.
 6 COFFEY, Q.C.:
 7 Q. - which you were advised was the American
 8 perspective, was the idea of her taking
 9 Tamoxifen explored?
 10 MR. PURCELL:
 11 A. Yes, yeah. Our first reaction, of course, was
 12 that that test had been done a year ago. We
 13 were aware at that point that her cancer had
 14 already spread, so that our first reaction was
 15 how much of an opportunity for better
 16 treatment had been lost? The Tamoxifen issue
 17 was brought up by us again. After some
 18 discussion among ourselves and other
 19 physicians that we knew, we approached the
 20 Cancer Clinic, and I think we made reference
 21 to it earlier, and brought up the issue of the
 22 test and the results of the test and what's
 23 recorded in the notes is that we had asked for
 24 a retest. That was after we had discussed the
 25 test that had already been done in Boston and

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1 the results of that test, and the question of
 2 whether Tamoxifen was of any value at this
 3 point was certainly raised by us, but we had
 4 very little knowledge of, you know, what would
 5 indicate whether Tamoxifen could be used at
 6 that point. So what we did do is ask for a
 7 retest so that at least we knew that the test
 8 was accurate.
 9 COFFEY, Q.C.:
 10 Q. Sir, when you were speaking with Ms. Smith,
 11 Sharon Smith, did the subject matter come up
 12 as to why your wife's tissue sample apparently
 13 was not retested at Mount Sinai?
 14 MR. PURCELL:
 15 A. Yes, it did. I asked her, in discussing--when
 16 we finally were able to get down to the fact
 17 that it was 1998 and that there was a marginal
 18 negative test that was then redone, I asked
 19 her about the results from Mount Sinai, and
 20 she said "well, she wasn't tested at Mount
 21 Sinai" and I asked her why. I was surprised
 22 that she wasn't retested, and I think her
 23 response was that the positive tests were not
 24 retested. I commented to her that in light of
 25 all of the inaccuracies that have gone on with

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1 these tests, was it not considered that in
 2 addition to there being false negatives, there
 3 could also be false positives or false
 4 percentages of positives, and she really
 5 didn't have an answer to that, except to say
 6 that the positives weren't retested, which I
 7 find very surprising and very disturbing.
 8 COFFEY, Q.C.:
 9 Q. Mr. Purcell, has anyone from Eastern Health,
 10 or what is now Eastern Health, told you what
 11 may have happened to have caused the original
 12 negative result?
 13 MR. PURCELL:
 14 A. No, not at any point, not a word.
 15 COFFEY, Q.C.:
 16 Q. That's back in--because I asked you about that
 17 before, the '97/98, when it retested in '98,
 18 the idea of, I take it, you told me this
 19 morning no one had explained to you how that
 20 could be?
 21 MR. PURCELL:
 22 A. No, and -
 23 COFFEY, Q.C.:
 24 Q. There may be a very rational explanation, may
 25 or may not, but no one has ever offered that

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1 to you?
 2 MR. PURCELL:
 3 A. No. We were also unaware, in 1999, of the
 4 extent of these problems. You know, we only
 5 had knowledge of our own test. I can tell you
 6 that if we had known how extensively the
 7 problem existed, we would have pursued it
 8 further. Maybe we wouldn't be sitting here
 9 today and thousands of people wouldn't be in
 10 the state that they're in.
 11 COFFEY, Q.C.:
 12 Q. Has anyone from Eastern Health outlined to you
 13 any plan intended to rectify the situation?
 14 MR. PURCELL:
 15 A. No, because there's been no contact.
 16 COFFEY, Q.C.:
 17 Q. Has anyone offered you the option of a family
 18 meeting or a meeting by yourself with anyone
 19 to discuss this issue?
 20 MR. PURCELL:
 21 A. No. I don't believe it came up in the
 22 discussion with Ms. Smith on Thursday. It
 23 certainly never came up anywhere else.
 24 COFFEY, Q.C.:
 25 Q. Has anyone from Eastern Health expressed to

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1 you any acceptance of responsibility in
 2 relation to this matter?
 3 MR. PURCELL:
 4 A. No, not at all.
 5 COFFEY, Q.C.:
 6 Q. Has anyone from Eastern Health expressed any
 7 regret or apologized to you?
 8 MR. PURCELL:
 9 A. No.
 10 COFFEY, Q.C.:
 11 Q. From the perspective of a family member of a
 12 deceased patient, namely your wife, Christine,
 13 how do you feel about or what are your views
 14 on how the communication of this issue has
 15 been handled by Eastern Health, and the
 16 medical community at large?
 17 MR. PURCELL:
 18 A. I think it's been terrible. I think it
 19 borders on negligent, although I'm not a
 20 lawyer. I think that what I have seen in
 21 public, because I didn't get any communication
 22 otherwise, what I have seen in public leaves
 23 the impression that there's an attempt to
 24 minimize. There's an attempt to, I won't use
 25 the word "cover up" but to prevent the

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1 information from coming out fully and openly.
 2 I wonder about both Eastern Health and the
 3 medical establishment, in terms of their role
 4 in this. I have been extremely surprised and
 5 disappointed by the reaction of the Medical
 6 Association, particularly around the attempt
 7 to suppress reports that were done. Eastern
 8 Health itself, again, as a layman, looking at
 9 this from the outside, I have been very
 10 disappointed with their reaction up to and
 11 including, if I may say it, on Thursday when
 12 the acting head of Eastern Health was
 13 interviewed by the press. She was asked
 14 several times if she would like to apologize,
 15 even for the incident that was raised here
 16 early in the week about charts allegedly being
 17 thrown at patients. She did not apologize.
 18 So yeah, I've been extremely disappointed,
 19 extremely surprised that an organization that
 20 large, with that level of responsibility,
 21 dealing with that level of complexity in the
 22 mandate that it has, would not be more open
 23 and responsible and accountable.
 24 COFFEY, Q.C.:
 25 Q. They're the questions I have, Commissioner.

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1 Thank you. Other counsel do, I'll step aside.
 2 THE COMMISSIONER:
 3 Q. Now, Mr. Pritchard is absent. I believe it's
 4 Ms. Chi, is it?
 5 MS. CHAI:
 6 Q. Ms. Chai.
 7 THE COMMISSIONER:
 8 Q. Chai, I apologize for mispronouncing your
 9 name. I'll try to get it right the next time.
 10 MS. CHAI:
 11 Q. That's fine.
 12 THE COMMISSIONER:
 13 Q. Do you have any questions?
 14 MS. CHAI:
 15 Q. No questions.
 16 THE COMMISSIONER:
 17 Q. Thank you. Mr. Simmons?
 18 MR. SIMMONS:
 19 Q. I have no questions.
 20 THE COMMISSIONER:
 21 Q. Thank you. Mr. Browne?
 22 MR. BROWNE:
 23 Q. Good afternoon, Mr. Purcell. No questions.
 24 Thank you very much for your evidence.
 25 THE COMMISSIONER:

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1 Q. Mr. Eaton?
 2 EATON, Q.C.:
 3 Q. No questions.
 4 THE COMMISSIONER:
 5 Q. Ms. Newbury?
 6 MS. NEWBURY:
 7 Q. No questions, thank you.
 8 THE COMMISSIONER:
 9 Q. Ms. Russell?
 10 MS. RUSSELL:
 11 Q. No questions, thank you.
 12 THE COMMISSIONER:
 13 Q. All right. Thank you, sir, very much for
 14 coming to tell us your story and that of your
 15 wife. I do appreciate it.
 16 MR. PURCELL:
 17 A. Thank you for the opportunity, Commissioner.
 18 THE COMMISSIONER:
 19 Q. Ms. Russell?
 20 MS. RUSSELL:
 21 Q. I have a brief application to make.
 22 THE COMMISSIONER:
 23 Q. Yes.
 24 MS. RUSSELL:
 25 Q. Mr. Ken McDonald will be testifying on behalf

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1 of his wife, Christine McDonald, who is
 2 deceased. He is appearing next. We request
 3 that Christine McDonald's name be added to the
 4 list of patients whose medical records will be
 5 marked confidential and prohibited from
 6 broadcast and/or publication.
 7 THE COMMISSIONER:
 8 Q. Okay, on the same basis that you made the
 9 application last week?
 10 MS. RUSSELL:
 11 Q. Yes, that's correct.
 12 THE COMMISSIONER:
 13 Q. All right, thank you.
 14 MS. RUSSELL:
 15 Q. Thank you.
 16 THE COMMISSIONER:
 17 Q. Let's do this the simple way. Are any of the
 18 counsel opposing this application? No
 19 opposition to the application. It's ordered
 20 that Christine McDonald's name be added to the
 21 list of persons whose medical records would be
 22 classed as C exhibits. Thank you. I'm
 23 assuming therefore that our next witness is,
 24 in fact, Mr. McDonald.
 25 COFFEY, Q.C.:

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1 Q. That's a fair assumption, Commissioner.
 2 THE COMMISSIONER:
 3 Q. All right.
 4 COFFEY, Q.C.:
 5 Q. Ken McDonald.
 6 THE COMMISSIONER:
 7 Q. You're Mr. Ken McDonald, are you, sir?
 8 MR. MCDONALD:
 9 A. Yes, I am.
 10 THE COMMISSIONER:
 11 Q. All right.
 12 MR. KEN MCDONALD, SWORN, EXAMINATION BY BERNARD COFFEY,
 13 Q.C.
 14 REGISTRAR:
 15 Q. Would you state and spell your complete name
 16 for the Commission, please?
 17 MR. MCDONALD:
 18 A. Yes, my name is Ken McDonald. K-E-N M-C-D-O-
 19 N-A-L-D
 20 COFFEY, Q.C.:
 21 Q. Good afternoon, Mr. McDonald.
 22 MR. MCDONALD:
 23 A. Good afternoon.
 24 COFFEY, Q.C.:
 25 Q. Mr. McDonald, where do you live?

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1 MR. MCDONALD:
 2 A. Kelligrews in Conception Bay South.
 3 COFFEY, Q.C.:
 4 Q. And could you tell us please what your
 5 occupation is?
 6 MR. MCDONALD:
 7 A. I'm self-employed. I own my own business in
 8 home appliance repair.
 9 COFFEY, Q.C.:
 10 Q. Okay, and I understand that you were married
 11 to a lady named Christine Mary McDonald?
 12 MR. MCDONALD:
 13 A. Yes.
 14 COFFEY, Q.C.:
 15 Q. And when were yourself and Christine married?
 16 MR. MCDONALD:
 17 A. September 24th, 1982.
 18 THE COMMISSIONER:
 19 Q. You remember it better than most people would
 20 have.
 21 MR. MCDONALD:
 22 A. If I had to get it wrong, she wouldn't be able
 23 to chastise me for it, but I didn't want to
 24 get it wrong.
 25 COFFEY, Q.C.:

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1 Q. No, want to get that right. Mr. McDonald, did
 2 yourself and Christine have any children?
 3 MR. MCDONALD:
 4 A. Yes, we had one son, John.
 5 COFFEY, Q.C.:
 6 Q. I understand that Christine was diagnosed with
 7 breast cancer?
 8 MR. MCDONALD:
 9 A. Yes.
 10 COFFEY, Q.C.:
 11 Q. And could you tell us please about what you
 12 recall about that?
 13 MR. MCDONALD:
 14 A. Everything, I guess. We didn't know what type
 15 of cancer it was at first. My wife had
 16 discovered a lump in her neck, I guess, when
 17 she was showering. She could feel a lump in
 18 her neck, so to check into that, she went to
 19 our family physician, who in turn told her
 20 that it could be something serious and that
 21 she should have some tests done. She went
 22 right away for what they called emergency
 23 blood work and a chest x-ray and that all
 24 turned out to be fine. So at that time then,
 25 her family doctor made an appointment for her

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1 to see an ENT specialist, I believe it was a
 2 Dr. Tom Batten at the Ropewalk Lane Clinic.
 3 So she immediately went to see him. He
 4 arranged to do an actual needle biopsy. He
 5 said it was a swollen lymph node by her
 6 collarbone, and he did that on a--he did the
 7 actual biopsy, I think, on a Tuesday and then
 8 Wednesday morning he phoned for her to come
 9 back to the clinic immediately. When we went
 10 back to his clinic, he said he wasn't used to
 11 having to do this, but he said "you have to
 12 start to go to see somebody at the Cancer
 13 Clinic," and he said "I have an appointment
 14 set up for you," the following Tuesday or
 15 Wednesday, whatever it was.
 16 COFFEY, Q.C.:
 17 Q. What happened then?
 18 MR. MCDONALD:
 19 A. We visited the Cancer Centre and seen a couple
 20 of doctors, I guess, and at the time, nobody
 21 could really tell us what type of cancer it
 22 was. They assumed from the needle biopsy that
 23 it was a cancer cell, so between having some
 24 CAT scans and bone scans and whatnot, Dr.
 25 Ganguly had arranged for a Dr. George to have

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1 a look at the mammogram and to see what he
 2 thought of it. So he determined that he
 3 should probably do an actual biopsy of the
 4 breast and of the lymph node by the
 5 collarbone. So he did that and from that, he
 6 came back and he said, his report to us was he
 7 didn't find anything in the breast at that
 8 time, but he said the lymph node that he had
 9 biopsied was 100 percent positive for breast
 10 cancer. So after that then, we started to see
 11 an oncologist.
 12 COFFEY, Q.C.:
 13 Q. And go ahead.
 14 MR. MCDONALD:
 15 A. The first day that we went back then to see,
 16 it was a Dr. Ralph Wong. He informed us he was
 17 a medical oncologist and a chemotherapy
 18 specialist. He looked at my wife and he said
 19 "Mrs. McDonald, you have metastatic breast
 20 cancer, for which there is no cure," and he
 21 said "I want to get you on chemotherapy as
 22 fast as possible," and that's exactly what we
 23 did. The next week she started to do
 24 chemotherapy.
 25 COFFEY, Q.C.:

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1 Q. And then how did her treatment progress?
 2 MR. MCDONALD:
 3 A. She did chemotherapy, I think it was once
 4 every three weeks, starting in August up to
 5 early December she finished. There was, I
 6 think, six or seven treatments, and in
 7 December -
 8 COFFEY, Q.C.:
 9 Q. Now this would be 1997?
 10 MR. MCDONALD:
 11 A. Yes, in '97. She did her first--like I say,
 12 she did her first treatment in August and
 13 actually the night that Lady Diana was killed
 14 in a car accident, she sat up all that night
 15 because her hair was falling off. So I
 16 remember it well. And like I say, she
 17 finished the first round of chemotherapy
 18 probably around December 5th or 7th, somewhere
 19 in that area, and met with Dr. George again,
 20 the surgeon, and he informed us that he wanted
 21 to remove the breast right away. So he
 22 actually did that, I think it was on December
 23 12th of '97. After that then, she went
 24 regular visits, started radiation, I think,
 25 sometime probably early February, because she

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1 had to do some--she had to heal up somewhat
 2 from the surgery and do some physio to be able
 3 to lift her arm properly. So that would have
 4 been the start of '98. She started radiation
 5 in February and finished radiation, the first
 6 round of radiation she finished it March 24th
 7 of '98. Took a small break from the
 8 treatments. In June, I guess, she was having
 9 some problems again. They did a bone scan and
 10 found that she did have some problems. There
 11 was some things showed up on the bone scan, so
 12 they recommended she do some more radiation.
 13 I think the radiation at that time was to her
 14 hip that was giving her some trouble. So she
 15 did that.
 16 In September, she had an infection and
 17 had to be admitted to hospital. She had fluid
 18 on her lung. She had a chest tube installed
 19 in the emergency room, was admitted to
 20 hospital. Sometime after that, they said they
 21 wanted to put another one in there. So she
 22 requested then that she be put asleep for the
 23 next one, because the first one was more than
 24 painful, to say the least. So they
 25 transferred her to St. Clare's. She had

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1 another one put in and that was--well, I don't
 2 know. It's hard to keep track of all the
 3 dates.
 4 COFFEY, Q.C.:
 5 Q. Yes.
 6 MR. MCDONALD:
 7 A. But she did. After that, that would have
 8 been--I'm probably after skipping ahead
 9 actually to actually '99, because it was in
 10 September of '99 she had that done. After
 11 that surgery, she noticed a slurring in her
 12 speech when she was talking and we mentioned
 13 that to her doctor and her doctor said there
 14 may be some other problems. She ordered a
 15 brain scan. She then informed us that it had--
 16 there were metastases or whatever they call
 17 it on the brain in several places, and that
 18 she would recommend doing some radiation. At
 19 that time, the doctor did inform me that, you
 20 know, we were probably down to a life
 21 expectancy of months at that time, and January
 22 4th of 2000, she passed away.
 23 COFFEY, Q.C.:
 24 Q. With respect to ER/PR, estrogen receptors and
 25 progesterone receptors and ER/PR status of

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1 tumor tissue, back when your wife was first
 2 diagnosed in 1997 and then had surgery toward
 3 the end of 1997 and in that time period, what,
 4 if anything, do you recall from that period
 5 about ER/PR?
 6 MR. MCDONALD:
 7 A. Absolutely nothing. With all the tests and
 8 the drugs and whatnot, there's just no way I
 9 could remember what ER/PR even stood for.
 10 COFFEY, Q.C.:
 11 Q. And what was--looking back on it, what was
 12 your wife's attitude towards treatment
 13 recommendations by her physicians?
 14 MR. MCDONALD:
 15 A. If they recommended it, she'd take it. It
 16 was--I mean, her idea was that if anything
 17 they recommended, whether it be chemotherapy
 18 or radiation or a drug you took orally or
 19 something, she would take it if there was a
 20 chance that it would be the drug that would
 21 extend her life. She didn't care. I mean,
 22 chemotherapy was rough. She was very sick on
 23 chemotherapy, but she wouldn't quit it, no
 24 matter, for nothing.
 25 COFFEY, Q.C.:

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1 Q. So your wife understood that she was
 2 terminally ill, but she was looking to, if she
 3 could, to extent her life?
 4 MR. MCDONALD:
 5 A. I don't know if she really understood how
 6 terminally ill she was. She always said
 7 "don't allow the doctors to tell me if it gets
 8 to a point that I'm not going to beat this."
 9 She said "if they tell me that, it'll take
 10 away my hope," and she said "I don't want to
 11 know it," even though her first visit, the
 12 doctor had said it's non-curable, but it was
 13 like she just blocked that out and she went on
 14 thinking that "well, maybe this is the drug
 15 that'll work," and I remember when Dr. Ralph
 16 Wong, who was her oncologist, was transferring
 17 to another facility, she wrote him a note and
 18 said "look, when you get to the new location,
 19 if you find the miracle drug, don't forget
 20 about me back here in Newfoundland."
 21 COFFEY, Q.C.:
 22 Q. Okay. Commissioner, if I could, Exhibits C-
 23 0085 through C-0096 exclusive, and Exhibit P-
 24 0008, could I ask to have those entered,
 25 please.

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1 THE COMMISSIONER:
 2 Q. Exhibit C-0085 through to 0096 and P-0008
 3 entered.
 4 COFFEY, Q.C.:
 5 Q. I've made reference to C-0096. Actually C-
 6 0096 -
 7 THE COMMISSIONER:
 8 Q. Is cancelled.
 9 COFFEY, Q.C.:
 10 Q. Is cancelled, yes.
 11 THE COMMISSIONER:
 12 Q. Yes, we, in fact, had a C-0096 earlier in the
 13 day, I believe.
 14 COFFEY, Q.C.:
 15 Q. We did.
 16 THE COMMISSIONER:
 17 Q. So we've already admitted that one.
 18 COFFEY, Q.C.:
 19 Q. Thank you.
 20 EXHIBITS ENTERED AND MARKED EXHIBITS C-0085 THROUGH C-
 21 0095
 22 EXHIBIT ENTERED AND MARKED EXHIBIT P-0008
 23 COFFEY, Q.C.:
 24 Q. Mr. McDonald, before I refer you actually to
 25 these various exhibits, or portions of them,

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1 as you've indicated, your wife died in early
 2 2000?
 3 MR. MCDONALD:
 4 A. Yes, January 4th.
 5 COFFEY, Q.C.:
 6 Q. January 4, 2000. And you've also indicated
 7 that in terms of ER/PR and what that all meant
 8 back in the time your wife was ill, it was
 9 really beyond you?
 10 MR. MCDONALD:
 11 A. Yeah.
 12 COFFEY, Q.C.:
 13 Q. ER and PR as an issue and the testing of it
 14 years ago and the retests has become a matter
 15 of public knowledge and concern toward the end
 16 of 2005, okay?
 17 MR. MCDONALD:
 18 A. Yeah.
 19 COFFEY, Q.C.:
 20 Q. October, November 2005, and has continued to
 21 the point where we are here today. What do
 22 you recall about your first awareness of that?
 23 MR. MCDONALD:
 24 A. I think through the media outlets I heard that
 25 breast cancer patients who were diagnosed with

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1 breast cancer in a certain time frame may have
 2 had some inaccurate testings, and there was--
 3 at that time, there was a phone number, I
 4 think in The Telegram that, you know, if you
 5 or a family member feel you've been kind of
 6 affected by this, you should phone this
 7 number, and that's exactly what I did.
 8 COFFEY, Q.C.:
 9 Q. Okay, you did do that?
 10 MR. MCDONALD:
 11 A. Yes.
 12 COFFEY, Q.C.:
 13 Q. And what was your reasoning at the time, in
 14 terms of why you would phone?
 15 MR. MCDONALD:
 16 A. At the time, I guess, with not knowing and not
 17 only did I not know what ER and PR was
 18 actually all about, I couldn't actually
 19 remember if my wife had taken Tamoxifen or the
 20 names of any drugs. If you ask me today to
 21 list off two or three drugs that she was on,
 22 I'd know the painkiller, but that would be
 23 probably about it. So I just decided I should
 24 phone and see if my wife was one of the people
 25 that could be affected by the false testing.

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1 COFFEY, Q.C.:
 2 Q. So you made the phone call?
 3 MR. MCDONALD:
 4 A. Yes.
 5 COFFEY, Q.C.:
 6 Q. And what happened then? Do you recall who you
 7 spoke with and -
 8 MR. MCDONALD:
 9 A. I believe it was a lady by the name of Nancy
 10 Parsons. I phoned the number and I told her
 11 who I was and why I was calling and I'm not
 12 sure if she told me right away or if she said
 13 I'll get back to you, but in the meantime,
 14 when she did tell me of the actual testing,
 15 she said "your wife's original testing", she
 16 said, "was negative. One was negative, the
 17 other one was such a low positive that it
 18 would be considered a negative." And she
 19 said, you know, "she will be put on the list
 20 for retesting." And I had explained to her
 21 that my wife was one of the patients who had
 22 passed away in that time frame and she said,
 23 well, their main concern right now was to get
 24 the retesting done for patients that are still
 25 living. She said, "deceased patients will be

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1 done after that point." And I said, that's
 2 fine, I'm not in any rush, I just wanted to
 3 kind of put my name on the list, to get the
 4 retesting done to see if it changed any
 5 results. She said she would and that it would
 6 probably take awhile, so she'd get back to me.
 7 Several months would pass by and I'd phone
 8 again and same thing. They're still not all
 9 done and I did that for probably two or three
 10 times, actual phoning and checking to see
 11 where they were to with it, until finally it
 12 got to the point I think there was a press
 13 conference and my idea of the press conference
 14 was that all the testing was redone, anything
 15 that's done is done. If you haven't heard
 16 anything, there's nothing to hear or it's not
 17 being retested.
 18 COFFEY, Q.C.:
 19 Q. So that was your--as a result of the press
 20 conference, a press conference that occurred
 21 at some point involving Eastern Health -
 22 MR. MCDONALD:
 23 A. Yes, well along into the actual talk about the
 24 retesting and the false readings.
 25 COFFEY, Q.C.:

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1 Q. Do you recall the names of any of the
 2 individuals who were involved with the press
 3 conference?
 4 MR. MCDONALD:
 5 A. I think Dr. Kara Laing was probably the lead
 6 speaker kind of at the press conference. I'm
 7 not a hundred percent sure, but I know she was
 8 there, but I don't know -
 9 COFFEY, Q.C.:
 10 Q. And your impression, rightly or wrongly at the
 11 time, was what?
 12 MR. MCDONALD:
 13 A. Was that the retesting was finished and that
 14 we've retested all of the living patients and
 15 anyone that had passed away, they hadn't
 16 retested them.
 17 COFFEY, Q.C.:
 18 Q. They had not retested them.
 19 MR. MCDONALD:
 20 A. No.
 21 COFFEY, Q.C.:
 22 Q. And you were left with the impression that
 23 they were not going to retest the deceased?
 24 MR. MCDONALD:
 25 A. That's correct.

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1 COFFEY, Q.C.:

2 Q. Did you contact anybody after that?

3 MR. MCDONALD:

4 A. No, no, I just left it.

5 COFFEY, Q.C.:

6 Q. Had you ever taken any steps to obtain a copy

7 of your wife's chart?

8 MR. MCDONALD:

9 A. Yes, when it all started, I did contact

10 Eastern Health or somebody at the actual

11 cancer centre and told them I would like to

12 receive a copy of my wife's chart and they did

13 do that for me and I still have it.

14 COFFEY, Q.C.:

15 Q. And this would be back in late 2005 or early

16 2006, around that time?

17 MR. MCDONALD:

18 A. Yes, probably early 2006 when I actually

19 requested a copy of the medical chart.

20 COFFEY, Q.C.:

21 Q. Now you're certainly medically a layperson, I

22 take it?

23 MR. MCDONALD:

24 A. Oh, very much so.

25 COFFEY, Q.C.:

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1 Q. Much like myself. What was contained in the

2 chart, did that really mean anything to you?

3 MR. MCDONALD:

4 A. No.

5 COFFEY, Q.C.:

6 Q. In the sense of at the time when you first got

7 it and would look at it?

8 MR. MCDONALD:

9 A. No, even when I first got it, I probably

10 didn't even take the time to read it. I just

11 wanted to have it for my records in case there

12 was a problem down the road with the testing

13 or whatnot, I felt that it would be a good

14 idea to have the medical chart for my purpose

15 COFFEY, Q.C.:

16 Q. Right. So at that time, I take it you were

17 still under the impression or understood that

18 at some point the deceased's tissue samples

19 would be retested?

20 MR. MCDONALD:

21 A. Yes, yes, like I said, that was early in 2006.

22 THE COMMISSIONER:

23 Q. I had perhaps misunderstood you earlier when

24 you were describing the impression you got

25 from the press conference you saw?

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1 MR. MCDONALD:

2 A. Yes.

3 THE COMMISSIONER:

4 Q. I had thought you were saying that you got the

5 impression that all of the testing was done

6 and that the test results for those who had

7 died would not be redone?

8 MR. MCDONALD:

9 A. Yes, that's late in the--that was probably in

10 early 2007, maybe or in 2007.

11 THE COMMISSIONER:

12 Q. Okay, so it's later in the--all right then,

13 thank you.

14 COFFEY, Q.C.:

15 Q. And if there aren't a whole lot of such press

16 conferences, Commissioner, I suspect--I can't

17 give evidence on the point, but I do know that

18 there is or was a technical media briefing on

19 December 11th, 2006 at which Dr. Laing -

20 MR. MCDONALD:

21 A. That would probably be the one, yes.

22 COFFEY, Q.C.:

23 Q. - Dr. Laing spoke. Now, sir, during the past

24 month or two, have you had occasion to make

25 any inquiries about whether or not your wife's

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1 tissue samples were in fact retested?

2 MR. MCDONALD:

3 A. Yes, I called the number that I was given back

4 on March 12th, I phoned to inquire.

5 COFFEY, Q.C.:

6 Q. Okay, what had happened on March 12th, before

7 you made the phone call?

8 MR. MCDONALD:

9 A. I actually had an interview with yourself and

10 Ms. Chaytor and Ms. Russell.

11 COFFEY, Q.C.:

12 Q. And just so that, to put this in context then,

13 you had arranged or the arrangements were made

14 for you to speak with Commission counsel on

15 March 12th of this year?

16 MR. MCDONALD:

17 A. Yes.

18 COFFEY, Q.C.:

19 Q. At the time you arrived for the interview,

20 what, if anything, did you know about any

21 retesting of your wife's tissue samples?

22 MR. MCDONALD:

23 A. I didn't know anything, I hadn't been notified

24 one way or the other.

25 COFFEY, Q.C.:

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1 Q. And during the interview, what did you learn?
 2 MR. MCDONALD:
 3 A. I learned that the retest had been done at
 4 Mount Sinai and the test came back negative
 5 and the original test was negative.
 6 COFFEY, Q.C.:
 7 Q. That's on the particular tissue that was
 8 retested?
 9 MR. MCDONALD:
 10 A. Yes, yes.
 11 COFFEY, Q.C.:
 12 Q. And then following the interview, what did you
 13 do?
 14 MR. MCDONALD:
 15 A. I phoned the number that was given and spoke
 16 to a Sharon Smith and I told her that I was of
 17 the understanding that the retesting has been
 18 done on my wife's tissue sample and I said I
 19 would like to be notified of that test and I
 20 said I would also like to receive a copy of
 21 the original test. And she said she would
 22 arrange to have that done and sent to me. On
 23 March 13th, she phoned me back and she wanted
 24 to, a point of clarity, I guess, she wanted to
 25 inform me that my wife's testing might be a

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1 little bit confusing when I get it because she
 2 said the original test showed positive, which
 3 was done, I think in August of '97. She said
 4 there was a second testing done, something to
 5 do with protocol or something had changed, she
 6 said, and there was a testing done in December
 7 of '97 which your wife was negative. And she
 8 said the retesting that was done shows it was
 9 still negative.
 10 COFFEY, Q.C.:
 11 Q. That's the retesting at Mount Sinai?
 12 MR. MCDONALD:
 13 A. Yes.
 14 THE COMMISSIONER:
 15 Q. So the sequence as it was told to you was that
 16 the first test positive?
 17 MR. MCDONALD:
 18 A. Yes.
 19 THE COMMISSIONER:
 20 Q. Second test negative, Mount Sinai test,
 21 negative?
 22 MR. MCDONALD:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. Now, if we could, Registrar, please, Exhibit

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1 C-0088 and Mr. McDonald, that will come up on
 2 the screen there in front of you.
 3 MR. MCDONALD:
 4 A. Okay, yes.
 5 THE COMMISSIONER:
 6 Q. There should also be a book in front of you,
 7 Mr. McDonald, with a--if you prefer paper,
 8 it's there. If you want to follow the screen,
 9 then that's good too.
 10 COFFEY, Q.C.:
 11 Q. And Mr. McDonald, you will see that the
 12 exhibit numbers are stamped at the top of the
 13 exhibits on the paper copy and on the
 14 electronic copy.
 15 MR. MCDONALD:
 16 A. Okay.
 17 COFFEY, Q.C.:
 18 Q. Top centre. And the paper copies are
 19 chronically--not chronically, sorry,
 20 numerically numbered C-0088, numerically
 21 ordered. This is a first assessment summary
 22 of 22nd of July, 1997 for Christine McDonald,
 23 it's on Newfoundland Cancer Treatment and
 24 Research Foundation letterhead. It's three
 25 pages long and it's signed by Dr. Ganguly,

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1 radiation oncologist. And under "Diagnosis"
 2 you can see a number of question marks, which
 3 is your recollection of that situation and the
 4 diagnosis or where the primary tumor might be
 5 was unknown, it's apparent from this.
 6 MR. MCDONALD:
 7 A. Yes.
 8 COFFEY, Q.C.:
 9 Q. And the reason seeing Dr. Ganguly is noted,
 10 "Referred to the clinic by Dr. Tony Batten
 11 following fine needle aspiration biopsy of the
 12 left supraclavicular adenopathy." And under
 13 "Impression" on page 3, Dr. Ganguly has noted,
 14 on the second line, "However, initially breast
 15 was felt to be the most suspicious site,
 16 however following clinical examination, I'm
 17 not so sure. Breast primary still has to be
 18 excluded." And the plan is one, two three.
 19 No. 3 is "if the mammogram is negative, open
 20 biopsy of the left supraclavicular adenopathy
 21 for full histological assessment."
 22 MR. MCDONALD:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. So as of July 22nd, 1997, your wife has seen

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1 Dr. Ganguly?
 2 MR. MCDONALD:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. If we could please, Registrar, Exhibit C-0087.
 6 Now this is a pathology report, sir, for your
 7 wife from St. Clare's Mercy Hospital. The
 8 specimen number is 97: SU3244 and a received
 9 date is July 31st, 1997. There are three
 10 tissues noted and in particular the lymph node
 11 as their specimen number, tissue number one,
 12 and when we turn to the micro description on
 13 the second page, there's sections of specimen
 14 number one labelled scalene node biopsy showed
 15 metastatic carcinoma and in sections two and
 16 three, down below here, were noted to be
 17 examined and it ends with the line, "Note that
 18 there is no evasive carcinoma in any of the
 19 issue examined." That is in tissue, specimens
 20 two and three, which are actually left central
 21 and left lateral breast biopsies. At the
 22 bottom of the page there's a note here,
 23 "Estrogen and progesterone receptor analysis
 24 results are pending and will be forwarded when
 25 available." And this is signed by Dr. Miriam

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1 Griffin on August 12th, 1997. Do you see
 2 that?
 3 MR. MCDONALD:
 4 A. Yes.
 5 COFFEY, Q.C.:
 6 Q. Okay. Now if we could, Registrar, please,
 7 Exhibit C-0089 is laboratory report. The
 8 physician is noted to be Dr. Miriam Griffin.
 9 It's on the Health Sciences Centre, St.
 10 John's, it's for Christine McDonald and the
 11 specimen is noted as being collected the 31st
 12 of the seventh month, which would be July
 13 31st, 1997 and it's noted to be received
 14 August 5th, 1997 and I understand that this is
 15 a biochemical assay report and under estrogen
 16 receptors, the rating is 65 and under
 17 progesterone receptors down here, the rating
 18 is 18 and when you look at the categorizations
 19 here, the interpretation categorizations or
 20 classifications, anything greater than 20 is
 21 positive, so she's a 65 in ER, estrogen -
 22 MR. MCDONALD:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. She's positive and anything between three and

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1 20 is noted to be equivocal, which would mean
 2 her 18 would be PR equivocal, that's at
 3 December, classified. And a copy is sent to
 4 Dr. R. George. Now with respect to your
 5 wife's treatment, I'm going to take you
 6 through and this may help explain some of what
 7 Ms. Smith told you was perhaps complexity or
 8 potential confusion in your wife's case.
 9 Exhibit C-0090 and this is a progress note for
 10 Christine McDonald. Its clinical diagnosis is
 11 basal cell carcinoma, right eyelid. She
 12 apparently must have had a little bit of
 13 cancer taken off her right eyelid.
 14 MR. MCDONALD:
 15 A. Yes.
 16 COFFEY, Q.C.:
 17 Q. But as well carcinoma of the left breast and
 18 it's a report by Dr. Joshi, 27th of November,
 19 1997, Medical Oncology Clinic and the clinical
 20 diagnosis is basal cell carcinoma, right
 21 eyelid and carcinoma of the left breast.
 22 "This lady was seen in follow up in the
 23 Medical Oncology Clinic today. She is to
 24 receive her sixth course of FAC chemotherapy
 25 starting Wednesday." And they speak about a

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1 dramatic response in her metastatic disease,
 2 at least as originally located. The second
 3 last paragraph indicates, ends with the
 4 sentence "She will also be seen by Dr. Ralph
 5 George to see if she really needs a mastectomy
 6 and she will be started on Tamoxifen after
 7 completion of her chemotherapy and will be
 8 reviewed in December." So all this time then,
 9 from July, really August through late
 10 November, she's on chemo?
 11 MR. MCDONALD:
 12 A. Yes.
 13 COFFEY, Q.C.:
 14 Q. If we could please, Registrar, Exhibit C-0086.
 15 This is a pathology report, Mr. McDonald for
 16 Christine McDonald. The specimen number is 97
 17 SU: 5519, received December 12th, '97, which
 18 presumably is the date of your wife's surgery.
 19 MR. MCDONALD:
 20 A. Yes, the day of the surgery.
 21 COFFEY, Q.C.:
 22 Q. The tissues are female breast, left mastectomy
 23 and then under micro description, sections
 24 from breast show the presence of infiltrating
 25 ductal carcinoma. And go on to the second

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1 page, this is a report by Dr. Miriam Griffin
 2 and then on the third page, you can see it's
 3 page 3 at the top right-hand side, the
 4 specimen is 97 SU: 5519 and under immuno
 5 stains are negative for estrogen receptor and
 6 positive for progesterone receptor, 25 percent
 7 positivity.
 8 MR. MCDONALD:
 9 A. Yes.
 10 COFFEY, Q.C.:
 11 Q. And the addendum is signed by Dr. Vaze and as
 12 of February 18th, 1998. So presumably your
 13 wife had the surgery in December and it was
 14 reported halfway through February of 1998.
 15 MR. MCDONALD:
 16 A. Okay.
 17 COFFEY, Q.C.:
 18 Q. And the ER/PR. If we could, Registrar,
 19 please, Exhibit C-0091. This is progress
 20 notes of Dr. Wong of February 12th, 1998,
 21 Medical Oncology Clinic for Christine McDonald
 22 and Dr. Wong notes "Christine returns today.
 23 She is now getting her radiation therapy. She
 24 had her mastectomy done on the 12th of
 25 January" -

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1 MR. MCDONALD:
 2 A. Actually that's the 12th of December.
 3 COFFEY, Q.C.:
 4 Q. 12th of December, actually, of '97. "Today
 5 her ER and PR status are positive. Her ER is
 6 65 and her PR is 18. We will start her on
 7 Tamoxifen and see her in three weeks' time to
 8 see how she is doing." And it ends with, "If
 9 she tolerates her Tamoxifen well, we will
 10 continue on indefinitely." So that was -
 11 MR. MCDONALD:
 12 A. Yes.
 13 COFFEY, Q.C.:
 14 Q. Exhibit C-0092, please Registrar. This is
 15 progress notes of 5th of March, 1998, Medical
 16 Oncology Clinic by Dr. G. Farrell, clinical
 17 associate for Christine McDonald. He notes,
 18 "This lady is back and is having no
 19 significant problems on the Tamoxifen. We are
 20 going to continue on with that. We will see
 21 her in three months' time from that point of
 22 view." And it goes on from there. If I could
 23 ask, please Registrar, move to Exhibit C-0094.
 24 Mr. McDonald, this is progress notes of Dr.
 25 Wong again of June 8th, 1998, Medical Oncology

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1 Clinic for Christine. And he indicates, "I
 2 had a long talk with Christine and her family.
 3 Unfortunately her bone scan shows progression
 4 of disease; therefore, the Tamoxifen is no
 5 longer effective. We have switched her over
 6 to Arimidex. Again, Arimidex would be one of
 7 those drugs that you wouldn't--you knew
 8 nothing really about your wife's treatments.
 9 MR. MCDONALD:
 10 A. Yeah, I remember Arimidex, I knew she was on
 11 it. It was in the form of a pill that she
 12 took at home, so -
 13 COFFEY, Q.C.:
 14 Q. But the Tamoxifen you have no memory of?
 15 MR. MCDONALD:
 16 A. No, no.
 17 COFFEY, Q.C.:
 18 Q. And Exhibit C-0095 please, Registrar. This is
 19 a two-page progress notes by Dr. Laing,
 20 medical oncologist for Christine McDonald,
 21 dated 22nd of October, 1999, Medical Oncology
 22 Clinic and the diagnosis is metastatic
 23 carcinoma of the breast with bone, bone
 24 marrow, plural, and brain metastases.
 25 Christine returns to clinic today"--and it

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1 goes on about her history and the impression
 2 is metastatic carcinoma of the breast with
 3 brain metastases. And plan, "I have told
 4 Christine's husband, Ken, about the extent of
 5 her disease; however, Christine has always
 6 expressed to us that she does not wish to know
 7 when her disease becomes very advanced. I
 8 think that given the fact that she has brain
 9 metastases now, that we are probably looking
 10 at a life span of a matter of months." And
 11 that accords with your recollection?
 12 MR. MCDONALD:
 13 A. Yes.
 14 COFFEY, Q.C.:
 15 Q. Turn to the second page of this report, it's
 16 noted in the second sentence, "She has not
 17 responded to Tamoxifen or Arimidex in the
 18 past, so it is unlikely that she would respond
 19 to another hormone. We could consider further
 20 chemotherapy, but I would reserve that until
 21 we finish the radiation and to see how she
 22 does, in terms of her performance status."
 23 And I take it within about three or so months,
 24 your wife was -
 25 MR. MCDONALD:

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1 A. Yes, about two and a half, a little over two
 2 months from that.
 3 COFFEY, Q.C.:
 4 Q. If we could, please Registrar, Exhibit C-0085.
 5 So Mr. McDonald, after that, you know, that
 6 press conference that you referred to, you got
 7 the impression you did that that was really
 8 the end of the testing.
 9 MR. MCDONALD:
 10 A. Yes.
 11 COFFEY, Q.C.:
 12 Q. For ER/PR retesting. Did you subsequently
 13 follow the matter in the news?
 14 MR. MCDONALD:
 15 A. Not much after that, no, because again, when I
 16 had the interview with yourself and co-
 17 counsel, you showed me an actual copy of the
 18 press release that was, I think, dated
 19 February of -
 20 COFFEY, Q.C.:
 21 Q. 2008.
 22 MR. MCDONALD:
 23 A. Yes, and at that time I informed you I never
 24 even knew anything about that press
 25 conference, so I didn't -

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1 COFFEY, Q.C.:
 2 Q. That was the one about, I take it, the
 3 deceased patient's families -
 4 MR. MCDONALD:
 5 A. Yes, everybody, that government had lived up
 6 to their commitment to retest all the deceased
 7 patients, as well as the living.
 8 COFFEY, Q.C.:
 9 Q. And so up until the time you had come in
 10 recently to be interviewed, you hadn't
 11 realized that the deceased, in fact were being
 12 retested?
 13 MR. MCDONALD:
 14 A. No, not at all.
 15 COFFEY, Q.C.:
 16 Q. No one from Eastern Health had contacted you
 17 to let you know?
 18 MR. MCDONALD:
 19 A. No, the only contact I had from Eastern Health
 20 since the notification of retesting, when it
 21 started, was actually on Thursday I received
 22 the actual copies of the test that I called
 23 for on the 12th.
 24 COFFEY, Q.C.:
 25 Q. That's Thursday past?

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1 MR. MCDONALD:
 2 A. Yes.
 3 COFFEY, Q.C.:
 4 Q. Now looking at C-0085, this is a final
 5 surgical report, a doctor's copy, for the
 6 Health Sciences Centre, St. John's. It's for
 7 Christine McDonald. The specimen number is
 8 indicated to be 98 SU: 001119, received
 9 February 6th, 1998 and the attending
 10 physician, of course, is noted to be Dr.
 11 Miriam Griffin. I anticipate that's probably
 12 the doctor who, back in the late '90s was
 13 involved. The addendum No. 1, which is here,
 14 is entered November 30th, 2007 at 11:52 and
 15 the addendum is signed by--I'll refer to him
 16 as Dr. Nash Denic, first name he goes by,
 17 Nash, signed out December 3rd, 2007 and it
 18 reads as follows: "This specimen has been
 19 retested at Mount Sinai Hospital (RS-07-203)
 20 for immunohistochemical studies (surgical
 21 number St. Clare's SU-5519-97, Block O) and
 22 shows estrogen receptor protein as seen in
 23 zero percent of cells using a particular
 24 antibody and procedure. Previous report from
 25 Health Care Corporation of St. John's, dated

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1 09-10-98 was reported as estrogen receptor
 2 negative; progesterone receptor protein as
 3 seen in zero percent of cells using specified
 4 antibody and procedure. Previous report from
 5 the Health Care Corporation of St. John's,
 6 dated 09-10-98 was reported as progesterone
 7 receptor 25 percent." So, had you learned the
 8 results of this retest when you called a week
 9 ago?
 10 MR. MCDONALD:
 11 A. Yes.
 12 COFFEY, Q.C.:
 13 Q. Actually officially learned when you called
 14 about a week ago.
 15 MR. MCDONALD:
 16 A. Yes.
 17 COFFEY, Q.C.:
 18 Q. Or within the past week or so--or two weeks
 19 anyway, within the past two weeks.
 20 MR. MCDONALD:
 21 A. Yeah, 12th.
 22 COFFEY, Q.C.:
 23 Q. Back in 2005 and 2006 when you had been
 24 dealing with Nancy Parsons -
 25 MR. MCDONALD:

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1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. Had you, at times, left your contact
 4 information, your phone number?
 5 MR. MCDONALD:
 6 A. Yes, she had my phone number and I made sure
 7 she had the proper address as well when I
 8 first spoke to her, so -
 9 THE COMMISSIONER:
 10 Q. Mr. Coffey, the afternoon break is upon us.
 11 If this is a convenient spot, if you were to
 12 complete -
 13 COFFEY, Q.C.:
 14 Q. It would be, thank you.
 15 THE COMMISSIONER:
 16 Q. All right. We'll take a few moments break and
 17 then continue. Mr. McDonald, just as an
 18 aside, it's the Scott in me, I noticed that on
 19 a number of occasions your name or your wife's
 20 name is spelled with a small "d", do you do
 21 that or are you a capital "D"?
 22 MR. MCDONALD:
 23 A. No, capital "D", that's a typo.
 24 THE COMMISSIONER:
 25 Q. Thank you, we just want to make sure we get

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1 those Scottish names right. Thank you very
 2 much.
 3 (RECESS)
 4 THE COMMISSIONER:
 5 Q. Thank you, please be seated. Mr. Coffey, when
 6 you're ready.
 7 COFFEY, Q.C.:
 8 Q. Thank you, Commissioner. Now, in Exhibit P-8,
 9 I'm not going to ask you to go looking for it,
 10 P-0008, I believe it's page 5. And this is
 11 from a database that will subsequently be
 12 referred to. But there's a particular entry
 13 here I want to ask you if it kind of sounds
 14 about--no. Sounds about right to yourself.
 15 MR. MCDONALD:
 16 A. Okay.
 17 COFFEY, Q.C.:
 18 Q. Under the column to the far right, two
 19 columns, contact cat, which would be category,
 20 presumably, "patient/family initiated
 21 contact." In your case that would be about
 22 right, wouldn't it?
 23 MR. MCDONALD:
 24 A. Yes.
 25 COFFEY, Q.C.:

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1 Q. You initiated the contact?
 2 MR. MCDONALD:
 3 A. Yeah.
 4 COFFEY, Q.C.:
 5 Q. Back in 2005. And "Comment, communication.
 6 Family called in October 17th, 2005 requesting
 7 retesting."
 8 MR. MCDONALD:
 9 A. Yes.
 10 COFFEY, Q.C.:
 11 Q. Does that sound about right to you back in--
 12 you're nodding, yes, yes?
 13 MR. MCDONALD:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. Okay. Mr. McDonald, you do have a copy of
 17 your wife's chart?
 18 MR. MCDONALD:
 19 A. Yes.
 20 COFFEY, Q.C.:
 21 Q. As well do I understand you correctly that
 22 during March of year in your conversations
 23 with Sharon Smith you asked or she advised you
 24 she'd send you certain material?
 25 MR. MCDONALD:

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1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. And you've received that?
 4 MR. MCDONALD:
 5 A. Yes. Received it on Thursday, March 20th.
 6 COFFEY, Q.C.:
 7 Q. And that would be, that material would be the
 8 result of the retest at Mount Sinai?
 9 MR. MCDONALD:
 10 A. Yes. And actually copies of the original test
 11 were sent to me, as well.
 12 COFFEY, Q.C.:
 13 Q. Okay. Have you gone through those materials
 14 to try to figure it out -
 15 MR. MCDONALD:
 16 A. Only briefly, not in any great extent. With
 17 regards to the copy of the medical chart, I've
 18 thumbed through it; that's probably to the
 19 extent that I've looked at it.
 20 COFFEY, Q.C.:
 21 Q. Yeah. And in terms of the material, though,
 22 that was sent to you this past week or so by
 23 Eastern Health, have you looked at that?
 24 MR. MCDONALD:
 25 A. Yes, I have.

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1 COFFEY, Q.C.:

2 Q. Have you been able to tell from that, have you

3 been able to kind of match one sent of numbers

4 up against another and so on?

5 MR. MCDONALD:

6 A. Yes, in looking at it and as you went through

7 earlier in a diagram about the actual specimen

8 numbers, I could match the two together and

9 see which one was retested.

10 COFFEY, Q.C.:

11 Q. If you could, please, C-0085? Sir, this is

12 addendum, described as addendum No. 1 entered

13 November 30th, 2007, signed effective December

14 3rd, 2007. Now, this specimen number in the--

15 right here. Or the whole of the specimen

16 number, 98, and received February 6th, '98.

17 You see that?

18 MR. MCDONALD:

19 A. Yes.

20 COFFEY, Q.C.:

21 Q. The surgical number here in this line, the

22 second line, surgical number, St. Clare's,

23 SU5519-97 is apparently the surgical number of

24 the material taken December 12th, 1997 from

25 your wife?

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1 MR. MCDONALD:

2 A. Yes, yeah.

3 COFFEY, Q.C.:

4 Q. Has anyone from Eastern Health attempted to

5 explain to you where that 98 number comes

6 from?

7 MR. MCDONALD:

8 A. No, no. And I didn't--in my copy I never even

9 noticed that. I just matched it up with the

10 SU5519 sample.

11 COFFEY, Q.C.:

12 Q. Sure.

13 MR. MCDONALD:

14 A. And assumed it was the same specimen.

15 COFFEY, Q.C.:

16 Q. Same one. And that's--and the SU5519-97 and

17 the reference in the original pathology report

18 to zero and 25?

19 MR. MCDONALD:

20 A. Yes.

21 COFFEY, Q.C.:

22 Q. Zero estrogen, 25 percent on progesterone.

23 Because that's referred to in Dr. Denic's

24 report here in November, early December, 2007.

25 Now, has anybody from Eastern Health ever

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1 explained to you why it was that apparently

2 the retest result for your wife was entered on

3 the--and this would be a Meditech system, it's

4 called.

5 MR. MCDONALD:

6 A. Okay.

7 COFFEY, Q.C.:

8 Q. In the Health Science Centre in late November,

9 early December of 2007, and yet, it wasn't

10 until, well -

11 MR. MCDONALD:

12 A. 20th.

13 COFFEY, Q.C.:

14 Q. February or March, really, that--February, I

15 suppose, if you were paying attention to press

16 releases.

17 MR. MCDONALD:

18 A. Yes.

19 COFFEY, Q.C.:

20 Q. You could have become aware of it. Anybody

21 explain that to you?

22 MR. MCDONALD:

23 A. No.

24 COFFEY, Q.C.:

25 Q. Why the delay?

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1 MR. MCDONALD:

2 A. No.

3 COFFEY, Q.C.:

4 Q. You indicated that when you spoke with Ms.

5 Smith this month, that I think you used the

6 words the effects of she said it was

7 complicated or -

8 MR. MCDONALD:

9 A. Yes, yeah. When I called her on the 12th in

10 the afternoon, I told her who I was and

11 basically I was wondering could I receive--

12 "It's come to my attention," I said, "that the

13 retesting has taken place" and I said, "I'd

14 like to receive a copy of the retest and a

15 copy of the original test." And she said,

16 okay. The next day, on the 13th, she called

17 me back and she said, "I just wanted to try

18 and explain something," she said, "I'm getting

19 ready to send this information to you and I

20 want you to understand that it may be a bit

21 confusing because," she said, "the first one

22 you look at, the earlier date will show that

23 the test is actually positive," she said,

24 "but the next test that was done" and she used

25 the word "protocol had changed, and under that

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1 test it shows an actual negative and that same
 2 sample when retested at Mount Sinai also
 3 showed negative."
 4 COFFEY, Q.C.:
 5 Q. At the time you spoke to her during March of
 6 2008 did she ever invite you to come to the
 7 Health Sciences Centre to meet with anybody?
 8 MR. MCDONALD:
 9 A. No. That has never happened.
 10 COFFEY, Q.C.:
 11 Q. Like to, for example, to explain something
 12 that what she had described as apparently
 13 complex?
 14 MR. MCDONALD:
 15 A. Yes, yeah. No, she didn't -
 16 COFFEY, Q.C.:
 17 Q. Or potentially complex.
 18 MR. MCDONALD:
 19 A. - no. The explanation was simply protocol had
 20 changed.
 21 THE COMMISSIONER:
 22 Q. So do I take it, Mr. McDonald, that you
 23 understood the explanation for the difference
 24 between the first test and the second test,
 25 both of which would have been done locally,

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1 although perhaps by different procedures?
 2 MR. MCDONALD:
 3 A. Yes.
 4 THE COMMISSIONER:
 5 Q. That the reason for the difference is the
 6 change in protocol?
 7 MR. MCDONALD:
 8 A. Yes.
 9 THE COMMISSIONER:
 10 Q. And did anyone explain to you what they meant
 11 by change in protocol?
 12 MR. MCDONALD:
 13 A. No. She just simply said protocol had changed
 14 and I left it at that.
 15 COFFEY, Q.C.:
 16 Q. And just so we're clear on this, it wasn't
 17 until I understand you were interviewed by
 18 Commission co-counsel, myself and Ms. Chaytor,
 19 on March 11, 2008, it wasn't until that point
 20 in time that you realized that, or advised
 21 that, in fact, your wife's tissue sample, at
 22 least one of them had been retested?
 23 MR. MCDONALD:
 24 A. That's correct.
 25 COFFEY, Q.C.:

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1 Q. And at that time were you advised to actually
 2 contact then Eastern Health?
 3 MR. MCDONALD:
 4 A. Yes, I was given the press release, I guess
 5 you'd call it, note and the phone number was
 6 on it and I was advised I should probably call
 7 and ask for the actual results.
 8 COFFEY, Q.C.:
 9 Q. Okay.
 10 THE COMMISSIONER:
 11 Q. How many surgeries did Mrs. McDonald have?
 12 MR. MCDONALD:
 13 A. Three, I think, in total. She had the actual
 14 biopsy done as a surgery procedure at St.
 15 Clare's in August, I think, of '97. In
 16 December of '97 she had the breast removed.
 17 And in September of '99 she actually had a
 18 chest tube installed surgically.
 19 THE COMMISSIONER:
 20 Q. So do you know were other procedures, other
 21 biopsies done?
 22 MR. MCDONALD:
 23 A. No.
 24 THE COMMISSIONER:
 25 Q. Particularly in '98?

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1 MR. MCDONALD:
 2 A. No, none that I'm aware of. She had no--the
 3 only biopsies she had done would have been the
 4 first initial biopsies when they were trying
 5 to determine the primary site of the cancer or
 6 if, indeed, it was just to the lymph nodes,
 7 and that would be one test. The only other
 8 surgery she had would have been the breast
 9 removal on December 12th.
 10 THE COMMISSIONER:
 11 Q. Which was in December of '97?
 12 MR. MCDONALD:
 13 A. Yes.
 14 COFFEY, Q.C.:
 15 Q. Yeah, December 12th, '97.
 16 THE COMMISSIONER:
 17 Q. And then -
 18 COFFEY, Q.C.:
 19 Q. Looking at, I think, Commissioner may be
 20 puzzled by C-0085.
 21 THE COMMISSIONER:
 22 Q. Yes, I am.
 23 COFFEY, Q.C.:
 24 Q. Yes. When you look at the second paragraph,
 25 the one beginning with "Estrogen receptor

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1 protein" it says "Previous report from Health
 2 Care Corporation of St. John's dated
 3 09/10'98," which if it's in keeping with their
 4 other ordering, would be October 9th, 1998?
 5 MR. MCDONALD:
 6 A. Yeah.
 7 COFFEY, Q.C.:
 8 Q. And the same reference, same date is referred
 9 to in the paragraph dealing with progesterone.
 10 MR. MCDONALD:
 11 A. Yes.
 12 COFFEY, Q.C.:
 13 Q. So -
 14 MR. MCDONALD:
 15 A. That date doesn't ring any bell as to having
 16 any surgery test or biopsies or whatnot done.
 17 COFFEY, Q.C.:
 18 Q. Okay.
 19 THE COMMISSIONER:
 20 Q. Okay.
 21 COFFEY, Q.C.:
 22 Q. Sir, and I appreciate you've referred to the
 23 fact that you were advised by Ms. Smith that
 24 there was a protocol change back in '97/98.
 25 MR. MCDONALD:

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1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. Has anyone else from Eastern Health said
 4 anything to you about what might have happened
 5 to cause or contribute to any discrepancy in
 6 your wife's testing?
 7 MR. MCDONALD:
 8 A. No, nobody.
 9 COFFEY, Q.C.:
 10 Q. Has anyone from Eastern Health offered to meet
 11 with yourself to discuss this issue?
 12 MR. MCDONALD:
 13 A. No.
 14 COFFEY, Q.C.:
 15 Q. Has anyone from Eastern Health expressed to
 16 you any acceptance of responsibility or regret
 17 or apologized to you about the delay even in
 18 getting the retesting done and communicating
 19 it to you?
 20 MR. MCDONALD:
 21 A. No, none whatsoever.
 22 COFFEY, Q.C.:
 23 Q. From the perspective of a family member, being
 24 the family member of a deceased patient, do
 25 you have any thoughts on how Eastern Health

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1 has handled the communication issues involving
 2 people in situations such as yourself?
 3 MR. MCDONALD:
 4 A. Well, for my own situation, I guess, they've
 5 handled it somewhat poorly to some extent. I
 6 mean, you phone, being, as you said, a
 7 layperson when it comes to medical
 8 terminology, basically I was just looking for
 9 information when I called first about the
 10 ER/PR testing and retesting and as a family
 11 member of a patient, I had to go looking for
 12 that and I had to continue looking for it
 13 until finally I stopped looking and until I
 14 met with yourself and co-counsel, but nobody
 15 has sent any notification, nothing. There's
 16 been no contact whatsoever to myself as a
 17 family member.
 18 COFFEY, Q.C.:
 19 Q. When you say back in 2005 and '06 when you
 20 were dealing with Ms. Parsons, you left your
 21 phone number, but as well your address?
 22 MR. MCDONALD:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. Mailing address?

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1 MR. MCDONALD:
 2 A. Yes, I left the address because I live in
 3 Kelligrews in Conception Bay South and mailing
 4 addresses changed. We went with a house
 5 number type address versus a P.O. Box number.
 6 So I knew that the original information would
 7 probably have a P.O. Box number on it versus a
 8 house number, so I was -
 9 COFFEY, Q.C.:
 10 Q. That's your wife's old information?
 11 MR. MCDONALD:
 12 A. Yes, so I was sure to give the new address.
 13 COFFEY, Q.C.:
 14 Q. Sir, is there anything further you'd like to
 15 add? I understand there was something that -
 16 MR. MCDONALD:
 17 A. Not a lot. I'd just like to say that I am
 18 grateful for the opportunity to speak to the
 19 Inquiry today. I feel my testimony does not
 20 reflect the care my wife received during her
 21 illness. I'd like to say a special thank you
 22 to Dr. Kara Laing, Dr. P.K. Ganguly and the
 23 staff at the Cancer Centre, who I feel went
 24 above and beyond the call of duty to make sure
 25 my wife was comfortable and exceptionally well

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1 cared for while she was a patient. Thank you.
 2 COFFEY, Q.C.:
 3 Q. So your concern really is with respect to the
 4 communications issues?
 5 MR. MCDONALD:
 6 A. Yes.
 7 COFFEY, Q.C.:
 8 Q. Okay. They're the questions I have,
 9 Commissioner. Thank you.
 10 THE COMMISSIONER:
 11 Q. Thank you. Ms. Chai?
 12 MS. CHAI:
 13 Q. No questions, thank you.
 14 THE COMMISSIONER:
 15 Q. Thank you. Mr. Simmons?
 16 MR. SIMMONS:
 17 Q. Just a couple.
 18 THE COMMISSIONER:
 19 Q. Okay then.
 20 MR. KEN MCDONALD, EXAMINATION BY MR. DANIEL SIMMONS
 21 MR. SIMMONS:
 22 Q. Thank you, Mr. McDonald. My name is Dan
 23 Simmons. I'm here for Eastern Health and I
 24 don't have very much to ask you either.
 25 MR. MCDONALD:

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1 A. Not a problem.
 2 MR. SIMMONS:
 3 Q. But it is just about some of the communication
 4 issues that you've talked about.
 5 MR. MCDONALD:
 6 A. Yes.
 7 MR. SIMMONS:
 8 Q. The first person that you dealt with, I
 9 understand, was Ms. Parsons, who you spoke
 10 with by phone back when you were inquiring as
 11 to whether your wife's sample was going to be
 12 retested?
 13 MR. MCDONALD:
 14 A. Yes.
 15 MR. SIMMONS:
 16 Q. And if I understand correctly, you've told us
 17 that you called her a number of times and you
 18 were initially told that the priority was
 19 going to be given to testing samples for those
 20 patients who were living?
 21 MR. MCDONALD:
 22 A. Yes, and I commented to her that I understood
 23 that fully.
 24 MR. SIMMONS:
 25 Q. Yes, yes.

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1 MR. MCDONALD:
 2 A. I knew nothing could change in my case by
 3 retesting as such, so I said "that's fine.
 4 I'm willing to wait."
 5 MR. SIMMONS:
 6 Q. Certainly, yes, and by the time you had your
 7 last contact, made the last phone call to her,
 8 before you heard the press conference and
 9 stopped calling, by that time, I gather she
 10 was still telling you that there were no
 11 results back yet for your wife's retesting?
 12 MR. MCDONALD:
 13 A. Yes, that's correct.
 14 MR. SIMMONS:
 15 Q. So aside from the fact that she had nothing to
 16 report to you, do you have any comment on your
 17 interaction with her, on whether you felt she
 18 dealt with you appropriately, whether she was
 19 reasonable to deal with or if you had any
 20 difficulty in the communication with her?
 21 MR. MCDONALD:
 22 A. No, I had no difficulty in reaching her or if
 23 she wasn't there, if I left a message, she
 24 would call me back. I had no problem with
 25 that at all.

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1 MR. SIMMONS:
 2 Q. Okay, and recently, you've spoken to Ms. Smith
 3 at the Cancer Centre?
 4 MR. MCDONALD:
 5 A. Yes.
 6 MR. SIMMONS:
 7 Q. And did you have any concern about the way in
 8 which Ms. Smith dealt with you or her
 9 responsiveness to your questions or concerns?
 10 MR. MCDONALD:
 11 A. No. When I informed her why I was calling, she
 12 just simply said she would get the information
 13 and get it out to me and again, as I stated
 14 earlier, she called me again the next day and
 15 told me that she was getting it ready, but she
 16 wanted to explain that it might be a bit
 17 confusing when I look at three pieces of paper
 18 with one positive and two negative.
 19 MR. SIMMONS:
 20 Q. Was there anything that you sought or asked
 21 her to do for you that she wasn't able to do
 22 for you or didn't provide to you, or any
 23 information you asked for that you didn't get?
 24 MR. MCDONALD:
 25 A. No. I simply asked for a copy of the report

1 and she provided that to me.
 2 MR. SIMMONS:
 3 Q. Okay. Thank you very much.
 4 MR. MCDONALD:
 5 A. Thank you.
 6 THE COMMISSIONER:
 7 Q. Thank you, Mr. Simmons. Mr. Browne?
 8 MR. BROWNE:
 9 Q. Good afternoon, Mr. McDonald. I have no
 10 questions. Thank you for your evidence.
 11 MR. MCDONALD:
 12 A. Thank you.
 13 THE COMMISSIONER:
 14 Q. Mr. Eaton?
 15 EATON, Q.C.:
 16 Q. No questions, thank you.
 17 THE COMMISSIONER:
 18 Q. Ms. Newbury?
 19 MS. NEWBURY:
 20 Q. I have a couple.
 21 THE COMMISSIONER:
 22 Q. All right then.
 23 MR. KEN MCDONALD, EXAMINATION BY MS. JENNIFER NEWBURY
 24 MS. NEWBURY:
 25 Q. Good afternoon, Mr. McDonald. I'm Jennifer

1 Q. Okay.
 2 MR. MCDONALD:
 3 A. Because each time she gave me the impression
 4 that there was quite a back log.
 5 MS. NEWBURY:
 6 Q. Okay.
 7 MR. MCDONALD:
 8 A. Not only with our lab locally, but in sending
 9 the specimens to a new lab. She said they're
 10 quite busy as well. So things are not going
 11 as quickly as she thought they might.
 12 MS. NEWBURY:
 13 Q. And do you recall about how many times you
 14 would have called again for status?
 15 MR. MCDONALD:
 16 A. Probably three to four times.
 17 MS. NEWBURY:
 18 Q. And were you ever given a time frame as to
 19 when you could expect a result back?
 20 MR. MCDONALD:
 21 A. No.
 22 MS. NEWBURY:
 23 Q. Okay. So if you called about three or four
 24 times, would that be say for about a year
 25 after your first contact?

1 Newbury representing the Canadian Cancer
 2 Society, Newfoundland and Labrador Division.
 3 I just want to clarify some of the
 4 communications issues. Now you've discussed,
 5 I think, at length about your first call to
 6 Nancy Parsons.
 7 MR. MCDONALD:
 8 A. Yes.
 9 MS. NEWBURY:
 10 Q. And I believe that, according to Exhibit P-
 11 0008, would be October 17th, 2005?
 12 MR. MCDONALD:
 13 A. Yes.
 14 MS. NEWBURY:
 15 Q. Okay, and you've indicated that you've called
 16 several times since then, just to find out if
 17 there's any update on the status.
 18 MR. MCDONALD:
 19 A. Yeah.
 20 MS. NEWBURY:
 21 Q. Can you recall approximately when those calls
 22 would have been made?
 23 MR. MCDONALD:
 24 A. Probably every two to three months.
 25 MS. NEWBURY:

1 MR. MCDONALD:
 2 A. Yes.
 3 MS. NEWBURY:
 4 Q. So that would bring you up to somewhere around
 5 the end of 2006, is that correct?
 6 MR. MCDONALD:
 7 A. Yes, or maybe even early 2007 may have been
 8 the last contact.
 9 MS. NEWBURY:
 10 Q. And you mentioned earlier that here was some
 11 sort of press conference or media announcement
 12 that left you with the impression that there
 13 would now be no testing of any more -
 14 MR. MCDONALD:
 15 A. Yes.
 16 MS. NEWBURY:
 17 Q. - cases, which would include, in your mind,
 18 deceased patients?
 19 MR. MCDONALD:
 20 A. Yes, that was my impression, rightly or
 21 wrongly, yes.
 22 MS. NEWBURY:
 23 Q. And how close in time was that to your last
 24 contact with Ms. Parsons?
 25 MR. MCDONALD:

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1 A. There was a space in between.
 2 MS. NEWBURY:
 3 Q. Okay, and was it after the last contact with
 4 Ms. Parsons?
 5 MR. MCDONALD:
 6 A. Yes, it was after the last contact.
 7 MS. NEWBURY:
 8 Q. Okay, and in any of your discussions with Ms.
 9 Parsons prior to that, had you ever been left
 10 with the impression that her sample may not be
 11 tested for any reason?
 12 MR. MCDONALD:
 13 A. No, it was always said that they would be done
 14 when they get the time to get to it actually.
 15 MS. NEWBURY:
 16 Q. And did you expect to be contacted by Eastern
 17 Health with any results from the retesting or
 18 had you been left with the impression that it
 19 would be--or the onus would be on you to make
 20 that contact?
 21 MR. MCDONALD:
 22 A. No, I was given the impression that I would be
 23 notified of the retest.
 24 MS. NEWBURY:
 25 Q. Okay. Thank you. Those are all the questions

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1 I have.
 2 MR. MCDONALD:
 3 A. Thank you.
 4 THE COMMISSIONER:
 5 Q. Thank you. Ms. Russell?
 6 MS. RUSSELL:
 7 Q. No questions, thank you.
 8 THE COMMISSIONER:
 9 Q. All right. Thank you very much, Mr. McDonald.
 10 I do appreciate you coming to -
 11 MR. MCDONALD:
 12 A. Thank you.
 13 THE COMMISSIONER:
 14 Q. - tell us your story and that of your wife.
 15 MR. MCDONALD:
 16 A. Appreciate it.
 17 THE COMMISSIONER:
 18 Q. Mr. Coffey?
 19 COFFEY, Q.C.:
 20 Q. Thank you, Commissioner. Commissioner, I've
 21 run out of witnesses. We'll have three
 22 witnesses tomorrow.
 23 THE COMMISSIONER:
 24 Q. That comes as a big surprise. I thought we
 25 were going to have a lot of witnesses.

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1 COFFEY, Q.C.:
 2 Q. We will, but for today. I've run out of
 3 witnesses for today, I hasten to add, and we
 4 have three witnesses tomorrow, two patients
 5 and one family member of a patient.
 6 THE COMMISSIONER:
 7 Q. All right.
 8 COFFEY, Q.C.:
 9 Q. And again, after we get through the patients,
 10 I anticipate then that I will certainly always
 11 have other witnesses lined up to fully utilize
 12 the time available. But in the circumstances,
 13 I'm going to ask that we adjourn until
 14 tomorrow morning.
 15 THE COMMISSIONER:
 16 Q. I'm assuming there's no objection to
 17 adjournment until the morning. 9:30 tomorrow
 18 morning. Thank you all.
 19 ADJOURNED TO MARCH 25, 2008 AT 9:30 A.M.

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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 24th day of March, 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 24th day of March, A.D., 2008
 13 Judy Moss

Inquiry on Hormone Receptor Testing

<p style="text-align: center;">-?-</p> <p>'05 [1] 46:15 '06 [2] 46:15 227:19 '90s [1] 211:12 '97 [10] 182:11,23 198:3 198:7 204:17 206:4 223:15,16 224:11,15 '97/98 [2] 170:17 225:24 '98 [7] 109:5 137:21 170:17 183:4,7 217:16 223:25 '99 [26] 6:14 8:10 31:4 31:17 40:1 46:16,21 47:17,19 60:6 61:3 64:2 85:8 101:21 102:17,17 107:7 129:23 134:13 137:21 138:11 157:9 164:15 184:9,10 223:17</p> <hr/> <p style="text-align: center;">---</p> <p>-233 [1] 2:15 -in [1] 96:19 -testing [1] 39:6 -there [1] 184:16 -you [1] 91:21</p> <hr/> <p style="text-align: center;">-0-</p> <p>0007 [1] 4:20 0008 [2] 186:24 234:11 001119 [1] 211:8 0072 [1] 21:2 0073 [1] 44:1 0075 [1] 30:7 0085 [1] 186:23 0095 [2] 3:8 187:21 0096 [2] 187:2,6 0098 [1] 107:16 0112 [1] 156:4 0113 [1] 156:3 09-10-98 [2] 212:1,6 09/10'98 [1] 225:3</p> <hr/> <p style="text-align: center;">-1-</p> <p>1 [13] 19:5,24 21:6 23:4 28:2 30:6 44:13,15 128:20 133:10,19 211:13 217:12 10 [5] 30:8 115:7 130:12 142:8 151:14 10-15 [1] 130:4 100 [1] 181:9 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