COMMISSION OF INQUIRY

ON HORMONE RECEPTOR TESTING

BEFORE THE HONOURABLE JUSTICE CAMERON - COMMISSIONER

MAY 9, 2008

Appearances:

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

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

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

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

Aaron Felt . . . . Members of the Breast Cancer
. . . . Testing Class Action

Mark Pike . . . . NL Medical Association
Jennifer Newbury . . . . . Canadian Cancer Society (NL Division)
David Eaton, Q.C. . . . . Central, Western and Labrador-Grenfell
Regional Integrated Health Authorities

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MR. ROBERT THOMPSON - RESUMES THE STAND

Examination by Bernard Coffey, Q.C. . . . . Pgs. 3 - 353

1 COMMISSIONER:
2 Q. Please be seated. Mr. Coffey.
3 MR. ROBERT THOMPSON, EXAMINATION-IN-CHIEF BY BERNARD
4 COFFEY, Q.C. (CONTINUED)
5 COFFEY, Q.C.:
6 Q. Thank you. Good morning, Mr. Thompson.
7 MR. THOMPSON:
8 A. Good morning.
9 COFFEY, Q.C.:
10 Q. Exhibit, Registrar, please, Exhibit P-0453?
11 Now, Mr. Thompson, this, I just, there are a
12 whole series of e-mails involving Andre
13 Picard, a column in the Globe and Mail toward
14 the end of May of 2007.
15 MR. THOMPSON:
16 A. Right.
17 COFFEY, Q.C.:
18 Q. You'd be kind of aware of it, okay. Were you
19 ever involved in the government's response
20 because Mr. Wiseman did send a letter?
21 MR. THOMPSON:
22 A. No. I remember it happening, but I don't
23 recall being involved in any way.
24 COFFEY, Q.C.:
25 Q. Okay. Yeah, and there's no suggestion in the

1 e-mail traffic that you were. I was just -
2 MR. THOMPSON:
3 A. Right.
4 COMMISSIONER:
5 Q. - ask you about that. That was, really that
6 had been concluded, I take it, before you
7 became acting deputy minister?
8 MR. THOMPSON:
9 A. When was the article then?
10 COFFEY, Q.C.:
11 Q. Well, it was May 24th, the response was
12 around--I should say the article was at that
13 time. When you look at this, you'll see here,
14 this is an e-mail from Susan Bonnell to George
15 Tilley and Heather Predham and there are other
16 e-mails involved around this time and just
17 after. This is May 24th, 2007. And she just
18 begins by saying, "The Department of Health
19 has asked us to respond in writing."
20 MR. THOMPSON:
21 A. Right, okay.
22 COFFEY, Q.C.:
23 Q. And, in fact, there was also a similar letter
24 or a letter from Mr. Wiseman.
25 MR. THOMPSON:

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1 A. Right.
2 COFFEY, Q.C.:
3 Q. And the same time.
4 MR. THOMPSON:
5 A. No, no one -
6 COFFEY, Q.C.:
7 Q. But it was before your -
8 MR. THOMPSON:
9 A. Yeah, that's right.
10 COFFEY, Q.C.:
11 Q. Okay. If we could, please, Exhibit P-128,
12 page 46, please? Sir, I had asked you about
13 your involvement as chair of this Task Force.
14 Is there any actual formal--this is the news
15 release of May 30th announcing that.
16 MR. THOMPSON:
17 A. Right.
18 COFFEY, Q.C.:
19 Q. Is there any actual formal documentation?
20 MR. THOMPSON:
21 A. Yes.
22 COFFEY, Q.C.:
23 Q. Okay, there is.
24 MR. THOMPSON:
25 A. You mean such as a minute of Cabinet?

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1 COFFEY, Q.C.:
2 Q. Yes.
3 MR. THOMPSON:
4 A. Yes, there is.
5 COFFEY, Q.C.:
6 Q. Okay. And this Task Force is supposed to
7 report when?
8 MR. THOMPSON:
9 A. June 30th.
10 COFFEY, Q.C.:
11 Q. Of this year?
12 MR. THOMPSON:
13 A. Of this year.
14 COFFEY, Q.C.:
15 Q. Okay.
16 MR. THOMPSON:
17 A. And I'm in discussion now about a different
18 reporting time frame.
19 COFFEY, Q.C.:
20 Q. Yeah. And as we go through the remaining part
21 of my examination with you, I think it'll
22 become apparent as to why that is so, the
23 obstacles or--I shouldn't say obstacles, the
24 challenges you've run into in accomplishing
25 that?

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1 MR. THOMPSON:
2 A. Right.
3 COFFEY, Q.C.:
4 Q. In that regard, and if I could, please, just
5 one moment, please, Commissioner.
6 COMMISSIONER:
7 Q. Actually, while you're doing that.
8 COFFEY, Q.C.:
9 Q. Sure.
10 COMMISSIONER:
11 Q. Can you tell me a little more about what the
12 Task Force is intended to accomplish?
13 MR. THOMPSON:
14 A. Sure, okay. Well, the original impetus was
15 that it was to look beyond ER/PR to, and
16 recognizing that in the health and community
17 services system there will always be, at some
18 point, perhaps regularly, some kind of adverse
19 event happening. And in order to insure that
20 the public's confidence is maintained in the
21 health system, the public should also know
22 that when something like that happens, there's
23 an appropriate response system, that it gets
24 documented and disclosed and followed up on
25 and that lessons get learned. So while ER/PR,

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1 the Inquiry will no doubt have findings that
2 are generalizeable, perhaps there is a broader
3 context still of how to manage adverse events
4 when they happen. So we've been asked to look
5 at how adverse events in our health and
6 community services system get identified. So
7 that could be an individual event or it could
8 be a pattern of practice and how do we
9 identify when adverse events happen in either
10 of those contexts, are our systems good for
11 identification. Then once they're identified,
12 how are they evaluated, what kind of
13 assessment might kick in at the interface with
14 the patient or perhaps a more thorough
15 assessment is needed of a more serious adverse
16 event. So what kinds of systems and
17 capacities do we have currently in place to
18 assess what happened in an event. The third
19 thing we've been asked to look at is the
20 disclosure process, both--and how we've
21 defined that is right from the single patient
22 event all the way up to a multi-patient,
23 multi-jurisdictional event. Fourth thing
24 we've been asked to look at then is how does
25 the system act when an event happens. And

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1 what we mean by that is how does it act to
2 deal with the patient who has suffered the
3 event, has the person been re-diagnosed, has
4 the person been treated, but then even beyond
5 that, once we learn lessons from an
6 assessment, how does the system implement
7 those lessons and share those lessons to make
8 sure things don't happen again. And I guess
9 undergirding all of that will be the issue of,
10 issues of communication, coordination and
11 leadership, does the system have a capacity
12 not just to communicate clearly among
13 themselves, but to coordinate so that nothing
14 drops in between cracks of individual's
15 responsibilities and that leadership is
16 provided in a coherent fashion throughout the
17 management of an adverse event. So -
18 COMMISSIONER:
19 Q. And does this extend beyond the health system
20 into the sort of community -
21 MR. THOMPSON:
22 A. Correct.
23 COMMISSIONER:
24 Q. - services kind of area?
25 MR. THOMPSON:

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1 A. Child Youth and Family Services, for example,
2 would be something we'd look at.
3 COMMISSIONER:
4 Q. Yes, okay. Thank you.
5 COFFEY, Q.C.:
6 Q. I have located that, thank you. If we could,
7 please, Registrar, Exhibit 0147? And now this
8 is a Medical Advisory Committee, I gather it's
9 for Eastern Health or the Health Care
10 Corporation of St. John's, I suppose,
11 depending upon whether they passed on to
12 Eastern Health. This is Wednesday, November
13 14th, 2007 at 5 p.m. And just to put it in
14 context for you, okay, and I have a question
15 then about a reference in it for you in terms
16 of your capacity as chair.
17 MR. THOMPSON:
18 A. Um-hm.
19 COFFEY, Q.C.:
20 Q. (A) says, paragraph A, "ER/PR estrogen and
21 progesterone receptor." Thank you, Registrar.
22 It says, "The vast majority of the meeting
23 time is devoted to a discussion of two major
24 issues, ER/PR, estrogen, progesterone receptor
25 issue and the Provincial Task Force for

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1 Adverse Health Events. The agenda for this
2 meeting was altered to accommodate discussion
3 on the ER/PR issues events to date." And it
4 goes on about, to say that "CBC had recently
5 aired an inaccurate story and so on." And
6 refers to the Commission of Inquiry having
7 been established. If we could look at page 2,
8 please? At the top of the page, first full
9 paragraph it refers to yourself in the
10 following terms, "At the same time, Mr. Robert
11 Thompson, Deputy Minister of Health, has also
12 been appointed a special advisor to government
13 to chair a Provincial Task Force on Adverse
14 Health Events. Considerable discussion took
15 place at MAC around the foregoing information.
16 There are major implications for health care
17 delivery both directly and indirectly in
18 providing ongoing quality patient care
19 processes." And then there's a paragraph
20 about "The peer review policy initiatives must
21 be protected" and talks about that. And then
22 they note in the fourth full paragraph,
23 "National standards for many medical test and
24 procedure results are lacking. Work is
25 ongoing and with time professional best

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1 practice and guideline standards will be more
2 complete. These processes appear not to be
3 well understood in government. Interpretation
4 of data has to occur with some reference to
5 acceptable error guidelines and where these
6 don't exist medical result interpretation can
7 be difficult. Such a reality underpins a
8 necessity for strong in-house quality
9 assurance and safety programs. Every support
10 and protection must be given to these
11 programs. An environment of blame,
12 retribution and an ignorance of the
13 complexities of such endeavours will insure
14 that no such programs will continue to exist!"
15 And I point out that that, there's an
16 exclamation point at the end of that sentence.
17 "Where physicians and their health care
18 colleagues are antagonized and demoralized by
19 government's public non-support of its health
20 care workers and their delivery of quality and
21 safe patient care, government must be made
22 aware that they will be held"--I'm sorry,
23 "that they will be held directly accountable
24 for inadequate and inappropriate health and
25 medical care in our province!" And there's

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1 another exclamation point. It goes on to say
2 then, "The proposed Provincial Task Force for
3 Adverse Health Care Events is an endeavour
4 which, in the present work climate, both
5 clinically and administratively cannot be
6 supported. The requests for further reports,
7 statistics and the like will simply overload
8 the system. Now is not the time!" And
9 another exclamation point. The chair of MAC
10 will prepare a paper/letter addressing MAC's
11 serious concerns. This will be presented at
12 the December MAC which will occur before the
13 next Eastern Health board meeting.
14 MR. THOMPSON:
15 A. Right.
16 COFFEY, Q.C.:
17 Q. Now, sir, as the chair of that Provincial Task
18 Force, were you ever made aware of this?
19 MR. THOMPSON:
20 A. I saw this for the first time maybe two months
21 ago reading the disclosures from Eastern
22 Health.
23 COFFEY, Q.C.:
24 Q. Sure. And that's the actual minutes
25 themselves?

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1 MR. THOMPSON:
2 A. Right.
3 COFFEY, Q.C.:
4 Q. You received that back through Mr. Pritchard,
5 I take it?
6 MR. THOMPSON:
7 A. Right.
8 COFFEY, Q.C.:
9 Q. Okay. But in terms of were you ever made
10 aware of the position taken, apparently, by
11 the MAC at the time concerning the
12 inadvisability of your endeavour?
13 MR. THOMPSON:
14 A. No.
15 COFFEY, Q.C.:
16 Q. Okay.
17 MR. THOMPSON:
18 A. And I should note, when I read these, I didn't
19 read those two paragraphs together as one
20 relating to the other. This meeting, I
21 believe the date was November 14th, as it?
22 COFFEY, Q.C.:
23 Q. Yes, sir.
24 MR. THOMPSON:
25 A. Right. Occurred in the wake of a news

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1 conference that was held regarding some data
2 release from the NLCHI database and there was
3 some public commentary at that time, and
4 that's the public--or the public commentary is
5 what I believe gave rise to the feelings that
6 were expressed in that large paragraph.
7 COFFEY, Q.C.:
8 Q. The one beginning, "National standards"?
9 MR. THOMPSON:
10 A. Correct. And then the next paragraph about
11 the Task Force, I read to be a completely
12 separate piece. But nonetheless, the point
13 being made that they felt the work of the Task
14 Force would be an overload on their system and
15 they felt that now is not the time for it.
16 COFFEY, Q.C.:
17 Q. Okay. And you first became aware of this
18 about two months ago?
19 MR. THOMPSON:
20 A. Right.
21 COFFEY, Q.C.:
22 Q. So that would be, it's now May, so April,
23 March?
24 MR. THOMPSON:
25 A. Sure.

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1 COFFEY, Q.C.:
2 Q. And this statement had been made in November
3 of '07.
4 MR. THOMPSON:
5 A. Right.
6 COFFEY, Q.C.:
7 Q. It hadn't, but the sentiment of this had not
8 been brought to your attention?
9 MR. THOMPSON:
10 A. No.
11 COFFEY, Q.C.:
12 Q. Have you--in fact, have any such complaints
13 been brought to your attention directly or
14 indirectly other than through the medium of
15 this?
16 MR. THOMPSON:
17 A. No. While I know that the -
18 COFFEY, Q.C.:
19 Q. And I say complaints from the MAC -
20 MR. THOMPSON:
21 A. No, no.
22 COFFEY, Q.C.:
23 Q. Okay.
24 MR. THOMPSON:
25 A. No.

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1 COFFEY, Q.C.:
2 Q. In terms of the Task Force overall, I'll ask
3 you this question, I'll be referring to
4 certain parts of it as we go. Can you tell
5 the Commissioner, please, kind of how the
6 effort has gone overall?
7 MR. THOMPSON:
8 A. Right. Well, largely the effort was delayed
9 while I was acting deputy minister of health.
10 There was just no time to allocate between
11 June of '07 and November of '07. So, and
12 then, of course, when I left the department to
13 focus on the work here related to the
14 Commission and the Task Force, most of my
15 effort then went into the preparations for the
16 Commission. So in the last two months,
17 however, we've been able to mobilize work and
18 the focus that we've taken is, of course,
19 background literature, review, collection and
20 analysis of case studies which is still under
21 way. We've identified a process for
22 interviewing experts in the area. The
23 Commission Symposium itself has been an
24 excellent vehicle for understanding the
25 process of disclosure and we will certainly be

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1 using the papers that were delivered there as
2 an input into our own thinking. And so all
3 the work now is under way, but really only in
4 about the last two months or so in terms of a
5 very steady and sustained effort.
6 COFFEY, Q.C.:
7 Q. And that's your Task Force chair role?
8 MR. THOMPSON:
9 A. Correct.
10 COFFEY, Q.C.:
11 Q. Yeah, your role as secretary to Cabinet for
12 health issues -
13 MR. THOMPSON:
14 A. For health issues.
15 COFFEY, Q.C.:
16 Q. Particularly in relation to the Commission of
17 Inquiry.
18 MR. THOMPSON:
19 A. Right.
20 COFFEY, Q.C.:
21 Q. Has been ongoing for some period of time more
22 intensively?
23 MR. THOMPSON:
24 A. Well, since June and then more extensively
25 since November of '07, that's right.

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1 COFFEY, Q.C.:
2 Q. If we could, please, Exhibit P-0954? Now,
3 sir, this is an e-mail, well, it's two e-
4 mails, actually, both of May 31st, 2007. One
5 from yourself at 5:06 p.m. to Tansy Mundon. I
6 take it by this point in time you're acting
7 deputy minister?
8 MR. THOMPSON:
9 A. Right.
10 COFFEY, Q.C.:
11 Q. And in the second sentence, "At the outset I
12 would like to get everything on the ER/PR
13 issue, particularly references to the Inquiry
14 and my assignment and everything related to
15 the Task Force including print, radio, TV,
16 etcetera. Can you go back to the beginning of
17 yesterday on this and then we will start to
18 work forward? Thanks," signed, "Robert." And
19 the response a minute later is, is from Ms.
20 Mundon is "Will do. I have a binder on ER/PR
21 with all clippings, so will get you a copy of
22 that. Also will compile clippings on Task
23 Force." So I take it at that point in time
24 you were attempting to do what?
25 MR. THOMPSON:

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1 A. Maintain a steady supply of information on
2 what was entering the public environment on
3 both of these efforts.
4 COFFEY, Q.C.:
5 Q. Okay. The binder on ER/PR with all clippings?
6 MR. THOMPSON:
7 A. Right.
8 COFFEY, Q.C.:
9 Q. That was, I take it, going back in time, I
10 take it?
11 MR. THOMPSON:
12 A. One existed within the department already and
13 this would--yes, that's right, it already
14 existed.
15 COFFEY, Q.C.:
16 Q. And do you know if that, the information in
17 that binder was ever, like, all copied, as it
18 were, as a body and provided to the
19 Commission?
20 MR. THOMPSON:
21 A. Well, that binder was part of the--information
22 in that binder made its way into the
23 disclosure. Now, I'm not sure if it was
24 identified as here is the binder, but
25 certainly the information in it was included.

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1 COFFEY, Q.C.:
2 Q. That binder do you know if it's--I use the
3 word "binder" -
4 MR. THOMPSON:
5 A. It's now bout four binders.
6 COFFEY, Q.C.:
7 Q. You know, I suspect. Is that still in
8 existence?
9 MR. THOMPSON:
10 A. Yes.
11 COFFEY, Q.C.:
12 Q. Okay. In other words, the information that
13 the department had, Ms. Mundon had collected
14 up to that point in time, up to May 31 would
15 be -
16 MR. THOMPSON:
17 A. Yes.
18 COFFEY, Q.C.:
19 Q. - they're in the first of the binders?
20 MR. THOMPSON:
21 A. Correct.
22 COFFEY, Q.C.:
23 Q. Okay. And it's that sort of information that
24 I asked you about yesterday. You recall I was
25 asking you about trying to ascertain what the

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1 department had in its media?
2 MR. THOMPSON:
3 A. You were asking me then, I thought about the
4 communications and consultations branch of
5 Executive Council.
6 COFFEY, Q.C.:
7 Q. It was that one and as well as the department
8 itself.
9 MR. THOMPSON:
10 A. Okay, I didn't detect your question yesterday
11 to include the Department of Health.
12 COFFEY, Q.C.:
13 Q. Yeah, if you would. And it's in terms of
14 that, because it relates to what the
15 department knew on December 11th -
16 MR. THOMPSON:
17 A. Sure.
18 COFFEY, Q.C.:
19 Q. - 12th, 13th or could have known.
20 MR. THOMPSON:
21 A. Right.
22 COFFEY, Q.C.:
23 Q. In the sense if it was in its own binder,
24 okay.
25 MR. THOMPSON:

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1 A. Okay. So is there a question you want to ask
2 me now?
3 COFFEY, Q.C.:
4 Q. So on that, so just to clarify, I'm glad then
5 it came up.
6 MR. THOMPSON:
7 A. Yes.
8 COFFEY, Q.C.:
9 Q. Because, if you would, please, if you're Mr.
10 Pritchard, ensure that, in terms of that
11 binder, that part of the binder -
12 MR. THOMPSON:
13 A. Yes.
14 COFFEY, Q.C.:
15 Q. - the departmental binder, up to the point
16 where you became acting DM, we have that.
17 MR. THOMPSON:
18 A. Yes.
19 COFFEY, Q.C.:
20 Q. Okay, thank you. If we could, please, Exhibit
21 P-0227? Now this is--these are actually two
22 e-mails, one at the bottom of the page, sorry,
23 is--yes, from Angela Benmore to Ms. Chaplin,
24 in the Bristol Group, copied to Susan Bonnell,
25 and it's subject "a message to our patients

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1 advertisement," see that?
2 MR. THOMPSON:
3 A. Um-hm.
4 COFFEY, Q.C.:
5 Q. And then there's one from Susan Bonnell to
6 Tansy Mundon at 10:01 on the same day. Ms.
7 Bonnell says "we're still in draft, but this
8 is basically it. This is going in all
9 Transcon papers and 'The Telegram'" and that
10 ad, in the end, passed through your hands,
11 didn't it?
12 MR. THOMPSON:
13 A. Yes.
14 COFFEY, Q.C.:
15 Q. Okay, and I'll get to that in a moment, but
16 what was Ms. Chaplin's of the Bristol Group's
17 involvement in this, do you know? At this
18 point in time, you'd just taken over as acting
19 DM.
20 MR. THOMPSON:
21 A. That's right. Well, I wasn't focused on that
22 at that time, but as I understand it, well,
23 she had moved into the private sector and was,
24 I guess, in charge of an account, Eastern
25 Health account, and therefore was in charge of

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1 framing up an advertisement for Eastern
2 Health.
3 COFFEY, Q.C.:
4 Q. If we could, please, Exhibit P-0955? Now this
5 is an e-mail from Tansy Mundon, to whom Ms.
6 Bonnell had just sent one at 10:01 a.m., to a
7 number of individuals, Ms. Cheeseman, Ms.
8 Hennessey, Ms. Matthews, yourself, Ms. Turpin
9 and Mr. Wiseman, same day 11:50 a.m., and it
10 says--the subject is "a message to our
11 patients advertisement. Please see attached
12 ad developed by Eastern Health which they plan
13 to put in Saturday's 'Telegram' along with
14 community newspapers next week. Their purpose
15 is to advise the public that patients were
16 informed of ER/PR testing throughout the
17 process. Please advise if you have any
18 concerns ASAP. Thanks, Tansy."
19 And in terms of what that related to,
20 again that's the--attached to that is the
21 10:01 e-mail from Ms. Bonnell to Ms. Mundon
22 sending a copy of the ad. And if--what we'll
23 do, get this up, at page four of that exhibit,
24 would that be the ad?
25 MR. THOMPSON:

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1 A. Looks like it, yes.
2 COFFEY, Q.C.:
3 Q. "A message to our patients" is the big
4 heading, and it says, in bold print, "we have
5 always been upfront and open with our
6 patients," and then further down in the
7 advertisement it says "our pledge to you"
8 again in italics and in larger print, and the
9 Eastern Health logo is at the bottom of the
10 page.
11 In terms of that, if we could bring up,
12 please, Exhibit P-0956? At the bottom of the
13 page, you'll see there, Ms. Mundon's 11:50
14 a.m. e-mail, which I just referred to, and
15 then this e-mail at the top of this exhibit is
16 June 1 2007 at 12 p.m.. It's from Elizabeth
17 Matthews and she sends, distributes it to Ms.
18 Turpin, Cheeseman, Ms. Hennessey, Wiseman, Mr.
19 Wiseman, Mr. Thompson, yourself, and Ms.
20 Mundon, and Ms. Matthews' comment is "my only
21 comment would be in the second paragraph. I
22 would add 'tests help determine treatment
23 options for breast cancer patients after
24 diagnosis has been given'" suggesting she
25 wants something added to the advertisement.

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1 MR. THOMPSON:
2 A. Right.
3 COFFEY, Q.C.:
4 Q. "or some words to that effect. Second, I
5 don't know if this is possible, but is there
6 some way of saying that 'although the media
7 were not given information about the patients
8 whose treatment was not affected, we did
9 ensure that all patients were fully
10 informed.'"
11 MR. THOMPSON:
12 A. Right.
13 COFFEY, Q.C.:
14 Q. So that assertion is being suggested by Ms.
15 Matthews?
16 MR. THOMPSON:
17 A. Correct.
18 COFFEY, Q.C.:
19 Q. And Ms. Matthews goes on to say "I think this
20 is a very solid point that is being lost.
21 Otherwise, I think it is a very good ad."
22 Now sir, if we could, please, Exhibit P-
23 0226? This is an e-mail on the same day at
24 12:09 p.m. from Ms. Cheeseman to the same
25 group, all the same individuals, including

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1 yourself, and she writes "ditto to Elizabeth's
2 comments. Meanwhile, maybe it's there and I
3 can't find it, but I've looked at Eastern
4 Health's website for information they provided
5 to the media at a briefing a couple of weeks
6 ago. Can't find any sign of a news release or
7 the background document that was distributed.
8 It might be helpful for them to post it." I
9 take it Ms. Cheeseman is in charge of the
10 Communications and Consultations branch?
11 MR. THOMPSON:
12 A. Correct.
13 COFFEY, Q.C.:
14 Q. In other words, she would be--or would have,
15 at one point, been Ms. Chaplin's boss?
16 MR. THOMPSON:
17 A. Yes.
18 COFFEY, Q.C.:
19 Q. And Ms. Cheeseman reports directly to you, at
20 that--well, before you became acting DM?
21 MR. THOMPSON:
22 A. Yes.
23 COFFEY, Q.C.:
24 Q. Had reported to you. And on this exhibit, Ms.
25 Matthews' e-mail of 11:59 is there. However,

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1 it's apparent, when you look at this one, this
2 copy of it, the print of it, that in the first
3 suggested addition where she says "tests help
4 determine treatment options for breast cancer
5 patients," the words "after diagnosis" has
6 been given or bolded. You see that?
7 MR. THOMPSON:
8 A. Right.
9 COFFEY, Q.C.:
10 Q. Okay, which is not apparent when you look at
11 the print on the one before. If we could
12 look, please, at Exhibit P-0957? This--thank
13 you. This again is another in that series of
14 e-mails involving this advertisement and this
15 is one on the same date, at 12:29 p.m. from
16 yourself to Ms. Mundon saying "I have some
17 comments for some changes" and you sent it via
18 your Blackberry.
19 Now sir, I take it then that--do you
20 recall if the changes you--the comments you
21 were going to make about the changes, if they
22 were included?
23 MR. THOMPSON:
24 A. Well, I don't recall what the changes were.
25 It perhaps might be useful to look at the

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1 before and after to see if any resulted and I
2 haven't done that, coming here today. So I
3 don't know, and typing up a note on the
4 Blackberry would have been--you know, it's a
5 lot of typing to record perhaps three or four
6 edits, so no doubt I would have preferred to
7 pass them on verbally if I wasn't at my
8 computer.
9 COFFEY, Q.C.:
10 Q. But do you recall what they were? You don't?
11 MR. THOMPSON:
12 A. I don't recall what they were.
13 COFFEY, Q.C.:
14 Q. What your concern was. Now sir, at the time,
15 and you are the Acting Deputy Minister of
16 Health at the time, if we could, just looking
17 at Exhibit 0227 please, page three, and again-
18 -and I'm not going to take you through the
19 nitty gritty of the comparison of whether
20 particular words got added or didn't at this
21 point, but I have a question for you. What
22 was the point of this ad?
23 MR. THOMPSON:
24 A. The point, from Eastern Health's point of view
25 -

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1 COFFEY, Q.C.:
2 Q. Well, and from your perspective too, I
3 suppose, because you're involved in it.
4 MR. THOMPSON:
5 A. Okay. Well, sure, but the ad is generated by
6 Eastern Health and so the point that they were
7 generating it for was to communicate with
8 patients directly and my guess is that they
9 felt directly was important because when
10 filtered through the media reporting, their
11 view might be that their message may not get
12 through entirely. So they were trying to
13 communicate through that and make a number of
14 points, perhaps to build up assurance or a
15 sense of confidence that they had been acting
16 in best interest, even though that there had
17 been a lot of concerns raised regarding the
18 disclosure of information. And the Government
19 would have understood that to be the case.
20 COFFEY, Q.C.:
21 Q. Now if we could look, please, at Exhibit P-
22 0955 again? Now this is Ms. Mundon's e-mail--
23 0955, please? Thank you, yes--of 11:50 a.m.
24 that morning to the various senior people
25 involved in this, and you were, by this point,

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1 Ms. Mundon is working directly for you?
2 MR. THOMPSON:
3 A. Right.
4 COFFEY, Q.C.:
5 Q. So she, on your department's behalf, is
6 advising your fellow government officials that
7 "their, Eastern Health's, purpose is to advise
8 the public that patients were informed of
9 ER/PR testing throughout the process."
10 MR. THOMPSON:
11 A. Right.
12 COFFEY, Q.C.:
13 Q. Okay. So I take it then that there was--was
14 it your understanding there was some concern
15 by Eastern Health that somehow that message
16 was getting lost?
17 MR. THOMPSON:
18 A. Well, perhaps there was, and so that's a more
19 specific way of saying that they needed to get
20 a message through that perhaps wasn't getting
21 through as clearly as they had hoped.
22 COFFEY, Q.C.:
23 Q. And Exhibit P-0956 again, please? And
24 certainly, the e-mail at noon from Ms.
25 Matthews, the Premier's director of

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1 communications, to the various people involved
2 in this, she's asking, I suppose, "is there
3 some way of saying that although the media
4 were not given information about the patients
5 whose treatment was not affected, we did
6 ensure that all patients were fully informed."
7 MR. THOMPSON:
8 A. Right.
9 COFFEY, Q.C.:
10 Q. I take it she wanted to emphasize that point.
11 MR. THOMPSON:
12 A. Um-hm.
13 COFFEY, Q.C.:
14 Q. And you would have understood that as the
15 acting DM?
16 MR. THOMPSON:
17 A. Right.
18 COFFEY, Q.C.:
19 Q. Did you make any inquiries at this time,
20 yourself, or cause any to be made that that
21 was so?
22 MR. THOMPSON:
23 A. Well, at that time, I would have been one of
24 the group of people who were still taking what
25 Eastern Health was telling us as really a

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1 point of fact.
2 COFFEY, Q.C.:
3 Q. The gospel, as it were.
4 MR. THOMPSON:
5 A. Yes, that everyone was contacted and that was
6 one of--we were regarding that as a really
7 important piece of confidence in all this that
8 at least people could rely upon having been
9 contacted, even if there was information--that
10 was the sense that we all had and we were
11 relying upon that assurance.
12 COFFEY, Q.C.:
13 Q. If I could, so but--let's see, the 22nd, ten
14 days before this, this series of e-mail
15 exchanges, the Commission of Inquiry had been
16 established?
17 MR. THOMPSON:
18 A. Right.
19 COFFEY, Q.C.:
20 Q. And I'm going to suggest to you that one of
21 the reasons it was established was related to
22 public complaints over a significant period of
23 time about a lack of such contact in
24 individual cases. You would have been aware
25 of that, right?

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1 MR. THOMPSON:
2 A. Yes.
3 COFFEY, Q.C.:
4 Q. Before June 1, you were aware, weren't you,
5 that there had been a number of complaints
6 over time aired in the media that individuals
7 had not been contacted?
8 MR. THOMPSON:
9 A. My sense of it, and I agree with you, but not
10 that as the primary reason.
11 COFFEY, Q.C.:
12 Q. Oh no, I appreciate it's not the primary.
13 MR. THOMPSON:
14 A. That's an important point to make. That my
15 sense of the way that the concerns evolved and
16 led to the establishment of the Commission
17 was, number one, that the -
18 COFFEY, Q.C.:
19 Q. No, if I could, but one of the concerns was
20 that?
21 MR. THOMPSON:
22 A. That's correct.
23 COFFEY, Q.C.:
24 Q. Okay.
25 MR. THOMPSON:

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1 A. But to put it in context, because you're
2 emphasizing this point so it's important for
3 me to put it in context so it's properly
4 understood.
5 COFFEY, Q.C.:
6 Q. Sir, if I could, I'm bringing you to this
7 point because it's really as the acting DM,
8 the first real point you're involved in.
9 MR. THOMPSON:
10 A. Right.
11 COFFEY, Q.C.:
12 Q. Isn't it?
13 MR. THOMPSON:
14 A. By way of copy and by way of request to
15 comment, I am involved in it.
16 COFFEY, Q.C.:
17 Q. And not only, well, request to comment, input
18 into it.
19 MR. THOMPSON:
20 A. But that doesn't diminish the fact of the kind
21 of sense I had of the issue at the time and
22 the information that--or the beliefs I had
23 based on the information that was in front of
24 me.
25 COFFEY, Q.C.:

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1 Q. Did you ask or cause any request to be made of
2 Eastern Health before this ad was run as to
3 whether or not the assertion that all patients
4 had been contacted was correct?
5 MR. THOMPSON:
6 A. No. Those doubts occurred to me in the
7 subsequent week.
8 COFFEY, Q.C.:
9 Q. So although there was some focus in this e-
10 mail exchange on that point, and making sure
11 that assurance was given -
12 MR. THOMPSON:
13 A. Yes.
14 COFFEY, Q.C.:
15 Q. - in fact, the focus perhaps amongst other
16 people including focus of Ms. Matthews on that
17 point, she wanted that emphasized. So you
18 knew, as the acting DM, and as a person who'd
19 been involved in drafting the Terms of
20 Reference, that whether or not people had all
21 been contacted was a point of some contention
22 or issue?
23 MR. THOMPSON:
24 A. Well, if we could bring up -
25 COFFEY, Q.C.:

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1 Q. In the public mind.
2 MR. THOMPSON:
3 A. But if we could bring up the Commission's
4 Terms of Reference and look at that point, it
5 might be a more--it might be a good
6 clarification as to what government wanted to
7 find out about communications, because I don't
8 think it was phrased to find out whether every
9 single person was contacted. It's a relevant
10 point within that context, as we were
11 concerned about communications.
12 COFFEY, Q.C.:
13 Q. It's included in the response by the -
14 MR. THOMPSON:
15 A. But the refinement of your question here is so
16 precise that it leads one to put more, I
17 think, attach more importance on the point
18 you're making than perhaps the general sense
19 in which it was felt at the time.
20 THE COMMISSIONER:
21 Q. Mr. Thompson, are you indicating you want to
22 see the Terms of Reference? Because we can
23 bring them up.
24 COFFEY, Q.C.:
25 Q. Sure, P-001.

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1 MR. THOMPSON:
2 A. It's not necessary. I think I've made my
3 point.
4 THE COMMISSIONER:
5 Q. Okay.
6 MR. THOMPSON:
7 A. Thank you.
8 COFFEY, Q.C.:
9 Q. And it's certainly included in that Terms of
10 Reference?
11 MR. THOMPSON:
12 A. The issue of determining whether patients were
13 communicated with in an appropriate and timely
14 manner, absolutely.
15 COFFEY, Q.C.:
16 Q. Yeah, and in fact, in terms of the database
17 that you eventually launched, that was one of
18 the key focuses of that whole database
19 exercise?
20 MR. THOMPSON:
21 A. Absolutely, because we were unnerved by that
22 point about the data.
23 COFFEY, Q.C.:
24 Q. So -- but as of your first involvement, your
25 first couple of days on the job --

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1 MR. THOMPSON:
2 A. Uh-hm.
3 COFFEY, Q.C.:
4 Q. This e-mail exchanges shows that you're
5 involved in vetting, as it were, an ad Eastern
6 Health wants to run. You provide input into
7 it.
8 MR. THOMPSON:
9 A. Um.
10 COFFEY, Q.C.:
11 Q. As do other senior officials in the
12 government. One of the points starting in
13 these e-mail exchanges is on that point as to
14 whether all patients have been contacted?
15 MR. THOMPSON:
16 A. That's correct.
17 COFFEY, Q.C.:
18 Q. You knew that at least in the public -- in the
19 media in the past there had been complaints or
20 concerns raised about whether or not that was
21 so?
22 MR. THOMPSON:
23 A. Yes, there were indications and questions
24 about that, but we didn't have any evidence at
25 that point in time to say to us that the

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1 assertions of Eastern Health, but there were
2 indications of a patient saying, "I wasn't
3 told", yes.
4 COFFEY, Q.C.:
5 Q. Yeah, and did you ask Eastern Health before
6 the ad was run, "Can I go out on a limb here,
7 is this true"?
8 MR. THOMPSON:
9 A. No, we believed in the assertions of Eastern
10 Health.
11 COFFEY, Q.C.:
12 Q. Okay. Now, sir, if we could, please, Exhibit
13 P-0958. Thank you, Registrar, 958. Now again
14 this is a series of e-mail exchanges involving
15 Ms. Hennessey and yourself on June 5th, 2007,
16 and in particular one at the bottom of the
17 page at 9:38 a.m, Ms. Hennessey writes to you,
18 "Robert, I had a call from Pat Pilgrim, CO,
19 all expressing some concern that a number of
20 people in the department are contacting
21 various people at Eastern on this issue. She
22 asked if we could streamline the number of
23 contacts. For your information, there are two
24 contacts on this file at Eastern; namely, Dr.
25 Howell and Ms. Predham. I would like to

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1 suggest that we name Bev Griffiths and Cathi
2 Bradbury as the two key contacts for this
3 department. That does not preclude you,
4 Tansy, or me from calling as needed. Are you
5 okay with this approach? Moira", and you
6 responded saying, "Absolutely. I can't
7 imagine who else is calling".
8 MR. THOMPSON:
9 A. Uh-hm.
10 COFFEY, Q.C.:
11 Q. So I take it early on in your tenure as acting
12 DM, there was this concern raised by Eastern
13 Health?
14 MR. THOMPSON:
15 A. Right.
16 COFFEY, Q.C.:
17 Q. Did you ever make any further inquiries about
18 what had led to this?
19 MR. THOMPSON:
20 A. No, just in responding to Moira, I can't
21 imagine who else is calling, but if there's a
22 perception over there that we're putting too
23 much of a burden and it needs to be
24 channelled, then that's fine.
25 COFFEY, Q.C.:

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1 Q. Okay. Well, then how then was that
2 information flow structured finally?
3 MR. THOMPSON:
4 A. As suggested by Moira, that seemed like a fine
5 way to structure.
6 COFFEY, Q.C.:
7 Q. Exhibit P-0231, please. This, I believe, we
8 looked at yesterday. This is an e-mail
9 exchange beginning on June 6th, 2007,
10 involving yourself. This is where you first -
11 - as you pointed out yesterday, the matter had
12 been raised, you understood, in the House of
13 Assembly by Mr. Reid making a complaint to the
14 effect that Eastern Health was misleading the
15 public in its full page ad?
16 MR. THOMPSON:
17 A. Uh-hm.
18 COFFEY, Q.C.:
19 Q. Which is the ad we just looked at, wasn't it?
20 MR. THOMPSON:
21 A. Right.
22 COFFEY, Q.C.:
23 Q. Or at least a version of the ad we were just
24 looking at.
25 MR. THOMPSON:

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1 A. Uh-hm.
2 COFFEY, Q.C.:
3 Q. And you note here in your response at 4:38
4 that the only possible remaining question is
5 whether some of the communications only went
6 to physicians, raising the possibility that
7 physicians did not contact patients. Why did
8 that occur?
9 MR. THOMPSON:
10 A. Well, at that point there was still some
11 semblance of belief in what Eastern Health was
12 saying that everyone on their list had been
13 contacted and that they could document that.
14 At some point during that process I had a --
15 in one of my conversations with George Tilley,
16 I had asked him the question, "George, are you
17 sure of that", and this would have been around
18 this day perhaps and the day or two prior to
19 it, and his response to me was, "Well, we have
20 spreadsheets and an enormous amount of
21 information and we can tell you exactly what
22 it is that has happened and every single
23 person has been contacted". So, you know,
24 there was assertions reinforcing that point,
25 but logic will tell you that if a letter is

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1 sent to a physician as the channel of contact
2 and there's a possibility if it's not -- if it
3 hasn't been confirmed, there's a possibility
4 that the follow through from the physician to
5 the patient may not have occurred and maybe
6 that's the source of some of the complaints
7 and information that certain patients hadn't
8 been contacted. So that was raising the
9 question from that point of view.
10 COFFEY, Q.C.:
11 Q. Now, sir, at the time this advertisement was
12 going to go into the newspaper -- I'll frame
13 the question this way, you, and there are
14 references in the material, at times have
15 expressed concerns about stating things in
16 absolute terms unless you are certain, unless
17 someone is as a civil servant --
18 MR. THOMPSON:
19 A. Uh-hm.
20 COFFEY, Q.C.:
21 Q. Concerned about saying all unless you are
22 certain "all" is the case.
23 MR. THOMPSON:
24 A. That's a good principle.
25 COFFEY, Q.C.:

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1 Q. Good principle, right, and you would have been
2 aware that there was such an assertion in the
3 advertisement?
4 MR. THOMPSON:
5 A. Yes.
6 COFFEY, Q.C.:
7 Q. The purpose of running the ad was to
8 communicate with whom?
9 MR. THOMPSON:
10 A. The patients.
11 COFFEY, Q.C.:
12 Q. Well, any patient who had already been
13 contacted would know that?
14 MR. THOMPSON:
15 A. That's right.
16 COFFEY, Q.C.:
17 Q. So really they weren't being told anything
18 they didn't already know?
19 MR. THOMPSON:
20 A. Fair point.
21 COFFEY, Q.C.:
22 Q. Then the other point, I take it, of the ad
23 would be to reassure everybody else that all
24 of those people had been contacted?
25 MR. THOMPSON:

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1 A. And to build some confidence generally in the
2 public, right.
3 COFFEY, Q.C.:
4 Q. In the public, yes, and though -- it would
5 have the effect, though, if there were
6 patients who had not been contacted, and who
7 knew that they were involved and had not been
8 contacted --
9 MR. THOMPSON:
10 A. Right.
11 COFFEY, Q.C.:
12 Q. Perhaps causing them some consternation?
13 MR. THOMPSON:
14 A. And in addition to that, patients who had
15 never been contacted and didn't know that they
16 were involved who would raise -- well, they
17 may not feel anything about it, but it would
18 be a category of people who might -- well,
19 they might feel that because they'd never been
20 contacted that they had no reason to worry
21 about their own condition.
22 COFFEY, Q.C.:
23 Q. Okay.
24 THE COMMISSIONER:
25 Q. Mr. Thompson, in the discussions that you

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1 referred to that you had with Mr. Tilley out
2 of which came the idea that perhaps you should
3 follow up on the physicians to determine
4 whether or not they had communicated, was
5 there an element explanation for why perhaps
6 within even Eastern Health's organization
7 people had been missed, and what I'm thinking
8 about is did Mr. Tilley talk to you about the
9 difficulty that they seemed to have within
10 their own records finding information,
11 identifying people, that kind of thing?
12 MR. THOMPSON:
13 A. Well, actually the conversations in the day or
14 two prior to this, Mr. Tilley was expressing a
15 large degree of confidence in the records that
16 they had and the tracking that they had done
17 with patients. His uncertainty about their
18 ability to track this data came after it
19 started to become clear that things weren't as
20 they were thought.
21 THE COMMISSIONER:
22 Q. Okay.
23 COFFEY, Q.C.:
24 Q. If I might assist in that regard,
25 Commissioner, and the witness, Exhibit P-0471.

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1 Now this is a series of e-mails again -- well,
2 not again, but it's between yourself and Mr.
3 Tilley and other people who had sent e-mails
4 to Mr. Tilley he had forwarded to you of June
5 7th, 2007.
6 MR. THOMPSON:
7 A. Right.
8 COFFEY, Q.C.:
9 Q. And if I could, please -- perhaps this will
10 help put the matter in perspective or assist.
11 The bottom of page two of the exhibit is an e-
12 mail from yourself, June 7th, at 12:37, the
13 subject is patient contact and you write, "We
14 keep on hearing through the media about
15 patients who say they were not contacted in
16 2005 about their retests, yet your media
17 material is clear that all", and "all" is in
18 caps, "retest patients were contacted in
19 October, 2005. How do we reconcile this? A
20 short reply would be appreciated as this may
21 arise in the House in an hour", and you sent
22 that via your Blackberry.
23 MR. THOMPSON:
24 A. Right.
25 COFFEY, Q.C.:

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1 Q. The point being you took -- made the effort to
2 capitalize "all" on your Blackberry at the
3 time.
4 MR. THOMPSON:
5 A. Right.
6 COFFEY, Q.C.:
7 Q. Notice that?
8 MR. THOMPSON:
9 A. Uh-hm.
10 COFFEY, Q.C.:
11 Q. So I take it you did so to emphasize the
12 point?
13 MR. THOMPSON:
14 A. Correct.
15 COFFEY, Q.C.:
16 Q. Then there's another e-mail internally by Mr.
17 Tilley to a number of people within Eastern
18 Health looking for a quick note, and then at -
19 - the same day at 1302 hours, Ms. Predham
20 writes again to Mr. Tilley and others within
21 Eastern Health, re; patient contact. She
22 says, "Hi, everyone. In October, 2005, all
23 patients that were identified at that time as
24 part of the retesting were contacted by our
25 department, QRM. These were calls to inform

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1 them that they were identified as ER negative
2 and will be retested. At the same time, ads
3 were put in the paper, media interviews were
4 held. The patient relations number was put in
5 the paper and patients were told if they had
6 questions or were not contacted by us to
7 please call us. Between our list and the
8 calls that we received, we felt we had a
9 comprehensive list of all those scheduled to
10 be retested. However, during the past two
11 years we have gotten an occasional call from
12 someone who did not make the original list.
13 There have been a variety of reasons. I must
14 note that we still get calls from people who
15 say they weren't called, but who are always ER
16 positive and not part of the retesting. When
17 the results came back, the patients who were
18 confirmed negative were notified by the
19 particular region. All patients whose results
20 were changed were notified by letter through
21 their physician. I hope this clarifies this".
22 Just go back to the bottom of page one of this
23 exhibit. Mr. Tilley apparently sends an e-
24 mail at 1:07 p.m, "Robert, attached is a reply
25 from our risk manager on the question you

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1 raised with respect to Burin, and we're in the
2 process of preparing a release for tomorrow".
3 In passing, I take it the Burin radiation
4 matter was going on parallel to this?
5 MR. THOMPSON:
6 A. Right.
7 COFFEY, Q.C.:
8 Q. And then there's an e-mail from yourself the
9 same day at 1:39 p.m. to Mr. Tilley regarding
10 the same subject and you write, "The return e-
11 mail has unnerved us. Let me explain", and
12 you write, "In December '06, Eastern Health
13 told the media that in October the patient
14 relations representative telephoned all
15 patients whose specimens were being sent away
16 for retesting". That's in quotes. "On May
17 18th, 2007, Eastern Health repeated this
18 message to the media", and that would be Mr.
19 Tilley's press conference.
20 MR. THOMPSON:
21 A. Right.
22 COFFEY, Q.C.:
23 Q. "On the basis of these confirmations from
24 Eastern Health, we assumed", and "we" in this
25 context would be the department?

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1 MR. THOMPSON:
2 A. Right.
3 COFFEY, Q.C.:
4 Q. And the government.
5 MR. THOMPSON:
6 A. Right.
7 COFFEY, Q.C.:
8 Q. "That the 763 patients whose samples were
9 retested were all called in October, 2005.
10 There has been some uncertainty on this point
11 because of patient statements in the media.
12 For example, Gerri Rogers is quoted in the
13 Independent in January, 2006, as saying they
14 haven't told me anything, nobody has contacted
15 me about anything, and then yesterday on VOCM
16 Open Line, Linda Swain summarized a caller as
17 saying, "But she got the letter she says --
18 she tells us in 2006, and she actually sent me
19 a copy of that letter that she got from
20 Eastern Health, so she just wanted to point
21 out that if there are indications that
22 patients were informed in 2005, that's not
23 necessarily the case. She wasn't informed
24 until 2006". You go on to say, "This is why
25 earlier today the response gives rise to more

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1 questions. Ms. Predham says, "In October,
2 2005, all patients that were identified at
3 that time as part of the retesting were
4 contacted by our department". She also says,
5 "Between our list and the calls that we
6 received, we felt we had a comprehensive list
7 of all those scheduled to be retested", and
8 she says, "However, during the past two years
9 we've gotten an occasional call from someone
10 who did not make the original list. There
11 have been a variety of reasons". "These three
12 statements are qualified statements", this is
13 your words?
14 MR. THOMPSON:
15 A. Right.
16 COFFEY, Q.C.:
17 Q. "Therefore, we need to receive from you this
18 afternoon the exact number of patients that
19 were contacted in October, 2005, out of the
20 total of 763. If there are any patients not
21 contacted in October, 2005, when were they
22 contacted since that time. As you can
23 appreciate, this is very important to
24 determine with great urgency. Please call me
25 when you have read this e-mail. Thanks,

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1 Robert". I take it by that point in time did
2 you have any real confidence in what Eastern
3 Health was telling you in this regard?
4 MR. THOMPSON:
5 A. It had been seriously compromised.
6 THE COMMISSIONER:
7 Q. Mr. Thompson, I take it that this is really
8 your articulation of the point you were coming
9 to regarding the information which had been
10 conveyed in respect of Eastern Health.
11 MR. THOMPSON:
12 A. That's correct.
13 THE COMMISSIONER:
14 Q. And your reasoning seems to be based on the
15 qualifications that slipping in to
16 communications -
17 MR. THOMPSON:
18 A. That's right.
19 THE COMMISSIONER:
20 Q. - although they might not be present in public
21 statements about what -
22 MR. THOMPSON:
23 A. This is the first time that I'd actually seen
24 qualifications or qualified statements, if you
25 like, from Eastern Health.

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1 THE COMMISSIONER:
2 Q. Okay.
3 MR. THOMPSON:
4 A. Up until that point, the assertions were
5 continued to be very confident.
6 COFFEY, Q.C.:
7 Q. Did you, at the point, ever ask Ms. Hennessey
8 any questions about what the basis for her
9 belief that everybody had been contacted up to
10 that point?
11 MR. THOMPSON:
12 A. I likely did. We would have been in
13 communication with each other at that time and
14 we would have all concurred that we're relying
15 upon assurances of Eastern Health.
16 COFFEY, Q.C.:
17 Q. If we could, please, to put this in context as
18 to what else is may be going on, exhibit P-
19 0960. Now, this is an e-mail from Elizabeth
20 Matthews to yourself, Mr. Wiseman and Tansy
21 Mundon. Now, would that be June 7 or July 6?
22 MR. THOMPSON:
23 A. I'm not sure.
24 COFFEY, Q.C.:
25 Q. Not sure.

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1 THE COMMISSIONER:
2 Q. Is there no standard in government about -
3 MR. THOMPSON:
4 A. I think the e-mail system generates the
5 standard. I just don't know which is which.
6 THE COMMISSIONER:
7 Q. I think you might find there's an ability to
8 change it.
9 MR. THOMPSON:
10 A. Oh really? Okay.
11 COFFEY, Q.C.:
12 Q. And anyway, Ms. Matthews, whichever it was -
13 MR. THOMPSON:
14 A. I'm sorry, then from context, it's probably
15 July.
16 COFFEY, Q.C.:
17 Q. July, yes. And because in fact, while we're
18 on that point, if we could bring up please,
19 Exhibit P-0233. This is an e-mail from
20 yourself to a number of individuals, Mr.
21 Crawley, Ms. Matthews, Ms. Hennessey, Ms.
22 Mundon and Mr. Wiseman. This 6/7/2007.
23 MR. THOMPSON:
24 A. Um-hm, that's June.
25 COFFEY, Q.C.:

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1 Q. So this would be June?
2 MR. THOMPSON:
3 A. Yes.
4 COFFEY, Q.C.:
5 Q. 2:51 p.m. So, there may well indeed be the
6 ability and I'll ask you now about P-0960,
7 whether June or July, whichever it is.
8 MR. THOMPSON:
9 A. I'm pretty certain it's July -
10 COFFEY, Q.C.:
11 Q. Yes, July, because of the content.
12 MR. THOMPSON:
13 A. Right.
14 COFFEY, Q.C.:
15 Q. And the content is, subject, "ATTIPA, access
16 to information protection of privacy act.
17 Requests related to hormone receptor tests.
18 And this an e-mail from Ms. Matthews to
19 yourself and others. "Hi Tansy. Please note
20 that the August 2006 note should be included
21 in the ATTIPA response regarding briefing
22 notes prepared for the minister. Although the
23 note was ultimately prepared for the Premier,
24 it was done so in consultation with the
25 department as well"--I think it should

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1 probably--"it is assumed that any note
2 prepared by a department on a particular issue
3 automatically goes to the minister of that
4 department. To exclude this note would be
5 disingenuous. So, it should be included in
6 the ATTIPA response (appropriate vetted by
7 officials, of course). Thanks. Signed, EM".
8 I will be coming to some of this a little
9 later, but what was this about? What was
10 going on in the background there?
11 MR. THOMPSON:
12 A. It was a request under the access to
13 information process for an array of documents.
14 I forget the exact phrasing of the request.
15 And so, right here, the question was, does the
16 August 18, 2006 briefing note that we
17 discussed yesterday, is that a note that
18 should be included under the phrasing of the
19 request? Does it fit? And the issue was,
20 well, is that a note that originated and was
21 for--originated for the Premier and delivered
22 to him? So, is that outside of the department
23 therefore or is it something that is possessed
24 by or belongs to the department instead and
25 should be included. So, that was the

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1 discussion that was under way.
2 COFFEY, Q.C.:
3 Q. And Ms. Matthews comments are, she's saying
4 include it, subject to whatever editing has to
5 be done.
6 MR. THOMPSON:
7 A. Yes.
8 COFFEY, Q.C.:
9 Q. In terms of that, do Cabinet notes prepared
10 for the Premier's office or for the Cabinet,
11 do they fall--are they discloseable under
12 ATIPP?
13 MR. THOMPSON:
14 A. Yes.
15 COFFEY, Q.C.:
16 Q. Whether or not it's for the Premier's officer
17 or otherwise?
18 MR. THOMPSON:
19 A. That's right. The note itself can be
20 disclosed, however if within the content of
21 the note there's--there might be an exception
22 of certain content of a note if it's advice to
23 a minister or advice to the Premier, but the
24 note itself is not barred,
25 COFFEY, Q.C.:

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1 Q. I suppose depending upon the contents of the
2 note you could just get, out of the date, a
3 lot of redaction and -
4 MR. THOMPSON:
5 A. Oh sure, absolutely. Now, it might be
6 worthwhile to clarify here, there's always
7 been and always with me, some uncertainty
8 about, was this a departmental note or was it
9 a Cabinet Secretariat note? And I think it
10 actually has elements, big elements of both
11 because most of the content ultimately was
12 sourced within the department and Eastern
13 Health, but there was a lot of polling from
14 Cabinet Secretariat and a lot of editing
15 involvement. So, there's sort of a shared
16 authorship here, but clearly it has its roots
17 inside the department.
18 COFFEY, Q.C.:
19 Q. That's that August 18, 2006 note.
20 MR. THOMPSON:
21 A. Correct, yes.
22 COFFEY, Q.C.:
23 Q. Okay. If we could, please, bring back up
24 please, Exhibit P-0233. Now, sir, in terms of
25 this, this is an e-mail from yourself to Mr.

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1 Crawley, Ms. Matthews, Ms. Hennessey, Ms.
2 Mundon and Mr. Wiseman. Now, you signed it at
3 the bottom of the--well, I suspect you don't
4 sign it. I take it your computer system
5 automatically generates -
6 MR. THOMPSON:
7 A. Correct.
8 COFFEY, Q.C.:
9 Q. - yourself as the Deputy Minister of the
10 Department of Health. So, would you have been
11 preparing this in that capacity as opposed to
12 Chair of the Task Force or Secretary to
13 Cabinet?
14 MR. THOMPSON:
15 A. Right.
16 COFFEY, Q.C.:
17 Q. So, it would be the DM's role?
18 MR. THOMPSON:
19 A. Right. Because it grew out of discussions
20 that we were having in preparing the minister
21 for question period. And so, in that
22 capacity, I'm acting at Deputy Minister and so
23 I signed it off that way. But the ownership
24 and what had and where I am for some of this
25 material as time goes on becomes very

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1 difficult to determine.
2 COFFEY, Q.C.:
3 Q. Sure. Now, and this particular one, you've
4 written, "talked to George and Heather
5 Predman" and the subject, of course, is ER/PR
6 and you sent it 2:51 p.m on the 7th of June.
7 You said "the key message is whether the
8 Eastern Health statements that all patients
9 were contacted in October 2005 is accurate.
10 The short answer is that every patient who
11 they had identified for retesting October 2005
12 was contacted by telephone at that time. The
13 long answer is that Eastern Health was
14 reasonably confident at that time that it had
15 identified everyone in the province that
16 needed retesting. The procedures to compile
17 the list included using various databases
18 within inside Eastern Health and calling other
19 health boards to obtain files and samples from
20 their own records. By October 2005 they felt
21 a comprehensive list was in hand. However, in
22 actual fact there was some flux in the list.
23 For example, some samples were for the same
24 person, so it drove the number of cases down.
25 Some additional results came in from St.

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1 Anthony late which drove the numbers up. Some
2 people responded to the advertisement that had
3 not been picked up in the various lists and
4 this also drove up the numbers. These upward
5 and downward adjustments occurred after
6 October 2005 and it is possible, Eastern
7 Health admits, that some of these people were
8 called. Another reason why some people were
9 not phoned is that the results were already
10 back from Mount Sinai and had been transmitted
11 to their oncologists. Given that these
12 oncologists were already meeting with
13 patients, the phone call was seen as
14 unnecessary. Yet, some of these patients may
15 not understand why a phone call was not made
16 (Heather says that Gerri Rogers falls into
17 this category). Given that the process was
18 non-routine and fast paced, exact totals at
19 each stage were not kept so the exact counts
20 each day cannot be reported now. The final
21 total of living people who were retested was
22 763 and this number was first reported,
23 according to Heather, in December, 2006. They
24 cannot report to us now what the number was in
25 October, 2005 and how much it oscillated in

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1 the following months, though the numbers are
2 small. In conclusion, we are informed by
3 Eastern Health that all people who have been
4 identified for retests by October, 2005 were
5 called in October, 2005, except for some
6 people whose results were already back from
7 Mount Sinai. Some more people, though we are
8 told it was a small number, were identified
9 after October, 2005 and may not have been
10 called. It is unfortunate that Eastern Health
11 did not raise these qualifications in their
12 media briefings because it leaves the
13 impression that 100 percent of the 763
14 retested patients were called when in actual
15 fact there is some degree of variation from
16 this absolute level. Furthermore, the total
17 of 763 was not known in October, 2005. It was
18 first used in December, 2006." Signed,
19 "Robert." And now, Mr. Thompson, by the time
20 you sent that e-mail--well, first of all,
21 having sent that e-mail did you get any
22 response from any of the people you sent it
23 to?
24 MR. THOMPSON:
25 A. I don't recall getting a response in writing,

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1 but certainly I would have discussed it with
2 the minister and perhaps others.
3 COFFEY, Q.C.:
4 Q. Okay. So by the time you sent this, you
5 understood what about whether or not all
6 patients, whether in October or otherwise, had
7 been contacted?
8 MR. THOMPSON:
9 A. Well, we understood that the information that
10 the minister had conveyed in the House of
11 Assembly, for example, was inaccurate and thus
12 the source of his information was inaccurate,
13 not intentionally so, clearly, but based on
14 the assertions that had been made to him.
15 Same with the advertisement, that--and so we
16 had to stop using that, we had to do some
17 investigation to determine objectively what
18 the true state of affairs was so that that
19 could start to form the basis of information
20 to the public and, of course, to the
21 Commission.
22 COFFEY, Q.C.:
23 Q. Was any thought given at the time to running a
24 comparable advertisement to inform the public
25 of what you'd found and your conclusion?

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1 MR. THOMPSON:
2 A. These were early days. We didn't have a good
3 handle on the extent of the error, and so I
4 don't think any thought was given to putting
5 out an advertisement at that time.
6 COFFEY, Q.C.:
7 Q. Okay. What about to making a public
8 announcement?
9 MR. THOMPSON:
10 A. Right.
11 COFFEY, Q.C.:
12 Q. To that effect?
13 MR. THOMPSON:
14 A. Right.
15 COFFEY, Q.C.:
16 Q. Whether advertisement or otherwise, was any
17 thought given to that?
18 MR. THOMPSON:
19 A. I don't recall any thought being given to
20 that.
21 COFFEY, Q.C.:
22 Q. Do you recall whether the minister at the
23 time, you know, that day or in the weeks
24 following publicly expressed the misgivings
25 voiced by you here?

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1 MR. THOMPSON:
2 A. I don't recall when, actually, the first time
3 that we would have expressed publicly
4 misgivings. I know that in November, of
5 course, we did a data release on some of the
6 interim results. My sense is that prior to
7 that there was public knowledge that, but I
8 don't recall exactly what it is that we
9 communicated and when.
10 COFFEY, Q.C.:
11 Q. So you can't recall when it was that the
12 government first acknowledged publicly that,
13 well, something that you had, a conclusion,
14 you didn't know the exact numbers for quite a
15 considerable period of time afterward, but the
16 conclusion you had reached by June 7th, that
17 afternoon, that this was unreliable?
18 MR. THOMPSON:
19 A. Right.
20 COFFEY, Q.C.:
21 Q. The government--you can't recall when the
22 government finally came out and said -
23 MR. THOMPSON:
24 A. No, I don't know.
25 COFFEY, Q.C.:

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1 Q. Can you explain why the government, from your
2 perspective, as the deputy minister at the
3 time, delayed doing so?
4 MR. THOMPSON:
5 A. Well, I guess we didn't think about it as a
6 delay in doing so. I'm not sure that we
7 formulated it as a question that needed to be
8 communicated until we had a clearer
9 understanding of what was ahead of us in
10 identifying the true numbers. So that became
11 the focus of our attention.
12 COFFEY, Q.C.:
13 Q. Was the idea ever discussed about perhaps
14 asking people, you know, public way, the
15 public medium, to contact Eastern Health to
16 ascertain and I just did the check on anybody
17 who had breast cancer, you know been diagnosed
18 since 1997 to contact a particular central
19 agency. At least that way if there were some
20 people who were missed by one of the regions
21 identifying patients, then at least it might
22 be picked up in some other database. Any
23 thought given to that at that time.
24 MR. THOMPSON:
25 A. Well, we would have been aware that there were

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1 already phone numbers for people to call if
2 they had any questions on this and that people
3 were self identifying throughout the process.
4 I'm not sure that we processed that question
5 that you're asking in quite that way, but we
6 certainly would have been aware of that.
7 COFFEY, Q.C.:
8 Q. In other words, invite people to--because this
9 self identifying is one thing, it's another
10 thing entirely to invite people.
11 MR. THOMPSON:
12 A. Our effort went into trying to reconstruct
13 what had happened.
14 COFFEY, Q.C.:
15 Q. Sure.
16 MR. THOMPSON:
17 A. We applied--perhaps we'll get into that now,
18 but we can -
19 COFFEY, Q.C.:
20 Q. Yes, I'm going to. Sir, if we could please at
21 Exhibit P-0235. Now, this is an e-mail of
22 yours, June 11, 2007 at 10:37 a.m. to Mr.
23 Wiseman. The subject is ER/PR and you write,
24 "regarding what the department in the months
25 after October 2005, I can confirm that we knew

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1 the following about the number of retests base
2 don briefing notes. I have not yet seen the
3 Eastern Health briefing material". And you
4 give out a series of dates and numbers.
5 MR. THOMPSON:
6 A. Right.
7 COFFEY, Q.C.:
8 Q. And ending with February 23, 2006, 939 total.
9 "From this information, we can conclude that
10 we had corporate memory that the 763 living
11 patients could not have all been called in
12 October 2005. The question thus moves to
13 whether all people were called at the time
14 they were added to the list of if timing
15 considerations were such that they were called
16 by their doctors with the results. Eastern
17 Health will be providing us with their records
18 today to show when the calls were made. It
19 may take a day or so to validate the issue.
20 Signed, Robert".
21 So, when you say here to Mr. Wiseman on
22 Jun 11, "we can conclude that we had corporate
23 memory that the 763 living patients could not
24 have all been called in October 2005".
25 MR. THOMPSON:

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1 A. Um-hm.
2 COFFEY, Q.C.:
3 Q. Can you translate that into kind of plain
4 english. What does that mean?
5 MR. THOMPSON:
6 A. Sure. What is means is that if we had taken
7 all of these notes out and assembled side by
8 side like it's done here, we would have drawn
9 the conclusion that all people could not have
10 been contacted by October of '05 as had been
11 asserted in some of the material. But it
12 wouldn't have answered the question, perhaps,
13 that others that--rather than tying it to
14 October '05 that perhaps as people were added
15 to the list that they may have been called to
16 say were added to the list. And when I say
17 the term "corporate memory" it doesn't mean
18 that any one individual actively contained it
19 within their conscious memory at that time,
20 but we had a sufficient number of records to
21 draw this conclusion.
22 COFFEY, Q.C.:
23 Q. I take it, is another way of saying that,
24 look, if anybody had sat down and done the
25 exercise that I, Robert, did leading up to

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1 June 11 in a short period of time you had
2 been, probably from June 7 through the 11,
3 anybody had sat down within the department and
4 actually done that exercise -
5 MR. THOMPSON:
6 A. Right.
7 COFFEY, Q.C.:
8 Q. - they would have arrived at the same
9 conclusion you have?
10 MR. THOMPSON:
11 A. I think so.
12 COFFEY, Q.C.:
13 Q. In that regard. I take it in terms of the
14 management of the department, you would have
15 discussed this aspect of the matter with them,
16 Ms. Hennessey -
17 MR. THOMPSON:
18 A. With others--I didn't send this e-mail to
19 anyone else other than the minister, so I'm
20 not sure how much I would have discussed with
21 others, but likely, given that were discussing
22 these things every day.
23 COFFEY, Q.C.:
24 Q. Have you ever given any explanation as to why
25 apparently no one within the department had

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1 noticed it?
2 MR. THOMPSON:
3 A. Well, if I'd been given an explanation, I'm
4 certain that it would have been that no one
5 had been asked or thought it necessary -
6 COFFEY, Q.C.:
7 Q. To play detective.
8 MR. THOMPSON:
9 A. - to link all these things together.
10 COFFEY, Q.C.:
11 Q. To act as a detective, effectively.
12 MR. THOMPSON:
13 A. Right. This is an unusual activity that we're
14 involved in here because our confidence in the
15 data had been reduced.
16 COFFEY, Q.C.:
17 Q. Exhibit P-0961 please. This is an e-mail on
18 June 11, 2007 at 10:59 a.m. The same e-mail
19 that you had at 10:37 sent to Mr. Wiseman.
20 MR. THOMPSON:
21 A. Right.
22 COFFEY, Q.C.:
23 Q. You, at 10:59 forwarded that to Brian Crawley
24 for his information.
25 MR. THOMPSON:

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1 A. Right, and still, of course, Secretary to
2 Cabinet for health issues. I have a
3 relationship with Executive Council and the
4 Premier's office through that.
5 COFFEY, Q.C.:
6 Q. And in any case, I take it, it would have been
7 important for the Premier's Chief of Staff to
8 be aware -
9 MR. THOMPSON:
10 A. Absolutely.
11 COFFEY, Q.C.:
12 Q. - the department had had corporate memory that
13 that October '05 contact statement was
14 inaccurate.
15 MR. THOMPSON:
16 A. Right.
17 COFFEY, Q.C.:
18 Q. If we could, please, Exhibit P-0236. This is
19 again following up on that June 11, 10:37 a.m.
20 e-mail you had sent to Mr. Wiseman, this is
21 one from Mr. Wiseman back to you the next day
22 at 16 minutes past midnight -
23 MR. THOMPSON:
24 A. Um-hm.
25 COFFEY, Q.C.:

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1 Q. - into June 12. He writes, "Robert, as a
2 follow up to our earlier conversation re:
3 info. I need for a meeting with the Premier,
4 is it possible to have it by tomorrow for a
5 meeting tomorrow night"? He sent it by his
6 BlackBerry. Did you provide that information?
7 MR. THOMPSON:
8 A. Well, I know that you asked Mr. Wiseman about
9 this and I don't think he recalled what that
10 meeting was about or even having a meeting.
11 What I recall about this actually is -
12 COFFEY, Q.C.:
13 Q. That's where I'm going is do you recall -
14 MR. THOMPSON:
15 A. Yes, is that this information actually was on
16 a completely different topic.
17 COFFEY, Q.C.:
18 Q. Okay.
19 MR. THOMPSON:
20 A. He had asked me for information on initiatives
21 and plans within the department other than the
22 ER/PR.
23 COFFEY, Q.C.:
24 Q. And the meeting did occur with the Premier or
25 -

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1 MR. THOMPSON:
2 A. I'm not sure if the meeting occurred, but I
3 was needed to supply information to the
4 minister.
5 COFFEY, Q.C.:
6 Q. And you weren't in attendance?
7 MR. THOMPSON:
8 A. No.
9 COFFEY, Q.C.:
10 Q. Okay. If we could -
11 THE COMMISSIONER:
12 Q. He was coming back as a reply to your e-mail
13 in respect of ER/PR.
14 MR. THOMPSON:
15 A. Right.
16 THE COMMISSIONER:
17 Q. In fact, he was replying about another
18 subject.
19 MR. THOMPSON:
20 A. Correct.
21 COFFEY, Q.C.:
22 Q. And I take it, just on that point, because
23 it's sent via BlackBerry, was it your
24 experience that Mr. Wiseman had used the
25 BlackBerry very much in terms of to -

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1 MR. THOMPSON:
2 A. Oh yes, we went back and forth on BlackBerry
3 from time to time, sure.
4 COFFEY, Q.C.:
5 Q. Exhibit P-0236 please. Now sir, this is an e-
6 mail--I apologize--right exhibit, wrong page.
7 This is an e-mail from yourself to Ms.
8 Hennessey, Ms. Mundon and Mr. Wiseman dated
9 June 14, 2007 at 8:59 a.m.. The subject is
10 "feedback on lab testing". And your write,
11 "Blair Fleming talked to Oscar Howell about
12 our questions. These questions focused on
13 what did Eastern Health do after the June 2003
14 letter about the remaining problems at the
15 Eastern Health labs. Dr. Howell essentially
16 repeated what he told Moira earlier in the
17 day. One, stopped rotating staff and focused
18 on two to three people to improve their
19 technical skills. Two, switch to the semi-
20 automatic Ventana system. And three,
21 concentrated the testing in one area of the
22 facility to reduce risks. Dr. Howell said in
23 response to Dr. Fleming's questions that these
24 improvements were done mainly to address the
25 ER/PR situation. Therefore, the changes were

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1 not focused on the other antibodies that were
2 the subject of tests addressed in the letter
3 or the other types of cancer mentioned in the
4 letter (eg. prostate). He said that the focus
5 was on ER/PR and because there was an index
6 case that converted from negative to positive
7 which started the ball rolling on everything
8 else. But there was no such index case for
9 other types of tests. However, he notes that
10 the improvements directed toward ER/PR testing
11 would generally cause improvements in other
12 related tests in immunohistochemistry. These
13 answers give rise to other questions. As the
14 letter point out, lab weaknesses related to
15 five or six tests other then ER/PR and given
16 the lack of focus on these tests, in
17 particular, is it possible that there were
18 unacceptable errors in these other tests that
19 should have been investigated retrospectively.
20 If they had been investigated and an error
21 rate established, then there would be a
22 benchmark for assessing improvements due to
23 the new lab procedures. The significance of
24 this question and the implication that other
25 cancer patients may not have received

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1 appropriate treatment, if error rates were
2 high is dependent on a better understanding of
3 how these tests are used and whether they play
4 as critical a role in treatment decision as
5 does ER/PR. Dr. Fleming will give us more
6 perspective on this question. In regard to
7 the other question on whether only breast
8 cancer patients were tested for ER/PR and a
9 possibility that other ER/PR tests for breast
10 cancer patients were not retested, Dr. Howell
11 says that ER/PR is not used for other cancers
12 than breast cancer. (When I received that
13 answer, I gave Dr. Fleming more details about
14 how we discovered that ER/PR might be used for
15 other than breast cancer and he will do
16 another follow-up on this question). Signed,
17 Robert".
18 Now sir, can you tell the Commissioner
19 what this was about? When you first come
20 across this topic and how you arrived here.
21 MR. THOMPSON:
22 A. Sure, yes. In these first couple of weeks in
23 the department and with questioning still
24 under way in the House of Assembly, we were
25 focussing ourselves on a better understanding

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1 of all the issues that occurred to us and
2 asking question and trying to anticipate
3 questions as well that might arise. And so in
4 doing that, we had a closer look at the notes
5 and the memo that Dr. Ejeckam had sent and
6 authored back in 2003. They had surfaced in
7 the House of Assembly in late May. And so
8 around this time we're getting back to these
9 memos and saying, what's the role of these?
10 What do they say? What other questions might
11 exist? And the one question that jumped out
12 at us is that Dr. Ejeckam initially had stated
13 that there are eight stains, eight IHC stains
14 that are erratic. Then there's a passage of
15 time when--or the lab is closed or the testing
16 has stopped, I should say. And then the
17 testing restarts and he only talks about
18 ER/PR, that solutions have come about and he
19 talks about the resumption of ER/PR testing.
20 So, the question -
21 COFFEY, Q.C.:
22 Q. I'm sorry, so at this point, did you just have
23 one of his memos or the three of them at that
24 point.
25 MR. THOMPSON:

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1 A. I think we had all of them.
2 COFFEY, Q.C.:
3 Q. Okay, I'm sorry, go ahead.
4 MR. THOMPSON:
5 A. And so, but still, in that material, I think
6 it only says that only ER/PR--or it only talks
7 about ER/PR in relation to the presumption of
8 testing. So, the question we had for
9 ourselves was what happened--what analysis,
10 what confidence can we have in the resumption
11 of testing with these other stains and as this
12 notes says, should there have been any
13 retrospective testing either at that time or
14 perhaps even now given that we've been in
15 engaged in retrospective testing on ER/PR.
16 Now, of course, I don't have a medical
17 background, so it's just a question that we
18 pose in our group that meets each day. And so
19 we initially asked Moira to follow with Dr.
20 Howell and then I also followed through by
21 using Dr. Blair Fleming who is one of the
22 departmental physicians, asking him to take
23 these questions to Dr. Howell at Eastern
24 Health so that doctors can talk to doctors and
25 perhaps talk the same language and translate

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1 back to us, are there any concerns? Is there
2 anything else that should be done? Is
3 everything okay with regard to these stains?
4 COFFEY, Q.C.:
5 Q. And in terms of that, I take it this group
6 that was sitting around looking at this, I
7 don't say you were doing it in a leisurely
8 manner, but sitting around examining these
9 memos, that didn't include a doctor -
10 MR. THOMPSON:
11 A. In the meetings that we were having?
12 COFFEY, Q.C.:
13 Q. Yes, initially.
14 MR. THOMPSON:
15 A. Well, in some meetings--no, at that occasion,
16 I don't think that we had doctors present.
17 And these would be meetings where we would
18 brief the minister, prepare him for question
19 period. So, we didn't have a doctor present.
20 COFFEY, Q.C.:
21 Q. So, what I'm alerting to here is that you, as
22 a lay person, just looking at those three
23 memos, kind of jumped out to you, well, there
24 are eight stains, the first memo. The second
25 memo talks about resuming testing in two of

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1 them.
2 MR. THOMPSON:
3 A. Right.
4 COFFEY, Q.C.:
5 Q. The third memo doesn't talk about any of the
6 stains per se as to what the status is.
7 MR. THOMPSON:
8 A. Right.
9 COFFEY, Q.C.:
10 Q. And you know, well, what happened to the other
11 six.
12 MR. THOMPSON:
13 A. Right.
14 COFFEY, Q.C.:
15 Q. Looking at this particular page, you note
16 that--in the last sentence you write, in
17 brackets, (when I receive that answer)--and
18 that was, I take it, Dr. Howell--(asserting
19 that ER/PR is not used for other cancers than
20 breast cancer). You say, "when I received
21 that answer, I gave Dr. Fleming more details
22 about how we discovered that ER/PR might be
23 used for other than breast cancer. And he
24 will do another follow-up on this question".
25 Who's "we" and what are you referring to

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1 there?
2 MR. THOMPSON:
3 A. I'm not sure who I was referring to there.
4 One is having many conversations with many
5 people and someone clearly had told us that
6 ER/PR might be use for other than breast
7 cancer. So, the two pieces of information
8 weren't coinciding. So, I asked Dr. Fleming
9 to follow-up on that as well.
10 COFFEY, Q.C.:
11 Q. And you don't recall who brought that to your
12 attention.
13 MR. THOMPSON:
14 A. No, I don't recall. I do know though, further
15 down the road, as we engaged the Centre for
16 Health Information to look at, to construct
17 the database, we did encounter that ER/PR
18 tests that were that were done for other than
19 breast cancer.
20 COFFEY, Q.C.:
21 Q. Yes. And do you know if any of those
22 particular ER/PR tests--that class, the ER/PR
23 tests done for tissue samples other than
24 breast cancer--do you know if any of those
25 were ever retested?

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1 MR. THOMPSON:
2 A. Yes. Well, it's a small proportion of tests.
3 And I've been told maybe to four to five
4 percent of all ER/PR tests are done for other
5 than breast cancer. And I think some of them
6 may have been retested perhaps--but that
7 wasn't the intention. The intention was, sort
8 of the criterion for retesting was to retest
9 breast cancer samples.
10 COFFEY, Q.C.:
11 Q. So, was it you understanding then in terms of
12 the retest effort--and I appreciate you came
13 to this very late -
14 MR. THOMPSON:
15 A. Yes.
16 COFFEY, Q.C.:
17 Q. - in the day in that regard. You acquired the
18 understanding that about four or five percent
19 of all ER/PR tests are for non-breast cancer -
20 MR. THOMPSON:
21 A. And I acquired that understanding perhaps
22 several months later.
23 COFFEY, Q.C.:
24 Q. Oh yeah, I appreciate that, but you have
25 acquired that understanding.

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1 MR. THOMPSON:
2 A. Yes.
3 COFFEY, Q.C.:
4 Q. And it's your understanding that in that four
5 or five percent of all ER/PR tests conducted -
6 MR. THOMPSON:
7 A. Right.
8 COFFEY, Q.C.:
9 Q. - or processed at the General Hospital that
10 not all of those ER/PR tissue samples have
11 been retested.
12 MR. THOMPSON:
13 A. That's my impression, that all of them have
14 not been and I sought an explanation on that
15 as well.
16 COFFEY, Q.C.:
17 Q. Sure. And what were you told in that regard?
18 MR. THOMPSON:
19 A. I'm told that ER/PR for breast is a very
20 important test because it's directly linked.
21 It's the primary indicator of the kind of
22 therapy that would follow for a breast cancer
23 patient and that in some circumstances, for
24 non-breast cancer, cervical cancer for
25 example, there may be a--this test may be done

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1 to help the pathologist identify the origin or
2 the source of the tumour and therefore it's
3 used more in identification of the kind of
4 tumour that one is looking at, and that it's
5 not an indicator of treatment. So that's the
6 understanding, that's the impression I've
7 developed, and just to add to that point,
8 that's why when we found out--well, that's why
9 when we found out that it wasn't a criterion
10 for retesting that they would be excluded, yet
11 it followed the same logic and that when--
12 well, that's the key point, I guess. So they
13 were excluded for that reason.
14 COFFEY, Q.C.:
15 Q. So you identified it, in terms of an anomaly
16 initially in terms of -
17 MR. THOMPSON:
18 A. Right.
19 COFFEY, Q.C.:
20 Q. - the statement all versus perhaps not all,
21 and then you investigated or made inquiries
22 and this is what you were told?
23 MR. THOMPSON:
24 A. Correct.
25 COFFEY, Q.C.:

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1 Q. Okay, and the explanation came from medically
2 trained personnel?
3 MR. THOMPSON:
4 A. Um-hm.
5 COFFEY, Q.C.:
6 Q. If we could, please, Exhibit P-0236, page
7 four? I think I have it up there. Just a
8 second now. Yes, this is an e-mail--well,
9 actually it's two e-mails. One is from
10 yourself on June 14th at 10:13 a.m. simply
11 forwarding the one below it to Ms. Hennessey,
12 Ms. Mundon and Mr. Wiseman. It's supplemental
13 information about immunohistochemistry tests,
14 and the e-mail you had forwarded had come to
15 you that morning, 9:27 a.m., from Blair
16 Fleming who had written "good morning, Robert.
17 Dr. Howell left me a voice mail message with
18 additional information relating to the two
19 questions we asked him yesterday. One, re:
20 improvements in the lab. There are no
21 documents describing the issue or the actions
22 taken in response other than those we already
23 have," and I'm going to stop there. I take it
24 that that is in relation to the issue or the
25 actions taken in response to the 2003 memos?

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1 Is that -
2 MR. THOMPSON:
3 A. No, I think what he's referring to, in
4 addition to that--no, sorry, you're right.
5 There's no additional documents describing
6 what Dr. Ejeckam had raised or actions taken
7 about those issues, other than those that we
8 had. That's right.
9 COFFEY, Q.C.:
10 Q. Okay, and at that point, you had what?
11 MR. THOMPSON:
12 A. Well, we had minutes from a quality committee.
13 We had a memo from Dr. Ejeckam to Terry
14 Gulliver, head of the lab, and I think that
15 may be it.
16 COFFEY, Q.C.:
17 Q. Okay, so that series, the three e-mails and a
18 couple of--I'm sorry, the three memos -
19 MR. THOMPSON:
20 A. Yes.
21 COFFEY, Q.C.:
22 Q. - of Dr. Ejeckam and I believe it's two
23 minutes of the Surgical Pathology Review
24 Committee.
25 MR. THOMPSON:

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1 A. Right.
2 COFFEY, Q.C.:
3 Q. And those documents didn't actually spell out
4 what, if anything, was done to address the
5 problem?
6 MR. THOMPSON:
7 A. No. It noted the lab was--or the testing was
8 stopped, adjustments were made, testing
9 reopened, but then in the memo where he was
10 making recommendations to Mr. Gulliver about
11 what--to maintain a high quality testing there
12 were a number of statements there that would
13 lead one to believe the kinds of things that
14 were adjusted while the lab was closed.
15 COFFEY, Q.C.:
16 Q. And now you go on--I'm sorry, Dr. Blair
17 Fleming when on to say to you, number two, re:
18 immunohistochemistry tests other than ER/PR,
19 he writes "there are two classes of stains,
20 class one and class two. ER and PR are class
21 two. The ER/PR measurement is the sole test
22 used when determining the hormone
23 responsiveness of a breast cancer. The other
24 antibodies referred to in Dr. Ejeckam's memo
25 involve class one stains. They are largely

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1 related to investigation of lymphomas. Class
2 one immunohistochemistry testing is used in
3 conjunction with two other tests, flow
4 cytology and the actual tumour cytology. So
5 the outcome of the investigation does not
6 depend entirely on the immunohistochemistry
7 testing. As has already been stated, there
8 were no index cases to suggest there were
9 problems in cancers other than breast cancer.
10 I will be following up with Eastern Health
11 officials this morning in an effort to obtain
12 more information on these questions and any
13 other uses of ER/PR tests." Okay.
14 The second last paragraph, the assertion
15 there were no index cases to suggest there
16 were problems in cancers other than breast
17 cancer. I take it, did you understand that to
18 have an index case, you actually have to
19 retest something? In this context, you'd
20 actually have to conduct--to identify some -
21 MR. THOMPSON:
22 A. What I understood by the term "index case" is
23 that an initial case where it shows that
24 there's an inaccurate test with a consequence
25 for a patient.

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1 COFFEY, Q.C.:
2 Q. And generally, in this context, to ascertain
3 that there has been an initial inaccurate test
4 -
5 MR. THOMPSON:
6 A. Yes.
7 COFFEY, Q.C.:
8 Q. - there would generally have to be a second
9 test?
10 MR. THOMPSON:
11 A. Right.
12 COFFEY, Q.C.:
13 Q. A retest of some sort?
14 MR. THOMPSON:
15 A. Right, yes, fair enough.
16 COFFEY, Q.C.:
17 Q. And so you're being advised here that there
18 were no index cases in relation to these other
19 six stains. Did you infer from that, because
20 there had been no retesting?
21 MR. THOMPSON:
22 A. I simply inferred into it that--well, first of
23 all, that particular part of the paragraph
24 didn't seem to me to be the most weighty
25 reason why one wouldn't do retrospective

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1 retesting. But nonetheless, it was a factor,
2 it appeared, in Eastern Health's belief that
3 no need to follow up on those stains because
4 there was no index case, no initial case that
5 showed--that displayed a reason why or that
6 testing, these other kinds of tests might not
7 be operating properly. So I didn't regard it
8 as a very persuasive factor, but one of the
9 factors.
10 And by the way, I've since come to learn
11 that you can find an index case without
12 actually having to retest, and I think Dr.
13 Flynn's later memo spells that out in more
14 detail.
15 COFFEY, Q.C.:
16 Q. And for other reasons, you can--other clinical
17 reasons, perhaps, you can figure out, somebody
18 fresh eyes coming to it can say or -
19 MR. THOMPSON:
20 A. Sure.
21 COFFEY, Q.C.:
22 Q. - or conclude that that first test result
23 can't be right, in light of what is now
24 apparent?
25 MR. THOMPSON:

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1 A. Right.
2 COFFEY, Q.C.:
3 Q. But one of the ways also of doing it is just
4 simply to do a retest?
5 MR. THOMPSON:
6 A. Yes.
7 COFFEY, Q.C.:
8 Q. And if you're confident that the retest is
9 more accurate than the first one, then you
10 have your index case.
11 MR. THOMPSON:
12 A. Right.
13 COFFEY, Q.C.:
14 Q. Did you ever make any inquiries, in relation
15 to this, while I'm on the topic here, as to
16 why there had been no retesting done of ER/PR
17 patients in 2003, in light of the wording in
18 Dr. Ejeckam's memos? Ever ask anybody about
19 why there was no retesting in 2003?
20 MR. THOMPSON:
21 A. Well, I have had several rounds of discussions
22 with, for example, Dr. Howell and Dr. Denic
23 and the sense was--I'm not sure we
24 specifically discussed it in that way, why,
25 and get an exact reason, but the sense I had

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1 is that people were satisfied with the
2 corrections made in the lab and just carried
3 on. Oh yes, and as this says, there wasn't a
4 specific error leading to a clinical
5 consequence, a patient consequence, that would
6 have ignited a retrospective review. So it's
7 those kinds of general statements is what I've
8 come to understand.
9 COFFEY, Q.C.:
10 Q. Now sir, I mean, you've looked at Dr.
11 Ejeckam's--certainly the initial memo of April
12 4th 2003, the one where he's advising for now
13 going to discontinue using these eight stains.
14 He talks about them being, I believe the words
15 are erratic, unreliable. So you never raised-
16 -you've never raised with Dr. Denic or anyone
17 else from Eastern Health about how, in 2003,
18 if a memo like that was sent to all
19 pathologists and it's addressed to all
20 pathologists, you never raised with anybody
21 about well, having received that sort of a
22 memo advising, as Dr. Ejeckam's perspective,
23 that's the conclusion he had reached about the
24 unreliability of such stains, you never asked
25 any of the medical staff "why didn't you

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1 conduct retests then if a fellow pathologist
2 is telling you that?" You've never asked them
3 that?
4 MR. THOMPSON:
5 A. Well, as I said, I have had discussions with
6 these physicians, actually on this issue of
7 the other stains and in the context of that,
8 that issue would have been discussed, but I
9 was going through, I guess, trying to
10 investigate and detect explanations on that,
11 but I did gain the impression--not trying to
12 evade, just trying to give you an accurate
13 sense of the impression I gained that they
14 felt with the problem corrected at the time,
15 with no clear evidence that there were people
16 who had suffered a clinical consequence of any
17 errors in the past, that it wasn't an event
18 that was going to cause them to do retesting.
19 So that's an impression I come away with
20 today, and so that's as best as I can answer
21 you.
22 COFFEY, Q.C.:
23 Q. And we'll be talking to them eventually, in
24 the context of this, but in terms of yourself
25 as the acting DM of the day, I'm just trying

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1 to get some sense of, from your perspective in
2 approaching this, and -
3 MR. THOMPSON:
4 A. But it's important that it's--at that stage in
5 time, which is after the Commission has been
6 appointed and I'm trying to track down certain
7 questions that perhaps aren't within the--that
8 will be helpful to the Commission, but one of
9 the specific questions in the Terms of
10 Reference of the Commission is to determine if
11 the problem could have been detected before.
12 COFFEY, Q.C.:
13 Q. Oh yes, and -
14 MR. THOMPSON:
15 A. And so in my relationship with these people, I
16 had a number of questions, but I wasn't going
17 to try to do the work of the Commission in my
18 own meetings.
19 COFFEY, Q.C.:
20 Q. Although you did see fit to ask about the
21 other six stains?
22 MR. THOMPSON:
23 A. Yes, because these were other than ER/PR.
24 COFFEY, Q.C.:
25 Q. Yes, and I take it that the motivation or

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1 motivator for you so asking, in the middle of
2 June 2007, was that it had certainly occurred
3 to you that you wanted some assurance that
4 there weren't going to be clinical
5 consequences that could now be addressed for
6 these patients, if there were any such
7 consequences?
8 MR. THOMPSON:
9 A. Well, and if there were, and another testing
10 process needed to occur, well that should come
11 out. So these are initial questions to see if
12 there's a larger review that needs to be done.
13 COFFEY, Q.C.:
14 Q. Thank you. If we could, please, Exhibit P-
15 0474? Now this is a couple of e-mails on June
16 15th 2007, one at 3:16 p.m. from Don MacDonald
17 to Bev Griffiths and copied to Ms. Pilgrim,
18 "follow up to meeting this morning," and then
19 the one from Ms. Pilgrim to Mr. Tilley and
20 others in Eastern Health is "a follow up to
21 meeting this morning re: NLCHI meeting and
22 ER/PR database."
23 Now sir, and I appreciate this is not
24 copied to you, but it's--the originator of the
25 original e-mail here is from Don MacDonald,

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1 director of research and evaluation,
2 Newfoundland and Labrador Centre for Health
3 Information. Now who's Don MacDonald?
4 MR. THOMPSON:
5 A. Well, he was -
6 COFFEY, Q.C.:
7 Q. Other than being that person.
8 MR. THOMPSON:
9 A. Sure, he's a--works for the Centre for Health
10 Information as one of their senior managers,
11 and he would be the contact person for me to
12 assemble a team and to undertake the project
13 to bring together the ER/PR database.
14 COFFEY, Q.C.:
15 Q. So whose idea was it to create this database?
16 MR. THOMPSON:
17 A. It was my idea to do it, to reach out to a
18 well-regarded third party to come in and
19 essentially rebuild the data within Eastern
20 Health so as to understand clearly how many
21 cases were there, who was contacted and when,
22 and to get some, well, clear insight into the
23 progress of the overall retesting exercise.
24 COFFEY, Q.C.:
25 Q. And I take it that you wanted somebody such as

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1 NLCHI to do this because you were not prepared
2 to rely upon Eastern Health's own records in
3 that regard?
4 MR. THOMPSON:
5 A. Well, it was important--yeah, at this stage,
6 there's a confidence issue, not in Eastern
7 Health overall, of course, but a confidence
8 issue in the data.
9 COFFEY, Q.C.:
10 Q. Sure.
11 MR. THOMPSON:
12 A. And so we can't have the department go in--
13 well, we don't have the capacity to take on a
14 database project with the kind of statistical
15 complexity that we might anticipate finding
16 here. We can't--we shouldn't turn to Eastern
17 Health because they are the people who has
18 assembled the data in the first place. So a
19 very logical place to turn is NLCHI because
20 they worked on health data and information all
21 the time.
22 COFFEY, Q.C.:
23 Q. And I take it that the--your initial function
24 that this database was going to--or might
25 perform was what?

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1 MR. THOMPSON:
2 A. Well, the trigger -
3 COFFEY, Q.C.:
4 Q. The focus.
5 MR. THOMPSON:
6 A. -I think we've missed part of the story line,
7 I think, if I could go back.
8 COFFEY, Q.C.:
9 Q. Sure.
10 MR. THOMPSON:
11 A. After I had written the memo to the Minister
12 regarding the qualified statements we had
13 found in Eastern Health, we thought that it
14 would not take long at all to go--to send a
15 couple of our officials over to Eastern Health
16 and look at the spreadsheets that existed and
17 assemble some tables to let us know when the
18 contact took place with patients over time and
19 if there were any people that had not been
20 contacted, then that would become evident. In
21 fact, we thought it would take an afternoon at
22 the time. And so these folks went over and
23 came back then.
24 COFFEY, Q.C.:
25 Q. And these are people from the department?

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1 MR. THOMPSON:
2 A. Correct, yes, they work in the Board Services
3 Division, and experienced people, and they
4 went over and quickly ascertained that the
5 data didn't exist in a format that was going
6 to be easily transcribed into tables for
7 analysis. They found that there were multiple
8 spreadsheets, multiple--some information was--
9 well, it wasn't all electronic. Some of it
10 was just on paper and multiple pieces of
11 paper, and so definitions may not be the same
12 from spreadsheet to spreadsheet.
13 At that stage, we didn't have--I'm not
14 suggesting to you that it was too large a task
15 to take on. It wasn't that. It's just that
16 we couldn't--these two people couldn't do it
17 in an afternoon, so we said "yeah, there's
18 more work here that needs to be done to
19 assemble this into a good high quality
20 database that all parties can rely on," and so
21 that's when we went to the Centre and asked
22 them to participate in this.
23 COFFEY, Q.C.:
24 Q. So these two individuals were whom?
25 MR. THOMPSON:

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1 A. Bev Griffiths and Derek Penney.
2 COFFEY, Q.C.:
3 Q. And so when they came back, they came back and
4 spoke to you?
5 MR. THOMPSON:
6 A. Yes.
7 COFFEY, Q.C.:
8 Q. After they went to Eastern Health?
9 MR. THOMPSON:
10 A. Yes.
11 COFFEY, Q.C.:
12 Q. Do you recall what it was they told you?
13 MR. THOMPSON:
14 A. Well -
15 COFFEY, Q.C.:
16 Q. About the state of -
17 MR. THOMPSON:
18 A. More or less as I described it just then.
19 COFFEY, Q.C.:
20 Q. So they come back and tell you that some of it
21 is electronic, some of it is -
22 MR. THOMPSON:
23 A. The spreadsheets are generated presumably from
24 electronic software.
25 COFFEY, Q.C.:

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1 Q. Some of it is handwritten?
2 MR. THOMPSON:
3 A. Right.
4 COFFEY, Q.C.:
5 Q. The spreadsheets, kind of handwritten
6 spreadsheets?
7 MR. THOMPSON:
8 A. Or some notes that are included in a file,
9 multiple files, some of it in boxes, but not
10 all integrated and connected so that one can
11 generate new tables from it.
12 COFFEY, Q.C.:
13 Q. Did they express any surprise?
14 MR. THOMPSON:
15 A. Yes, they were somewhat surprised.
16 COFFEY, Q.C.:
17 Q. Did they use any adjectives to describe their
18 overall assessment of it?
19 MR. THOMPSON:
20 A. Well, surprised that the data wasn't in better
21 format.
22 COFFEY, Q.C.:
23 Q. And you then, in reaching out to NLCHI or
24 asking NLCHI to get involved, how long did you
25 expect that it might take them?

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1 MR. THOMPSON:
2 A. Just perhaps before I go--you know, I don't
3 want to leave the impression that Eastern
4 Health could not answer questions based on the
5 data that they had or that there wasn't a
6 significant amount of effort that had gone
7 into it, because ultimately NLCHI uses their
8 spreadsheets as the foundation for completing
9 their work. But it just wasn't in a format
10 which was going to be useable for the kinds of
11 questions that we had.
12 COFFEY, Q.C.:
13 Q. Sure, and I take it the information you
14 understood was there, but it was just so
15 disparate and prepared at different times,
16 arguably for different purposes at times?
17 MR. THOMPSON:
18 A. Right.
19 COFFEY, Q.C.:
20 Q. So NLCHI then, you reached out to them. How
21 long did you understand it was going to take
22 them initially?
23 MR. THOMPSON:
24 A. I think my recollection is that we were hoping
25 it would be completed within two to four

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1 weeks.
2 COFFEY, Q.C.:
3 Q. How long, in fact, did it take?
4 MR. THOMPSON:
5 A. About six or seven months.
6 THE COMMISSIONER:
7 Q. Mr. Coffey, before we go too far down the data
8 line, would be this a convenient place to take
9 the morning break?
10 COFFEY, Q.C.:
11 Q. Yes, in fact, I was just going to look up and
12 request that, please.
13 THE COMMISSIONER:
14 Q. All right. We'll take 15 minutes.
15 (BREAK)
16 THE COMMISSIONER:
17 Q. Please be seated. Mr. Coffey?
18 COFFEY, Q.C.:
19 Q. Thank you, Commissioner. Exhibit, yes, P-
20 0474? Now at this point, Mr. MacDonald, I
21 take it he's advising Bev Griffiths of this,
22 you certainly would have become aware of
23 certainly the contents of this?
24 MR. THOMPSON:
25 A. Um-hm.

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1 COFFEY, Q.C.:
2 Q. The informational component. Here, in the
3 last paragraph, he says "while I have only
4 just started to review what is required of
5 this database, I have gained some insight into
6 its complexities through two meetings with the
7 ministry and Eastern Health officials. Based
8 on this, I would estimate that it could take
9 between six to ten weeks to develop the
10 database, and where possible, fill in any data
11 gaps. Example, event dates. A more accurate
12 time frame could be provided once we begin
13 building the database and the scope is fine
14 tuned. As you're aware, there are many
15 unknowns at this point and it is possible that
16 many cases will need to be investigated
17 individually. Nevertheless, I thought I
18 should put this estimate on the table as early
19 as this in case expectations were for a much
20 shorter period of time."
21 And sir, in the middle of June of 2007,
22 as you indicated at first it was--your first
23 sense was a couple of weeks?
24 MR. THOMPSON:
25 A. That's what we had hoped for, yes.

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1 COFFEY, Q.C.:
2 Q. And it was before this?
3 MR. THOMPSON:
4 A. I presume so, yes.
5 COFFEY, Q.C.:
6 Q. And then Mr. MacDonald was a person who
7 actually would have some experience -
8 MR. THOMPSON:
9 A. Yes.
10 COFFEY, Q.C.:
11 Q. - hands-on experience in this, gets involved
12 and by June 15th, he's telling the Department
13 of Health personnel that it's going to be six
14 to ten weeks.
15 MR. THOMPSON:
16 A. Um-hm.
17 COFFEY, Q.C.:
18 Q. And he does posit here that "there are many
19 unknowns and it is possible that many cases
20 will need to be investigated individually."
21 See that, that's the second last sentence?
22 MR. THOMPSON:
23 A. Right.
24 COFFEY, Q.C.:
25 Q. What did you understand that to relate to, or

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1 that sort of notion?
2 MR. THOMPSON:
3 A. I may not have given it any thought.
4 Sometimes in--if I could infer now that what
5 he probably meant was that we may know--have
6 some data on an individual, but be missing
7 other aspects of data, so to have a complete
8 database, there may be a lot of detective work
9 to fill in gaps.
10 COFFEY, Q.C.:
11 Q. And now again to help put this in, you know,
12 from your perspective, in context for the
13 Commissioner, in the middle of June, up to
14 that point, and you have indicated that, of
15 course, you were, by then, acutely aware that
16 there were concerns from your perspective on
17 whether or not all patients had been
18 contacted?
19 MR. THOMPSON:
20 A. Right.
21 COFFEY, Q.C.:
22 Q. Were there any concerns by that point in time
23 about whether all patients had been identified
24 for retesting?
25 MR. THOMPSON:

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1 A. No -
2 COFFEY, Q.C.:
3 Q. That arose, I take it, did arise afterwards?
4 MR. THOMPSON:
5 A. It did arise after. At that point it might
6 have been a hypothesis or might have been one
7 of those questions one might say, well, maybe
8 this could be answered, but it wasn't a
9 concern of ours.
10 COFFEY, Q.C.:
11 Q. Do you recall when that became a concrete
12 concern?
13 MR. THOMPSON:
14 A. The best I can recall would be sometime in
15 July, perhaps towards the end of July that
16 NLCHI would have said to us in general terms,
17 we may yet find some people in here in our
18 effort that are ER/PR negative that should
19 have been retested but weren't. So there was
20 a general concern that we might find cases
21 like that.
22 COFFEY, Q.C.:
23 Q. And when did the first such concrete cases
24 actually -
25 MR. THOMPSON:

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1 A. I don't recall the exact date that the first
2 cases came to our attention.
3 COFFEY, Q.C.:
4 Q. Do you recall the geographic location?
5 MR. THOMPSON:
6 A. Well, there are several geographic locations
7 but the one of greatest prominence, if you
8 like, is Carbonear and that there's a group of
9 cases in the Carbonear area that were missed.
10 Missed is a loaded term, but, you know, let me
11 say it without attaching any meaning to it.
12 COFFEY, Q.C.:
13 Q. Were not identified the first time round?
14 MR. THOMPSON:
15 A. Right, were no identified, thank you, the
16 first time round and should have been.
17 COFFEY, Q.C.:
18 Q. And would this have been in August or
19 September of '07 that you became aware of
20 that, around that time?
21 MR. THOMPSON:
22 A. That's right, August, September.
23 COFFEY, Q.C.:
24 Q. Thank you. So if we--now here in the second-
25 last paragraph or the middle paragraph of this

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1 e-mail, because Mr. MacDonald has suggested in
2 the first paragraph different approaches to
3 what master list might be used. He says,
4 "Regardless of what master list is used, one
5 staff member at the centre will need
6 authorization to review clinical records via
7 Meditech as well as other documents that may
8 be relevant to the development of the
9 database. The ministry will need to request
10 from Eastern Health approval for this access."
11 MR. THOMPSON:
12 A. Um-hm.
13 COFFEY, Q.C.:
14 Q. What was that about?
15 MR. THOMPSON:
16 A. Well, whenever they engage in research,
17 there's--they have to observe appropriate
18 approach to the privacy of information that
19 belongs to patients and within the records of
20 a health authority. And the minister has the
21 authority to allow, or to obtain access to
22 data, and so he was, wanted to--Don wanted to
23 make sure that we had all the appropriate
24 authorities lined up in order to allow the

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1 centre to have access to that information.
2 COFFEY, Q.C.:
3 Q. Had you, up to this point in time, had any
4 prior experience in dealing with NLCHI
5 yourself?
6 MR. THOMPSON:
7 A. Yes.
8 COFFEY, Q.C.:
9 Q. Okay. In what context?
10 MR. THOMPSON:
11 A. Well, as deputy minister -
12 COFFEY, Q.C.:
13 Q. Oh, back -
14 MR. THOMPSON:
15 A. - in between '01 and '03 I had many encounters
16 and involvement with the centre and its
17 personnel then and so this, they were quite
18 familiar with me.
19 COFFEY, Q.C.:
20 Q. And you actually would have, like Mr.
21 MacDonald, then, you would have known them -
22 MR. THOMPSON:
23 A. I knew him, yes, yes.
24 COFFEY, Q.C.:
25 Q. - personally, okay. If we could, please,

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1 Exhibit P-0128? Page 49, please, when you're
2 ready? Now, this is a news release, Health
3 and Community Services news release, June
4 20th, 2007. "Centre for Health Information
5 Act Proclaimed." What was this about?
6 MR. THOMPSON:
7 A. Well, the early evolution of the centre was,
8 I'm going back here now perhaps four or five
9 years, was that there was a recognized need in
10 the health system for one entity, one body to
11 have expertise and capacity and resources to
12 generate and analyze health information on
13 behalf of the health authorities as well as
14 the government, and a lot of reporting has to
15 be done to national agencies, as well, to
16 produce national statistics, so the Centre for
17 Health Information was created as an entity
18 that would serve that function. But its legal
19 status was not as a corporate entity at that
20 point in time. We created it as an
21 administrative unit that operated with its own
22 board, but was housed within the Health Care
23 Corporation of St. John's for purposes of
24 budgeting and other kinds of administration,
25 always with the intent that it would assume a

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1 separate autonomous legal status. And, in
2 fact, I was working on this in 2003 when I was
3 at the department creating, helping create
4 legislation to convent the centre into its own
5 Crown corporation. Legislation, I forget when
6 it went through the House of Assembly, but by
7 this time here we were in a position to
8 proclaim, to proclaim it into law.
9 COFFEY, Q.C.:
10 Q. So the actual centre itself, as a division
11 within the then Health Care Corporation of St.
12 John's would have dated back to the late '90s
13 or in early 2000s?
14 MR. THOMPSON:
15 A. Yeah, yeah.
16 COFFEY, Q.C.:
17 Q. Okay.
18 MR. THOMPSON:
19 A. Before I arrived at the department in '01.
20 COFFEY, Q.C.:
21 Q. And I say that because there's a reference in
22 the quotation in the third-last paragraph, "I
23 would like particularly--I would particularly
24 like to thank Eastern Health and its CEO,
25 George Tilley, and Elizabeth Davis, CEO of the

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1 former Health Care Corporation." Ms. Davis
2 had been gone at that -
3 MR. THOMPSON:
4 A. Yes.
5 COFFEY, Q.C.:
6 Q. Around 2000?
7 MR. THOMPSON:
8 A. Right.
9 COFFEY, Q.C.:
10 Q. Okay. So its genesis dated back to that time?
11 MR. THOMPSON:
12 A. Right.
13 COMMISSIONER:
14 Q. Was this genesis for the purpose of Eastern
15 Health or -
16 MR. THOMPSON:
17 A. No.
18 COFFEY, Q.C.:
19 Q. - wider, it was always wider?
20 MR. THOMPSON:
21 A. It was always provincial mandate.
22 COFFEY, Q.C.:
23 Q. And under what legislation or authority it had
24 been operating before the Act was proclaimed?
25 MR. THOMPSON:

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1 A. As I understand it, it didn't have any
2 independent legislation so I'm not sure
3 whether you can--it was simply--one can assume
4 it's part of the Hospitals Act and just an
5 administrative division of one entity. That
6 would be my guess.
7 COFFEY, Q.C.:
8 Q. So you had worked on the health--sorry, the
9 Centre for Health Information Act, like that
10 actual piece of legislation back when you had
11 been deputy minister before?
12 MR. THOMPSON:
13 A. Correct.
14 COFFEY, Q.C.:
15 Q. In 2001 to 2003?
16 MR. THOMPSON:
17 A. Right.
18 COFFEY, Q.C.:
19 Q. Did it pass the house when you were back, back
20 at that time?
21 MR. THOMPSON:
22 A. No, so it passed in between when I was in
23 Executive Council.
24 COFFEY, Q.C.:
25 Q. Do you know, did you make any inquiries in

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1 June of 2007 as to how long it had been passed
2 but unproclaimed, like why now the
3 proclamation?
4 MR. THOMPSON:
5 A. It's just that its time was ready. I didn't
6 make any inquiries because it was a natural
7 progress of events over time.
8 COFFEY, Q.C.:
9 Q. And the need then to proclaim it was what, why
10 would -
11 COMMISSIONER:
12 Q. Sorry.
13 COFFEY, Q.C.:
14 Q. I apologize.
15 COMMISSIONER:
16 Q. Go ahead. No, no, ask your question and then
17 I'll -
18 MR. THOMPSON:
19 A. Well, the act of proclamation turns a bill of
20 the legislature into law so that the centre
21 can actually function as a legal entity. It's
22 really a formality in many ways, but it's a
23 formality that needs to be done in order to
24 create the law.
25 COFFEY, Q.C.:

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1 Q. Okay. I'm sorry.
2 COMMISSIONER:
3 Q. Just in terms of the purpose of this
4 organization interests me in the sense of its
5 ability to deal with information.
6 MR. THOMPSON:
7 A. Sure.
8 COMMISSIONER:
9 Q. And to track events as a potential for quality
10 issues, actually.
11 MR. THOMPSON:
12 A. Right.
13 COMMISSIONER:
14 Q. And you indicated that it does assist in, for
15 example, gathering information for reports
16 which institutions have to file, they probably
17 think in vast numbers and why do we have to
18 file them, but that's beside the point, they
19 do. Would the group then merely collate
20 information that would be provided to them by
21 Eastern Health or is there any opportunity for
22 this group to influence how information is
23 gathered, stored, what information is stored
24 within an institution?
25 MR. THOMPSON:

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1 A. Um-hm. All of those things. I'll take you
2 through three or four parts of this. At its
3 core there's the function of obtaining health
4 records from the health authorities and
5 merging them, making sure definitions are all
6 sorted out and then filing reports to national
7 statistical agencies to produce provincial and
8 national data. Some of that is used for
9 tracking of health status, for example, of the
10 population of Canada and subregions, so
11 there's that function. There's an additional
12 function of undertaking analytical reports or
13 trend reports for purposes of this province.
14 So sometimes you'll see reports from this
15 group on a specific topic that analyzes
16 patterns and trends to highlight the progress
17 of the province in dealing with a certain
18 disease entity or a certain part of health
19 status, so that's helpful to health managers
20 and health policy makers. Another function is
21 to engage in contract research or project
22 research like this issue that we're dealing
23 with now, to take on a task for a health
24 authority or the provincial government or to
25 work, or to collaborate with university-based

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1 researchers, because academic researchers will
2 find the databased held by the centre
3 extraordinarily valuable for their own work,
4 and so there'll be a lot of collaboration
5 there. And then finally, and perhaps becoming
6 more and more important, the centre is perhaps
7 the chief agent in the province for the
8 creation of the electronic health record. And
9 this is a long-term project going back now at
10 least six or eight years and still a lot of
11 work to be done to create the architecture and
12 the on the ground technology, all the software
13 that's necessary to insure that every
14 individual citizen, that their medical
15 information, that is, their pharmaceutical
16 information, all the prescriptions that they
17 have, for example, both ideally in the
18 community as well as inside an institution, to
19 link together lab and diagnostic imaging
20 information, and there's other categories that
21 are all interrelated. But in the end the idea
22 will be to have every citizen can have an
23 electronic health record that can be accessed
24 by their providers at the point of care. And
25 that way there'll be reliable and accurate

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1 information rather than just having to rely on
2 one's memory and having to rely on records
3 that are kept in various places. So this is a
4 major function right now of the centre.
5 COMMISSIONER:
6 Q. And I presume if an electronic health record
7 is being created, then a lot of work is going
8 into the nature of the data which would be
9 collected in the various institutions and that
10 kind of thing?
11 MR. THOMPSON:
12 A. Right, yeah.
13 COMMISSIONER:
14 Q. Because one of things which at this particular
15 level, and I recognize we're not yet into the
16 specifics of some of the information that will
17 come sooner or later, but there seems to be
18 some suggestion that, for example, the
19 Meditech system was not very helpful in this
20 process.
21 MR. THOMPSON:
22 A. Um-hm.
23 COMMISSIONER:
24 Q. Now, that could be for a number of different
25 reasons, one of which could be the Meditech

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1 system does not record some of the kind of
2 information that you would have wanted in this
3 case?
4 MR. THOMPSON:
5 A. Um-hm.
6 COMMISSIONER:
7 Q. Another reason might be that the Meditech
8 system wasn't properly being used?
9 MR. THOMPSON:
10 A. Um-hm. That's right.
11 COMMISSIONER:
12 Q. So I'm not necessarily suggesting that that
13 system could not work for maintaining better
14 records, I'm just saying in this case it would
15 seem, and we're told that there was a problem
16 because the Meditech system in one hospital
17 didn't seem to blend easily with a Meditech
18 system in another hospital. Once again,
19 presumably further information will come on
20 that. But would part of the work being done
21 by the centre, for example, involve looking at
22 a central method for the whole of the province
23 for keeping records, whether you're in an
24 institution or whether all your records are in
25 some family physician's office and you'd never

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1 been to a hospital in your life?
2 MR. THOMPSON:
3 A. Right. It is in sofar as they're working on
4 this electronic health record project and
5 therefore that project needs to drive some
6 commonality down into the regional health
7 authorities to make sure that the data that is
8 transferred into the record and is linked
9 together that it all makes sense and that all
10 these moving parts are, they're all speaking
11 to each other properly, so the Centre for
12 Health Information has some influence in that
13 respect. Meditech is part of the foundation
14 of ultimately the electronic health record
15 because the Meditech contains within it
16 fragments of patient records, so that needs to
17 be pulled in. Meditech is a good system. And
18 I think you're right that some of the problems
19 we've seen here are not so much flaws with
20 Meditech but perhaps the functionality that's
21 actually been built around Meditech to insure
22 that it can--that one can draw reports out of
23 it that are relevant to the matter at hand.
24 So--but, yes, the centre's mandate can assist
25 in getting commonality and defining what kinds

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1 of records should be kept and what the
2 definitions are to be, the reporting
3 frequency, all of those kinds of things. But
4 each RHA also has an information technology,
5 information management capacity for managing
6 its own needs and NLCHI doesn't take over. It
7 is not the IT--it's not in charge of IT in all
8 these institutions, but it is a major
9 influence in what they do.
10 COMMISSIONER:
11 Q. Would there be an advantage to having a
12 mandated system for IT within such
13 institutions to deal with large projects or
14 would--are large projects so rare that you
15 wouldn't want to go down that road?
16 MR. THOMPSON:
17 A. Yeah. I may not be the best person to ask
18 that, it's outside my area of expertise. But
19 my sense of it is is that any entity like a
20 regional health authority, they need to have
21 control over all of the functions that go on
22 within that, whether it be finance, human
23 resources, information technology, clinical
24 systems, so it operates better as an entity
25 that way. But as a provincial system, we do

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1 need to have uniformity and we need to have
2 some influence over the data that's collected,
3 so it's perhaps a combination of both.
4 COMMISSIONER:
5 Q. All right. Thank you.
6 COFFEY, Q.C.:
7 Q. Who would be?
8 MR. THOMPSON:
9 A. Who would be?
10 COFFEY, Q.C.:
11 Q. The person -
12 MR. THOMPSON:
13 A. Oh, to talk to about that?
14 COFFEY, Q.C.:
15 Q. Yeah.
16 MR. THOMPSON:
17 A. Well, I think the--there's several different
18 places to look. One would be the office of
19 the chief information officer who would have
20 some expertise. Another would be the CEO of
21 NLCHI, Mike Barron, who has--who's been a
22 driver, a key driver in the electronic health
23 record. And then there are IT professionals
24 in each of the RHAs.
25 COFFEY, Q.C.:

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1 Q. And how does the Centre for Health
2 Information, which I take it is the actual
3 name of the -
4 MR. THOMPSON:
5 A. Yes.
6 COFFEY, Q.C.:
7 Q. - organization? How does that relate to
8 NLCHI?
9 MR. THOMPSON:
10 A. That's the same thing.
11 COFFEY, Q.C.:
12 Q. Same, okay, it's the same in terms of that.
13 No, I just--because -
14 MR. THOMPSON:
15 A. Sure.
16 COFFEY, Q.C.:
17 Q. It apparently uses the same?
18 MR. THOMPSON:
19 A. It's a lot of background, sure.
20 COFFEY, Q.C.:
21 Q. - you know, myself and others. But in terms
22 of the Centre for Health Information vs NLCHI
23 and--that phrase is used continuously, NLCHI
24 is?
25 MR. THOMPSON:

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1 A. Yes.
2 COFFEY, Q.C.:
3 Q. Throughout this.
4 MR. THOMPSON:
5 A. It's exactly the same thing.
6 COFFEY, Q.C.:
7 Q. Same thing. So what does it actually go by
8 now?
9 MR. THOMPSON:
10 A. It's the Newfoundland and Labrador Centre for
11 Health Information. You've called it NLCHI, I
12 typically say NLCHI, it's all the same thing.
13 COFFEY, Q.C.:
14 Q. And so if we hear in this on a go forward
15 basis Centre for Health Information or NLCHI
16 or NLCHI -
17 MR. THOMPSON:
18 A. Correct.
19 COFFEY, Q.C.:
20 Q. It's, they're all one and the same?
21 MR. THOMPSON:
22 A. Correct.
23 COFFEY, Q.C.:
24 Q. How does the Cancer Registry, do you know,
25 relate to, I'll call it the Centre for Health

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1 Information?
2 MR. THOMPSON:
3 A. I can't -- I don't have knowledge of that
4 particularly.
5 COFFEY, Q.C.:
6 Q. In the context of your involvement in this
7 matter, what if any involvement or exposure
8 have you had to the Cancer Registry?
9 MR. THOMPSON:
10 A. The only exposure I've had to it is that I
11 know that it was one potential source of
12 information to feed into the database to fill
13 in gaps or records that might otherwise have
14 not been available through Eastern Health or
15 the ER/PR data that Eastern Health was
16 assembling.
17 COFFEY, Q.C.:
18 Q. Has there been any concern expressed to you
19 about any gaps or inadequacies in the Cancer
20 Registry database?
21 MR. THOMPSON:
22 A. It's been said to me that the Cancer Registry
23 may not be a complete source of data on all
24 cancer patients in the province, but I don't
25 know the extent to which that's the case.

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1 COFFEY, Q.C.:
2 Q. Do you recall who it was who informed you of
3 that?
4 MR. THOMPSON:
5 A. I think it would have been the people within
6 NLCHI who were working on the database.
7 COFFEY, Q.C.:
8 Q. In the course of their reporting to you on
9 what they were doing --
10 MR. THOMPSON:
11 A. Correct.
12 COFFEY, Q.C.:
13 Q. They would have made that comment to you, and
14 that would be, I take it, Mr. MacDonald --
15 MR. THOMPSON:
16 A. Dr. Alaghehbandan.
17 COFFEY, Q.C.:
18 Q. Alaghehbandan, and Reza, I think, is the way
19 he's --
20 MR. THOMPSON:
21 A. Reza.
22 COFFEY, Q.C.:
23 Q. Reza is the way he's referred to routinely.
24 MR. THOMPSON:
25 A. And Tracy Chislett.

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1 COFFEY, Q.C.:
2 Q. Okay. Now, sir, if we could, please, Exhibit
3 P-0964. Now this is a -- it's a couple of e-
4 mails of June 26th, 2007. Actually, I'll go
5 to the first in the line. I apologize. It's
6 an e-mail from George Tilley to Don MacDonald
7 and other people, re; access to information
8 ER/PR. It says, "Further to the
9 correspondence below, this will confirm my
10 approval for you to access information related
11 to the database for patients who are involved
12 in the ER/PR testing with the Health Care
13 Corporation of St. John's/Eastern Health".
14 Signed, George.
15 MR. THOMPSON:
16 A. Uh-hm.
17 COFFEY, Q.C.:
18 Q. Now this is his approval?
19 MR. THOMPSON:
20 A. Correct.
21 COFFEY, Q.C.:
22 Q. Which was thought to be necessary --
23 MR. THOMPSON:
24 A. And appropriate.
25 COFFEY, Q.C.:

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1 Q. And appropriate. Now, sir, there's an e-mail
2 then from Mr. MacDonald passing that on at
3 11:04 a.m. to various individuals within
4 Eastern Health, I believe. It's that and more
5 because Mr. MacDonald writes, "Hello all. As
6 per George's e-mail below, the Centre has been
7 granted approval for access to relevant
8 information necessary for developing the
9 database for patients who are involved in the
10 ER/PR testing with the Health Care Corporation
11 of St. John's/Eastern Health. My senior
12 research associate", Dr -- Reza, I'm going to
13 refer to him as, and I understand he finds
14 that acceptable, "will work with me on this
15 initiative. As a first step, I've been asked
16 to prepare a scoping document for the Deputy
17 Minister outlining the steps and timelines for
18 completing the project. To do this, the Centre
19 will need access to the hard copy documents
20 that Heather has gathered and were discussed
21 at our earlier meeting. Several options are
22 possible and I'm looking to Heather and Pat
23 for guidance. One is I have allocated a
24 secure office in my department for this work
25 to be carried out. We could have the "boxes"

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1 brought to the Centre. Two, we could have
2 Reza copy all the documents and have these
3 copies delivered to the Centre. Three, Reza
4 could do some preliminary work down at
5 Southcott Hall if a secure area was available.
6 This is not my first option as other resources
7 will be required, and this is best done out of
8 the Centre. Also to be considered is our
9 preliminary estimate puts this project in the
10 six to ten week frame category. These are but
11 three possibilities". He then says,
12 "Heather/Pat, could you let me know the best
13 way for accessing these documents". Then when
14 we look up at the top of the page here, Mr.
15 Barron, who is the CEO, I take it, of the
16 Centre for Health Information?
17 MR. THOMPSON:
18 A. Right.
19 COFFEY, Q.C.:
20 Q. Forwarded it on to you that day.
21 MR. THOMPSON:
22 A. Right.
23 COFFEY, Q.C.:
24 Q. I take it that then by the end of June, you
25 realized that this was going to involve moving

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1 boxes of documents around?
2 MR. THOMPSON:
3 A. Right.
4 COFFEY, Q.C.:
5 Q. And wading through the documents presumably to
6 construct the database?
7 MR. THOMPSON:
8 A. I should as well that with George Tilley's
9 approval there, it's an indication of their
10 complete collaboration of the effort.
11 COFFEY, Q.C.:
12 Q. Oh, yes.
13 MR. THOMPSON:
14 A. And we encountered a great deal of cooperation
15 from the people working in Eastern Health.
16 COFFEY, Q.C.:
17 Q. If we could look, please, at Exhibit P--965.
18 Actually it's two e-mails of June 26th, 2007.
19 One at 2:01 p.m. from Mr. Coates, Reg Coates
20 to yourself. He says, "I've started reviewing
21 the ER/PR access request. It is likely that
22 we will be disclosing at least some material.
23 Given that you are the Task Force, should I
24 prepare a final response for signature by the
25 Minister. Technically speaking, an ADM cannot

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1 sign an access request disclosure letter. The
2 ATIPP Act says the Minister. The
3 Interpretation Act allows the DM to sign on
4 his/her behalf", and you responded by saying,
5 "Yes, the Minister". I take it that you're
6 telling Mr. Coates to prepare the response for
7 Mr. Wiseman's signature?
8 MR. THOMPSON:
9 A. Right, exactly.
10 COFFEY, Q.C.:
11 Q. In that regard, the reference to you are the
12 Task Force, what was --
13 MR. THOMPSON:
14 A. Just meant that I'm the single person Task
15 Force.
16 COFFEY, Q.C.:
17 Q. So either yourself or Mr. Wiseman could have
18 signed the response, though, to the --
19 MR. THOMPSON:
20 A. In my capacity as Deputy Minister, I could
21 have signed that off, yes. I guess Reg was
22 thinking that perhaps I didn't have that
23 capacity, but indeed I did.
24 COFFEY, Q.C.:
25 Q. If we could, please, Exhibit P-0966. Now this

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1 is an e-mail, June 28th, 2007, 7:44 p.m. from
2 yourself to Ms. Maddigan, Joy Maddigan, and
3 Reginald Coates, and you write, "Reg, George
4 Tilley called about the ATIPP request which
5 they are completing. They wanted to know how
6 we were approaching it in the department. I
7 told him to have his people call you, Reg,
8 about how we interpret the Act in regard to
9 specific documents. He is very concerned that
10 some of this disclosure will have an impact on
11 the way medicine is practised. In addition,
12 would you ensure while I'm away that the
13 Minister is well briefed on this file as we
14 approach disclosure date and also Cabinet
15 Secretariat". Thanks, Robert. So -- and it's
16 copied to Ms. Hennessey and Ms. Mundon. I
17 take it, sir, at least at that point you were
18 planning a vacation?
19 MR. THOMPSON:
20 A. Correct.
21 COFFEY, Q.C.:
22 Q. And the references to the conversation you had
23 with Mr. Tilley about this, first of all do
24 you recall what Mr. Tilley said that led you
25 to conclude "he's very concerned that some of

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1 this disclosure will have an impact on the way
2 medicine is practised".
3 MR. THOMPSON:
4 A. Right. There was an ATIPP request around that
5 time dealing with the disclosure of all of the
6 patient records that are included in the --
7 that have been retested with -- but anonymized
8 to remove any identifying information, and the
9 -- I don't have all the timing exactly here,
10 but Eastern Health had initially refused to
11 release that information on the basis that it
12 was private information.
13 COFFEY, Q.C.:
14 Q. So was this before your involvement?
15 MR. THOMPSON:
16 A. As I understand it, yes.
17 COFFEY, Q.C.:
18 Q. Go ahead, I'm sorry.
19 MR. THOMPSON:
20 A. There was an appeal -- sorry, the Privacy
21 Commissioner was asked to review this decision
22 of Eastern Health. The Commissioner felt that,
23 no, it was a reasonable request and should be
24 issued, and I think -- well, what George was
25 expressing to me at that time was that

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1 releasing such information is unheard of in
2 his experience within Canada, and this would
3 be hundreds of records with before and after
4 ER/PR test results, even though they were
5 anonymized, that to have to release data of
6 that level of detail would cause great concern
7 and in his words "have an impact on the way
8 medicine is practised".
9 COFFEY, Q.C.:
10 Q. Did he elaborate on why that was so if you
11 just got, like, a number -- like, a number
12 zero and a number 60, 0 percent and 60
13 percent, and another number, zero and zero,
14 and another one, zero and 100. I mean, what -
15 -
16 MR. THOMPSON:
17 A. The way that I took his meaning was simply
18 that if anybody can request extensive amounts
19 of data like this, that there could be an
20 overwhelming burden placed on the system and
21 that that would be a concern. That was the
22 way I interpreted what he was saying.
23 COFFEY, Q.C.:
24 Q. Now do you know if the overburdening of the
25 system was, in fact, the approach that Eastern

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1 Health had taken with the Privacy Commissioner
2 or had they --
3 MR. THOMPSON:
4 A. I don't know.
5 COFFEY, Q.C.:
6 Q. Okay.
7 MR. THOMPSON:
8 A. I don't know.
9 COFFEY, Q.C.:
10 Q. Have you ever read the Privacy Commissioner's
11 decision in that regard?
12 MR. THOMPSON:
13 A. I can't recall reading it, no.
14 COFFEY, Q.C.:
15 Q. He also -- you also say that, "Mr. Tilley had
16 called about the ATIPP request which they are
17 completing. They wanted to know how we were
18 approaching it in the department". What was
19 that about?
20 MR. THOMPSON:
21 A. What our opinion was on this.
22 COFFEY, Q.C.:
23 Q. Concerning what?
24 MR. THOMPSON:
25 A. Concerning how we felt about the Privacy

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1 Commissioner's opinion and whether or not all
2 of this should be released.
3 COFFEY, Q.C.:
4 Q. Weren't you also at his point in time
5 preparing to respond to an ATIPP request?
6 MR. THOMPSON:
7 A. There was -- okay. Yes, there was another
8 ATIPP request as well that Reg Coates was
9 working on and preparing a document release.
10 So there -- yeah, there could be overlap here
11 in the commentary.
12 COFFEY, Q.C.:
13 Q. Wasn't there, in fact, almost mirror images
14 ATIPP requests during June of '07 to the
15 department and Eastern Health in terms of for
16 the same information?
17 MR. THOMPSON:
18 A. I know that we had one that was in the
19 department. I don't know that there was a
20 mirror image one in Eastern Health.
21 COFFEY, Q.C.:
22 Q. Well, in terms of that, if we just look back
23 at Exhibit P-0965, two days before on June
24 26th, Mr. Coates had advised you that he had
25 started reviewing the ER/PR access request?

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1 MR. THOMPSON:
2 A. Right.
3 COFFEY, Q.C.:
4 Q. And you were saying when you get it done, have
5 it prepared for Mr. Wiseman's signature?
6 MR. THOMPSON:
7 A. Right.
8 COFFEY, Q.C.:
9 Q. If we look back at P-0966, two days later, you
10 say, "Mr. Tilley called about the ATIPP
11 request which they are completing. They want
12 to know how we were approaching it in the
13 department. I told him to have his people
14 call you, Reg, about how we interpret the Act
15 in regard to specific documents". So did that
16 part of the e-mail relate to, in fact --
17 MR. THOMPSON:
18 A. I see what you mean. The conversation I
19 recall in particular was on all of this.
20 COFFEY, Q.C.:
21 Q. I appreciate the conversation, and I thank you
22 for the answer in regard to that. This part
23 of the e-mail, though, appears, doesn't it, to
24 relate to the --
25 MR. THOMPSON:

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1 A. You're right, I see what you mean, and indeed
2 if there are mirror -- if there were mirror
3 ATIPP requests, then indeed he may have been
4 referring to that, and from that point of
5 view, it would imply that the second
6 paragraph, if you like, about having an impact
7 on the way we practise medicine was a question
8 that was embodied in relation to the document
9 request.
10 COFFEY, Q.C.:
11 Q. Yes.
12 MR. THOMPSON:
13 A. That's not the way I recall it. The only
14 detail of the discussion I had with him that I
15 recall was on the more detailed data related
16 ATIPP Request.
17 THE COMMISSIONER:
18 Q. In either one of your lives, can you tell me
19 what the anticipation was within government in
20 terms of the resource that they would have to
21 direct to dealing with ATIPP?
22 MR. THOMPSON:
23 A. What kind of human resource capacity we have
24 in the department?
25 THE COMMISSIONER:

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1 Q. Yes, because, I mean, obviously it was made
2 applicable to a whole lot of other bodies as
3 well, and they presumably would have had to
4 gear up in the same kind of way.
5 MR. THOMPSON:
6 A. Uh-hm.
7 THE COMMISSIONER:
8 Q. And for the moment assuming the same kind of
9 gear up would have had to happen --
10 MR. THOMPSON:
11 A. That's right. Well, initially when --
12 COFFEY, Q.C.:
13 Q. What would you expect?
14 MR. THOMPSON:
15 A. Sorry. Initially when ATIPP was passed, there
16 were no additional resources added to
17 departments to handle the load, but that
18 became a concern and there was additional
19 concerns with the anticipated privacy
20 component of that Act being proclaimed and
21 additional requirements for internal -- for
22 the Transparency and Accountability Act which
23 created burdens on planning and policy and
24 regulatory type of professionals within the
25 department. So in response to that, there was

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1 at one year, and I think it might have been in
2 2006 when we did add a million dollars to the
3 provincial budget to allocate how to
4 departments where there were particular heavy
5 -- where there was a lot of activity on all of
6 these fronts. So we didn't allocate human
7 resources just for ATIPP, but we did provide
8 some additional human resources, I believe, to
9 every department, but some departments more
10 than others.
11 THE COMMISSIONER:
12 Q. Based on the -- I'm sure there are certain
13 departments that one can anticipate would get
14 many more ATIPP requests than others.
15 MR. THOMPSON:
16 A. Right.
17 THE COMMISSIONER:
18 Q. That's sort of doted out on the basis of
19 expected activity.
20 MR. THOMPSON:
21 A. Exactly.
22 THE COMMISSIONER:
23 Q. All right.
24 COFFEY, Q.C.:
25 Q. If we could, please, Exhibit P-0967. Now

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1 this, sir, is a letter from yourself, June
2 29th, 2007, to Mr. George Tilley, CEO of
3 Eastern Health.
4 MR. THOMPSON:
5 A. Right.
6 COFFEY, Q.C.:
7 Q. And you state, "As you are aware, I've been
8 recently been appointed to assume the role of
9 Secretary to Cabinet for the management of
10 health issues. In this position, I will
11 assume responsibility for preparing the
12 provincial government and health system for
13 full and open participation in the Commission
14 of Inquiry on estrogen and progesterone
15 receptor testing for breast cancer patients,
16 and will chair a Task Force on the management
17 of adverse health events. I will be most
18 grateful if you could appoint someone within
19 Eastern Health as my primary point of contact
20 for all matters relating to same. This point
21 of contact could be you or a VP level
22 official. At this point, I'm asking you as
23 well to collect and send to me copies of all
24 documents from your records in the following
25 categories related to ER/PR testing between

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1 1997 and 2005; correspondence, e-mails,
2 reports, briefing notes, presentations, press
3 releases and backgrounders. Please forward
4 these documents to Betty Donahue, Secretary to
5 the Deputy Minister. Please ensure that the
6 documents included in this request are
7 comprehensive in respect of all employees who
8 have been involved in these matters. Thank
9 you for your cooperation in this request. We
10 would appreciate these documents by July 18th,
11 2007", and if we could just bring up, please,
12 Exhibit P-0968, and this, sir, is in effect
13 the same letter to Ms. Susan Gillam, the CEO
14 of Western Regional.
15 MR. THOMPSON:
16 A. Uh-hm.
17 COFFEY, Q.C.:
18 Q. And you sent identical letter to the two other
19 CEO's?
20 MR. THOMPSON:
21 A. Correct.
22 COFFEY, Q.C.:
23 Q. Of the health authorities. Now the purpose of
24 you doing so was what?
25 MR. THOMPSON:

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1 A. Well, at that stage we were -- well, my
2 mandate had to do with helping prepare
3 everyone for open and full participation, so I
4 interpret that to include the collection of
5 documentation that we -- so we could
6 understand and, of course, disclose to the
7 Commission. I have to admit to you in
8 retrospect I felt that we would have enough
9 time to collect all this together, put it in a
10 searchable database, and hand it over to the
11 Commission as one large block of data that
12 would aid the Commission in having access to
13 all these documents at an early point in time.
14 Then it would be supplemented as necessary by
15 the Commission itself, but we weren't able to
16 make the kind of progress that we had hoped
17 for, and so by the time the Commission was up
18 and running and requests its direct
19 disclosure, we were caught in parallel, so
20 that one hoped for goal didn't materialize,
21 but nonetheless the secondary activity of
22 wanting to understand as completely as we
23 could and start learning some early lessons
24 from what had gone on related to the ER/PR
25 process was a secondary and very important

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1 function of asking for this information.
2 COFFEY, Q.C.:
3 Q. Now as well your final comment here is, "Thank
4 you for your cooperation in this request. We
5 would appreciate these documents by July 18th,
6 2007". Now what in practise happened?
7 MR. THOMPSON:
8 A. Well, in respect of --
9 COFFEY, Q.C.:
10 Q. In terms of the time frame?
11 MR. THOMPSON:
12 A. In respect of Western, Labrador, and Central,
13 my recollection is a fairly timely response.
14 Whether or not it was the 18th, I can't
15 recall, but they sent in collections of
16 documents that -- I think in the month of
17 July. With regards to Eastern, there was a
18 greater delay. There was a change in CEO's,
19 there was some questioning of the kinds of
20 information that would be submitted to our
21 office, and so we had to -- I had a meeting
22 subsequently with Louise Jones and we worked
23 on, I guess, additional steps in which to --
24 through which this information was provided to
25 us.

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1 COFFEY, Q.C.:
2 Q. I take it that in relation to -- because by
3 the time you got back from vacation, Mr.
4 Tilley was gone?
5 MR. THOMPSON:
6 A. Yes.
7 COFFEY, Q.C.:
8 Q. And Ms. Jones had replaced him?
9 MR. THOMPSON:
10 A. Correct.
11 COFFEY, Q.C.:
12 Q. And so in terms of Eastern Health, the shear
13 volume of material coming from Eastern Health
14 compared to the other three authorities was --
15 MR. THOMPSON:
16 A. The deadline was probably not reasonable,
17 anyway.
18 COFFEY, Q.C.:
19 Q. And there would be an incredible amount more
20 actual --
21 MR. THOMPSON:
22 A. Yes.
23 COFFEY, Q.C.:
24 Q. Raw material, raw documents.
25 MR. THOMPSON:

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1 A. We had no idea how much.
2 COFFEY, Q.C.:
3 Q. So from -- when you came back from vacation in
4 terms of dealing with Ms. Jones, you heard
5 from her two things, I take it, it'll take us
6 time because of the shear volume?
7 MR. THOMPSON:
8 A. Right.
9 COFFEY, Q.C.:
10 Q. And did she have some concerns, though, about
11 the types, like whether certain things should
12 or shouldn't come over?
13 MR. THOMPSON:
14 A. Well, I don't recall -- if you're talking in
15 particular about the Banerjee and Wegrynowski
16 reviews, I don't recall whether we talked
17 about those immediately when I got back, but
18 there was certainly an indication this was
19 going to take time and she wanted her legal
20 counsel involved and in a dialogue with ours,
21 so it would be a more complicated process.
22 COFFEY, Q.C.:
23 Q. And what about the other three authorities,
24 were there ever any concerns expressed by
25 either of them to yourself about disclosing

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1 any information to you?
2 MR. THOMPSON:
3 A. No.
4 COFFEY, Q.C.:
5 Q. Now while I'm on the topic --
6 MR. THOMPSON:
7 A. Well, not in relation to this request.
8 COFFEY, Q.C.:
9 Q. Okay.
10 MR. THOMPSON:
11 A. There was a subsequent concern related to the
12 database, but not in relation to this request.
13 COFFEY, Q.C.:
14 Q. And in terms of the other three authorities,
15 I'm just going to focus on that for the
16 moment, your understanding by this point in
17 time which would be the end of June, was what
18 in terms of who had been contacting the
19 patients of the other three authorities?
20 MR. THOMPSON:
21 A. Well, I --
22 COFFEY, Q.C.:
23 Q. Because this is all couched, we looked at,
24 Eastern Health have contacted all patients, or
25 all patients have been contacted and Eastern

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1 Health was saying it.
2 MR. THOMPSON:
3 A. Uh-hm.
4 COFFEY, Q.C.:
5 Q. As you pointed out. What was your
6 understanding about the other three
7 authorities and their involvement, if any, in
8 it?
9 MR. THOMPSON:
10 A. Well, I have a clearer -- much clearer
11 understanding now and that understanding
12 evolved slowly over time.
13 COFFEY, Q.C.:
14 Q. Could you tell the Commissioner then about
15 that?
16 MR. THOMPSON:
17 A. Sure, of course. Well, initially I did think
18 that most of the contact, perhaps all of it,
19 was done directly by Eastern Health with all
20 the patients that were in the database -- that
21 had been retested. What I came to understand
22 over time was that all of the other health
23 authorities did have a role in the
24 communications process and that role in the
25 main was that -- there were two points in

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1 that. One is to phone to contact patients who
2 were to be retested and to advise them that
3 they were involved in a retesting process, and
4 then when results returned, any cases that had
5 converted from negative to positive would be
6 analyzed and the contact would be done by
7 Eastern Health or from Eastern Health to the
8 patient's physicians, but all those results
9 that had been confirmed negative or that were
10 otherwise straightforward with no treatment
11 impact, those cases would be -- there would be
12 a notification from Eastern Health to the
13 other relevant health authority and that
14 health authority would make the contact with
15 that information. So the more straightforward
16 contacts would happen via the other health
17 authorities and the more complex ones, if you
18 like, would happen directly from Eastern
19 Health. So in general terms, in its basic
20 terms, that's what I understand today.
21 COFFEY, Q.C.:
22 Q. Okay, and -- now in terms of that, what if
23 anything is your understanding about what has
24 been done concerning checking with the other
25 authorities to confirm contact by them with

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1 their patients?
2 MR. THOMPSON:
3 A. Well, we mandated NLCHI to contact the other
4 authorities to collect information directly
5 from them as well.
6 COFFEY, Q.C.:
7 Q. So it was -- when you got really into it and
8 the Centre for Health Information was retained
9 to get involved, then they were off, you
10 understood, doing that?
11 MR. THOMPSON:
12 A. Yes.
13 COFFEY, Q.C.:
14 Q. And going to take what steps were necessary to
15 confirm that?
16 MR. THOMPSON:
17 A. Correct.
18 COFFEY, Q.C.:
19 Q. Okay. If we could, please, Exhibit P-0971.
20 This again -- I just bring this up here
21 because it perhaps clarifies the e-mail we
22 looked at earlier with the -- we couldn't tell
23 which one was the date first and so on.
24 MR. THOMPSON:
25 A. Right.

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1 COFFEY, Q.C.:
2 Q. And your recollection is correct, the comment
3 or direction from Ms. Matthews that the
4 August, 2006, note should be included in the
5 ATIPP response regarding briefing notes
6 prepared for the Minister was, in fact,
7 looking at the top one, July, it would have
8 been in July, July 6th, 2007. It confirms
9 that. If we could, please, Exhibit P-0974.
10 This is -- the first e-mail here is July 10th,
11 2007, at 4:13 p.m. to Ms. Pilgrim and Ms.
12 Predham, and Mr. MacDonald writes, "Hi
13 Pat/Heather. Following the review of options
14 put forward to the Ministry, the decision to
15 use primary data sources whenever possible and
16 practical was made. As a result, I'm asking
17 for assistance in obtaining the following
18 data. All breast cancer patients, both male
19 and female in the province, from January 1,
20 1997 to December 31, 2005, with the following
21 information; name of patient, name of
22 oncologist, gender, date of birth, MCP,
23 diagnosis [tumor type], date of diagnosis,
24 OPIS number, residence of patient, SGC
25 community name. We would also like to discuss

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1 this request with the appropriate person at
2 the NCTRF", which is the Cancer Treatment
3 Research Foundation?
4 MR. THOMPSON:
5 A. Right.
6 COFFEY, Q.C.:
7 Q. "Perhaps Susan Ryan, prior to the data being
8 downloaded. I have been informed that Dr.
9 Howell was the person the Ministry worked with
10 on this issue. Also we ask that Eastern
11 Health request on behalf of the Centre of DHCS
12 a file from Mount Sinai of all ER/PR testing
13 and retesting done for the period, January 1,
14 '97 to December 31st, 2005, for all diagnosed
15 breast cancer patients in Newfoundland and
16 Labrador. The fields requested for this data
17 include", and he's got a list of material.
18 "Could you let me know how best to move this
19 request along", thanks. I appreciate you were
20 on vacation, but when you came back, you
21 weren't surprised to find out that this was --
22 MR. THOMPSON:
23 A. Oh, no.
24 COFFEY, Q.C.:
25 Q. In terms of then from your perspective as the

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1 Acting DM, Chair of the Task Force, and
2 Secretary to Cabinet, once the Centre for
3 Health Information was engaged, Mr. MacDonald,
4 Mr. Barron, and Reza, what if any involvement
5 -- practical involvement were you having and
6 what was their mandate?
7 MR. THOMPSON:
8 A. Well, essentially we were the client and they
9 were the contractor to undertake this project.
10 We outlined our objectives for them and they
11 tried to deliver on a set of objectives. So on
12 a regular basis, we would talk to each other.
13 Normally they would contact us to explain
14 their progress or to seek clarification or
15 direction. You know, if they had three
16 options on which to go on a certain question,
17 they may ask us which one is most relevant to
18 our original objective so that we were always
19 in alignment. So there was reasonable
20 frequent contact, and when I say that, perhaps
21 -- well, with me, certainly more than once a
22 month, sometimes many times a month. With
23 others on my team, very frequently as well
24 throughout the whole period.
25 COFFEY, Q.C.:

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1 Q. Okay, and -- so I take it as the client, you
2 would have tasked them and how they went about
3 doing it was their --
4 MR. THOMPSON:
5 A. Well, it was their's to design -- to design
6 the methodology, and they came up with options
7 as to how that could be done. They presented
8 those options to us and we evaluated the
9 options and then selected which one we thought
10 would best meet our objectives.
11 COFFEY, Q.C.:
12 Q. If we could, please, Exhibit P-0973, and I
13 just pull this one up because there are a
14 number of other similar letters from the other
15 health authorities -- two of the other health
16 authorities. Western Health, July 10th, 2007,
17 is a letter to yourself, Secretary to Cabinet
18 on health issues, signed by Susan Gillam, and
19 she writes, "Thank you for your correspondence
20 of June 29th, 2007, outlining your role as
21 Secretary to Cabinet for the management of
22 health issues, including the Commission of
23 Inquiry", and she identifies then Dr. Jenkins,
24 VP Medical to be your point of contact.
25 MR. THOMPSON:

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1 A. Uh-hm.
2 COFFEY, Q.C.:
3 Q. Contact information. So I take it you did hear
4 back from the other authorities?
5 MR. THOMPSON:
6 A. Yes.
7 COFFEY, Q.C.:
8 Q. And heard back relatively early on?
9 MR. THOMPSON:
10 A. Yes.
11 COFFEY, Q.C.:
12 Q. In terms of dealing with the -- well, first of
13 all, the three authorities other than Eastern
14 Health, as your task as the secretary
15 continued, did you ever encounter any
16 difficulties in obtaining information from the
17 other three authorities, and you have alluded
18 to one which is dealing with some information
19 in a database?
20 MR. THOMPSON:
21 A. No, a huge amount of cooperation throughout.
22 COFFEY, Q.C.:
23 Q. And the timeliness of their responses?
24 MR. THOMPSON:
25 A. Good timeliness.

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1 COFFEY, Q.C.:
2 Q. Okay, if we could, please, Exhibit P-0477. I
3 just bring this up because it has appended to
4 it, it's an e-mail of July 4th, 2007 from Mr.
5 Tilley to a number of people involved with
6 Eastern Health, but it has appended to it the
7 announcement, Executive Council announcement
8 of July 4, 2007 as to the terms of reference,
9 establish for inquiry on estrogen and
10 progesterone testing for breast cancer
11 patients.
12 MR. THOMPSON:
13 A. Um-hm.
14 COFFEY, Q.C.:
15 Q. And it identifies, well, the Commissioner,
16 Commissioner, Justice Cameron, as she is in
17 another life as being the Commissioner. So
18 you had sent out requests for information from
19 all these authorities before, in fact, the
20 actual Commissioner was identified or, in
21 fact, the terms of reference were published?
22 MR. THOMPSON:
23 A. Well, yes -
24 COFFEY, Q.C.:
25 Q. Formal terms of reference.

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1 MR. THOMPSON:
2 A. - these are the first time the terms of
3 reference are published, that would be the
4 case, yes.
5 COFFEY, Q.C.:
6 Q. Okay. Had you known what those terms of
7 reference were going to be when you sent out
8 your letters, June 29th letters to the CEOs?
9 MR. THOMPSON:
10 A. Well, the public generally knew what they
11 were, as well, going back to May 22nd. And
12 then there was a refinement process, and I was
13 involved in that refinement process, so I was
14 largely aware of the terms of reference by
15 then, for sure.
16 COFFEY, Q.C.:
17 Q. And, in fact, Exhibit P-0128, please? It's at
18 pages 51--yeah, 51, please? That is the
19 actual news release, isn't it?
20 MR. THOMPSON:
21 A. Okay.
22 COFFEY, Q.C.:
23 Q. So it is the same. Now, sir, do you recall
24 when it was you came back from vacation in the
25 summer?

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1 MR. THOMPSON:
2 A. About July 16th.
3 COFFEY, Q.C.:
4 Q. Okay. If we could, please, Exhibit P-0238?
5 This is an e-mail from Tansy Mundon, Friday,
6 July 13th, 2007 to Mr. Wiseman, it's copied to
7 yourself. The subject is "ER/PR Key Messages,
8 ATIPPA Request." And she writes, "Minister,
9 please see key messages below for your review
10 and response to ATIPPA request. Thanks,
11 Tansy." And then it's key messages for
12 Minister Wiseman, ATIPPA request, July 12th,
13 2007. And seven key messages, you see that?
14 MR. THOMPSON:
15 A. Right.
16 COFFEY, Q.C.:
17 Q. At least bullets, anyway?
18 MR. THOMPSON:
19 A. Um-hm.
20 COFFEY, Q.C.:
21 Q. And then there's a chronology down below it.
22 What is your understanding of the purpose of
23 creating key messages in relation to a
24 response to an ATIPPA request?
25 MR. THOMPSON:

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1 A. In general the purpose of preparing key
2 messages is to provide the minister with some,
3 I guess, tools to use if called upon by the
4 media to answer some questions in relation to
5 an issue. So clearly here Tansy Mundon felt
6 that the release of this information under the
7 ATIPPA request may generate some questions
8 from the media and she provided these to the
9 minister as an aid.
10 COFFEY, Q.C.:
11 Q. So I take it that the idea of creating such
12 key messages in--you know, certainly when the
13 media have an ATIPP request?
14 MR. THOMPSON:
15 A. Right.
16 COFFEY, Q.C.:
17 Q. Is common or is the rule, in fact?
18 MR. THOMPSON:
19 A. Well, I don't know if it's a rule. My guess -
20 COFFEY, Q.C.:
21 Q. Or fairly common?
22 MR. THOMPSON:
23 A. - is done on a discretionary basis.
24 COFFEY, Q.C.:
25 Q. And certainly it was done here in this -

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1 MR. THOMPSON:
2 A. And it was done here.
3 COFFEY, Q.C.:
4 Q. In fact, before you went on vacation, had you
5 made any suggestion to your staff to insure
6 that it was done?
7 MR. THOMPSON:
8 A. No.
9 COFFEY, Q.C.:
10 Q. Okay. If we could look, please, at Exhibit P-
11 0130? Now, this is a--just look to the second
12 page. Mr. Wiseman's signature is on it. And
13 this is a letter to Rob Antle, July 17th,
14 2007. Mr. Antle works, apparently, for the
15 Telegram. It's "Re your request for access
16 for information under part 2 of the Access to
17 Information, Protection of Privacy Act." It
18 says, "On June 12th, 2007 the Department of
19 Health and Community Services received your
20 three requests for access to the following
21 records/information." And then it's "Briefing
22 notes in any and all formats, including paper
23 and electronic prepared for the minister on
24 the ER/PR cancer testing issue at Eastern
25 Health, time frame of request is" and there's

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1 a particular time frame in this one, January
2 1, 2005 to March 14th, 2006, inclusive. Same
3 request, different time frame, March 14th,
4 2006 through January 19th, 2007. And finally,
5 the time frame in the third request is from
6 January 19th, 2007 to the present. And what
7 was your understanding, if any, about why it
8 was broken down that way?
9 MR. THOMPSON:
10 A. I wouldn't have likely paid particular
11 attention to it at that time. Why there would
12 be a break on March 14th, 2006, I couldn't
13 say. And, no, I don't know the rationale for
14 that.
15 COFFEY, Q.C.:
16 Q. Would this have been the ATIPP request and
17 response thereto that Ms. Matthews was, we had
18 earlier seen this morning suggesting that -
19 MR. THOMPSON:
20 A. Yes, I think so, yes.
21 COFFEY, Q.C.:
22 Q. - 18th briefing note be included?
23 MR. THOMPSON:
24 A. Yes, I think so.
25 COFFEY, Q.C.:

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1 Q. Now, here in the responses here at the bottom
2 of the page, information that is non-
3 responsive to the request, has been severed.
4 "Access to parts of the documents are being
5 denied in accordance with," paragraph
6 20(1)(a), paragraph 21, Section 24 and Section
7 30. Sorry. If we could look, please, at page
8 62 of the same exhibit? Now, this is an e-
9 mail, I'm sorry, an e-mail, this is a briefing
10 note, this is the third page of a July 20th,
11 2005 briefing note on Eastern Health
12 letterhead. The third page is entitled, has
13 the word "Actions" on it. The second-last
14 paragraph is missing. See that?
15 MR. THOMPSON:
16 A. Yes.
17 COFFEY, Q.C.:
18 Q. It's redacted. And that paragraph, if you
19 look at the original version of the document,
20 is the paragraph referring to or that refers
21 to Dr. Williams having been requested to carry
22 out an investigation in relation to the
23 stoppage of immunohistochemistry testing -
24 MR. THOMPSON:
25 A. Right.

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1 COFFEY, Q.C.:
2 Q. - by Dr. Ejeckam in 2003. When did you first
3 become aware that that paragraph had been left
4 out of this response, ATIPP response?
5 MR. THOMPSON:
6 A. Several months ago when Rolf Pritchard brought
7 it to my attention that it was becoming an
8 issue here.
9 COFFEY, Q.C.:
10 Q. And did you make any inquiries at the time as
11 to the basis, the rationale for leaving that
12 particular paragraph out?
13 MR. THOMPSON:
14 A. Yes.
15 COFFEY, Q.C.:
16 Q. And that is being left out by the government?
17 MR. THOMPSON:
18 A. Correct.
19 COFFEY, Q.C.:
20 Q. In its response?
21 MR. THOMPSON:
22 A. Right.
23 COFFEY, Q.C.:
24 Q. And what were you advised?
25 MR. THOMPSON:

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1 A. What I was advised is that the person who, Reg
2 Coates, who was processing this request within
3 the department had perhaps not at this time
4 but on an earlier ATIPP request, which he was
5 also involved in developing, and which this
6 document was present, that he had contacted or
7 I forget who initiated the contact, but
8 anyway, there was a conversation with George
9 Tilley about this paragraph and George Tilley
10 had requested on the basis that peer review
11 and quality assurance type information is
12 protected under the Evidence Act should be
13 eliminated from this document. So as I
14 understand it, Mr. Coates deleted it from this
15 document for the initial request and then
16 carried through on the same rationale to
17 maintain the deletion of it in responding to
18 this request here.
19 COFFEY, Q.C.:
20 Q. But the actual covering letter itself that Mr.
21 Wiseman signed doesn't make any reference to
22 that as a rationale, does it?
23 MR. THOMPSON:
24 A. Right. I note that.
25 COFFEY, Q.C.:

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1 Q. Now looking at it, if there was to be a
2 similar response now to another request, would
3 that as a basis be separately identified?
4 MR. THOMPSON:
5 A. It's my view that any redaction or deletion in
6 a document there needs to be an indication of
7 the reason why under the relevant section of
8 the Act.
9 COFFEY, Q.C.:
10 Q. Now, I am not going--this is, I was just
11 looking at page 62, which is the last page of
12 it. I'm not going to take you through each
13 page. But if we could, please, I'll just open
14 a page, page 26, if you would, please? Now,
15 this, sir, is just again to give you some
16 sense of--this is the November 27th, 2006
17 question and answer, Department of Health
18 briefing note?
19 MR. THOMPSON:
20 A. Right.
21 COFFEY, Q.C.:
22 Q. Okay. It just happens to be that one. You'll
23 notice that there are a number of redactions
24 apparent?
25 MR. THOMPSON:

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1 A. Um-hm.
2 COFFEY, Q.C.:
3 Q. There is no indication out to the sides here
4 of the basis for any particular redaction?
5 MR. THOMPSON:
6 A. Correct.
7 COFFEY, Q.C.:
8 Q. What is your understanding as the clerk, in
9 your former capacity as clerk as to whether or
10 not the policy or protocol or suggested
11 approach required that such sections be
12 identified in the margins?
13 MR. THOMPSON:
14 A. Well, I know now that the policy is that
15 whenever there's a, or policy or guideline,
16 I'm not sure which, but from the Department of
17 Justice and the office that administers this
18 and gives--and trains or otherwise
19 communicates standard practice to all the
20 ATIPP coordinators in government, that they
21 suggest that the appropriate method is to
22 identify the section with the Act for which
23 that's applicable to a deletion or a redaction
24 should be noted in the margin so that the
25 applicant when they see that there's something

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1 that has been taken out, can understand the
2 particular reason why the foundation reason
3 why, from the Act, and then can make up their
4 mind as to whether or not they wish to launch
5 an appeal or otherwise, accept it at face
6 value. And so, I may well have understood the
7 same policy, when I was Clerk, I just don't
8 have a clear recollection, but that's what I
9 understand, that the guideline is from the
10 Department of Justice.
11 COFFEY, Q.C.:
12 Q. So that the recipient can make up their own
13 mind about or consider whether or not that
14 appears to be a reasonable rationale.
15 MR. THOMPSON:
16 A. Right.
17 COFFEY, Q.C.:
18 Q. If we could, please, just looking at this and
19 I'll pick the, one, two, three, four, fifth
20 bullet down. The one that begins "a claim has
21 been filed", see that?
22 MR. THOMPSON:
23 A. Yes.
24 COFFEY, Q.C.:
25 Q. Thank you. "Named blank versus Eastern

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1 Regional Health Authority with the
2 Newfoundland Supreme Court, Trial Division.
3 Government is not named as party to the
4 action. Blank is representing the Plaintiffs.
5 Blank is representing Eastern Health and blank
6 is assigned as case management judge". And it
7 goes on to say, "the claim alleges faulty
8 ER\PR testing by Eastern Health" and this is
9 the one that ended up--it's a class action,
10 it's referred to.
11 Do you understand what the basis is for
12 removing the Plaintiff's name in a Statement
13 of Claim which is a public document and, in
14 fact, the case management judge's name as that
15 would be certainly publicly, readily
16 available? Do you understand the basis for -
17 MR. THOMPSON:
18 A. I don't know which exception under the Act
19 that this applies to, but I can give you a
20 general point that there have been occasions
21 and, in fact, media have, I think, chastised
22 government on those occasions when there's
23 been information that's been deleted or not
24 made available within an ATIPP response.
25 Information that had already been made public

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1 in another context. And I agree, it does
2 raise ones eyebrows as to why that would be
3 the case, but as I understand it, nonetheless,
4 the ATIPP co-ordinators believe and perhaps
5 rightly so that they have to apply the Act as
6 it's written. And the Act says certain kinds
7 of information are to be withheld. I speaking
8 in general terms because I'm not an expert on
9 how the Act is applied. So, with that as
10 background, I could see then Mr. Coates, in
11 applying his understanding of what is to be
12 deleted, no matter what, if it had been made
13 public before, to a paragraph like this. But
14 I will concur with you that public information
15 that is already out there, it just raises your
16 eyebrows as to why you'd delete it again.
17 COFFEY, Q.C.:
18 Q. Particularly where it involves--it's a labour
19 intensive, over time, if we look through these
20 60 pages, six odd pages -
21 MR. THOMPSON:
22 A. That's exactly the effort that we expect of
23 the co-ordinators.
24 COFFEY, Q.C.:
25 Q. Okay. In terms of--if we could look at page

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1 29, please, of the same exhibit. Now, this is
2 the same briefing note. The anticipated
3 questions, you notice they're all gone?
4 MR. THOMPSON:
5 A. Yes.
6 COFFEY, Q.C.:
7 Q. The key messages, of course, are there. Do
8 you understand, what's the--and we've looked
9 through all the briefing notes here, all the
10 anticipated questions are redacted.
11 MR. THOMPSON:
12 A. Right.
13 COFFEY, Q.C.:
14 Q. What's the rational for -
15 MR. THOMPSON:
16 A. From what I understand, the rationale is that
17 these, anticipated questions are inherent
18 within them that they contain advice to
19 ministers, that they provide an indication of
20 the issues and the analysis that might be
21 sensitive to a minister and provide guidance
22 or insight into the logic behind the advice
23 that's made to ministers on a certain issue,
24 and as a consequence of that, the redaction of
25 the anticipated questions would fall under an

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1 exception related to advice to ministers.
2 It's again a general explanation, but that's
3 how I've come to understand it.
4 COFFEY, Q.C.:
5 Q. If we could, please, if we could look at page
6 52 of the same exhibit? One moment, please,
7 Commissioner. Just want to locate something
8 here. Now you'll notice that all of those
9 are--the anticipated questions are gone.
10 MR. THOMPSON:
11 A. Right.
12 COFFEY, Q.C.:
13 Q. This is, if we could go to the next page, this
14 is the November 7th 2005 briefing note?
15 MR. THOMPSON:
16 A. Um-hm.
17 COFFEY, Q.C.:
18 Q. All of the anticipated questions are removed.
19 If we could bring up, please, Exhibit P-0124,
20 page eight? Now sir, this is the same
21 briefing note except it's an unredacted
22 version of it.
23 MR. THOMPSON:
24 A. Um-hm.
25 COFFEY, Q.C.:

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1 Q. It's the one that's been filed as an exhibit
2 here, just so you get some comfort there,
3 that's November 7th. Now here, the
4 anticipated questions are, well, "one, when
5 did the HCS Minister find out about the
6 inaccurate cancer test results? Two, how did
7 this happen? What is being done to correct
8 this problem?" See that? And how do either
9 of those three questions relate to advice
10 provided to a minister?
11 MR. THOMPSON:
12 A. Well, first of all, it's a general policy, as
13 I understand it, in the government to redact
14 the anticipated questions, and it's in the
15 context of the explanation that I've given to
16 you. So in an application of the general
17 policy, as I understand it, that's why those
18 questions would have been redacted. Now on
19 your specific question, how do they relate to
20 advice to ministers, it would--I don't know.
21 COFFEY, Q.C.:
22 Q. And in fact, they seemingly wouldn't, those
23 particular questions. When the minister
24 first--when did the minister first find out
25 about the inaccurate cancer test results,

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1 okay, when he was first told something, but
2 how did this happen, and that could not be--
3 how would that be advice?
4 MR. THOMPSON:
5 A. No, it's hard to suggest that that constitutes
6 advice to ministers.
7 COFFEY, Q.C.:
8 Q. Did you ever speak to Mr. Coates while you
9 were Acting Deputy Minister about his view as
10 to whether or not anticipated questions should
11 be routinely and automatically redacted?
12 MR. THOMPSON:
13 A. I believe I did, because I remember that
14 issues arose over this particular point.
15 COFFEY, Q.C.:
16 Q. And what was his position?
17 MR. THOMPSON:
18 A. His position was that redaction was not
19 supported by his interpretation of the Act.
20 COFFEY, Q.C.:
21 Q. So the ATIPP coordinator for the Department of
22 Health, while you were the acting DM, his view
23 was that the anticipated questions, unless a
24 particular one, they should not be routinely
25 redacted?

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1 MR. THOMPSON:
2 A. Right.
3 COFFEY, Q.C.:
4 Q. They didn't fall within the exemptions under
5 the Act. He was responsible for the
6 Department's approach to this. He's the
7 expert, as it were.
8 MR. THOMPSON:
9 A. He was the coordinator of the Department's
10 activities.
11 COFFEY, Q.C.:
12 Q. So who was it that overruled him? Because
13 they are expunged.
14 MR. THOMPSON:
15 A. I understand there was a dialogue with--well,
16 I can't be sure exactly, Department of Justice
17 or Cabinet Secretariat officials about what
18 the appropriate application of the policy was,
19 and then it was followed through.
20 COFFEY, Q.C.:
21 Q. If we could, please, Exhibit P-0978? Now this
22 is a letter from--actually from yourself,
23 you'll see that, dated July 19th 2007 to Dr.
24 Kenneth Pritzker, pathologist in chief,
25 Pathology and Laboratory Medicine, Mount Sinai

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1 Hospital, and you write "Dear Dr. Pritzker: I
2 am writing in follow up to our conversation on
3 Tuesday, July 17th"--I'm sorry, "to your
4 conversation," that's his, "on Tuesday, July
5 17th with Dr. Don"--I'm sorry, "Mr. Don
6 MacDonald of the Newfoundland and Labrador
7 Centre for Health Information. As Mr.
8 MacDonald noted, the Department of Health is
9 carrying out a review of the events
10 surrounding ER/PR testing of breast cancer
11 patients in Newfoundland and Labrador. As
12 part of this review, I have asked the Centre
13 for Health Information to prepare a database
14 of all breast cancer patients diagnosed in the
15 province during 1997 through 2005, including
16 those that had ER/PR testing or retesting
17 carried out at Mount Sinai Hospital. When
18 completed, this database will contain each
19 patient's personal identifiers, as well as a
20 record of their various contacts with the
21 health system, specific to their breast cancer
22 treatment. In support of this database, I am
23 requesting from Mount Sinai data on all ER/PR
24 testing and retesting carried out on breast
25 cancer patients in Newfoundland and Labrador.

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1 Specifically, I am requesting the following
2 data fields for the period January 1/97 to
3 December 31 2005," and in fact there are 15
4 such fields, and you conclude by saying "I
5 assure you that any data provided by the Mount
6 Sinai Hospital for the Centre for Health
7 Information on behalf of the Department of
8 Health will be held in the strictest
9 confidence and will only be used by the
10 Department of Health in carrying out the
11 aforementioned review. I look forward to
12 hearing from you regarding this request."
13 Now sir, who drafted this letter for you?
14 MR. THOMPSON:
15 A. Likely it was Don MacDonald.
16 COFFEY, Q.C.:
17 Q. And like the specification of those 15 fields,
18 data fields, that would have been Mr.
19 MacDonald and his people's purview?
20 MR. THOMPSON:
21 A. Well, the way that they're phrased, yes, but
22 they would have been based on fulfilling the
23 objectives that we had for the database.
24 COFFEY, Q.C.:
25 Q. And the objectives, at that time, were what?

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1 MR. THOMPSON:
2 A. Well, the triggering objective, if you like,
3 was to identify when and if everyone was--
4 everyone of the retested patients was
5 contacted, and then to examine, as well, the
6 total number of people that were involved in
7 retesting, and to understand information about
8 their original test results and their new test
9 results to confirm some of the results or some
10 of the statements that Eastern Health had made
11 about the total number of conversions. So it
12 was a combination of those objectives.
13 COFFEY, Q.C.:
14 Q. Okay, and Mr. Pritzker's response was?
15 MR. THOMPSON:
16 A. That they'll compile this information and send
17 it.
18 COFFEY, Q.C.:
19 Q. Exhibit P-0979, please? Sir, this is an--I'm
20 sorry, a letter of July 23rd 2007 from Ms.
21 Jones, CEO of Eastern Health, to yourself.
22 She says "this is written as a follow up to
23 your letter of June 29th 2007 on our
24 conversation of July 19th requesting that
25 Eastern Health provide the Department with a

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1 primary point of contact for all matters
2 relating to the Commission of Inquiry and the
3 Task Force," and she informs you that that's
4 going to be Patricia Pilgrim.
5 MR. THOMPSON:
6 A. Um-hm.
7 COFFEY, Q.C.:
8 Q. Since that time, has she been your primary
9 point of contact?
10 MR. THOMPSON:
11 A. Yes.
12 COFFEY, Q.C.:
13 Q. So the data flow between Eastern Health and
14 the Department of Health or the government at
15 large has been through Ms. Pilgrim, all of it
16 has come through her?
17 MR. THOMPSON:
18 A. She's been my liaison, but the flow of
19 information pursuant to this request, has been
20 routed through legal counsel.
21 COFFEY, Q.C.:
22 Q. Okay, because it goes on to say "as per our
23 discussion of July 19th, your request was not
24 actioned until late last week and the
25 organization is now in the process of

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1 collecting all documentation inside Eastern
2 Health with respect to ER/PR. Our solicitor
3 for the Judicial Inquiry, Mr. Dan Simmons, has
4 indicated that prior to these documents being
5 transferred to the Department, he wishes to
6 have a discussion with the Department's
7 solicitor, Mr. Rolf Pritchard, to address a
8 number of issues associated with the transfer
9 of documents. We trust that the approach of
10 the solicitors' meeting to discuss protocol,
11 etcetera, is acceptable to the Department
12 prior to any transfer." So that was the route
13 that documents coming from Eastern Health?
14 MR. THOMPSON:
15 A. Correct.
16 COFFEY, Q.C.:
17 Q. How about from the--in the meantime, how about
18 from the other health authorities?
19 MR. THOMPSON:
20 A. Indirectly from the appointed contacts.
21 COFFEY, Q.C.:
22 Q. Now in terms of having sent out your initial
23 request on June 29th to these various CEOs,
24 did you have any doubts or concerns or did it
25 even cross your mind as to whether or not you

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1 had the authority? Were you directing them to
2 provide it or requesting?
3 MR. THOMPSON:
4 A. I forget how the letter was phrased, but it
5 was I expected to receive the information.
6 COFFEY, Q.C.:
7 Q. And that would be, I take it, as both in the
8 capacity as acting deputy minister, because
9 your understanding -
10 MR. THOMPSON:
11 A. Yes.
12 COFFEY, Q.C.:
13 Q. - or approach as the DM was that any health
14 authority should provide, upon request,
15 information
16 MR. THOMPSON:
17 A. Yes.
18 COFFEY, Q.C.:
19 Q. - to the Department, and as well as in your
20 capacity as secretary?
21 MR. THOMPSON:
22 A. Yes, that's right, and in that respect, we
23 made it clear, if ever asked, that the
24 minister supported the transfer of that
25 information to me in that capacity as well.

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1 COFFEY, Q.C.:
2 Q. Now, of course, at that point in time, this is
3 even before the Commission is actually
4 formally established?
5 MR. THOMPSON:
6 A. Correct.
7 COFFEY, Q.C.:
8 Q. Did you understand though throughout that the
9 government would be a party before the
10 Commission?
11 MR. THOMPSON:
12 A. Yes.
13 COFFEY, Q.C.:
14 Q. If we could, please, Exhibit P-0240? Now this
15 is a series of e-mails on July 19th 2007.
16 What did these relate to?
17 MR. THOMPSON:
18 A. Can we go down to the bottom?
19 COFFEY, Q.C.:
20 Q. Sure, you go right ahead, sir. You have the--
21 I think when you turn to the next page, you'll
22 see probably why it's here at all, in the
23 sense of there's a reference in the
24 transcript.
25 MR. THOMPSON:

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1 A. Okay. It looks like a--without reading it in
2 detail, it looks like it's a discussion of the
3 perceived problems associated with the large
4 size of the health boards in the province.
5 COFFEY, Q.C.:
6 Q. Yes, and there were concerns being expressed
7 in the media by certain individuals.
8 MR. THOMPSON:
9 A. Right, by the opposition.
10 COFFEY, Q.C.:
11 Q. By opposition and certain individuals about
12 it. Ms. Matthews, at July 19th 2007, 9:58
13 a.m., writes to yourself and Ms. Hennessey and
14 Mr. Wiseman, Ms. Mundon and Ms. Turpin, "re:
15 host preamble, Open Line." She says "the
16 total population, number of boards for six
17 provinces would be helpful for sure. Really,
18 I just want to get a sense of some other
19 jurisdictions. Thanks, Moira." She's
20 thanking Moira, and it's signed EM.
21 She had earlier, that is Ms. Matthews
22 had, at 9:37 a.m., sent an e-mail to the same
23 individuals saying "Tansy, I still haven't
24 gotten the info I requested last week on the
25 boards in comparison to other jurisdictions.

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1 Any ETA on that info?"
2 So what did you understand Ms. Matthews
3 was engaged in here during that week, week
4 long period?
5 MR. THOMPSON:
6 A. Well, she was collecting some information in
7 order perhaps to prepare the Premier, if asked
8 the question about whether or not the health
9 authorities were too large, that he would have
10 some comparative information to use in any
11 response that he might make.
12 COFFEY, Q.C.:
13 Q. Sir, in your capacity as Deputy Minister, and
14 when I say that from now henceforth it'll be
15 as acting, had you ever met, during your
16 current--your June through November stint of
17 '07, ever met with the Medical Advisory
18 Committee?
19 MR. THOMPSON:
20 A. No.
21 COFFEY, Q.C.:
22 Q. Okay. If we could, please, Exhibit P-0983?
23 And there's an e-mail there at the bottom of
24 the page, Mr. Thompson, from yourself, June
25 12th '07 is the first in a series of them, at

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1 11:23 p.m. "Please e-mail the attached to
2 Mike Barron with a note saying" and it says
3 "Mike, these are the core questions or outputs
4 I am seeking. The database should be
5 constructed to get these outputs. I will send
6 another e-mail on some thoughts on database
7 structure." So that suggests that in June,
8 you were involved in, you know, the early
9 first part of June, involved in structuring or
10 setting out the parameters for the database
11 yourself?
12 MR. THOMPSON:
13 A. Correct.
14 COFFEY, Q.C.:
15 Q. By July 30th 2007, 2:31 p.m. e-mail to Ms.
16 Gregory, Ms. Sullivan and Mr. Pritchard, who
17 are Ms. Gregory and Ms. Sullivan?
18 MR. THOMPSON:
19 A. They were hired on to the Task Force and
20 Secretariat of Cabinet office in order to be
21 researchers.
22 COFFEY, Q.C.:
23 Q. Okay, and you've attached an ER/PR spreadsheet
24 and you write "here are a couple of e-mails
25 that led to the request to NLCHI. The

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1 attached were given to a couple of our staff
2 in order to extract certain data from Eastern
3 Health records. After one meeting, it was
4 clear to the staff that the data was not
5 organized sufficiently, so I sent the attached
6 to NLCHI and asked Mike Barron to take on the
7 work of constructing a database. I also sent
8 him another e-mail, which I will send to you
9 after this one. These documents form our
10 request, following which they developed a
11 scoping document which you already have."
12 So if we look at page two of this
13 exhibit, which would be the--well, another e-
14 mail that you had sent back on June 11th 2007
15 at 11:19 a.m. to Ms. Hennessey and Ms. Mundon.
16 "The following are the results I would like to
17 see from review of the spreadsheet" and you
18 spell out A through E.
19 MR. THOMPSON:
20 A. Um-hm.
21 COFFEY, Q.C.:
22 Q. Now do you know if what you have requested
23 here in this e-mail of June 11th, A through E,
24 do you know if that was ever actually carried
25 out?

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1 MR. THOMPSON:
2 A. I think substantially it was. They used this
3 as a basis for developing the fields that they
4 were going to fill in in the database. It
5 turned out, over time--and I'm not looking at
6 the details here, but in general terms, it
7 turned out that some of the data or some of
8 the perhaps--yes, some of the data, the
9 precision wasn't available in actually
10 collecting it at Eastern Health and in
11 particular, around dates. What we found,
12 over--as we were trying to identify the
13 specific dates on which phone calls were made
14 or letters were sent, that some of those dates
15 were not as readily available as we had hoped.
16 But otherwise, the data that had been
17 collected, I think, without reading all of
18 this in detail, largely consistent with where
19 we wanted--where we started.
20 COFFEY, Q.C.:
21 Q. Okay. Looking at D in your e-mail, you say
22 "if the spreadsheet also includes data on the
23 contacts with patients when results came back
24 from Mount Sinai, compile a table which
25 describes the timing of when patients received

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1 the results and how the patients were
2 informed. Example, letter or call from
3 Eastern Health, call from doctor. The table
4 should also include categories for patients
5 that were never informed (I assume there were
6 none) and for any cases where the data is not
7 complete." So I take it although you were
8 assuming there were no such cases, you
9 envisaged that there might be?
10 MR. THOMPSON:
11 A. Oh, absolutely.
12 COFFEY, Q.C.:
13 Q. What about the idea or why would--I take it
14 initially your assumption was that something
15 is written down in an Eastern Health record,
16 contact on a particular day with a particular
17 patient.
18 MR. THOMPSON:
19 A. Sorry?
20 COFFEY, Q.C.:
21 Q. Say patient A, if there was something written
22 on a piece of paper that came over in one of
23 those boxes, that was located in one of those
24 boxes Eastern Health had the data in, and if
25 somebody had noted patient A contacted on

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1 November 1st 2005 -
2 MR. THOMPSON:
3 A. Yes.
4 COFFEY, Q.C.:
5 Q. Was there ever any consideration given to
6 analysing the reliability of that actual data?
7 MR. THOMPSON:
8 A. Okay, so let me talk then a bit about the
9 nature of the project that we were starting.
10 The intention--I've spelled out the
11 objectives, but the intention was to recreate,
12 in an objective database, the data that
13 Eastern Health had within its system, and we
14 wanted this database to have integrity and
15 reliability clearly, and so we had to
16 establish some rules around how we--what data
17 we could rely upon and bring into the
18 database, and because it was a database on
19 their data, one of the rules that we devised,
20 you know, NLCHI may have suggested it, I can't
21 recall which way, but was that we would only
22 rely upon information that was document based.
23 So a spreadsheet as a print out from a
24 computer, that was a document. But even a
25 notation on the side of, say, a call sheet, if

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1 there was a call sheet with a name and a phone
2 number and there was a handwritten notation
3 "called on February 1st" that was a written
4 record, that was Eastern Health's own data and
5 we would incorporate that. What we would not
6 rely upon would be just the verbal assurances
7 that something happened on a certain date.
8 That wasn't good enough. It had to exist on a
9 record in order so that the--ultimately the
10 database could be auditable in a sense, that
11 we could go back to source documents, that we
12 could also identify who wrote that or who was
13 the author of the source document, and if
14 necessary then, one could ask the author of
15 that source document "is that an accurate
16 reflection of what you actually did?"
17 Now that was our sense of it. We weren't
18 going to then second guess--that wasn't the
19 objective, to second guess the truthfulness -
20 COFFEY, Q.C.:
21 Q. Or the accuracy perhaps is a--is it the -
22 MR. THOMPSON:
23 A. Okay, sorry, I'm reading too much into what
24 you're asking perhaps.
25 COFFEY, Q.C.:

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1 Q. No, no, I'm talking about the reliability and
2 accuracy, not that somebody is falsifying
3 something. I'm not suggesting that at all.
4 MR. THOMPSON:
5 A. No, okay, thank you. So this was the
6 limitation of our objective in order to
7 recreate with some integrity the data that
8 Eastern Health had in its own records. We
9 realized that data may be subject to some
10 error. Some people may write down things
11 inaccurately. That's inherent in any data
12 collection exercise, but it was really
13 important to base it and anchor it in that
14 experience that Eastern Health had lived.
15 COFFEY, Q.C.:
16 Q. Now -
17 MR. THOMPSON:
18 A. Oh sorry.
19 COFFEY, Q.C.:
20 Q. Go ahead.
21 MR. THOMPSON:
22 A. So in that respect, it wasn't an evaluation,
23 okay, of the Eastern Health retesting and
24 communication exercise. It was really
25 ultimately a description, hopefully one with

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1 lots of integrity, but a description of what
2 had happened during this time period.
3 COFFEY, Q.C.:
4 Q. Has there ever arisen any occasion, you know,
5 since that exercise started, that task
6 started, where the reliability of particular
7 notations as to contact has come into
8 question? Like a particular patient having,
9 you know, a note that a particular patient was
10 contacted on a particular day and told a
11 particular thing, and its become apparent that
12 because of what the patient has now said, has
13 now reported or in fact just because if you
14 compare it to other documents, it could not
15 have happened.
16 MR. THOMPSON:
17 A. I don't -
18 COFFEY, Q.C.:
19 Q. And here's a particular one, and I'll refer
20 you to the details of it later, if necessary,
21 is Janet Andrews.
22 MR. THOMPSON:
23 A. Right.
24 COFFEY, Q.C.:
25 Q. Are you aware of the situation, in terms of

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1 what the notation -
2 MR. THOMPSON:
3 A. No.
4 COFFEY, Q.C.:
5 Q. Okay, you're not, okay. But is there any that
6 you're aware of? Has anyone ever said to you,
7 "listen, Robert, I know it's noted there, and
8 that's what I transposed the informational
9 into our database, but I have some reason to
10 believe that particular source documents, the
11 information contained in them, is not
12 accurate"?
13 MR. THOMPSON:
14 A. We talked about what if there's a discrepancy
15 between what a patient may say and what a
16 notation says, and we recognize that perhaps
17 there might be discrepancies from time to
18 time, but I can't recall any specific cases of
19 that. But in those general discussions about
20 the possibility that that may be the case, my
21 recollection is that it was asserted to us
22 that it's possible that, for example, a letter
23 would have gone to a physician and that aspect
24 of it would be true, but that if a patient
25 doesn't recall being told about it, that may

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1 be true as well. So reflecting in the
2 database that a patient was contacted may, in
3 that sense, not be accurate. So we know that
4 the category of patient contact via physician
5 may not validate full patient contact, but
6 again, we're working with the data that is
7 available to us within Eastern Health, and in
8 that category of more recent date, we've had
9 reason to be even more concerned about a case
10 where the data was--so this is a case in point
11 of very recent date where the data that we
12 recorded from source documents turned out--the
13 contact turned out not to have happened, and
14 so when--okay, I'm glad we had the opportunity
15 to come through this, because I was thinking
16 back then and not of more recent date. So on
17 the basis of that particular case, which was
18 in April, as I recall -
19 COFFEY, Q.C.:
20 Q. Like last month?
21 MR. THOMPSON:
22 A. Right, last month. That we, in dialogue with
23 Eastern Health, and Eastern Health was equally
24 concerned about finding out that the recorded
25 contact did not actually happen, Eastern

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1 Health determined that they would do an audit
2 exercise of all the physician letters that
3 went to--that were believed to have resulted
4 in contacts, but perhaps some may not have.
5 So there is a process under way to deal with
6 that.
7 COFFEY, Q.C.:
8 Q. Okay, and that matter or that aspect of the
9 matter first came to your attention when, in
10 terms of that possibility first came to your
11 attention when?
12 MR. THOMPSON:
13 A. Well, you know, the theoretical possibility
14 perhaps even last June or July, but the actual
15 example that I'm talking about came to my
16 attention last month.
17 COFFEY, Q.C.:
18 Q. Okay. Commissioner, lunch?
19 THE COMMISSIONER:
20 Q. Take a break.
21 COFFEY, Q.C.:
22 Q. Thank you.
23 THE COMMISSIONER:
24 Q. 2:15, thank you.
25 (LUNCH BREAK)

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1 THE COMMISSIONER:
2 Q. Please be seated. Mr. Coffey?
3 COFFEY, Q.C.:
4 Q. Thank you, Commissioner. Exhibit P-0983,
5 please, page two. This June 11th e-mail from
6 yourself to Ms. Hennessey and Ms. Mundon,
7 particularly under paragraph C, you've written
8 "for the period after October 24th 2005, it
9 would also be helpful to have explanations as
10 to why each case was added. For example,
11 blocks of samples arrived from Western,
12 Labrador, etcetera, or the block of samples
13 for retesting the Ventana system."
14 Now what did you mean by "or the block of
15 samples for retesting the Ventana system"?
16 MR. THOMPSON:
17 A. As I recall, there was a--I just have to think
18 for a moment. Well, there was a group of
19 samples, tissue samples that were tested under
20 the DAKO system and then a subsequent group
21 that were tested originally by the Ventana
22 system, and so I think all that was there was
23 a reference to helping us understand which
24 samples they were, you know, were they
25 originally tested on DAKO or Ventana. That's

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1 as best as I can figure looking at reading
2 that now.
3 COFFEY, Q.C.:
4 Q. Okay. Would that have had anything to do with
5 whether or not certain people retested on the
6 Ventana system had or hadn't been notified
7 about the results? Retested.
8 MR. THOMPSON:
9 A. I don't think so.
10 COFFEY, Q.C.:
11 Q. I'm not suggesting -
12 MR. THOMPSON:
13 A. C starts off "for the period after October
14 24th" so in other words, samples added after
15 that time.
16 COFFEY, Q.C.:
17 Q. To the overall database?
18 MR. THOMPSON:
19 A. Right.
20 COFFEY, Q.C.:
21 Q. Okay.
22 MR. THOMPSON:
23 A. It would be so that explanations as to why
24 each case was added. You know, it may be--if
25 I was writing that today, I clearly wouldn't

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1 phrase it that way because I don't think it
2 would be relevant, but at that time maybe I
3 thought it was--that was a relevant phrasing.
4 COFFEY, Q.C.:
5 Q. If we could, please, Exhibit P-0985? These
6 are two e-mails of August 1, 2007. One is
7 said to be forwarded on behalf of Joan Dawe,
8 Board Chair, Eastern Health. She writes "good
9 morning, Honourable Minister and Deputy
10 Minister. With the permission of Dr. Linda
11 Inkpen, chairperson, Medical Advisory
12 Committee, MAC, I am forwarding the attached
13 correspondence for your information, that is
14 June 18th 2007 letter and a July 24th 2007
15 letter. With respect to the reference in the
16 July 24th correspondence and MAC requesting an
17 opportunity to meet with the Premier and the
18 Minister of Health, Mrs. Dawe advises that she
19 will be meeting with Dr. Inkpen for a focus
20 discussion prior to scheduling this meeting.
21 Thank you, Joyce."
22 And then you advise Ms. Donahue the same
23 day to "please print for the ER/PR file." Now
24 what was this about?
25 MR. THOMPSON:

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1 A. My instruction to Betty or -
2 COFFEY, Q.C.:
3 Q. Well, the printing for the file, I -
4 MR. THOMPSON:
5 A. Okay, I have to be clear.
6 COFFEY, Q.C.:
7 Q. I appreciate that.
8 MR. THOMPSON:
9 A. This was a letter, as I recall, or a request
10 from Dr. Inkpen for a meeting. There was a
11 considerable amount of turmoil within Eastern
12 Health, trying to understand the relationship,
13 the partnership between government and Eastern
14 Health, the amount of support for the
15 institution, and there was, as I recall, a
16 desire for Dr. Inkpen to meet with the
17 Minister and the Premier in order to express
18 the level of concern in general within Eastern
19 Health and, I guess, to seek good ongoing
20 understandings and relationships.
21 COFFEY, Q.C.:
22 Q. And did either of those--you would have gotten
23 those two pieces of correspondence?
24 MR. THOMPSON:
25 A. Yes.

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1 COFFEY, Q.C.:
2 Q. Did either or both of those relate to or
3 convey the view, on behalf of the MAC, that
4 they vehemently disagreed with Mr. Tilley
5 having been let go?
6 MR. THOMPSON:
7 A. Well, I know that they disagreed with it. I
8 can't remember the exact tone.
9 COFFEY, Q.C.:
10 Q. Then how did this unfold? The last paragraph
11 is "Ms. Dawe advises she will be meeting with
12 Dr. Inkpen," but when did you--what did you
13 next hear about this?
14 MR. THOMPSON:
15 A. Well, I didn't stay close to this series of
16 events. I recall that the Minister--well,
17 that Mrs. Dawe did meet with MAC and that she
18 listened to their concerns and responded to
19 them about the views of the Board of Trustees,
20 said that she would convey these views to the
21 Minister. I know that the Minister was
22 interested in participating in a meeting with
23 the Board of Trustees or the MAC as necessary,
24 but I can't recall that that meeting actually
25 occurred.

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1 COFFEY, Q.C.:
2 Q. I take it that you didn't meet with the MAC
3 yourself?
4 MR. THOMPSON:
5 A. No.
6 COFFEY, Q.C.:
7 Q. In the sense of or as part of a larger
8 meeting?
9 MR. THOMPSON:
10 A. No.
11 THE COMMISSIONER:
12 Q. Mr. Thompson, was this--I'm just trying to get
13 an understanding in respect of the nature of
14 this as it relates to ER/PR. Was this just
15 concern--was the message from the MAC that Mr.
16 Tilley's departure somehow was being
17 interpreted by them as a lack of support by
18 the department for the institution or was it
19 more complicated than that?
20 MR. THOMPSON:
21 A. I think it was a lack of support for--or lack
22 of under--they thought that the government had
23 a lack of understanding as to the desire to
24 have a culture within Eastern Health which
25 supported openness and transparency and clear

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1 discussions about things when they go wrong
2 without attributing blame and the desire to
3 use a culture like that to learn from things
4 that happen and that actions of recent weeks,
5 in particular the departure of Mr. Tilley,
6 were perhaps perceived within Eastern Health
7 and by MAC as a lack of support by government
8 for that kind of culture and for--and that
9 actually trying to--they felt that government
10 was using blame and using finger pointing as a
11 way to try to resolve the issues and perhaps
12 that wasn't the best approach. That was the
13 sense in which I interpreted it.
14 THE COMMISSIONER:
15 Q. All right, thank you.
16 COFFEY, Q.C.:
17 Q. P-0116, please? Page two, please? Now this
18 is one of those two letters, the June 18th
19 2007 one, which was forwarded to you, I
20 believe around August 1st.
21 MR. THOMPSON:
22 A. Um-hm.
23 COFFEY, Q.C.:
24 Q. This is the letter from Dr. Linda Inkpen to
25 Ms. Dawe and after advising Ms. Dawe that she

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1 was--as a result of a meeting of June 13th,
2 2007 of the MAC, she was asked to write to the
3 Board before their next Board meeting, and if
4 we could go to page two of the letter, which
5 is page three of the exhibit, she continues
6 "the MAC members are troubled and alarmed when
7 health care problems are perceived to be
8 resolved through blame and retribution. That
9 procedures and strategies are now sufficiently
10 mature to recognize and identify weaknesses in
11 patient care, has reason to feel proud of the
12 leadership which promoted the culture to
13 pursue quality patient care and services in
14 the first place, and of course communication
15 policies and action will need constant
16 refinement and re-invention as health care
17 stakeholders at all levels become sufficiently
18 mature to appreciate the nature and
19 implication for public disclosure of health
20 care quality initiatives. The MAC is
21 appreciative of Mr. Tilley's leadership at
22 this time and is concerned that Mr. Tilley's
23 approach and involvement is not understood to
24 be highly supportive and integral to quality
25 patient care services."

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1 So at this point in time, the middle of
2 June, Mr. Tilley was still in his position?
3 MR. THOMPSON:
4 A. Right.
5 COFFEY, Q.C.:
6 Q. And Dr. Inkpen points out, "it's not often
7 that the MAC" who are described here, "who
8 traditionally have little tolerance for
9 bureaucratic and administrative necessities
10 and processes, choose to speak out on
11 management and political issues. However,
12 this letter speaks to the MAC support that Mr.
13 Tilley has in these difficult times." So I
14 take it even while Mr. Tilley was still in his
15 job, and this would be two to three weeks
16 before he left his job, that there was a
17 complaint by the MAC concerning what they
18 perceived to be a lack of support by the
19 department and the government.
20 MR. THOMPSON:
21 A. Right.
22 COFFEY, Q.C.:
23 Q. Because the approach of the department and
24 government at the time was described here as
25 involving health care problems being perceived

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1 to be resolved through blame and retribution.
2 MR. THOMPSON:
3 A. Right.
4 COFFEY, Q.C.:
5 Q. Did you ever make any inquiries as to what
6 exactly it was that the department or the
7 government had done, up until June 18th 2007,
8 that would have amounted to blame and
9 retribution of Mr. Tilley?
10 MR. THOMPSON:
11 A. Well, I had a general sense of what they may
12 have been referring to and that--and I think
13 in substantial part, it arose out of comments
14 made in the House of Assembly or in media
15 interviews outside the House of Assembly by
16 the Minister and the Premier, but these were
17 very general comments and could be interpreted
18 in different directions. So, for example--and
19 I forget the date, but after Mr. Abbott had
20 left the department, there was questioning
21 about whether--about how the government felt
22 about Mr. Tilley and there was reference, I
23 think by the Minister, to that's a matter that
24 needs to be addressed by the Board of Eastern
25 Health, and those statements were indicative

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1 of a feeling generally that people were
2 wondering about whether or not the government
3 was supportive of Mr. Tilley's leadership
4 there and that was creating an environment of
5 tension, and my belief was that that was an
6 example of the type of thing that MAC was
7 feeling and felt that the government was not
8 supporting Mr. Tilley at the time.
9 COFFEY, Q.C.:
10 Q. So that, in effect, the MAC, you understood,
11 was complaining that--or their complaint was
12 that government, including the Premier, had
13 not been--and the Minister, had not been
14 openly publicly supportive of Mr. Tilley's -
15 MR. THOMPSON:
16 A. That was the impression that I formed around
17 their feelings.
18 COFFEY, Q.C.:
19 Q. And by June 18th, 2007, certainly you,
20 yourself, as the acting deputy minister, had
21 some doubts about the confidence level that
22 you could accord to certainly the data that
23 Eastern Health had?
24 MR. THOMPSON:
25 A. Certainly the data.

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1 COFFEY, Q.C.:
2 Q. Yes. If we could, please, page four of the
3 same exhibit? July 24th 2007 letter, and this
4 is again from--it's actually three pages long.
5 It's from Dr. Linda Inkpen again to Ms. Dawe
6 as chair of the Board of Trustees of Eastern
7 Health, and this apparently followed a special
8 meeting of the MAC on July 16th 2007, and she
9 advises, in the first four lines of the second
10 paragraph, "I have been asked to write the
11 Board with the following comments. First, the
12 MAC members felt that there was nothing
13 presented at the special meeting which caused
14 them to feel differently than when the MAC
15 wrote to you," that would be Ms. Dawe, "on
16 June 18th 2007."
17 And she goes on further down in that
18 second paragraph, just past the midway point,
19 "currently, a climate of blame and retribution
20 exists and impedes rather than fosters quality
21 health care. Complex medical problems are
22 associated with a simplistic, micro-managed,
23 non-patient centred basis" and she goes on at
24 some length after that.
25 So the gist of this letter, which is a

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1 week before August 1, was what? What was your
2 understanding of it?
3 MR. THOMPSON:
4 A. That the sense of concern that MAC had for
5 that, the damage that was being done to a
6 culture that they held as very important was
7 continuing and they wanted to express that
8 view that nothing had changed from their
9 warning about that that they made in June.
10 COFFEY, Q.C.:
11 Q. And the second paragraph on the second page of
12 the letter, the last two sentences read "the
13 Medical Advisory Committee is asking for the
14 opportunity to meet with the Premier and the
15 Minister of Health and Community Services. I
16 would welcome the opportunity to discuss the
17 details of such a meeting with the Board
18 Chair."
19 Now what, on August 1, when you would
20 have read this letter, or thereabouts, what
21 was your understanding of what exactly it was
22 that the MAC hoped to accomplish by meeting
23 with the Premier and the Minister of Health?
24 What would they be requesting of both those
25 gentlemen?

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1 MR. THOMPSON:
2 A. My sense was that MAC felt that the Premier
3 and the Minister didn't understand and
4 appreciate the kind of culture they felt was
5 important within Eastern Health and they
6 wanted to break through unfiltered and have
7 that direct meeting with them, and apprise
8 them of that point of view that they held and
9 receive some feedback about what was actually
10 the views of the Premier and the Minister so
11 they could have an honest and frank exchange.
12 COFFEY, Q.C.:
13 Q. Okay, because otherwise you could just send a
14 letter. The MAC could just send a letter to
15 the Premier expressing their views, I take it.
16 MR. THOMPSON:
17 A. But the benefit of a meeting clearly would be
18 eyeball-to-eyeball appreciation with body
19 language and all of that that comes with it.
20 COFFEY, Q.C.:
21 Q. Okay. If we could, please, Exhibit P-0996? I
22 take it as no such meeting, to your knowledge,
23 ever occurred, you don't know what, if
24 anything, they would have actually wanted of
25 the Premier or the Minister at the time?

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1 MR. THOMPSON:
2 A. No, that's right.
3 COFFEY, Q.C.:
4 Q. But you did understand, because of your
5 earlier--well, looking at the earlier letter
6 and your involvement earlier in the summer,
7 that they were concerned that there'd be no
8 public statements in support of Mr. Tilley,
9 while he was still -
10 MR. THOMPSON:
11 A. I think that gave rise to some of their
12 concerns, that's right.
13 COFFEY, Q.C.:
14 Q. Now this is an e-mail from Theresa Pirogowicz,
15 I suspect is the way it's pronounced and I
16 apologize to the lady if I've mispronounced
17 it, August 7th 2007, 3:13 p.m. It's to
18 yourself, copied to Mr. MacDonald, and Dr.
19 Brendan Mullen and another person. The
20 attachment is--well, it says "please find
21 attached a letter with attachment from Dr.
22 Kenneth Pritzker regarding ER/PR testing of
23 breast cancer," and the sender here is
24 described as the assistant to Dr. Pritzker,
25 who was with Mount Sinai.

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1 If we look at the second page, if we
2 could, please, I take it here, on August--this
3 letter which is itself dated August 3rd 2007,
4 is Dr. Pritzker advising you that Mount Sinai
5 will be pleased to provide the information for
6 the database?
7 MR. THOMPSON:
8 A. Right.
9 COFFEY, Q.C.:
10 Q. If we could, please, Exhibit P-0997? Now sir,
11 the bottom e-mail is one of August 7th 2007
12 from yourself to Ms. Hennessey and a number of
13 other individuals. You write "Don, talked to
14 Louise," which would be Louise Jones?
15 MR. THOMPSON:
16 A. Right.
17 COFFEY, Q.C.:
18 Q. "I think she understands our plight. She
19 wants to consult with her people before she
20 gives a response. I told her that if we had to
21 stop now and wait until Eastern Health
22 constructs a new master list, it would delay
23 our database efforts by an unknown amount of
24 time. While a master list is important and
25 will bring confidence around the question of

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1 whether everyone is included, it will not
2 address our more focused effort to deliver a
3 timely database that can be useful around the
4 Terms of Reference for the Commission. I
5 specifically asked her to allow Mr. Dyer to
6 continue the extra five to seven sessions with
7 Reza and to allow Ms. Predham to work
8 exclusively with Reza for two weeks on the
9 communications events. I guess we will need
10 to meet with her team before we have a final
11 resolution. In the meantime, stay on the
12 course you have set. Signed Robert." And so
13 what was this about, sir?
14 MR. THOMPSON:
15 A. Yes, so what's going on here is that Eastern
16 Health had come forward to us with a
17 suggestion that there might be an alternative
18 way to construct the database than the
19 methodology that NLCHI had proposed to us, and
20 as I understand it, although for me it was a
21 layer into the information system that I
22 wasn't entirely familiar with, but as I
23 understood it, what they were proposing was to
24 delve into raw data in pathology reports in
25 the Meditech system within Eastern Health and

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1 as a basis for searching the entire set of
2 pathology reports, and to search for key words
3 and terms that would produce a comprehensive
4 set of all of ER/PR tests ever done, and that
5 they would have to write some new software or
6 at least revise some software to carry out
7 that task and it would take the NLCHI people
8 that were on the present project off of that
9 and in a new course of activity.
10 So we weren't concerned that it wasn't a
11 good goal. Our concern was that, about the
12 viability of the methodology that they were
13 proposing and whether or not it would result--
14 or I should say, whether or not it would delay
15 an outcome of the kind that we had set out to
16 obtain, and so that's the caution I was
17 expressing that this is--no doubt it's a good
18 objective, but if it's going to divert us,
19 possibly be a very long time and then we don't
20 get back on the track that we were on, then
21 there's a risk there I didn't want to take
22 unless there could be some more guarantees.
23 So I was quite cautious, as was Don MacDonald,
24 about taking this alternative.
25 We weren't, of course, going to get in

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1 the way of Eastern Health doing this kind of
2 assessment themselves, and they have an IT
3 department that could no doubt take it on, but
4 I didn't want to divert NLCHI from that task,
5 based on what they had already started.
6 COFFEY, Q.C.:
7 Q. Okay, and so the decision was made to go with
8 the approach you -
9 MR. THOMPSON:
10 A. Well, the Department's decision as a client of
11 NLCHI, we wanted to continue on with what we
12 were doing.
13 COFFEY, Q.C.:
14 Q. If we could, please, Exhibit P-0999? Sir,
15 this is a--well, it's a series of e-mails.
16 There's one from yourself, so it must have
17 ended up in your e-mail account, the ones
18 below it, August 8th 2007 at 11:53 a.m.
19 You're forwarding data and letter to Glenda
20 Power and Tansy Mundon, and the e-mails below
21 are between Marion Crowley and Louise Jones
22 and I take it they concern drafting or
23 responding--or drafting a letter, because when
24 we look--I'm going to ask you about that then.
25 Marion Crowley is the information coordinator,

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1 Quality and Risk Management of Eastern Health.
2 And then page three of the exhibit is a draft.
3 It's marked draft in the watermark, August 8th
4 2007 to Mark Quinn.
5 MR. THOMPSON:
6 A. Right.
7 COFFEY, Q.C.:
8 Q. See that? Of CBC, and it's "re: your request
9 to access to information letter, part two of
10 the ATIPPA. This is to confirm that on
11 February 15th 2007, Eastern Health received
12 your request for access to the following
13 records/information," and is this the request
14 for the ER/PR results without identifying
15 character markers?
16 MR. THOMPSON:
17 A. Right.
18 COFFEY, Q.C.:
19 Q. And why were you involved in this?
20 MR. THOMPSON:
21 A. That's a good question. Could you -
22 COFFEY, Q.C.:
23 Q. Sure, go ahead.
24 MR. THOMPSON:
25 A. Or I can go right back?

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1 COFFEY, Q.C.:
2 Q. Just go ahead, sir.
3 MR. THOMPSON:
4 A. Okay, I need to reread those e-mails.
5 COFFEY, Q.C.:
6 Q. Sure.
7 MR. THOMPSON:
8 A. We didn't have any particular functional role.
9 Clearly, we were communicating back and forth
10 on a lot of things. I know that Eastern
11 Health didn't want to do anything in the
12 public domain without making sure that we were
13 aware of what was going on. So I think it's
14 in that context that they're sharing their
15 activities on this request with us, so that
16 we'd be well aware of what's going on.
17 COFFEY, Q.C.:
18 Q. So did you have any input into the wording of
19 the letter that was going to go out to Mr.
20 Quinn?
21 MR. THOMPSON:
22 A. No.
23 COFFEY, Q.C.:
24 Q. Okay, and in terms of that, if we could look
25 at P-1000, please? This is an e-mail from Ms.

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1 Mundon to Ms. Cheeseman, Ms. Matthews, Andrea
2 Nolan and Carmel Turpin, August 8th 2007 at
3 3:16 p.m., and I take it she is--she says
4 "FYI, just to update you on the ATIPP request
5 submitted to Eastern Health on ER/PR test
6 results from 1997 to the present" and this is
7 Mr. Quinn's, and she concludes by saying
8 "Eastern Health has compiled the data
9 requested. It is in chart form and is 22 pages
10 long, which I have attached. As you can see,
11 the information is not easily interpreted. In
12 discussions with Susan Bonnell, she indicated
13 that should Mark Quinn seek interpretation of
14 the data as a follow up to this request, then
15 Eastern Health will provide it. They will
16 develop a strategy to deal with this if the
17 request comes. Thanks, Tansy" and in fact,
18 that particular e-mail is copied to Ms. Power
19 and yourself.
20 MR. THOMPSON:
21 A. Right.
22 COFFEY, Q.C.:
23 Q. Now sir, could we please look at just page two
24 of the exhibit? This is an e-mail from
25 yourself forwarding Ms. Mundon's e-mail that

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1 we just looked at at 3:05, at 3:19 p.m. to
2 Sandra Barnes and Gary Norris, and now as part
3 of this exhibit, page three and four and quite
4 a number of other pages afterward, they have,
5 in fact, the data in question, okay?
6 MR. THOMPSON:
7 A. Um-hm.
8 COFFEY, Q.C.:
9 Q. By this point in time, had this data been
10 released to CBC?
11 MR. THOMPSON:
12 A. I don't think so.
13 COFFEY, Q.C.:
14 Q. Okay. Well, do you know if this data was
15 being distributed to the various recipients
16 here of these various e-mails?
17 MR. THOMPSON:
18 A. If it was an attachment to the e-mail, then it
19 was going to those recipients, yes.
20 COFFEY, Q.C.:
21 Q. Okay. What would the purpose be of your
22 forwarding this sort of data to Sandra Barnes
23 and Gary Norris?
24 MR. THOMPSON:
25 A. The only purpose would be, not so much to send

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1 them the data, that might have been a
2 byproduct of the e-mail, but to make them
3 aware that this activity was under way.
4 COFFEY, Q.C.:
5 Q. And in terms of then Ms. Mundon having sent
6 though the underlying e-mail with the
7 attachment to Ms. Cheeseman, Ms. Matthews, Ms.
8 Nolan and Mr. Turpin, do you--I appreciate
9 that she's carboning it to you because you're
10 her boss.
11 MR. THOMPSON:
12 A. Yeah.
13 COFFEY, Q.C.:
14 Q. But why the others?
15 MR. THOMPSON:
16 A. To alert the network of people involved in
17 government that this activity was under way.
18 COFFEY, Q.C.:
19 Q. But as well, if the data was attached, what
20 purpose would that serve?
21 MR. THOMPSON:
22 A. The only purpose it would serve is to allow an
23 appreciation for the nature of what was being
24 released, that it was an extensive amount of
25 data and that it contained the kinds of

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1 information that it contained.
2 COFFEY, Q.C.:
3 Q. And by that point in time, I take it the
4 Privacy Commissioner had made his ruling that
5 -
6 MR. THOMPSON:
7 A. Yes.
8 COFFEY, Q.C.:
9 Q. - it should be released to CBC? Okay. Now,
10 sir, if we could look at, please, Exhibit P-
11 1011? Now this is an e-mail on August 24th
12 2007 from Ms. McCormack at 4:03 p.m. It's
13 indicated to herself in fact, subject is
14 "briefing note for the Premier" and the
15 attachment is "briefing note for Premier to
16 update on current status of pathology reports
17 and legal suits for women diagnosed with
18 breast cancer" and the one below it is one
19 from Marilyn McCormack to another Marilyn, I
20 take it. She's hardly writing to herself.
21 REGISTRAR:
22 Q. Mr. Coffey, you asked for 1011?
23 COFFEY, Q.C.:
24 Q. Yes, I did, yeah.
25 REGISTRAR:

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1 Q. What page were you looking for?
2 COFFEY, Q.C.:
3 Q. Oh, I apologize, page two. I apologize.
4 Thank you, Ms. Chaytor. Yes, in terms of if
5 we could look at--actually, if we'd just go
6 back, I'll just back the one. It explains how
7 it ends up in your e-mail system. Page one is
8 the e-mail from Ms. McCormack to yourself on
9 August 24th 2007 at 2:49 p.m., and this is at
10 least one of the versions of the August 18th
11 briefing note.
12 MR. THOMPSON:
13 A. Right.
14 COFFEY, Q.C.:
15 Q. Why were you looking for that at that point in
16 time? In fact, what you're looking for really
17 and what you're getting is the underlying e-
18 mail back in '06. You see that, down here?
19 MR. THOMPSON:
20 A. The reason I was looking for it then, as I
21 recall, is that the issue had arisen about we
22 were trying to understand and appreciate, I
23 guess, the sequence in which that note was
24 prepared. So I would have contacted Marilyn
25 and said "well, send me the note as you would

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1 have it on your system at that time" or
2 something like that.
3 COFFEY, Q.C.:
4 Q. And in the course of doing so, I gather she
5 sent the actual e-mail by which she had sent
6 an e-mail back in--the original e-mail of
7 August 18th 2006?
8 MR. THOMPSON:
9 A. Right.
10 COFFEY, Q.C.:
11 Q. Was the form she took, and the briefing note
12 itself that accompanies this, and this is the
13 August 18th 2006 one, says "the attached note
14 has been approved for Gary"--or "approved by
15 Gary" and we've looked at that before.
16 MR. THOMPSON:
17 A. And just to clarify the two Marilyns, one
18 Marilyn is an administrative assistant in
19 Cabinet Secretariat.
20 COFFEY, Q.C.:
21 Q. So by that point in time, why I'm asking you
22 about it is this, I take it by that point in
23 time, there was some curiosity maybe or
24 concern in your office as to how -
25 MR. THOMPSON:

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1 A. Gathering together all the information and
2 which version was the most -- was the final
3 version that had the highest likelihood of
4 having been forwarded to the Premier.
5 COFFEY, Q.C.:
6 Q. Okay. In terms of that, wouldn't that be the
7 one that had a stamp on it.
8 MR. THOMPSON:
9 A. Yeah.
10 COFFEY, Q.C.:
11 Q. Which the stamp with all the names in the top?
12 MR. THOMPSON:
13 A. That's right.
14 COFFEY, Q.C.:
15 Q. Right hand corner we looked at before. This
16 particular electronic version is not --
17 doesn't have the stamp on it?
18 MR. THOMPSON:
19 A. Right.
20 COFFEY, Q.C.:
21 Q. Are you trying to piece together at that point
22 in time in mid August, 2007, as to who had had
23 input into this and how it had evolved?
24 MR. THOMPSON:
25 A. We were trying to generally understand it, but

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1 I -- we weren't trying to find out edit by
2 edit, you know, how it had been constructed,
3 but just to get a general sense of -- because
4 it is a confusing -- the assembly of that note
5 is somewhat confusing because it involves
6 Eastern Health, the department, and Cabinet
7 Secretariat, and several others who are making
8 contributions or reviewing it. So we were
9 just trying to get a sense of that.
10 COFFEY, Q.C.:
11 Q. And in terms of that, in fact, has at some
12 point an effort been made to try and
13 reconstruct how the note was prepared?
14 MR. THOMPSON:
15 A. That effort is under way right now.
16 COFFEY, Q.C.:
17 Q. Under way right now.
18 MR. THOMPSON:
19 A. Yes.
20 COFFEY, Q.C.:
21 Q. And what, if any, are the challenges in that
22 regard?
23 MR. THOMPSON:
24 A. Well, as I understand it, the key -- several
25 types of challenges. One is that -- the

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1 easiest way to -- if everyone had been using a
2 certain function of the wordprocessing
3 software that actually highlights the changes
4 that are made by each individual, then it
5 would be easier, but most people don't use
6 that particular function. So when an edit is
7 made, it's not immediately obvious that it has
8 been, so one has to do a -- sort of eyeball
9 both versions of a document in order to
10 identify changes. The second thing is that
11 when -- if an author has invited changes from
12 several people, some of those suggested
13 changes might come by a telephone call or
14 walking over to that person's office and
15 suggesting with maybe even perhaps edits
16 handwritten on a paper, why don't you make
17 these changes, and so the next time that the
18 note is changed, it might represent the
19 thinking of several individuals, but it's all
20 being entered by one person. Then there's a
21 host of technological reasons why it might be
22 hard to trace these things as well, which I
23 wouldn't know how to explain, but have some
24 sense of.
25 COFFEY, Q.C.:

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1 Q. Are computer programmers or software experts
2 being utilized in the course of trying to do
3 this?
4 MR. THOMPSON:
5 A. Yes, our office has asked the Office of the
6 Chief Information Office to have a look at
7 that, and we've started a process to see if
8 all the changes to this note can be put into
9 some kind of sequence so it can attribute
10 which changes were made at, I guess, which
11 desktop or which computer.
12 COFFEY, Q.C.:
13 Q. And the source -- any particular change to a
14 particular stand-alone computer?
15 MR. THOMPSON:
16 A. Correct.
17 COFFEY, Q.C.:
18 Q. And how long has that inquiry been going on
19 now?
20 MR. THOMPSON:
21 A. Well, where I haven't been directing it
22 myself, our legal counsel has, I don't know
23 exactly.
24 COFFEY, Q.C.:
25 Q. Okay. If we could, please, Exhibit P-1016.

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1 Now, sir, this is an e-mail from Donald
2 MacDonald to yourself of September 19th, 2007,
3 9:57 p.m. It's re; ER/PR interim report. He
4 writes, "Robert, attached is the interim
5 report which outlines the approach used in
6 developing the database, the data dictionary,
7 and recommendations for the maintenance and
8 development of the database interface. As
9 noted in my earlier e-mail, work continues on
10 adding to the database as new information
11 becomes available, however, we are in a
12 position to begin providing you preliminary
13 data analysis. I also have attached a copy of
14 the letter I'll be sending to Pat Pilgrim
15 tomorrow. This letter came out of last
16 meeting. It took some time to put together
17 given the number of patients involved.
18 Clearly once we hear back from Eastern Health
19 on our request, there will be further updates
20 to this database". Signed Don MacDonald.
21 Now, sir, if we look at page two of this,
22 please, here we are, that's the -- I take it,
23 the interim report?
24 MR. THOMPSON:
25 A. Correct.

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1 COFFEY, Q.C.:
2 Q. And this goes on in writing for some sixteen
3 pages, I believe. I take it this was a text
4 description of what the database would
5 contain?
6 MR. THOMPSON:
7 A. Yeah, that's right, what it contains; not the
8 results, but what it will contain.
9 COFFEY, Q.C.:
10 Q. Now did the database at that point exist?
11 MR. THOMPSON:
12 A. Well, as I understand it, it existed as a
13 computer file, but still with much work
14 remaining to be done in terms of completing --
15 getting comprehensive data for each record
16 within the database, and then redefining some
17 of the variables so that they become useful
18 for analysis.
19 COFFEY, Q.C.:
20 Q. Okay. If we could look at Exhibit P-1017.
21 Now, sir, at the bottom of the page, on
22 October 14th, 2007, you wrote to Mr. Hunt, I
23 believe -- Dr. Hunt, I apologize.
24 MR. THOMPSON:
25 A. Right.

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1 COFFEY, Q.C.:
2 Q. And you write at 3:11 p.m, "Just wondering how
3 you're making out with pathologist info".
4 Signed Robert. He comes back on the 15th at
5 9:47 p.m. saying, "Robert, when I read this e-
6 mail earlier, I misunderstood your inquiry to
7 be when we would hear from Eastern Health
8 about their review. On re-read, I think you
9 were asking about the pathologist numbers for
10 the ER/PR work. I have all that done, but
11 wanted to verify a couple of points with
12 Cathy. For example, I'm not sure if one of
13 the pathologists who also do infectious
14 disease counts A1FTE otherwise. I will check
15 this with Cathy on Wednesday afternoon, the
16 earliest I will see her, and then send you the
17 spreadsheet data. Hope this is okay". Signed
18 Ed. Now what was this about?
19 MR. THOMPSON:
20 A. We had asked for human resource information
21 from Dr. Hunt and from Dr. Bradbury in the
22 department so that we could see and better
23 understand when there had been over this
24 period of time, over this nine year period, a
25 full complement of pathologists in place or

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1 perhaps -- and vacancies to get an
2 understanding of that pattern, and he was
3 providing us with that data.
4 COFFEY, Q.C.:
5 Q. I take it a person power compared to the total
6 available --
7 MR. THOMPSON:
8 A. Essentially.
9 COFFEY, Q.C.:
10 Q. Funded spaces --
11 MR. THOMPSON:
12 A. Essentially, yes.
13 COFFEY, Q.C.:
14 Q. From time to time.
15 MR. THOMPSON:
16 A. Right.
17 COFFEY, Q.C.:
18 Q. Was that ever produced?
19 MR. THOMPSON:
20 A. We did receive some data on it and we have
21 that in our files. That wasn't disclosed?
22 COFFEY, Q.C.:
23 Q. I'm not saying that, I'm just -- do you
24 recall?
25 MR. THOMPSON:

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1 A. Oh, yes, I recall it, yes.
2 COFFEY, Q.C.:
3 Q. Fair enough, and you would have examined that
4 data?
5 MR. THOMPSON:
6 A. Yes.
7 COFFEY, Q.C.:
8 Q. And this analysis, as it were, or summary went
9 back as far as what, do you recall?
10 MR. THOMPSON:
11 A. Well, we were trying to go all the way back to
12 '97. I don't recall whether or not we reached
13 all the way back there, but we had a number of
14 years of data.
15 COFFEY, Q.C.:
16 Q. And in examining the data that's compiled,
17 generally what did you find?
18 MR. THOMPSON:
19 A. Well, my impression of the data was that from
20 time to time over that period there were
21 vacancies of a greater or lesser extent, but
22 no overall pattern that indicated that in
23 certain years there was, let's say, a crisis
24 and other years it was -- nothing emerged to
25 me that would say we have something here

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1 that's worthy of further investigation.
2 COFFEY, Q.C.:
3 Q. And you were -- at the time you compiled it
4 for what purpose? To see if there was some
5 kind of a pattern, I take it?
6 MR. THOMPSON:
7 A. Right, right.
8 COFFEY, Q.C.:
9 Q. And what type of a pattern would you be
10 looking for, do you think?
11 MR. THOMPSON:
12 A. Oh, we'd be looking for a pattern of
13 persistent understaffing in pathology or
14 perhaps a pattern of in one or two years
15 having extraordinary amount of vacancy, and we
16 didn't really detect -- what we detected was
17 that as positions were becoming vacant, they
18 would get filled over time and that there
19 wasn't any sense of a particular problem that
20 peaked at one point in time or another.
21 COFFEY, Q.C.:
22 Q. I take it that in this analysis at times there
23 were significant shortages compared to the
24 total --
25 MR. THOMPSON:

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1 A. Well, I --
2 COFFEY, Q.C.:
3 Q. For short periods.
4 MR. THOMPSON:
5 A. I can't tell you that there were significant
6 shortages.
7 COFFEY, Q.C.:
8 Q. Okay.
9 MR. THOMPSON:
10 A. Certainly there were vacancies at times, but
11 it's also hard to look at the data and
12 determine that there were significant
13 shortages because individual pathologists may
14 work longer hours in order to -- so it was
15 actually data that didn't allow for a complete
16 analysis.
17 COFFEY, Q.C.:
18 Q. For example, did you -- was this database in
19 relation to Eastern Health or all the
20 pathologists across the province, do you
21 recall?
22 MR. THOMPSON:
23 A. We were trying to do it for all pathologists,
24 but to be frank, I'm not sure. I'd have to
25 check that for you.

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1 COFFEY, Q.C.:
2 Q. I'll pick an example, okay.
3 MR. THOMPSON:
4 A. Sure.
5 COFFEY, Q.C.:
6 Q. Grand Falls Windsor, the hospital there, there
7 are -- if there are normally two pathologists
8 there --
9 MR. THOMPSON:
10 A. Uh-hm.
11 COFFEY, Q.C.:
12 Q. But for one year there would be two and the
13 next year there'd be one.
14 MR. THOMPSON:
15 A. Right.
16 COFFEY, Q.C.:
17 Q. And the next year there'd be two again, did
18 you notice anything like that in looking at --
19 because it's one thing to go from 20 to 17
20 potentially, but it's another thing entirely
21 maybe to go from two to one.
22 MR. THOMPSON:
23 A. Sure, sure. No, I didn't prepare or I didn't
24 have another look at this data before I came
25 here today, and I actually haven't looked at

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1 it in several months, so I can't pick out in
2 my recollection -- I could certainly examine
3 it again if it was interest to you.
4 COFFEY, Q.C.:
5 Q. And were you looking for any particular
6 correlation between the level of pathologists
7 and the results in a database?
8 MR. THOMPSON:
9 A. Well, if we saw a pattern that stood out to us
10 in terms of human resources -- or resourcing
11 the pathologists, allowable number of
12 pathologists in the province, we would have --
13 that may have lead us to do that crossover
14 analysis, but there wasn't anything that we
15 saw that was of particular note.
16 THE COMMISSIONER:
17 Q. I just want to be clear on this because
18 obviously levels of staffing are a
19 consideration in terms of potential causes for
20 what we have been calling conversion rates.
21 MR. THOMPSON:
22 A. Sure.
23 THE COMMISSIONER:
24 Q. So I'm taking what you're saying to be that in
25 your examination of the data related to the

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1 number of pathologists working, you were not
2 able to make any correlation between that data
3 and conversion rates for whatever reason. It
4 doesn't mean that it couldn't have been made,
5 it's just that with the data you got, you
6 weren't able to make that connection?
7 MR. THOMPSON:
8 A. That's right, and --
9 THE COMMISSIONER:
10 Q. Or were you able to get enough data to say,
11 no, that's not a factor? That's my concern.
12 MR. THOMPSON:
13 A. No, no, fair enough. We -- our level of
14 analysis on this was superficial because when
15 we looked at simply the vacancy rates, we
16 didn't see enough of a pattern there to cause
17 us to ask secondary questions, so we didn't
18 really answer the question one way or another,
19 "is it or is it not related to conversion
20 rates". I would call it a cold trail based on
21 the kind of insight that I have into that
22 data. Another person with the same data might
23 see more, someone more familiar with the
24 workload of pathologists and so forth, but in
25 our office we did a first pass analysis and

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1 didn't see anything more to pursue.
2 THE COMMISSIONER:
3 Q. All right, thank you.
4 COFFEY, Q.C.:
5 Q. Commissioner, Exhibit P-1022. Sir, this is a
6 couple of e-mails. One of October 25, 2007,
7 at 10:03 a.m. from Reza to a number of
8 individuals connected with this, including Don
9 MacDonald. He says, "Hi, Debbie; in follow up
10 to our meeting with Robert on Tuesday, please
11 see below a summary of the process used to
12 select breast cancer patients for retest at
13 Mount Sinai by Eastern Health. Later today
14 I'll be sending a further note, re; Meditech
15 search for ER/PR pathology reports", signed,
16 Reza, and the e-mail attached is one from
17 Terry Gulliver, Tuesday, July 24th, 2007,
18 11:42 a.m. to Reza, re; ER/PR clinical cut off
19 points, and I take it that these, and they
20 extend to the next page, cover seven points in
21 the process and then there's an intervening
22 paragraph in 8, 9, and 10, and Mr. Gulliver
23 concludes by saying, "Barry and I had very
24 little involvement after results came back.
25 The pathologists/oncologists/QI

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1 Department/Communications Department handles
2 this phase of the process". So I take it that
3 this -- there's e-mails here about or related
4 to a meeting you had with Reza probably on
5 Tuesday, October 23rd.
6 MR. THOMPSON:
7 A. Okay.
8 COFFEY, Q.C.:
9 Q. He says -- I'll just see if you're comfortable
10 with it. Reza has written, "In follow up to
11 our meeting with Robert", and I take it you'd
12 be probably the Robert.
13 MR. THOMPSON:
14 A. Um.
15 COFFEY, Q.C.:
16 Q. And it's Tuesday, and this is Thursday, so
17 October 23rd. Do you recall what the concern
18 was at that point in time? This is the end of
19 October. Why would they be looking for those
20 sorts of guidelines process then?
21 MR. THOMPSON:
22 A. Well, this -- the meeting that we had with the
23 Centre for Health Information would have been
24 one of the many meetings we would have to
25 discuss the progress of the preparation of the

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1 database, and my general recollection is that
2 the discussion we were having around that time
3 would have been on such issues as trying to
4 understand how it is that Eastern Health --
5 what criteria that they use for the selection
6 of tissue samples to send off for retesting
7 and did those criteria change for samples
8 before 2000 and after 2000 because that was an
9 important year for clinical reasons, and
10 perhaps other issues like that. So it's
11 important when compiling the database that we
12 have an understanding of some of those on the
13 ground decisions that were made during the
14 actual retesting process so that we'll
15 understand the data that's being collected in
16 the database. So that's the reason why we
17 wanted some more information on -- brought
18 back to us because the older memos from July
19 24th and -- so Reza already had that
20 information in his possession and he's just
21 forwarding that to help us gain an
22 appreciation for some of the ways the database
23 is constructed.
24 COFFEY, Q.C.:
25 Q. I take it then by the middle and the end of

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1 the October, were there concerns being
2 expressed by Reza about that, about his
3 ability to accomplish what he had been asked
4 to do?
5 MR. THOMPSON:
6 A. I don't have that sense from this memo, and
7 perhaps you're asking about a specific point
8 that I'm not seeing.
9 COFFEY, Q.C.:
10 Q. Okay. Well, if we could go, please, to
11 Exhibit P-1023. Reza's e-mail was October 25
12 and it referenced probably a meeting of
13 October 23 with yourself. This is an e-mail
14 from yourself to Don MacDonald of October 26,
15 2007, at 11:08 a.m, and you've said, "Thanks",
16 but you're thanking him for an e-mail of 11:06
17 that day. He said, "Robert, the list for
18 Saturday's meeting will be ready by end of
19 day. It will contain all tested/retested
20 patients in the Centre database. "N" equals
21 1,030 that were not identified in the original
22 list. "N" equals 924. Provided to the Centre
23 on August 1st. The name, MCP number,
24 source/region, example, consult/Carbonear, and
25 specimen number would be provided on the list.

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1 The list will also contain any cases that were
2 originally ER negative, but may not have been
3 sent for retesting". Signed, Don MacDonald.
4 Does that --
5 MR. THOMPSON:
6 A. Sure, okay, I see where you're going there
7 now. After -- by early September there was a
8 database structure in place with all of the
9 easy to retrieve data, let's say, in it, but
10 then there's sort of an 80/20 rule here; 20
11 percent of the time will give you 80 percent
12 of the product, but then you need to spend 80
13 percent of the time gathering the final 20
14 percent of the work -- of the data. So by the
15 middle of September, the team was running into
16 -- problems might not be the right word, but
17 gaps or questions that were difficult to
18 answer about whether a case, for example,
19 actually belonged in the database or not. So
20 let me give you an example. There might be a
21 record for a patient who is retested at Mount
22 Sinai, but -- for whom they couldn't find in
23 any information system, the original results
24 done in one of the years between 1997 and
25 2005. So they were accumulating a separate

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1 list of all these types of gaps in the data.
2 There were others for which there was an
3 original ER negative result, but no matching
4 test at Mount Sinai. There were other pieces
5 of data missing that created question marks
6 for NLCHI. So they were compiling all this,
7 and then on September 20th, these lists were
8 all documented and letters were sent, I
9 believe, to all four RHA's because some of the
10 data needed to be sourced in all four of them,
11 asking for them to fill in these gaps so that
12 some decisions could be made as to which cases
13 were actually qualifying as in the database
14 because they were -- the underlying criterion
15 was an ER negative, an original ER negative
16 patient that was subsequently tested at Mount
17 Sinai. That was the bottom line criterion to
18 be included in the database. So the lists of
19 September 20th were designed to be a check-off
20 process so that as the answers came in, we
21 could determine which ones of those would
22 remain in the database and which ones did not
23 meet the criteria. So by -- coming toward the
24 end of October, all of that work or there was
25 some of that work still not completed, and we

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1 found that it was necessary to have a lengthy
2 meeting with Eastern Health to work our way
3 through these lists once again and assign,
4 with the help of Pat Pilgrim and Louise Jones,
5 to assign work to other officials to dig in
6 and answer those questions so we could resolve
7 them once and for all. So that's the nature
8 or that's the sort of thing that was going on
9 towards the end of October.
10 THE COMMISSIONER:
11 Q. Let's go back for just a second to the point
12 that you made a little earlier in respect to
13 Exhibit P-1022, and you said that the concern
14 at the time was understanding the criteria
15 used by Eastern Health in sending material to
16 Mount Sinai?
17 MR. THOMPSON:
18 A. Well, I was making a general point that in
19 Reza sending us that attachment --
20 THE COMMISSIONER:
21 Q. Uh-hm.
22 MR. THOMPSON:
23 A. He was sending us information that allowed us
24 to better understand how people at Eastern
25 Health at the very beginning of the testing

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1 process -- retesting process, were making
2 decisions about which tissue samples to send
3 to Mount Sinai.
4 THE COMMISSIONER:
5 Q. You mean as in which block or you mean as in
6 whose?
7 MR. THOMPSON:
8 A. Whose.
9 THE COMMISSIONER:
10 Q. All right, thank you.
11 COFFEY, Q.C.:
12 Q. Thank you. So you recall communicating with
13 the Boards on September 20th about that?
14 MR. THOMPSON:
15 A. Yes, letters.
16 COFFEY, Q.C.:
17 Q. And you requested of them, what, confirmation
18 that --
19 MR. THOMPSON:
20 A. To review these lists and to fill in missing
21 data or to confirm one way or another whether
22 these -= including these cases in the database
23 was appropriate.
24 COFFEY, Q.C.:
25 Q. Okay. Did you -- how often did you go through

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1 that process with the Boards?
2 MR. THOMPSON:
3 A. Well --
4 COFFEY, Q.C.:
5 Q. Did you do it -- like, each port twice, or one
6 once or twice or --
7 MR. THOMPSON:
8 A. That's perhaps a question better directed to
9 NLCHI because they would have had multiple
10 contacts with each board.
11 COFFEY, Q.C.:
12 Q. The reason I ask is this, and I'll just -- in
13 that regard, perhaps if we could pull up
14 Exhibit P-1032. This is a letter of October
15 29th, 2007, to Mr. Boyd Rowe, CEO.
16 MR. THOMPSON:
17 A. Right.
18 COFFEY, Q.C.:
19 Q. ER/PR cases/confidential.
20 MR. THOMPSON:
21 A. Okay.
22 COFFEY, Q.C.:
23 Q. Is that the -- just look through it.
24 MR. THOMPSON:
25 A. So we did it on this date as well. Now I may

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1 or may not be correct in saying that on
2 September 20th we had letters to all of the
3 RHA's. It may be on September 20th it was
4 just to Eastern Health, but -- and what's
5 more, in my recent months we've had, in our
6 effort to narrow down on communications data
7 to make sure that we had all the
8 communications data, we've gone through at
9 least a couple of more similar exercises in
10 sending lists back to the RHA's and getting
11 them to confirm final -- filling in empty
12 pieces of data.
13 COFFEY, Q.C.:
14 Q. If we could, please, Exhibit P-1024. Now this
15 is an e-mail from Brian Crawley to yourself,
16 October 26th, 2007, at 2:15 p.m, the subject
17 is ER/PR briefing. He writes, "Robert, I
18 spoke with the Premier this morning and
19 summarized the information you shared with me
20 yesterday afternoon. He would like for you to
21 be prepared to brief him at the earliest
22 opportunity. He's in Corner Brook right now,
23 and then on to Ottawa this evening until
24 Sunday. So the earliest will likely be Monday
25 morning. His immediate reaction was to

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1 proceed with disclosure as quickly as
2 possible. We think this should happen next
3 week once the Premier is briefed. I don't
4 think it can wait for the new Cabinet to be
5 sworn in. Given our past frustrations with
6 Eastern Health, we may have to tell them that
7 we will release this information if they do
8 not, but we can discuss this in greater detail
9 Monday morning when we meet with the Premier",
10 signed, Brian. Now, sir, you had apparently
11 spoken with Mr. Crawley?
12 MR. THOMPSON:
13 A. Right.
14 COFFEY, Q.C.:
15 Q. What had that been about?
16 MR. THOMPSON:
17 A. Okay, in the month of October, it had become
18 clear to us that the total number of patients
19 present in the database was exceeding the
20 number that had been recorded by Eastern
21 Health in --
22 COFFEY, Q.C.:
23 Q. That's the 1030, "N" equals 1030 versus "N"
24 equals 924? Is that the --
25 MR. THOMPSON:

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1 A. Well, there's so many N's throughout the whole
2 period. I know the ones you're referring to,
3 but the general point I think is more
4 important that --
5 COFFEY, Q.C.:
6 Q. "N" kept changing, as it were.
7 MR. THOMPSON:
8 A. Oh, it did, many, many times, but the point is
9 that over the course of this work it started
10 to become clear that there were actually more
11 people retested at Mount Sinai than 939, and
12 so when -- in October the data started to
13 become stable, we started to get a focus on
14 about how many people that was, so now it was
15 time for me to brief Minister Wiseman and the
16 Premier's Office to give them a progress
17 report on what we were finding. And I guess
18 there were really two key findings at that
19 point. Number one is that the total number of
20 cases case about 1000, rather than 939. And
21 as well that there were 15 new cases, that
22 number was up and down in our notes because
23 some days we thought it was 14, some 16, but
24 by the time it was publicly released we were
25 saying 15 new cases that should have been

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1 retested in 2005, but had not been. So, these
2 were important pieces of information that
3 people needed to know. I briefed Brian
4 Crawley and, of course, he was seized with the
5 information as well, and briefed the premier.
6 And the Premier's first reaction was well,
7 this is important, if the government has this
8 information, it's information that should be
9 made available to the public as well.
10 COFFEY, Q.C.:
11 Q. And this 12, 14, 15, that's the--I take it, is
12 that part of the Carbonear -
13 MR. THOMPSON:
14 A. Yes, yes.
15 COFFEY, Q.C.:
16 Q. Or is it all the Carbonear cases?
17 MR. THOMPSON:
18 A. My recollection is that Carbonear was most of
19 them, but maybe not all of them.
20 COFFEY, Q.C.:
21 Q. And you become aware of those when?
22 MR. THOMPSON:
23 A. Well, we became gradually aware of them
24 throughout the September/October period. We
25 had an inclination in the summer that we might

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1 find some of those. And now I know that some
2 of the--the Eastern Health had identified some
3 of those perhaps coincident with NLCHI finding
4 out about them and Eastern Health was sending
5 them off for retesting in August in, in
6 September. So, these 15 had already been sent
7 off for retesting by the end of October, but
8 they fit into a category, we were saying as
9 newly identified as should have been retested
10 at the time, but weren't.
11 COFFEY, Q.C.:
12 Q. So, In terms of that, who did you learn about
13 these patients from, the fact that there were
14 10, 14, 15 whatever, numbers -
15 MR. THOMPSON:
16 A. Through the regular updates form NLCHI.
17 COFFEY, Q.C.:
18 Q. So, it wasn't Eastern Health that contacted
19 you about it to tell you as acting deputy
20 minister, we've discovered a group of other
21 patients who have yet to be retested?
22 MR. THOMPSON:
23 A. It's possible that that happened on one case
24 or another, but there was--because there's so
25 many, a flood of conversations always going on

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1 back and forth, but my general recollection is
2 that we learned about this in the updates we
3 were getting from the Centre.
4 COFFEY, Q.C.:
5 Q. And what, if anything, were you advised by
6 Eastern Health about whether those individuals
7 patients were being told that they had not
8 been retested and now were going to be
9 retested.
10 MR. THOMPSON:
11 A. Yes, I was of the understanding that contact
12 was not being made coincident with the
13 identification and the retesting. I had the
14 understanding that retesting was occurring
15 soon after the discovery of a case that should
16 have been tested before. But I was concerned
17 that contact may not be occurring at the same
18 time. So, I undertook to write Louise Jones,
19 once or twice, to suggest to her that this is
20 something that needed to be done for these
21 cases and that Eastern Health should follow
22 through on that.
23 COFFEY, Q.C.:
24 Q. And were you ever advised if they did or
25 didn't do some?

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1 MR. THOMPSON:
2 A. On those particular cases, well in the end
3 we've identified a variety of cases that did
4 not receive contact. I don't know whether
5 these 15 were among that group.
6 COFFEY, Q.C.:
7 Q. What I'm curious about in this regard is this,
8 Mr. Thompson. By then you've been through
9 this whole scenario, October of '05, you know,
10 December '06, May '07 and a lot of that had
11 involved issues about whether or not, when
12 they were being notified about the fact that
13 they were being retested and if they were
14 retested, what the results were. And when the
15 news came along in August, beginning in August
16 of 2007 to you as the acting Deputy Minister
17 that there are a number of patients who we've
18 just now identified, that should have been
19 retested, arguably, are now going to retested.
20 MR. THOMPSON:
21 A. Yes.
22 COFFEY, Q.C.:
23 Q. But having yet be told that they are going to
24 be retested. Did that raise any alarm bells
25 with you, bearing in mind all the controversy

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1 about -
2 MR. THOMPSON:
3 A. Absolutely. When I became aware or concerned
4 that maybe they hadn't been contacted, my
5 effort was to tell Eastern Health, a reminder
6 that it's not appropriate and it's
7 inconsistent with the practice that's expected
8 for these people not to be contacted. So,
9 therefore, I'm reminding you to actually do
10 that. And perhaps a bit of general context is
11 worthwhile here as well. We thought that the
12 database that we were engaging in back in
13 June/July of '07 was one of, you know, a
14 limited exercise of integrating existing data
15 into one spread sheet and then we have a
16 picture emerge before us of something not too
17 complex, but as each month passed, we're, of
18 course, being impressed by its complexity.
19 But on top of that we're being drawn into,
20 almost at the operational level of the
21 management of cases and that wasn't the role
22 of the task force or the role of the Office of
23 Secretary to Cabinet. But whenever--we felt
24 we had a duty or obligation, that whenever we
25 identified something of an operational nature

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1 that we think Eastern Health should do, well,
2 we would try to identify that. So, for
3 example, from the outset, we had told NLCHI
4 that whenever and if you ever and whenever you
5 identify a case that should have been
6 retested, but wasn't, make sure that Eastern
7 Health is alerted to that so they can get the
8 resting process under way right away. And
9 that's an obvious straightforward kind of
10 function that we should observe. And then as
11 a secondary matter, when we became concerned
12 that maybe some of these examples existed, but
13 maybe they weren't communicated with, but we
14 layered onto that some communication and
15 formalized it in writing, you know, you should
16 be communicating on this.
17 And so as each month passed there became
18 more and more of these kinds of, I shouldn't
19 make the list endless, but there were more
20 instances where we found ourselves drawing
21 closer and closer to following individual
22 cases, but we never did regard this as part of
23 our function, but having become so close to
24 it, we did take as much care as we could to be
25 on top of this fairly closely. Now, that

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1 became most--well it started to occur in late
2 October that we were starting to get down to
3 the case level, but we still regarded it as
4 Eastern Health's role to follow through
5 operationally on the retesting and on the
6 communication. We would never take that over,
7 but we could check on that from time to time.
8 COFFEY, Q.C.:
9 Q. Check to see, remind them, ask them if it had
10 been done.
11 MR. THOMPSON:
12 A. Right. And, of course, there was always a
13 willingness to take those messages and there
14 was lots of discussions about when is the
15 right time to communicate and who should do
16 the communicating. We might get into some of
17 those issues later on, but nonetheless, there
18 were many occasions to have those case by case
19 or list by list conversations, the kind of
20 activity we never expected to be involved in.
21 COFFEY, Q.C.:
22 Q. Exhibit P-1025
23 THE COMMISSIONER:
24 Q. Mr. Coffey, we'll take the break after you're
25 finished.

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1 COFFEY, Q.C.:
2 Q. Thank you, Commissioner. This is an e-mail
3 from yourself to Mr. MacDonld of October 27,
4 2007 1:06 p.m.. Subject is "Draft Notes" and
5 you said, "Reza, these are my draft notes on
6 this mornings meeting, if you have time could
7 you give them a scan to see if they reflect
8 your understanding as well. If so, I will
9 base my communications with Louise to tell her
10 the outcomes with the other CEOs accordingly".
11 And then, if we could, this is an e-mail,
12 sorry, it's a draft of a memo, October 27,
13 2007 meeting regarding outstanding ER/PR data,
14 retests and communication issues". It
15 describes who was in attendance, including
16 yourself, Mr. Gulliver, Ms. Jones, Ms.
17 Pilgrim, Reza and Heather Predham. And sir,
18 in this regard, I take it that here the notes
19 in the fourth page of the exhibit indicate,
20 I'll refer to October 26, 2007, a list of
21 patients which had been retested at Mount
22 Sinai, but no indication if they had been
23 contacted. When Eastern Health gets this list
24 on October 29, they will review it to
25 determine if they have contacted all the

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1 patients or families"--is it "or families" or
2 "of families"? It says, "of", but -
3 MR. THOMPSON:
4 A. Um-hm, should be "or".
5 COFFEY, Q.C.:
6 Q. - "or families, if not they will begin the
7 contact process". I take it that relates to
8 this whole idea of Carbonear or mostly
9 Carbonear, and -
10 MR. THOMPSON:
11 A. Yeah, that's right.
12 COFFEY, Q.C.:
13 Q. Okay. Now what was Ms. Jones' and the other
14 personnel's from Eastern Health's attitude
15 towards that at the time? Was there any
16 objection by them to them contacting the
17 patients to tell them that they were being
18 retested, and if so, what were the objections?
19 MR. THOMPSON:
20 A. I don't think that there were objections per
21 se, but there was a discussion perhaps or an
22 expression that there are issues here about
23 when they should be contacted, should they be
24 contacted when the results get back or should
25 they be contacted now. There might have been

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1 discussions like that.
2 COFFEY, Q.C.:
3 Q. Which is similar to that whole earlier
4 discussion, I take it?
5 MR. THOMPSON:
6 A. Right.
7 COFFEY, Q.C.:
8 Q. Like going all the way back to '05?
9 MR. THOMPSON:
10 A. Um-hm.
11 COFFEY, Q.C.:
12 Q. I take it up to this point in time, it was not
13 publicly known that there had been this
14 grouping of patients.
15 MR. THOMPSON:
16 A. Grouping?
17 COFFEY, Q.C.:
18 Q. Well, grouping in the sense of the 14-15,
19 whatever the actual number was.
20 MR. THOMPSON:
21 A. Right. Right, no, it wasn't publicly known.
22 COFFEY, Q.C.:
23 Q. It was not publicly known.
24 MR. THOMPSON:
25 A. Right.

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1 COFFEY, Q.C.:
2 Q. And I take it that contacting any one or more
3 of those patients to tell them that -
4 MR. THOMPSON:
5 A. - would potentially make it a public issue,
6 yes.
7 COFFEY, Q.C.:
8 Q. - could potentially become public. And was
9 that discussed at the time?
10 MR. THOMPSON:
11 A. I don't recall discussing it that way, but it
12 may have been.
13 COFFEY, Q.C.:
14 Q. And one final point, if I could, Commissioner,
15 on this, Exhibit 1026, please? This is an e-
16 mail from yourself, October 27th 2007, 1:36
17 p.m. to Mr. MacDonald and "Reza, I need to
18 know when you were first advised that the
19 Carbonear specimens had indeed been sent for
20 retesting. The October 24th spreadsheet says
21 they were sent to Mount Sinai on September
22 27th. Was this spreadsheet the first time we
23 knew?" That's the October 24th spreadsheet.
24 "My reason for asking is that I am puzzled why
25 Eastern Health is only now contemplating

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1 making phone calls to these people and did not
2 do so at the same time as samples sent to
3 Mount Sinai. My question does not reflect
4 upon you at all. I just want to know the
5 chronology." Okay, and did you get a
6 response?
7 MR. THOMPSON:
8 A. I don't recall any response from him, so
9 today, I don't know the answer to that.
10 COFFEY, Q.C.:
11 Q. Had you, in terms of your discussions with Mr.
12 Crawley. Did you discuss this with the
13 premier as well?
14 MR. THOMPSON:
15 A. I -
16 COFFEY, Q.C.:
17 Q. First of all, did you discuss this aspect of
18 the matter with Mr. Crawley to alert him to
19 the fact that you had learned there were a
20 number of patients who were then being
21 retested and who had not been told that they
22 were being retested?
23 MR. THOMPSON:
24 A. Well, because we did address an issue of some
25 patients that had not been contacted in the

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1 press release, from that I would presume that
2 I did. So, there are three elements overall,
3 the total number of patients in the overall
4 file. Secondly, the number of patients that
5 had not been retested, but should have been
6 and then the communications issue.
7 COFFEY, Q.C.:
8 Q. So, you would have advised Mr. Crawley that
9 there is this group and I'm trying to figure
10 out -
11 MR. THOMPSON:
12 A. It was a verbal briefing and I can't remember
13 all of the elements of it, but it's likely
14 that I did.
15 COFFEY, Q.C.:
16 Q. Thank you, Commissioner.
17 THE COMMISSIONER:
18 Q. Fifteen minutes.
19 (RECESS)
20 THE COMMISSIONER:
21 Q. Please be seated. Mr. Coffey?
22 COFFEY, Q.C.:
23 Q. If we could look then at Exhibit P-1027,
24 please and this is an e-mail from yourself,
25 Mr. Thompson to Louise Jones, October 28 at

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1 9:02 p.m. Notes from Saturday meeting and you
2 say, "Louise, please find attached my draft
3 notes from Saturday's meeting. If you have
4 any variances with your own, please advise".
5 And then you say, "the next key steps are",
6 number three says, "Eastern to establish
7 communication protocol for patients who are
8 currently be retested or who will be retested.
9 Advise the department of the protocol and then
10 begin making contact". See that?
11 MR. THOMPSON:
12 A. Right.
13 COFFEY, Q.C.:
14 Q. I take it that suggests that there was no
15 protocol in place?
16 MR. THOMPSON:
17 A. Right.
18 COFFEY, Q.C.:
19 Q. And by that point in time, and that was for
20 those who were then currently being retested
21 which is generally the Carbonear group of
22 people.
23 MR. THOMPSON:
24 A. Right.
25 COFFEY, Q.C.:

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1 Q. Okay. Number four, "Eastern to develop a
2 communications plan for making the public
3 aware of the new group of retests and possibly
4 the tests for which communications were not
5 undertaken and will consult with department on
6 this plan". I take it this was you in your
7 capacity as, I think you here, Deputy
8 Minister, were instructing Eastern Health as
9 to how to carry out this work.
10 MR. THOMPSON:
11 A. Well, this is a summary of the conclusions of
12 a meeting, but it was clear that the
13 department wanted to have this done and
14 Eastern Health would have agreed with it at
15 the meeting.
16 COFFEY, Q.C.:
17 Q. If we could, please, Exhibit P-1032. Now,
18 this is the letter of October 29, 2007, this
19 one happens to be to Mr. Boyd, the CEO of
20 Labrador Grenfell. If we could look, please,
21 at the Exhibit P-1033, it's the same, I gather
22 the same letter -
23 MR. THOMPSON:
24 A. Right.
25 MR. THOMPSON:

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1 A. - to Ms. Karen McGrath, CEO of the Central
2 Regional Health Authority and finally, P-1035
3 please, this is again, in effect, the same
4 letter, except it's to a Ms. Susan Gillam of
5 the Western Regional Health Authority. Now
6 sir, I'm just going to ask you a couple of
7 questions about this. You begin by saying,
8 "I'm soliciting your assistance regarding
9 patients who had original ER/PR tests between
10 1997 and 2005 in the Western Region. Your
11 organization has already sent case information
12 to NLCHI as part of the ER/PR database which
13 it is developing for the department. NLCHI's
14 further work has resulted in some questions on
15 a portion of these cases. The questions have
16 been divided into two groups, each with an
17 associated list as follows. List one is
18 attached. This list contains patients who are
19 identified by Western Regional Health"--
20 Western Health Authority, I'll say--"to NLCHI
21 as having negative ER/PR results from the
22 Eastern Health laboratory between 1997 and
23 2005 and also sent for retesting in 2005 and
24 2006. NLCHI has been unable to find
25 information within Eastern Health information

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1 systems or in a separate data file provided by
2 Mount Sinai Hospital to verify that these
3 cases have been retested. Therefore, we ask
4 that you determine from your own information
5 systems or files whether you can verify that
6 these cases have been retested. If so, please
7 forward to us the following information on
8 each case, dated retested, place retested,
9 ER/PR score result and a verification that the
10 patients/family was contacted with the result.
11 NLCHI will contact your organization is an
12 additional information beyond these items will
13 be necessary. If any cases have not been
14 retested, please inform us on a case by case
15 basis, if there was a valid reason that a
16 retest was not requested". And the next--you
17 continue--"If there are cases for which
18 retesting should have been completed included
19 deceased cases, please take the necessary
20 action to forward these cases as consults to
21 Mount Sinai Hospital as soon as possible. You
22 should also prepare to communication with the
23 patient/families regarding these new retests
24 and we would be pleased to discuss with you
25 the timing and approach that might be taken".

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1 And it lists too, "attached the list contains
2 patients which we have verified as being
3 retested in Mount Sinai Hospital, but were not
4 included in Eastern Health's August 1, 2007
5 spread sheet. Therefore, while we are
6 confident that a retest was done, we do not
7 know whether the patients/families have been
8 contacted regarding the outcome of the retest.
9 Therefore, we ask that you determine from your
10 records whether these patients were contacted
11 by Western Regional Health Authority after the
12 retest results were provided to you. If so,
13 please let us know on a case by case basis,
14 the date on which the patient apparently was
15 contacted. If not, please explain why these
16 patients/families were not contacted. Thank
17 you for your co-operation. Given the urgency
18 of this matter, we would appreciate knowing
19 the results of your review by Wednesday,
20 October 31, if not possible by that date,
21 please call me so we can discuss a schedule".
22 And here you're acting as, writing as the
23 deputy minister here.
24 Now, Mr. Thompson, we look here, if I
25 could, each of these letters has a list

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1 attached.
2 MR. THOMPSON:
3 A. Right.
4 COFFEY, Q.C.:
5 Q. And I take it these documents as they went out
6 to the Health Authorities would not have these
7 redactions.
8 MR. THOMPSON:
9 A. No.
10 COFFEY, Q.C.:
11 Q. They would have had the -
12 MR. THOMPSON:
13 A. No, that's correct.
14 COFFEY, Q.C.:
15 Q. - name and so on, information here. Now, if
16 we look here at this particular one, it says,
17 List One in the top left hand side of--it's
18 page three of the exhibit, see that?
19 MR. THOMPSON:
20 A. Yes.
21 COFFEY, Q.C.:
22 Q. That's List One. And then there's a List Two
23 below it. And if we could go to, page 5 of
24 the exhibit, List Three and then a List Four,
25 Five. Do you recall what these various lists

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1 were about? Because your letter refers to
2 List One and Two.
3 MR. THOMPSON:
4 A. Well, no, I don't specifically, but I do
5 recall that on the September 20 list which I
6 spoke to you about a few moments ago, there
7 were five lists that we were dealing with
8 there, but why there are five lists here and
9 only two referenced in the letter, I just
10 can't bring back the particular reason why
11 that's the case.
12 COFFEY, Q.C.:
13 Q. Okay.
14 MR. THOMPSON:
15 A. Just wondering here as well, if I could, why
16 the specimen numbers are not redacted on these
17 exhibits?
18 COFFEY, Q.C.:
19 Q. I think--well, I'll have to check. Okay. It
20 certainly hasn't been brought to our
21 attention; you just noticed it now.
22 MR. THOMPSON:
23 A. Okay.
24 COFFEY, Q.C.:
25 Q. And your counsel did not say anything about

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1 it, okay.
2 MR. THOMPSON:
3 A. Um-hm.
4 COFFEY, Q.C.:
5 Q. In terms of this, Mr. Thompson, what was the
6 response from these three health authorities?
7 MR. THOMPSON:
8 A. We found the response very good, timely as I
9 recall, but of course, when the data came in,
10 it was handed onto other people, so I can't
11 speak to exactly how long it took. But we
12 were always, seemed to be very pleased with
13 the responses.
14 COFFEY, Q.C.:
15 Q. Were there any patients identified by either
16 of the three boards who had not been retested
17 and should have been?
18 MR. THOMPSON:
19 A. Well, yes, in terms of deceased patients, who
20 we believe should have been included in the--
21 who met the criteria for retesting and should
22 have been retested. I seem to recall maybe--I
23 might be wrong in my recollections of the
24 exact details, but I seem to recall a couple
25 from Eastern Region or maybe from Labrador

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1 that, in that category. There's also another
2 reason or there was--in one of our attempts to
3 track down these kinds of questions, there was
4 a also period of time between January and
5 April of 1997, I believe those are the correct
6 months when, for some RHAs it was clear that
7 patients who had met the criteria and who were
8 from that period should be included in
9 retesting, but for maybe one or two RHAs it
10 wasn't clear. And so we picked up a few in
11 that regard as well. But these patients, in
12 the main, were deceased patients. And so, I'm
13 not sure if they were in the total of 15 or
14 not. I'm given you a, unfortunately, a little
15 bit hazier recollection than you might wish,
16 but if that's important, then we'll break that
17 down -
18 COFFEY, Q.C.:
19 Q. Oh yes, yes. Now, this actual data would have
20 been passed on to whom? I mean, in terms of -
21 MR. THOMPSON:
22 A. Well, responses would have come into my office
23 and then would have been handed on directly to
24 NLCHI.
25 COFFEY, Q.C.:

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1 Q. Yes. And that would be Mr. McDonald and Reza?
2 MR. THOMPSON:
3 A. Correct.
4 COFFEY, Q.C.:
5 Q. That would be the two--I'll be dealing with
6 them on those points in the main, but as you
7 were the client -
8 MR. THOMPSON:
9 A. Yes.
10 COFFEY, Q.C.:
11 Q. - I'm asking you in terms of the overall, your
12 impression overall -
13 MR. THOMPSON:
14 A. My impression overall was that the response
15 was good.
16 COFFEY, Q.C.:
17 Q. Okay. It was fairly prompt, there were some
18 patients in various categories for various
19 reasons that had apparently been missed or
20 just not included -
21 MR. THOMPSON:
22 A. And we received reasons why and so forth.
23 COFFEY, Q.C.:
24 Q. Sure. If we could please, Exhibit P-1039.
25 This is a series of e-mails of October 30,

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1 2007 between a number of individuals. The one
2 at the bottom of the page is, the first page,
3 is from yourself to Joyce Penney and Louise
4 Jones, copied to Ms. Donahue, subject is a
5 meeting. You write, "Louise, regarding a
6 Thursday meeting on ER/PR you will be coming
7 over here for the 10:00 meeting on 'owner
8 board' issues. I suggest that we convene on
9 ER/PR earlier, perhaps 8:30 a.m. The
10 objective is to review all the checking that
11 is being done the lists and finalize our
12 collective view and the number of extra
13 retests and the number of people who may not
14 have been contacted. We will also need to
15 finalize a communication approach/protocol
16 with patients and with the public. Sounds
17 like at least 90 minutes. Does that sound
18 okay to you. Signed Robert." Now what did
19 you mean by owner board issues?
20 MR. THOMPSON:
21 A. It's a separate issue, nothing to do with
22 ER/PR.
23 COFFEY, Q.C.:
24 Q. Nothing, okay.
25 MR. THOMPSON:

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1 A. Would you like me to -
2 COFFEY, Q.C.:
3 Q. No, no, no, but it had nothing to do with -
4 MR. THOMPSON:
5 A. No.
6 COFFEY, Q.C.:
7 Q. Okay, and the ER/PR meeting you anticipated
8 would be, I take it, 90 minutes or so before
9 on ER/PR. What was the purpose of that
10 meeting? It's spelled out here, I take it,
11 and that's to get ready for what, the press
12 conference?
13 MR. THOMPSON:
14 A. Well, I'm not certain that we had agreed on a
15 press conference then, but we knew we were
16 heading to a disclosure clearly and we needed
17 to have a common understanding. No one wanted
18 to be--no misinterpretation back and forth,
19 ideally full agreement on what the final
20 numbers were.
21 COFFEY, Q.C.:
22 Q. And that would be between the Department and
23 Eastern Health, I take it?
24 MR. THOMPSON:
25 A. Inclusive of the Centre for Health

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1 Information, and if necessary, we would
2 communicate otherwise to the other RHAs.
3 COFFEY, Q.C.:
4 Q. And "we will also need to finalize a
5 communication approach/protocol with patients
6 and the public." So I take it that that was
7 going to be a jointly agreed one between the
8 Department and Eastern Health?
9 MR. THOMPSON:
10 A. Well, at that stage, we were keeping our
11 shoulder to the wheel to make sure that these
12 things got completed, but--and while we're
13 getting a lot closer to that operational
14 level, we still saw Eastern Health as the
15 implementing party in any communication with
16 patients. Now we did, ultimately on November
17 2nd, become the implementing party on public
18 communication.
19 COFFEY, Q.C.:
20 Q. I see, because this does--it says with
21 patients and with the public.
22 MR. THOMPSON:
23 A. Um-hm.
24 COFFEY, Q.C.:
25 Q. Did you ever approve of the protocol that they

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1 arrived at or approach that they arrived at
2 vis-a-vis the patients?
3 MR. THOMPSON:
4 A. I don't recall seeing one, but there may have
5 been one, I just don't recall it.
6 COFFEY, Q.C.:
7 Q. So you might have had a meeting and -
8 MR. THOMPSON:
9 A. Well, we had a meeting with--they may have
10 presented to us an approach. I don't recall
11 any document or what it may have been.
12 COFFEY, Q.C.:
13 Q. If we could, please, the Exhibit 1041, please?
14 This is a fax to yourself, October 31st 2007,
15 from Western Health. I'm just going to go to
16 the second page of the exhibit. The first
17 page is dated November 1st 2007 and this, I
18 take it, is the response to your earlier
19 letter looking for certain information.
20 MR. THOMPSON:
21 A. Um-hm.
22 COFFEY, Q.C.:
23 Q. And they spell out the number of numbers of
24 people that fall into different categories.
25 MR. THOMPSON:

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1 A. Right.
2 COFFEY, Q.C.:
3 Q. In list one and two, and Ms. Gillam concludes
4 by saying "there are a number of cases for
5 which retesting was not completed in 2005 due
6 to patients being deceased. This was
7 consistent with the criteria established by
8 Eastern Health for retesting in 2005. We
9 briefly discussed the issue of resending the
10 samples for retesting on October 29th 2007.
11 Please advise if retesting is required and we
12 will make arrangements to send the cases as
13 soon as possible. Please contact Dr. Ken
14 Jenkins if you require clarification."
15 Now sir, this is the end of October 2007,
16 and this apparently is Ms. Gillam, the CEO of
17 Western, advising you, the Deputy Minister,
18 that they certainly had not yet sent out the
19 deceased patients' samples from Western.
20 MR. THOMPSON:
21 A. Some of them.
22 COFFEY, Q.C.:
23 Q. Did you ever get an understanding, in fact,
24 that there were quite a number of them?
25 MR. THOMPSON:

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1 A. I can't recall how many there were, but they
2 had deceased patient samples that were never
3 retested.
4 COFFEY, Q.C.:
5 Q. Okay, and she explains why.
6 MR. THOMPSON:
7 A. Um-hm.
8 COFFEY, Q.C.:
9 Q. Going back to the original criteria
10 established by Eastern Health in 2005. Was
11 this the first that you were learning of this?
12 MR. THOMPSON:
13 A. I think so.
14 COFFEY, Q.C.:
15 Q. So up to this point in time, and I take it the
16 deceased had been an issue back in May -
17 MR. THOMPSON:
18 A. Well, it wasn't the first time I was learning
19 that there were deceased patients that had not
20 been tested, but it was perhaps the first time
21 I was learning that Western Health had a group
22 of deceased patients and they had been told
23 to, you know, not retest them. So yeah, this
24 was reasonably new--probably completely new
25 information for me.

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1 COFFEY, Q.C.:
2 Q. And this suggests that--she says "we briefly
3 discussed the issue of resending the samples
4 for retesting on October 29th 2007."
5 MR. THOMPSON:
6 A. Um-hm.
7 COFFEY, Q.C.:
8 Q. So she discussed it with, amongst others, you?
9 MR. THOMPSON:
10 A. I take that as referring to me, yes.
11 COFFEY, Q.C.:
12 Q. So was it news to her, as it were, that she
13 was now going to be asked to -
14 MR. THOMPSON:
15 A. Yes, yes.
16 COFFEY, Q.C.:
17 Q. This was the first time--you understood from
18 her that October 29th was the first time she
19 was being asked to send those samples?
20 MR. THOMPSON:
21 A. Yes.
22 COFFEY, Q.C.:
23 Q. Did you have any understanding before that as
24 to the Minister's views as to whether or not--
25 any of the earlier ministers' views, as to

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1 whether or not the deceased should be
2 retested?
3 MR. THOMPSON:
4 A. Well, we held a general view that all of these
5 samples ultimately needed to be retested so
6 that we could have data on everyone, and we
7 knew that Eastern Health had reported, in
8 December and then in May of '07, that there
9 was a group of deceased patients not retested.
10 We also heard, in May of '07, from Eastern
11 Health that they were going to proceed and
12 test the samples of the deceased. What we
13 didn't make was the connection perhaps that
14 there were blocks or groups of samples, groups
15 of deceased patient samples in other regions,
16 and so really we were stumbling upon this
17 point here, and saying "okay, we have more
18 retesting to be done."
19 COFFEY, Q.C.:
20 Q. Now the point was that in May of '07, when you
21 first got involved in this, you know, when you
22 were clerk, in that immediate period, you
23 learned that--or understood that Eastern
24 Health had announced--I believe Mr. Tilley had
25 announced on May 18th that the deceased would

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1 be -
2 MR. THOMPSON:
3 A. Yes.
4 COFFEY, Q.C.:
5 Q. - samples would be retested.
6 MR. THOMPSON:
7 A. Yes.
8 COFFEY, Q.C.:
9 Q. And yet, this is five months later.
10 MR. THOMPSON:
11 A. Yes.
12 COFFEY, Q.C.:
13 Q. And apparently, no one had contacted Western
14 to convey that information to them, in terms
15 of the expectation being that they would do
16 the same?
17 MR. THOMPSON:
18 A. Well, yeah, and as I've come to understand it,
19 the coordinating role that Eastern Health had
20 played back in 2005/06 had essentially come to
21 a halt and Eastern Health--and now, in a
22 sense, this process was resuming. We were
23 coming into a higher pitch of activity and
24 Eastern Health was not regarding itself any
25 longer as a coordinating agent for this

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1 activity. So while back in '05/06, Western
2 may have been told not to send off the tissue
3 samples related to the deceased, there was no
4 new entity that had told them to do so, and--
5 but that was not clear to us because in May of
6 '07, if George Tilley was saying "we're going
7 to test all the deceased" in our minds, we
8 just assumed that that meant all of the
9 deceased, tissue samples for all those that
10 were in the--who met criteria for retesting.
11 Now what's interesting as well, from this
12 time period, we were finding out, not only
13 that there were groups of deceased patients
14 that had not been retested, but also that
15 despite the intent not to retest those, at
16 least in Central and perhaps in Labrador as
17 well, many deceased patients samples had been
18 sent. So there was a mixture going on.
19 COFFEY, Q.C.:
20 Q. In terms of your dealings in late October
21 though with the CEO of Western -
22 MR. THOMPSON:
23 A. Right.
24 COFFEY, Q.C.:
25 Q. - I take it, did she indicate to you that, in

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1 fact--well, she had told you that they
2 understood--Western had understood all along
3 that the deceased were not going to be
4 retested and -
5 MR. THOMPSON:
6 A. That's correct.
7 COFFEY, Q.C.:
8 Q. - and they had acted accordingly?
9 MR. THOMPSON:
10 A. That's correct.
11 COFFEY, Q.C.:
12 Q. Okay, and if they were thorough, if they were
13 thorough in their sorting out the deceased
14 before they submitted tissue samples for
15 retesting, that means a number of those
16 deceased of their patients would not have been
17 retested?
18 MR. THOMPSON:
19 A. Correct.
20 COFFEY, Q.C.:
21 Q. Okay. That lack of communication, well, of
22 Mr. Tilley's message to the public to Western,
23 did you find that remarkable at all, the fact
24 that it never got sent to the other CEOs?
25 Like, I, George have spoken on behalf of all

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1 of us.
2 MR. THOMPSON:
3 A. Well, it's something that we didn't even think
4 about.
5 COFFEY, Q.C.:
6 Q. Okay. Oh no, in May, I appreciate it.
7 MR. THOMPSON:
8 A. Right.
9 COFFEY, Q.C.:
10 Q. But in October?
11 MR. THOMPSON:
12 A. Did we think it remarkable?
13 COFFEY, Q.C.:
14 Q. Well, you're facing this now in October.
15 MR. THOMPSON:
16 A. Yeah, sure.
17 COFFEY, Q.C.:
18 Q. There's obviously a gap at that point.
19 MR. THOMPSON:
20 A. It's more of eureka. Ah, ah, here's something
21 we now understand and we can bring about a
22 resolution to it.
23 COFFEY, Q.C.:
24 Q. Did you or the Department, to your knowledge,
25 take any steps to address that apparent lack

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1 of coordination on a go-forward basis to
2 ensure that everybody, in terms of the health
3 authorities, were all on the same page on this
4 in terms of well, if we're going to retest the
5 deceased, let's make sure everybody knows
6 that?
7 MR. THOMPSON:
8 A. Well, effectively, that's the role we had
9 already stepped into, as a result of writing
10 letters to all of the authorities and more
11 intensively then from thereafter communicating
12 with all of them.
13 COFFEY, Q.C.:
14 Q. From the Department's own perspective though,
15 did you, at that time, identify the idea that
16 there might be a gap overall here in the sense
17 that there is no one person or entity in the
18 province that is charged with doing that, any
19 kind of coordination of activities that should
20 be coordinated?
21 MR. THOMPSON:
22 A. I think that was glaringly obvious at that
23 point.
24 COFFEY, Q.C.:
25 Q. Has anything been done to correct that or to

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1 address it?
2 MR. THOMPSON:
3 A. Well, among lessons learned from this, we will
4 be addressing that gap.
5 COFFEY, Q.C.:
6 Q. So you would, but it hasn't been -
7 MR. THOMPSON:
8 A. But nothing has been institutionally put in
9 place yet.
10 COFFEY, Q.C.:
11 Q. Has anybody been informally tasked with -
12 MR. THOMPSON:
13 A. No. Right now, at the present moment, being
14 aware that there is this issue that if there's
15 an inter-jurisdictional adverse event that
16 needs coordination, the Department would
17 actively step into that role and perhaps
18 improvise at this stage. But in the Task
19 Force activities, we'll be elaborating as to
20 what that might look like on a more permanent
21 basis, realizing of course that the need for
22 this will be periodic, certainly not
23 continuous, but we'll find--we'll be making
24 recommendations as to how to deal with it.
25 COFFEY, Q.C.:

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1 Q. And if we could, 1044 please? Now this is
2 again a series of e-mails, the one in
3 particular that I want to turn your attention
4 to, I apologize, it's actually page two of it,
5 of the exhibit, is the e-mail on Monday,
6 November 5th 2007 at 4:34 p.m. to Ms. Jones
7 from yourself, "database follow up" and you
8 say "Louise, there is one issue on which I
9 would like to follow up after last week's
10 activities. The variances in the data
11 reported to the public last week have placed a
12 focus on database management skills within the
13 Eastern Health group which are tracking the
14 data from the outset. Without questioning
15 anyone's commitment to patient care, there was
16 inadequate record keeping on this project
17 which resulted in variances. The NLCHI
18 project, for the most part, is about
19 rebuilding a picture of what happened, a
20 retrospective picture. If the whole story was
21 in the past, then the NLCHI process would be
22 enough. However, now that some new cases are
23 being retested and some people are being
24 contacted for the first time, events are
25 happening again in which good quality data

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1 needs to be collected.
2 Therefore if the same record keeping
3 approach is being used (and I am not sure if
4 it is) it may contain the same problems as the
5 first time around. For example, I understand
6 that Heather's spreadsheet, the one that was
7 periodically updated, was overwritten each
8 time with the result that no copy of the
9 spreadsheet as it existed previously was still
10 available. Another example is the absence of
11 a linkage between the spreadsheet data and the
12 provincial mortality database to ensure that
13 up-to-date mortality information was included.
14 As I am not sure what improvements have been
15 made to the data collection approach, I cannot
16 make specific recommendations. However, given
17 that new real time events and data collection
18 are occurring again, I recommend that someone
19 with data management research skills, other
20 than NLCHI, be added to the team to ensure the
21 completeness, consistency and reliability of
22 the new data."
23 And Ms. Jones does respond to yourself on
24 November 6th at 7:45 p.m. saying "I will give
25 you a call on this to follow up on this

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1 issue." And she asks "do you have any sense
2 when your database will be completed? On
3 Thursday you had indicated you thought this
4 would happen in the next ten days." And I
5 take it that didn't happen within the next ten
6 days?
7 MR. THOMPSON:
8 A. No.
9 COFFEY, Q.C.:
10 Q. Okay, and you're smiling ruefully, I would
11 suggest. Sir, in terms of this, there's a
12 couple of references here, I draw your
13 attention to. In your e-mail you said
14 "another example is the absence of a linkage
15 between the spreadsheet data and the
16 provincial mortality database to ensure that
17 up-to-date mortality information was
18 included." What was that about?
19 MR. THOMPSON:
20 A. Well, it deals with an accurate recording of
21 patients who are deceased. So as I understand
22 it, Eastern Health, of course, produced a
23 number of 176 as their estimate of the number
24 of deceased in December of 2006, and
25 essentially that estimate was unchanged when

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1 the data was released to the Court and then
2 subsequently publicly, and when we asked NLCHI
3 to produce--to essentially rebuild the data,
4 but on the same basis as Eastern Health would
5 have done, but more completely and hopefully
6 with 100 percent accuracy, what they found was
7 that they linked all of the records to the
8 provincial mortality database, which records
9 essentially the incidents of when someone dies
10 and when they did the cross match, what they
11 found is that in the list of 1,000 plus cases
12 in the ER/PR database that more than 176
13 people were presently deceased. In fact, they
14 found that in December of '06, there was a
15 greater number of people than 176 at that
16 time. Of course, the number was higher later
17 on. By February of '08, we released a number
18 that 322 were deceased at that time.
19 So the point here is that a database
20 manager or statistician trained with health
21 information, with health information
22 background, would have the experience to know
23 how to link an exercise like this, ER/PR
24 database, to the mortality database and make
25 sure that there is a as current as possible

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1 listing of those who are deceased.
2 COFFEY, Q.C.:
3 Q. And I take it the NLCHI personnel that were
4 engaged in this were very capable of doing
5 that?
6 MR. THOMPSON:
7 A. Yes, sure.
8 COFFEY, Q.C.:
9 Q. And did it as a matter of routine?
10 MR. THOMPSON:
11 A. Right, and Eastern Health relied on its own
12 internal records and information and came up
13 with a less complete portrayal of that.
14 COFFEY, Q.C.:
15 Q. Were you given to understand at the time that
16 Eastern Health had actually never, up to that
17 point, utilized the provincial mortality
18 database?
19 MR. THOMPSON:
20 A. Well, my only understanding is that the team
21 managing the ER/PR process didn't know about
22 the functionality of the other and that it
23 could be linked. It wasn't something that was
24 in perhaps the knowledge set of the people
25 involved.

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1 COFFEY, Q.C.:
2 Q. So they hadn't utilized it?
3 MR. THOMPSON:
4 A. They hadn't utilized it, no.
5 COFFEY, Q.C.:
6 Q. But the NLCHI, Reza and company, it was second
7 nature to them and they just went ahead and
8 did it?
9 MR. THOMPSON:
10 A. Correct, right.
11 COFFEY, Q.C.:
12 Q. Were you surprised by that? That Eastern
13 Health had not apparently utilized it?
14 MR. THOMPSON:
15 A. Surprised by two things, perhaps. Number one,
16 that it hadn't occurred throughout the process
17 to do that, although I really don't know how
18 obvious it is to most people that that linkage
19 can be made, but yes, so that's one surprise.
20 The second is that there is such a large
21 difference between the number of people
22 actually deceased and the number that would
23 have been recorded from internal information
24 within Eastern Health, it's a fairly large
25 gap, so that was surprising, as well.

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1 COFFEY, Q.C.:
2 Q. And here overall in your e-mail, I take it,
3 you're urging Ms. Jones in relation to on a
4 go-forward basis do what?
5 MR. THOMPSON:
6 A. To bring inside a team that's going to be
7 doing the continued tracking of the retesting
8 and communicating to bring into the team
9 somebody with specialized database or health
10 information experience. It's appropriate to
11 point out here that the people that I've met
12 on the team that handled the ER/PR retesting
13 process are extraordinarily dedicated, hard-
14 working individuals who know their jobs well,
15 but this skill set, I think, was missing from
16 the start and then it was compounded over time
17 so that then we saw the gaps in it at the end.
18 So it was important to remind her that--and
19 she told me, she responded to me perhaps
20 verbally that they had already taken note of
21 that, that gap in the skill set, if you like,
22 and that the management of the Burin radiology
23 effort was a good example of that, under Ms.
24 Jones, that they were able to track, she said,
25 with a great amount of precision the overall

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1 reexamination of the diagnostic tests or the
2 images and produce a result on a timely basis.
3 And she said that that same sort of approach,
4 that same sort of--would inform the continued
5 ER/PR testing. Now, be that as it may, all of
6 the data coming in quickly to NLCHI after this
7 date here gave us the same level of comfort,
8 anyway, that we were having a good solid
9 record of the data.
10 COFFEY, Q.C.:
11 Q. Okay. If we could, please, Exhibit 1044? Now
12 this is again a series of e-mails. One in
13 particular--I apologize. First page of the
14 exhibit, November 5th, 2007 4:34 p.m., it's
15 from yourself to--I apologize. I want to go
16 to page 4 of the exhibit, of the same exhibit,
17 1044. This, Mr. Thompson, is an e-mail
18 November 9th, 2007, 5:06 p.m. from Ms. Jones
19 to yourself. She says, she's trying to set up
20 for agreeing to a meeting. And you had sent
21 her an e-mail at 4:04 p.m. saying "Louise, now
22 that I've almost a week at this work
23 (preparing for the Commission) on a sustained
24 basis, I have revamped our work plan and would
25 like to sit down with you to review it. I can

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1 also see more clearly that confusion exists
2 around the mandate of this office and how we
3 relate to the department and to the regional
4 health authorities, therefore you I would like
5 to meet with you early next week, if possible,
6 to connect these dots and lay the basis for a
7 smooth process as we head towards the
8 Commission. A separate process of the Task
9 Force in Adverse Health Events also needs to
10 be communicated clearly, but that will take
11 another couple of weeks." And you go on to
12 say about your availability. Sir, what was it
13 that caused you to conclude at that point that
14 the Task force aspect of it needed to be
15 communicated clearly and to whom? The last
16 sentence on that page, a separate process.
17 MR. THOMPSON:
18 A. It's not a--it's just really a notation that
19 we need to make clear in people's minds that
20 the Task Force has a separate mandate from the
21 work that we're doing to have open and full
22 participation in the work of the Commission,
23 because people are using the term "task force"
24 interchangeably with the database effort and
25 some of the work I was doing in the

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1 department, so clarity might help. I'm not
2 sure if we've accomplished all that since, but
3 clarity would help.
4 COFFEY, Q.C.:
5 Q. That was my next question. In terms of that
6 was it ever that kind of relationship or
7 relationships, was that ever reduced to
8 writing in any way?
9 MR. THOMPSON:
10 A. The separate roles here?
11 COFFEY, Q.C.:
12 Q. Yes.
13 MR. THOMPSON:
14 A. Well, when we -
15 COFFEY, Q.C.:
16 Q. Vis-a-vis the department and the RHAs too, I
17 mean, just because you refer to that, as well.
18 MR. THOMPSON:
19 A. Right.
20 COFFEY, Q.C.:
21 Q. Confusion around that aspect of the matter.
22 So I'm just--here obviously a week into this
23 full-time, in November of '07 you're realizing
24 that there's certain confusion or
25 misunderstandings exists, so -

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1 MR. THOMPSON:
2 A. This confusion is not an important impediment
3 to our work, let me make that point. And I
4 wanted to make sure people understood that
5 when we're asking for data and working on the
6 database, in particular, that we're doing that
7 now as part of the office of the secretary to
8 Cabinet for health issues and in effect that
9 work has been transferred from my former
10 position as deputy minister of the department
11 and over to my new office. So that's one part
12 that needs to be clear, that the department,
13 per se, is not directing the work on the
14 database any longer, but that my office will
15 be. And then to further clarify that, the
16 office is not, is not the Task Force office,
17 the Task Force has a separate mandate as yet
18 not publicly communicated and that will be.
19 So it's just important to lay out some of the-
20 -but it wasn't impeding and it wasn't a major
21 obstacle in our work.
22 COFFEY, Q.C.:
23 Q. And you, I think, did start--suggested even
24 now it may not be entirely clear you -
25 MR. THOMPSON:

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1 A. Well, only that people still use all these
2 terms interchangeably. But it's still not an
3 obstacle, either, it's just a matter of
4 clarity.
5 COFFEY, Q.C.:
6 Q. And if we could, please, Exhibit 1048? Now,
7 this is--before I go past it and before we get
8 onto this, there was a, some kind of a press
9 conference in November of 2007?
10 MR. THOMPSON:
11 A. November 2nd.
12 COFFEY, Q.C.:
13 Q. Okay. And what was that about and what was
14 your involvement in it?
15 MR. THOMPSON:
16 A. As we were talking about earlier, the--we had
17 come to a point where we understood that there
18 was approximately 1000 cases, unique patients
19 in the database and that was a reasonable
20 amount more than the 939 that had been
21 publicly talked about before, so this is a
22 significant point. Secondly, we had a group
23 of new retest patients that the public didn't
24 know about and this information was possessed
25 by the Provincial Government and Eastern

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1 Health and it certainly was the view of the
2 minister and the Premier that we make that
3 public. So there was a press conference,
4 basically to accomplish that function.
5 COFFEY, Q.C.:
6 Q. So to let the public know that the actual
7 number that were retested was higher than the
8 939 or so originally?
9 MR. THOMPSON:
10 A. Right.
11 COFFEY, Q.C.:
12 Q. And, I'm sorry, secondly to?
13 MR. THOMPSON:
14 A. That there was group of test--retested
15 patients that should have been retested back
16 in late '05 but had not been identified at
17 that time.
18 COFFEY, Q.C.:
19 Q. And that's the, I won't say it's entirely the
20 Carbonear group, but some, the Carbonear were
21 -
22 MR. THOMPSON:
23 A. Were the main part.
24 COFFEY, Q.C.:
25 Q. Main part. And from your perspective how did

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1 that press conference go?
2 MR. THOMPSON:
3 A. Well, it was--I'm not sure what you mean
4 exactly.
5 COFFEY, Q.C.:
6 Q. Well in the sense of -
7 MR. THOMPSON:
8 A. Publicly or with Eastern Health?
9 COFFEY, Q.C.:
10 Q. Yes, oh, publicly and with Eastern Health,
11 both.
12 MR. THOMPSON:
13 A. Okay. Well publicly I think that there was
14 some degree of surprise that--among the media
15 and commentators and the public that the
16 numbers that were reported originally weren't
17 accurate and that this higher--there was
18 questions how much higher will it go, do we
19 still have the right picture. So it opened up
20 some of those types of questions. Of course,
21 our effort was to try to instill some
22 confidence that we were actually arriving a
23 the right numbers. I think we were successful
24 in that, as well, because the message from the
25 minister was that the work of the centre and

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1 the work of our office, with the cooperation
2 of the health authorities were trying to clear
3 away any of the underbrush here and get at a
4 true description of what had happened. The
5 fact that there were some people who had never
6 been retested but now had been identified was
7 in the same category of some public surprise
8 at that. Now, in relation to Eastern Health,
9 I think that the reaction there was in a
10 different category because in the press
11 release there was some criticism of Eastern
12 Health's data management capacity and of
13 course, any time levelling a criticism, it's a
14 straightforward human emotion that it created
15 some ill feeling, but nothing that got in the
16 way of our ability to operate with each other,
17 but it was a source of tension.
18 COFFEY, Q.C.:
19 Q. And was that conveyed, their displeasure or
20 dissatisfaction, was that conveyed to you or
21 the minister?
22 MR. THOMPSON:
23 A. Well, it was made known to me, certainly, by
24 people I spoke to, but we worked through it.
25 COFFEY, Q.C.:

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1 Q. And that would include Ms. Jones?
2 MR. THOMPSON:
3 A. Right.
4 COFFEY, Q.C.:
5 Q. And anyone else?
6 MR. THOMPSON:
7 A. No one else in particular, certainly Ms.
8 Jones.
9 COFFEY, Q.C.:
10 Q. And your response to her in that regard was
11 what at the time?
12 MR. THOMPSON:
13 A. Only that this what we've observed and we're
14 just telling it like it is and we're both in
15 this together, so let's move on. And she was
16 very much of the same view, you know, the work
17 at hand is more important than any tension or
18 any criticism.
19 COFFEY, Q.C.:
20 Q. And, sir, in terms of that, the minister's
21 approach at the time was, I take it, Mr.
22 Wiseman held the press conference?
23 MR. THOMPSON:
24 A. Correct.
25 COFFEY, Q.C.:

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1 Q. And you would have been an advisor?
2 MR. THOMPSON:
3 A. Right.
4 COFFEY, Q.C.:
5 Q. To him in that. Was the approach at the time
6 by Mr. Wiseman one to be cautious about using
7 absolutes in the sense of did you understand
8 he was going to go out and tell the public
9 this is it, this is all or that a more
10 cautious approach in that regard was to be
11 taken?
12 MR. THOMPSON:
13 A. well, as a general principle, he and I were
14 cautious about using absolutes.
15 COFFEY, Q.C.:
16 Q. Okay. I take it that had arisen, if not out
17 of anything else, certainly contributed to by
18 what had happened in May and June?
19 MR. THOMPSON:
20 A. A principle to live by.
21 COFFEY, Q.C.:
22 Q. Now, at the time, just on that point, because
23 you would have paid some attention to the
24 media reaction afterward, reaction in the
25 media to that?

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1 MR. THOMPSON:
2 A. Yes.
3 COFFEY, Q.C.:
4 Q. And Mr. Wiseman, I'm going to suggest to you,
5 at the time was cautious and was not prepared
6 and indicated he was not prepared to give
7 absolutes?
8 MR. THOMPSON:
9 A. Um-hm. I'm not saying that he said that.
10 COFFEY, Q.C.:
11 Q. No, oh, yeah, but not that word -
12 MR. THOMPSON:
13 A. In principle that would be a good way to
14 operate.
15 COFFEY, Q.C.:
16 Q. Do you recall if there was any criticism about
17 that?
18 MR. THOMPSON:
19 A. About not being -
20 COFFEY, Q.C.:
21 Q. Yeah, well, not being kind of absolute, giving
22 an absolute assurance, do you recall if he was
23 -
24 MR. THOMPSON:
25 A. No, I don't, I don't recall any criticism of

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1 that.
2 COFFEY, Q.C.:
3 Q. No. In other words, if you can't be absolute
4 in dealing with, in communicating something to
5 the public, then the fact that you say that,
6 you acknowledge that, you don't see that as
7 any kind of a failing or a weakness?
8 MR. THOMPSON:
9 A. Acknowledging that one can't be absolute?
10 COFFEY, Q.C.:
11 Q. Yes.
12 MR. THOMPSON:
13 A. That that's a failing? No, that's not a
14 failing.
15 COFFEY, Q.C.:
16 Q. No. If we could, please, Exhibit 1050? This
17 is the e-mail I was about to ask you about.
18 Now, this is, well, it's again, it's a series
19 of e-mails of February 21st, 2008. The one
20 toward the bottom of the page--no, the one at
21 the top of the page at 8:16 a.m. is to
22 yourself from Ms. Power. And you're asking
23 "Can you please e-mail the presentation to
24 Tara and ask that she do that for you. Were
25 you planning on providing copies to the media

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1 and others in attendance?" And you had
2 written to her at 3:05--well, possibly at 3:05
3 literally, 3:05 in the morning, at least
4 that's what the time appears to be.
5 MR. THOMPSON:
6 A. Yes, yes, it is.
7 COFFEY, Q.C.:
8 Q. To Ms. Matthews, Ms. Turpin and Ms. Cheeseman.
9 You say, "Yes, it is" the fact that you would
10 send an e-mail--I just hesitated for a second.
11 MR. THOMPSON:
12 A. This is from Glenda Power at 3:05 in the
13 morning.
14 COFFEY, Q.C.:
15 Q. It's from Glenda?
16 MR. THOMPSON:
17 A. Yeah.
18 COFFEY, Q.C.:
19 Q.
20 COFFEY, Q.C.:
21 Q. I'm sorry, to yourself. Minister or deputy
22 minister had not yet approved. And then there
23 is a--below it, "Health and Community
24 Services, February 21st, 2008. Update
25 provided on ER/PR database. Minister outlines

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1 actions to strengthen the health care system."
2 And this, I take it, is a press release and a
3 backgrounder?
4 MR. THOMPSON:
5 A. Right.
6 COFFEY, Q.C.:
7 Q. Okay. What was this about?
8 MR. THOMPSON:
9 A. On February 22nd we'd come to a point with the
10 Centre for Health Information and the database
11 project that it was substantially complete.
12 And what we mean by that is that it was
13 complete on the side of knowing the retest
14 results and having most--having what we
15 believed to be a as comprehensive as possible
16 list of all patients that should be within the
17 database, but we didn't have communications
18 data or all of the communications data ready
19 to report on. So it was a milestone and it
20 was time to report out on some of the issues
21 that had been raised in the November release
22 but also some additional data.
23 COFFEY, Q.C.:
24 Q. And how did -
25 MR. THOMPSON:

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1 A. I'm sorry. And as well, to indicate publicly
2 some of the learnings that government, in
3 particular, had made regarding the ER/PR
4 process and indicate some directions,
5 budgetary directions and some other policy
6 directions that government may pursue in the
7 future.
8 COFFEY, Q.C.:
9 Q. And how did Eastern Health feel about going
10 ahead with this press conference at the time?
11 MR. THOMPSON:
12 A. We had so many events they get crisscrossed in
13 my mind because there was one in March and
14 then another in April. But in general I
15 recall that they felt that there was more work
16 to be done before we would go public on that
17 date.
18 COFFEY, Q.C.:
19 Q. And did they communicate that to you, that
20 view?
21 MR. THOMPSON:
22 A. Yes.
23 COFFEY, Q.C.:
24 Q. And work about what, what were they -
25 MR. THOMPSON:

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1 A. Well, do you have any documents that will help
2 prompt me on this, I'd be able to speak more
3 precisely?
4 COFFEY, Q.C.:
5 Q. Let's see, I had--I certainly do but I don't
6 know if I've actually got them right. Just a
7 moment, please, Commissioner.
8 MR. BROWNE:
9 Q. (Inaudible).
10 COMMISSIONER:
11 Q. I'm sorry, Mr. Browne?
12 MR. BROWNE:
13 Q. Are you looking for the technical briefing -
14 COFFEY, Q.C.:
15 Q. No, it's not so much the technical briefing.
16 MR. BROWNE:
17 Q. Oh, I'm sorry (inaudible).
18 COFFEY, Q.C.:
19 Q. No, and I appreciate that, Mr. Browne. I have
20 that there. It's the reservations expressed by
21 Eastern Health to the effect of can't you wait
22 a couple of days.
23 MR. THOMPSON:
24 A. Right.
25 COFFEY, Q.C.:

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1 Q. Okay. And you don't recall, though, without
2 the documents -
3 MR. THOMPSON:
4 A. Well, as I'm just sitting here for a few
5 moments, I'm recalling that, you know, we had
6 reached this general milestone and, of course,
7 the kinds of things that we wanted to
8 communicate on February 22nd would be a more
9 precise number on the total number of cases
10 that are in the database. We wanted to
11 communicate on the total number of deceased
12 because that number had come into clear focus.
13 And we wanted to communicate regarding some of
14 the people that--or the people that we felt
15 had identified as never having been contacted,
16 so with the 1013 cases the number that we had
17 identified as never having been contacted and
18 that--now, not all of these people, even on
19 that date, had been contacted, so my
20 recollection is that Eastern Health wanted to
21 have those, try to have those contacts
22 completed before we went public with that
23 number.
24 COFFEY, Q.C.:
25 Q. So that was their--they were looking for more

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1 time to actually try and contact particular
2 patients?
3 MR. THOMPSON:
4 A. That's my recollection.
5 COFFEY, Q.C.:
6 Q. (Unintelligible).
7 MR. THOMPSON:
8 A. Unprompted with documents, that's my
9 recollection.
10 COFFEY, Q.C.:
11 Q. And the decision was made to go ahead?
12 MR. THOMPSON:
13 A. Right.
14 COFFEY, Q.C.:
15 Q. Anyway. Who attended that press conference in
16 terms of who were the presenters?
17 MR. THOMPSON:
18 A. Well, there was a technical briefing prior to
19 the press conference and then there was a, the
20 press conference was--included the minister
21 and Pat Pilgrim of Eastern Health.
22 COFFEY, Q.C.:
23 Q. Now, at that conference was the minister asked
24 about the deceased and the number of deceased
25 who results had converted?

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1 MR. THOMPSON:
2 A. Yes.
3 COFFEY, Q.C.:
4 Q. Okay. And did he respond to those questions?
5 MR. THOMPSON:
6 A. Well, he responded to them in the--okay, first
7 of all, the data that we were releasing that
8 day, just to reiterate, to make it all clear,
9 that there's 1013 in the total and 322
10 patients who were deceased.
11 COFFEY, Q.C.:
12 Q. Yes.
13 MR. THOMPSON:
14 A. And so the question then was asked by the
15 media, how many of the deceased actually had
16 results that converted from negative to
17 positive. We hadn't prepared that data,
18 hadn't extracted it for in preparation for
19 this press conference, so the minister didn't
20 have it to communicate and--at that time.
21 COFFEY, Q.C.:
22 Q. Was that data already available on raw form in
23 the database?
24 MR. THOMPSON:
25 A. Well, inside the database, unconstructed to

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1 ready made tables for this press conference,
2 sure, the data was there.
3 COFFEY, Q.C.:
4 Q. Had you anticipated that the minister would be
5 asked that question by the media?
6 MR. THOMPSON:
7 A. We didn't, actually. We had reached a
8 milestone around the baseline data that was to
9 be communicated. We weren't going to get into
10 any interpretation or analysis of things like
11 conversions in the press material, so we--
12 what, you know, people who were living and
13 people who were deceased. We did show
14 conversion rates in a media technical briefing
15 to allow the media to understand some of the
16 additional kinds of analysis that could be
17 done with the data, but our point was that,
18 you know, that we were handing all this data
19 over to the Commission in the hope, but not
20 certainty, of course, that Commission would
21 find it useful to do further kinds of analysis
22 as part of its mandate.
23 COFFEY, Q.C.:
24 Q. And in terms of--so no one did speak to you or
25 bring to your attention the fact that you

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1 might be asked, that the minister might be
2 asked the question about how many of the
3 deceased had conversions?
4 MR. THOMPSON:
5 A. That's right, it's not a question that we
6 focused on in preparing for -
7 COFFEY, Q.C.:
8 Q. Had anyone ever raised that with you?
9 MR. THOMPSON:
10 A. Ever -
11 COFFEY, Q.C.:
12 Q. Yes.
13 MR. THOMPSON:
14 A. - at any point in the--no doubt, it was a
15 question that surfaced between last June and
16 this press conference, but it's not a question
17 that we focused on in leading up to this press
18 conference.
19 COFFEY, Q.C.:
20 Q. Did anyone ever bring that to your attention
21 in the day or two before the press conference?
22 MR. THOMPSON:
23 A. Not that I can recall. I feel like I'm being
24 set up here.
25 COFFEY, Q.C.:

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1 Q. Oh, no, no, I just want to--I'm just asking
2 you, because it was asked about six different
3 times, wasn't it, at the press conference?
4 MR. THOMPSON:
5 A. Yes, it was.
6 COFFEY, Q.C.:
7 Q. Do you know how long it took when you did go
8 looking for the data, that actual output, how
9 long it took to get it?
10 MR. THOMPSON:
11 A. Of course, we asked for NLCHI to produce it
12 immediately after we ended the press
13 conference, that process began. The minister
14 wanted to then, of course, have that data and
15 release it. I don't recall exactly how long
16 it took to produce the table, but the folks at
17 the centre are skilled in operating the
18 database and perhaps it'd take a day, I don't
19 know.
20 COFFEY, Q.C.:
21 Q. And might it have taken a matter of seconds?
22 MR. THOMPSON:
23 A. Well, once one pushes the button and punches
24 out the answer, sure.
25 COFFEY, Q.C.:

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1 Q. If I could, please, Exhibit 1053? Now, sir,
2 this is another e-mail from yourself to Ms.
3 Power. And "Here's some suggestions, if this
4 is going tomorrow I'd like to send to Eastern
5 this morning. When would you like to talk to
6 minister?" We look then at this, and this
7 obviously in draft form, March 14th, 2008,
8 "Work by Centre for Health Information. ER/PR
9 database concluded." And when was it that
10 that press conference was held, do you recall?
11 MR. THOMPSON:
12 A. March 18th.
13 COFFEY, Q.C.:
14 Q. March 18th.
15 MR. THOMPSON:
16 A. I'm not sure that it was a press conference.
17 COFFEY, Q.C.:
18 Q. Or just a --
19 MR. THOMPSON:
20 A. I think -- was it a technical briefing? I
21 think perhaps it was just a -- no, no, I have
22 here in my notes press release, so was it
23 accompanied by a press conference, I'm not
24 sure.
25 COFFEY, Q.C.:

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1 Q. Okay. Now, sir, in terms f o that, Eastern
2 Health participate in that?
3 MR. THOMPSON:
4 A. No.
5 COFFEY, Q.C.:
6 Q. This was the Minister --
7 MR. THOMPSON:
8 A. Releasing that data.
9 COFFEY, Q.C.:
10 Q. Releasing it, and if I could, please, Exhibit
11 P-1059. Now this is a letter, March 14th,
12 2008. I take it it's from your office,
13 Secretary to Cabinet, health issues, addressed
14 to Sandra Chaytor and myself, counsel to the
15 Commission, and you say, "Please find enclosed
16 a draft copy of the technical brief on the
17 ER/PR database. The report contains a short
18 overview of key results and methodological
19 issues. The main part of the report consists
20 of the appendices which contains statistical
21 tables provides by NLCHI based on requests
22 from this office".
23 MR. THOMPSON:
24 A. Correct.
25 COFFEY, Q.C.:

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1 Q. "The tables may not necessarily address all
2 possible combinations of the data within the
3 database. In particular, the report does not
4 yet include tables on communications, but we
5 expect that to be available in a short time.
6 Hence, the report remains a draft report and
7 we continue to examine it for editorial
8 changes. We will be pleased to answer any
9 questions you may have on the content of this
10 draft report", and then the -- and this was
11 this database?
12 MR. THOMPSON:
13 A. It was a compendium of tables drawn from the
14 database.
15 COFFEY, Q.C.:
16 Q. Yes. Now the actual database was concluded
17 when?
18 MR. THOMPSON:
19 A. Well, now that -- on April the -- in April, we
20 concluded essentially all the reporting that
21 we planned to do on it with the final
22 communications tables, so really it concluded
23 in April.
24 COFFEY, Q.C.:
25 Q. And it was then, I take it, wherever else you

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1 sent it, it was delivered to the Commission at
2 that time?
3 MR. THOMPSON:
4 A. Right.
5 COFFEY, Q.C.:
6 Q. Okay. Now in terms of that database --
7 MR. THOMPSON:
8 A. Uh-hm.
9 COFFEY, Q.C.:
10 Q. As the client who requested it --
11 MR. THOMPSON:
12 A. Right.
13 COFFEY, Q.C.:
14 Q. How confident are you in terms of its
15 reliability and accuracy?
16 MR. THOMPSON:
17 A. Well, I have to break it down into sections.
18 So on the clinical data, the test and retest
19 results and the clarity with which we've
20 included and excluded people based on
21 criteria, I think that it has a high level of
22 reliability and one question might be have we
23 identified as the Centre, we as a client,
24 identified every single potential ER/PR person
25 who was tested ER/PR originally and who met

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1 the criteria, have we identified all of them,
2 and which actually is the same question, has
3 every single patient who had an original test
4 been retested. It's the same question. So
5 what we found, and we reported on this in
6 April, is that there's still a possibility
7 that there are individuals out there who had
8 an original test, but who have not been
9 identified in all of the searches that have
10 been done to identify those people, and as
11 recently as about a month ago, one individual
12 did identify themselves who had not been
13 picked up by either Eastern Health's original
14 round of searching or in the additional
15 searching that the Centre for Health
16 Information did, and there's a particular
17 technical reason for that. I can get into it
18 if you like. So there remains a small
19 possibility that such patients still exist
20 there, but we think that the exercise done by
21 the Centre has reduced the possibility of that
22 occurring substantially. So I think we have
23 as comprehensive an exercise has we reasonably
24 could have expected in terms of inclusiveness.
25 COFFEY, Q.C.:

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1 Q. And that was the clinical part.
2 MR. THOMPSON:
3 A. That's the total records. On the clinical
4 part then, the original test data, the retest
5 data, we have a high level of confidence in
6 the Centre for Health Information that they've
7 been able transcribe and import all of the
8 relevant data in the right way on the patient.
9 So they're a good credible organization, so we
10 have confidence in their data. On the
11 communications side --
12 COFFEY, Q.C.:
13 Q. Yes, go ahead.
14 MR. THOMPSON:
15 A. It's a different picture because one of the
16 goals was to identify the date on which people
17 were communicated, and unfortunately the data
18 on date was often missing. So while we could
19 break down the data by year, fairly confident
20 in which year somebody was contacted, that's
21 not a very precise marker for the kind of
22 analysis we had hoped we'd be able to do. So
23 the database is not deficient because of the
24 work that's been done, but because of the
25 underlying data that was available. There's

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1 other deficiencies on the communication side
2 because can we rely, for example, on a phone
3 call that's recorded as having been made in
4 the notes of one of the RHA's to actually
5 having been made. Well, we can't verify that,
6 but we can verify that the note was there that
7 the call took place. So we think that we have
8 a reliable database that we have lifted out
9 actual sources of information into it. We
10 talked earlier about the issue of whether
11 every letter to a physician was actually
12 followed up, and we have an example to cause
13 us some concern that it didn't happen in one
14 case, which leads us to suspect that maybe it
15 didn't happen in some more cases and Eastern
16 Health is undertaking an audit of that to
17 determine if it's complete. There's probably
18 several other comments I could make, but I'll
19 just make one more that the Canadian Cancer
20 Society has suggested that why didn't we take
21 on as part of project the contact with every
22 patient to determine -- to ask about the
23 quality of the contact that had been made by
24 Eastern Health and the other RHA's in the
25 original instance, so I've asked Peter Dawe

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1 what he meant by quality of the contact, and
2 his definition of it is, well, did the patient
3 -- first of all, did they recognize what you
4 were calling about, what Eastern Health was
5 calling about, did they understand the
6 information that was given to them, and did
7 they have an opportunity to follow up with a
8 medical professional to have a further
9 discussion. That's a good idea, but the
10 mandate for the Centre for Health Information
11 was to establish what it is that Eastern
12 Health had done, and not to evaluate the
13 process, and not to go that next step. So
14 that may be a worthwhile extra step to
15 contemplate as well by Eastern Health, but
16 it's not something that was within the mandate
17 of this project. So those are some
18 commentaries on the final state of the
19 database.
20 COFFEY, Q.C.:
21 Q. Did Mr. Dawe convey to you any reason as to
22 why he had made the suggestion in terms of
23 that he had concerns about the quality of the
24 contact?
25 MR. THOMPSON:

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1 A. Sure. He had -- his office has received many
2 phone calls from breast cancer patients who
3 felt that they might have been included in the
4 retest group, but that had never been
5 contacted. So part -- the database effort,
6 though, we thought would address certainly
7 some of those cases because what the Centre
8 did identify in the end in terms of living
9 patients, 35 had never been contacted at all
10 who have since been contacted, and 15
11 additional who had been told that they were
12 originally going to be retested, but were
13 never followed up. So we have 50 people alive
14 who had not had a complete contact process
15 that have since been followed up. So maybe
16 some of those people that were contacting the
17 Canadian Cancer Society will have been
18 followed up in that manner, and -- but if
19 there are -- I don't know for sure if there
20 are still additional people.
21 COFFEY, Q.C.:
22 Q. In terms of the quality, people who were
23 contacted who had concerns about the
24 effectiveness of the contact, did Mr. Dawe
25 convey any of that to you?

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1 MR. THOMPSON:
2 A. Well --
3 COFFEY, Q.C.:
4 Q. He wanted you to do a survey effectively of --
5 MR. THOMPSON:
6 A. Effectively, he would have preferred perhaps
7 to see this exercise being something different
8 than what it was.
9 COFFEY, Q.C.:
10 Q. But in terms of that, did he explain to you or
11 give you any instances in terms of complaints
12 that the Cancer Society received about --
13 MR. THOMPSON:
14 A. In general terms, he did. He was telling me
15 that some people didn't understand the
16 information they were given.
17 COFFEY, Q.C.:
18 Q. And is there anything that we have not covered
19 that you think the Commissioner should know?
20 MR. THOMPSON:
21 A. Yeah.
22 COFFEY, Q.C.:
23 Q. Go right ahead.
24 MR. THOMPSON:
25 A. Okay. Well, the survey that we've done of the

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1 different press releases perhaps don't give a
2 complete arc of the story and I'll just make a
3 few comments on that. The database project,
4 as I said in the beginning, was simply trying
5 to answer a simple question around
6 communications, but in doing so, it developed
7 into much more and we were able to, I think,
8 lend some clarity to the overall understanding
9 of the retesting process, able to clarify how
10 the total number of people included the actual
11 number of people deceased and alive, those who
12 had not been contacted, and a variety of
13 categories of additional follow up that we
14 relayed to the Commission in April. So we
15 think that the database exercise, the function
16 that we started out with, it brought us
17 perhaps a little bit more to the operational
18 surface than we expected, but we're satisfied
19 that we've answered the questions that we were
20 interested in. We are hoping that the
21 Commission will find it a useful tool as well
22 because we have not gone the extra step and
23 done intensive analysis that would lead to
24 clinical conclusions or conclusions related to
25 your terms of reference that might benefit

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1 from the calculation. For example, positivity
2 rates. We had done some of those calculations
3 to get an impression of the data, but none
4 that -- none that would have the kind of, I
5 guess, clinical/medical stamp of authority
6 that would be -- that we could provide. So
7 we're hoping that the Commission will find the
8 data of some utility doing that work because
9 positivity rate and conversion rates and the
10 variations by different kinds of groups within
11 the patient group may assist in helping you
12 draw some conclusions. So we hope that that
13 body of work will be valuable for you. I have
14 in addition to that some comments to make on
15 the -- which I thought we would have actually
16 come to in a different way on the relationship
17 between the -- the role of the minister and
18 the department in relation to an RHA, and in
19 particular when an adverse event occurs within
20 a subordinate agency to a department. A lot
21 of the issues surrounding this event and the
22 communication of this event to the public, not
23 the patient so much, but to the public, and
24 the opportunities that were available to
25 government to communicate when Eastern Health

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1 had chosen a different strategy surround what
2 is the appropriate role of a minister in a
3 circumstance like that. I just need to find
4 my notes. The -- we've dwelled upon that quite
5 a bit within the government and within my
6 office, and we've tried first of all to track
7 down what's the framework or the guidance, the
8 policy, the procedure that might help inform a
9 minister what's the right thing to do when an
10 adverse event happens within an agency that's
11 within their portfolio, but is a relative
12 autonomous and self-governing agency. So we
13 look at the -- in this case, the Hospitals Act
14 or even the new Regional Health Authorities
15 Act, and there really isn't guidance about
16 what the proper role is, what's the first step
17 that a minister or department should take when
18 an event like that happens. There's certainly
19 guidance about what the normal roles are for
20 the RHA and for the department, but there
21 isn't guidelines -- when something like an
22 adverse event occurs, what are the roles.
23 There's no specific guidance in the
24 Transparency and Accountability Act on this,
25 there's no -- the RHA's have their own

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1 incident reporting and adverse event policies,
2 but, of course, they don't inform what the
3 minister or the department should do. So with
4 all that, without effectively having some
5 guidance in that area, what we have to rely
6 upon is the general capacity of the minister
7 and the doctrine of ministerial
8 responsibility. The minister clearly has a
9 responsibility for all of the affairs and the
10 entities which are captured by the Acts that
11 the minister has to administer and account in
12 the House of Assembly for. So there's a large
13 body of activity that the minister has a
14 responsibility for. So what are the
15 principles within that that we can -- by which
16 the minister and the department should take
17 guidance from when an adverse event occurs,
18 and an adverse event will often happen at an
19 operational level within a health authority in
20 this case, and this could be applied perhaps
21 to other settings. I omitted to mention that
22 the minister doesn't have a regulatory role on
23 this case as well, so there's no particular
24 Act that says your regulatory role in regard
25 to quality or regulatory role in regard to

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1 accidents should cause you to take action. So
2 the minister says, well, how do I act, should
3 I intervene, should -- what are the most
4 sensible steps to take. So if the health
5 authority is being charged with responsibility
6 for operations and being charged with the
7 responsibility for quality, and as a self-
8 governing entity, that's where the minister
9 and the department should expect the response
10 to an adverse event to occur, and that it
11 would be well handled by appropriate officials
12 that are within the regional health authority
13 that a patient in this case, or patients,
14 should be -- any harm that's occurring should
15 be stopped and the patient should be properly
16 diagnosed and treated and so forth, all the
17 way perhaps to an evaluation of what's
18 happened, and there's no doubt that that all
19 should happen within health authority, but the
20 question still remains given that if something
21 very serious happens, what is it that should
22 engage the minister.
23 THE COMMISSIONER:
24 Q. Which really wasn't (inaudible) Health
25 Authority though, was it?

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1 MR. THOMPSON:
2 A. Oh, no, well fair point, but using that as an
3 example in this case and it's a good point,
4 I'll certainly try to encompass that in my
5 comments. The Minister has a--or if an event
6 at an operational level does, is serious and
7 large enough to engage a public concern or
8 becomes an issue of confidence in the health
9 care system, there's no question that the
10 Minister needs to be informed and the
11 department needs to be informed and it needs
12 to ask all the right questions to ensure that
13 the confidence is sustained in the health
14 authority and that the health authority has
15 acted in an appropriate manner. So what our
16 thinking is, is that the Minister does have a
17 responsibility and the department has a
18 responsibility to adequately ensure that in
19 this specific case, if we're just looking
20 inside of Eastern Health, has a responsibility
21 to ensure that--to be informed and to ask a
22 variety of questions, such as is Eastern
23 Health or the health authority taking action
24 to avoid further potential harm to patients.
25 Is Eastern Health or the health authority

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1 taking action to provide proper assessment and
2 treatment for patients who may have been
3 harmed? Is the health authority taking action
4 to determine the causes of the problem. And
5 further on in time sequence, perhaps, making
6 sure that the health authority explains the
7 causes of those problems to the department,
8 making sure that when, if causes are
9 identified, that the problems are identified
10 are fixed, based on the identified causes and
11 ensuring that the communications with patients
12 has occurred in a public--and with the public
13 in a timely and appropriate manner. So if the
14 health authority in this case is managing the
15 adverse event in an appropriate manner, it
16 does suggest that there is a, that there's a
17 general responsibility for the department and
18 the Minister to be well informed of these
19 kinds of points that to be accountable to the
20 Legislature, to be accountable to the public,
21 there is a variety of types of questions in a
22 serious adverse event that the Minister and
23 the department should be informed about. If
24 in the course of asking and getting answers to
25 these questions and that could, of course,

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1 take place over a period of time, as certain
2 questions are clear at one point in time or
3 unclear at one point in time and may become
4 more clear at a later point in time. If in
5 the course of gaining this information there
6 develops any concerns or a lack of confidence,
7 well, there may be a cause of a more,
8 developing a closer relationship with the
9 health authority in this case to ensure that
10 certain types of actions are taken, but in
11 general as a framework, we're trying to
12 develop a sense of--and hopefully for the
13 future, about what kinds of questions and how
14 close should a minister or a department be to
15 a health agency--to a health authority when a
16 serious adverse event happens. And so I just
17 wanted to share with you the kinds of
18 questions that we formulated in the hope that
19 they will be of some benefit.
20 THE COMMISSIONER:
21 Q. Have you thought about the issue of
22 communications and have your observations of
23 what occurred over the last two years lead you
24 to come to any conclusions about how health
25 authorities should approach communications

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1 when, with large scale adverse events, as
2 opposed to ones that might involve one patient
3 or two, which I think are entirely a different
4 thing.
5 MR. THOMPSON:
6 A. So when should a communication with the public
7 be engaged, is that the -
8 THE COMMISSIONER:
9 Q. Well there's certainly a very major issue here
10 as to at what stage, in this case,
11 communication should have been engaged with
12 the patients. You know, there's the obvious
13 one as to whether or not patients should have
14 been advised that testing was going to take
15 place or as Eastern Health argued at the time
16 and as I gather from your evidence, continue
17 to argue until very late in the day and may,
18 perhaps still do take the position, that
19 patients should not be advised until the
20 retest has been completed.
21 MR. THOMPSON:
22 A. Uh-hm.
23 THE COMMISSIONER:
24 Q. There's that issue. Then there's the issue of
25 how big does an incident have to be before it

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1 becomes of such a nature that it becomes a
2 public issue.
3 MR. THOMPSON:
4 A. Right.
5 COFFEY, Q.C.:
6 Q. I'm assuming, most of us would agree, that an
7 adverse incident for one patient would not be
8 of a nature that would dictate of itself that
9 there should be some kind of a public
10 announcement by a health authority. There are
11 certainly grave duties on a health authority
12 when an adverse incident occurs involving one
13 patient, but at least at this point, I don't
14 see that as triggering some kind of public
15 responsibility in the sense of making
16 announcement that there has been such an
17 event. The patient concerned should know a
18 whole lot about it, but not necessarily the
19 public.
20 MR. THOMPSON:
21 A. Uh-hm.
22 THE COMMISSIONER:
23 Q. On the other end of the spectrum, I don't
24 think there's much doubt that in the case that
25 we're dealing with where the number of people

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1 involved was so great that that would fall
2 into the category of one where there should be
3 some kind of a public involvement.
4 MR. THOMPSON:
5 A. Right.
6 THE COMMISSIONER:
7 Q. Now, I suppose luckily for me, we don't have
8 to deal with where that cut-off point is in
9 the context of looking at the current
10 situation, although perhaps it might be
11 something I would want to put my oar in on,
12 but I'm just wondering whether or not you had
13 come to any conclusions about a preferred
14 method of communication with both the public
15 and the patients. Because of your activity, I
16 would assume that you were not necessarily
17 accepting Eastern Health's view that one
18 should wait until the results came back, but
19 perhaps I'm wrong on that, that might not be
20 your own personal view of things having looked
21 at it.
22 MR. THOMPSON:
23 A. From the task force point of view, we haven't
24 come to conclusions on this point, but we're
25 looking at similar considerations, I'm sure,

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1 that you are, but this ER/PR context is, of
2 course, an extraordinarily large case study
3 for us as well and one of the issues that
4 arises in the decision as to when to
5 communicate with the public is a question of
6 how confident can one be in the--that you've
7 identified all of the patients that are
8 affected. In this case here, it would be
9 relevant to determine whether Eastern Health
10 could have been confident at that early stage
11 that it did have the data available to it, to
12 ensure that without communicating with the
13 public, without asking for people to self-
14 identify, that they would have identified one
15 hundred percent of the cases. I think now we
16 know that there was, that it was very
17 difficult to bring together that full list, so
18 that would be one criterion, I think, that if
19 the health authority can't be sure that all
20 people affected are going to be identified on
21 a concrete or discrete list that is easily
22 gathered together quickly, then that might be
23 one reason why one would communicate in public
24 to ensure that -
25 THE COMMISSIONER:

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1 Q. It becomes a patient and safety issue then.
2 MR. THOMPSON:
3 A. Patient/safety issue, exactly. And second
4 reason is that even though a patient may be
5 identified on the list, it may take some time
6 for, with a large group of people, for the
7 health authority to do all the internal
8 assessments that are necessary to understand
9 the scope of an issue and be ready otherwise
10 for public communication. So this creates a
11 second reason why early public communication
12 may be helpful and that is, to let patients
13 know, even if they may already be on the list
14 internally, that something is happening so
15 that they can start to be their own patient
16 advocate, perhaps to take the matter into
17 their own hands and obtain retests as
18 necessary. These two points, though, I am not
19 certain are general principles, they don't
20 necessary apply in every case, but they are
21 two perspectives that have occurred to us, so
22 far as factors that should be put into the
23 thought process of people in a health
24 authority in deciding when an adverse event
25 should be made public. Another big issue is

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1 confidence, to sustain public confidence there
2 should be as early as possible public
3 communication. I agree with points others
4 have made that there's a priority with the
5 patient, but balancing the issue of priority
6 of information to the patient would sustain
7 public confidence, it's perhaps a calculus
8 that needs to be made in each and every
9 incident, but it's one that should be
10 consciously made to determine if there will be
11 an loss of confidence if there's an undue
12 delay in contacting so many patients that the
13 matter, as it had happened in this case,
14 leaked out and then the issue had to be
15 managed or reacted to after the fact, rather
16 than managed in a way that not only got the
17 information out, but showed a clear effort at
18 transparency in doing so. So those are some
19 observations.
20 THE COMMISSIONER:
21 Q. All right, thank you.
22 COFFEY, Q.C.:
23 Q. I do have a couple of questions arising out of
24 that. One is you've addressed the timing
25 issue, what about the methodology or method of

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1 communication, particularly with individual
2 patients? Like, have you had any thoughts on
3 whether or not it should be verbal, written,
4 both?
5 MR. THOMPSON:
6 A. We are examining that in the task force, we're
7 finding that policies in existence and the
8 health authorities take different approaches
9 on that, and when we talk to the quality
10 officials, we're finding different opinions as
11 well, that phone calls are adequate, even from
12 quality officials, rather than medical staff.
13 Some believe they are adequate, depending upon
14 the circumstances; others believe that a
15 meeting, no matter what the circumstance, a
16 meeting is in order with appropriate medical
17 and quality staff in place. And then the--on
18 the issue of letters, it seems opinion is
19 divided between a letter sometimes being a
20 detached and perhaps uncaring way of
21 communicating a possible incident. On the
22 other side, a letter, registered or not, but a
23 letter will be a definitive way of perhaps
24 assuring that contact is actually made. So I
25 don't actually have an opinion as to the

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1 single best way, but it's something that is a
2 big issue in the work that we're doing as
3 well.
4 COFFEY, Q.C.:
5 Q. Now when I invited you, you know, if there was
6 anything else you thought you might want to
7 pass on to the Commissioner, we have heard
8 when Mr. Abbott was last here, he suggested
9 that perhaps there should be some thought
10 give, consideration given to the idea of
11 having a, by legislation, a person or persons
12 or a body that is charged with or has to be
13 told about an adverse event, or certainly an
14 adverse event of any size or significance, in
15 terms of numbers, and he used the example of,
16 for example a laboratory problem and then that
17 entity or individual, by statute, would be
18 able to say well, no, you can continue on to
19 do the testing or I'm satisfied or no, you
20 can't, you have to suspend it, and so on and
21 govern yourself accordingly. And the point
22 being that somebody who independent,
23 independent of political considerations, as he
24 put it, small p or perhaps large P, Political
25 considerations, had you given any thought to

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1 that? First of all, are you aware of what he
2 -
3 MR. THOMPSON:
4 A. I've heard bits and pieces of what he said and
5 he was comparing it to the medical officer
6 health model as well, but I don't have a final
7 opinion on that. Certainly it's interesting,
8 worthy of consideration, but there's so many
9 varieties of adverse events and every one that
10 we've looked at so far has fundamental
11 differences, size and serious, actual and
12 potential, lab, where it's not at the clinical
13 interface and then at the clinical interface.
14 So it's, I wouldn't draw a conclusion yet
15 whether that particular legislative model--and
16 also I don't know how he's drawn the
17 conclusion that there's a political
18 interference in this at all and that
19 therefore, legislation needs to remove it, I'm
20 not -
21 COFFEY, Q.C.:
22 Q. He didn't use political interference.
23 THE COMMISSIONER:
24 Q. To be fair to Mr. Abbott, he wasn't suggesting
25 that.

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1 MR. THOMPSON:
2 A. Okay, well I apologize.
3 COFFEY, Q.C.:
4 Q. He didn't say it was any political
5 interference, he said political
6 considerations, to take any possible political
7 considerations out of it in a theoretical way.
8 He wasn't talking about this event.
9 MR. THOMPSON:
10 A. Okay, so I apologize. I think the most
11 important thing here is to ensure that the
12 tools and the considerations and the guidance
13 are placed into the hands of the health
14 authority and the people who are dealing with
15 patients and in the administration and in the
16 quality department to make the right decisions
17 at the right time. I don't think at present
18 that they, the policies I've seen have enough
19 factors and considerations to take into
20 account the vast diversity of adverse events
21 that may happen. Policies are mainly right
22 now designed around single patient events that
23 happen in the medical environment and don't
24 take into consideration necessarily the lab
25 and don't take into consideration multi-

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1 patient events or inter-jurisdictional events,
2 so there's a lot more added value that we can
3 bring to policies and perhaps the law as well,
4 but whether, as an interesting aside, the
5 Medical Officer of Health was the person in
6 Alberta who closed down a facility and brought
7 to attention adverse events happening there.
8 So it's certainly worth looking at, but too
9 early for me to give you my conclusion.
10 COFFEY, Q.C.:
11 Q. And I have one final point, Commissioner, if I
12 could approach Mr. Thompson. Mr. Thompson,
13 I've just given you a copy of Section 31 of
14 the Access to Information and Protection of
15 Privacy -
16 THE COMMISSIONER:
17 Q. This is the same piece of legislation you
18 brought up--by the way, have we given that to
19 the other counsel?
20 COFFEY, Q.C.:
21 Q. No, I haven't, although, judge, frankly they
22 are all lawyers, I anticipate or I expect
23 they've all looked at it, but I'll certainly
24 remedy that in any event.
25 THE COMMISSIONER:

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1 Q. I think that should be remedied.
2 COFFEY, Q.C.:
3 Q. I certainly. Just on this point, were you
4 aware that this exists?
5 MR. THOMPSON:
6 A. Yes.
7 COFFEY, Q.C.:
8 Q. And have you given any thought to whether in
9 the circumstances, at least based upon its
10 wording, a public body in this context, would
11 that include Eastern Health?
12 MR. THOMPSON:
13 A. Yes.
14 COFFEY, Q.C.:
15 Q. And in fact, it would be the CEO, I take it of
16 Eastern Health, the head of a public body in
17 this context.
18 MR. THOMPSON:
19 A. Right, right.
20 COFFEY, Q.C.:
21 Q. Have you given any consideration or thought
22 from your perspective as to whether or not
23 that perhaps was applicable here?
24 MR. THOMPSON:
25 A. Well I think that section does get engaged by

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1 an event like this and, but then the facts of
2 the matter would determine whether it's
3 directly applicable. So I think there can be
4 adverse events, serious adverse events or
5 conditions within a health setting where this
6 section gets engaged and a disclosure is
7 called for. But my understanding of this law,
8 and this section is that this wasn't developed
9 with a health setting in mind, and so it may
10 be some, either revision of this or taking
11 these principles into another statute might be
12 helpful in advancing the structures that we
13 have.
14 COFFEY, Q.C.:
15 Q. Can I just refer to that, Commissioner,
16 because it did come up the other day, Mr.
17 Abbott did refer to it. I have no further
18 questions, Commissioner, thank you.
19 THE COMMISSIONER:
20 Q. It's quite late in the day. Can we do the
21 rounds and determine how much longer we'll
22 need this witness? Mr. Simmons?
23 MR. SIMMONS:
24 Q. With the weekend to think about it, I may be
25 shorter at than longer, right now I don't

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1 anticipate very much with Mr. Thompson at all,
2 Commissioner.
3 THE COMMISSIONER:
4 Q. Okay. Mr. Browne?
5 MR. BROWNE:
6 Q. Likewise, Commissioner, there's two areas I
7 want to dwell on over the weekend. I don't
8 anticipate I'll be very long--or if at all.
9 THE COMMISSIONER:
10 Q. If at all. Oh, Mr. Eaton?
11 EATON, Q.C.:
12 Q. If there's anything, I will be brief.
13 MS. NEWBURY:
14 Q. I'd say about fifteen, twenty minutes or so.
15 THE COMMISSIONER:
16 Q. Yes.
17 MR FELT:
18 Q. If anything, it will be brief.
19 MR. PIKE:
20 Q. Less than 15 minutes for the Medical
21 Association.
22 THE COMMISSIONER:
23 Q. Mr. Pritchard?
24 MR. PRITCHARD:
25 Q. Twenty minutes to half an hour.

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1 THE COMMISSIONER:
2 Q. Twenty minutes, half an hour. The matter
3 which occurs to me, forgive me, Mr. Thompson,
4 about this conversation which is about to come
5 here, I'm sure you won't want to hear it. But
6 we have a witness who is returning from the
7 mainland for the purpose of giving his,
8 completing his evidence on Monday, so that it
9 seems to me that we do have to give priority
10 to that individual because he is coming from
11 outside the province. So as I reckon it,
12 we're just talking maybe at the maximum
13 another hour with this witness. My suggestion
14 is going to be we try to fit him in after Mr.
15 Tilley, if that's acceptable and if you're
16 available. If you're not, then we'll give you
17 a time in which you are available.
18 MR. THOMPSON:
19 A. I'll be out of the province for most of next
20 week. I'm leaving on Tuesday afternoon.
21 THE COMMISSIONER:
22 Q. All right, leaving on Tuesday. In that case,
23 we'll probably see you the week after, but if
24 we can fit you in on Tuesday morning, would
25 that be acceptable or have you--if you have

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1 commitments which make it difficult, we'll
2 accommodate you whenever you're available.
3 MR. THOMPSON:
4 A. It would be difficult, but I'll certainly talk
5 with Rolf Pritchard about it.
6 THE COMMISSIONER:
7 Q. Well, since the benefit, of course, of having
8 you come back sooner, rather than later, is
9 that what you've said is fresh in the mind.
10 MR. THOMPSON:
11 A. I would like that, yes. Sure.
12 THE COMMISSIONER:
13 Q. Of us, as well as you.
14 MR. THOMPSON:
15 A. Yes.
16 THE COMMISSIONER:
17 Q. So that I'd like to do that, but because Mr.
18 Tilley is coming from out of the province, I
19 really want to make sure that we get his
20 evidence in. So I propose we continue with
21 Mr. Tilley on 9:30 on Monday and if that goes
22 well, we'll see if we can fit you in;
23 otherwise, when you return, we'll do it then.
24 MR. THOMPSON:
25 A. Great.

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1 THE COMMISSIONER:
2 Q. Thank you, 9:30 on Monday.
3 Upon conclusion at 5:00 p.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 9th day of May, A.D., 2008 before the
6 Honourable Justice Margaret A. Cameron,
7 Commissioner, at the Commission of Inquiry, St.
8 John's, Newfoundland and Labrador and was
9 transcribed by me to the best of my ability by
10 means of a sound apparatus.
11 Dated at St. John's, Newfoundland and Labrador
12 this 9th day of May, A.D., 2008
13 Judy Moss

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