

<p>COMMISSION OF INQUIRY ON HORMONE RECEPTOR TESTING</p> <p>BEFORE THE HONOURABLE JUSTICE CAMERON - COMMISSIONER</p> <p>October 31, 2008</p> <p>Appearances:</p> <p>Bernard Coffey, Q.C. . . . . Commission Co-counsel Sandra Chaytor, Q.C. . . . . Commission Co-counsel</p> <p>Rolf Pritchard/Jackie Brazil, Q.C. . Her Majesty in Right of NL</p> <p>Peter Browne, Q.C./Jane Hennebury . . . Doctors Kara Laing et al</p> <p>Daniel Simmons . . . . . Eastern Regional Integrated . . . . . Health Authority</p> <p>Chesley Crosbie, Q.C... . . . . Members of the Breast Cancer . . . . . Testing Class Action</p> <p>Mark Pike, Q.C. . . . . NL Medical Association Jennifer Newbury . . . . Canadian Cancer Society (NL Division) Blair Pritchett. . . . Central, Western and Labrador-Grenfell Regional Integrated Health Authorities</p>	<p>LIST OF EXHIBITS</p> <p>EXHIBITS P-3701 TO P-3711, INCLUSIVE . . . . . Pg. 81 EXHIBIT P-0309 . . . . . Pg. 128 EXHIBIT P-3712 . . . . . Pg. 130 EXHIBITS P-3696 THROUGH P-3700 . . . . . Pg. 136 EXHIBITS C-0279 THROUGH C-0313 . . . . . Pg. 136</p>
<p>TABLE OF CONTENTS</p> <p>MS. SHARON SMITH - RESUMES THE STAND</p> <p>Examination by Peter Browne, Q.C. - Cont'd . . . . Pgs. 4 - 9 Examination by Jennifer Newbury . . . . . Pgs. 9 - 66 Examination by Daniel Simmons . . . . . Pgs. 66 - 107 Re-examination by Bernard Coffey, Q.C. . . . . Pgs. 107 - 123 Examination by Madam Commissioner . . . . . Pgs. 123 - 135</p> <p>MS. ELIZABETH FINLAYSON - SWORN MS. JANE HOPKINS - SWORN</p> <p>Examination by Sandra Chaytor, Q.C . . . . . Pgs. 135 - 222 Examination by Chesley Crosbie, Q.C. . . . . Pgs. 222 - 227</p> <p>Discussion . . . . . Pgs. 227 - 230</p> <p>Certificate</p>	<p style="text-align: right;">Page 4</p> <p>1 THE COMMISSIONER: 2 Q. Good morning. Mr. Pritchard, are you still of 3 the same position you were yesterday? 4 MR. PRITCHARD: 5 Q. Yes, Commissioner, thank you. Thank you for 6 your evidence. 7 THE COMMISSIONER: 8 Q. Mr. Browne? 9 MS. SHARON SMITH, EXAMINATION BY PETER BROWNE, Q.C. 10 BROWNE, Q.C.: 11 Q. Thank you, Commissioner. Good morning, Ms. 12 Smith. 13 MS. SMITH: 14 A. Good morning, Mr. Browne. 15 BROWNE, Q.C.: 16 Q. We've met previously. 17 MS. SMITH: 18 A. Yes, we certainly have. 19 BROWNE, Q.C.: 20 Q. I just have one area, you'll be glad to know, 21 but it has to do with your past life, and that 22 has to do with your position in Quality 23 Initiatives. You commented to Mr. Coffey 24 yesterday in response to a question that while 25 you were--I think you were in that position</p>

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1 from 1996 to 1999. Is that--did I get that  
 2 correct?  
 3 MS. SMITH:  
 4 A. In Quality Initiatives?  
 5 BROWNE, Q.C.:  
 6 Q. Yes  
 7 MS. SMITH:  
 8 A. It was later.  
 9 BROWNE, Q.C.:  
 10 Q. Okay.  
 11 MS. SMITH:  
 12 A. 1999 to 2003.  
 13 BROWNE, Q.C.:  
 14 Q. Sorry, okay. But if I captured your comment -  
 15 MS. SMITH:  
 16 A. Or sorry, Mr. Browne, or was it back to when I  
 17 was involved in Quality at the General  
 18 Hospital?  
 19 BROWNE, Q.C.:  
 20 Q. Either or. The question I want to sort of  
 21 follow up on is that you had mentioned program  
 22 directors were responsible for professional  
 23 practice coordination.  
 24 MS. SMITH:  
 25 A. Okay.

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1 BROWNE, Q.C.:  
 2 Q. Can you just expound on that for me a little  
 3 bit further? Like what sort of  
 4 responsibilities and what sort of activities  
 5 were you referring to?  
 6 MS. SMITH:  
 7 A. So you're talking about when I was  
 8 professional practice coordinator with the  
 9 nursing realm?  
 10 BROWNE, Q.C.:  
 11 Q. Yes, okay, yes.  
 12 MS. SMITH:  
 13 A. Those positions were created when we became a-  
 14 -we had a program manager approach to care.  
 15 So rather than the traditional departments of  
 16 nursing, physiotherapy, social work, etcetera.  
 17 BROWNE, Q.C.:  
 18 Q. Right.  
 19 MS. SMITH:  
 20 A. All the health care professionals working  
 21 within a program reported through to the  
 22 program director.  
 23 BROWNE, Q.C.:  
 24 Q. Right.  
 25 MS. SMITH:

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1 A. So if the program director happened to have a  
 2 nursing background, that director was able to  
 3 understand the nuances around professional  
 4 practice for nurses, but not necessarily for  
 5 physiotherapists, social workers, etcetera.  
 6 BROWNE, Q.C.:  
 7 Q. Sure, sure.  
 8 MS. SMITH:  
 9 A. And conversely, if the program director  
 10 happened to have a physiotherapy background,  
 11 they didn't understand or have as good a  
 12 knowledge about the nuances for the nursing  
 13 professional practice standards. So those  
 14 positions were created. In areas where the  
 15 functional departments remained, while they  
 16 were bigger, such as the lab and pharmacy,  
 17 those types of functional services, the  
 18 program director was of a like professional  
 19 background as the people that they were  
 20 responsible for.  
 21 BROWNE, Q.C.:  
 22 Q. Okay.  
 23 MS. SMITH:  
 24 A. So at that point in time, there was no  
 25 professional practice structure put in place

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1 to support those departments. Does that make  
 2 sense to you?  
 3 BROWNE, Q.C.:  
 4 Q. It does, and I guess I just want to take it a  
 5 step further. Were there still expectations  
 6 in those areas, and you referenced the lab,  
 7 that the program directors or, you know,  
 8 people who were in management there, had a  
 9 responsibility for professional practice  
 10 coordination and development within their  
 11 respective spheres, and if so, what sort of  
 12 responsibilities, expectations were demanded  
 13 of them?  
 14 MS. SMITH:  
 15 A. So yes, you're correct. The program director  
 16 for those areas then would have a  
 17 responsibility to ensure that the standards  
 18 for that professional practice area were  
 19 monitored and processes put in place to enable  
 20 staff to practice at the level that was  
 21 expected of them.  
 22 BROWNE, Q.C.:  
 23 Q. Okay. Thank you. Thank you, Commissioner.  
 24 MS. SMITH:  
 25 A. Thank you, Mr. Browne.

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1 THE COMMISSIONER:  
 2 Q. Mr. Pritchett, are you still of the -  
 3 MR. PRITCHETT:  
 4 Q. Same mind, no questions.  
 5 THE COMMISSIONER:  
 6 Q. Thank you. Ms. Newbury?  
 7 MS. SHARON SMITH, EXAMINATION BY MS. JENNIFER NEWBURY  
 8 MS. NEWBURY:  
 9 Q. Good morning, Ms. Smith. Jennifer Newbury. I  
 10 represent the Newfoundland and Labrador  
 11 division of the Canadian Cancer Society, and I  
 12 wanted to ask perhaps for a little bit more  
 13 elaboration on your presentation yesterday on  
 14 the Cancer Registry.  
 15 MS. SMITH:  
 16 A. Sure.  
 17 MS. NEWBURY:  
 18 Q. Perhaps we could bring up Exhibit P-3567,  
 19 please? And starting -  
 20 MS. SMITH:  
 21 A. Now, you don't need to me to use that mouse,  
 22 do you?  
 23 MS. NEWBURY:  
 24 Q. No, no, I'll take control of the mouse.  
 25 Hopefully that'll work. On page two, there's

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1 an outline of the different purposes for the  
 2 Cancer Registry.  
 3 MS. SMITH:  
 4 A. Yes.  
 5 MS. NEWBURY:  
 6 Q. And I just wanted to ask perhaps for a little  
 7 bit more detail on that, starting with  
 8 surveillance, and if you could perhaps give  
 9 some examples of what types of surveillance  
 10 and who uses the Registry data for  
 11 surveillance?  
 12 MS. SMITH:  
 13 A. Okay, so, the surveillance that I refer to is  
 14 basically incidents of cancer and I know  
 15 you've seen those booklets that are published  
 16 every year, the Cancer Statistics in Canada.  
 17 MS. NEWBURY:  
 18 Q. Um-hm, Cancer Statistics.  
 19 MS. SMITH:  
 20 A. And basically, that is where we use the most  
 21 of it. We also use it within the Cancer Care  
 22 program to help us look at our incidents,  
 23 whether it's rising or falling for particular  
 24 types of cancer, and help us plan programs.  
 25 For example, we've used that to look at the

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1 incidents of colorectal cancer to help support  
 2 our efforts to establish a colorectal  
 3 screening program.  
 4 MS. NEWBURY:  
 5 Q. Okay, and would that be staff members of the  
 6 Cancer Registry itself who do such analysis or  
 7 do other members of the medical community or  
 8 other health professionals in the province use  
 9 the registry data for that particular purpose?  
 10 MS. SMITH:  
 11 A. So most of the analysis is done using the  
 12 Statistics Canada publication and the Canadian  
 13 Cancer Statistics. Some analysis is done by  
 14 our data analyst in house. Those are very  
 15 basic statistics, Ms. Newbury. We do not have  
 16 very much in terms of analytical capacity, and  
 17 I think I referenced that yesterday.  
 18 MS. NEWBURY:  
 19 Q. Yes, you did.  
 20 MS. SMITH:  
 21 A. We did have one staff member who attended a  
 22 workshop last year to help us in this effort.  
 23 MS. NEWBURY:  
 24 Q. Okay.  
 25 MS. SMITH:

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1 A. So we're hoping to build that capacity.  
 2 MS. NEWBURY:  
 3 Q. Okay, and do you know if any, for example, any  
 4 oncologists or pathologists with particular  
 5 areas of interest use the cancer data for  
 6 surveillance purposes?  
 7 MS. SMITH:  
 8 A. Not necessarily for surveillance, but they  
 9 often will use it if they're doing a  
 10 particular research project.  
 11 MS. NEWBURY:  
 12 Q. Okay.  
 13 MS. SMITH:  
 14 A. And I know that the cytology registry is used  
 15 more by the cervical screening initiatives for  
 16 statistical purposes.  
 17 MS. NEWBURY:  
 18 Q. Right, okay, yes, and we have had some  
 19 evidence from Dr. Fontaine on that.  
 20 MS. SMITH:  
 21 A. Right, yes.  
 22 MS. NEWBURY:  
 23 Q. And in terms of the data analyst, what--could  
 24 you just explain again how long you've had  
 25 that position in place?

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1 MS. SMITH:  
 2 A. There's always been someone in the Registry  
 3 who's a data analyst. That's not full time  
 4 for the Registry.  
 5 MS. NEWBURY:  
 6 Q. Okay. How many hours a week would that person  
 7 -  
 8 MS. SMITH:  
 9 A. I couldn't tell you for sure, and it depends  
 10 on the week really.  
 11 MS. NEWBURY:  
 12 Q. And what is the training for that particular  
 13 person?  
 14 MS. SMITH:  
 15 A. That person, they're not a cancer  
 16 epidemiologist or anything. They just have  
 17 particular computer skills.  
 18 MS. NEWBURY:  
 19 Q. Okay.  
 20 MS. SMITH:  
 21 A. More of a programmer analyst than -  
 22 MS. NEWBURY:  
 23 Q. Okay, as opposed to something specific to  
 24 health care?  
 25 MS. SMITH:

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1 A. Yes, yes.  
 2 MS. NEWBURY:  
 3 Q. And would you consider that the Cancer  
 4 Registry could be a potential resource that  
 5 could be used perhaps more widely than it is  
 6 currently being used?  
 7 MS. SMITH:  
 8 A. Oh, absolutely.  
 9 MS. NEWBURY:  
 10 Q. Okay.  
 11 MS. SMITH:  
 12 A. Absolutely, it's one of the areas that we  
 13 identified for improvement. It comes up every  
 14 time we talk about issues and we recognize  
 15 that it is an area that we would like to see  
 16 improved, and we've certainly asked for  
 17 resources to help us do that in our budget  
 18 submissions.  
 19 MS. NEWBURY:  
 20 Q. Okay, and what sort of resources have you been  
 21 looking for?  
 22 MS. SMITH:  
 23 A. Well, we've looked for that analytical  
 24 capacity certainly has been one of the areas.  
 25 We were able to, as I said yesterday, fund a

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1 position because of the money that we've  
 2 gotten from the Canadian Partnership Against  
 3 Cancer where Ms. Ryan is a collaborative stage  
 4 trainer. So we've used some of that money to  
 5 help us, in terms of the people who actually  
 6 enter the data, but we really want someone to  
 7 be able to help us do the analysis. We've  
 8 asked for an epidemiologist to be there. I  
 9 certainly have had some conversation with Dr.  
 10 Donovan at the Community Medicine Department  
 11 at Memorial to see if we can come up with some  
 12 creative ways to partner, and you know, that's  
 13 one of the things we really would like to do.  
 14 MS. NEWBURY:  
 15 Q. Okay, and to partner with, perhaps, other--  
 16 with the University or other -  
 17 MS. SMITH:  
 18 A. We'd like to be able to partner locally.  
 19 Certainly we've been able to partner somewhat  
 20 with Cancer Care Nova Scotia and we've had the  
 21 benefit of the expertise of some of the people  
 22 in that registry. But you know, they're going  
 23 to be losing that expert too, because he's  
 24 soon going to retire.  
 25 MS. NEWBURY:

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1 Q. In Cancer Care Nova Scotia?  
 2 MS. SMITH:  
 3 A. In Cancer Care Nova Scotia, so it's an issue  
 4 for many of us.  
 5 MS. NEWBURY:  
 6 Q. And in Cancer Care Nova Scotia, how long has  
 7 the epidemiologist there been in place?  
 8 MS. SMITH:  
 9 A. A long time.  
 10 MS. NEWBURY:  
 11 Q. Long time, okay, and is there an issue with  
 12 being able to attract people for that  
 13 particular position? You sort of expressed a  
 14 concern that perhaps Cancer Care Nova Scotia  
 15 won't have anyone in that position.  
 16 MS. SMITH:  
 17 A. It's having someone--you build an expertise in  
 18 this area, you know, and they're not--there's  
 19 not people out there with that expertise  
 20 necessarily. So it just takes a while to get  
 21 someone up to speed.  
 22 MS. NEWBURY:  
 23 Q. Okay, and you've mentioned that Ms. Ryan has  
 24 been trained as a collaborative staging  
 25 trainer.

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1 MS. SMITH:  
 2 A. Yes.  
 3 MS. NEWBURY:  
 4 Q. She's the coordinator as well, is she?  
 5 MS. SMITH:  
 6 A. Yes.  
 7 MS. NEWBURY:  
 8 Q. And what is her background?  
 9 MS. SMITH:  
 10 A. She's a health records technician.  
 11 MS. NEWBURY:  
 12 Q. Okay.  
 13 MS. SMITH:  
 14 A. She's also a certified cancer registrar.  
 15 She's also recently completed the Canadian  
 16 Hospital Association Quality Initiatives  
 17 program, which is about a one year program.  
 18 MS. NEWBURY:  
 19 Q. Okay, and you've mentioned that there are  
 20 others who are trained as registrars as well?  
 21 MS. SMITH:  
 22 A. They're all--the only person not certified as  
 23 a registrar is the person who's in a temporary  
 24 position.  
 25 MS. NEWBURY:

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1 Q. Okay, and are there requirements for  
 2 continuing education for registrars?  
 3 MS. SMITH:  
 4 A. There's no--so, no set requirements, but each  
 5 year there's a technical workshop that's held,  
 6 and we've been able to send, the past two  
 7 years anyway, we've been able to send all our  
 8 staff to those technical workshops.  
 9 MS. NEWBURY:  
 10 Q. Okay.  
 11 MS. SMITH:  
 12 A. And those are basically around the rules for  
 13 entering the data, you know, those types of  
 14 things, and certainly with the collaborative  
 15 stage training, every time we put a new site,  
 16 new cancer site on to be entered, we've had  
 17 the opportunity for training for those sites  
 18 as well.  
 19 MS. NEWBURY:  
 20 Q. Okay. So that's if there's a new disease site  
 21 being added to the Registry?  
 22 MS. SMITH:  
 23 A. Yes.  
 24 MS. NEWBURY:  
 25 Q. And in terms of policy development, who relies

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1 upon Registry data for that purpose?  
 2 MS. SMITH:  
 3 A. I know we do, within the Cancer Care program.  
 4 I'm sure that many others use that data. I  
 5 know the breast screening program uses the  
 6 information to help look at the indicators  
 7 within breast screening and that certainly  
 8 forms policy. I think if you look at the  
 9 incidents of skin cancer, for example, there's  
 10 lots--lung cancer, there's lots of information  
 11 there to help inform policy.  
 12 MS. NEWBURY:  
 13 Q. Okay, and are some disease sites perhaps  
 14 captured more adequately than others?  
 15 MS. SMITH:  
 16 A. Well, I would say that that is an accurate  
 17 assessment. As I said yesterday, we have this  
 18 electronic pathology system. So any disease  
 19 site that is diagnosed using a pathological  
 20 exam, we would have that data crossover  
 21 seamlessly into the Registry, but other  
 22 diseases that might be diagnosed without--you  
 23 know, some of the blood disorders, those are  
 24 not necessarily going to come that way. So we  
 25 have to try to capture that data a little bit

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1 differently.  
 2 MS. NEWBURY:  
 3 Q. Okay, and you mentioned some that might be  
 4 diagnosed through diagnostic imaging -  
 5 MS. SMITH:  
 6 A. Yes.  
 7 MS. NEWBURY:  
 8 Q. - may not be captured.  
 9 MS. SMITH:  
 10 A. Yes, and some people who get diagnosed very  
 11 late in a cancer diagnosis and they might not  
 12 necessarily have a surgical procedure.  
 13 MS. NEWBURY:  
 14 Q. Okay. So they might be at later stages of  
 15 life and for that reason may not have the same  
 16 sort of reports that would ultimately make  
 17 their way into the Registry?  
 18 MS. SMITH:  
 19 A. Yes.  
 20 MS. NEWBURY:  
 21 Q. Okay, and in terms of disease sites that do  
 22 have pathology reports provided, are they  
 23 captured equally among the different, you  
 24 know, breast disease versus lung versus  
 25 colorectal that all might have pathology

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1 reports, are they captured more or less in the  
 2 same manner or are some disease sites have a  
 3 more accurate or adequate -  
 4 MS. SMITH:  
 5 A. Ascertainment, is that what you mean?  
 6 MS. NEWBURY:  
 7 Q. Yes.  
 8 MS. SMITH:  
 9 A. I think the ones that are--we are pretty good  
 10 at capturing those data.  
 11 MS. NEWBURY:  
 12 Q. I'm just wondering if perhaps the--if the  
 13 Cancer Care program might have a particular  
 14 interest in, for example, cytology. Is there  
 15 an extra involvement by oncologists, in terms  
 16 of providing information to the Registry which  
 17 might enhance what information is being  
 18 provided from pathologists through the  
 19 pathology reporting system?  
 20 MS. SMITH:  
 21 A. I'm not quite sure I understand your question.  
 22 MS. NEWBURY:  
 23 Q. I'm just wondering, if the information all  
 24 comes from pathologists and only pathologists,  
 25 perhaps the reporting from one disease site to

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1 the next might be the same, but are there any  
 2 disease sites that might have enhanced  
 3 information because of participation by  
 4 oncologists providing information to the  
 5 Registry as well or some sort of cross  
 6 referencing?  
 7 MS. SMITH:  
 8 A. Okay, so when the pathology report comes into  
 9 the Registry, the cancer registrars also have  
 10 information from the oncologist, if the  
 11 individual has been seen by an oncologist, and  
 12 they have a very close working relationship  
 13 with those oncologists and can clarify and  
 14 obtain further information, especially in  
 15 terms of the collaborative stage data. But  
 16 sometimes not all that information comes from  
 17 pathology. Sometimes they have to go to the  
 18 charts and to the oncologist.  
 19 MS. NEWBURY:  
 20 Q. And do you observe any disease site groups  
 21 that might be better enhanced because of that  
 22 interaction with the registrars?  
 23 MS. SMITH:  
 24 A. Not in particular, not in the solid tumor  
 25 registry. In the cytology registry, we've

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1 certainly seen some great improvements there  
 2 with interactions with Dr. Fontaine.  
 3 MS. NEWBURY:  
 4 Q. Right, and he's spoken, I think, of some of  
 5 the initiatives there.  
 6 MS. SMITH:  
 7 A. Yes.  
 8 MS. NEWBURY:  
 9 Q. Are there any plans for other disease sites to  
 10 perhaps follow the lead of Dr. Fontaine, in  
 11 terms of his efforts to improve the data and  
 12 the manner in which it's used?  
 13 MS. SMITH:  
 14 A. Certainly, and the hematology oncology side of  
 15 things. One of the new hematologists is very  
 16 keen and very interested in helping us improve  
 17 our data. That's Dr. Jason Tay, and he's been  
 18 in contact with us. We've met with him on a  
 19 number of occasions and he's done some  
 20 interactions with the staff in the registry.  
 21 So I think we'll see some improvements there  
 22 for sure.  
 23 MS. NEWBURY:  
 24 Q. Are there any efforts specific to breast  
 25 cancer data?

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1 MS. SMITH:  
 2 A. Well, in terms of the information that's  
 3 captured, it's certainly been enhanced through  
 4 the collaborative stage initiative, and one of  
 5 the other initiatives that we spoke about  
 6 yesterday was the synoptic reporting. We're  
 7 hoping to get the funding for that through the  
 8 Canadian Partnership Against Cancer, and we've  
 9 worked with Dr. Denic and Dr. Gallagher to  
 10 help us put our proposal together, and we hope  
 11 that we'll be successful in that. I think  
 12 that will be a very exciting initiative and  
 13 we'd be one of the first in Canada to do such  
 14 a thing, so it's wonderful.  
 15 MS. NEWBURY:  
 16 Q. Okay, and I'm not sure if you mentioned  
 17 yesterday what the time frame is for that. Do  
 18 you have any anticipated date?  
 19 MS. SMITH:  
 20 A. We're told that we would be informed in  
 21 November of the success or not of the grant  
 22 proposal.  
 23 MS. NEWBURY:  
 24 Q. Okay.  
 25 MS. SMITH:

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1 A. That starts tomorrow.  
 2 MS. NEWBURY:  
 3 Q. Good, and failing that, do you have any other  
 4 plans to try to pursue that?  
 5 MS. SMITH:  
 6 A. Well, I think if we didn't get the funding  
 7 from CPAC, I think then we'd have to discuss  
 8 amongst ourselves any other opportunities for  
 9 funding there, you know.  
 10 MS. NEWBURY:  
 11 Q. Okay, and Dr. Neil had given some information  
 12 that he--when he was requested to provide or  
 13 identify patients for whom samples would have  
 14 to be retested back in the summer of 2005 or  
 15 the fall of 2005, he thought about contacting  
 16 the Cancer Registry.  
 17 MS. SMITH:  
 18 A. Yes.  
 19 MS. NEWBURY:  
 20 Q. And I'll bring up Exhibit P-2250, please? To  
 21 obtain a list of the patients for whom he had  
 22 provided tumor reports over the years, and  
 23 this is a letter that was sent on his--well,  
 24 sent to him--by him to Susan Ryan of the  
 25 Cancer Registry there.

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1 MS. SMITH:  
 2 A. Right.  
 3 MS. NEWBURY:  
 4 Q. And he indicates here in the third paragraph,  
 5 "please provide us with all patients with  
 6 breast cancers diagnosed in that time frame"  
 7 and he's referring to the time frame above,  
 8 "by name and MCP. These are from hospitals  
 9 from our area, including Western Memorial,  
 10 Stephenville, Port aux Basques, Burgeo, Bonne  
 11 Bay and Port Saunders. This information was  
 12 supplied to you as weekly tumor registry  
 13 reports." And he got a quick response from  
 14 Ms. Ryan. If we could bring up Exhibit P-  
 15 2253, please? So the next day here, Calista  
 16 Silver, I think, on behalf of Susan Ryan,  
 17 sends to Dr. Neil in furtherance to his  
 18 request, a list of the patients with the names  
 19 redacted there. And it appears that aside  
 20 from Heather Predham's efforts in the summer  
 21 of 2005, that he was the only pathologist that  
 22 thought to contact the Cancer Registry to get  
 23 that information to facilitate identifying the  
 24 patients for retesting, and I guess that  
 25 raises the question whether there's enough, I

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1 guess, awareness across the province among  
 2 pathologists as to the data that's kept at the  
 3 Registry. Of course, they provide the  
 4 information, but their ability to access this  
 5 information for purposes such as this. I  
 6 guess this was not intended to be one of the  
 7 purposes when the Registry was set up, but it  
 8 certainly is a--it was beneficial to Dr. Neil,  
 9 and I'm just wondering if you have any idea or  
 10 views on perhaps the awareness among not only  
 11 pathologists, but perhaps oncologists or other  
 12 health care professionals around the province  
 13 about this information.  
 14 MS. SMITH:  
 15 A. Well, I can certainly say that when I went to  
 16 work as a director in the Cancer Care program,  
 17 I don't think many people knew what the Cancer  
 18 Registry was for and what it did. I do think  
 19 that there's a greater awareness now. There's  
 20 certainly been discussion. We've had  
 21 discussions, not only with the Cancer  
 22 Registry, but the cytology registry as well,  
 23 and I think people have a better understanding  
 24 now of what it is, but I don't think that  
 25 people really and truly knew it. We did

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1 identify this as an issue when we were working  
 2 on the Cancer Control Strategy for the  
 3 province, and we have identified that, you  
 4 know, we would like to educate people about  
 5 the cancer registry and we have had some  
 6 preliminary efforts. I think this whole  
 7 commission has certainly brought it to light  
 8 as well.  
 9 MS. NEWBURY:  
 10 Q. Sure.  
 11 MS. SMITH:  
 12 A. But I think you're right that this was not a  
 13 well known database.  
 14 MS. NEWBURY:  
 15 Q. Okay, and just for clarification, you became  
 16 the director in October, I think, or November  
 17 of -  
 18 MS. SMITH:  
 19 A. October 17th, 2005.  
 20 MS. NEWBURY:  
 21 Q. 2005.  
 22 MS. SMITH:  
 23 A. Yes.  
 24 MS. NEWBURY:  
 25 Q. So even as recent as that, there wasn't

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1 perhaps a considerable awareness about the  
 2 registry and the benefits of it?  
 3 MS. SMITH:  
 4 A. That's right.  
 5 MS. NEWBURY:  
 6 Q. And is the Cancer Registry used for decisions  
 7 or to support requests for financial resources  
 8 within the Cancer Care Program?  
 9 MS. SMITH:  
 10 A. I use it, yes.  
 11 MS. NEWBURY:  
 12 Q. You do.  
 13 MS. SMITH:  
 14 A. I use it as part of my budget submissions. I  
 15 have to be able to support any requests as  
 16 best I can.  
 17 MS. NEWBURY:  
 18 Q. Right.  
 19 MS. SMITH:  
 20 A. So you need to have the evidence to get  
 21 funding, so I use it.  
 22 MS. NEWBURY:  
 23 Q. And if there is perhaps inadequate information  
 24 there because of the case ascertainment, if  
 25 you're not getting the reports in from across

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1 the province, for example, about new cancers,  
 2 would that perhaps impede your ability to get  
 3 resources to deal with various types of  
 4 programs?  
 5 MS. SMITH:  
 6 A. Well, I think we couple the information from  
 7 the registry with what we see in the cancer  
 8 centres as well, and we recognize that we  
 9 don't get all the cases, but we are - it's a  
 10 recognized event and we're working to improve  
 11 it, so at least if - we're collecting the  
 12 information by the same rules from year to  
 13 year, so one would think that in 2005 or 2004,  
 14 or whatever, that the data was the data. Now  
 15 I expect that as case ascertainment improves,  
 16 we'll see higher numbers, and we'd have to  
 17 make sure that people understand that's not  
 18 necessarily an increased incidents, it's  
 19 better data capture.  
 20 MS. NEWBURY:  
 21 Q. Better data capture.  
 22 MS. SMITH:  
 23 A. Yeah, so that's something we have to keep in  
 24 mind.  
 25 MS. NEWBURY:

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1 Q. And do you think that that might enable you to  
 2 perhaps support or warrant greater funding for  
 3 particular areas?  
 4 MS. SMITH:  
 5 A. I would hope so.  
 6 MS. NEWBURY:  
 7 Q. Okay. In terms of the resources available to  
 8 the Cancer Registry for positions such as an  
 9 epidemiologist or a full time data analyst,  
 10 how does Newfoundland compare with other  
 11 provinces?  
 12 MS. SMITH:  
 13 A. It depends on the province you look at. I  
 14 mean, we've compared PEI. We're pretty well -  
 15 we're better than PEI, but if you look at  
 16 Cancer Care Nova Scotia, we are much less  
 17 supported in these efforts, and certainly some  
 18 of the bigger provinces, we don't even - we  
 19 don't stand a chance or compare.  
 20 MS. NEWBURY:  
 21 Q. You don't compare. I guess, I was thinking  
 22 more about the comparable provinces, the  
 23 Atlantic provinces. How would it compare with  
 24 New Brunswick, for example?  
 25 MS. SMITH:

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1 A. New Brunswick is just reestablishing their  
 2 cancer registry. It was through the  
 3 Department of Health in New Brunswick, so they  
 4 were part of an epidemiology unit which was a  
 5 lot of disease management done there. So they  
 6 have separated that and they are now trying to  
 7 look at their structure. They haven't got it  
 8 finalized yet, as far as I'm aware.  
 9 MS. NEWBURY:  
 10 Q. If I could bring up Exhibit 3567 again,  
 11 please, and on page five of this report,  
 12 there's a reference on the bottom to data  
 13 elements that are identified through the  
 14 Canadian Council of Cancer Registries.  
 15 MS. SMITH:  
 16 A. Yes.  
 17 MS. NEWBURY:  
 18 Q. Are these minimum data elements?  
 19 MS. SMITH:  
 20 A. I guess you could look at it that way, but,  
 21 you know, the submission has to go from our  
 22 registry to Stats Canada. So they would be  
 23 pretty well mostly the data elements that you  
 24 would send.  
 25 MS. NEWBURY:

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1 Q. I'm wondering if other provinces might have  
 2 additional information over and above the data  
 3 elements that are identified on the next page  
 4 here?  
 5 MS. SMITH:  
 6 A. I don't think so.  
 7 MS. NEWBURY:  
 8 Q. Okay, you think this will capture what other  
 9 provinces are capturing?  
 10 MS. SMITH:  
 11 A. Yeah.  
 12 MS. NEWBURY:  
 13 Q. And how long have these minimum data elements  
 14 been outlined by Stats Canada?  
 15 MS. SMITH:  
 16 A. Well, I'm sure they've changed since 1969 when  
 17 the registry was first started. So the data  
 18 elements, you know, would probably be changed  
 19 over the years. I don't know when those  
 20 changes happened, but - and when you look at  
 21 the collaborate stage data elements that we're  
 22 now collecting, they weren't in existence in  
 23 2005, you know.  
 24 MS. NEWBURY:  
 25 Q. So the Canadian Council of Cancer Registries

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1 has always outlined data elements and they've  
 2 evolved over time?  
 3 MS. SMITH:  
 4 A. Yes.  
 5 MS. NEWBURY:  
 6 Q. Has Newfoundland been able to keep pace with  
 7 other provinces in terms of capturing the data  
 8 elements?  
 9 MS. SMITH:  
 10 A. Well, one of the data elements that we're  
 11 trying to capture is certainly the death  
 12 information. So we haven't kept up with that.  
 13 MS. NEWBURY:  
 14 Q. Right.  
 15 MS. SMITH:  
 16 A. But the major ones, we're pretty well - our  
 17 indicators for those pieces are good, pretty  
 18 well the same.  
 19 MS. NEWBURY:  
 20 Q. Is the provision of this information  
 21 considered voluntary?  
 22 MS. SMITH:  
 23 A. I wouldn't consider it voluntary, no.  
 24 MS. NEWBURY:  
 25 Q. And are there any consequences, I guess, for

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1 having incomplete data? Are there any  
 2 penalties or consequences, I guess?  
 3 MS. SMITH:  
 4 A. There's no - I don't know of any penalties.  
 5 All I can say is that we do get - if there's  
 6 any issues with your data, we get calls from  
 7 Stats Canada to help to tell us that, you  
 8 know, we need your data by a certain date, and  
 9 actually one of the indicators that they report  
 10 on to the deputy ministers is whether or not  
 11 each cancer registry was able to meet the  
 12 deadline for data submission, so I guess that  
 13 would be the consequence.  
 14 MS. NEWBURY:  
 15 Q. Okay, and I just want to clarify what your  
 16 evidence was on what percentage of records  
 17 submitted to the registry here in the province  
 18 are complete?  
 19 MS. SMITH:  
 20 A. In terms of the data elements?  
 21 MS. NEWBURY:  
 22 Q. Yes.  
 23 MS. SMITH:  
 24 A. 100 percent data elements are complete.  
 25 MS. NEWBURY:

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1 Q. You have no records that are incomplete?  
 2 MS. SMITH:  
 3 A. No.  
 4 MS. NEWBURY:  
 5 Q. And if you were have a record that was  
 6 incomplete, would there be a follow up  
 7 process?  
 8 MS. SMITH:  
 9 A. Yes.  
 10 MS. NEWBURY:  
 11 Q. And how does that work?  
 12 MS. SMITH:  
 13 A. So Statistics Canada would send us back our  
 14 data and tell us that the edits were done and  
 15 X, Y, and Z was missing. It would come back  
 16 to the registry. The staff there would look  
 17 through the reports and complete those missing  
 18 elements.  
 19 MS. NEWBURY:  
 20 Q. And I guess those are the data elements  
 21 outlined by -  
 22 MS. SMITH:  
 23 A. As you see there.  
 24 MS. NEWBURY:  
 25 Q. Yeah, the Canadian Council of Health

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1 Registries. Bring up Exhibit P-0785, please.  
 2 This is an e-mail. You weren't involved in  
 3 this e-mail at the time, but given your  
 4 current position, I wanted to find out if you  
 5 had ever been made aware of the information  
 6 contained in this, and this relates to Heather  
 7 Predham's efforts in the summer of 2005 to  
 8 obtain information from the Cancer Registry.  
 9 MS. SMITH:  
 10 A. Uh-hm.  
 11 MS. NEWBURY:  
 12 Q. And she - this is dated August 8th, 2005 and  
 13 she sends the e-mail to Dr. Williams, Dr.  
 14 Cook, Terry Gulliver, and Patricia Pilgrim.  
 15 She indicates under the heading, database,  
 16 "I've got the lab database and the NCRTF  
 17 database combined".  
 18 MS. SMITH:  
 19 A. Yes.  
 20 MS. NEWBURY:  
 21 Q. "But I still have issues to clarify. There  
 22 are data quality issues, such as people with  
 23 the same name and address and different MCP  
 24 numbers, and people with different names and  
 25 addresses, but with the same MCP numbers.

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1 Also there are a lot of individuals with  
 2 incomplete MCP numbers. I'll work on that  
 3 today", and she continues, "There are a couple  
 4 of issues that came to light through this -  
 5 during this process. We haven't discussed the  
 6 process for informing or providing hotline  
 7 services to individuals from St. Pierre", and  
 8 that's not particularly relevant here, and the  
 9 third bullet, "Rough numbers from the combined  
 10 database show 4,510 people overall", and then  
 11 she states, "The Cancer Registry does not  
 12 identify almost 2,100 individuals who had  
 13 ER/PR testing", and the next bullet, "Current  
 14 status, living or deceased, is only identified  
 15 in 1,245 of those people. It's going to be  
 16 difficult to determine this for the rest of  
 17 the individuals. ER/PR status is indicated in  
 18 1,230 people with an overall positivity rate  
 19 of 55 percent". Were you ever made aware of  
 20 these concerns expressed by Ms. Predham, these  
 21 particular concerns?  
 22 MS. SMITH:  
 23 A. Not at that time.  
 24 MS. NEWBURY:  
 25 Q. Any time since then?

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1 MS. SMITH:  
 2 A. Since that time, we - I do know we've had  
 3 these issues around case ascertainment and  
 4 data collection, and myself and Ms. Ryan have  
 5 actually had some discussion about maybe some  
 6 potential linking the ER/PR database back to  
 7 the registry to see what cases we've missed.  
 8 So we've just had an initial discussion around  
 9 that.  
 10 MS. NEWBURY:  
 11 Q. Okay.  
 12 MS. SMITH:  
 13 A. We'll be following up on it.  
 14 MS. NEWBURY:  
 15 Q. Sorry, when was that discussion?  
 16 MS. SMITH:  
 17 A. Just recently.  
 18 MS. NEWBURY:  
 19 Q. And so it would appear then according to what  
 20 Ms. Predham is finding here, and again she is  
 21 talking about two databases -  
 22 MS. SMITH:  
 23 A. Yes.  
 24 MS. NEWBURY:  
 25 Q. But she does identify some concerns with the

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1 Cancer Registry, in particular, and whether or  
 2 not the ER/PR status has been captured over  
 3 time.  
 4 MS. SMITH:  
 5 A. Right.  
 6 MS. NEWBURY:  
 7 Q. How long has the ER/PR status been a data  
 8 element for the purposes of the Canadian  
 9 Council of Cancer Registries?  
 10 MS. SMITH:  
 11 A. I can't remember the exact date, but I - the  
 12 other issue with it, it was either positive or  
 13 negative, it didn't have the percent, but now  
 14 it does have the percent.  
 15 MS. NEWBURY:  
 16 Q. Yes, and you mentioned that yesterday, yeah,  
 17 but there seems to be not just whether or not  
 18 the percentage is mentioned, but whether or  
 19 not -  
 20 MS. SMITH:  
 21 A. And I don't know how far back those - if it  
 22 was issues from early on in 1997. Those would  
 23 be times when the e-path system was not in  
 24 place, so you would expect to have less case  
 25 ascertainment for those years.

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1 MS. NEWBURY:  
 2 Q. Okay, and if prior to the date that the Cancer  
 3 Registry started to use a percentage as  
 4 opposed to just positive or negative as a data  
 5 element for a particular entry, if a  
 6 pathologist or a pathology report had included  
 7 the actual percentage prior to that particular  
 8 switch date, would that information have been  
 9 included in the Cancer Registry, or would it  
 10 have been converted to either positive or  
 11 negative?  
 12 MS. SMITH:  
 13 A. I'd have to check on that, Ms. Newbury, I'm  
 14 not 100 percent sure.  
 15 MS. NEWBURY:  
 16 Q. And whose responsibility would it be to make  
 17 that sort of decision, what information to  
 18 include?  
 19 MS. SMITH:  
 20 A. In terms of the percentage, you mean?  
 21 MS. NEWBURY:  
 22 Q. Yeah, say number -  
 23 MS. SMITH:  
 24 A. There was discussions back and forth at the  
 25 time in 2000 and 2001 what would the registrar

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1 consider to be positive or not, and I know  
 2 they had discussion with the oncologist back  
 3 at that point in time, from what I have been  
 4 told, certainly I wasn't there.  
 5 MS. NEWBURY:  
 6 Q. Uh-hm.  
 7 MS. SMITH:  
 8 A. So those decisions would have been made with  
 9 the council, plus with talking to the  
 10 oncologist within our centre.  
 11 MS. NEWBURY:  
 12 Q. Right, and I guess not just whether or not  
 13 something would be considered as positive or  
 14 negative, but what to actually include in the  
 15 registry?  
 16 MS. SMITH:  
 17 A. What to put there, yes.  
 18 MS. NEWBURY:  
 19 Q. Whether to put both, you know, 15 percent and  
 20 whether or not it's considered positive or  
 21 negative, you don't -  
 22 MS. SMITH:  
 23 A. I don't know when those - I know we do it now,  
 24 but I don't know when -  
 25 MS. NEWBURY:

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1 Q. And you don't know who would have made those  
 2 decisions at the time?  
 3 MS. SMITH:  
 4 A. It would have been done conjointly with the  
 5 oncologist.  
 6 MS. NEWBURY:  
 7 Q. Do you have any idea how many files over the  
 8 years have come back to Newfoundland for  
 9 correction from Stats Canada?  
 10 MS. SMITH:  
 11 A. It would be something that we would have to  
 12 check on. I don't -  
 13 MS. NEWBURY:  
 14 Q. Is that something that's monitored, you know,  
 15 like incident reports or what have you?  
 16 MS. SMITH:  
 17 A. There's an annual report, data quality report,  
 18 that comes back.  
 19 MS. NEWBURY:  
 20 Q. Uh-hm.  
 21 MS. SMITH:  
 22 A. From Stats Canada to the deputy ministers and  
 23 to each Cancer Registry. So we're able to use  
 24 that information. We can find out how many  
 25 records were rejected, what percentage of

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1 records were rejected and came back for  
 2 editing purposes. So we do have that  
 3 information.  
 4 MS. NEWBURY:  
 5 Q. You do have that information, and is that  
 6 annual report - I guess my impression was the  
 7 annual report would capture records that were  
 8 not complete ultimately by the end of the  
 9 year, but -  
 10 MS. NEWBURY:  
 11 Q. Which is the rejection rate.  
 12 MS. NEWBURY:  
 13 Q. Perhaps if they had called for clarification  
 14 in April of 2004, would that information also  
 15 have been included in the annual report?  
 16 MS. SMITH:  
 17 A. It's a data quality report and we would find  
 18 out what records were rejected, but we would  
 19 also find out which ones then had the records  
 20 were completed at the end of the day.  
 21 MS. NEWBURY:  
 22 Q. At the end of the year.  
 23 MS. SMITH:  
 24 A. Yes.  
 25 MS. NEWBURY:

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1 Q. Okay, so it would give you the picture  
 2 throughout the year how many had to be  
 3 rejected and how many ultimately were  
 4 rectified at the end of the year?  
 5 MS. SMITH:  
 6 A. Yes.  
 7 MS. NEWBURY:  
 8 Q. And how many were still deficient at the end  
 9 of the year?  
 10 MS. SMITH:  
 11 A. Yes.  
 12 MS. NEWBURY:  
 13 Q. Okay. You were giving some information, some  
 14 evidence yesterday about death clearances, and  
 15 the involvement of Stats Canada in providing  
 16 death clearances for the province. Is that an  
 17 exercise that Stats Canada engages in for all  
 18 of the Canadian provinces?  
 19 MS. SMITH:  
 20 A. Yes.  
 21 MS. NEWBURY:  
 22 Q. Do other provinces have their own resources  
 23 for death clearances in addition to what Stats  
 24 Canada -  
 25 MS. SMITH:

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1 A. Yes, they do.  
 2 MS. NEWBURY:  
 3 Q. Okay, and I just wanted to bring up - you've  
 4 referred a couple of times to the Canadian  
 5 Cancer Statistics, and I wanted to bring up  
 6 one exhibit, P-0789, please. You're obviously  
 7 familiar with this problem, but I just wanted  
 8 to show you - this is for 2008, this is the  
 9 most recent one, I believe, and on page 89 of  
 10 this exhibit, please, just down at the bottom  
 11 of this page. This is under heading, Appendix  
 12 2, Methods.  
 13 MS. SMITH:  
 14 A. Yes.  
 15 MS. NEWBURY:  
 16 Q. And at the bottom of the page, it says, "For  
 17 all cancers, even those with poor survival,  
 18 such as pancreas and lung, the annual number  
 19 of incident cases is expected to be similar to  
 20 or larger than the number of deaths. However,  
 21 there are situations in which the number of  
 22 deaths either observed or projected is larger  
 23 than the corresponding number of new cases.  
 24 In the case of Newfoundland and Labrador, this  
 25 is caused by the registry not receiving

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1 information on death certificates that mention  
 2 cancer. This limitation of not having access  
 3 to death certificates is greater for cancers  
 4 with a poor prognosis. This results in an  
 5 underestimate of the number of cases for the  
 6 years used to generate the estimates. So this  
 7 would seem to suggest that there are actually  
 8 more deaths reported than there are cancers  
 9 reported".  
 10 MS. SMITH:  
 11 A. In some instances, yes.  
 12 MS. NEWBURY:  
 13 Q. In some instances, right, and I guess they're  
 14 looking at the broad picture?  
 15 MS. SMITH:  
 16 A. Right.  
 17 MS. NEWBURY:  
 18 Q. And the anomaly, I guess, of having more  
 19 deaths registered due to cancer than actual  
 20 cancers being reported. I think you've  
 21 mentioned that already. I'm wondering why  
 22 would Newfoundland be singled out for this  
 23 particular problem there? You've mentioned  
 24 that Stats Canada is involved in doing death  
 25 clearances there, and it would seem from this

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1 particular report there that death  
 2 certificates are available that actually do  
 3 mention cancer. So if that information is  
 4 available on death certificates, where is the  
 5 Newfoundland -  
 6 MS. SMITH:  
 7 A. If I can explain to you again this process.  
 8 MS. NEWBURY:  
 9 Q. Sure.  
 10 MS. SMITH:  
 11 A. Death certificate is completed within the  
 12 province and it goes to Vital Statistics. The  
 13 cause of death, and we know there's problems  
 14 with completion of death certificates, they're  
 15 not always 100 percent accurate. So the cause  
 16 of death might be listed as pneumonia, and the  
 17 contributing factor could be lung cancer.  
 18 I'll just use that as an example. That  
 19 information then is recorded and is sent to  
 20 Vital Statistics. Vital Statistics, as I said  
 21 yesterday to the Commissioner about the person  
 22 with the magic ball, they do have a member on  
 23 their staff who has developed rules and  
 24 expertise around looking at cause of death.  
 25 so while we in the province would have

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1 pneumonia as the cause of death, and a death  
 2 number, it would not appear as a cancer death.  
 3 MS. NEWBURY:  
 4 Q. Uh-hm.  
 5 MS. SMITH:  
 6 A. So that data then is cleared through Stats  
 7 Canada. When we get our information back for  
 8 the statistics booklet, all we're looking at  
 9 is how many people died of that cancer. What  
 10 we want to have is a local process so that  
 11 when we get a death record file, if we don't  
 12 have a particular person in our records, we  
 13 can take that death certificate number and do  
 14 a follow back process here in the province  
 15 without waiting for a couple of years for  
 16 Stats Canada to give us back all our  
 17 information. So they would do that  
 18 nationally, they do it for their particular  
 19 purposes, which is to look at survival,  
 20 mortality, morbidity, etc. We would do it  
 21 locally to improve our case ascertainment and  
 22 that's what we're trying to do with this whole  
 23 process.  
 24 MS. NEWBURY:  
 25 Q. I guess I'm just trying to reconcile the

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1 description that you have of the reason why  
 2 death information is not being captured, and I  
 3 think from your description it would seem to  
 4 me that it would lead to an under reporting of  
 5 deaths due to cancer because you mentioned it  
 6 might be pneumonia as opposed to cancer per  
 7 se, but this seems to point to a different  
 8 situation, this seems to point to the registry  
 9 not receiving information on death  
 10 certificates that actually mention cancer, and  
 11 due to that there's the anomaly of having more  
 12 deaths due to cancer than there are cancers  
 13 actually being reported?  
 14 MS. SMITH:  
 15 A. That's why we want to do the local death  
 16 clearance process.  
 17 MS. NEWBURY:  
 18 Q. Okay.  
 19 MS. SMITH:  
 20 A. And I'm sorry if I've confused you on that,  
 21 but what would happen is if an individual  
 22 comes into the emergency department and is  
 23 quite ill, gets admitted to an in-patient  
 24 unit, and dies and it's determined that that  
 25 person died of cancer, that information will

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1 be on the death certificate. However, we  
 2 would not have that case in our file at all.  
 3 That wouldn't be there as an incident case, it  
 4 wouldn't appear in our records. That  
 5 information would go then to Vital Statistics.  
 6 Once we get our local process, when we do our  
 7 data linkage with our local information from  
 8 Vital Stats, we'll be able to say this  
 9 individual appeared to have a cancer death,  
 10 here's the death registration number, let's  
 11 follow up and see exactly what happened, get  
 12 the information and register that case.  
 13 MS. NEWBURY:  
 14 Q. Yes.  
 15 MS. SMITH:  
 16 A. Regardless of what's happening with Stats  
 17 Canada. So the purposes are a little bit  
 18 different. One is to look at survival, and  
 19 the other one is case ascertainment.  
 20 MS. NEWBURY:  
 21 Q. Right.  
 22 MS. SMITH:  
 23 A. And that's where we're putting our efforts on  
 24 now is that case ascertainment.  
 25 MS. NEWBURY:

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1 Q. And this problem that's outlined in the Stats  
 2 Canada report really seems to focus on -  
 3 MS. SMITH:  
 4 A. On the local -  
 5 MS. NEWBURY:  
 6 Q. On the case ascertainment?  
 7 MS. SMITH:  
 8 A. Absolutely.  
 9 MS. NEWBURY:  
 10 Q. Because it seems to be missing -  
 11 MS. SMITH:  
 12 A. It is.  
 13 MS. NEWBURY:  
 14 Q. Incidents of cancer because -  
 15 MS. SMITH:  
 16 A. We know it is.  
 17 MS. NEWBURY:  
 18 Q. Right, okay.  
 19 MS. SMITH:  
 20 A. We know it is.  
 21 MS. NEWBURY:  
 22 Q. So there are actually two problems going on.  
 23 One is the failing to pick up on deaths due to  
 24 cancer that might be perhaps described  
 25 inadequately or not fully as being due to

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1 pneumonia?

2 MS. SMITH:

3 A. Uh-hm.

4 MS. NEWBURY:

5 Q. And you want to clarify that, and then the

6 second aspect of it is to pick up all

7 incidents of cancer, and if someone dies,

8 perhaps if they're in late stages and they die

9 of cancer before they get reported, you want

10 to pick up on that group as well?

11 MS. SMITH:

12 A. Right. So we'll be able to do two things once

13 we finish up our local process. We'll be able

14 to get more cases in our registry, and we'll

15 also have our cases with our death

16 registration number so that when Stats Canada

17 has their expert look at all their information

18 in Ottawa, if they have anything to add to

19 this individual's information, we'll be able

20 to link that back through that death

21 registration number at a later date.

22 MS. NEWBURY:

23 Q. Okay.

24 MS. SMITH:

25 A. So it's really two steps--probably more than

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1 two.

2 MS. NEWBURY:

3 Q. So you would be looking at Stats Canada more

4 to enhance the information that you hopefully

5 will have in place already.

6 MS. SMITH:

7 A. Will already have.

8 MS. NEWBURY:

9 Q. Locally.

10 MS. SMITH:

11 A. Yes.

12 MS. NEWBURY:

13 Q. And you expect that the local information

14 would be much more readily available?

15 MS. SMITH:

16 A. Yes.

17 MS. NEWBURY:

18 Q. And therefore, you would have more timely

19 information.

20 MS. SMITH:

21 A. Yes, uh-hm. It's a very complex process. I

22 thought, I really thought we would have had

23 this done a long time ago, I have to say, but

24 -

25 MS. NEWBURY:

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1 Q. And what are the impediments to that, is it a

2 human resource or a financial resource?

3 MS. SMITH:

4 A. It's being able to link the data. As I said

5 yesterday, we had the re-registration of MCP

6 numbers, it's being able to find, you know, if

7 there's seven Sharon Smiths, well which one is

8 it we're looking for. And if someone happened

9 to enter the data and transpose the numbers,

10 which I do all the time, there's no way to

11 link me back to my number. So it's a big

12 problem and all the experts tell me that you

13 have to be patient, bear with it, we'll work

14 through all these issues that crop up and

15 eventually we will have a good product, so -

16 MS. NEWBURY:

17 Q. Okay. And is it your understanding that other

18 provinces have already established local

19 clearance processes in place, which is why

20 they aren't sort of part of the problem

21 identified here in the Cancer Statistics

22 Report?

23 MS. SMITH:

24 A. Yes. And we were fortunate to be able to find

25 from Nova Scotia how they did it and get some

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1 of their advice and expertise, so -

2 MS. NEWBURY:

3 Q. Okay, and that's communicating or consulting

4 with their epidemiologist?

5 MS. SMITH:

6 A. Yes. And the people there who did the actual

7 process, the computer analysts people.

8 MS. NEWBURY:

9 Q. How long has this been a problem and I have

10 cancer statistic reports back to 2005 that

11 have been entered -

12 MS. SMITH:

13 A. For case ascertainment? It's been a problem

14 here since the registry started, I would say.

15 MS. NEWBURY:

16 Q. Okay.

17 MS. SMITH:

18 A. I mean, the case ascertainment was improved

19 somewhat by e-path because, you know, the

20 information electronically comes over. We've

21 seen that in our cytology registry. At the

22 present time we have a paper process. We're

23 implementing an electronic process in that

24 registry. We know we're missing PAP smear

25 reports because they're sent in by paper, so

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1 once we--when you make something electronic,  
 2 you're certainly going to improve that data  
 3 capture, so this has been a problem for quite  
 4 some time.  
 5 MS. NEWBURY:  
 6 Q. Yes, and you've got a couple of areas of  
 7 problem, one is the non-solid tumours, the  
 8 deaths -  
 9 MS. SMITH:  
 10 A. Hematology work, yes.  
 11 MS. NEWBURY:  
 12 Q. Hematology and cancers identified through  
 13 diagnostic imaging, for example.  
 14 MS. SMITH:  
 15 A. Yes.  
 16 MS. NEWBURY:  
 17 Q. And you've mentioned yesterday Dr. Dankwa and  
 18 you're trying to resolve that.  
 19 MS. SMITH:  
 20 A. Yes.  
 21 MS. NEWBURY:  
 22 Q. There was evidence from Donald McDonald, Dr.  
 23 McDonald from the Newfoundland and Labrador  
 24 Centre for Health Information and he's  
 25 familiar with perhaps the goings on before you

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1 were involved with the cancer registry here  
 2 and in particular, he indicated that the  
 3 Centre for Health Information provided  
 4 mortality information to the Cancer Registry  
 5 up until six or seven years ago and about a  
 6 year and a half ago, NLCHI then began to  
 7 discuss again resuming a similar process with  
 8 the Cancer Registry.  
 9 MS. SMITH:  
 10 A. Yes.  
 11 MS. NEWBURY:  
 12 Q. Do you have any knowledge -  
 13 MS. SMITH:  
 14 A. I do know that there had been up at some point  
 15 in time and this predates me, there had been a  
 16 person in the Registry who was able to do  
 17 these electronic linkages much better. That  
 18 person left and then the information became a  
 19 manual process, which, from what I understand,  
 20 the resources were not available and the  
 21 decision was made by the former administration  
 22 to stop doing that process. So once I went  
 23 back into this position, one of the first  
 24 things we talked about was to be able to do  
 25 this, we had conversations with Dr. McDonald

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1 and others at the Centre for Health  
 2 Information.  
 3 MS. NEWBURY:  
 4 Q. Okay. So you understand that prior to six or  
 5 seven years ago, there was some information  
 6 electronically?  
 7 MS. SMITH:  
 8 A. There was at some point in time an electronic  
 9 format to do this, that person left, but  
 10 apparently she did it--it wasn't that she  
 11 developed the process, it was something she  
 12 did herself and so, when she left, that  
 13 expertise went with her.  
 14 MS. NEWBURY:  
 15 Q. And what was her position?  
 16 MS. SMITH:  
 17 A. I can't recall, all I know is -  
 18 MS. NEWBURY:  
 19 Q. So she had some kind of computer skills and -  
 20 MS. SMITH:  
 21 A. Yes.  
 22 MS. NEWBURY:  
 23 Q. Had an interest in doing it.  
 24 MS. SMITH:  
 25 A. Yes.

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1 MS. NEWBURY:  
 2 Q. And you don't have any idea who else, aside  
 3 from the director--was it the director you  
 4 said of the Cancer Registry at the time who  
 5 would have been involved in deciding not to  
 6 continue on with that -  
 7 MS. SMITH:  
 8 A. It would have been the former administration,  
 9 the Newfoundland Cancer Treatment and Research  
 10 Foundation.  
 11 MS. NEWBURY:  
 12 Q. You've mentioned on page 17 of P-3567, please,  
 13 which is your PowerPoint presentation about an  
 14 Atlantic Canada Partnership. When was this  
 15 established?  
 16 MS. SMITH:  
 17 A. I guess we first met about two years ago, Ms.  
 18 Newbury. We identified that, you know,  
 19 oftentimes when you look at it across Canada  
 20 and some of the initiatives that were  
 21 happening from the Canadian Partnership  
 22 Against Cancer, Atlantic Canada was seen as  
 23 one province and so we felt that it would be  
 24 wise for us, as people within the Registry, to  
 25 form some kind of a partnership. We first did

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1 that to try and help us get some support for  
 2 data quality initiatives and some education,  
 3 so that was the purpose of it and I think it  
 4 was two years, pretty well.  
 5 MS. NEWBURY:  
 6 Q. Okay.  
 7 MS. SMITH:  
 8 A. So we've had, we met once in New Brunswick and  
 9 we met here last March in the middle of a  
 10 snowstorm.  
 11 MS. NEWBURY:  
 12 Q. I think I remember that snowstorm. Who are  
 13 the members of the Cancer Registry Advisory  
 14 Committee?  
 15 MS. SMITH:  
 16 A. We're just establishing that committee and  
 17 we've approached individuals to see if they  
 18 would be willing to be partners with us on  
 19 that and we haven't finalized that, but we're  
 20 hoping to do that now.  
 21 MS. NEWBURY:  
 22 Q. And what types of individuals are you looking  
 23 for?  
 24 MS. SMITH:  
 25 A. We have certainly gone to see if Dr. Tay from

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1 Hematology would like to be part of it and  
 2 I've talked to Dr. Tompkins who is one of our  
 3 radiation oncologists because he has an  
 4 interest as well and we would like to have  
 5 someone from the Centre for Health Information  
 6 to help us with this, and someone from  
 7 Memorial in terms of the epidemiology, Peter  
 8 Wang is over there and he certainly has great  
 9 information from the Cancer Registry in China,  
 10 so he's got expertise as well. I've had some  
 11 conversations with him. So it's been a busy  
 12 fall, but we've had this draft Terms of  
 13 Reference on our plates that we're trying to  
 14 get off the ground. It certainly was one of  
 15 the objectives that we identified in the  
 16 cancer control strategy.  
 17 MS. NEWBURY:  
 18 Q. And in terms of certification, what programs  
 19 are available to cancer registries in Canada  
 20 for certification?  
 21 MS. SMITH:  
 22 A. It's a US base.  
 23 MS. NEWBURY:  
 24 Q. Okay, so it's just the NAACCR is the only one,  
 25 the North American Association for Cancer

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1 Registry.  
 2 MS. SMITH:  
 3 A. They look at our data quality, but the  
 4 organization--well it's part of it, I guess,  
 5 but they do actually have a process for Cancer  
 6 Registrar Exams.  
 7 MS. NEWBURY:  
 8 Q. Okay, but is there a certification process for  
 9 the Registry itself, not just for -  
 10 MS. SMITH:  
 11 A. Oh sorry, I thought you were talking about the  
 12 staff.  
 13 MS. NEWBURY:  
 14 Q. No, no, the registry itself.  
 15 MS. SMITH:  
 16 A. There's no Canadian process, no. The only  
 17 process is the NAACCR one.  
 18 MS. NEWBURY:  
 19 Q. And what are the levels of certification  
 20 through NAACCR?  
 21 MS. SMITH:  
 22 A. Gold and silver and not achieved.  
 23 MS. NEWBURY:  
 24 Q. Not achieved, gold and silver, okay. And just  
 25 to perhaps provide some perspective, what

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1 provinces in Canada had achieved  
 2 certification, either the gold or silver?  
 3 MS. SMITH:  
 4 A. I'd say a good many of them. I know PEI had  
 5 achieved it, but I think they lost it this  
 6 year, I'm not quite sure, but you know, it  
 7 comes and goes type of thing.  
 8 MS. NEWBURY:  
 9 Q. So it's an annual thing.  
 10 MS. SMITH:  
 11 A. It's based on your data.  
 12 MS. NEWBURY:  
 13 Q. Right.  
 14 MS. SMITH:  
 15 A. It's based on your data. Within Newfoundland,  
 16 we've got some elements that we've gotten gold  
 17 on, some we've gotten silver on. The ones we  
 18 haven't achieved are case ascertainment and  
 19 the death clearance. So those, you know, that  
 20 certification process is very helpful because  
 21 it identifies for us and it reinforces for us  
 22 the areas that we want to improve.  
 23 MS. NEWBURY:  
 24 Q. So PEI has achieved certification in the past,  
 25 how about Nova Scotia?

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1 MS. SMITH:  
 2 A. I think so, but I don't know for sure, I don't  
 3 remember, Ms. Newbury, it's not something that  
 4 I remembered a lot.  
 5 MS. NEWBURY:  
 6 Q. And Newfoundland has sought to be certified in  
 7 the past and just hasn't -  
 8 MS. SMITH:  
 9 A. It's an automatic process.  
 10 MS. NEWBURY:  
 11 Q. Is it? Okay.  
 12 MS. SMITH:  
 13 A. Yes, so your data gets submitted to NAACCR and  
 14 they look at, they do the data quality  
 15 indicators and send them back and they give  
 16 you their assessment of what you've achieved.  
 17 MS. NEWBURY:  
 18 Q. Great, thank you, Ms. Smith. Those are all  
 19 the questions I have.  
 20 MS. SMITH:  
 21 A. Thank you, Ms. Newbury.  
 22 THE COMMISSIONER:  
 23 Q. Mr. Pike?  
 24 PIKE, Q.C.:  
 25 Q. No, questions, thank you very much.

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1 THE COMMISSIONER:  
 2 Q. Mr. Simmons.  
 3 MR. SIMMONS:  
 4 Q. Thank you, Commissioner.  
 5 MS. SHARON SMITH, EXAMINATION BY MR. DANIEL SIMMONS  
 6 MR. SIMMONS:  
 7 Q. Good morning, Ms. Smith.  
 8 MS. SMITH:  
 9 A. Good morning, Mr. Simmons.  
 10 MR. SIMMONS:  
 11 Q. Can I have Exhibit P-3582 please? And I hope  
 12 I have the number right.  
 13 THE COMMISSIONER:  
 14 Q. That voice is not getting any better, Mr.  
 15 Simmons.  
 16 MR. SIMMONS:  
 17 Q. No, it sounds worse than I feel, so that's the  
 18 good news.  
 19 THE COMMISSIONER:  
 20 Q. Oh good.  
 21 MR. SIMMONS:  
 22 Q. You've spoken, Ms. Smith, about the cancer  
 23 control strategy?  
 24 MS. SMITH:  
 25 A. Yes.

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1 MR. SIMMONS:  
 2 Q. And this document we have here is an action  
 3 plan for the cancer control strategy. Are you  
 4 familiar with this, with the strategy and with  
 5 this action plan?  
 6 MS. SMITH:  
 7 A. Yes, I am.  
 8 MR. SIMMONS:  
 9 Q. Okay, can you maybe tell me what the cancer  
 10 control strategy is and how it came to be?  
 11 MS. SMITH:  
 12 A. So this work stated before I went in my role  
 13 as program director in the Cancer Centre and  
 14 it started with discussions with Mr. Dawe and  
 15 the Department of Health from, you know, the  
 16 Canadian Cancer Society and the Department of  
 17 Health around the need to have a provincial  
 18 strategy for cancer control. So when I joined  
 19 the Cancer Care Program, a steering committee  
 20 had already been established from the Canadian  
 21 Cancer Society, Department of Health and  
 22 Eastern Health to look at a process around  
 23 this. And so there was a public forum held  
 24 upon which there was over a hundred  
 25 stakeholders there present to identify

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1 direction for a cancer control strategy. From  
 2 that initial forum, there was a number of  
 3 working groups that were established and I'll  
 4 just give you the Reader's Digest condensed  
 5 version of this. There was a number of  
 6 working groups formed who then did some work  
 7 on their own to develop particular goals and  
 8 objectives. All through this time there was a  
 9 steering committee comprised of members of the  
 10 Canadian Cancer Society, Department of Health  
 11 and Eastern Health and Cancer Care Program,  
 12 but we did expand our committee to include  
 13 people from other regions, other regional  
 14 health authorities to help us with this work.  
 15 We then had another form, which again got  
 16 interrupted by a snowstorm--it seems to happen  
 17 a lot, where we reaffirmed the directions that  
 18 we had identified through this particular  
 19 working groups and this document they have  
 20 here is the action plan that we have  
 21 developed, a lot of work went into this from  
 22 the Canadian Cancer Society, through M. Hauser  
 23 and Mr. Dawe, Mr. Antle. We had hired an  
 24 outside consultant to give us some help around  
 25 this to develop our goals. So those goals and

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1 objectives have been refined. There are many  
 2 things that have been identified as  
 3 responsibility of certain people within the  
 4 province. You can see the first one is to  
 5 develop a comprehensive cancer surveillance  
 6 and information program, supported by a  
 7 dedicated research agenda and that's the  
 8 objective that I referred to where we've  
 9 talked about some improvements in the  
 10 Registry.  
 11 So those, some of the objectives and  
 12 goals around that particular area would be the  
 13 Cancer Program's responsibility. Some of the  
 14 other, like goal 7, "Enhancing Social Policies  
 15 for Access to Service" would certainly be the  
 16 role of the Canadian Cancer Society and they  
 17 would be identified as the lead organization  
 18 in this area.  
 19 MR. SIMMONS:  
 20 Q. Okay, so we're looking at page 8 of the  
 21 exhibit here and there are 8 goals listed and  
 22 I take it then that those are goals that have  
 23 been jointly adopted by the participants in  
 24 this process as being goals for the overall  
 25 cancer strategy for Newfoundland and Labrador/

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1 MS. SMITH:  
 2 A. Yes, uh-hm.  
 3 MR. SIMMONS:  
 4 Q. And what role does the Cancer Care Program  
 5 that you're the director of, you are the  
 6 program director of, play in working towards  
 7 achieving these goals?  
 8 MS. SMITH:  
 9 A. So some of these--and I just should say that  
 10 we have submitted this document to government  
 11 and we're waiting, you know, we haven't had a  
 12 lot of action from--response to this document  
 13 at this point in time.  
 14 MR. SIMMONS:  
 15 Q. When was it submitted, the action plan?  
 16 MS. SMITH:  
 17 A. I think that was July.  
 18 MR. SIMMONS:  
 19 Q. Okay, of this year?  
 20 MS. SMITH:  
 21 A. This year, yes. So there are particular  
 22 objectives within each goal that have been  
 23 assigned the responsibility of the Cancer Care  
 24 Program. For example, the clinical practice  
 25 guidelines.

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1 MR. SIMMONS:  
 2 Q. Maybe we could actually bring up P-3583  
 3 please? And, Ms. Smith, this is a longer  
 4 version, I think of the action plan which has  
 5 more detailed description of some of these  
 6 goals?  
 7 MS. SMITH:  
 8 A. Yes.  
 9 MR. SIMMONS:  
 10 Q. So--and the first goal there is developing a  
 11 comprehensive Cancer Surveillance and  
 12 Information Program supported by dedicated  
 13 research agenda and then there's three  
 14 different objectives there.  
 15 MS. SMITH:  
 16 A. Yes.  
 17 MR. SIMMONS:  
 18 Q. And I'm not going to take you through all  
 19 these goals and objectives in detail, but  
 20 maybe we can just use this one as an example,  
 21 page 2 here or the table on page 3 which  
 22 follows, whichever one you prefer, to explain  
 23 how these objectives relate to the goals and  
 24 the outcomes that are sought to be achieved?  
 25 MS. SMITH:

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1 A. So you can see that the objectives have been  
 2 developed and we've identified the outcomes  
 3 that we would like to see achieves, so we're  
 4 very action oriented.  
 5 MR. SIMMONS:  
 6 Q. Uh-hm.  
 7 MS. SMITH:  
 8 A. We've identified the lead stakeholder and  
 9 whether or not the outcomes would be short-  
 10 term, long-term and what kind of a reporting  
 11 framework we would like to see around those  
 12 objectives.  
 13 MR. SIMMONS:  
 14 Q. Uh-hm.  
 15 MS. SMITH:  
 16 A. So you can see this Cancer Registry Advisory  
 17 Committee, of which I've referred to, is very  
 18 key in getting some of these objectives me and  
 19 so we are working towards that.  
 20 MR. SIMMONS:  
 21 Q. And we could similarly work through the other  
 22 goals and I'll just go as far as goal number  
 23 two, this is headed "Clinical Practice  
 24 Guidelines".  
 25 MS. SMITH:

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1 A. Yes.  
 2 MR. SIMMONS:  
 3 Q. And the goal is to implement national and  
 4 international clinical standards and  
 5 guidelines for cancer care along the cancer  
 6 control continuum in Newfoundland and  
 7 Labrador. Now I believe when Dr. Laing was  
 8 here we saw some drafts and some work that had  
 9 been done on developing clinical practice  
 10 guidelines for use in the Cancer Care Program.  
 11 MS. SMITH:  
 12 A. Yes.  
 13 MR. SIMMONS:  
 14 Q. Is that the kind of activity that relates to  
 15 achieving this goal here?  
 16 MS. SMITH:  
 17 A. Yes, it would be.  
 18 MR. SIMMONS:  
 19 Q. Okay. Is there any particular timeframe in  
 20 which it's intended to try and achieve the  
 21 goals set out in this strategy or any proposed  
 22 timeframe?  
 23 MS. SMITH:  
 24 A. We put our working plan, I'm trying to  
 25 remember the years now that we put down, it

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1 was a work plan for the next three to five  
 2 years.  
 3 MR. SIMMONS:  
 4 Q. Yes.  
 5 MS. SMITH:  
 6 A. Some of these are short term, some of these  
 7 are very long term.  
 8 MR. SIMMONS:  
 9 Q. Yes, okay.  
 10 MS. SMITH:  
 11 A. So this is, you know, some of the--prevention  
 12 activities would be very long term, some of  
 13 the health education activities might not be  
 14 as long term, there's some goals and  
 15 objectives there around a corectal screening  
 16 program that we have asked for some funding  
 17 for, so some of these would be a shorter term,  
 18 but the outcomes might be longer before  
 19 they're realized.  
 20 MR. SIMMONS:  
 21 Q. Okay, good, all right, thank you. You've told  
 22 us about the structure within the Cancer Care  
 23 Program, the administrative structure. We've  
 24 heard from others about the program management  
 25 model that was brought in by the Health Care

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1 Corporation in 1995, '96. Is that the model  
 2 that is now applied to the Cancer Care  
 3 Program?  
 4 MS. SMITH:  
 5 A. Yes, it is.  
 6 MR. SIMMONS:  
 7 Q. So that as program director, you are part of a  
 8 leadership team with others who are at, at an  
 9 equal level with you on the organizational  
 10 chart, if we were to try out a management  
 11 organization chart.  
 12 MS. SMITH:  
 13 A. Yes.  
 14 MR. SIMMONS:  
 15 Q. Right, and principally that would be the  
 16 clinical chief, Dr. Kara Laing?  
 17 MS. SMITH:  
 18 A. That's correct.  
 19 MR. SIMMONS:  
 20 Q. And from what we've heard about program  
 21 management, there's an expectation that the  
 22 program director and the clinical chief would  
 23 work together, as you've described it earlier.  
 24 MS. SMITH:  
 25 A. Yes.

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1 MR. SIMMONS:  
 2 Q. Can you tell me anything about your experience  
 3 in the Cancer Clinic since you've been there  
 4 and since Dr. Laing has been appointed, with  
 5 this model and whether between the two of you  
 6 in your positions, this has, to your mind,  
 7 been working successfully or whether there are  
 8 draw backs to taking this approach in the  
 9 Cancer Care Program?  
 10 MS. SMITH:  
 11 A. It's working very well from my perspective.  
 12 We have been able to develop some processes,  
 13 to develop some goals. We have a planning day  
 14 every year where we identify what our  
 15 priorities are, how we're going to achieve  
 16 some of those and we try to identify who is  
 17 going to be responsible for particular parts  
 18 of those objectives.  
 19 MR. SIMMONS:  
 20 Q. Uh-hm.  
 21 MS. SMITH:  
 22 A. We work together on some of these clinical  
 23 practice guidelines activity, we work together  
 24 on some of the national work that's done  
 25 through the Canadian Partnership Against

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1 Cancer. It's very mutually responsible roles  
 2 and I think that it's working very well for  
 3 us.  
 4 MR. SIMMONS:  
 5 Q. Are yours and Dr. Laing's offices located  
 6 physically in the same area?  
 7 MS. SMITH:  
 8 A. Yes, right across from each other, so we're  
 9 very accessible.  
 10 MR. SIMMONS:  
 11 Q. How frequent is your contact on matters of  
 12 importance or routine?  
 13 MS. SMITH:  
 14 A. Daily, sometimes many times during the run of  
 15 a day.  
 16 MR. SIMMONS:  
 17 Q. Okay. The Cancer Care Program since 2005 has  
 18 been part of Eastern Health rather than been  
 19 its own separate organization under the NCTRF.  
 20 And you've described to us earlier how the  
 21 radiation and medical oncologists are within  
 22 the Cancer Care Program, but other medical  
 23 disciplines which are involved in cancer care  
 24 are under other programs that are part of  
 25 Eastern Health.

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1 MS. SMITH:  
 2 A. That's right.  
 3 MR. SIMMONS:  
 4 Q. Can you tell me something about what kind of  
 5 forums exist for interaction between those  
 6 people involved in clinical care under the  
 7 Cancer Care Program umbrella and those  
 8 involved in cancer care within other programs  
 9 under Eastern Health.  
 10 MS. SMITH:  
 11 A. There's a number of avenues for discussion.  
 12 First of all, there's a clinical chief program  
 13 director meeting held monthly, so all of the  
 14 clinical chiefs responsible for the services  
 15 within Eastern Health and the program  
 16 directors as well, meet on a monthly basis to  
 17 discuss items of mutual concern and  
 18 opportunities, I guess, and information  
 19 sharing. That's one level. You've heard  
 20 about the tumor board rounds that are held  
 21 within the Cancer Care Program. They are  
 22 multi-disciplinary in nature and they include  
 23 surgeons, diagnostic imaging personnel, those  
 24 types of individuals who are also involved in  
 25 the care of a patients, but don't necessarily

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1 report through to our program. We also have  
 2 had, within the Cancer Care Program, we've  
 3 gone through the accreditation process. And  
 4 so we have an accreditation care team which we  
 5 formed when I first went to the program that  
 6 tried to get as many people involved as  
 7 possible. And the last accreditation, we made  
 8 it a regional group. So, there are other  
 9 disciplines from other areas that sit at that  
 10 table. In particular from 4 north A, the in-  
 11 patient unit, diagnostic areas, pastoral care,  
 12 a number of different areas sit on our care  
 13 team. And we decided to keep that  
 14 accreditation team running as a forum for  
 15 communication and discussion and opportunities  
 16 to make things better. And -  
 17 MR. SIMMONS:  
 18 Q. So, that has been not disbanded once  
 19 accreditation has been done, that's been kept  
 20 going for another purpose.  
 21 MS. SMITH:  
 22 A. No--it's been kept going, it's been kept  
 23 going. We also have--there's lymphoma rounds  
 24 that are held in the cancer centre. So, the  
 25 hematology staff come to the cancer centre to

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1 do that process. We have our information  
 2 management committee that we struck, we have  
 3 people from outside the cancer program  
 4 involved in that as well. There are many  
 5 opportunities, pharmacy and therapeutics  
 6 committee is another one that I can think of.  
 7 MR. SIMMONS:  
 8 Q. Now, have these sorts of forums developed over  
 9 time or are these things that have always  
 10 existed back into the NCTRF days?  
 11 MS. SMITH:  
 12 A. Some of them were back in the NCTRF days, but  
 13 some of them have developed in the past couple  
 14 of years.  
 15 MR. SIMMONS:  
 16 Q. Okay. And are these sorts of initiatives now  
 17 done or are there prospects that there will be  
 18 continued development of these kinds of multi-  
 19 disciplinary contacts?  
 20 MS. SMITH:  
 21 A. Oh, I think that you'll see more of those.  
 22 MR. SIMMONS:  
 23 Q. Okay. Commissioner, there's a number of  
 24 exhibits that I'd like to have entered,  
 25 please. P-3701 to 3711.

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1 THE COMMISSIONER:  
 2 Q. I'm sorry, would you mind repeating those  
 3 please?  
 4 MR. SIMMONS:  
 5 Q. P-3701 to P-3711.  
 6 THE COMMISSIONER:  
 7 Q. Are -  
 8 REGISTRAR:  
 9 Q. 3711.  
 10 MR. SIMMONS:  
 11 Q. I think I've got those right, Registrar.  
 12 REGISTRAR:  
 13 Q. Yes, you do.  
 14 THE COMMISSIONER:  
 15 Q. Okay, this is a new list.  
 16 REGISTRAR:  
 17 Q. Yes.  
 18 THE COMMISSIONER:  
 19 Q. Okay, sorry, I hadn't realized my list was  
 20 changed; I was thinking we were repeating  
 21 numbers. Entered.  
 22 MR. SIMMONS:  
 23 Q. Thank you.  
 24 EXHIBITS ENTERED AND MARKED P-3701 TO P-3711, INCLUSIVE  
 25 MR. SIMMONS:

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1 Q. I'm going to go through some of these as  
 2 quickly as I can with you, but they raise a  
 3 number of issues that have come up previously  
 4 that I just want to get some comment on from  
 5 you. Can we have P-3701 please? This an e-  
 6 mail message and I'm going to go down--it's a  
 7 chain, as many of these area--I'm going to go  
 8 down just to the first one in the chain which  
 9 is dated April 15th, 2008 from Dr. David  
 10 Saltman to a number of people including Louise  
 11 Jones and Oscar Howell and you're one of the  
 12 people it's copied to. It's copied to you and  
 13 Dr. Siddiqui and Dr. Ganguly.  
 14 MS. SMITH:  
 15 A. Yes.  
 16 MR. SIMMONS:  
 17 Q. And I believe Dr. Siddiqui would be a division  
 18 chief and Dr. Ganguly a division chief within  
 19 your Cancer Care Program?  
 20 MS. SMITH:  
 21 A. Yes, both division chiefs, that's correct.  
 22 MR. SIMMONS:  
 23 Q. This particular one comments on the departure  
 24 of Dr. Beverley Carter from the pathology  
 25 department.

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1 MS. SMITH:  
 2 A. Yes.  
 3 MR. SIMMONS:  
 4 Q. And in the second paragraph of that message,  
 5 Dr. Saltman makes a suggestion that he would  
 6 like to see implemented which is at Eastern  
 7 Health with the help and encouragement of the  
 8 Faculty of Medicine should create a position  
 9 within the Cancer Care Program for an  
 10 oncologic pathologist to be site based at the  
 11 H. Bliss Murphy Cancer Centre, which Dr.  
 12 Saltman has told us about.  
 13 MS. SMITH:  
 14 A. Yes.  
 15 MR. SIMMONS:  
 16 Q. What the advantages would be from his point of  
 17 view of doing that and I think you've been  
 18 asked about that by Mr. Coffey already.  
 19 MS. SMITH:  
 20 A. Yes.  
 21 MR. SIMMONS:  
 22 Q. And then above that there's a reply from Ms.  
 23 Jones on the same date and if you look about  
 24 mid way through there Ms. Jones says she's  
 25 "taken the liberty of forwarding a copy of Dr.

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1 Saltman's e-mail to Dr. Denic. Given the  
 2 suggestion that you have provided in this  
 3 correspondence, I would ask that Dr. Denic  
 4 follow up with you and work with Dr, John Guy  
 5 with respect to the recruitment of a  
 6 replacement pathologist. I'll also ask Dr.  
 7 Denis to explore with the Memorial the  
 8 possibility of such an arrangement. I will  
 9 also personally follow up with Dr. Rourke who  
 10 is the Dean of Medicine around your suggestion  
 11 as well". So, it appears at this point that  
 12 there has been support from the CEO for the  
 13 suggestion.  
 14 MS. SMITH:  
 15 A. Yes.  
 16 MR. SIMMONS:  
 17 Q. Now, is that issue dead or has there been a  
 18 decision that there will not be any effort to  
 19 get oncologic pathologist in the Cancer Care  
 20 Program or where does it stand now, as far as  
 21 you know?  
 22 MS. SMITH:  
 23 A. Well, I think until the staffing levels are  
 24 where they need to be from the pathology  
 25 department, that it's very difficult to have

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1 this type of a conversation. Certainly it's  
 2 something that we've all recognized would be  
 3 of a benefit to us and we would love to have  
 4 such an arrangement. We all had hoped that  
 5 Dr. Carter would stay, but she's gone on to  
 6 Vancouver where she's quite happy.

7 MR. SIMMONS:  
 8 Q. Um-hm.

9 MR. SIMMONS:  
 10 Q. And so I'm not quite sure what the potential  
 11 is for this, but it certainly is something  
 12 that I'm sure we'll hear from Dr. Denic on.  
 13 And I think Dr. Laing will probably would be  
 14 in a better position to respond to that.

15 MR. SIMMONS:  
 16 Q. Right. So, has there been any disagreement  
 17 with Dr. Saltman's view that this would be an  
 18 advantageous thing for the Cancer Care  
 19 Program?

20 MS. SMITH:  
 21 A. No.

22 MR. SIMMONS:  
 23 Q. And to your understanding, the issue has been  
 24 the continuing problems with pathologist  
 25 staffing within Eastern Health more generally,

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1 is that fair to say?

2 MS. SMITH:  
 3 A. Yes.

4 MR. SIMMONS:  
 5 Q. Okay.

6 MS. SMITH:  
 7 A. It's the same situation that we have with, I  
 8 liken it to clinical pharmacy services.

9 MR. SIMMONS:  
 10 Q. Yes.

11 MR. SIMMONS:  
 12 Q. You know, we'd like to have permanent full  
 13 time clinical pharmacists working only in the  
 14 Cancer Centre, but because there's a shortage  
 15 in pharmacists, we have a rotational system in  
 16 place. So, I mean, it does happen and we  
 17 certainly would like to see something around  
 18 this.

19 MR. SIMMONS:  
 20 Q. Okay. 3711, please, that last exchange was in  
 21 April and this is May of 2008, it's another e-  
 22 mail chain. And if we go down to starting at  
 23 the bottom, there's a message from Dr. Joy  
 24 McCarthy to Dr. Saltman, Dr. Laing and  
 25 yourself. So, this would be directed--Dr.

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1 Saltman being the discipline chair; Dr. Laing  
 2 the clinical chief and yourself, the program  
 3 director.

4 MS. SMITH:  
 5 A. Yes.

6 MR. SIMMONS:  
 7 Q. And this was mentioned by Dr. Saltman, I  
 8 believe you were asked about it. It's Dr.  
 9 McCarthy's message to Dr. Saltman concerning  
 10 some comments that had been made and  
 11 discussion that had happened at a meeting that  
 12 they had been in attendance at.

13 MS. SMITH:  
 14 A. Um-hm, yes.

15 MR. SIMMONS:  
 16 Q. And was that a meeting that you were at?

17 MS. SMITH:  
 18 A. No, I wasn't. I was actually out of the  
 19 province.

20 MR. SIMMONS:  
 21 Q. All right. And in this generally--Dr.  
 22 McCarthy takes issue with Dr. Saltman's  
 23 assertions regarding quality of the Cancer  
 24 Care Program here in Newfoundland and  
 25 Labrador?

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1 MS. SMITH:  
 2 A. Yes.

3 MR. SIMMONS:  
 4 Q. Okay. Now, this is your reply on May 26 at  
 5 2:05 p.m. Where were you when you received  
 6 this message and gave this reply?

7 MS. SMITH:  
 8 A. I was at a meeting in Toronto.

9 MR. SIMMONS:  
 10 Q. Okay, all right. Now, your reply is, "I'm not  
 11 sure what meeting was held this morning, but  
 12 I'm quite concerned about the comments. I'll  
 13 be back in the office on Wednesday and would  
 14 like to discuss this. Dr. Saltman, if you  
 15 have concerns about the quality of the Cancer  
 16 Care Program, please bring them to my  
 17 attention for discussion and resolution.  
 18 Hopefully, we can get together and sort this  
 19 out".

20 MS. SMITH:  
 21 A. Yes.

22 MR. SIMMONS:  
 23 Q. Okay. Now, I recall Dr. Saltman's evidence as  
 24 being that a reply he received from you at  
 25 this time was to the effect that he was being

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1 told that he should not be criticizing the  
 2 Cancer Care Program. Have you ever made any  
 3 such statement -  
 4 MS. SMITH:  
 5 A. No.  
 6 MR. SIMMONS:  
 7 Q. - either in an e-mail or otherwise?  
 8 MS. SMITH:  
 9 A. No.  
 10 MR. SIMMONS:  
 11 Q. And then this exchange continued. Dr. Saltman  
 12 replied stating "if you'd like to set up a  
 13 meeting at a later date, then I would ask that  
 14 a third party be present". And you replied  
 15 then, "I will talk to you and Kara on  
 16 Wednesday regarding setting up a meeting".  
 17 And Dr. Saltman's reply is "you can e-mail me  
 18 a date and I'll see if my lawyer is available  
 19 to attend". Now, do you have any idea or had  
 20 you had any conversation or indication from  
 21 Dr. Saltman why he felt that he should be  
 22 bringing a layer to a meeting with you and Dr.  
 23 Laing?  
 24 MS. SMITH:  
 25 A. Absolutely not. I know I spend enough time

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1 with lawyers these days, but it's certainly  
 2 not something that I was used to in the work  
 3 environment.  
 4 MR. SIMMONS:  
 5 Q. Well, hopefully you won't have to spend too  
 6 much more time with lawyers now.  
 7 MS. SMITH:  
 8 A. Not that I don't like you people.  
 9 MR. SIMMONS:  
 10 Q. Okay, thank you. Now, around this time did  
 11 you have any concerns then about the working  
 12 relationship or the integration of Dr. Saltman  
 13 as the new discipline chair into the  
 14 leadership team in the Cancer Care -  
 15 MS. SMITH:  
 16 A. No, I had no--I didn't know--this came  
 17 completely as a surprise to me and if there  
 18 are issues that we need to deal with, I stand  
 19 on my reputation, that I get people together  
 20 and talk about it and move forward. So,  
 21 that's what I was trying to do.  
 22 MR. SIMMONS:  
 23 Q. Did you bring this issue up with anyone in  
 24 more senior management in Eastern Health?  
 25 MS. SMITH:

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1 A. And so I also, I think I called Dr. Laing to  
 2 see what was happening and then I brought it  
 3 forward to Ms. Pilgrim.  
 4 MR. SIMMONS:  
 5 Q. Okay. And to your knowledge, did Ms. Pilgrim  
 6 take any action?  
 7 MS. SMITH:  
 8 A. Yes. So, Ms. Pilgrim was also trying to  
 9 establish a senior leadership committee which  
 10 would be comprised of Dr. Saltman as a  
 11 discipline chair; Dr. Laing as the clinical  
 12 chief, myself as program director and Ms.  
 13 Pilgrim who is chief operating officer and  
 14 sits at the executive table in Eastern Health.  
 15 So, it was a good idea to have that level of a  
 16 committee. And she tried to establish a  
 17 meeting, but was not successful.  
 18 MR. SIMMONS:  
 19 Q. Okay. And I'll just show you P-3702, please.  
 20 Now, I'm not sure if you've seen this one  
 21 before, but I understand this to be a letter  
 22 of May 28, 2008 from Ms. Pilgrim to Dr.  
 23 Saltman.  
 24 MS. SMITH:  
 25 A. Yes.

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1 MR. SIMMONS:  
 2 Q. And would this relate to that request to  
 3 establish the senior leadership team?  
 4 MS. SMITH:  
 5 A. Yes.  
 6 MR. SIMMONS:  
 7 Q. Now, do you know if Ms. Pilgrim was every  
 8 successful in arranging that meeting with Dr.  
 9 Saltman?  
 10 MS. SMITH:  
 11 A. Not to my knowledge. I know we certainly have  
 12 not had a senior leadership team meeting where  
 13 the four of us had been in the room together.  
 14 MR. SIMMONS:  
 15 Q. Okay. There was also some evidence concerning  
 16 a communication between Dr. Saltman and you  
 17 regarding an issue relating to pharmacy and  
 18 dispensing of a certain type of chemotherapy  
 19 medication from hospital pharmacies instead of  
 20 communities pharmacies. Could I have P-3705  
 21 please? This is an e-mail chain. The last  
 22 message in the chain is July 17th, '08, if we  
 23 go way down to the bottom, it begins on July  
 24 14th, '08 with an e-mail from Dr. Saltman to,  
 25 I believe, it's Mr. Don Rowe who is the

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1 Registrar of the Pharmacy Board.  
 2 MS. SMITH:  
 3 A. Yes.  
 4 MR. SIMMONS:  
 5 Q. Would that be correct?  
 6 MS. SMITH:  
 7 A. Yes.  
 8 MR. SIMMONS:  
 9 Q. The subject is changes in Pharmacy Act to  
 10 accommodate hospitals prescribing oral  
 11 chemotherapy. Now, the first question, were  
 12 you or to your knowledge, Dr. Laing, aware  
 13 that Dr. Saltman was taking this initiative on  
 14 his own to investigate this?  
 15 MS. SMITH:  
 16 A. No. Our concerns around oral chemotherapy  
 17 have never been around the dispensing of the  
 18 drug. Our concerns have always been around  
 19 that people have to pay for those drugs;  
 20 that's the challenge.  
 21 MR. SIMMONS:  
 22 Q. Yes.  
 23 MS. SMITH:  
 24 A. From our perspective. If you come into the  
 25 Cancer Centre for IV treatment, we pay for it,

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1 but if you're having an oral treatment that  
 2 you take at home, you have to pay for it and  
 3 they can be very, very costly.  
 4 MR. SIMMONS:  
 5 Q. Okay. There's a reply here, July 16th from  
 6 Don Rowe. It's quite long, so I won't take  
 7 you through that and then Dr. Saltman to Dr.  
 8 Rowe, to Don Rowe, the same day and this  
 9 particular one was copied to you. You're on  
 10 the cc list. So, by July 16th you have these  
 11 messages and you can see this exchange that's  
 12 occurring here. Was that the first that you  
 13 learned that this initiative was being taken?  
 14 MS. SMITH:  
 15 A. Yes, it was.  
 16 MR. SIMMONS:  
 17 Q. And this initiative, would that have any  
 18 consequences or impact on the administration  
 19 of your program?  
 20 MS. SMITH:  
 21 A. Oh yes, if the proposal was that we have to  
 22 dispense these drugs, where would they be  
 23 dispensed from? Who would staff them? Where  
 24 would the space be? Many, many issues that we  
 25 would have from a resource implication have to

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1 deal with.  
 2 MR. SIMMONS:  
 3 Q. Right. Now, is that to say that this was an  
 4 idea that would have been impossible to  
 5 consider?  
 6 MS. SMITH:  
 7 A. It wouldn't have been impossible to consider,  
 8 but it just was not something that was brought  
 9 to our attention.  
 10 MR. SIMMONS:  
 11 Q. Okay. Then there's a reply here from you to  
 12 Dr. Saltman copied to Dr. Laing on July 17th.  
 13 MS. SMITH:  
 14 A. Yes.  
 15 MR. SIMMONS:  
 16 Q. "Hi David, I was hoping to speak to you in  
 17 person this morning, before (phonetic) having  
 18 to go to St. Clare's. I'm concerned that once  
 19 again, I hear of an issue you raised that  
 20 affects resources within our program. We've  
 21 not had an opportunity to discuss the issue at  
 22 either of our leadership committees. You  
 23 refer to this as a safety issue. So, I would  
 24 expect that we have discussion about matters  
 25 such as this with at least, myself as program

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1 director and Kara as clinical chief. I'm  
 2 particularly concerned about the comment that  
 3 you plan to talk to the media about issue  
 4 facing our program. Perhaps we'll get a few  
 5 minutes to discuss this before the week is  
 6 out".  
 7 So, what was your intention in sending  
 8 this message here to Dr. Saltman?  
 9 MS. SMITH:  
 10 A. Well, again, I was concerned that there was  
 11 issues that Dr. Saltman felt were impacting on  
 12 cancer care in this province that I was no  
 13 aware of. He did reference in his e-mail to  
 14 Mr. Rowe that he planned to talk to the media.  
 15 And if anyone talks to the media, the next  
 16 person who gets a call is going to be myself  
 17 or Dr. Laing. So, I really wanted to find out  
 18 what this was all about.  
 19 MR. SIMMONS:  
 20 Q. Did you--were you telling him that he couldn't  
 21 talk to the media or shouldn't talk to the  
 22 media?  
 23 MS. SMITH:  
 24 A. No, just that I was concerned.  
 25 MR. SIMMONS:

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1 Q. Okay. Did you ever, on any occasion  
 2 communicate to him yourself or know if anyone  
 3 else did that there were restrictions on his  
 4 ability to speak to the media himself?  
 5 MS. SMITH:  
 6 A. I don't recall any.  
 7 MR. SIMMONS:  
 8 Q. Okay. Now, then there's another -  
 9 THE COMMISSIONER:  
 10 Q. Excuse me, Mr. Simmons, I just want to ask  
 11 this now. I had the impression from the  
 12 evidence yesterday that there was a procedure  
 13 that was expected of people who were within  
 14 the Eastern Health organization regarding  
 15 contact with the media.  
 16 MS. SMITH:  
 17 A. There's policies around, confidentiality, that  
 18 we all signed in terms of talking publicly  
 19 about operations of services within the health  
 20 care system. I'm not quite 100 percent sure  
 21 of what that says exactly about talking to the  
 22 media, but I know it's an expectation that if  
 23 the media are going to be involved, that there  
 24 would be some discussion among the people that  
 25 would be affected by that media discussion, in

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1 order to respond properly. Oftentimes, and I  
 2 know you've all heard people on the radio or  
 3 TV talking about issues facing health care, it  
 4 might be the cardiac program, for example,  
 5 oftentimes the communications people within  
 6 Eastern Health are involved in that to help  
 7 determine what messages might be and help  
 8 respond to what some of those issues are. So,  
 9 some of it is a courtesy thing, I would think.  
 10 THE COMMISSIONER:  
 11 Q. As opposed to a policy thing?  
 12 MS. SMITH:  
 13 A. Well, I guess you kind of put the two  
 14 together, you know, the confidentiality  
 15 agreements along with the courtesy pieces, I  
 16 suppose, and I hadn't given this a whole lot  
 17 of thought, to be honest with you.  
 18 THE COMMISSIONER:  
 19 Q. Yes, okay. Well, it's just that from our  
 20 conversation yesterday, I had the impression  
 21 that there was a policy, an understanding,  
 22 whatever, within Eastern Health regarding how  
 23 employees, particularly those who might be  
 24 physicians, would deal with media.  
 25 MS. SMITH:

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1 A. We all -  
 2 THE COMMISSIONER:  
 3 Q. Now I'm understanding that there really isn't  
 4 one. It's just kind of you should have the  
 5 sense to do this. Is that what I'm--you're  
 6 telling me?  
 7 MS. SMITH:  
 8 A. I guess it's two things. We do sign a  
 9 confidentiality agreement when we go to work  
 10 within the organization, and that's part of  
 11 it, and the other would be, I think, the  
 12 agreement of courtesy that if there is an  
 13 issue and a challenge that we would work  
 14 together to address it.  
 15 THE COMMISSIONER:  
 16 Q. Okay, thank you.  
 17 MS. SMITH:  
 18 A. And I guess if we really need to get further  
 19 information about that, Commissioner, we could  
 20 find out for you.  
 21 THE COMMISSIONER:  
 22 Q. Thank you.  
 23 MR. SIMMONS:  
 24 Q. Ms. Smith, I'm going to put you on the spot  
 25 now and ask you about something related, but a

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1 little bit different.  
 2 MS. SMITH:  
 3 A. Okay.  
 4 MR. SIMMONS:  
 5 Q. You have had some involvement in the  
 6 Association of Registered Nurses in  
 7 Newfoundland and Labrador in the past, I  
 8 believe.  
 9 MS. SMITH:  
 10 A. Yes, I was president.  
 11 MR. SIMMONS:  
 12 Q. Yes, you were president, and are you familiar  
 13 with a protocol or procedure that's been  
 14 adopted by that association that's available  
 15 to their nurses when their nurses have  
 16 concerns about patient care that they wish to  
 17 bring forward outside of their organizations?  
 18 MS. SMITH:  
 19 A. Absolutely.  
 20 MR. SIMMONS:  
 21 Q. Yes.  
 22 MS. SMITH:  
 23 A. And that protocol would require that the nurse  
 24 would take these concerns to the next level.  
 25 So if I was a staff nurse, I would take the

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1 concerns to my manager. If they weren't  
 2 addressed, I would then take the concerns to  
 3 the program director, and so the process would  
 4 follow and then there's a whole protocol  
 5 around that, through ARNN.  
 6 MR. SIMMONS:  
 7 Q. Yes, and does that protocol lead eventually to  
 8 the ability for the individual nurse, as a  
 9 professional, to go outside their employer's  
 10 organization with concerns?  
 11 MS. SMITH:  
 12 A. Yes.  
 13 MR. SIMMONS:  
 14 Q. And that's a process that's laid out for that  
 15 particular profession about how they are to  
 16 handle that?  
 17 MS. SMITH:  
 18 A. That's correct.  
 19 MR. SIMMONS:  
 20 Q. And following through this chain, on the 17th  
 21 of July then, Dr. Saltman did reply to you,  
 22 referring to his plan to meet with the Dean of  
 23 Medicine, and he said "given the Cancer Care  
 24 program's non-physician management's  
 25 continuing concerns about academic freedom."

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1 Now who would you understand the Cancer Care  
 2 program's non-physician management to be?  
 3 MS. SMITH:  
 4 A. I would think that would be me.  
 5 MR. SIMMONS:  
 6 Q. Had you ever had any concern about academic  
 7 freedom or any discussion along those lines  
 8 with Dr. Saltman?  
 9 MS. SMITH:  
 10 A. No.  
 11 MR. SIMMONS:  
 12 Q. And do you have any idea what he could be  
 13 referring to when he makes that statement  
 14 here?  
 15 MS. SMITH:  
 16 A. No, I was quite surprised at that statement.  
 17 MR. SIMMONS:  
 18 Q. Okay, and do you know what the current status  
 19 is of the efforts of Eastern Health leadership  
 20 or executive to try and obtain a meeting with  
 21 Dr. Saltman to discuss these sorts of concerns  
 22 that he's brought forward?  
 23 MS. SMITH:  
 24 A. I do believe that Ms. Jones has contacted the  
 25 Dean of the Medical School to try to

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1 facilitate some processes there.  
 2 MR. SIMMONS:  
 3 Q. Okay, and we can just look at P-3710 please?  
 4 And you were not copied on this.  
 5 MS. SMITH:  
 6 A. No.  
 7 MR. SIMMONS:  
 8 Q. And you may not have seen it, but this is an  
 9 e-mail message from Louise Jones to J. Rourke,  
 10 who I believe is the Dean of the Medical  
 11 School.  
 12 MS. SMITH:  
 13 A. Yes, that's right.  
 14 MR. SIMMONS:  
 15 Q. This is just October 21st, 2008, and in this,  
 16 this appears to be a request for some  
 17 discussion about how to resolve that issue.  
 18 MS. SMITH:  
 19 A. Yes.  
 20 MR. SIMMONS:  
 21 Q. Okay. Now Dr. Saltman has certainly brought  
 22 forward a number of ideas. Can you give me  
 23 any sort of response as to generally whether  
 24 those, a lot of those ideas appear to have  
 25 value or could very well be useful and helpful

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1 for the organization?  
 2 MS. SMITH:  
 3 A. Certainly. We've looked at the neutrapenia  
 4 guidelines and I talked about those yesterday.  
 5 Those are guidelines that we would follow if a  
 6 person's white blood count dropped too low and  
 7 they were at risk for infection. So I know  
 8 that Dr. Saltman was trying to do some work  
 9 around that, and I had actually asked him  
 10 where we were, because we certainly would like  
 11 to implement those guidelines, and as far as I  
 12 know, the infection control service was  
 13 looking at some measures that we might be able  
 14 to take and try to fit that protocol into the  
 15 current environment within Eastern Health,  
 16 from an emergency department perspective, the  
 17 in-patients units, and then move it right  
 18 across the province. So that's one of the  
 19 things that we certainly were quite interested  
 20 in hearing about.  
 21 We shared his concerns around a website,  
 22 which I talked about yesterday. So we're  
 23 trying to develop that website and get that up  
 24 and running. Other things that, you know, the  
 25 tele-oncology, for example, we've been

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1 involved with tele-oncology now. It started  
 2 before I went into the Cancer Centre. Dr.  
 3 Laing, Dr. Greenland, Dr. Howse were very much  
 4 involved in initiating that process. So we're  
 5 always interested in ways of clearing up the  
 6 backlog of people who are waiting for  
 7 services. Many things that, you know, we've  
 8 talked about at the table.

9 MR. SIMMONS:  
 10 Q. Now when people in the system have good ideas  
 11 like that, can you give me any comment on why  
 12 then it would be necessary to work through  
 13 processes like going to leadership instead of  
 14 taking action on the spot to implement them  
 15 without going through those levels of  
 16 management or committees or so on? What is  
 17 there an issue around?

18 MS. SMITH:  
 19 A. Well, I don't--I'm sure people realize how  
 20 complex our health care system is right now.  
 21 It's always been complicated. It's not a  
 22 perfect system. It's the best we've got.  
 23 We're trying to make it better all the time.  
 24 The issue we find with the patient population  
 25 we care for is we have a distinct part that we

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1 are responsible for and many other areas of  
 2 the health care system have a role to play.  
 3 So it might be diagnostic imaging. It might  
 4 be the in-patient unit. Things happen in the  
 5 emergency department. We need linkages from  
 6 an information management perspective. It  
 7 might be health records perspective, etcetera.

8 So when an idea comes forward, we really  
 9 have to try to figure out well, who does this  
 10 impact and who do we have to talk to before we  
 11 can go forward on this, and if you look at  
 12 that pathology brochure that we tried to  
 13 implement, you know, just when we thought we  
 14 had it perfect, someone else read it and said  
 15 "oh, you didn't put this in." So those are  
 16 the kinds of issues that we're faced with day  
 17 to day. It's frustrating. It takes time to  
 18 get these done, but those are the reasons. We  
 19 talk about it with other people. Like you  
 20 might have to go forward looking for money.  
 21 We might have to go forward looking for space,  
 22 because we just don't have any space any more  
 23 in the Cancer Centre. So there's many reasons  
 24 why we have to work this out.

25 MR. SIMMONS:

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1 Q. Okay. Thank you, Ms. Smith. I don't have any  
 2 other questions for you. There may be some  
 3 others from the Commissioner or from Mr.  
 4 Coffey.

5 MS. SMITH:  
 6 A. Thank you, Mr. Simmons.

7 THE COMMISSIONER:  
 8 Q. Anything arising, Mr. Coffey?

9 MS. SHARON SMITH, EXAMINATION BY BERNARD COFFEY, Q.C.  
 10 COFFEY, Q.C.:  
 11 Q. Yes, Commissioner, thank you. Ms. Smith, Mr.  
 12 Simmons showed you that action plan.

13 MS. SMITH:  
 14 A. The Cancer Control Strategy?

15 COFFEY, Q.C.:  
 16 Q. Yes, the two documents.

17 MS. SMITH:  
 18 A. Yes.

19 COFFEY, Q.C.:  
 20 Q. There are two such documents, I believe,  
 21 there, a shorter and a longer version. I  
 22 believe the first of them, P-3582, if I could  
 23 have that brought up, please, 3582? Just  
 24 scroll down here a bit, okay. This would have  
 25 been prepared when? Is it dated, do you know?

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1 MS. SMITH:  
 2 A. I think the final date would have been July.

3 COFFEY, Q.C.:  
 4 Q. Okay, so July of this year?

5 MS. SMITH:  
 6 A. Yes.

7 COFFEY, Q.C.:  
 8 Q. And how long would that have been in  
 9 preparation?

10 MS. SMITH:  
 11 A. Since we've started working on this final  
 12 document?

13 COFFEY, Q.C.:  
 14 Q. Not the final document, the action plan. How  
 15 long has that been in preparation?

16 MS. SMITH:  
 17 A. So the action plan, we would have started  
 18 working on the action plan after we had our  
 19 forum this past winter.

20 COFFEY, Q.C.:  
 21 Q. So?

22 MS. SMITH:  
 23 A. So that would have been February. We had the  
 24 forum in February and we had a reaffirmation  
 25 of what the goals and objectives were from the

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1 various working groups, and then we started  
 2 working on the action plan.  
 3 COFFEY, Q.C.:  
 4 Q. So the action plan started--work started on  
 5 it, February/March of this year?  
 6 MS. SMITH:  
 7 A. Yes.  
 8 COFFEY, Q.C.:  
 9 Q. And it's styled an -  
 10 MS. SMITH:  
 11 A. March, I would say.  
 12 COFFEY, Q.C.:  
 13 Q. It's styled an action plan from 2007.  
 14 MS. SMITH:  
 15 A. Sure, because the work has been ongoing since  
 16 our very first forum.  
 17 COFFEY, Q.C.:  
 18 Q. Okay, and the forum started when?  
 19 MS. SMITH:  
 20 A. In 2006.  
 21 COFFEY, Q.C.:  
 22 Q. '06. So since 2006 then, in relation to this  
 23 action plan, you've been involved with a  
 24 number of individuals. You said a lot of work  
 25 has gone into this.

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1 MS. SMITH:  
 2 A. That's right.  
 3 COFFEY, Q.C.:  
 4 Q. And the period of time would be '06, '07 and  
 5 into, up to July of '08?  
 6 MS. SMITH:  
 7 A. Yes.  
 8 COFFEY, Q.C.:  
 9 Q. And you said a lot of work by many people,  
 10 including Mr. Dawe of the Canadian Cancer  
 11 Society, correct?  
 12 MS. SMITH:  
 13 A. Correct.  
 14 COFFEY, Q.C.:  
 15 Q. And so you would have met with Mr. Dawe on a  
 16 number of occasions throughout that time  
 17 period?  
 18 MS. SMITH:  
 19 A. We had meetings--the steering committee would  
 20 have met over the months, yes.  
 21 COFFEY, Q.C.:  
 22 Q. Does that--the answer to my question is yes,  
 23 is it?  
 24 MS. SMITH:  
 25 A. Yes.

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1 COFFEY, Q.C.:  
 2 Q. Okay. During those meetings, you referenced--  
 3 during those meetings, I take it yourself, you  
 4 would have been aware, all during that time  
 5 period, that Daffodil Place was on the go?  
 6 MS. SMITH:  
 7 A. Yes, I was also a member of a steering  
 8 committee within the Canadian Cancer Society  
 9 around the programs committee for Daffodil  
 10 Place.  
 11 COFFEY, Q.C.:  
 12 Q. Okay. Well, it just occurs to me then, how  
 13 then or why was it then, early this year, at  
 14 the leadership meetings that you were talking  
 15 about--you told the Commissioner yesterday in  
 16 relation to Mr. Dawe, critical remarks were  
 17 made involving Daffodil Place.  
 18 MR. SIMMONS:  
 19 Q. Excuse me, Commissioner, this is an area that  
 20 Ms. Smith was examined on in her direct  
 21 examination and was not raised in mine or any  
 22 other of counsel's cross-examinations. So I  
 23 don't think it's appropriate to reopen it.  
 24 COFFEY, Q.C.:  
 25 Q. Well, if I could, Commissioner?

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1 THE COMMISSIONER:  
 2 Q. You'll have to respond to the objection.  
 3 COFFEY, Q.C.:  
 4 Q. I appreciate that. Commissioner, it's just  
 5 now, in fact just in response to a question I  
 6 just asked, that Ms. Smith indicated that, in  
 7 fact, she was involved with this Daffodil  
 8 Place project, apparently over a period of  
 9 time, dating back for years.  
 10 MS. SMITH:  
 11 A. Not for years, Mr. Coffey.  
 12 COFFEY, Q.C.:  
 13 Q. Okay. For how long then, perhaps you could  
 14 tell us?  
 15 MS. SMITH:  
 16 A. There's a programs committee was struck around  
 17 the time of the announcement, after the site  
 18 was determined.  
 19 COFFEY, Q.C.:  
 20 Q. When would that be?  
 21 MS. SMITH:  
 22 A. I can't remember the date.  
 23 COFFEY, Q.C.:  
 24 Q. Approximately?  
 25 MS. SMITH:

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1 A. I can't remember. I'm sorry.  
 2 COFFEY, Q.C.:  
 3 Q. The year? Okay, just in terms of -  
 4 THE COMMISSIONER:  
 5 Q. Wait now, I want to--now I'm confused. So  
 6 let's resolve my confusion first and see if  
 7 there are any--yesterday, my impression was  
 8 that you felt that the Cancer Centre should  
 9 have been consulted -  
 10 MS. SMITH:  
 11 A. In the process around the site.  
 12 THE COMMISSIONER:  
 13 Q. - around the site for the Daffodil Place?  
 14 MS. SMITH:  
 15 A. Right.  
 16 THE COMMISSIONER:  
 17 Q. Okay.  
 18 MS. SMITH:  
 19 A. Since that time, if I can just say then?  
 20 THE COMMISSIONER:  
 21 Q. Yes.  
 22 MS. SMITH:  
 23 A. I was asked to be part of a programs committee  
 24 to determine what kind of services would be  
 25 announced, would be available at this Daffodil

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1 Place.  
 2 THE COMMISSIONER:  
 3 Q. After the site had been chosen?  
 4 MS. SMITH:  
 5 A. After, yes.  
 6 THE COMMISSIONER:  
 7 Q. Okay.  
 8 MS. SMITH:  
 9 A. And there were some issues that would come up  
 10 at those meetings, such as, you know,  
 11 decisions, for example, to allow alcohol on  
 12 the premises that we might not have  
 13 necessarily agreed with. That might have come  
 14 up at our leadership team. I really don't  
 15 remember what we talked about, but those could  
 16 be some -  
 17 THE COMMISSIONER:  
 18 Q. Wait now. Now I'm--sorry, I'm not following.  
 19 My understanding from your evidence yesterday  
 20 that you were concerned, if you will, about  
 21 the partnership arrangement and what you were  
 22 saying was that you felt that the Canadian  
 23 Cancer Society taking this initiative should  
 24 have consulted you about the location of  
 25 Daffodil Place.

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1 MS. SMITH:  
 2 A. We felt that we should have been involved,  
 3 yes.  
 4 THE COMMISSIONER:  
 5 Q. Okay. Now can you tell me whether the  
 6 decision about the location of Daffodil Place  
 7 was made while this was ongoing, the Canadian  
 8 Cancer Control Strategy for Newfoundland and  
 9 Labrador?  
 10 MS. SMITH:  
 11 A. Yes, that was made.  
 12 THE COMMISSIONER:  
 13 Q. Before that?  
 14 MS. SMITH:  
 15 A. No. Well, I know that the initial discussion  
 16 around the need for cancer specific lodging  
 17 came out of the very first stakeholders forum,  
 18 which would have been in 2006.  
 19 THE COMMISSIONER:  
 20 Q. Okay.  
 21 MS. SMITH:  
 22 A. Then the next I heard of it was the proposal  
 23 that was sent to me from the Minister of  
 24 Health through, I think, Mr. Tilley at the  
 25 time to say "would you have a look at this?"

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1 and so we had not had any involvement in it at  
 2 that point in time. So once the site was  
 3 established, I did -  
 4 THE COMMISSIONER:  
 5 Q. And the proposal you got included where the  
 6 site would be?  
 7 MS. SMITH:  
 8 A. At that time, the site hadn't been determined.  
 9 So I was asked to go to a meeting at the  
 10 Canadian Cancer Society office, which I  
 11 thought was to talk about some of the  
 12 operational issues around the hostel. At that  
 13 time, I found that they had determined a site.  
 14 THE COMMISSIONER:  
 15 Q. Okay. So you knew that there was a--let's  
 16 make sure everybody's clear.  
 17 MS. SMITH:  
 18 A. Sure.  
 19 THE COMMISSIONER:  
 20 Q. You knew that there was the effort ongoing,  
 21 which I understood from your evidence you were  
 22 supportive of, to find--to create a place -  
 23 MS. SMITH:  
 24 A. Cancer specific, yes.  
 25 THE COMMISSIONER:

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1 Q. - that Daffodil Place is going to function as.  
 2 MS. SMITH:  
 3 A. Um-hm.  
 4 THE COMMISSIONER:  
 5 Q. And indeed, that was part of the discussion  
 6 when you were involved in this action plan?  
 7 MS. SMITH:  
 8 A. Well, it didn't go into the action plan  
 9 because -  
 10 THE COMMISSIONER:  
 11 Q. The predecessor meetings to the action plan?  
 12 MS. SMITH:  
 13 A. Yes, okay.  
 14 THE COMMISSIONER:  
 15 Q. Okay. Then you got invited to attend a  
 16 meeting and when you got to this meeting, you  
 17 discovered that the decision had already been  
 18 made regarding the location?  
 19 MS. SMITH:  
 20 A. Yes, that's correct.  
 21 THE COMMISSIONER:  
 22 Q. Is that the substance of it?  
 23 MS. SMITH:  
 24 A. Pretty well.  
 25 THE COMMISSIONER:

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1 Q. And subsequent to that, you have been involved  
 2 in a group which has dealt with -  
 3 MS. SMITH:  
 4 A. The planning for the services.  
 5 THE COMMISSIONER:  
 6 Q. - planning for services that are going to be  
 7 provided at Daffodil Place?  
 8 MS. SMITH:  
 9 A. Um-hm, and I know there was some concerns from  
 10 social work department, for example, there's a  
 11 few of us on this committee, around decisions  
 12 about alcohol on the premises, how much this  
 13 might cost, those kinds of things.  
 14 THE COMMISSIONER:  
 15 Q. So are you involved in the budget for the  
 16 place?  
 17 MS. SMITH:  
 18 A. No. No, it's just from the social work  
 19 department, they were concerned about how much  
 20 it might cost an individual patient to go  
 21 there, because they often deal with the  
 22 financial concerns of people with cancer.  
 23 THE COMMISSIONER:  
 24 Q. Oh, I see, okay, that's a different concern.  
 25 MS. SMITH:

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1 A. Yes.  
 2 THE COMMISSIONER:  
 3 Q. And during this time frame, are you saying  
 4 that at no point you knew what the  
 5 considerations were for where Daffodil would  
 6 be placed?  
 7 MS. SMITH:  
 8 A. Not until the site was announced.  
 9 THE COMMISSIONER:  
 10 Q. You didn't know about the potential sites?  
 11 MS. SMITH:  
 12 A. No.  
 13 THE COMMISSIONER:  
 14 Q. I thought that was in the news.  
 15 MS. SMITH:  
 16 A. At the time of the announcement.  
 17 THE COMMISSIONER:  
 18 Q. Oh, perhaps, okay. Okay then, Mr. Coffey,  
 19 were there any other questions?  
 20 COFFEY, Q.C.:  
 21 Q. No, Commissioner, thank you. One other  
 22 question, one other point. You were referred  
 23 by Mr. Simmons to a number of e-mails.  
 24 MS. SMITH:  
 25 A. Yes.

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1 COFFEY, Q.C.:  
 2 Q. You see those involving Dr. Saltman.  
 3 MS. SMITH:  
 4 A. Yes.  
 5 COFFEY, Q.C.:  
 6 Q. Just put those in. Ms. Smith, did you provide  
 7 any of those e-mails to Mr. Simmons?  
 8 MS. SMITH:  
 9 A. Yes, I did.  
 10 COFFEY, Q.C.:  
 11 Q. How many of them?  
 12 MS. SMITH:  
 13 A. Whatever he has put into evidence.  
 14 COFFEY, Q.C.:  
 15 Q. So all the e-mails that he just took you  
 16 through, you provided them to him?  
 17 MS. SMITH:  
 18 A. Yes, I did.  
 19 COFFEY, Q.C.:  
 20 Q. Okay, there's a number of them.  
 21 MS. SMITH:  
 22 A. Yes.  
 23 COFFEY, Q.C.:  
 24 Q. And did you print any of them off yourself?  
 25 MS. SMITH:

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1 A. Did I print them?  
 2 COFFEY, Q.C.:  
 3 Q. Yes.  
 4 MS. SMITH:  
 5 A. That's how I gave them to him.  
 6 COFFEY, Q.C.:  
 7 Q. Oh, okay, that's the way, because you can  
 8 send--you can forward an e-mail to somebody,  
 9 of course, electronically.  
 10 MS. SMITH:  
 11 A. Sure, but I didn't. I just printed them.  
 12 COFFEY, Q.C.:  
 13 Q. You printed them off and gave them to him and  
 14 there were a number of such e-mails?  
 15 MS. SMITH:  
 16 A. Yes.  
 17 COFFEY, Q.C.:  
 18 Q. In locating those e-mails, did you do an  
 19 exhaustive search?  
 20 MS. SMITH:  
 21 A. No, Mr. Coffey, I did not.  
 22 COFFEY, Q.C.:  
 23 Q. Okay. Did you provide all those e-mails--it's  
 24 all kind of you did the--you kind of looked,  
 25 identified some, printed them off and then

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1 provided them to be provided here?  
 2 MS. SMITH:  
 3 A. Correct.  
 4 COFFEY, Q.C.:  
 5 Q. Okay, and do you know if you ever sent any e-  
 6 mails to Dr. Saltman, just a single e-mail  
 7 from you to him?  
 8 MS. SMITH:  
 9 A. I don't know. I probably did.  
 10 COFFEY, Q.C.:  
 11 Q. Okay, and perhaps then if we could ask you to  
 12 have an exhaustive--you know, such as you're  
 13 capable of or someone on your behalf is  
 14 capable of, a search in relation to any e-  
 15 mails that relate or could be said to be  
 16 related to the subject matters of those e-  
 17 mails that Mr. Simmons put in this morning,  
 18 okay? So if there's any more -  
 19 MR. SIMMONS:  
 20 Q. Commissioner, if I might, that request has  
 21 already been made of me last night, and I've  
 22 already replied that we would be asking Ms.  
 23 Smith to do that today. As you can  
 24 appreciate, Dr. Saltman came upon us as a  
 25 surprise, and so the opportunity to do a more

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1 exhaustive search was pretty limited before we  
 2 -  
 3 THE COMMISSIONER:  
 4 Q. The request is a narrow one, and am I taking  
 5 it everybody is agreeing that it will be done?  
 6 MS. SMITH:  
 7 A. I will do whatever is requested of me.  
 8 MR. SIMMONS:  
 9 Q. Yes, certainly, I've already responded that we  
 10 will be doing it.  
 11 THE COMMISSIONER:  
 12 Q. All right. Thank you, Mr. Simmons.  
 13 COFFEY, Q.C.:  
 14 Q. And thank you very much.  
 15 MS. SMITH:  
 16 A. Thank you.  
 17 MS. SHARON SMITH, EXAMINATION BY MADAM COMMISSIONER  
 18 THE COMMISSIONER:  
 19 Q. Ms. Smith, really I don't have much in  
 20 addition to a request of you, but just  
 21 listening to your life, it seems to me that I  
 22 don't see how physically you attend all the  
 23 meetings of the committees that you are in.  
 24 MS. SMITH:  
 25 A. It's a very challenging position for many of

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1 us within the health care system, I have to  
 2 say.  
 3 THE COMMISSIONER:  
 4 Q. And I'm sort of sitting here wondering sort of  
 5 aren't there ways--aren't there other ways of  
 6 doing it so that you don't have to spend all  
 7 your time in committee meetings, because I'm  
 8 sure you have other things to do and think  
 9 about.  
 10 MS. SMITH:  
 11 A. I think that some of these committees, they  
 12 might sound more onerous than what they really  
 13 are, and some work actually does happen at  
 14 some of these committee meetings, and progress  
 15 may be sometimes glacial, but it does happen.  
 16 It is--I guess in able to be able to include  
 17 people who need to be involved in the  
 18 decisions, we have to have some of these  
 19 bigger working groups and committees in place.  
 20 THE COMMISSIONER:  
 21 Q. And what about on a practical level? Do they--  
 22 you know, I'm sure everybody in this room has  
 23 had their share of committees.  
 24 MS. SMITH:  
 25 A. I've had more than my share.

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1 THE COMMISSIONER:  
 2 Q. Yes, I'm sure you have, and often they're a  
 3 ritualistic dance, shall I say. There's  
 4 really not a lot accomplished except that you  
 5 can then sort of go back in your office and  
 6 say "well, they know about it, and if they  
 7 don't come up with some response, then I can  
 8 assume that I proceed ahead."  
 9 MS. SMITH:  
 10 A. Um-hm.  
 11 THE COMMISSIONER:  
 12 Q. So is it your experience that you have that  
 13 kind of meeting or are your--is your general  
 14 experience with these meetings that they are  
 15 accomplishing something?  
 16 MS. SMITH:  
 17 A. I certainly have had committees where I felt  
 18 that I would leave the committee and think  
 19 that was an utter and complete waste of my  
 20 time, but the committees that we have  
 21 established within our program, within the  
 22 Cancer Centres, I think we have them  
 23 positioned in such a way to be able to action  
 24 items and to resolve issues. So some of our  
 25 committees are very, very good in terms of

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1 functioning.  
 2 THE COMMISSIONER:  
 3 Q. So you're telling me, within your area -  
 4 MS. SMITH:  
 5 A. Some are -  
 6 THE COMMISSIONER:  
 7 Q. - your committees work?  
 8 MS. SMITH:  
 9 A. I like my committees.  
 10 THE COMMISSIONER:  
 11 Q. Maybe not in the rest of Eastern Health, but  
 12 at least where you are, they work.  
 13 MS. SMITH:  
 14 A. Well, I wouldn't say that all of the Eastern  
 15 Health committees don't work, but there are  
 16 some that I do think so.  
 17 THE COMMISSIONER:  
 18 Q. Okay, all right. Thank you very much for your  
 19 contribution. I appreciate it.  
 20 MS. SMITH:  
 21 A. Thank you. Good luck with your report.  
 22 THE COMMISSIONER:  
 23 Q. Thank you. That I'll need. Would you like me  
 24 to take the morning break now so that we can  
 25 set up for the next witness?

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1 CHAYTOR, Q.C.:  
 2 Q. Perhaps there's one issue that we can resolve  
 3 before we do that.  
 4 THE COMMISSIONER:  
 5 Q. Okay.  
 6 CHAYTOR, Q.C.:  
 7 Q. There was the issue of whether Ms. Predham  
 8 would need to come back to be questioned on  
 9 re-direct.  
 10 THE COMMISSIONER:  
 11 Q. Okay.  
 12 CHAYTOR, Q.C.:  
 13 Q. We had an Exhibit P-0309 which was on hold for  
 14 some time as there was a - there is a claim of  
 15 privilege by Eastern Health regarding that  
 16 document.  
 17 THE COMMISSIONER:  
 18 Q. Uh-hm.  
 19 CHAYTOR, Q.C.:  
 20 Q. And it was the content of that document that I  
 21 wished to examine with Ms. Predham, and  
 22 Commission counsel and Mr. Simmons have now  
 23 agreed that a redacted version of that  
 24 document can be entered into evidence.  
 25 THE COMMISSIONER:

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1 Q. Okay.  
 2 CHAYTOR, Q.C.:  
 3 Q. So I would ask, please, if P-0309 could be  
 4 entered.  
 5 THE COMMISSIONER:  
 6 Q. 309, redacted version. You've seen this, Mr.  
 7 Simmons?  
 8 MR. SIMMONS:  
 9 Q. I have, yes.  
 10 THE COMMISSIONER:  
 11 Q. All right, entered.  
 12 CHAYTOR, Q.C.:  
 13 Q. So there will be no need then for Ms. Predham  
 14 to come back.  
 15 THE COMMISSIONER:  
 16 Q. With the entering of this document, you're not  
 17 seeking to have Ms. Predham come back?  
 18 CHAYTOR, Q.C.:  
 19 Q. That's correct.  
 20 THE COMMISSIONER:  
 21 Q. All right, entered. Is there anything else  
 22 then outstanding before the break?  
 23 CHAYTOR, Q.C.:  
 24 Q. No, that's it.  
 25 EXHIBIT MARKED AND ENTERED - P-0309

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1 THE COMMISSIONER:  
 2 Q. All right, we'll take the morning break.  
 3 (BREAK)  
 4 THE COMMISSIONER:  
 5 Q. Please be seated. Ms. Newbury.  
 6 MS. NEWBURY:  
 7 Q. Commissioner, there is an exhibit that we  
 8 would like to have entered and this has been  
 9 distributed to counsel.  
 10 THE COMMISSIONER:  
 11 Q. Okay.  
 12 MS. NEWBURY:  
 13 Q. I believe it's P-3712.  
 14 THE COMMISSIONER:  
 15 Q. Yes.  
 16 MS. NEWBURY:  
 17 Q. And just for explanation, this is information  
 18 from the Centre for Health Information and it  
 19 has a spreadsheet, plus an e-mail, explaining  
 20 the request to NLCHI and a cover letter from  
 21 NLCHI that was attached with the database  
 22 information.  
 23 THE COMMISSIONER:  
 24 Q. Okay, yes, I understand this was requested  
 25 some time ago.

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1 MS. NEWBURY:  
 2 Q. Yes.  
 3 THE COMMISSIONER:  
 4 Q. Was it?  
 5 MS. NEWBURY:  
 6 Q. I think it was the latter part of October.  
 7 October 27th was the initial request.  
 8 THE COMMISSIONER:  
 9 Q. All right. In any event, yes.  
 10 MS. NEWBURY:  
 11 Q. Thank you.  
 12 THE COMMISSIONER:  
 13 Q. Thank you, that's entered.  
 14 EXHIBIT MARKED AND ENTERED - P-3712  
 15 THE COMMISSIONER:  
 16 Q. Mr. Simmons.  
 17 MR. SIMMONS:  
 18 Q. Commissioner, if I might also, at the  
 19 conclusion of Dr. Saltman's evidence, I'd  
 20 reserved my cross-examination at that point  
 21 and we've now concluded that it will not be  
 22 necessary to bring Dr. Saltman back, and I  
 23 won't be conducting any cross-examination of  
 24 him.  
 25 THE COMMISSIONER:

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1 Q. All right. There are no other witnesses you  
 2 wish to re-examine then?  
 3 MR. SIMMONS:  
 4 Q. No, there are not, Commissioner.  
 5 THE COMMISSIONER:  
 6 Q. All right, thank you. Now that we're cluing  
 7 up outstanding matters, I have one of my own.  
 8 I understand from discussions with the  
 9 Commission counsel that all parties were asked  
 10 to indicate to Commission counsel whether or  
 11 not there were additional witnesses which they  
 12 wished to be called, and we did, in fact, get  
 13 some requests to call particular individuals.  
 14 I just want to confirm with those who are here  
 15 representing parties with standing that there  
 16 are no outstanding witnesses of that nature.  
 17 Mr. Pritchard?  
 18 MR. PRITCHARD:  
 19 Q. No, Commissioner, there are no outstanding  
 20 witnesses that I wish to call.  
 21 THE COMMISSIONER:  
 22 Q. Mr. Simmons.  
 23 MR. SIMMONS:  
 24 Q. Likewise, Commissioner, there are none.  
 25 BROWNE, Q.C.:

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1 Q. None, Commissioner.  
 2 MS. NEWBURY:  
 3 Q. None for me, Commissioner.  
 4 THE COMMISSIONER:  
 5 Q. Mr. Crosbie.  
 6 CROSBIE, Q.C.:  
 7 Q. There is one - something I've been discussing  
 8 with Mr. Coffey. Perhaps he can state what  
 9 his approach or attitude to that is.  
 10 THE COMMISSIONER:  
 11 Q. I have no - well, I have no idea.  
 12 COFFEY, Q.C.:  
 13 Q. Commissioner, there is - Mr. Crosbie has  
 14 identified a patient who is a client of his,  
 15 has provided certain materials from the  
 16 patient's file to myself, and this has  
 17 happened in the past two days, and I think  
 18 he's just provided some late yesterday or this  
 19 morning, and I've not yet had the opportunity  
 20 to look at them, but I've advised him that I  
 21 will review them and I will let him know if I  
 22 propose to do anything further in terms of  
 23 communicating with any of the health  
 24 authorities concerning -  
 25 THE COMMISSIONER:

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1 Q. All right.  
 2 COFFEY, Q.C.:  
 3 Q. Okay, concerning that matter, okay.  
 4 CROSBIE, Q.C.:  
 5 Q. Thank you.  
 6 THE COMMISSIONER:  
 7 Q. Mr. Crosbie, otherwise there are no  
 8 outstanding requests on your part. Mr. Pike.  
 9 PIKE, Q.C.:  
 10 Q. None from the Medical Association.  
 11 THE COMMISSIONER:  
 12 Q. Mr. Pike, we have news. It seems like only  
 13 yesterday I was congratulating you on your QC.  
 14 PIKE, Q.C.:  
 15 Q. Thank you.  
 16 THE COMMISSIONER:  
 17 Q. And then tout suite, there you are a fellow  
 18 Judge.  
 19 PIKE, Q.C.:  
 20 Q. Thank you very much, Commissioner.  
 21 THE COMMISSIONER:  
 22 Q. Welcome to the world.  
 23 PIKE, Q.C.:  
 24 Q. I can say, Madam Commissioner, I take some  
 25 comfort in the fact that when I start my new

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1 job, and you go back to your old job, and I  
 2 fall into error, as I'm so often wont to do,  
 3 you'll be there to correct me.  
 4 THE COMMISSIONER:  
 5 Q. We've learned it's now called quality control.  
 6 PIKE, Q.C.:  
 7 Q. Thank you very much.  
 8 THE COMMISSIONER:  
 9 Q. Now we have another witness or two.  
 10 CHAYTOR, Q.C.:  
 11 Q. Yes, Commissioner, on March 19th, I had the  
 12 honour of standing here and introducing our  
 13 first witness, breast cancer patient, Beverley  
 14 Green, and today 128 hearing days later, I  
 15 stand here and I'm very privileged to  
 16 introduce the 92nd and 93rd witnesses, which  
 17 may be - we're intending would be our final  
 18 witnesses.  
 19 THE COMMISSIONER:  
 20 Q. Okay.  
 21 CHAYTOR, Q.C.:  
 22 Q. And so I'd ask, please, if Jane Hopkins, and  
 23 her mother, breast cancer patient, Elizabeth  
 24 Finlayson please could take the stand.  
 25 THE COMMISSIONER:

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1 Q. Thank you.  
 2 MS. ELIZABETH FINLAYSON (SWORN)  
 3 REGISTRAR:  
 4 Q. Would you please state and spell your complete  
 5 name for the Commission?  
 6 MS. FINLAYSON:  
 7 A. My name is Elizabeth Finlayson, E-L-I-Z-A-B-E-  
 8 T-H F-I-N-L-A-Y-S-O-N.  
 9 MS. JANE HOPKINS (SWORN)  
 10 REGISTRAR:  
 11 Q. Would you please state and spell your complete  
 12 name for the Commission?  
 13 MS. HOPKINS:  
 14 A. Jane Hopkins, J-A-N-E H-O-P-K-I-N-S.  
 15 EXAMINATION BY SANDRA CHAYTOR, Q.C.  
 16 CHAYTOR, Q.C.:  
 17 Q. Good morning.  
 18 MS. FINLAYSON:  
 19 A. Good morning, Sandra.  
 20 MS. HOPKINS:  
 21 A. Good morning.  
 22 CHAYTOR, Q.C.:  
 23 Q. I have, Commissioner, a few new exhibits,  
 24 please, that I would ask to have entered, P-  
 25 3696 to P-3700 inclusive, and C-0279 to C-0313

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1 inclusive.  
 2 THE COMMISSIONER:  
 3 Q. Entered.  
 4 EXHIBITS MARKED AND ENTERED - P-3696 THROUGH P- 3700  
 5 EXHIBITS MARKED AND ENTERED - C-0279 THROUGH C- 0313  
 6 CHAYTOR, Q.C.:  
 7 Q. Mrs. Finlayson, perhaps you could tell us  
 8 where do you live?  
 9 MS. FINLAYSON:  
 10 A. I live in Wabush, Labrador.  
 11 CHAYTOR, Q.C.:  
 12 Q. Okay, and Ms. Hopkins, where do you live?  
 13 MS. HOPKINS:  
 14 A. Cambridge, Ontario.  
 15 CHAYTOR, Q.C.:  
 16 Q. And thank you both for travelling then to be  
 17 with us today.  
 18 MS. FINLAYSON:  
 19 A. Thank you for having us.  
 20 CHAYTOR, Q.C.:  
 21 Q. I understand, Mrs. Finlayson, that you are a  
 22 breast cancer patient?  
 23 MS. FINLAYSON:  
 24 A. Yes, I am.  
 25 CHAYTOR, Q.C.:

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1 Q. And perhaps you can tell the Commissioner when  
 2 were you diagnosed with breast cancer?  
 3 MS. FINLAYSON:  
 4 A. I was diagnosed with breast cancer August,  
 5 2000.  
 6 CHAYTOR, Q.C.:  
 7 Q. And where were you diagnosed?  
 8 MS. FINLAYSON:  
 9 A. I was diagnosed in St. Clare's Hospital here  
 10 in St. John's.  
 11 CHAYTOR, Q.C.:  
 12 Q. If we could bring up, please, C-0280. This  
 13 will appear on your screen there.  
 14 MS. FINLAYSON:  
 15 A. Uh-hm.  
 16 CHAYTOR, Q.C.:  
 17 Q. And you'll see here, Mrs. Finlayson, this is a  
 18 pathology report.  
 19 MS. FINLAYSON:  
 20 A. Uh-hm.  
 21 CHAYTOR, Q.C.:  
 22 Q. Tumour registry report it's called, from St.  
 23 Clare's Hospital site.  
 24 MS. FINLAYSON:  
 25 A. Uh-hm.

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1 CHAYTOR, Q.C.:  
 2 Q. And it's a left breast needle core biopsy  
 3 infiltrating ductal carcinoma, and signature  
 4 on file is Dr. Denic, August 25th, 2000.  
 5 MS. FINLAYSON:  
 6 A. Uh-hm.  
 7 CHAYTOR, Q.C.:  
 8 Q. And his diagnosis, as I've pointed out, is  
 9 infiltrating ductal carcinoma. So I take it  
 10 your diagnosis on the basis of a needle core  
 11 biopsy was in August, August 25th, 2000, and  
 12 you were diagnosed then with your breast  
 13 cancer in your left breast?  
 14 MS. FINLAYSON:  
 15 A. Yes.  
 16 CHAYTOR, Q.C.:  
 17 Q. And this sample was left breast core in B5  
 18 fixative is indicated here. What happened  
 19 after that, Mrs. Finlayson, did you have to  
 20 undergo any - after you had your biopsy and  
 21 you're told this diagnosis, did you have to  
 22 undergo any surgery?  
 23 MS. FINLAYSON:  
 24 A. Yes, I had my breast removed in Labrador City  
 25 on October - the 2nd of the 3rd of October,

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1 and in November I came out here to the Cancer  
 2 Clinic to see oncologist, as I thought was an  
 3 oncologist, but it wasn't an oncologist at  
 4 all, just a doctor.  
 5 CHAYTOR, Q.C.:  
 6 Q. A different doctor?  
 7 MS. FINLAYSON:  
 8 A. Yes.  
 9 CHAYTOR, Q.C.:  
 10 Q. So who originally told you - after you had  
 11 your biopsy done, who gave you your diagnosis  
 12 that this was, in fact, breast cancer?  
 13 MS. FINLAYSON:  
 14 A. Dr. Colbourne, Dr. Ann Colbourne.  
 15 CHAYTOR, Q.C.:  
 16 Q. And when was that?  
 17 MS. FINLAYSON:  
 18 A. That was in November, yeah, around the middle  
 19 of November, around there.  
 20 CHAYTOR, Q.C.:  
 21 Q. Of 2000?  
 22 MS. FINLAYSON:  
 23 A. Yes.  
 24 CHAYTOR, Q.C.:  
 25 Q. And is Dr. Colbourne the doctor that you saw

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1 here in St. John's at the Cancer Clinic?  
 2 MS. FINLAYSON:  
 3 A. Yes.  
 4 CHAYTOR, Q.C.:  
 5 Q. Okay. So after having your biopsy in St.  
 6 John's, you then went back to Labrador and in  
 7 Labrador in October, you then had your  
 8 mastectomy?  
 9 MS. FINLAYSON:  
 10 A. Yes.  
 11 CHAYTOR, Q.C.:  
 12 Q. And if we could bring up, please, C-0282.  
 13 This is called a discharge summary and it's  
 14 from your chart. You see your name here.  
 15 MS. FINLAYSON:  
 16 A. Uh-hm.  
 17 CHAYTOR, Q.C.:  
 18 Q. And it's from the Captain William Jackman  
 19 Memorial Hospital?  
 20 MS. FINLAYSON:  
 21 A. Yes.  
 22 CHAYTOR, Q.C.:  
 23 Q. And date of admission was October 2nd, 2000,  
 24 date of discharge, October 5th, 2000, and the  
 25 final diagnosis was carcinoma left breast, and

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1 indicates that you've had a mastectomy?  
 2 MS. FINLAYSON:  
 3 A. Uh-hm.  
 4 CHAYTOR, Q.C.:  
 5 Q. So you were in hospital about - three days,  
 6 three days in Labrador?  
 7 MS. FINLAYSON:  
 8 A. Yes.  
 9 CHAYTOR, Q.C.:  
 10 Q. Okay, and if we could then please look at C-  
 11 0284. This is then a pathology report from  
 12 the Health Care Corporation of St. John's.  
 13 I'm just going to take you to the second page  
 14 here, and you'll see your breast specimen has  
 15 been sent to St. John's, "Left breast  
 16 specimen, mastectomy, infiltrating ductal  
 17 carcinoma", and that's signed by - you'll see  
 18 that your specimen was, I should point out  
 19 here, was received in 175 millilitres of  
 20 formalin. So from Labrador, I guess, your  
 21 specimen was sent then to St. John's, and it's  
 22 signed off on October 13th, 2000, by a Dr.  
 23 Rasty. So Dr. Rasty has done the tumour  
 24 summary and made the diagnosis on the basis of  
 25 your mastectomy, which is infiltrating ductal

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1 carcinoma, similar to what Dr. Denic found on  
 2 your - the same as what Dr. Denic found on  
 3 your core biopsy?  
 4 MS. FINLAYSON:  
 5 A. Yes.  
 6 CHAYTOR, Q.C.:  
 7 Q. And so this - this was on October 13th, 2000,  
 8 and then what happened after your surgery?  
 9 You came to St. John's for your treatment.  
 10 MS. FINLAYSON:  
 11 A. Yes.  
 12 CHAYTOR, Q.C.:  
 13 Q. And that was in November, you say?  
 14 MS. FINLAYSON:  
 15 A. Yes.  
 16 CHAYTOR, Q.C.:  
 17 Q. And when you were coming to St. John's, who  
 18 did you think you were going to be meeting and  
 19 who would be looking after you here in St.  
 20 John's?  
 21 MS. FINLAYSON:  
 22 A. Well, I figured I'd be talking to a cancer  
 23 doctor where I had my breast off, of course,  
 24 and we went in, we talked, and I thought it  
 25 was an oncologist, you know. So she told me

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1 I'd have to have around four bouts of chemo,  
 2 and probably 25 radiation treatments.  
 3 CHAYTOR, Q.C.:  
 4 Q. And who was this?  
 5 MS. FINLAYSON:  
 6 A. Dr. Colbourne.  
 7 CHAYTOR, Q.C.:  
 8 Q. Dr. Colbourne, okay, and did you meet with any  
 9 other doctors at that time when you first came  
 10 in and were assessed? Was she the only doctor  
 11 you saw?  
 12 MS. FINLAYSON:  
 13 A. She was the only one I saw then.  
 14 CHAYTOR, Q.C.:  
 15 Q. Okay, and if we could look at, please, C-0287.  
 16 This is called a first assessment summary and  
 17 we've seen those for other patients as well,  
 18 and on the third page, it's indicated that a  
 19 Dr. Ross signed - Dr. Ross dictated, I guess,  
 20 because this looks like Dr. Colbourne's  
 21 signature.  
 22 MS. FINLAYSON:  
 23 A. Uh-hm.  
 24 CHAYTOR, Q.C.:  
 25 Q. And she's indicated to be an internist?

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1 MS. FINLAYSON:  
 2 A. Yes.  
 3 CHAYTOR, Q.C.:  
 4 Q. Okay, and Dr - I'll just take you through some  
 5 of what's written here in Dr. Colbourne's  
 6 first assessment report. We'll see the  
 7 diagnosis as indicated to be moderately  
 8 differentiated ductal carcinoma, and she gives  
 9 a history of your illness being, "A 61 year  
 10 old lady was transferred to the clinic today  
 11 with regards to starting chemo, radiation, for  
 12 what looked to be at the end of stage three  
 13 breast cancer, where a modified radical  
 14 mastectomy on the left side was performed and  
 15 found to be moderately differentiated  
 16 infiltrating ductal carcinoma stage with two  
 17 tumours at the same specimen taken out, and  
 18 the deepest margin of two millimetres from  
 19 resection, and thirteen out of twenty-two  
 20 lymph nodes were found positive for the  
 21 tumour". Was that kind of information given  
 22 to you when you met with Dr. Colbourne in  
 23 terms of, for example, you had thirteen out of  
 24 your twenty-two lymph nodes affected, and that  
 25 it was thought to be a stage three breast

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1 cancer?  
 2 MS. FINLAYSON:  
 3 A. Yes, yes.  
 4 CHAYTOR, Q.C.:  
 5 Q. Then there's some about your past medical  
 6 history, and a physical examination, and after  
 7 assessment and discussion, she has, "Mrs.  
 8 Finlayson's physical condition was rather  
 9 normal overall, and a discussion was conducted  
 10 by Dr. Colbourne about several issues that we  
 11 mentioned above, and she's decided to go ahead  
 12 with an AC regime of chemotherapy, plus or  
 13 minus concurrent radiation. All the pros and  
 14 cons of the chemotherapy were discussed with  
 15 Mrs. Finlayson, and all issues were answered.  
 16 She was given a prescription for a wig and a  
 17 left breast implant. She's supposed to be  
 18 checked again in one week's time by Dr.  
 19 Colbourne. It is worth noting that this lady  
 20 has been discovered to have this problem on a  
 21 routine mammogram - screening mammography. The  
 22 remainder of the other issues were also  
 23 discussed", and then you're booked for a bone  
 24 scan and some other procedures, and you're  
 25 booked for chemotherapy on November 22nd.

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1 MS. FINLAYSON:  
 2 A. Yes.  
 3 CHAYTOR, Q.C.:  
 4 Q. Okay. Then if we could have, C-0288. Then  
 5 you're seen on November 22nd by Dr. Colbourne  
 6 in the medical oncology clinic. "Elizabeth  
 7 returns to follow up prior to starting her  
 8 chemotherapy with AC cycle number one today.  
 9 We reviewed the indication and side effects.  
 10 Written consent has been obtained.  
 11 Prescriptions are written. We will plan to  
 12 proceed with chemotherapy cycle number one  
 13 today. She will receive cycle two to four at  
 14 home in Labrador. We will see her back after  
 15 chemotherapy is completed. She's due at the  
 16 radiation oncologist on Friday". So now, Ms.  
 17 Finlayson, is that what happened, did you have  
 18 your first cycle here in St. John's and then  
 19 the remainder of your chemotherapy in  
 20 Labrador?  
 21 MS. FINLAYSON:  
 22 A. Yes.  
 23 CHAYTOR, Q.C.:  
 24 Q. Okay, and who did - who followed you while you  
 25 were in Labrador having your chemotherapy?

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1 Was there a physician involved in your care  
 2 during that?  
 3 MS. FINLAYSON:  
 4 A. Well, my family doctor, but there was no,  
 5 like, cancer doctor or anything there, just my  
 6 family doctor.  
 7 CHAYTOR, Q.C.:  
 8 Q. And so you would go into the hospital, I take  
 9 it, for your chemotherapy?  
 10 MS. FINLAYSON:  
 11 A. Yes.  
 12 CHAYTOR, Q.C.:  
 13 Q. And who would you see then? Just tell us a  
 14 bit about that. We haven't heard from anyone  
 15 who'd had their chemotherapy outside of the  
 16 Cancer Clinic. So how would you - who would  
 17 administer your chemotherapy in Labrador?  
 18 MS. FINLAYSON:  
 19 A. They had a chemo nurse there. I forget her  
 20 name right now, but I think her last name was  
 21 Dixon or Nixon, something like that, and we  
 22 had one little small room in the hospital, the  
 23 Captain Jackman, and with one chair, that was  
 24 it, and a small TV.  
 25 CHAYTOR, Q.C.:

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1 Q. And, Mrs. Finlayson, would your family doctor  
 2 see you then before you would have your  
 3 treatments and after you had your treatments?  
 4 How would that work? What was your family  
 5 doctor's involvement?  
 6 MS. FINLAYSON:  
 7 A. He wanted blood work done, of course, before  
 8 each treatment, and he came in a couple of  
 9 times and watched the nurse perform it because  
 10 I had the one that they put in my arm  
 11 intravenously, the chemo, and he used to come  
 12 in and ask me how I was doing.  
 13 CHAYTOR, Q.C.:  
 14 Q. So he came in, Dr. Costello, a couple of times  
 15 with you?  
 16 MS. FINLAYSON:  
 17 A. Yes, oh, yes.  
 18 CHAYTOR, Q.C.:  
 19 Q. But he wasn't always there?  
 20 MS. FINLAYSON:  
 21 A. No.  
 22 CHAYTOR, Q.C.:  
 23 Q. It was usually you and the nurse?  
 24 MS. FINLAYSON:  
 25 A. That's it, yes, and my daughter.

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1 CHAYTOR, Q.C.:

2 Q. And your daughter. It says here that you're

3 going to then see the radiation oncologist the

4 same week while you're still in St. John's in

5 November, 2000, and did that happen?

6 MS. FINLAYSON:

7 A. Yes.

8 CHAYTOR, Q.C.:

9 Q. Okay, and who did you see, who was the

10 radiation oncologist?

11 MS. FINLAYSON:

12 A. Dr. Thain.

13 CHAYTOR, Q.C.:

14 Q. Dr. Thain. If we could have, please, C-0289,

15 and this is November 24th, 2000, and you'll

16 see that it's written by Dr. Thain, radiation

17 oncologist?

18 MS. FINLAYSON:

19 A. Uh-hm.

20 CHAYTOR, Q.C.:

21 Q. And he indicates that - and he gives up here

22 the clinical diagnosis again.

23 MS. FINLAYSON:

24 A. Yes.

25 CHAYTOR, Q.C.:

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1 Q. And "Mrs. Finlayson was seen by medical

2 oncology initially, and she has been started

3 on AC chemotherapy already. She's had two

4 cycles of chemotherapy and has been tolerating

5 the chemotherapy reasonably well". Now is

6 that right, had you had by November 24th two

7 cycles of chemotherapy? How many did you have

8 in St. John's?

9 MS. FINLAYSON:

10 A. One.

11 CHAYTOR, Q.C.:

12 Q. "And in conclusion, this patient is a patient

13 with advanced carcinoma of the left breast who

14 is currently on chemotherapy. She would

15 require adjuvant radiation therapy to the left

16 chest wall, supraclavical fossa and axilla to

17 be started about four to six weeks after her

18 last course of chemotherapy. I've explained

19 the details of radiation, the side effects and

20 the rationale to the patient and her husband."

21 They are agreeable to it. And Mrs. Finlayson,

22 when I read through Dr. Thain's note and when

23 I read through the first assessment by Dr.

24 Colbourne, I don't see any reference to

25 hormone receptor status and that's what we

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1 call here ER/PR, your ER/PR status. Did

2 either Dr. Thain or Dr. Colbourne discuss your

3 hormone receptor status with you?

4 MS. FINLAYSON:

5 A. Never ever mentioned.

6 CHAYTOR, Q.C.:

7 Q. Okay, and we understand that one of the tests

8 conducted on breast cancer tissue at the time

9 of diagnosis is a test to determine in

10 patients hormone receptor tests. Did anyone

11 discuss that with you, hormone receptor

12 status, ER/PR? For example, what about Dr.

13 Costello, did he bring it up with you?

14 MS. FINLAYSON:

15 A. No, not that I recall.

16 CHAYTOR, Q.C.:

17 Q. And if we could go back, please, to C-0284?

18 And this is your pathology report that I

19 showed you a few moments ago and you were seen

20 again, if we keep our dates in mind, November

21 22nd, November 24th in St. John's. And then

22 added to your, at page 1 of this report,

23 you'll see the first addendum is December 5,

24 2000 and the results of ER/PR

25 immunohistochemical assessment are as follows,

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1 and then we have "estrogen receptor is

2 negative, progesterone receptor is positive,

3 40 to 50 percent of tumour cells" and again,

4 that's signed off by Dr. Rasty. So it

5 appears, according to this, that the addendum

6 with your ER/PR results aren't entered on your

7 chart until December 5th, 2000. And where

8 would you have been by December 5th, 2000?

9 Are you back in Labrador then?

10 MS. FINLAYSON:

11 A. Yes.

12 CHAYTOR, Q.C.:

13 Q. So, Mrs. Finlayson, at the time of your

14 diagnosis in 2000, were you ever offered

15 hormonal therapy?

16 MS. FINLAYSON:

17 A. No.

18 CHAYTOR, Q.C.:

19 Q. If we could look, please, at C-0290? And Ms.

20 Finlayson, this is the next progress note and

21 it appears that you're in St. John's seeing

22 Dr. Thain, radiation oncologist, March 14th,

23 2001. "Mrs. Finlayson is seen in the Cancer

24 Clinic prior to her radiation simulation. She

25 is feeling well and recovered well from her

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1 chemotherapy." So I take it by this point in  
 2 time, March of 2001, you've completed your  
 3 chemotherapy in Labrador and you're now back  
 4 in St. John's to begin your radiation?  
 5 MS. FINLAYSON:  
 6 A. Yes.  
 7 CHAYTOR, Q.C.:  
 8 Q. And he says "I have planned for her to get  
 9 radiation to the left chest wall"--and he goes  
 10 on from there--"in 25 daily fractions." And  
 11 is that then what happened? Did you stay in  
 12 St. John's then and complete your radiation  
 13 therapy?  
 14 MS. FINLAYSON:  
 15 A. Yes.  
 16 CHAYTOR, Q.C.:  
 17 Q. And how did things go? You've been through  
 18 your chemotherapy then and your radiation and  
 19 how were you feeling throughout this whole  
 20 period?  
 21 MS. FINLAYSON:  
 22 A. I was feeling good. A little bit tired, but  
 23 other than that, I was feeling good.  
 24 CHAYTOR, Q.C.:  
 25 Q. And after you finished then your radiation

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1 therapy and if we could look, I believe it  
 2 might be at C-291 and this is called June  
 3 27th, 2001 date and it's a radiation treatment  
 4 summary and it's done by Dr. Cook as a locum  
 5 for, I guess, Dr. Thain. "Elizabeth received  
 6 left chest wall and regional nodule radiation  
 7 from March 19th, to April 20th, inclusive,  
 8 2001." So is that right, you underwent your  
 9 chemo from March 19th to April 20th?  
 10 MS. FINLAYSON:  
 11 A. Yes, that was right.  
 12 CHAYTOR, Q.C.:  
 13 Q. And it's indicated here "In addition, a right  
 14 anterior oblique field was used to deliver the  
 15 25 fractions." So after finishing then April  
 16 20th, 2001, finishing your radiation treatment  
 17 here in St. John's, I take it you went home to  
 18 Labrador?  
 19 MS. FINLAYSON:  
 20 A. Yes.  
 21 CHAYTOR, Q.C.:  
 22 Q. And were you then seen periodically for follow  
 23 up at the Cancer Centre?  
 24 MS. FINLAYSON:  
 25 A. Never, never.

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1 CHAYTOR, Q.C.:  
 2 Q. Did anyone suggest to you that that should  
 3 happen or that you would be coming back?  
 4 MS. FINLAYSON:  
 5 A. Dr. Thain suggested that he'd be in Labrador  
 6 in six months after I had my radiation  
 7 treatment, but I never heard tell of him. I  
 8 was never called.  
 9 CHAYTOR, Q.C.:  
 10 Q. So did anybody from the Cancer Clinic ever  
 11 come to Labrador and see you?  
 12 MS. FINLAYSON:  
 13 A. No.  
 14 CHAYTOR, Q.C.:  
 15 Q. So what happened in between, who--were you  
 16 seeing anybody for your cancer in between?  
 17 MS. FINLAYSON:  
 18 A. No.  
 19 CHAYTOR, Q.C.:  
 20 Q. And did you continue to have, though, your  
 21 annual mammograms?  
 22 MS. FINLAYSON:  
 23 A. Yes, I did, yes.  
 24 CHAYTOR, Q.C.:  
 25 Q. And those were done in Labrador, were they?

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1 MS. FINLAYSON:  
 2 A. Yes.  
 3 CHAYTOR, Q.C.:  
 4 Q. And if I could have, please--well tell us  
 5 then, I guess, though, Ms. Finlayson first,  
 6 how things went for you after you're finished  
 7 your therapy in 2001, were you feeling fairly  
 8 well and did you continue to be well?  
 9 MS. FINLAYSON:  
 10 A. Yes, I felt really good, yes.  
 11 CHAYTOR, Q.C.:  
 12 Q. And when do you next have any issues? When do  
 13 you start not feeling so well?  
 14 MS. FINLAYSON:  
 15 A. Almost four and a half years later, I got this  
 16 dry cough and it continued for about a month,  
 17 so I figured it was just a cough, so I ignored  
 18 it, got cough syrup from the drugstore and  
 19 stuff like that, you know, so I finally  
 20 decided I'd go to my family doctor and see  
 21 what was going on. So he gave me some pills  
 22 and stuff like that to take for ten days, two  
 23 weeks or whatever, and I'd take that, I wasn't  
 24 getting any better. And I kept going back to  
 25 him about this cough and he kept giving me

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1 pills and medicine and all that stuff and it  
 2 still wasn't getting any better. That went on  
 3 for 14 months. So finally he decided he'd  
 4 send me out to St. Clare's to have the light  
 5 put down, Dr. Duguid, and they said it was  
 6 nothing, it was just a shadow on my lung, but  
 7 it wasn't cancer.  
 8 CHAYTOR, Q.C.:  
 9 Q. And do you ultimately then end up in hospital  
 10 in Labrador?  
 11 MS. FINLAYSON:  
 12 A. Yes. In July, of that year, I ended up in  
 13 hospital for ten days. They said I had  
 14 pneumonia.  
 15 CHAYTOR, Q.C.:  
 16 Q. And that's July, according to your records, of  
 17 2006?  
 18 MS. FINLAYSON:  
 19 A. Yes.  
 20 CHAYTOR, Q.C.:  
 21 Q. Now, Ms. Finlayson, in 2005, did anyone  
 22 contact you to tell you that there was  
 23 retesting of patients who was ER negative?  
 24 MS. FINLAYSON:  
 25 A. No, no.

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1 CHAYTOR, Q.C.:  
 2 Q. So what happened then in July of 2006 for you  
 3 to end up in hospital in Labrador?  
 4 MS. FINLAYSON:  
 5 A. Well I just couldn't breathe, so I was there,  
 6 like I said, for ten days. They said it was  
 7 pneumonia, so when I come out, I still had  
 8 this cough and I kept coughing. I couldn't  
 9 even talk to my kids on the phone, I'd have to  
 10 get my husband to talk for me. And so he  
 11 decided he'd send me out, this is September  
 12 now, he'd send me out to a specialist, Dr.  
 13 Gardiner, Paul Gardiner at St. Clare's  
 14 Hospital. So he checked me over and he said  
 15 he was talking to Dr. Duguid and he said  
 16 understand, he said, that we're going to  
 17 remove your middle lobe of your right lung  
 18 with surgery, and I said, well okay, if this  
 19 will stop me from coughing, I'll do anything,  
 20 I was so far gone then. And he said, well, he  
 21 said, if you want surgery, I can do it, but he  
 22 said I can't guarantee you that you'll stop  
 23 coughing. And I said, well, I'll try  
 24 anything, I can't live like this. So that was  
 25 the 12th or 13th of September and I had

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1 surgery on the 20th of September at St.  
 2 Clare's.  
 3 CHAYTOR, Q.C.:  
 4 Q. In 2006?  
 5 MS. FINLAYSON:  
 6 A. Yes.  
 7 CHAYTOR, Q.C.:  
 8 Q. And what was the outcome of that surgery?  
 9 MS. FINLAYSON:  
 10 A. Well they told me it was cancer, breast cancer  
 11 from my breast to my lung had spread.  
 12 CHAYTOR, Q.C.:  
 13 Q. And if we could look, please, at C-0292? And  
 14 this is from Labrador Grenfell Captain William  
 15 Jackman Memorial Hospital and this is your  
 16 stay in hospital there, it's a discharge  
 17 summary, with your name here.  
 18 MS. FINLAYSON:  
 19 A. Yes.  
 20 CHAYTOR, Q.C.:  
 21 Q. Date of admission was July 15th, 2006, date of  
 22 discharge July 24th, 2006 and the final  
 23 diagnosis was right middle lob pneumonia and  
 24 it indicates that you're also a diabetic.  
 25 MS. FINLAYSON:

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1 A. Yes.  
 2 CHAYTOR, Q.C.:  
 3 Q. So what happened after, then you had your  
 4 surgery in St. John's and you're told that you  
 5 have metastatic disease, your breast cancer is  
 6 now spread to your lungs, did you then receive  
 7 further follow up treatment in St. John's?  
 8 MS. FINLAYSON:  
 9 A. I was sent to the Cancer Clinic and I saw Dr.  
 10 Zulfiqar, he's a real nice doctor, I must say,  
 11 and he suggested that I have six chemo  
 12 treatments.  
 13 CHAYTOR, Q.C.:  
 14 Q. And when you were first seen then by Dr.  
 15 Zulfiqar and I take it this would be still in  
 16 September, 2006?  
 17 MS. FINLAYSON:  
 18 A. Yes.  
 19 CHAYTOR, Q.C.:  
 20 Q. Did Dr. Zulfiqar talk to you about--or anyone  
 21 in the Cancer Centre talk to you about if  
 22 there had been ER/PR retesting tests going on,  
 23 did anyone bring that up with you?  
 24 MS. FINLAYSON:  
 25 A. No, I never heard.

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1 CHAYTOR, Q.C.:

2 Q. Never heard. So nobody suggested to you that

3 perhaps they'd look at your test where you

4 were ER negative originally?

5 MS. FINLAYSON:

6 A. No, no.

7 CHAYTOR, Q.C.:

8 Q. If we could look, please, at C-0293? And this

9 is another first assessment and this one is

10 September 29th, 2006 and you will see on the

11 second page I'll take you to or maybe it's the

12 third page, it's three pages long and it's

13 signed off by Dr. Zulfiqar, medical

14 oncologist. So is this the first time then

15 you were seen by a medical oncologist?

16 MS. FINLAYSON:

17 A. Yes.

18 CHAYTOR, Q.C.:

19 Q. And he notes again your diagnosis, moderately

20 differentiated ductal carcinoma and "a 66 year

21 old female with recurrent metastatic breast

22 carcinoma with mets to the lungs." And you're

23 in to be seen for discussion of treatment

24 options. And he indicates, "She completed all

25 of her treatment in 2001"--or sorry, start

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1 here, "In 2000, she was given four cycles of

2 AC, followed by external beam radiation. She

3 completed all of her treatment in 2001 and

4 have been following with her family doctor on

5 a regular basis with annual mammograms. No

6 abnormalities were found." And Mrs.

7 Finlayson, is that right, was your family

8 doctor following you with respect to your

9 breast cancer?

10 MS. FINLAYSON:

11 A. No, it's just that he, like I had a physical

12 every year and go for a mammogram, that was

13 it.

14 CHAYTOR, Q.C.:

15 Q. So no different than what you were doing in

16 any event.

17 MS. FINLAYSON:

18 A. That's right.

19 CHAYTOR, Q.C.:

20 Q. And I guess he was following you for your

21 diabetes?

22 MS. FINLAYSON:

23 A. Yes, oh yes.

24 CHAYTOR, Q.C.:

25 Q. "Recently she started having a dry cough and

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1 occasional shortness of breath with wheezing."

2 And now this is September 29th, 2006. Had it

3 been recent that you're starting to have your

4 dry cough and shortness of breath or how long

5 had it been going on up to September, 2006?

6 MS. FINLAYSON:

7 A. Well it started May month, 2006.

8 CHAYTOR, Q.C.:

9 Q. So it's been some period of months.

10 MS. FINLAYSON:

11 A. Oh yes.

12 CHAYTOR, Q.C.:

13 Q. And "She continued to have this problem. In

14 Goose Bay, she went through another CT scan

15 which showed the increased density appropriate

16 to the right middle lobe region. There was"--

17 and I'm not sure what that word is Mrs.

18 Finlayson--"of the right middle lobe." And he

19 goes on then to talk about the operative

20 finding, he talks about you having had your

21 procedure. And the operative finding was the

22 presence of multiple nodules in her right

23 upper lobe, middle--right middle lobe and the

24 right lower lobe, including part of tumour

25 overlying pulmonary in the major fissure."

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1 And I'm not going to pretend I know what that

2 means either.

3 MS. FINLAYSON:

4 A. No.

5 CHAYTOR, Q.C.:

6 Q. "After wedge resection of the right middle

7 lobe, the pathologist confirmed the metastatic

8 adenocarcinoma possibly arising from previous

9 breast cancer and therefore, the further

10 lumpectomy attempt was abandoned and the right

11 chest tube was placed and she was discharged

12 home." And under his assessment and

13 discussion, he says "A 66 year old female with

14 recurrent metastatic breast cancer with mets

15 to lung which were obviously visible on right

16 thoractomy. I have had a discussion for a

17 verbal report with Dr. Beverley Carter, who

18 has reviewed the specimen and felt that it is

19 consistent with the previous breast primary."

20 And Dr. Carter has been here, so what I

21 understand this to be saying is that Dr.

22 Zulfiqar has contacted her and she has an

23 interest in breast pathology and she had

24 confirmed that it was from your original

25 breast primary. "I have requested"--then he

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1 says,--"HER2/neu and ER/PR level on them. I  
 2 will obtain a baseline CT of abdomen and  
 3 pelvis for her in Goose Bay when she returns."  
 4 Now, did Dr. Zulfiqar mention anything to you  
 5 about your ER/PR status while you were seeing  
 6 him on this visit?  
 7 MS. FINLAYSON:  
 8 A. No.  
 9 CHAYTOR, Q.C.:  
 10 Q. And it looks like he's requesting HER2/neu and  
 11 ER/PR level on them. So I'm not sure if he's  
 12 suggesting that on your original tumour or on  
 13 any tissue that they may have now taken. But  
 14 it goes on to say they understand that this is  
 15 a stage 4 metastatic breast cancer, so they've  
 16 discussed the treatment options with you. And  
 17 that they've told you it's a stage 4  
 18 metastatic breast cancer and "I have informed  
 19 them, unfortunately, this is not curable,  
 20 however, it can be treated and can be  
 21 controlled and slowed down. They verbalized  
 22 understanding and they know the treatment aim  
 23 is to improve survival and quality of life.  
 24 There is no fixed duration of chemotherapy."  
 25 So, Mrs. Finlayson, I take it this wasn't very

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1 good news that you were getting from Dr.  
 2 Zulfiqar?  
 3 MS. FINLAYSON:  
 4 A. No, no.  
 5 CHAYTOR, Q.C.:  
 6 Q. And Jane, from the family's perspective,  
 7 what's happening by this point in time in  
 8 September of 2006 when you know your mom has  
 9 metastatic disease?  
 10 MS. HOPKINS:  
 11 Q. Well it's devastating. We were with my mom  
 12 when she came out of surgery and we went to  
 13 see Paul Gardiner in his officer afterwards  
 14 and he told us that the cancer had spread to  
 15 her lung. Well, we'll just go forward, okay,  
 16 let's get this treated and everything else and  
 17 we went up to see my mom and, of course,  
 18 everybody was just shocked about it all.  
 19 CHAYTOR, Q.C.:  
 20 Q. And then on the next page, we have, it's  
 21 written here, "Because of her co-morbidities"-  
 22 -and I guess that includes your diabetes--"and  
 23 performance status at this time, it allows us  
 24 to give her 75 percent of the dose. As soon  
 25 as there is some debulking of the disease, by

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1 that time I will have the HER2/neu and ER/PR  
 2 levels available." So it appears that at this  
 3 point in time, Dr. Zulfiqar doesn't have or  
 4 hasn't referenced your original ER/PR test  
 5 that I showed you that was done back in  
 6 December 2000, it doesn't appear that it's  
 7 come to his attention, there's no reference of  
 8 it, at least here in this September 29th, 2006  
 9 report.  
 10 MS. FINLAYSON:  
 11 A. No.  
 12 CHAYTOR, Q.C.:  
 13 Q. "I am initially planning on proceeding with  
 14 the six cycles of chemo. After three cycles I  
 15 will do re-imaging studies. If her HER2/neu  
 16 is positive, we will add Herceptin on top of  
 17 it. If ER/PR is positive and we have  
 18 impressive response with Taxotere after six  
 19 cycles, we will stop chemotherapy and proceed  
 20 with hormonal treatment only and then follow  
 21 along. She verbalized understanding and I  
 22 have written a letter to Labrador City to  
 23 kindly assist in administering the  
 24 chemotherapy." So, Ms. Finlayson then, what  
 25 happens after that? You go back to Labrador

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1 and what treatment do you undergo?  
 2 MS. FINLAYSON:  
 3 A. I had six treatments of chemo, Taxotere and  
 4 like every three weeks, I'd have it.  
 5 CHAYTOR, Q.C.:  
 6 Q. And was it done, administered the same way,  
 7 that you would go into the hospital and the  
 8 nurse would be there with you.  
 9 MS. FINLAYSON:  
 10 A. Yes, that's right.  
 11 CHAYTOR, Q.C.:  
 12 Q. And was Dr. Costello your general practitioner  
 13 involved in your care then?  
 14 MS. FINLAYSON:  
 15 A. Just with my blood work.  
 16 CHAYTOR, Q.C.:  
 17 Q. So he'd do your blood work before you would  
 18 have your chemotherapy?  
 19 MS. FINLAYSON:  
 20 A. Yes.  
 21 CHAYTOR, Q.C.:  
 22 Q. If we could have please, C-0294? And I take  
 23 it Dr. Zulfiqar didn't have any discussion  
 24 with you about your previous ER/PR finding in  
 25 September, 2006?

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1 MS. FINLAYSON:  
 2 A. No.  
 3 CHAYTOR, Q.C.:  
 4 Q. And did he mention to you anything about a  
 5 retesting that had been taking place on the  
 6 ER/PR tests back then in September, 2006?  
 7 MS. FINLAYSON:  
 8 A. No, no.  
 9 CHAYTOR, Q.C.:  
 10 Q. And C-0294 is a pathology report and Dr.  
 11 Beverley Carter is the person who arranged  
 12 this and it's a final surgical pathology  
 13 report for Mount Sinai Hospital, dated October  
 14 26th--sorry, dated October 5th, 2006. And  
 15 it's returned October or date and time of  
 16 report is October 10th, 2006. And you'll see  
 17 that it's a consultation of HER2/neu  
 18 assessment and the test is done on your  
 19 HER2/neu and you're found to be negative.  
 20 And, Mrs. Finlayson, was that discussed with  
 21 you, the result of your HER2/neu test?  
 22 MS. FINLAYSON:  
 23 A. No.  
 24 CHAYTOR, Q.C.:  
 25 Q. And it appears while Zulfiqar had indicated he

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1 was going to get ER/PR and HER2/neu done,  
 2 there is only a HER2/neu that's done at this  
 3 point in at Mount Sinai. And was there any  
 4 further discussion with you about that?  
 5 MS. FINLAYSON:  
 6 A. He spoke something about it, but I can't, you  
 7 know, really understand what he was talking  
 8 about.  
 9 CHAYTOR, Q.C.:  
 10 Q. And is that later on?  
 11 MS. FINLAYSON:  
 12 A. Yes.  
 13 CHAYTOR, Q.C.:  
 14 Q. That's not at this point?  
 15 MS. FINLAYSON:  
 16 A. No, no.  
 17 CHAYTOR, Q.C.:  
 18 Q. And I'll bring you to some notes then about  
 19 your discussion that you eventually had with  
 20 him.  
 21 MS. FINLAYSON:  
 22 A. Yes.  
 23 CHAYTOR, Q.C.:  
 24 Q. And I understand that's quite some time later,  
 25 that's in fact this year in 2008?

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1 MS. FINLAYSON:  
 2 A. Oh yes, yeah, in August.  
 3 CHAYTOR, Q.C.:  
 4 Q. August of this year.  
 5 MS. FINLAYSON:  
 6 A. Yes.  
 7 CHAYTOR, Q.C.:  
 8 Q. And it appears if we look at the--and I won't  
 9 take you back through it right now, but if we  
 10 look at the surgical number here, that it is  
 11 from your breast specimen. So the HER2/neu  
 12 specimen is done on your original mastectomy  
 13 specimen. If we could then look, please, at--  
 14 well perhaps we'll go back to it, it's C-0284  
 15 and this is your pathology report, Mrs.  
 16 Finlayson, which I brought you to before. And  
 17 I showed you the first addendum of your ER/PR  
 18 status back in December of 2000 and then if we  
 19 come up, we'll see that there is the second  
 20 addendum is entered on your chart on October  
 21 12th, 2006, consultation to Mount Sinai  
 22 Hospital for immunohistochemical studies.  
 23 Block 1B shows HER2/neu protein as seen in  
 24 zero percent of cells using the antibody--and  
 25 they give the antibody and procedure--and is

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1 seen in zero percent of cells using the  
 2 antibody under this procedure. And so that's  
 3 your HER2/neu results, and it's entered or  
 4 signed off on your chart October 17th, 2006 by  
 5 Dr. Cook. And there's no indication, as I  
 6 said at that time that there is an ER/PR done  
 7 by Mount Sinai, it's just your HER2/neu.  
 8 MS. FINLAYSON:  
 9 A. Yes.  
 10 CHAYTOR, Q.C.:  
 11 Q. So I take it, Mrs. Finlayson then throughout  
 12 2006, nobody mentioned to you in St. John's  
 13 that--or in Labrador, Grenfell, in your  
 14 Labrador hospital either, that there was any  
 15 retesting taking place of hormone receptor  
 16 tests?  
 17 MS. FINLAYSON:  
 18 A. No.  
 19 CHAYTOR, Q.C.:  
 20 Q. And if I could look, please, at C-0295? And  
 21 this is another progress note and it's now  
 22 March 28th, 2007 and you're in the medical  
 23 oncology clinic. And I take it at this point  
 24 then, you're back into St. John's, so Dr.  
 25 Zulfiqar is following you now, you are being

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1 followed at the Cancer Clinic.  
 2 MS. FINLAYSON:  
 3 A. Yes.  
 4 CHAYTOR, Q.C.:  
 5 Q. And that's different from what happened in  
 6 2000?  
 7 MS. FINLAYSON:  
 8 A. Yes.  
 9 CHAYTOR, Q.C.:  
 10 Q. And he writes here that "A 67 year old female  
 11 with metastatic breast carcinoma with mets to  
 12 lung and bones." So I take it now they've  
 13 determined that you also have--your cancer is  
 14 spread to your bones. And he says you're  
 15 currently on Femara and Aredia. She was  
 16 diagnosed with stage 3 infiltrating ductal  
 17 carcinoma in 2000 and after a modified radical  
 18 mastectomy on October 30th, 2000, you had four  
 19 cycles of chemo, and he goes on with the  
 20 treatment that you had had. And then "She had  
 21 regular mammograms and was discovered to have  
 22 pulmonary mets due to chronic cough and  
 23 surgical exploration by thoracic surgery"--and  
 24 that's your surgery by Dr. Duguid.  
 25 MS. FINLAYSON:

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1 A. Yes.  
 2 CHAYTOR, Q.C.:  
 3 Q. Or Dr. Gardiner, sorry.  
 4 MS. FINLAYSON:  
 5 A. Dr. Gardiner.  
 6 CHAYTOR, Q.C.:  
 7 Q. "Revealed that there were multiple right lung  
 8 nodules. One of them on biopsy showed  
 9 adnocarcinoma consistent with a breast  
 10 primary. She received six cycles of  
 11 Taxotere." So you received your six cycles of  
 12 chemo.  
 13 MS. FINLAYSON:  
 14 A. Yes.  
 15 CHAYTOR, Q.C.:  
 16 Q. And then "She presents for follow up today.  
 17 Her original tumour was HER2/neu negative, ER  
 18 negative and PR 40 to 60 percent positive."  
 19 And this is the first time having reviewed  
 20 your chart, Mrs. Finlayson, this is the first  
 21 reference we see is March 28th, 2007 to your  
 22 ER/PR status. And prior to this point in  
 23 time, had you had any discussion with anyone  
 24 about your ER/PR status?  
 25 MS. FINLAYSON:

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1 A. No.  
 2 CHAYTOR, Q.C.:  
 3 Q. And in March of 2007, March 28th, 2007, did  
 4 Dr. Zulfiqar on that date discuss this with  
 5 you, what it would mean--or at any time then  
 6 once he takes over your care, discuss with you  
 7 your ER/PR status and the fact that you would  
 8 be a candidate now for the Femara?  
 9 MS. FINLAYSON:  
 10 A. No, we didn't discuss that, but he just told  
 11 me he'd put me on Femara, which was a hormone  
 12 pill.  
 13 CHAYTOR, Q.C.:  
 14 Q. And his impression and plan: "Because of her  
 15 near complete remission after six cycles of  
 16 Taxotere, we are now going to switch her  
 17 treatment to Femara. We discussed the side  
 18 effects of Femara, including but not confined  
 19 to"--and he goes on with your side effects.  
 20 So I take it it's at this point then that you  
 21 are put on the Femara?  
 22 MS. FINLAYSON:  
 23 A. Yes.  
 24 CHAYTOR, Q.C.:  
 25 Q. And obviously your original ER/PR scores have

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1 come to Dr. Zulfiqar's attention by this point  
 2 in time?  
 3 MS. FINLAYSON:  
 4 A. Yes.  
 5 CHAYTOR, Q.C.:  
 6 Q. And how long then did you continue on with the  
 7 Femara?  
 8 MS. FINLAYSON:  
 9 A. I was on Femara for 11 months.  
 10 CHAYTOR, Q.C.:  
 11 Q. And did it appear to be making a difference?  
 12 MS. FINLAYSON:  
 13 A. Yes, but I had to go to Goose Bay for a CAT  
 14 scan and a spot showed up on my liver, so he  
 15 decided to stop the Femara and give me more  
 16 chemo, which he did, in pill form.  
 17 CHAYTOR, Q.C.:  
 18 Q. Okay, and this, the decision to put you on  
 19 Femara, this is your original test done back  
 20 in 2000, was there any discussion to you or  
 21 any explanation to you that the ER/PR result  
 22 that I'm looking at here is something that was  
 23 done back in 2000? Did Dr. Zulfiqar talk to  
 24 you about that?  
 25 MS. FINLAYSON:

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1 A. No, no.  
 2 CHAYTOR, Q.C.:  
 3 Q. And if I could have then, please, C-0297? And  
 4 this is notes of a videoconference with Dr.  
 5 Zulfiqar and it's on July 5th, 2007.  
 6 MS. FINLAYSON:  
 7 A. Yes.  
 8 CHAYTOR, Q.C.:  
 9 Q. So it looks like you're seen via  
 10 videoconference with Dr. Zulfiqar and these  
 11 appear to be notes taken perhaps by the nurse  
 12 who would be in attendance.  
 13 MS. FINLAYSON:  
 14 A. Yes, yes.  
 15 CHAYTOR, Q.C.:  
 16 Q. Tell us how that works, how does--what do you  
 17 do to take part in a videoconference with your  
 18 doctor here in St. John's?  
 19 MS. FINLAYSON:  
 20 A. Well, we go into a special room, of course,  
 21 and a chemo nurse be's with me and my family  
 22 and we just talk back and forth, he telling me  
 23 what's going on and he'll ask me questions and  
 24 I'll answer him and so forth.  
 25 CHAYTOR, Q.C.:

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1 Q. And does the nurse do any kind of assessment  
 2 while you're there before you have your  
 3 discussion with Dr. Zulfiqar?  
 4 MS. FINLAYSON:  
 5 A. No, no.  
 6 CHAYTOR, Q.C.:  
 7 Q. And it says that on this day they discuss good  
 8 news, Femara is working. So it appeared to be  
 9 doing fairly good, lesions in your lung were  
 10 stable, no change, no chemo and you're taking  
 11 your Femara every day. And then you had your  
 12 Femara prescription then until March of 2008,  
 13 they're going to reschedule a CT scan for  
 14 three months and a teleconference post your CT  
 15 scan. And if we could look, please, at C-  
 16 0296? And then this is July 5th, 2007 and  
 17 this is Dr. Zulfiqar's note of your video  
 18 conference as well, and he refers to you again  
 19 as "67-year-old female with metastatic breast  
 20 carcinoma with mets to lung and bones.  
 21 Presently on Femara and Aredia" and he takes  
 22 you--he writes about your diagnosis again, and  
 23 "she received palliative chemotherapy with  
 24 Taxatere and after six cycles, she was started  
 25 on Femara because she was ER negative, PR 40

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1 to 60 percent positive, HER2 is negative." So  
 2 it appears the decision by Dr. Zulfiqar to put  
 3 you on the Femara, the hormone treatment, was  
 4 because of your original ER/PR.  
 5 MS. FINLAYSON:  
 6 A. Yes.  
 7 CHAYTOR, Q.C.:  
 8 Q. "Today, I saw her while doing a tele-oncology  
 9 conference," he calls it, "and the nurse  
 10 accompanying her was advised to send the  
 11 physical exam findings by her family  
 12 physician. Her other review of systems today  
 13 was unremarkable." So was Dr. Costello then  
 14 following you, doing physicals on you during  
 15 this period of time, and those findings then  
 16 being sent to Dr. Zulfiqar?  
 17 MS. FINLAYSON:  
 18 A. No, I had nothing like that.  
 19 CHAYTOR, Q.C.:  
 20 Q. That didn't happen, okay, and if we could then  
 21 please have C-0299? And this is now February  
 22 28th, 2008, and I believe this is also via  
 23 video-conference.  
 24 MS. FINLAYSON:  
 25 A. Yes.

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1 CHAYTOR, Q.C.:  
 2 Q. Okay, and again, he describes who you are and  
 3 the treatments that you've been through, and  
 4 that you had "remained stable on Femara since  
 5 July 2007" and he says "today I saw her via  
 6 video-conference. She has no new symptoms.  
 7 Complete review of system was unremarkable."  
 8 His impression "however, it is progressive  
 9 metastatic breast cancer, on Femara.  
 10 Progression in bones" and new lesion in your  
 11 liver. So this is what you're referring to,  
 12 that there's now a--at this point in time,  
 13 February '08, there was a lesion now in your  
 14 liver?  
 15 MS. FINLAYSON:  
 16 A. Yes.  
 17 CHAYTOR, Q.C.:  
 18 Q. "I have shared this imaging study findings  
 19 with Ms. Finlayson and her family via video  
 20 conference. They were sad to hear this,  
 21 however, were willing to proceed with the next  
 22 appropriate step." And he goes on from there,  
 23 and he puts you on "I'm going to calculate her  
 24 creiture (phonetic) clearance and adjust  
 25 appropriate dose," and this is your

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1 chemotherapy pill, I take it, is it?  
 2 MS. FINLAYSON:  
 3 A. Yes, yes.  
 4 CHAYTOR, Q.C.:  
 5 Q. Okay, and I take it, Jane, this was--or sorry,  
 6 Ms. Hopkins, this was another difficult day  
 7 for the family?  
 8 MS. HOPKINS:  
 9 Q. Of course.  
 10 CHAYTOR, Q.C.:  
 11 Q. So this is February then, 2008. Mrs.  
 12 Finlayson, what then happens with your  
 13 treatment? Do you continue to be seen by Dr.  
 14 Zulfiqar? And have you been back to St.  
 15 John's or do you normally have your  
 16 consultations with him via video-conferences?  
 17 MS. FINLAYSON:  
 18 A. Well, the last one was July, was it? No,  
 19 June.  
 20 CHAYTOR, Q.C.:  
 21 Q. Yes, there's more to come, but up to February  
 22 2008.  
 23 MS. FINLAYSON:  
 24 A. Yes.  
 25 CHAYTOR, Q.C.:

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1 Q. So you continue on then to see him?  
 2 MS. FINLAYSON:  
 3 A. Yes, with the tele-conference.  
 4 CHAYTOR, Q.C.:  
 5 Q. With the tele-conference?  
 6 MS. FINLAYSON:  
 7 A. Yes, yeah.  
 8 CHAYTOR, Q.C.:  
 9 Q. Okay, and then you come to St. John's again  
 10 then, I believe you were here in August?  
 11 MS. FINLAYSON:  
 12 A. August.  
 13 CHAYTOR, Q.C.:  
 14 Q. August is the next time?  
 15 MS. FINLAYSON:  
 16 A. Yes.  
 17 CHAYTOR, Q.C.:  
 18 Q. And in between, you're seen via video-  
 19 conference?  
 20 MS. FINLAYSON:  
 21 A. Yes.  
 22 CHAYTOR, Q.C.:  
 23 Q. Okay. When do you first then learn of such a  
 24 thing as retesting of the ER/PR for certain  
 25 patients? When did you learn about that?

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1 MS. FINLAYSON:  
 2 A. Well, I saw on the TV about this Inquiry that  
 3 was going on, and I didn't think much of it  
 4 first, and then there was people on the stand  
 5 and they were talking and I said "that sounds  
 6 like me," you know. So I phoned my daughter,  
 7 Jane, and she said "Mom, I'm going to look  
 8 into that for you" and she did.  
 9 CHAYTOR, Q.C.:  
 10 Q. Okay, and so then, Jane, perhaps you can take  
 11 it from there for us and tell us what is it  
 12 that you did?  
 13 MS. HOPKINS:  
 14 A. Well, my Mom gave me two numbers to phone, and  
 15 the first number I phoned was Ches Crosbie's  
 16 office, Sherry Geehan, I think her name was.  
 17 CHAYTOR, Q.C.:  
 18 Q. Okay, and you don't have to tell us about any  
 19 discussions with the lawyers.  
 20 MS. HOPKINS:  
 21 A. No. And then she gave me the number, "well,  
 22 here's a number" and I phoned the other number  
 23 and I was talking to Nancy Parsons, and I  
 24 asked Nancy Parsons.  
 25 CHAYTOR, Q.C.:

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1 Q. And what discussion then did you have with  
 2 Nancy Parsons?  
 3 MS. HOPKINS:  
 4 A. I told her who I was and "I'm phoning on  
 5 behalf of my mom" and I asked her to look at  
 6 her file.  
 7 CHAYTOR, Q.C.:  
 8 Q. And what did she -  
 9 MS. HOPKINS:  
 10 A. To see if she was tested at all or retested.  
 11 So Nancy was kind enough and she got back to  
 12 me and she said "your mom was retested--was  
 13 tested in 2001. She was never retested." She  
 14 said "would you like her retested?" I said  
 15 "of course." She said "here in St. John's or  
 16 Toronto?" and I said "well, Toronto." She  
 17 said "well, it'll be six weeks before we get  
 18 back to you on that," and I said "well, that's  
 19 fine" and we left it at that.  
 20 CHAYTOR, Q.C.:  
 21 Q. Okay, and if we could look, please, at P-3698?  
 22 And this is a message log sheet and it's  
 23 indicated to be March 27th, 2008, and you see  
 24 your mom's name here, Elizabeth Finlayson, and  
 25 her diagnosis it's 2002, for some reason

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1 written here, but "saw Dr. Zulfiqar, 2007" and  
 2 then there's something written here, and "Jane  
 3 Hopkins" and I take it your phone number.  
 4 MS. HOPKINS:  
 5 A. Yes.  
 6 CHAYTOR, Q.C.:  
 7 Q. Okay. So would this be the first contact  
 8 perhaps that you made, was it around then?  
 9 MS. HOPKINS:  
 10 A. Yes.  
 11 CHAYTOR, Q.C.:  
 12 Q. Okay, and then if we could look at, please, P-  
 13 3699? And we'll see here, your name, Mrs.  
 14 Finlayson, and then these are notes, we  
 15 understand, from Nancy Parsons, March 28th,  
 16 2008. "This patient's daughter is Jane  
 17 Hopkins. She is calling to ask what they  
 18 should do next. Her mother is very sick,  
 19 currently receiving chemo, now has cancer in  
 20 her lungs. She is inquiring why this patient  
 21 has been not more closely followed by the  
 22 Cancer Clinic. I told caller I would contact  
 23 the Cancer Clinic and ask someone who could  
 24 answer her question to call her next week. I  
 25 also checked patient's ER/PR test results from

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1 2000. Daughter has permission to speak on her  
 2 mother's behalf. E-mailed Sharon Smith, S.  
 3 Smith, and asked Dr. Denic to look patient's"-  
 4 -I'm not sure, something missing there.  
 5 "Spoke to Pat P." We understand that might be  
 6 Pat Pilgrim. "She advised me to check with  
 7 Wayne Miller, whether he has info on patient's  
 8 retest status. Not in the database. Dr.  
 9 Denic will have patient retested. I checked  
 10 with Ms. Hopkins. She decided, on behalf of  
 11 her mother, to have the sample retested at  
 12 Mount Sinai. Dr. Denic notified and will send  
 13 sample."  
 14 So this looks like the follow up work  
 15 that Nancy did after receiving--Nancy Parsons  
 16 did after receiving your message. And then it  
 17 says here, you had some questions about her  
 18 follow up with the Cancer Clinic and Nancy  
 19 told you that she would have someone from the  
 20 Cancer Clinic get back to you next week?  
 21 MS. HOPKINS:  
 22 A. Yes.  
 23 CHAYTOR, Q.C.:  
 24 Q. Did that happen?  
 25 MS. HOPKINS:

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1 A. Yes.  
 2 CHAYTOR, Q.C.:  
 3 Q. Okay, and who did you then speak with?  
 4 MS. HOPKINS:  
 5 A. Sharon Smith.  
 6 CHAYTOR, Q.C.:  
 7 Q. And what do you recall about your discussion  
 8 with Mrs. Smith?  
 9 MS. HOPKINS:  
 10 A. I asked her why Mom was never retested.  
 11 CHAYTOR, Q.C.:  
 12 Q. And what did she tell you?  
 13 MS. HOPKINS:  
 14 A. She couldn't answer my question.  
 15 CHAYTOR, Q.C.:  
 16 Q. And did you have any other discussion with  
 17 Mrs. Smith?  
 18 MS. HOPKINS:  
 19 A. I asked her why my mother was never looked  
 20 after for five years, why she wasn't seen by  
 21 an oncologist, and just followed up on.  
 22 CHAYTOR, Q.C.:  
 23 Q. And did she have an answer to that question?  
 24 MS. HOPKINS:  
 25 A. She told me that no, normally you would just

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1 go back and forth to your family doctor once a  
 2 year and have a physical and a mammogram.  
 3 CHAYTOR, Q.C.:  
 4 Q. And did you have any other discussion then  
 5 with Mrs. Smith? Did you ask her any other  
 6 questions?  
 7 MS. HOPKINS:  
 8 A. I don't think so.  
 9 CHAYTOR, Q.C.:  
 10 Q. That's all you can remember?  
 11 MS. HOPKINS:  
 12 A. Yes.  
 13 CHAYTOR, Q.C.:  
 14 Q. And then if we look, please, at C-0301? This  
 15 is an ER/PR follow-up form and the staff  
 16 member noted is Sharon Smith and it's April  
 17 10th, and we understand this to be 2008, and  
 18 you'll see your name here, Elizabeth  
 19 Finlayson, Mrs. Finlayson, and reason "called  
 20 with questions re: mother's care. Jane called  
 21 with questions regarding her mother's follow-  
 22 up care." Now did you call Mrs. Smith or did  
 23 Mrs. Smith call you?  
 24 MS. HOPKINS:  
 25 A. She called me.

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1 CHAYTOR, Q.C.:

2 Q. Okay. "She was diagnosed and treated for

3 breast cancer in 2000, but was not followed by

4 our Cancer Centre. I told her that follow up

5 is often with the family doctor. She also

6 asked why her mother did not have her ER/PR

7 retested. I was unable to answer that

8 question. She has also had discussion with

9 Nancy Parsons re: this and her mother is being

10 retested. She had a recurrence in 2006 and is

11 currently on Femara. She wondered if one had

12 to take Tamoxifen before Femara and I told her

13 no."

14 MS. HOPKINS:

15 A. Yes.

16 CHAYTOR, Q.C.:

17 Q. Do you recall being told that?

18 MS. HOPKINS:

19 A. Yes.

20 CHAYTOR, Q.C.:

21 Q. Okay, and did you ask her whether your mom

22 could have been a candidate for Tamoxifen back

23 in 2000-2001?

24 MS. HOPKINS:

25 A. I don't remember if I even said that. I just

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1 wanted to know if, you know, the retesting and

2 then I wanted to know if you had to be on

3 Tamoxifen before Femara, and we just wanted to

4 figure out, well, if she's on Femara now, and

5 that's a hormonal therapy drug, which we knew,

6 why wasn't she on Tamoxifen. So it was

7 hormonal, so we just wanted to--why. We just

8 wanted to know why.

9 CHAYTOR, Q.C.:

10 Q. So that's what you were asking?

11 MS. HOPKINS:

12 A. Yeah.

13 CHAYTOR, Q.C.:

14 Q. With that question.

15 MS. HOPKINS:

16 A. Right.

17 CHAYTOR, Q.C.:

18 Q. Okay, and then the summary or further follow

19 up noted here is "will check with the lab to

20 see why she was not retested" and did anyone

21 get back to either of you with any answers as

22 to why you were not retested?

23 MS. HOPKINS:

24 A. No.

25 CHAYTOR, Q.C.:

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1 Q. And then if we could have, please, C-0284? Go

2 back to your pathology report. When Ms.

3 Parsons told you it would take six weeks to

4 have your results back, and you said "well,

5 okay, that's fine," and did she tell you why

6 it would take so long to get the results back?

7 MS. HOPKINS:

8 A. No, not really. She just said "well, in St.

9 John's, it'll take less time, about two weeks.

10 But," she said "if we send it to Toronto,

11 it'll be six weeks."

12 CHAYTOR, Q.C.:

13 Q. And C-0084 again is your pathology report, and

14 you'll see there's a third addendum entered

15 and signed off on your chart by Dr. Denic on

16 April 15th, 2008. So this is about five days

17 after your discussion with Sharon Smith.

18 MS. HOPKINS:

19 A. Right.

20 CHAYTOR, Q.C.:

21 Q. And you had your discussion on March 27th, it

22 appears, or 28th with Nancy Parsons.

23 MS. HOPKINS:

24 A. Yes.

25 CHAYTOR, Q.C.:

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1 Q. "This specimen has been retested at Mount

2 Sinai Hospital for immunohistochemistry

3 studies" and the surgical number here is

4 given, and this, if we compare, is the same

5 surgical number from your mastectomy specimen,

6 "and shows estrogen receptor protein is seen

7 in 30 percent of cells using the antibody" and

8 it gives the antibody and the procedure.

9 "Previous report from Health Care Corporation

10 of St. John's dated December 5th, 2000 was

11 reported as estrogen receptor negative.

12 Progesterone receptor protein is seen in 60

13 percent of cells using" and the antibody and

14 the procedure. "Previous report from the

15 Health Care of St. John's dated December 5th,

16 2000 was reported as 40 to 50 percent of tumor

17 cells."

18 When did you learn this information, Ms.

19 Finlayson, that you were--that you had been

20 now retested at Mount Sinai and what the

21 results were there?

22 MS. FINLAYSON:

23 A. A letter went to my family doctor.

24 CHAYTOR, Q.C.:

25 Q. And that's what we've been calling the panel

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1 letter?

2 MS. FINLAYSON:

3 A. Yes, I guess it was, and they didn't call me.

4 I had to call myself to see if they received

5 it.

6 CHAYTOR, Q.C.:

7 Q. And if we could look then, please, at C-0313?

8 And I'll come to that panel letter. I believe

9 that panel letter is dated June 9th, 2008.

10 Does that seem about right to you, that it was

11 sometime in June or -

12 MS. FINLAYSON:

13 A. Yes, yeah.

14 CHAYTOR, Q.C.:

15 Q. Okay, and then this is an e-mail. I don't

16 expect you to be familiar with this. It's

17 from within Eastern Health. But it's Heather

18 Predham, and it's April 29th, 2008, and she's

19 writing to a number of people, Pat Pilgrim,

20 Sharon Smith, Nancy Parsons, and she's copying

21 Pam Elliott, and it's about "recent results

22 Nash sent out," and we understand this to be

23 Dr. Denic, "sent out a spreadsheet from Mount

24 Sinai this a.m." and there's other people also

25 on here, and so we've taken away their

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1 information.

2 MS. FINLAYSON:

3 A. Yes.

4 CHAYTOR, Q.C.:

5 Q. And then "Elizabeth Finlayson, was originally

6 ER negative, PR 40 to 50 in 2000. Her

7 daughter had called asking whether or not her

8 mother was affected. The patient is still

9 alive, but very sick as she had lung metastases

10 diagnosed in 2006. She was not identified for

11 retesting originally. Dr. Zulfiqar saw her in

12 2006 and based on her 2000 ER/PR started her

13 on Femara. She was just retested at Mount

14 Sinai and came back as ER 30 and PR 60," and

15 then in bold "she will have to be panelled."

16 And was this information told to you?

17 Jane, or Ms. Hopkins, do you continue to then

18 call and request the results of your mother's

19 testing?

20 MS. HOPKINS:

21 A. Yes, I did.

22 CHAYTOR, Q.C.:

23 Q. And who did you speak with?

24 MS. HOPKINS:

25 A. Nancy Parsons.

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1 CHAYTOR, Q.C.:

2 Q. And what did Ms. Parsons tell you?

3 MS. HOPKINS:

4 A. Nancy told me that Mom's results were back,

5 but she couldn't tell me the results, which I

6 thought well, that's understandable. She

7 can't tell me the results, and she also said

8 "your mom will have to be panelled." When I

9 heard that, and from watching the Inquiry, I

10 knew my mother's results were different.

11 CHAYTOR, Q.C.:

12 Q. And did you share that information with your

13 mom?

14 MS. HOPKINS:

15 A. Yes, I did.

16 CHAYTOR, Q.C.:

17 Q. You told her that you suspected her results

18 were different?

19 MS. HOPKINS:

20 A. Yeah.

21 CHAYTOR, Q.C.:

22 Q. Okay, and do you know when you had that

23 conversation, around when did you discuss that

24 with Nancy Parsons?

25 MS. HOPKINS:

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1 A. May, June. I know I phoned her when I got

2 back on the 20--the end of April, and I phoned

3 her and asked her if Mom's results were back,

4 because I knew while I was gone that week, I

5 was expecting a call, and I didn't get the

6 call. So I called Nancy then, the end of

7 April, and she said--I don't know. I'm sorry,

8 I don't know if she said her results were back

9 or not, but I remember calling her and asking

10 her, and then she said she had to be panelled,

11 so it was around the end of April.

12 CHAYTOR, Q.C.:

13 Q. Around the end of April?

14 MS. HOPKINS:

15 A. Yeah.

16 CHAYTOR, Q.C.:

17 Q. Okay, and if we could have, please, C-0302?

18 And this is another e-mail exchange from

19 Heather Predham, May 15th, 2008, to a number

20 of individuals, Ms. Pilgrim, Ms. Smith, Ms.

21 Laidley, copied to Ms. Elliott and to Nancy

22 Parsons, and she's sending along a list of

23 self-identified patients not in current

24 database, and you'll see your name. Sometimes

25 you're referred to Ethel. Is this -

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1 MS. FINLAYSON:  
 2 A. Yes.  
 3 CHAYTOR, Q.C.:  
 4 Q. Your MCP number matched up though.  
 5 MS. FINLAYSON:  
 6 A. Yes.  
 7 CHAYTOR, Q.C.:  
 8 Q. And your surgical number.  
 9 MS. FINLAYSON:  
 10 A. Yes.  
 11 CHAYTOR, Q.C.:  
 12 Q. Is Ethel one of your names?  
 13 MS. FINLAYSON:  
 14 A. Yes.  
 15 CHAYTOR, Q.C.:  
 16 Q. Okay.  
 17 THE COMMISSIONER:  
 18 Q. Not your favourite one.  
 19 MS. FINLAYSON:  
 20 A. No.  
 21 THE COMMISSIONER:  
 22 Q. We all have one of those.  
 23 CHAYTOR, Q.C.:  
 24 Q. And it does indicate your original results and  
 25 then your Mount Sinai results.

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1 MS. FINLAYSON:  
 2 A. Yes.  
 3 CHAYTOR, Q.C.:  
 4 Q. And then I take you to the next page, page  
 5 three of the exhibit and it says "Nancy and I  
 6 went through our notes and this is a list of  
 7 patients that came forward since the spring.  
 8 As you can see, I don't have complete records  
 9 about communication. Nancy has a note that  
 10 Ethel Finlayson was to be panelled. Did that  
 11 happen?" And this again now is May 15th,  
 12 2008.  
 13 And if we could then, please, have--okay,  
 14 I'm sorry, yes, Mr. Coffey, thank you. The  
 15 last sentence then says "if the communication  
 16 occurred with any of these ladies who are  
 17 still alive, they can receive letters" and I'm  
 18 going to take you to further reference about  
 19 receiving letters at a later point. And if we  
 20 could have, please, P-30--I'm sorry, P-3700,  
 21 and this is another message log sheet, and  
 22 we'll see here there's Thursday, May 22nd,  
 23 2008 and it indicates Jane Hopkins calling,  
 24 and Elizabeth Finlayson "query test results  
 25 back yet. Dr. Tom Costello, Wabush" and Dr.

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1 Costello, you've indicated, is your GP?  
 2 MS. FINLAYSON:  
 3 A. Yes.  
 4 CHAYTOR, Q.C.:  
 5 Q. Okay, and is this then, Mrs. Hopkins, another  
 6 telephone call that you would have placed?  
 7 MS. HOPKINS:  
 8 A. Yeah.  
 9 CHAYTOR, Q.C.:  
 10 Q. Or is this the call that perhaps you made to  
 11 Nancy Parsons?  
 12 MS. HOPKINS:  
 13 A. Yes, I phoned Nancy and she said that Mom was  
 14 being panelled, and of course, the panelling  
 15 was cancelled, so they would have to do it the  
 16 following week, and I said okay. So she said  
 17 by Friday they'll have the panel, and she said  
 18 "by the following Thursday, your mother's  
 19 letter should be at Dr. Costello's office to  
 20 be picked up."  
 21 CHAYTOR, Q.C.:  
 22 Q. Okay, and did you understand then that's how  
 23 your mother would learn about the results of  
 24 her test?  
 25 MS. HOPKINS:

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1 A. Yes.  
 2 CHAYTOR, Q.C.:  
 3 Q. And then C-0303, please? And this is  
 4 indicated--this again is a document internal  
 5 to Eastern Health. "Patients late being  
 6 identified, as of May 27th, 2008" and then in  
 7 brackets, apology letter, and number two is  
 8 "Finlayson, Elizabeth Ethel, for panelling,  
 9 add to database, prepare a letter. Pat  
 10 setting up panel meeting. Heather doing data  
 11 action. Pat preparing letter." And Mrs.  
 12 Finlayson, did you ever receive an apology  
 13 letter?  
 14 MS. FINLAYSON:  
 15 A. No.  
 16 CHAYTOR, Q.C.:  
 17 Q. And if we could have, please, C-0305? And  
 18 this again, it appears the nurses notes from  
 19 your video-conference, and this date here is  
 20 June 5th, 2008, and it says "video-conference  
 21 today with patient, Her husband, daughter and  
 22 son, and Dr. Zulfiqar (medical oncologist).  
 23 Today at 12:30 p.m. Based on slight overall"  
 24 I think it's lung improvement, "Dr. Zulfiqar  
 25 decided to continue with three more chemo

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1 cycles as already ordered." So I take it you  
 2 continued on then with some more chemo?  
 3 MS. FINLAYSON:  
 4 A. Yes.  
 5 CHAYTOR, Q.C.:  
 6 Q. That's just June of this year?  
 7 MS. FINLAYSON:  
 8 A. Yes.  
 9 CHAYTOR, Q.C.:  
 10 Q. Okay. "Then he will see her with a repeat CT  
 11 and visit in St. John's."  
 12 MS. FINLAYSON:  
 13 A. Yes.  
 14 CHAYTOR, Q.C.:  
 15 Q. "Then if there is further improvement, he will  
 16 continue with the -  
 17 MS. FINLAYSON:  
 18 A. That's the chemo pill.  
 19 CHAYTOR, Q.C.:  
 20 Q. That's the chemo pill, thank you. "If CT is  
 21 worse or unchanged, he will then switch her to  
 22 a new hormone treatment. He will also discuss  
 23 the results of her ER/PR (retest)" I'm sorry,  
 24 quotation it looks like around the re, 're'  
 25 testing, "which are yet unavailable." So this

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1 is June 5th, 2008 and Dr. Zulfiqar, do you  
 2 recall, did Dr. Zulfiqar indicate that your  
 3 retesting was unavailable as of that day?  
 4 MS. FINLAYSON:  
 5 A. Yes, he did, yes.  
 6 CHAYTOR, Q.C.:  
 7 Q. "And patient will visit clinic for new  
 8 prescription", it says. Then if we could  
 9 have, please, 312. This is the same video  
 10 conference and this is Dr. Zulfiqar's notes  
 11 from that conference, from the video  
 12 conference, June 5th, 2008, and he again goes  
 13 through the history of your treatment, and it  
 14 says here, "She received six cycles of  
 15 palliative Taxotere, and then was switched  
 16 over to Femara". If we'll just read through  
 17 this, I'll take you back a little bit further,  
 18 "She had surgical exploration by plastic  
 19 surgery and was found to have multiple right  
 20 lung nodules. One of them was biopsied". So  
 21 this is after you have your metastatic  
 22 disease?  
 23 MS. FINLAYSON:  
 24 A. Yes.  
 25 CHAYTOR, Q.C.:

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1 Q. "She received six cycles of palliative  
 2 Taxotere, and then was switched over to  
 3 Femara. She is ER negative, PR 40 to 60  
 4 percent positive, and received six cycles of  
 5 palliative Taxotere followed by Femara. She  
 6 remained stable on Femara from July, 2007, to  
 7 February, 2008, and at that time there was  
 8 progression and she was switched over to", and  
 9 that's a chemotherapy pill, you've told us, is  
 10 that right, is that your understanding, or do  
 11 you know what that is?  
 12 MS. FINLAYSON:  
 13 A. Is that a chemo pill? Yes, yes.  
 14 CHAYTOR, Q.C.:  
 15 Q. "Today she has now completed three cycles and  
 16 is feeling well".  
 17 MS. FINLAYSON:  
 18 A. Yes.  
 19 CHAYTOR, Q.C.:  
 20 Q. So it appears to be your chemo pill?  
 21 MS. FINLAYSON:  
 22 A. Yes.  
 23 CHAYTOR, Q.C.:  
 24 Q. So you're taking chemo orally at this point?  
 25 MS. FINLAYSON:

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1 A. Yes.  
 2 CHAYTOR, Q.C.:  
 3 Q. And it says here she has been seeing Dr - and  
 4 it's redacted, so I'm not sure, for her chemo  
 5 supervision. It may be Dr. Costello, I'm not  
 6 sure. Do you know which doctor you would have  
 7 been seeing to supervise your chemo?  
 8 MS. FINLAYSON:  
 9 A. Dr. Costello, I guess. He's the only one  
 10 there.  
 11 CHAYTOR, Q.C.:  
 12 Q. And his plan then is, "To do three more cycles  
 13 of the oral chemotherapy and then see her in  
 14 St. John's as she's visiting here for a  
 15 personal visit, and I will book a CAT scan a  
 16 week before her return. They did not have any  
 17 additional questions". I don't see anything -  
 18 any reference in Dr. Zulfiqar's note other  
 19 than saying what your original ER/PR was.  
 20 There's no reference in his note to the  
 21 discussion around your retesting?  
 22 MS. FINLAYSON:  
 23 A. No.  
 24 CHAYTOR, Q.C.:  
 25 Q. But you do recall that, and it's in the

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1 nurse's note?  
 2 MS. FINLAYSON:  
 3 A. Yes.  
 4 CHAYTOR, Q.C.:  
 5 Q. If we could have, please, P-3696, and this is  
 6 a physician panel meeting of June 5th, 2008,  
 7 and there's in attendance, Dr. Kara Laing is  
 8 the chair, and Ms. Sharon Smith, Dr. Joy  
 9 McCarthy, and the recording secretary is a Ms.  
 10 Gregory, and Dr. Denic, is a pathologist, and  
 11 he's also there. We know that Dr. Laing and  
 12 Dr. McCarthy are oncologists, and Dr. Laing,  
 13 in fact, is the clinical chief for medical  
 14 oncology here at the Cancer Clinic. Ms.  
 15 Sharon Smith is the director of the Cancer  
 16 Care Program. On page two of this exhibit,  
 17 you'll see there's a number of patients who  
 18 were dealt with by the panel that day,  
 19 including yourself, and it refers to you -  
 20 these two columns here are your original  
 21 ER/PR, and then it's your Mount Sinai report,  
 22 and then a recommendation or follow up by the  
 23 panel. So your original report is negative,  
 24 40 to 60 percent negative ER, 40 to 60 percent  
 25 PR, and then 30 percent ER, 60 percent PR, and

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1 the recommendation from the panel, "The panel  
 2 noted that she had received hormonal treatment  
 3 with Femara for metastatic disease.  
 4 Therefore, there is no recommendation for  
 5 change in treatment at this time", and the  
 6 follow up physician is to be Dr. Zulfiqar and  
 7 cc'd to Dr. Costello. Then if we could look,  
 8 please, at C-0306. This is the letter then  
 9 that's generated from the panel meeting, and  
 10 it's June 9th, 2008, written to Dr. Zulfiqar  
 11 about you, and signed by Dr. Laing, and it was  
 12 copied to Dr. Costello. It says that, "Ms.  
 13 Finlayson was diagnosed with carcinoma of the  
 14 left breast in October, 2000. The original  
 15 report of the ER and PR showed negative ER and  
 16 40 to 60 percent PR staining respectively. A  
 17 repeat report from Mount Sinai Hospital has  
 18 shown the tumour to be 30 percent ER and 60  
 19 percent PR staining respectively. This  
 20 patient was discussed at the physician review  
 21 panel on June 5th, 2008. On review of the  
 22 patient's chart, it was noted that she had  
 23 received hormonal therapy with Femara for  
 24 metastatic breast disease. Therefore, there is  
 25 no recommendation for change in treatment at

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1 this time. We would ask you to communicate  
 2 this to your patient as soon as possible".  
 3 First of all, Mrs. Finlayson, did you go to  
 4 Dr. Costello and pick up this letter?  
 5 MS. FINLAYSON:  
 6 A. Yes.  
 7 CHAYTOR, Q.C.:  
 8 Q. And when you read the letter, what did you  
 9 think?  
 10 MS. FINLAYSON:  
 11 A. Well, I was disappointed in the numbers, the  
 12 percentages.  
 13 CHAYTOR, Q.C.:  
 14 Q. And why is that, how so?  
 15 MS. FINLAYSON:  
 16 A. Well, they're different.  
 17 CHAYTOR, Q.C.:  
 18 Q. And did you share this letter with Jane and  
 19 your other family members?  
 20 MS. FINLAYSON:  
 21 A. Yes.  
 22 CHAYTOR, Q.C.:  
 23 Q. And Ms. Hopkins, when you saw this letter,  
 24 what was your reaction?  
 25 MS. HOPKINS:

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1 A. I didn't need to see it to know that the  
 2 numbers were going to be different, but when  
 3 Mom phoned me and said here's the letter, and  
 4 she read it out to me, I said, Mom, your  
 5 numbers are different.  
 6 CHAYTOR, Q.C.:  
 7 Q. And did anyone have - when you picked it up  
 8 from Dr. Costello did he explain anything to  
 9 you in terms of, for example, 30 percent ER,  
 10 and whether or not that - what that was  
 11 considered to be, for example, back in 2000  
 12 when you were diagnosed, whether or not  
 13 negative meant 30 percent or anything below 30  
 14 percent, was there any discussion as to the  
 15 meaning of the numbers?  
 16 MS. FINLAYSON:  
 17 A. No, no.  
 18 CHAYTOR, Q.C.:  
 19 Q. Has anyone had that discussion with you about  
 20 the numbers?  
 21 MS. FINLAYSON:  
 22 A. No, no.  
 23 CHAYTOR, Q.C.:  
 24 Q. And in terms of your PR score, I guess it's  
 25 similar, 40 to 60 percent PR, and you're 60

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1 percent PR now at Mount Sinai. So in terms of  
 2 the meaning of this letter, or what it might  
 3 mean in terms of your treatment, that wasn't  
 4 discussed with you when you got your letter?  
 5 MS. FINLAYSON:  
 6 A. No.  
 7 CHAYTOR, Q.C.:  
 8 Q. And, Ms. Hopkins, the note here that on review  
 9 of her chart, that because she's now - she's  
 10 received hormonal treatment with Femara for  
 11 metastatic breast disease. Therefore, the  
 12 panel doesn't have any further recommendation,  
 13 did that cause you any concern?  
 14 MS. HOPKINS:  
 15 A. Yes, it did.  
 16 CHAYTOR, Q.C.:  
 17 Q. Perhaps you can tell the Commissioner about  
 18 that?  
 19 MS. HOPKINS:  
 20 A. Well, when I read the letter, I said - I think  
 21 "no recommendation for change in treatment",  
 22 I'm like she didn't receive any hormonal  
 23 treatment before, so how can they say no  
 24 change in treatment. She's on Femara now in  
 25 2006, she was never on any anti - like,

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1 hormonal drugs before then. So how can they  
 2 say "no change in treatment".  
 3 CHAYTOR, Q.C.:  
 4 Q. And if we could have then, please, C-0308. So  
 5 what you're saying is she's on the hormonal  
 6 treatment now, the Femara, because of her  
 7 metastatic disease?  
 8 MS. HOPKINS:  
 9 A. Right.  
 10 CHAYTOR, Q.C.:  
 11 Q. And that she wasn't on anything back in 2000  
 12 when she was initially diagnosed?  
 13 MS. HOPKINS:  
 14 A. Yeah, yeah, so what I was gathering from this  
 15 letter was they're thinking she was already on  
 16 hormonal therapy. I'm thinking that's wrong,  
 17 she hasn't been, not until the breast cancer  
 18 went to her lung that she went on Femara. She  
 19 was never on anything else before.  
 20 CHAYTOR, Q.C.:  
 21 Q. And if we could see C-0308, thank you,  
 22 Registrar, and this appears to have been a  
 23 telephone conversation on July 2nd, 2008, and  
 24 it's Dr. Zulfiqar and it's included as a  
 25 progress note in your chart, and do you recall

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1 having a discussion with Dr. Zulfiqar on July  
 2 2nd?  
 3 MS. FINLAYSON:  
 4 A. Yes.  
 5 CHAYTOR, Q.C.:  
 6 Q. And did he phone you?  
 7 MS. FINLAYSON:  
 8 A. Yes.  
 9 CHAYTOR, Q.C.:  
 10 Q. Perhaps you could tell us what you remember  
 11 about that?  
 12 MS. FINLAYSON:  
 13 A. Well, he called me and he said he had the  
 14 report from the panel, which they discussed,  
 15 and he talked about ER and PR, and I really  
 16 didn't understand it on the phone, you know,  
 17 and he said, okay, you were retested. So he  
 18 said when you come out now, we'll discuss this  
 19 further. So when we got there to the clinic  
 20 on August 14th it was, it wasn't the 15th, and  
 21 he discussed it with me, but I still wasn't  
 22 sure what he was talking about, you know.  
 23 CHAYTOR, Q.C.:  
 24 Q. And when he phoned you then on July 2nd, had  
 25 you already picked up the letter from your

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1 family physician in June?  
 2 MS. FINLAYSON:  
 3 A. Yes.  
 4 CHAYTOR, Q.C.:  
 5 Q. So you already had the letter?  
 6 MS. FINLAYSON:  
 7 A. Yes, yes, yeah.  
 8 CHAYTOR, Q.C.:  
 9 Q. And "I have received a letter", he says, "from  
 10 the panel of physicians regarding Elizabeth  
 11 Finlayson for her repeat estrogen/progesterone  
 12 receptor status. She was diagnosed with a  
 13 left breast carcinoma in October, 2000.  
 14 Original report showed ER negative, PR 40 to  
 15 60 percent, and the report from Mount Sinai  
 16 showed ER was 30 percent, and PR was 60  
 17 percent respectively. I saw her for the first  
 18 time in September, 2006, and at that time she  
 19 had visceral metastatic disease with pulmonary  
 20 metastases, and, therefore, she was given six  
 21 cycles of Taxotere followed by Femara. She  
 22 had been on aromatase inhibitors for eleven  
 23 months. I have informed her that the  
 24 treatment philosophy in her case has not  
 25 changed, and the numbers on progesterone

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1 receptors were positive, and they are positive  
 2 now. However, she was concerned about the  
 3 fact that she was given any hormonal treatment  
 4 back in the year 2000 when she was originally  
 5 diagnosed". Mrs. Finlayson, did you bring  
 6 that up with Dr. Zulfiqar in this telephone  
 7 call, did you ask him, well, why wasn't I - if  
 8 my PR hasn't changed, why wasn't I given the  
 9 treatment originally?  
 10 MS. FINLAYSON:  
 11 A. Yes, yes.  
 12 CHAYTOR, Q.C.:  
 13 Q. "And I have reviewed her chart from  
 14 previously. She was seen by", and the names  
 15 are taken out here, but it's Dr. Colbourne and  
 16 Dr. Thain, as we've gone through your chart.  
 17 "I am unable to find any information or  
 18 discussion regarding hormonal receptors", and  
 19 that's consistent with your memory, that  
 20 nobody brought up the issue of hormone  
 21 receptors with you?  
 22 MS. FINLAYSON:  
 23 A. No.  
 24 CHAYTOR, Q.C.:  
 25 Q. "I will discuss it further with her when she

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1 comes in on the 15th of August, 2008, for her  
 2 follow appointment here in the Cancer Clinic.  
 3 She was satisfied with the current discussion  
 4 and did not have any additional questions".  
 5 Did Dr. Zulfiqar tell you that he had reviewed  
 6 your chart and he didn't see anywhere in it  
 7 that anybody had talked to you about your  
 8 hormone receptor status?  
 9 MS. FINLAYSON:  
 10 A. That's right.  
 11 CHAYTOR, Q.C.:  
 12 Q. He told you that?  
 13 MS. FINLAYSON:  
 14 A. Yes.  
 15 CHAYTOR, Q.C.:  
 16 Q. And so I take it he wasn't able to offer any  
 17 answers to you as to why you weren't offered  
 18 the treatment back in 2000?  
 19 MS. FINLAYSON:  
 20 A. That's right.  
 21 CHAYTOR, Q.C.:  
 22 Q. If we could look, please, at C-0307. These  
 23 are notes again provided to us by people  
 24 within Eastern Health, and on July 3rd, 2008,  
 25 "Review of table, and several more items of

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1 address obtained. Still some questions to be  
 2 answered on several items. Will continue to  
 3 look for address". Then we see your name,  
 4 number 11 on the table, "Letter signed and  
 5 being sent out the week of June 16th, 2008.  
 6 July 3rd, 2008, OPIS, Dr. Zulfiqar talked with  
 7 patient about retesting results. Patient will  
 8 be coming to Cancer Clinic on August 15th for  
 9 her follow up appointment", and it says,  
 10 "Follow up completed. Letter gone to GP. No  
 11 letter of apology to be sent". So your letter  
 12 went to your family doctor, your panel letter,  
 13 and the decision here is "no letter of apology  
 14 to be sent to you". Mrs. Finlayson, has  
 15 anyone apologized to you?  
 16 MS. FINLAYSON:  
 17 A. Nobody.  
 18 CHAYTOR, Q.C.:  
 19 Q. C-0311. This is your visit, August 14th,  
 20 2008, and you're seen in the clinic. This is  
 21 your visit - you're right in your memory that  
 22 it was the 14th, not the 15th.  
 23 MS. FINLAYSON:  
 24 A. That's right.  
 25 CHAYTOR, Q.C.:

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1 Q. Seen by Dr. Zulfiqar.  
 2 MS. FINLAYSON:  
 3 A. Yes.  
 4 CHAYTOR, Q.C.:  
 5 Q. And when I read down through, he goes through  
 6 the same thing with your diagnosis.  
 7 MS. FINLAYSON:  
 8 A. Yes.  
 9 CHAYTOR, Q.C.:  
 10 Q. And you've had a CT scan then on August 8th,  
 11 which shows there's some scarring due to  
 12 radiation in your lung area, and he goes on  
 13 with the rest of what he finds there, "but  
 14 there's no clinical evidence of progression",  
 15 and the plan then at this point in time was,  
 16 "To switch her over to another drug, as  
 17 patient feels that she needs a break from  
 18 chemotherapy", and what do you recall about  
 19 the discussion about that, that you're going  
 20 to have a break from your chemotherapy?  
 21 MS. FINLAYSON:  
 22 A. Well, I was happy about it, but this was the  
 23 hormone drug that he's got me on now.  
 24 CHAYTOR, Q.C.:  
 25 Q. So it's another hormone drug?

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1 MS. FINLAYSON:  
 2 A. Yes.  
 3 CHAYTOR, Q.C.:  
 4 Q. And he says he's going to see you back in  
 5 three months via video conference from  
 6 Labrador with repeat CT scan. "In the  
 7 meantime, she will continue", and then he  
 8 indicates what you're continue on in the  
 9 meantime.  
 10 MS. FINLAYSON:  
 11 A. Yes.  
 12 CHAYTOR, Q.C.:  
 13 Q. I take it this is the last time that you've  
 14 spoken with Dr. Zulfiqar or been seen by him?  
 15 MS. FINLAYSON:  
 16 A. Since August, yes.  
 17 CHAYTOR, Q.C.:  
 18 Q. Since August.  
 19 MS. FINLAYSON:  
 20 A. Yes.  
 21 CHAYTOR, Q.C.:  
 22 Q. And you're due to see him again, I guess, in  
 23 about another month?  
 24 MS. FINLAYSON:  
 25 A. The 27th of November.

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1 CHAYTOR, Q.C.:  
 2 Q. And you'll see him via video conference?  
 3 MS. FINLAYSON:  
 4 A. Yes.  
 5 CHAYTOR, Q.C.:  
 6 Q. Okay, and when I look through this, do you  
 7 recall then on August 14th when you saw him,  
 8 did he discuss further about your ER/PR and  
 9 your retesting? I don't see reference to that  
 10 in here.  
 11 MS. FINLAYSON:  
 12 A. No, he never said anything.  
 13 CHAYTOR, Q.C.:  
 14 Q. He never gave you any further explanation?  
 15 MS. FINLAYSON:  
 16 A. No.  
 17 CHAYTOR, Q.C.:  
 18 Q. And I don't see - I'm looking through here,  
 19 and I don't see any reference to your ER/PR in  
 20 here, or the fact of anything that's happened  
 21 regarding your retesting. So, Mrs. Finlayson,  
 22 to this date has it been explained to you why  
 23 nobody told you your original ER/PR results in  
 24 2000, 2001 - your December, 2000, ER/PR  
 25 result, has anyone explained to you why that

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1 was never discussed with you?  
 2 MS. FINLAYSON:  
 3 A. No.  
 4 CHAYTOR, Q.C.:  
 5 Q. Has anyone explained to you why there was no  
 6 discussion with you of the option of hormonal  
 7 therapy at the time of your original  
 8 diagnosis?  
 9 MS. FINLAYSON:  
 10 A. No.  
 11 CHAYTOR, Q.C.:  
 12 Q. Has anybody explained to you why you were not  
 13 identified for retesting in 2005?  
 14 MS. FINLAYSON:  
 15 A. No.  
 16 CHAYTOR, Q.C.:  
 17 Q. Has anyone explained to you why in 2006 when  
 18 you presented with metastatic disease that you  
 19 were not identified then for retesting?  
 20 MS. FINLAYSON:  
 21 A. No.  
 22 CHAYTOR, Q.C.:  
 23 Q. And has anybody explained to date why the  
 24 results on your retest were on your chart  
 25 since April 15th, but you don't learn about it

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1 for another two months?  
 2 MS. FINLAYSON:  
 3 A. That's right.  
 4 CHAYTOR, Q.C.:  
 5 Q. Did anyone explain that to you?  
 6 MS. FINLAYSON:  
 7 A. No.  
 8 CHAYTOR, Q.C.:  
 9 Q. Did Dr. Zulfiqar offer any explanation as to  
 10 why even though your results were on your  
 11 chart on April 15th, the results of your  
 12 retesting, they were not told to you on June  
 13 5th during your telephone discussion with him?  
 14 MS. FINLAYSON:  
 15 A. No.  
 16 CHAYTOR, Q.C.:  
 17 Q. And, Mrs. Finlayson, and Ms. Hopkins, has  
 18 anyone - I asked you whether or not anyone had  
 19 apologized to you, including Eastern Health or  
 20 Labrador Grenfell. Has anyone offered any  
 21 explanations to you or your family or offered  
 22 anything in the form of an apology?  
 23 MS. FINLAYSON:  
 24 A. No.  
 25 MS. HOPKINS:

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1 A. No.  
 2 CHAYTOR, Q.C.:  
 3 Q. Unless there's anything else that you would  
 4 like to add, those are my questions, and I  
 5 sincerely thank you. It's been a privilege to  
 6 meet you both, and I wish you all the best.  
 7 Some of my colleagues may have some questions.  
 8 THE COMMISSIONER:  
 9 Q. Thank you. Mr. Pritchard.  
 10 MR. PRITCHARD:  
 11 Q. Thank you, Commissioner, no questions. Thank  
 12 you for your evidence.  
 13 THE COMMISSIONER:  
 14 Q. Mr. Simmons.  
 15 MR. SIMMONS:  
 16 Q. No questions, Commissioner, and thank you both  
 17 for coming here today.  
 18 THE COMMISSIONER:  
 19 Q. Mr. Browne.  
 20 BROWNE, Q.C.:  
 21 Q. No questions. Thank you both for your  
 22 evidence today.  
 23 THE COMMISSIONER:  
 24 Q. Mr. Pritchett.  
 25 MR. PRITCHETT:

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1 Q. No questions, Commissioner, and thank you  
 2 both.  
 3 THE COMMISSIONER:  
 4 Q. Ms. Newbury.  
 5 MS. NEWBURY:  
 6 Q. No questions, and thank you for your evidence.  
 7 THE COMMISSIONER:  
 8 Q. Mr. Crosbie.  
 9 CROSBIE, Q.C.:  
 10 Q. Thank you.  
 11 MRS. ELIZABETH FINLAYSON AND MS. JANE HOPKINS -  
 12 EXAMINATION BY CHESLEY CROSBIE, Q.C.  
 13 CROSBIE, Q.C.:  
 14 Q. We've met, of course, and you know who I am.  
 15 MS. FINLAYSON:  
 16 A. Yes.  
 17 CROSBIE, Q.C.:  
 18 Q. A question for you, Ms. Hopkins, in discussing  
 19 this this morning before you came in to  
 20 testify, you mentioned to me that you followed  
 21 these hearings along on the internet while  
 22 they'd been happening.  
 23 MS. HOPKINS:  
 24 A. Yes.  
 25 CROSBIE, Q.C.:

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1 Q. Do you have any comments that the Commissioner  
 2 might find of use about that? You certainly  
 3 availed of the chance to follow what's been  
 4 going on.  
 5 MS. HOPKINS:  
 6 A. No, not really.  
 7 THE COMMISSIONER:  
 8 Q. Are we having buffering problems that you're  
 9 not - and you're not getting it all.  
 10 MS. HOPKINS:  
 11 A. oh, yes, you are having buffering problems. I  
 12 had to leave my house on the morning that  
 13 Danny Williams was testifying, so I watched  
 14 about an hour of it. I went to download it to  
 15 have it downloaded and have it taped onto my  
 16 computer, and when I came home there was  
 17 nothing there. It stopped buffering. So when  
 18 you went to break, it just cut off, and then  
 19 you didn't pick up. So I have nothing of  
 20 Danny Williams.  
 21 THE COMMISSIONER:  
 22 Q. Well, maybe we can get you a tape. Okay,  
 23 thank you.  
 24 CROSBIE, Q.C.:  
 25 Q. They do DVD of these things.

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1 MS. HOPKINS:  
 2 A. Oh, okay.  
 3 CROSBIE, Q.C.:  
 4 Q. That can be corrected.  
 5 MS. HOPKINS:  
 6 A. Okay.  
 7 CROSBIE, Q.C.:  
 8 Q. But I take it from your comments that you  
 9 found that to be a valuable service to the  
 10 public?  
 11 MS. HOPKINS:  
 12 A. Yes.  
 13 CROSBIE, Q.C.:  
 14 Q. That the Commission was made available.  
 15 MS. HOPKINS:  
 16 A. Yes.  
 17 CROSBIE, Q.C.:  
 18 Q. Was there anything else, any other observation  
 19 about it that you wanted to make?  
 20 MS. HOPKINS:  
 21 A. I don't think so.  
 22 CROSBIE, Q.C.:  
 23 Q. Mrs. Finlayson, when you were asked earlier in  
 24 your testimony about being followed up in  
 25 Labrador when you went back home, after your

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1 initial diagnosis and treatment in the year  
 2 2000, I believe you said that it was Dr. Thain  
 3 who said that - it's a "he" is it, Dr. Thain?  
 4 MS. FINLAYSON:  
 5 A. Yes, yes.  
 6 CROSBIE, Q.C.:  
 7 Q. That he would follow up with you or see you in  
 8 Labrador in six months time?  
 9 MS. FINLAYSON:  
 10 A. Yes.  
 11 CROSBIE, Q.C.:  
 12 Q. So, that was Thain and not Colbourne.  
 13 MS. FINLAYSON:  
 14 A. That's right, yes.  
 15 CROSBIE, Q.C.:  
 16 Q. That didn't happen?  
 17 MS. FINLAYSON:  
 18 A. No, no.  
 19 CROSBIE, Q.C.:  
 20 Q. Commissioner, this is not so much a question  
 21 for the witness, but I'm left in a state of  
 22 perplexity by the records that we've just seen  
 23 and that I read for myself in preparation.  
 24 Because it seems that between September 29th,  
 25 2006 and that's document C-0293 and the 28th

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1 of March, 2007, Dr. Zulfiqar, who is the  
 2 current treating oncologist becomes aware of  
 3 the 2000, year 2000 ER/PR results, but nobody  
 4 on the chart higher than that manifests any  
 5 awareness that those results exist or are on  
 6 the chart. And that includes the first  
 7 treating, not oncologist, but internist  
 8 because Dr. Colbourne was an internist, not  
 9 oncologist. It includes Dr. Thain who is the  
 10 treating radiation oncologist and then up to a  
 11 certain point in time because as we've just  
 12 heard this lady sadly had a recurrence in  
 13 2006, Dr. Zulfiqar becomes involved, but it's  
 14 not until 2007 sometime or late 2006 that he  
 15 becomes aware of the original ER/PR result. I  
 16 see it as addendum number one to the original  
 17 pathology done back in 2000. It may be that  
 18 that's an addendum to the histology and  
 19 diagnostic report. However, it still remains  
 20 a mystery why these three doctors didn't spot  
 21 that before relatively late date when they  
 22 did. And so I'm left to wonder, because I've  
 23 seen this in another patient matter that I've  
 24 had under discussion with Mr. Coffey, whether  
 25 in fact it only got entered on the written

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1 record late, in fact, that it was done--when  
 2 it purports to be done back in the year 2000,  
 3 but did not find its way onto the record  
 4 until later. And I'm just wondering whether  
 5 one of your commission counsel might be able  
 6 to take that up through appropriate channels  
 7 and seek an explanation from Eastern Health  
 8 to see whether, in fact, that's what may have  
 9 happened here. That it was discovered that  
 10 the result was not entered on the record until  
 11 late 2006 or 2007. That's the question; is  
 12 that what happened? I seen this in another  
 13 case. Other than that, thank you very much.  
 14 MS. FINLAYSON:  
 15 A. Thank you.  
 16 MS. HOPKINS:  
 17 A. Thank you.  
 18 THE COMMISSIONER:  
 19 Q. Ms. Chaytor?  
 20 MS. CHAYTOR:  
 21 Q. Nothing arising, but I'd certainly be pleased  
 22 if you saw fit to pose that -  
 23 THE COMMISSIONER:  
 24 Q. Pursue the question. You're taking notes, Mr.  
 25 Simmons, as usual.

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1 MR. SIMMONS:  
 2 Q. (Inaudible ) question Commission counsel  
 3 (inaudible ) come in any time, we will respond  
 4 to this as expeditiously as we can.  
 5 THE COMMISSIONER:  
 6 Q. Thank you, Mr. Simmons.  
 7 CHAYTOR, Q.C.:  
 8 Q. Thank you, Mr. Simmons.  
 9 THE COMMISSIONER:  
 10 Q. Thank you both very much for coming. As Ms.  
 11 Chaytor indicated when we started this  
 12 morning, when we started the hearings we  
 13 started with patients and now you're our last  
 14 witnesses and I think it was very important to  
 15 come back to the whole reason we're here. And  
 16 you're representing them this morning and let  
 17 me tell you, you've done it very well. Thank  
 18 you very much for coming.  
 19 MS. FINLAYSON:  
 20 A. Thank you.  
 21 MS. HOPKINS:  
 22 A. Thank you.  
 23 THE COMMISSIONER:  
 24 Q. Now, would you mind just sitting there for one  
 25 more moment because I got to say a few words

1 to these people in this room.  
 2 MS. FINLAYSON:  
 3 A. Yes, okay.  
 4 THE COMMISSIONER:  
 5 Q. First, as we all know, this is the last day of  
 6 hearings phase of this Inquiry. I now have to  
 7 go to work. I don't know where you're all  
 8 going, but that's where I'm going anyway. I'm  
 9 reminding you that the clock starts today.  
 10 Somebody did tell me this morning that the  
 11 expiry date was on a Sunday and I can confirm  
 12 that I'll expect your submissions on the 1st  
 13 of December. I remind you that they will be  
 14 put on our website as will be the replies,  
 15 should you wish to file replies as we continue  
 16 the process. No obligation to file replies;  
 17 no obligation, of course, to file submissions,  
 18 but that I'll leave in your hands.  
 19 I also want to thank counsel for their  
 20 assistance in the hearings. Things have gone,  
 21 from my perspective, quite smoothly and that  
 22 can only happen because of a lot of work by a  
 23 lot of people and that includes counsel. I  
 24 recognize that we made some very heavy demands  
 25 on you and your families because we kept

1 turning up and interrupting weekends and lives  
 2 generally and I do very much appreciate your  
 3 assistance in keeping the process going and in  
 4 the smooth running of the proceedings here  
 5 during this phase of the Inquiry.  
 6 I also want to acknowledge and I think  
 7 you would all want me to do, so, the work of a  
 8 couple of other people in this room; Len, who  
 9 kept us on time because otherwise all of us  
 10 would be out in the back chatting to each  
 11 other perhaps. And our registrar who has  
 12 magic fingers and who manages to get exhibits  
 13 up on our system very, very quickly. One  
 14 thing that bothers me is that she seems to be  
 15 able to anticipate when Mr. Coffey wants an  
 16 exhibit and that's really scary. And the  
 17 other thing is she has incredible energy  
 18 because she manages after a long day here to  
 19 come up with goodies for all on Friday  
 20 mornings and we've all very much appreciated  
 21 that. Thank you all. I'll be looking forward  
 22 to hearing your submissions and going back to  
 23 the office and not having to come out of it  
 24 for a while. Bye.  
 25 Upon conclusion at 12:38 p.m.

1  
 2 CERTIFICATE  
 3 I, Judy Moss, hereby certify that the foregoing is  
 4 a true and correct transcript in the matter of the  
 5 Commission of Inquiry on Hormone Receptor Testing,  
 6 heard on the 31st day of October, A.D., 2008 before  
 7 the Honourable Justice Margaret A. Cameron,  
 8 Commissioner, at the Commission of Inquiry, St.  
 9 John's, Newfoundland and Labrador and was  
 10 transcribed by me to the best of my ability by  
 11 means of a sound apparatus.  
 12 Dated at St. John's, Newfoundland and Labrador  
 13 this 31st day of October, A.D., 2008  
 14 Judy Moss

<p style="text-align: center;"><b>-?-</b></p> <p>'06 [2] 109:22 110:4 '07 [1] 110:4 '08 [4] 92:22,24 110:5 180:13 '96 [1] 75:1 're' [1] 201:24</p> <hr/> <p style="text-align: center;">---</p> <p>-and [1] 166:22 -I'm [1] 186:4 -we [1] 6:14</p> <hr/> <p style="text-align: center;"><b>-0-</b></p> <p>0284 [1] 141:11 0296 [1] 178:16</p> <hr/> <p style="text-align: center;"><b>-1-</b></p> <p>1 [1] 151:22 1,230 [1] 38:18 1,245 [1] 38:15 100 [4] 35:24 41:14 48:15 97:20 107 [2] 2:5,6 10th [2] 169:16 188:17 11 [2] 176:9 215:4 123 [2] 2:6,7 128 [2] 3:3 134:14 12:30 [1] 200:23 12:38 [1] 230:25 12th [2] 158:25 171:21 130 [1] 3:4 135 [2] 2:7,10 136 [2] 3:5,6 13th [3] 141:22 142:7 158:25 14 [1] 157:3 14th [6] 92:24 152:22 211:20 215:19,22 218:7 15 [1] 42:19 15th [11] 82:9 159:21 191:16 196:19 198:11 211:20 214:1 215:8,22 219:25 220:11 16th [3] 94:5,10 215:5 17 [1] 60:12 175 [1] 141:19 17th [5] 28:19 92:22 95:12 101:20 172:4 1969 [1] 33:16 1995 [1] 75:1 1996 [1] 5:1 1997 [1] 40:22 1999 [2] 5:1,12 19th [3] 134:11 154:7,9 1B [1] 171:23 1st [1] 229:12</p>	<p style="text-align: center;"><b>-2-</b></p> <p>2 [2] 46:12 71:21 2,100 [1] 38:12 20 [1] 196:2 2000 [42] 41:25 137:5 138:4,11 139:21 140:23 140:24 141:22 142:7 149:5,15 151:24 152:7,8 152:14 162:1 167:6 171:18 173:6,17,18 176:20,23 186:1 189:3 192:10,16 194:6,12 206:14 208:11 210:11 212:13 213:4 214:18 218:24,24 225:2 226:3,3 226:17 227:2 2000-2001 [1] 189:23 2001 [11] 41:25 152:23 153:2 154:3,8,16 156:7 161:25 162:3 184:13 218:24 2002 [1] 184:25 2003 [1] 5:12 2004 [2] 30:13 44:14 2005 [13] 25:14,15 26:21 28:19,21 30:13 33:23 37:7,12 56:10 77:17 157:21 219:13 2006 [32] 109:20,22 115:18 157:17 158:2 159:4,21,22 160:16 161:10 163:2,5,7 166:8 167:8 168:25 169:6,14 169:16 171:21 172:4,12 189:10 194:10,12 209:25 212:18 219:17 225:25 226:13,14 227:11 2007 [13] 109:13 172:22 174:21 175:3,3 177:5 178:16 180:5 185:1 203:6 226:1,14 227:11 2008 [36] 1:4 46:8 82:9 86:21 91:22 103:15 170:25 178:12 179:22 181:11,22 184:23 185:16 188:17 191:16 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