

COMMISSION OF INQUIRY
ON HORMONE RECEPTOR TESTING

BEFORE THE HONOURABLE JUSTICE CAMERON - COMMISSIONER

June 11, 2008

Appearances:

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

Rolf Pritchard/Stephen Mills Her Majesty in Right of NL

Jane Hennebury Doctors Kara Laing et al

Daniel Simmons Eastern Regional Integrated
. Health Authority

Pamela Taylor Members of the Breast Cancer
. Testing Class Action

Mark Pike NL Medical Association
Jennifer Newbury Canadian Cancer Society (NL Division)
Stacey O’Dea. Central, Western and Labrador-Grenfell
Regional Integrated Health Authorities

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1 COMMISSIONER:
2 Q. Please be seated. Mr. Coffey?
3 COFFEY, Q.C.:
4 Q. Thank you, Commissioner. The next witness,
5 Commissioner, is Brian Crawley. Registrar,
6 thank you.
7 MR. BRIAN CRAWLEY (SWORN) EXAMINATION BY BERNARD COFFEY,
8 Q.C.
9 REGISTRAR:
10 Q. Would you please state and spell your complete
11 name for the Commission?
12 MR. CRAWLEY:
13 A. Brian William Crawley, B-R-I-A-N, W-I-L-L-I-A-
14 M, C-R-A-W-L-E-Y.
15 REGISTRAR:
16 Q. Thank you.
17 COFFEY, Q.C.:
18 Q. Mr. Crawley, would you give the Commission,
19 please, an overview of your educational
20 background and your employment background?
21 MR. CRAWLEY:
22 A. Yes, sir. I was born and raised in Labrador
23 City, Labrador, where I attended high school.
24 After graduation I studied journalism at
25 Carlton University in Ottawa. After a year I

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1 changed majors and came here to St. John's and
 2 studied at Memorial University. I graduated
 3 with a Bachelor of Commerce from the Co-op
 4 program in 1994.
 5 COFFEY, Q.C.:
 6 Q. And -
 7 MR. CRAWLEY:
 8 A. I'm sorry, work, as well?
 9 COFFEY, Q.C.:
 10 Q. Yes, please.
 11 MR. CRAWLEY:
 12 A. Sure. I started, I guess, in the
 13 communications field while I was working with
 14 the Hibernia Management and Development
 15 Company on a work term in probably, I think it
 16 may have been 1993. They hired me upon
 17 graduation, as well, and I worked with the
 18 Hibernia Project probably until 2000, 2001 in
 19 a communications field. I also played a role
 20 on their emergency response team, again, from
 21 a communications perspective. And for the
 22 last couple of years I was with them, I also
 23 played a role on the business planning team.
 24 Once I finished with Hibernia, I did a
 25 subcontract for probably five or six months

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1 with Exxon Mobile doing, again, communications
 2 cover, primarily in the event if something
 3 were to go wrong offshore, I'd be there to
 4 provide a support role. Following that, I
 5 guess, again, 2000, 2001 I worked for about a
 6 year with the Newfoundland and Labrador
 7 Medical Association as their director of
 8 communications. And -
 9 COMMISSIONER:
 10 Q. I'm sorry, Newfoundland and Labrador?
 11 MR. CRAWLEY:
 12 A. Medical Association. And after that I worked
 13 with Premier Williams as his director of
 14 communications with the official opposition.
 15 And I was there for two years until the
 16 general election in 2003, at which time
 17 Premier Williams offered me the position of
 18 chief of staff, and I accepted, or obviously
 19 accepted that position and I've been with him
 20 ever since in that capacity.
 21 COFFEY, Q.C.:
 22 Q. And your time with the NLMA as director of
 23 communications, I'm sorry, how long was that
 24 for?
 25 MR. CRAWLEY:

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1 A. About a year. I don't have the exact dates.
 2 COFFEY, Q.C.:
 3 Q. Okay. And in your day with NLMA do you recall
 4 who the executive director was?
 5 MR. CRAWLEY:
 6 A. Mr. Bruce Squires.
 7 COFFEY, Q.C.:
 8 Q. Okay. Sir, could you describe, please, your
 9 role as chief of staff in the Premier's
 10 office?
 11 MR. CRAWLEY:
 12 A. Sure. As chief of staff, I'm the Premier's
 13 senior advisor on all issues. I also play a
 14 liaison role between the Premier's office and
 15 Cabinet, to a lesser degree, a same role
 16 between Caucus and the Premier's office. And
 17 I'm also the prime interface between Cabinet
 18 Secretariat and the Premier's office. I spend
 19 a lot of time dealing with the clerk,
 20 primarily, but also to a lesser degree the
 21 deputy clerk. In addition to those roles, I
 22 also have accountability for the operation of
 23 the Premier's office here in St. John's, the
 24 Premier's office in Corner Brook, the
 25 Premier's office in Happy Valley-Goose Bay and

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1 the office of the Premier's representative in
 2 Ottawa, Dr. John Fitzgerald; all of those
 3 areas fall, I guess, under my wing. In
 4 addition to that I have oversight of the
 5 political function of government; all of the
 6 EAs eventually report into my office,
 7 although, to another staff member, I still
 8 take accountability for that. In a general
 9 sense, I take responsibility for the
 10 preparation of the government for by-
 11 elections, general elections. Although I
 12 don't do the detailed work of it, I do ensure
 13 that the necessary preparations are under way
 14 so that we would be ready for any of those
 15 events.
 16 COFFEY, Q.C.:
 17 Q. What--could you describe, please, the system
 18 or structure in place in the Premier's office
 19 that deals with record keeping and information
 20 management?
 21 MR. CRAWLEY:
 22 A. Sure. In the Premier's office?
 23 COFFEY, Q.C.:
 24 Q. Yes.
 25 MR. CRAWLEY:

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<p>1 A. It's actually a fairly detailed process. The 2 office receives, over the run of a year, 3 anywhere from 125,000 to 150,000 contacts, so 4 it's an incredibly busy place to work from the 5 time you get there to the time you leave, and 6 then some.</p> <p>7 There are probably three different 8 parties that play a role in record keeping, 9 the first being Cabinet Secretariat. They're 10 responsible for all Cabinet submissions that 11 eventually end up in the Premier's lap. And 12 on average, I understand, there's about 400 of 13 those a year. They're all tracked 14 electronically, and I understand that goes 15 back to Confederation, so it's a robust 16 process where they can very quickly 17 extrapolate for you whatever your request is.</p> <p>18 In addition to Cabinet submissions, they 19 also track and coordinate all briefing notes 20 on behalf of the Premier, and that's done 21 electronically, as well. And I understand, on 22 average, there's about 400 briefing notes a 23 year, as well. So both those functions are 24 coordinated electronically by Cabinet 25 Secretariat.</p>	<p>1 generated to let folks know that an issue 2 hasn't been resolved until it's actually keyed 3 in that there is some closure. So that's, you 4 know, for the Premier's correspondence and his 5 e-mail.</p> <p>6 In addition to that I have my own filing 7 system for issues that, you know, I tend to 8 deal with in a run of a day. I also have a 9 redundant filing system for briefing notes 10 that come my way. And the reason for the 11 redundancy, I guess, is that we tend to work 12 some very long days and weekends in the 13 office, sometimes you need access to a 14 briefing note and rather than haul someone in 15 from Cabinet Secretariat, I'd just as soon 16 defer to our own files. So in total I guess I 17 have about six filing cabinets full of 18 information that are for my use.</p> <p>19 Then I guess we have e-mail tracking. 20 And I think, you know, it's become clear 21 through this process, certainly, that we have 22 some deficiencies in our e-mail tracking 23 system. The Premier's system is monitored 24 quite closely and is very efficient. I guess 25 it's left to staff to track their own e-mail</p>
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<p>1 In addition to Cabinet Secretariat, the 2 Premier is also very active on a national 3 level in matters of intergovernmental affairs, 4 so he would, I think, last year, have received 5 well in excess of 400 submissions from the 6 Intergovernmental Affairs Secretariat; that 7 would be used to prep him for any issue 8 should he decide to participate in on a 9 national level. And he is quite active on 10 that front, so again, that's a fairly busy 11 place.</p> <p>12 In addition to that we have our own 13 tracking system on the 8th floor for any 14 information that come onto the floor, 15 particularly correspondence for the Premier. 16 I took a walk around the office yesterday and 17 counted some 30 odd filing cabinets that are 18 used to contain correspondence to the Premier. 19 All of that is catalogued and tracked 20 electronically so that we know what comes in 21 when and who sent it.</p> <p>22 There's also fields that allow you to 23 determine who's been assigned what when it 24 comes to tracking down follow-up on a 25 correspondence and reminders that are</p>	<p>1 system and we probably haven't been as 2 thorough in that as we should have been, in 3 hindsight, but we're all tasked individually 4 with following our own e-mail correspondence 5 and -</p> <p>6 COFFEY, Q.C.:</p> <p>7 Q. I'm sorry, you're what?</p> <p>8 MR. CRAWLEY:</p> <p>9 A. We're all tasked with monitoring our own and 10 keeping our own e-mail system in place. So I 11 don't think I've forgotten anything there, but 12 that's basically the record management system 13 for government for the Premier's office.</p> <p>14 COFFEY, Q.C.:</p> <p>15 Q. The latter part of it, being tasked with 16 monitoring your own e-mail?</p> <p>17 MR. CRAWLEY:</p> <p>18 A. Yeah.</p> <p>19 COFFEY, Q.C.:</p> <p>20 Q. Tracking your own e-mail, is that still the 21 practice?</p> <p>22 MR. CRAWLEY:</p> <p>23 A. Yeah, I think that's a government-wide policy.</p> <p>24 COFFEY, Q.C.:</p> <p>25 Q. And that is, I take it, is applicable to</p>

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1 yourself, as well?
 2 MR. CRAWLEY:
 3 A. Yes, sir, it is, yeah. And I'll be the first
 4 to acknowledge that I probably haven't been
 5 the best on tracking e-mails either for bunch
 6 of different reasons.
 7 COFFEY, Q.C.
 8 Q. I'm sorry, you have not been the best?
 9 MR. CRAWLEY:
 10 A. No, for a bunch of different reasons.
 11 COFFEY, Q.C.:
 12 Q. Mr. Crawley, during the period that you've
 13 been chief of staff in the Premier's office, I
 14 take it that would be from late 2003 until,
 15 includes today, up until today?
 16 MR. CRAWLEY:
 17 A. Yeah.
 18 COFFEY, Q.C.:
 19 Q. Has there been any significant change in the
 20 way that particular matters are kept track of?
 21 MR. CRAWLEY:
 22 A. I think from my own perspective, you know, the
 23 Premier's system is quite robust. You know,
 24 it's well established, it works very well.
 25 For me I have tried to become much more

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1 diligent, particularly on the e-mail side. I
 2 initially, for years, rarely used a PC, I
 3 defer to my Blackberry. And you know, I
 4 probably get anywhere from 60 to 100 e-mails a
 5 day. You know, you read them at home, you
 6 read them whenever you get a few minutes and I
 7 would delete them from my Blackberry once I
 8 was done with them, and you know, knowingly or
 9 unknowingly they were then automatically
 10 deleted from my PC, as well. So I'm quite
 11 certain that there would be fairly wide gaps
 12 in the historical record keeping of my e-
 13 mails.
 14 COFFEY, Q.C.:
 15 Q. When you say "knowingly or unknowingly" when
 16 you would delete them from your Blackberry -
 17 MR. CRAWLEY:
 18 A. Unbeknownst to me they'd also -
 19 COFFEY, Q.C.:
 20 Q. Okay, unbeknownst to you?
 21 MR. CRAWLEY:
 22 A. - be deleted from my--oh, yes, yeah, for
 23 several years.
 24 COFFEY, Q.C.:
 25 Q. When did you learn that by deleting them from

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1 your Blackberry then were, in fact,
 2 disappearing, period?
 3 MR. CRAWLEY:
 4 A. I have to think, I can't be 100 certain, but I
 5 would think 2006, probably late 2006, maybe,
 6 you know, but that is a bit of a guess.
 7 COFFEY, Q.C.:
 8 Q. So when you learned that, did you change your
 9 practice in any way?
 10 MR. CRAWLEY:
 11 A. Yes, I did, yeah, yeah, I did. But to be fair
 12 and honest, it probably be well into 2007
 13 before I could say with a degree of comfort
 14 that, you know, I have a proper tracking
 15 system in place.
 16 COFFEY, Q.C.:
 17 Q. And this proper tracking system, is that one
 18 that you are responsible for yourself?
 19 MR. CRAWLEY:
 20 A. Yes, sir, yeah.
 21 COFFEY, Q.C.:
 22 Q. Okay, to, I take it, you've adopted some
 23 procedures?
 24 MR. CRAWLEY:
 25 A. Yes, I have. I actually called the chief

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1 information officer and asked for some advice
 2 as to how to best do that.
 3 COFFEY, Q.C.:
 4 Q. Okay. And what caused you to change the
 5 practice at the time?
 6 MR. CRAWLEY:
 7 A. I think, to be blunt, the Inquiry and a
 8 recognition that my own e-mail tracking system
 9 probably wasn't as good as it should have
 10 been. And I think that's really a deficiency
 11 that tracks well back into 2003. As part of
 12 the transition to government there's normally-
 13 -and I don't mean to make an excuse.
 14 COFFEY, Q.C.:
 15 Q. Sure, no.
 16 MR. CRAWLEY:
 17 A. It's a matter of fact for learning purposes, I
 18 guess, for the next folks that happen to go
 19 through this, yeah. When we changed the
 20 government in 2003, you know, you receive days
 21 and days and days of briefings about how
 22 things work, but there's, you know, lots of
 23 really important things that, you know, just
 24 aren't talked about. I'm sure the people who
 25 brief us, you know, it's just an innocent

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1 oversight on their part, but, you know, there
 2 was never a clear discussion about how, you
 3 know, you really should protect your records
 4 and why. I mean, common sense would tell you,
 5 yeah, you should be more diligent than I was,
 6 but, you know, that was it, you know, busy
 7 office, you just get in there, roll up your
 8 sleeves and go to it and unfortunately that
 9 was something that certainly could have gone
 10 better.
 11 COFFEY, Q.C.:
 12 Q. And what is it about the Commission or the,
 13 well, you referred to it as the Commission,
 14 that has caused you to rethink that?
 15 MR. CRAWLEY:
 16 A. Well, I guess the requests were made for e-
 17 mails and whatnot and, you know, some folks
 18 had excellent documentation of their
 19 historical e-mails and some folks probably
 20 didn't have the best. From my own perspective
 21 I receive an awful lot of e-mail; I really
 22 don't send that many e-mails. My preferred
 23 method of communication is always by phone. I
 24 think e-mails probably it's a little too easy
 25 to get away with things, you know, to just

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1 send someone a quick note and take it then as
 2 gospel that they've received it; to me that
 3 just doesn't cut it. I prefer to have a
 4 conversation.
 5 COFFEY, Q.C.:
 6 Q. Sir, after the Commission of Inquiry was
 7 established in 2007, you've just referred to
 8 the fact that you were asked or understood you
 9 were being asked to identify any documents.
 10 MR. CRAWLEY:
 11 A. Um-hm.
 12 COFFEY, Q.C.:
 13 Q. That might be relevant. Could you tell the
 14 Commission what, if anything, you were
 15 initially asked to do?
 16 MR. CRAWLEY:
 17 A. I don't recall the exact request or who made
 18 the request, but I know what I went through.
 19 I mean, both my assistant and I conducted
 20 separate searches of my e-mails. I went
 21 through my health files. I went through all
 22 of my notes to see if there was anything there
 23 pertinent and there wasn't. And really, I
 24 wasn't at all surprised by that simply
 25 because, you know, for an extended period, my

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1 office really didn't have a whole lot of
 2 interaction on this. So that was the process.
 3 COFFEY, Q.C.:
 4 Q. Were you -
 5 MR. CRAWLEY:
 6 A. I should also point out that we did search all
 7 of the Premier's files and correspondence as
 8 well, and I don't know if anything was
 9 produced, but if it was, it would have been
 10 forwarded to our coordinators for sure.
 11 COFFEY, Q.C.:
 12 Q. Now sir, with respect to this, do you recall
 13 who it was first asked you?
 14 MR. CRAWLEY:
 15 A. No, I don't.
 16 COFFEY, Q.C.:
 17 Q. Okay. Do you recall what the search--were you
 18 given any search criteria initially?
 19 MR. CRAWLEY:
 20 A. I really -
 21 COFFEY, Q.C.:
 22 Q. Or was that just kind of left to yourself?
 23 MR. CRAWLEY:
 24 A. I really don't recall, but I know, you know,
 25 when we searched e-mails, for example, we used

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1 a variety of words to see if anything would be
 2 triggered and there wasn't.
 3 COFFEY, Q.C.:
 4 Q. Was there any subsequent search conducted?
 5 MR. CRAWLEY:
 6 A. Yes, there was. After some additional e-mails
 7 turned up--off the top of my head, I don't
 8 recall the date, but there were, you know,
 9 three to--I was made aware of three e-mails
 10 and later turned to be more than that. After
 11 that point, Mr. Thompson and at least one
 12 official from the chief information office or
 13 possibly two, came in and ran subsequent
 14 searches on both my PC and I'm quite certain
 15 they also ran searches of some of the archive
 16 material from the chief information officer,
 17 but I'm really, you know, not the person to
 18 explain how they did that.
 19 COFFEY, Q.C.:
 20 Q. And that was after these e-mails that a number
 21 of them are dated July 19th, 2007?
 22 MR. CRAWLEY:
 23 A. That's correct, yeah.
 24 COFFEY, Q.C.:
 25 Q. It's after that, and that would be earlier

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1 this year?
 2 MR. CRAWLEY:
 3 A. Yes, sir.
 4 COFFEY, Q.C.:
 5 Q. 2008.
 6 MR. CRAWLEY:
 7 A. Yeah.
 8 COFFEY, Q.C.:
 9 Q. You referred to the Premier's information
 10 management system. How does that--I think you
 11 used the adjective "robust" a couple of times.
 12 MR. CRAWLEY:
 13 A. Yeah.
 14 COFFEY, Q.C.:
 15 Q. How does that work? How is that set up?
 16 MR. CRAWLEY:
 17 A. Well, to be honest, I'm--you know, I don't use
 18 it, so I'm not the person to explain the
 19 detailed workings of it. Suffice to say, you
 20 know, I know when correspondence comes in,
 21 it's entered into a system, catalogued and
 22 tracked until the issue is brought to a close.
 23 That's about as good a description as I can
 24 give, I'm afraid.

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1 COFFEY, Q.C.:
 2 Q. Do you know if the Premier's office, you know,
 3 that information management system, the
 4 Premier's office, search of it, ever resulted
 5 in any information suggesting that he or his
 6 office was asked by a patient or the media
 7 about ER/PR or the public?
 8 MR. CRAWLEY:
 9 A. No, but I understand Mr. Ross Reid, I can't
 10 tell you the date, but he was the Premier's
 11 deputy at the time, received a contact from a
 12 patient. But that was unbeknownst to me and
 13 to the Premier until the Inquiry was well
 14 under way and it came out through the
 15 discovery process.
 16 COFFEY, Q.C.:
 17 Q. I was going to ask you about that, because Mr.
 18 Reid worked in the same complex overall as
 19 yourself.
 20 MR. CRAWLEY:
 21 A. Yeah.
 22 COFFEY, Q.C.:
 23 Q. You first became aware that Mr. Reid was
 24 involved in the sense of was contacted about
 25 ER/PR, you first became aware of that when?

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1 MR. CRAWLEY:
 2 A. I suspect when the list of interviews for--I'm
 3 not sure what you call the process, but I'm
 4 assuming the discovery process, for lack of a
 5 better word. That would be the first time I
 6 was aware that he had an involvement in this.
 7 COFFEY, Q.C.:
 8 Q. Okay, that would be late 2007, early 2008. It
 9 wasn't back in 2005?
 10 MR. CRAWLEY:
 11 A. No, it certainly wasn't, no.
 12 COFFEY, Q.C.:
 13 Q. Sir, in particular, in--well, I'll go right to
 14 July 2005 and around that time, which would be
 15 almost two years into your current position,
 16 could you tell us, please, what, if any,
 17 system you used as a chief of staff to keep
 18 track of an issue, issue A I'll call it,
 19 whatever you want to name it, if an issue came
 20 to your attention?
 21 MR. CRAWLEY:
 22 A. I'd use the established procedures that were
 23 in there. I'd have my own hot file obviously,
 24 but I'd also work very closely with Cabinet
 25 Secretariat. You know, when the issue arose,

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1 I would have requested a briefing note and,
 2 you know, gone from there on any issue really.
 3 COFFEY, Q.C.:
 4 Q. So if you became aware of an issue, you would
 5 request a briefing note. Well, what criteria
 6 would you use to determine whether or not you
 7 would request a briefing note on an issue?
 8 MR. CRAWLEY:
 9 A. Well, normally I'd get a call from a minister
 10 and the minister would say "look, I've got
 11 this issue happening." I would then request a
 12 briefing note, either of him or her or of
 13 Cabinet Secretariat, and either way, I'd
 14 generally let Cabinet Secretariat know that
 15 I'd requested the briefing note, and the
 16 process would flow from there.
 17 COFFEY, Q.C.:
 18 Q. Okay. So on a particular day one, you would
 19 request a briefing note?
 20 MR. CRAWLEY:
 21 A. Yeah.
 22 COFFEY, Q.C.:
 23 Q. Did you have any system in place yourself to
 24 remind you that you had requested a briefing
 25 note?

1 MR. CRAWLEY:

2 A. No. No, the way it works really is, you know,
3 we don't manage the departments. You know,
4 the minister and the deputy minister are
5 responsible for managing their departments,
6 and when a request is made, you know, the onus
7 is upon them to drive that request.
8 Similarly, you know, if there's a development
9 after that initial briefing note happens, the
10 onus is clearly on the minister and the
11 department to bring that information forward
12 to us.

13 COFFEY, Q.C.:

14 Q. Are there any criteria as to when they are
15 supposed to bring it forward? What sort of a
16 development is supposed to lead to them
17 bringing something forward?

18 MR. CRAWLEY:

19 A. Well, you know, I think there's a well known--
20 I'm not exactly sure how to phrase it, but I
21 think it's well known throughout the system
22 that this government, the Premier does not
23 like surprises, and if there is a development
24 that is important, it's expected that we be
25 made aware of it, either you know, a direct

1 issue, other than, I take it, reading or
2 listening--reading it or listening to him
3 about it, you yourself would take no steps
4 further to kind of diary date that, "I have to
5 go back to that" in a week or two or three?

6 MR. CRAWLEY:

7 A. No, and to be clear, you know, I can't speak
8 for anyone else in the office, but I would say
9 more than 90 percent of the issues that come
10 to me, come from a minister and you know, the
11 remainder of the time, it would come from the
12 clerk. I generally don't interact with
13 deputies or civil servants. My line of
14 contact is with the ministers and I prefer it
15 that way.

16 COFFEY, Q.C.:

17 Q. And that's why I've mentioned the clerk
18 because if the clerk brought something to your
19 attention, an issue, from your perspective at
20 the time, you did not kind of generate a file
21 as it were and have that brought forward?

22 MR. CRAWLEY:

23 A. It depends on the life of the issue, you know.

24 COFFEY, Q.C.:

25 Q. Well, if it's an issue that wasn't settled or

1 call from the minister to the Premier or a
2 direct call from the minister to me. That's
3 well entrenched within the system. It's
4 something we go by and you know, we count on
5 our ministers to be the ones that are driving
6 their files. That's where the accountability
7 lies very clearly.

8 COFFEY, Q.C.:

9 Q. And I appreciate that, but what would
10 constitute a surprise?

11 MR. CRAWLEY:

12 A. Just if you were to see something--you know,
13 there was a development on an issue you were
14 seeing in the evening news and not be aware of
15 it, you know. A minor thing, yeah, you can
16 understand that, but some--you know, issues
17 that tend to raise eyebrows, you know, that's
18 something we'd clearly want to be aware of and
19 expect to be aware of.

20 COFFEY, Q.C.:

21 Q. And within the system then, as it was at least
22 in July of 2005, I take it, within your
23 office, if someone made you aware, for
24 example, the clerk at the time was Mr.
25 Thompson, made you aware of a particular

1 likely to be settled with--it was apparent it
2 wasn't going to be settled within a day or two
3 or three, what would you do, if anything?

4 MR. CRAWLEY:

5 A. It depends on the situation, but generally if
6 there are what I'd call a hot file, I do tend
7 to keep a file. But Mr. Coffey, you know, I
8 do have to say, you know, I've been there for--
9 I've been with the Premier for almost seven
10 years. The overwhelming majority of issues
11 that come to us, and there's a lot, and I
12 mean, there's issues that come up, you know,
13 every day. Some are more important than
14 others, but you know, the classic example of
15 the life of an issue is that, you know,
16 something comes into you and it's generally a
17 phone call from a concerned minister saying
18 "look, I've got this information. I've got
19 this problem. This is kind of the context of
20 it. I don't know where it's going, but you
21 need to be aware." I encourage that type of
22 conversation. I'd much rather someone call me
23 and say "look, we've got a potential problem
24 here," than not. However, you know, just as
25 quickly as that, you know, the civil service

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1 starts working it, whatever. You know,
 2 subsequent information comes up and the--I
 3 don't want to, I guess, belittle any issue,
 4 but the magnitude of the issue or the
 5 understanding of the issue becomes much
 6 clearer and the significance of it tends to
 7 dissipate with time. Sometimes that can be a
 8 matter of hours. Sometimes it can be a matter
 9 of days. Sometimes a matter of weeks, but the
 10 lion's share of the issues that come to me
 11 never make it to the public attention, just
 12 simply because there is a greater
 13 understanding of the issue has developed and
 14 there's no need to do anything with it.
 15 That's pretty much, you know, a classic
 16 breakdown of the life cycle of any issue that
 17 comes forward.

18 COFFEY, Q.C.:
 19 Q. I take it though in your own position, in your
 20 own office, you have no actual system in place
 21 to keep track of whether--to remind--because
 22 there are so many such issues.

23 MR. CRAWLEY:
 24 A. Oh, you mean like a pop up on my calendar or
 25 something like that?

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1 COFFEY, Q.C.:
 2 Q. Yes, exactly.

3 MR. CRAWLEY:
 4 A. No, sir, I don't, no. Again, you know, when a
 5 department has a file, they're generally very
 6 good at keeping us in the loop. There's, you
 7 know, some 20 odd departments out there. It's
 8 not practical for me to call, you know, 20
 9 departments every day and say "look, make sure
 10 I'm up to speed and the Premier's up to speed
 11 on all the issues." That accountability is
 12 with them.

13 COFFEY, Q.C.:
 14 Q. So from your perspective, as the chief of
 15 staff and the way the system is structured
 16 now, it's up to the department, whichever one
 17 or ones that may be involved, to manage the
 18 issue?

19 MR. CRAWLEY:
 20 A. Oh correct, yeah, absolutely, and my contact
 21 in the departments would be the minister.

22 COFFEY, Q.C.:
 23 Q. And so whether the issue comes to your
 24 attention from either the clerk of a minister,
 25 your approach to it is the same.

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1 MR. CRAWLEY:
 2 A. Yes, sir.

3 COFFEY, Q.C.:
 4 Q. It's either left to the clerk and executive--
 5 the Cabinet Secretariat to deal with or it's
 6 left to the minister and his department or her
 7 department to deal with?

8 MR. CRAWLEY:
 9 A. Yeah, and I would expect that even if an issue
 10 is brought forward by the clerk, you know, the
 11 accountability still remains with the
 12 department. You know, they're the ones that
 13 do the work, they have the expertise on it,
 14 you know, the clerk staff is certainly bigger
 15 than mine, but at the end of the day, the
 16 expertise for managing these issues are with
 17 the departments.

18 COFFEY, Q.C.:
 19 Q. Now, sir, the purpose in, though, you being--
 20 information being brought to your attention,
 21 by either the clerk or a minister or anyone
 22 else, for that matter.

23 MR. CRAWLEY:
 24 A. Uh-hm.

25 COFFEY, Q.C.:

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1 Q. But particular by that individual, that group
 2 of individuals, is what? What do you do with
 3 the information?

4 MR. CRAWLEY:
 5 A. I'm not sure I understand your question.

6 COFFEY, Q.C.:
 7 Q. Well what's the point of telling you? What
 8 are you supposed to do with it and who are you
 9 supposed to tell?

10 MR. CRAWLEY:
 11 A. Well usually it's for information purposes and
 12 obviously I'd brief the Premier and my staff,
 13 depending on the nature of the issue.

14 COFFEY, Q.C.:
 15 Q. And brief them how so? What sort of format is
 16 used and when does it happen?

17 MR. CRAWLEY:
 18 A. Well I'd normally, I mean, the Premier is a
 19 busy man, I don't beat down his door every
 20 time an issue comes up unless it is something
 21 of life safety, you know, I'd keep a little
 22 list on a tear-off pad, like this, and the
 23 first opportunity we'd have to have a
 24 conversation, I'd sit down and say, look, you
 25 know, there's a couple of issues here you need

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1 to be aware of. I also, you know, as a matter
 2 of fact, I'd request a briefing note and I
 3 would leave the details of this, you know, I'd
 4 certainly talk to him at a high level, but I'd
 5 leave the details to the briefing note to
 6 provide the clarity. There's been a couple of
 7 times where, I mean, information just comes in
 8 and, you know, it's real time, it's fluid,
 9 there's been, you know, more than one
 10 situation where I've acted upon information
 11 that's come in, that's been inaccurate that,
 12 you know, it's no big deal but nobody likes to
 13 work with inaccurate information. So I place
 14 great confidence in those notes, you know, I
 15 rely on them heavily.

16 COFFEY, Q.C.:
 17 Q. On the briefing notes?
 18 MR. CRAWLEY:
 19 A. I do, yes.
 20 COFFEY, Q.C.:
 21 Q. And these are these ones, these are the
 22 briefing notes that are formal, they have a
 23 registry stamp on them.
 24 MR. CRAWLEY:
 25 A. Yeah, I don't know if it's a registry stamp,

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1 but there is a distribution list -
 2 COFFEY, Q.C.:
 3 Q. Distribution list and if you look at the ones
 4 we have, the last page has a registry stamp as
 5 well.
 6 MR. CRAWLEY:
 7 A. That's correct, yes.
 8 COFFEY, Q.C.:
 9 Q. I take it then, if you're made aware of an
 10 issue and it may be of some significance that
 11 you would inform the Premier about it before
 12 the briefing note came along?
 13 MR. CRAWLEY:
 14 A. Yes, sir, I would and if it was a truly--if
 15 the minister called me and said I have a
 16 significant issue, I would make a point of
 17 saying to that minister, look, this is
 18 something that should probably go on the
 19 Cabinet agenda, we need to prepare yourself
 20 for that and I'd look for permission from the
 21 Premier to add it to the Cabinet agenda, you
 22 know, for anything that comes in that's major.
 23 COFFEY, Q.C.:
 24 Q. And what criteria do you use to decide whether
 25 something should make it on to the Cabinet's

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1 agenda or not?
 2 MR. CRAWLEY:
 3 A. Well at the end of the day, it's the Premier's
 4 decision, but my recommendation would be based
 5 on experience and a gut sense as to the
 6 appropriateness. I don't have a check list
 7 that I go through that says, yeah, this is
 8 there, this is there, this is there, whatever.
 9 It's just based on experience. And we do err
 10 on the side of caution, though, however.
 11 COFFEY, Q.C.:
 12 Q. Sir, the briefing notes, we will see at least
 13 two here, actually Cabinet Secretariat style
 14 briefing notes. What's the practice, vis-a-
 15 vis or with respect to your own review of
 16 them? How do you deal with them?
 17 MR. CRAWLEY:
 18 A. Well, to be frank, I mean, there's briefing
 19 notes come in every day. If there's something
 20 important, I'd expect a phone call on it,
 21 depending on how busy the day was, you know, I
 22 try to read my briefing notes everyday. I
 23 certainly look at them to see what's there
 24 everyday. The office is so busy, if there's
 25 nothing there that jumps out at me or nothing

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1 I've been told to watch out for, in all
 2 possibility I'll take them home and read them
 3 at night or, depending on the issue, read it
 4 on a Sunday morning--you know, before my kids
 5 were born, in the office; since they were
 6 born, at home.
 7 COFFEY, Q.C.:
 8 Q. Do you have any system of keeping track or
 9 noting that I've actually read that briefing
 10 note?
 11 MR. CRAWLEY:
 12 A. No.
 13 COFFEY, Q.C.:
 14 Q. You don't, in terms of initial it or -
 15 MR. CRAWLEY:
 16 A. No.
 17 COFFEY, Q.C.:
 18 Q. And at 400 briefing notes a year, that's
 19 about, somewhere between one and one and a
 20 half briefing notes a working day.
 21 MR. CRAWLEY:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. Depending upon how many days one works.
 25 MR. CRAWLEY:

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1 A. Bearing in mind summertimes aren't--I can't
 2 say that, because there are a lot of
 3 intergovernmental affairs briefing notes in
 4 the run of a summer, so you know, there's no--
 5 I don't think it's fair to say, you know, an
 6 average of one a day. There's times of the
 7 year when the briefing notes are coming at you
 8 fast and furious; and there's times when
 9 they're not. If you look at July of 2005, you
 10 know, I was just back from my honeymoon, so
 11 I'm sure that was quite a stack of briefing
 12 notes on my desk and you know, again, it just
 13 depends on the time of year.
 14 COFFEY, Q.C.:
 15 Q. Okay, that's July; how about August of '06?
 16 MR. CRAWLEY:
 17 A. August of '06, you know, I can't tell you what
 18 was on the go. I just can't recall.
 19 COFFEY, Q.C.:
 20 Q. Generally in the summertime, I take it that
 21 the briefing note traffic would slow down,
 22 compared to the -
 23 MR. CRAWLEY:
 24 A. Yeah, early summer it would, but as you get
 25 back into September, I mean, members are

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1 getting active, you know, ministers are trying
 2 to get files up to speed for early September,
 3 so I think you're safe to say in August things
 4 do pick up considerably.
 5 COFFEY, Q.C.:
 6 Q. And what's the practice to your knowledge with
 7 respect to briefing notes and Mr. Williams?
 8 You'd be on the same distribution list.
 9 MR. CRAWLEY:
 10 A. I would, yeah.
 11 COFFEY, Q.C.:
 12 Q. So how are they supplied to him?
 13 MR. CRAWLEY:
 14 A. Through the same way that I get them, you
 15 know, the Cabinet Secretariat brings it down
 16 and the mechanics of how it works, I don't
 17 know, it's just there in my briefing note in-
 18 tray and, you know, like I said, sometimes
 19 there could be 12, sometimes it could be 5,
 20 sometimes it could be 1, you know, I don't
 21 think you can have--I don't think your analogy
 22 of one a week is really a fair one.
 23 COFFEY, Q.C.:
 24 Q. I was just doing the arithmetic on 400 a year.
 25 MR. CRAWLEY:

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1 A. Yeah.
 2 COFFEY, Q.C.:
 3 Q. One to one and a half a day, actually.
 4 MR. CRAWLEY:
 5 A. Whatever, yeah, good point.
 6 COFFEY, Q.C.:
 7 Q. Do you keep track of them afterward? Do you
 8 have any kind of a filing system?
 9 MR. CRAWLEY:
 10 A. I do, I have a redundant filing system for all
 11 of the briefing notes that come down to the
 12 floor, you know, one or two may get lost
 13 because I've taken it home to do some work on,
 14 but you know, I'd always be able to get one
 15 from Cabinet Secretariat, but I do keep
 16 briefing notes, yes. And again, if we're into
 17 a file, you know, at some point I'll generally
 18 start to keep my own file.
 19 COFFEY, Q.C.:
 20 Q. Now in the Premier's office, what sort of
 21 routine or regular meetings are there? What
 22 sort of routine or regular meetings are there
 23 within the Premier's office?
 24 MR. CRAWLEY:
 25 A. I meet with my staff, you know, every day at

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1 9:00, the length of that depends. I also
 2 generally meet with the clerk at least once a
 3 day, but that can be several times, depending
 4 on what's on the go.
 5 COFFEY, Q.C.:
 6 Q. What time of day would you meet with the
 7 clerk? Is there a routine time?
 8 MR. CRAWLEY:
 9 A. No, that schedule is--we try to do, you know,
 10 with the Premier, we try to do regular
 11 meetings with the clerk, but just given the
 12 volume of activity that's out there and the
 13 way we work, it wasn't practical, so it
 14 evolved, you know, to meetings with the
 15 Premier as necessary and I still continue to
 16 have daily or near daily meetings with the
 17 clerk. No scheduled time, no.
 18 COFFEY, Q.C.:
 19 Q. So in July of 2005, it was a schedule, like a
 20 typical schedule would be meet with your staff
 21 at 9:00 a.m.
 22 MR. CRAWLEY:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. Your own staff.

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1 MR. CRAWLEY:
 2 A. Yes, if schedules permit it, yes.
 3 COFFEY, Q.C.:
 4 Q. And at that point in time, meeting with the
 5 clerk, what as the practice then?
 6 MR. CRAWLEY:
 7 A. I don't recall the specifics of it. I don't
 8 know when this all evolved, but, you know,
 9 it's safe to say, Mr. Coffey, that I would
 10 meet with the clerk on a daily basis or close
 11 to daily basis, whenever schedules permitted.
 12 COFFEY, Q.C.:
 13 Q. And the purpose in meeting with the clerk
 14 would be what?
 15 MR. CRAWLEY:
 16 A. Whatever was on his agenda and sometimes, you
 17 know, I'd have things that I'd want to have
 18 actioned.
 19 COFFEY, Q.C.:
 20 Q. And would there be any record kept of those
 21 meetings?
 22 MR. CRAWLEY:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. Of the meeting with the clerk?

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1 MR. CRAWLEY:
 2 A. I can't say all meetings would, but if am
 3 emerging issue came up, then no, there
 4 wouldn't be, but if she wanted to talk to me
 5 about, you know, I get involved with all
 6 executive recruitment, deputies, ADM's or
 7 someone else on my staff on an ADM level and
 8 if he wanted to talk to me about something
 9 like that, then there would be an agenda item
 10 for it. If something came up, then obviously,
 11 no, there wouldn't be an agenda for that, he'd
 12 just pop down and we'd have a chat. But on
 13 the whole, yeah, there are agendas for these
 14 meetings, yeah.
 15 COFFEY, Q.C.:
 16 Q. And what about for your own office staff? Are
 17 there any -
 18 MR. CRAWLEY:
 19 A. No agenda.
 20 COFFEY, Q.C.:
 21 Q. Any record kept?
 22 MR. CRAWLEY:
 23 A. No, we just open the floor up for discussions
 24 on whatever is of interest and I don't recall
 25 for you when those meetings started.

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1 COFFEY, Q.C.:
 2 Q. Recall when the practice started?
 3 MR. CRAWLEY:
 4 A. Yeah.
 5 COFFEY, Q.C.:
 6 Q. Was it in place by July of 2005?
 7 MR. CRAWLEY:
 8 A. I couldn't tell you.
 9 COFFEY, Q.C.:
 10 Q. Now who is your staff?
 11 MR. CRAWLEY:
 12 A. My senior staff at that time would have been
 13 Elizabeth Matthews.
 14 COFFEY, Q.C.:
 15 Q. So she reported to you?
 16 MR. CRAWLEY:
 17 A. Yes, sir, she's our director of
 18 communications. Stephen Dinn, he's my deputy
 19 chief of staff; Brian Taylor is our director
 20 of operations and at the time, Peter Noel, who
 21 is the Premier's principle assistant.
 22 COFFEY, Q.C.:
 23 Q. When did you first hear of, well what's now in
 24 shorthand referred to as ER/PR?
 25 MR. CRAWLEY:

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1 A. Well looking back at the paper trail, it would
 2 have been July, 2005.
 3 COFFEY, Q.C.:
 4 Q. Now I ask you that because the paper trail and
 5 I take it you're referring to those July 19th
 6 e-mails?
 7 MR. CRAWLEY:
 8 A. I am sir, yes.
 9 COFFEY, Q.C.:
 10 Q. Don't actually refer to ER and PR?
 11 MR. CRAWLEY:
 12 A. No, I know they don't, yes.
 13 COFFEY, Q.C.:
 14 Q. So the subject matter that the Commission is
 15 dealing with, I take it that's when you first
 16 heard of it, July 19th?
 17 MR. CRAWLEY:
 18 A. Yes, I believe it is, yes.
 19 COFFEY, Q.C.:
 20 Q. What do you recall about that?
 21 MR. CRAWLEY:
 22 A. July -
 23 COFFEY, Q.C.:
 24 Q. Well July 19th, what do you recall about when
 25 you first became aware of this matter?

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1 MR. CRAWLEY:
 2 A. You know, I've gone through every briefing
 3 note on this, every e-mail on it, every
 4 presentation with hopes that something, you
 5 know, would jog in my memory, but I really
 6 don't remember anything about those early days
 7 at all.
 8 COFFEY, Q.C.:
 9 Q. The--so when is your first conscious
 10 recollection of this matter?
 11 MR. CRAWLEY:
 12 A. It would have to be, you know, I guess when
 13 the media coverage started in October of 2005.
 14 COFFEY, Q.C.:
 15 Q. And that's with, I take it, The Independent
 16 story?
 17 MR. CRAWLEY:
 18 A. Yeah.
 19 COFFEY, Q.C.:
 20 Q. If we could, please, just in relation to that,
 21 just a moment please. If we could bring up,
 22 please, exhibit P-0313? Now this is an e-mail
 23 September 30th, 2005, Mr. Crawley, it's from
 24 Carolyn Chaplin. It's at 4:42 p.m. and it's
 25 to a number of individuals, including

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1 Elizabeth Matthews, Josephine Cheeseman,
 2 Robert Thompson and Sheree MacDonald and I'll
 3 name the final one, Mr. Cooper, Bruce Cooper.
 4 It reads, "Eastern Health Authority has
 5 contacted us to advise that an issue that had
 6 been ongoing throughout the summer concerning
 7 ER/PR testing of breast cancer patients is
 8 about to hit the media. Late this afternoon
 9 Eastern Health was contacted by The
 10 Independent inquiring whether the health
 11 authority had an issue with its mammogram
 12 screening"--and it goes on to talk about or
 13 point out that Dr. Laing had spoken with The
 14 Independent and talks about NTV.
 15 MR. CRAWLEY:
 16 A. Uh-hm.
 17 COFFEY, Q.C.:
 18 Q. Now I notice that you're not an addressee in
 19 this?
 20 MR. CRAWLEY:
 21 A. No.
 22 COFFEY, Q.C.:
 23 Q. Do you know if you received this e-mail at the
 24 time? Was it forwarded to you?
 25 MR. CRAWLEY:

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1 A. Not that I'm aware of, but if someone says it
 2 was, you know, I'm not saying that it wasn't,
 3 I have no recollection of this at all.
 4 COFFEY, Q.C.:
 5 Q. The subject matter, do you recall whether or
 6 not before the story actually appeared in The
 7 Independent, you were made aware of it?
 8 MR. CRAWLEY:
 9 A. I don't recall at all, no.
 10 COFFEY, Q.C.:
 11 Q. Given the circumstances, this was a Friday
 12 afternoon, September 30th.
 13 MR. CRAWLEY:
 14 A. Uh-hm.
 15 COFFEY, Q.C.:
 16 Q. If this was to be brought to your attention,
 17 whose role was it to bring it to your
 18 attention?
 19 MR. CRAWLEY:
 20 A. I mean, if it's just a heads up on a story,
 21 you know, given everything that's on the go, I
 22 may very well not have gotten a heads up on
 23 it, you know, Elizabeth Matthews would
 24 normally be the one to do it, she's, you know,
 25 probably the best in the business, so you

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1 know, if she felt it was appropriate and it
 2 was appropriate, I have no doubt that it would
 3 happen. She's very, very good.
 4 COFFEY, Q.C.:
 5 Q. If we were to look at, please, exhibit P-0086?
 6 Now this is the actual story that appeared in
 7 The Independent on October 2nd. Would you
 8 have read that at the time, do you think, or
 9 in the days immediately after that?
 10 MR. CRAWLEY:
 11 A. Chances are I would have, yeah, I definitely
 12 would have actually, yeah, I'm sure.
 13 COFFEY, Q.C.:
 14 Q. Do you recall the matter being discussed?
 15 MR. CRAWLEY:
 16 A. No. No, I don't.
 17 COFFEY, Q.C.:
 18 Q. And why would you have read it at the time?
 19 Why would you have definitely read it?
 20 MR. CRAWLEY:
 21 A. Well I read the paper. Now, Mr. Coffey,
 22 reading it and sitting down with a pen and
 23 analyzing are two different things. I mean,
 24 like anyone else out there, I would go through
 25 it and take it for what it's worth.

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1 COFFEY, Q.C.:

2 Q. In an overall sense, though, just looking at

3 the first paragraph, the first sentence

4 actually, it refers to "retesting tissue

5 samples taken from breast cancer patients from

6 as far back as 1997 to address possible

7 inaccuracies in the results".

8 MR. CRAWLEY:

9 A. Yes.

10 COFFEY, Q.C.:

11 Q. So as the chief of staff at the time, what, if

12 anything, would you have thought of that,

13 bearing in mind that you have told us you have

14 no conscious recollection of anything before

15 that?

16 MR. CRAWLEY:

17 A. No, I would--when you read the article in its

18 entirety, I would have actually been quite

19 pleased to see the things that are in there.

20 I mean, my philosophy on these matters are

21 that, you know, you have the experts in the

22 field and they're really the ones that should

23 be talking about it, and in this case that's

24 what's happened. You have, I guess it's Dr.

25 Laing out speaking about this and she appears

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1 to be quite candid, you know, they are

2 disclosing what some of the problems are.

3 They're commenting on it, which I think is a

4 very good thing. They're the experts, you

5 know, if they point out that patients are

6 being contacted, which is very important,

7 that, you know, all the samples are being

8 retested; to me, it appeared that the issue

9 was being properly handled.

10 COFFEY, Q.C.:

11 Q. Now, sir, we look at the third paragraph and

12 its last sentence says, "The results are only

13 now returning since the retesting began in

14 May, this year."

15 MR. CRAWLEY:

16 A. Uh-hm.

17 COFFEY, Q.C.:

18 Q. That's, well certainly four more months later,

19 four to five months later.

20 MR. CRAWLEY:

21 A. Uh-hm.

22 COFFEY, Q.C.:

23 Q. So that wouldn't have caused any raising of

24 your eyebrows, the fact that you, apparently,

25 were only now really focusing on this?

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1 MR. CRAWLEY:

2 A. No, because I would rely on the minister in

3 the department, you know, there's--again,

4 there's some twenty-odd departments of

5 government, plus crown corps and agencies, I

6 mean, if there's something that the Premier

7 needs to be aware of, you know, the department

8 really has to flag that, you know, to him or

9 to me to get to him, and that's the way it

10 worked, so you know, if we don't get that

11 heads up and you know, you treat the issues

12 for what they are.

13 COFFEY, Q.C.:

14 Q. Well certainly and on that point, this is what

15 I want to ask you about, in early October of

16 2005, learning for the first time, you know,

17 based upon your recollection now, in terms of

18 actually it kind of striking you in the face,

19 as it were, that there's some kind of

20 retesting going on, breast cancer patients,

21 covers a span of years -

22 MR. CRAWLEY:

23 A. Uh-hm.

24 COFFEY, Q.C.:

25 Q. Seven to eight years.

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1 MR. CRAWLEY:

2 A. Uh-hm.

3 COFFEY, Q.C.:

4 Q. The fact the minister had not, apparently,

5 brought it to your attention.

6 MR. CRAWLEY:

7 A. Uh-hm.

8 COFFEY, Q.C.:

9 Q. You know, from your perspective as chief of

10 staff and you've pointed out that Mr. Williams

11 is the sort of person who doesn't like to be

12 surprised.

13 MR. CRAWLEY:

14 A. Yes.

15 COFFEY, Q.C.:

16 Q. I gather you were probably surprised.

17 MR. CRAWLEY:

18 A. No, I didn't have a reaction to the story at

19 all, saying, my goodness, why wasn't this

20 brought to my attention, I mean, that's the

21 call of the minister of the day, you know. If

22 in his opinion, you know, looking at all of

23 the issues that are involved with health at

24 that time, if--he knows the files better than

25 anyone, you know, the onus is on him to say,

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1 look, you know, you've got stories on a dozen
 2 different health care matters that day, this
 3 is the one that really concerns me and that's
 4 his job.
 5 COFFEY, Q.C.:
 6 Q. Well you would agree, wouldn't you, that as it
 7 turns out this is--even in that world, this is
 8 an unusual story?
 9 MR. CRAWLEY:
 10 A. Oh I think in hindsight it most certainly is,
 11 yeah.
 12 COFFEY, Q.C.:
 13 Q. And I think--I'm going to suggest to you based
 14 upon what you know now, as of September 30th
 15 anybody who was informed about, it was an
 16 unusual story?
 17 MR. CRAWLEY:
 18 A. Yeah, I think that's probably a safe
 19 assumption, yeah.
 20 COFFEY, Q.C.:
 21 Q. And when we look at that briefing note of
 22 October 5th, when we're going to -
 23 MR. CRAWLEY:
 24 A. Uh-hm.
 25 COFFEY, Q.C.:

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1 Q. Anybody who read that, this was an unusual
 2 story.
 3 MR. CRAWLEY:
 4 A. You know, unusual in that sense, but again,
 5 this is a government with 20 to 30,000
 6 employees that runs the whole province.
 7 Unusual issues come up all the time and if
 8 there's no way, you know, for us to determine
 9 what's unusual to the minister, then really
 10 it's hard for us to do that.
 11 COFFEY, Q.C.:
 12 Q. Well do you know if the minister was asked in
 13 October why we weren't given a heads up about
 14 this?
 15 MR. CRAWLEY:
 16 A. No, I don't know, I never asked him, no.
 17 COFFEY, Q.C.:
 18 Q. Now, when we look at exhibit P-0312 please?
 19 MR. CRAWLEY:
 20 A. Uh-hm.
 21 COFFEY, Q.C.:
 22 Q. Which is an e-mail from Mr. Cake of July 19th,
 23 2005 at 10:32 a.m. It's page one of the
 24 exhibit. If we could just look at page two,
 25 there's an e-mail from Mr. Thompson to

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1 yourself at 10:49 a.m., the same day,
 2 forwarding Mr. Cake's e-mail, I gather, and
 3 Mr. Thompson has written "This is major, once
 4 the solution is set into motion, we will
 5 expect the department and the board to
 6 undertake appropriate evaluation to determine
 7 why this happened." Signed Robert.
 8 MR. CRAWLEY:
 9 A. Yes.
 10 COFFEY, Q.C.:
 11 Q. And when we look back at page one of the
 12 exhibit, Mr. Cake and what he's written to Mr.
 13 Thompson at 10:32, does refer to Carolyn
 14 Chaplin just called from Health and Community
 15 Services to provide a heads up that a major
 16 story will break from Eastern Health Board as
 17 early as this Thursday, but more likely next
 18 Monday.
 19 So, in looking at that, anyone who is
 20 privy to that information, would you agree
 21 would realize that as of July 19, the
 22 Department of Health had told the Cabinet
 23 Secretariat and presumptively then the
 24 Premier's office about the existence of this
 25 issue.

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1 MR. CRAWLEY:
 2 A. Sure, yes.
 3 COFFEY, Q.C.:
 4 Q. Okay.
 5 MR. CRAWLEY:
 6 A. Yes, in that initial e-mail they--I can assure
 7 you, Mr. Coffey, when I look at this note and
 8 I see things such as, number one, breast
 9 cancer, you know, that would catch people's
 10 attention for sure; "testing from 1997 to
 11 April of 2004 an estimated 1200 - 1500
 12 clients", I can assure you sir, that that
 13 caught my attention on that day, make no
 14 mistake about that.
 15 COFFEY, Q.C.:
 16 Q. And you're also advised that the Health Board,
 17 "Eastern Health Board is currently working on
 18 a strategy for communicating this news to
 19 affected clients", as its put there, "and the
 20 public at large, legal advice is being engaged
 21 in this process".
 22 MR. CRAWLEY:
 23 A. Um-hm.
 24 COFFEY, Q.C.:
 25 Q. "And Health and Community Services will be

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1 advised of the communication strategy, a
 2 briefing note is currently being prepared.
 3 Carolyn has also alerted Elizabeth to this
 4 matter". So, having read that, as you pointed
 5 out just now, opening that in your e-mail
 6 system, reading it, it would grab your
 7 attention.
 8 MR. CRAWLEY:
 9 A. Yes sir.
 10 COFFEY, Q.C.:
 11 Q. You would have noted Elizabeth Matthews had
 12 been brought into the loop, as it were?
 13 MR. CRAWLEY:
 14 A. Um-hm.
 15 COFFEY, Q.C.:
 16 Q. What, if any, significance being told that a
 17 briefing note is currently being prepared
 18 would have for you, what would that mean?
 19 MR. CRAWLEY:
 20 A. Oh, I'd take comfort in that because I'd know
 21 more details to follow.
 22 COFFEY, Q.C.:
 23 Q. Would you make any effort to check to ensure
 24 that you actually received a briefing note?
 25 MR. CRAWLEY:

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1 A. No, no, that would be--I mean, if it's a
 2 significant issue, it's up to the department
 3 to make sure that that issue moves forward to
 4 Cabinet Secretariat and then on to us. I
 5 should say too, Mr. Coffey, I mean, I would be
 6 very pleased to see that Eastern Health is
 7 appearing to be taking the lead on it. They
 8 are the experts and I'd be comforted by the
 9 fact that they are developing a strategy for
 10 patients and to the public at large. The
 11 legal advice thing wouldn't have registered
 12 with me one way or the other.
 13 COFFEY, Q.C.:
 14 Q. It would not?
 15 MR. CRAWLEY:
 16 A. No.
 17 COFFEY, Q.C.:
 18 Q. Why not?
 19 MR. CRAWLEY:
 20 A. Lawsuits happen all the time. I guess, you
 21 know, I suspect on that day I would have been
 22 more concerned about the other points that are
 23 listed.
 24 COFFEY, Q.C.:
 25 Q. Now sir, have you ever received otherwise in

Page 59

1 your career as Chief of Staff, a communication
 2 suggesting that 1200 - 1500 patients, over an
 3 extended period of time, have had test results
 4 problems?
 5 MR. CRAWLEY:
 6 A. No, but I've certainly received heads up, you
 7 know, that are--I really, I don't want to do
 8 anything to diminish the significance of this
 9 issue and the people who have been involved
 10 with it. So, my comments hopefully don't do
 11 that, but I regularly receive updates on very
 12 significant issues impacting many thousands of
 13 people. You know, that could go from problems
 14 with the way water systems are treated to
 15 affected, potentially, at the time, I'm sure
 16 hundreds of communities to issues with public-
 17 -breaches of information, access to personal
 18 records, I guess, that you know, first come in
 19 to many tens of thousands of people. So, you
 20 know, the numbers, you know, while very
 21 seriously, we do have examples of issues that
 22 impact many, many more people. And again, I
 23 really don't want to offend anyone by those
 24 comments. It's just the way it works; you
 25 have, you know, big issues all the time.

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1 COFFEY, Q.C.:
 2 Q. Well, I appreciate that, all the time, but I
 3 mean, really how often -
 4 MR. CRAWLEY:
 5 A. What do you think.
 6 COFFEY, Q.C.:
 7 Q. - in the sense of in the middle of the summer
 8 to be told that there's this many patients -
 9 MR. CRAWLEY:
 10 A. Sure.
 11 COFFEY, Q.C.:
 12 Q. - potentially negatively affected.
 13 MR. CRAWLEY:
 14 A. Yes, it happens.
 15 COFFEY, Q.C.:
 16 Q. Okay. How often?
 17 MR. CRAWLEY:
 18 A. I -
 19 COFFEY, Q.C.:
 20 Q. Not a lot?
 21 MR. CRAWLEY:
 22 A. There's not an average of two incidents a
 23 week. It doesn't quite work that way.
 24 COFFEY, Q.C.:
 25 Q. Now, having been told it was major, from your

Page 61

1 perspective, in whose lap was this?

2 MR. CRAWLEY:

3 A. This would have been an Eastern Health issue

4 with oversight by the department.

5 COFFEY, Q.C.:

6 Q. Pardon me?

7 MR. CRAWLEY:

8 A. This would have been an Eastern Health issue

9 with--I don't know if oversight is the right

10 word, but the department would be responsible

11 for keeping and eye on it within Eastern

12 Health.

13 THE COMMISSIONER:

14 Q. What does that mean?

15 MR. CRAWLEY:

16 A. Well, I don't know, I've never worked in the

17 line department, so I don't know how they

18 interact with the outside agencies, but I

19 would expect for there to be ongoing

20 communication between the department and the

21 health authority to ensure both are up to

22 speed on what's going on.

23 THE COMMISSIONER:

24 Q. What I'm really interested in is what your

25 view of oversight is. Does oversight just

Page 62

1 mean it's a channel for information? Does

2 oversight given anyone any power to do

3 anything? What's the role of the department,

4 vis-a-vis, Eastern Health in this?

5 MR. CRAWLEY:

6 A. I would, I mean, Eastern Health have the

7 medical experts to run, you know, these types

8 of issues. I would expect that the Department

9 of Health would just want to know what's

10 happening there, you know, to be engaged.

11 THE COMMISSIONER:

12 Q. To do no assessment?

13 MR. CRAWLEY:

14 A. I can't say that, it depends on the issue and-

15 -I've never worked in health, so I don't know

16 the type of day-to-day interaction they have

17 with the health authorities.

18 THE COMMISSIONER:

19 Q. Okay. What I suppose I'm trying to determine

20 is because other witnesses have referred to

21 the oversight role of a department -

22 MR. CRAWLEY:

23 A. Um-hm.

24 THE COMMISSIONER:

25 Q. - and what I'm trying to struggle with is

Page 63

1 because they don't all agree, is what the

2 oversight role of a department is when there's

3 a crown corporation, as is in this case,

4 reporting through that department. So, you

5 can't give me any more than that?

6 MR. CRAWLEY:

7 A. No, ma'am, from my interaction, I have

8 generally zero interaction at all with health

9 boards or school boards or certainly minimal

10 interaction with either of those.

11 THE COMMISSIONER:

12 Q. All right, thank you.

13 COFFEY, Q.C.:

14 Q. And so from your perspective as the chief of

15 staff in the Premier's office as of July 19th,

16 2005, having the e-mail Mr. Cake had sent to

17 Mr. Thompson, Mr. Thompson with his commentary

18 had forwarded to you, from your perspective as

19 the chief of staff, it was left to the

20 Department of Health to conduct oversight of

21 Eastern Health's handling of this matter -

22 MR. CRAWLEY:

23 A. Yeah, it would be -

24 COFFEY, Q.C.:

25 Q. - without--an oversight is an undefined in

Page 64

1 this context, term?

2 MR. CRAWLEY:

3 A. It would be for me, I would look to the

4 department to manage this issue with Eastern

5 Health. Eastern Health would have the

6 responsibility for dealing with it; they have

7 the technical expertise. But if this impacted

8 government, my contact would be the department

9 as opposed to Eastern Health.

10 COFFEY, Q.C.:

11 Q. And what sort of criteria would you expect the

12 department to use, then, in determining any

13 future contact on this with you and the

14 Premier's office?

15 MR. CRAWLEY:

16 A. I would think if there was a significant

17 development, you know, a greater clarity on

18 the issue, you know, that's probably relevant,

19 yeah.

20 COFFEY, Q.C.:

21 Q. So that if the issue got worse?

22 MR. CRAWLEY:

23 A. Um-hm.

24 COFFEY, Q.C.:

25 Q. Thank was thought on July 19th?

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1 MR. CRAWLEY:
 2 A. Yeah.
 3 COFFEY, Q.C.:
 4 Q. To be told about that?
 5 MR. CRAWLEY:
 6 A. Yeah.
 7 COFFEY, Q.C.:
 8 Q. If the issue got to be perceived to be less
 9 serious?
 10 MR. CRAWLEY:
 11 A. Yeah.
 12 COFFEY, Q.C.:
 13 Q. To be contacted?
 14 MR. CRAWLEY:
 15 A. Yes. And it appears they did that several
 16 hours later that day.
 17 COFFEY, Q.C.:
 18 Q. And if the issue changed even again, it went
 19 from A to B, back to somewhere between A and
 20 B?
 21 MR. CRAWLEY:
 22 A. Yeah.
 23 COFFEY, Q.C.:
 24 Q. To be advised about that, as well, I take it?
 25 MR. CRAWLEY:

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1 A. I would, you know, I would generally expect a
 2 minister to keep the Premier apprised of major
 3 developments on key issues. So you know, if
 4 there's an issue that's going to play a
 5 prominent role, then that's his job to let him
 6 know. If it dissipates, then that's also, you
 7 know, an onus on him to give us a heads up.
 8 And if the issue comes back to life, then, you
 9 know, that's their call.
 10 COFFEY, Q.C.:
 11 Q. It's their call?
 12 MR. CRAWLEY:
 13 A. Yes.
 14 COFFEY, Q.C.:
 15 Q. But the understanding, I take it, as you
 16 pointed out, within the government, was and is
 17 that it's your call, but we had better not be
 18 surprised?
 19 MR. CRAWLEY:
 20 A. We'd like to know.
 21 COFFEY, Q.C.:
 22 Q. That's -
 23 MR. CRAWLEY:
 24 A. Yes, sir, yeah.
 25 COFFEY, Q.C.:

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1 Q. Okay.
 2 MR. CRAWLEY:
 3 A. We'd very much like to know.
 4 COFFEY, Q.C.:
 5 Q. What does "prominent" mean?
 6 MR. CRAWLEY:
 7 A. In what context?
 8 COFFEY, Q.C.:
 9 Q. Well, in--no, I'll just leave it at that.
 10 Here on July 19th then what happened? We can
 11 look at the e-mail, you just referred to it.
 12 It's page 5, please? Skip ahead here. This
 13 is the e-mail from Carolyn Chaplin to Gary
 14 Cake at 2:37 p.m. And in fact, if we just go
 15 back, we can see that at 2:51 p.m. Ms. Chaplin
 16 forwarded that--not Ms. Chaplin, Mr. Cake
 17 forwarded that on to Mr. Thompson with a note,
 18 "FYI" signed, "GC."
 19 MR. CRAWLEY:
 20 A. Um-hm.
 21 COFFEY, Q.C.:
 22 Q. What happened that day? I mean, do you
 23 actually know what happened?
 24 MR. CRAWLEY:
 25 A. I'm not following your question.

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1 COFFEY, Q.C.:
 2 Q. Well, you said you have no recollection of it
 3 at all?
 4 MR. CRAWLEY:
 5 A. Yeah.
 6 COFFEY, Q.C.:
 7 Q. Period?
 8 MR. CRAWLEY:
 9 A. Yeah.
 10 COFFEY, Q.C.:
 11 Q. You've told the Commissioner, well, told me
 12 and the Commissioner, look, I would have
 13 opened that e-mail that Robert forwarded to me
 14 and it would have caught my attention? Right?
 15 MR. CRAWLEY:
 16 A. Yes, sir.
 17 COFFEY, Q.C.:
 18 Q. What then happened, do you know, do you have
 19 any actual idea of what then happened?
 20 MR. CRAWLEY:
 21 A. No. I would assume the department worked the
 22 issue.
 23 COFFEY, Q.C.:
 24 Q. Okay. Does the existence of this e-mail at
 25 page 5 assist in any way?

1 MR. CRAWLEY:
 2 A. Yeah. I would take that as being, you know,
 3 the same as happens any time we get a heads up
 4 on something, additional work gets done.
 5 They've got a better handle on what the issue
 6 is actually all about. I would see, you know,
 7 come key points that would catch my eye. "No
 8 action is required at this time. Briefing to
 9 follow, significance minimized" -
 10 COFFEY, Q.C.:
 11 Q. Significance of any announcement actually is
 12 what it is, it doesn't say significance -
 13 MR. CRAWLEY:
 14 A. Sure.
 15 COFFEY, Q.C.:
 16 Q. - of any announcement would be minimized.
 17 MR. CRAWLEY:
 18 A. Yeah.
 19 COFFEY, Q.C.:
 20 Q. So, -
 21 MR. CRAWLEY:
 22 A. That could be anything, I mean, the way I
 23 would read something like that is, you know,
 24 the same way most issues come up in the run of
 25 a day, you know, it's a major issue when it

1 MR. CRAWLEY:
 2 A. Yes.
 3 COFFEY, Q.C.:
 4 Q. Okay. So, -
 5 MR. CRAWLEY:
 6 A. And you know, maybe that's a good learning in
 7 this, is a better tracking system for issues,
 8 but we clearly rely the departments to
 9 follow through on that. That's the way, I'm
 10 sure it has always worked and it's the way it
 11 should work.
 12 COFFEY, Q.C.:
 13 Q. Do you know if--we've heard some evidence that
 14 perhaps you spoke or were party to a
 15 conversation on July 19 with Carolyn Chaplin
 16 while Ms. Matthews was there. Do you recall
 17 that?
 18 MR. CRAWLEY:
 19 A. No sir, I don't -
 20 COFFEY, Q.C.:
 21 Q. It doesn't -
 22 MR. CRAWLEY:
 23 A. You know, if they say it happened, then it
 24 happened. I have had probably less than, you
 25 can probably count on one hand the number of

1 first comes in. We get some additional
 2 information on it and, you know, the issue is
 3 not what it first appeared to be. That would
 4 be the way that I read that e-mail.
 5 COFFEY, Q.C.:
 6 Q. Now, there's nothing actually in that that
 7 suggests what that other information is, is
 8 there?
 9 MR. CRAWLEY:
 10 A. No, I would assume that would come forward
 11 with the briefing note.
 12 COFFEY, Q.C.:
 13 Q. And you had no system in place to keep track
 14 of whether or not you ever actually got a
 15 briefing note?
 16 MR. CRAWLEY:
 17 A. Yeah, we have a system, it's the department, I
 18 mean, that's where the responsibility -
 19 COFFEY, Q.C.:
 20 Q. Yeah, but I mean within your own office -
 21 MR. CRAWLEY:
 22 A. No sir.
 23 COFFEY, Q.C.:
 24 Q. - to remind you that, you know, a week later
 25 you didn't actually have a briefing note.

1 conversations that I've had that are issues
 2 drive with communications director. I
 3 generally deal with the ministers; that's the
 4 way I work.
 5 COFFEY, Q.C.:
 6 Q. So, you would not normally have conversations
 7 with -
 8 MR. CRAWLEY:
 9 A. A communications director.
 10 COFFEY, Q.C.:
 11 Q. Oh, within a department.
 12 MR. CRAWLEY:
 13 A. No.
 14 COFFEY, Q.C.:
 15 Q. Like Ms. Chaplin. It would be an unusual -
 16 MR. CRAWLEY:
 17 A. I mean, it has happened, yeah, it has
 18 happened, but it isn't the norm.
 19 COFFEY, Q.C.:
 20 Q. And if it happened in this instance, it was
 21 not the norm?
 22 MR. CRAWLEY:
 23 A. Yeah, I don't have an explanation as to why
 24 that happened. Again, I look to be briefed by
 25 the ministers.

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1 COFFEY, Q.C.:

2 Q. In this context, would you have--why wouldn't

3 you have asked Mr. Ottenheimer, having learned

4 of this in a dire, potentially dire situation

5 that morning in your e-mail -

6 MR. CRAWLEY:

7 A. Um-hm.

8 COFFEY, Q.C.:

9 Q. - why wouldn't you have asked to meet with Mr.

10 Ottenheimer to see what was going on with it?

11 MR. CRAWLEY:

12 A. Well, it's not really the way it works. I

13 mean, if he feels, you know -

14 COFFEY, Q.C.:

15 Q. And I appreciate that, just in terms of -

16 MR. CRAWLEY:

17 A. But you do need the perspective. I mean,

18 there's twenty odd departments out there and

19 all of them have issues and at different times

20 all of them come to the Premier's office.

21 It's not possible for me to track down

22 individual ministers since it's not my job.

23 It's their job to bring that to our attention.

24 You know, they have the day to day oversight

25 on these things; the day to day accountability

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1 for managing it. If there's information that

2 we need to know, you know, they are

3 responsible for getting that to us.

4 THE COMMISSIONER:

5 Q. So, do I understand the way it would work is

6 that you get information, it could come from

7 many sources.

8 MR. CRAWLEY:

9 A. No, it could come from many departments, but

10 it would generally come from either the

11 minister or the clerk.

12 THE COMMISSIONER:

13 Q. The clerk of Cabinet?

14 MR. CRAWLEY:

15 A. Yes.

16 THE COMMISSIONER:

17 Q. In terms of the information that comes to you.

18 MR. CRAWLEY:

19 A. Yes.

20 THE COMMISSIONER:

21 Q. But I'm just thinking--as I understand, in

22 respect, vis-a-vis the issue that we're

23 dealing with here, you don't remember any of

24 the events of July?

25 MR. CRAWLEY:

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1 A. No.

2 THE COMMISSIONER:

3 Q. You don't remember seeing anything about this

4 until the story broke in "The Independent" and

5 you don't even really remember reading "The

6 Independent" story.

7 MR. CRAWLEY:

8 A. Correct.

9 THE COMMISSIONER:

10 Q. You're just assuming you would have read it

11 because you read the paper.

12 MR. CRAWLEY:

13 A. That's right.

14 THE COMMISSIONER:

15 Q. And the only thing you can assume is that

16 because you got an e-mail from Robert Thompson

17 you would have read an e-mail from Robert

18 Thompson.

19 MR. CRAWLEY:

20 A. Um-hm, but I can also assure you that Robert

21 and I would likely have had a conversation on

22 this, you know, given the relationship that we

23 had, you know.

24 THE COMMISSIONER:

25 Q. Well, I'm getting a lot of that, this is what

Page 76

1 I would have done, but nobody ever remembers

2 seemingly having done much.

3 MR. CRAWLEY:

4 A. And to be clear, I mean, I'm not saying

5 categorically that we did. I'm saying that

6 it's likely that we would have.

7 THE COMMISSIONER:

8 Q. Okay. And but you don't know, for example,

9 whether anybody called you back to say, this

10 isn't a problem.

11 MR. CRAWLEY:

12 A. No ma'am, I have no recollection of a call -

13 THE COMMISSIONER:

14 Q. Now, do I further understand that having

15 gotten this, this doesn't mean anything unless

16 you hear from the minister that the minister

17 thinks this is a big problem?

18 MR. CRAWLEY:

19 A. No, no, I wouldn't say that at all. I mean,

20 if the clerk feels it's important enough to

21 bring it to my attention then that still would

22 catch my attention. What I'm saying is that

23 the normal process for this to happen is

24 generally, you know, information comes from

25 the minister. I don't mean to diminish the

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1 clerk's role at all.

2 THE COMMISSIONER:

3 Q. Okay, but having gotten this clerk--does it

4 then--what I'm trying to understand is what

5 that signals, if anything, to the Premier's

6 office other than this may be on the horizon.

7 Does the Premier's office then not leave it to

8 either the clerk or the ministers to bring it

9 back to the Premier or to Cabinet on the

10 assessment of either the clerk or the minister

11 that this is an issue that should go that

12 route.

13 MR. CRAWLEY:

14 A. Are you asking me, I'm sorry, I'm not clear on

15 what you're asking me.

16 THE COMMISSIONER:

17 Q. Okay, well, I'm not clear on what happens

18 within the office, so that's the reason for my

19 question. Assume for the moment that you

20 received and read the e-mail from Mr. Thompson

21 in which he is, in effect, saying this is a

22 major issue, having forwarded you a copy of an

23 e-mail which he received.

24 MR. CRAWLEY:

25 A. Um-hm.

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1 THE COMMISSIONER:

2 Q. So, we make that assumption for the moment and

3 assume that nothing else comes into your

4 office by way of any more information about it

5 during that day.

6 MR. CRAWLEY:

7 A. Right.

8 THE COMMISSIONER:

9 Q. Do you then wait for either Mr. Thompson or a

10 minister to contact the Premier's office to

11 say, yes, we're about to confirm that this

12 really is a major issue and here's a briefing

13 note on it or here's additional information on

14 it. Or are there circumstances where you, as

15 chief of staff, would say, this one is so

16 major that I go look for information?

17 MR. CRAWLEY:

18 A. I would think -

19 THE COMMISSIONER:

20 Q. And if so, what would be the--what makes it so

21 major that you go look for it?

22 MR. CRAWLEY:

23 A. I would think, you know, I would normally rely

24 on the departments to bring forward the issue.

25 I mean, that's a long established structure

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1 that we've worked under. The onus is on them

2 to bring it to us. And you know, the way I

3 would have read, I believe, that first e-mail

4 is that briefing information is to follow, I

5 think, I do believe it says that at some

6 point. "A briefing note is currently being

7 prepared". I would have accepted that and I

8 would have expected the briefing note to

9 follow.

10 THE COMMISSIONER:

11 Q. And if one didn't follow, that wouldn't have

12 bothered you?

13 MR. CRAWLEY:

14 A. I would have to say given all of the files

15 that come across my desk, you know, I don't

16 watch all of them for ongoing developments. I

17 mean -

18 THE COMMISSIONER:

19 Q. I'm just trying to figure out what happens in

20 the office. And the impression that I'm being

21 left with, I have to tell you about because if

22 I've gotten the wrong impression, I was you to

23 correct me.

24 MR. CRAWLEY:

25 A. Sure.

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1 THE COMMISSIONER:

2 Q. And the impression I'm being left with is you

3 might get a heads up, you obviously prefer to

4 get your heads up from ministers or from Mr.

5 Thompson.

6 MR. CRAWLEY:

7 A. Yes.

8 THE COMMISSIONER:

9 Q. But sometimes information comes indirectly, I

10 presume, like from communications directors.

11 MR. CRAWLEY:

12 A. Yeah.

13 THE COMMISSIONER:

14 Q. And what I'm understanding from what you're

15 saying is that that's all it is. You really

16 don't place much importance on these things

17 unless and until either Mr. Thompson or a

18 minister gets in touch with you to say, I'm

19 here to confirm that this is major issue and I

20 want it to be taken further than my

21 department, let's put it on the Cabinet agenda

22 or I need to talk to the Premier about it.

23 MR. CRAWLEY:

24 A. I don't think it's fair to say I wouldn't

25 place any importance on it. I mean, you know,

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1 all the issues that come in are important.
 2 What I'm saying is -
 3 THE COMMISSIONER:
 4 Q. Well, you wouldn't take any action on it.
 5 MR. CRAWLEY:
 6 A. No, I--well, other than brief the Premier, if
 7 appropriate or yeah, I mean, -
 8 THE COMMISSIONER:
 9 Q. But how can you brief the Premier if all you
 10 got is something like that?
 11 MR. CRAWLEY:
 12 A. It's a heads up of an issue -
 13 THE COMMISSIONER:
 14 Q. That would be just saying there may be an
 15 issue.
 16 MR. CRAWLEY:
 17 A. Yeah.
 18 THE COMMISSIONER:
 19 Q. Okay, I think. Carry on, Mr. Coffey.
 20 COFFEY, Q.C.:
 21 Q. Thank you, Commissioner. Following from those
 22 questions by the Commissioner, Mr. Crawley,
 23 and perhaps it's just a lack of understanding
 24 of the way the actual system works, but is the
 25 Premier's office actually, in that context

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1 then, exercise any management or oversight
 2 itself?
 3 MR. CRAWLEY:
 4 A. Do you mean do we intervene in a file?
 5 COFFEY, Q.C.:
 6 Q. Well, do you exercise any management or
 7 oversight yourselves?
 8 MR. CRAWLEY:
 9 A. Yeah, I mean, when a note comes in, we can
 10 oftentimes say or when an issue comes to our
 11 head, we can oftentimes say, you know, we need
 12 to get a presentation ready for this or make
 13 sure the note talks about this, those kinds of
 14 things. That does happen.
 15 COFFEY, Q.C.:
 16 Q. The note, yes, but what's the point of getting
 17 the note?
 18 MR. CRAWLEY:
 19 A. Well, then you can decide then next steps.
 20 COFFEY, Q.C.:
 21 Q. And so having received a note and having--if
 22 you satisfied that it's as complete as you
 23 need, you would utilize it then to decide
 24 whether or not to intervene or not. Is that -
 25 MR. CRAWLEY:

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1 A. Yeah, well generally we don't intervene, but
 2 I'm -
 3 COFFEY, Q.C.:
 4 Q. I'm trying to get some sense because you did
 5 intervene finally in May of '07.
 6 MR. CRAWLEY:
 7 A. Yes sir, we did.
 8 COFFEY, Q.C.:
 9 Q. Significantly.
 10 MR. CRAWLEY:
 11 A. Yes.
 12 COFFEY, Q.C.:
 13 Q. So, what is it about--you'd wait for a note.
 14 MR. CRAWLEY:
 15 A. Yep.
 16 COFFEY, Q.C.:
 17 Q. The note comes and if it's satisfactory in
 18 form that you would read the note and decide
 19 based upon what you read either to let things
 20 continue without intervening -
 21 MR. CRAWLEY:
 22 A. Um-hm.
 23 COFFEY, Q.C.:
 24 Q. Correct?
 25 MR. CRAWLEY:

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1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. Or if there's something in the note that
 4 triggered it, you would intervene.
 5 MR. CRAWLEY:
 6 A. Yeah, general rule of thumb is, you know, I'd
 7 say 99 percent of all files that come through
 8 government, we don't intervene.
 9 COFFEY, Q.C.:
 10 Q. I appreciate that. So, what is it then that
 11 would happen in a note or what would have to
 12 happen for you to intervene and actually then
 13 exercise management or oversight?
 14 MR. CRAWLEY:
 15 A. Well, generally you know, on the last page of
 16 a note there's a section that says "action
 17 required" and if it says "no action required"
 18 then that's what it is, for information
 19 purposes, that's what it is. If the
 20 Department if asking action of us, that's
 21 where it's requested and that's where
 22 direction would be given.
 23 COFFEY, Q.C.:
 24 Q. Sure, but say they don't suggest any action,
 25 but you reading the note think there should be

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1 action.
 2 MR. CRAWLEY:
 3 A. Um-hm.
 4 COFFEY, Q.C.:
 5 Q. I take it you would then intervene?
 6 MR. CRAWLEY:
 7 A. You could, yeah, you could.
 8 COFFEY, Q.C.:
 9 Q. Okay. Now sir, what sort of things would
 10 cause, from your perspective, you to advise
 11 Mr. Williams, the Premier, to intervene or
 12 take it upon yourself to intervene?
 13 MR. CRAWLEY:
 14 A. I would intervene in a file, you know, one, if
 15 a minister asked me for some support or for
 16 some advice. If I didn't the issue was being
 17 handled properly--I know if there were matters
 18 of life and safety, health safety, you know,
 19 we'd want to, eminent, you know, issues like
 20 that, we'd want to get involved, but for the
 21 most part we don't intervene. Of course, if
 22 the Premier told me to intervene, I'd
 23 intervene. Those are my criteria.
 24 COFFEY, Q.C.:
 25 Q. Okay. Now the matters referred to on page one

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1 here, P-0312, this is the sort of matter, I
 2 take it you would bring to Mr. Williams'
 3 attention.
 4 MR. CRAWLEY:
 5 A. Yes sir, I would.
 6 COFFEY, Q.C.:
 7 Q. Do you recall if you did so?
 8 MR. CRAWLEY:
 9 A. No, I really don't recall much about that day
 10 at all, but I know, you know, the way I work
 11 with the Premier and this first e-mail, if
 12 that's all there was to it, you know, I can
 13 assure you that would have been brought to his
 14 attention.
 15 COFFEY, Q.C.:
 16 Q. And I take it, just because of the sheer
 17 magnitude of the potential problem spelled out
 18 here.
 19 MR. CRAWLEY:
 20 A. Um-hm.
 21 COFFEY, Q.C.:
 22 Q. And would you have brought it to his
 23 attention, whether or not there was any
 24 reference to Thursday or next Monday.
 25 MR. CRAWLEY:

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1 A. Yes, yeah.
 2 COFFEY, Q.C.:
 3 Q. The underlying issue itself is serious enough,
 4 whether or not it was going to make it into
 5 public forum.
 6 MR. CRAWLEY:
 7 A. And I would have likely brought to him three
 8 or four other issues that were on the go that
 9 day, you know, that I felt required his
 10 attention.
 11 COFFEY, Q.C.:
 12 Q. Now, we understand that there was a swearing
 13 in that day.
 14 MR. CRAWLEY:
 15 A. Yes, that morning.
 16 COFFEY, Q.C.:
 17 Q. And did you attend that?
 18 MR. CRAWLEY:
 19 A. No, I rarely attend--I rarely leave the office
 20 to be honest with you.
 21 COFFEY, Q.C.:
 22 Q. Is there anything--I'm just going to go to--
 23 I'm looking at page five of the exhibit, if
 24 you--because the e-mail--there's not record
 25 that the e-mail itself actually went to you.

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1 MR. CRAWLEY:
 2 A. Um-hm.
 3 COFFEY, Q.C.:
 4 Q. Was forwarded to you, but if you receive the
 5 informational content of that in some form,
 6 would that cause you not to tell Mr. Williams
 7 that?
 8 MR. CRAWLEY:
 9 A. Well, I mean the facts of it are, I don't
 10 remember telling Premier Williams; I don't
 11 remember not telling him. I can assure you,
 12 if we did have a conversation, I would have,
 13 the perspective brought forward by this e-mail
 14 would have been captured in that conversation.
 15 I would have left him with a clear impression
 16 that there was originally something here, but
 17 it doesn't appear to be much of an issue right
 18 now.
 19 COFFEY, Q.C.:
 20 Q. And why is that? What is there about this
 21 that's suggested that there may not be much of
 22 an issue here, looking at the e-mail, what is
 23 there in it?
 24 MR. CRAWLEY:
 25 A. Well, just read, I mean, there's new incoming

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1 information this afternoon, no action is
 2 required.
 3 COFFEY, Q.C.:
 4 Q. If we could, please, what action was required
 5 in the first place?
 6 MR. CRAWLEY:
 7 A. For information purposes to pass on to the
 8 Premier is the way, you know, that's the
 9 action I would have took.
 10 COFFEY, Q.C.:
 11 Q. I appreciate that, but this is Ms. Chaplin to
 12 Mr. Cake. So, there was no actual action
 13 required, I take it, of the Premier's office
 14 or Cabinet Secretariat that morning.
 15 MR. CRAWLEY:
 16 A. I have no idea what Ms. Chaplin was thinking.
 17 I mean, that's probably a question you should
 18 ask her.
 19 COFFEY, Q.C.:
 20 Q. And -
 21 MR. CRAWLEY:
 22 A. I can tell you how I read it, was that nothing
 23 was required of me or the Premier's office.
 24 COFFEY, Q.C.:
 25 Q. Of course, that assumes you read it all.

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1 MR. CRAWLEY:
 2 A. Yeah, yeah.
 3 COFFEY, Q.C.:
 4 Q. Okay.
 5 MR. CRAWLEY:
 6 A. Just on that, Mr. Coffey, I mean, I have a
 7 very good relationship with the clerk, you
 8 know, the former clerk and the current clerk,
 9 we have a very regular communications policy.
 10 I mean, I would--it's inconceivable to me that
 11 Robert Thompson would not have shared this
 12 information with me.
 13 COFFEY, Q.C.:
 14 Q. And if he did so, you would have passed your
 15 understanding of it onto Mr. Williams?
 16 MR. CRAWLEY:
 17 A. I'm sorry?
 18 COFFEY, Q.C.:
 19 Q. If he did so, you would have understood your
 20 understanding of what he was telling you onto
 21 Mr. Williams.
 22 MR. CRAWLEY:
 23 A. Yes, if the Premier and I had a conversation
 24 on this issue that day, I would have certainly
 25 put this in the context of not being, you

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1 know, the major issue that I was led to
 2 believe earlier that day.
 3 COFFEY, Q.C.:
 4 Q. Okay. Now sir -
 5 THE COMMISSIONER:
 6 Q. That was the earlier question though, it's one
 7 thing to having gotten the original message,
 8 to pass that onto the Premier and then if
 9 you've got a second message to say, this is
 10 new material about what I've already told you
 11 -
 12 MR. CRAWLEY:
 13 A. Right.
 14 THE COMMISSIONER:
 15 Q. - but having gotten the second message, would
 16 you even bother to bring it up with him, is I
 17 think the question.
 18 MR. CRAWLEY:
 19 A. Oh, yes, if I had briefed him earlier in the
 20 day -
 21 COMMISSIONER:
 22 Q. No, but if you had not?
 23 MR. CRAWLEY:
 24 A. If I had not.
 25 COMMISSIONER:

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1 Q. Would you not brief him at all having gotten
 2 it?
 3 MR. CRAWLEY:
 4 A. I mean, really, I don't remember briefing him
 5 or briefing him, but -
 6 COMMISSIONER:
 7 Q. That's so I understand.
 8 MR. CRAWLEY:
 9 A. But I can assure you, if he had been briefed
 10 on this, I would have given him the context
 11 that this was not, you know, the issue it was
 12 lead to believe. And -
 13 COMMISSIONER:
 14 Q. Yes, but my question is if you had not briefed
 15 him.
 16 MR. CRAWLEY:
 17 A. If I had not briefed him, I would have, if we
 18 had a conversation on it, I would have said,
 19 look, you know, this really isn't that--it
 20 doesn't appear to be, you know, a major issue,
 21 the department is not flagging it as something
 22 we should be worried about, and we likely
 23 would have moved on to the next issue on our
 24 list.
 25 COMMISSIONER:

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1 Q. Well, I'm just assuming that there will be
 2 occasions when you will use your discretion to
 3 say this isn't worthy of even bringing up with
 4 the Premier, he's got enough on his plate.
 5 MR. CRAWLEY:
 6 A. Oh, my apologies, ma'am, yeah, I know -
 7 COMMISSIONER:
 8 Q. All I'm asking you is whether or not this kind
 9 of information would have caused you to use
 10 that kind of discretion?
 11 MR. CRAWLEY:
 12 A. Sure, there's lots of issues that come forward
 13 that, you know, I deal with and move on. But
 14 I don't think it's fair to say black and
 15 white, you know, just reading that that, no, I
 16 never talked to the Premier about it; I don't
 17 think that's a fair assumption.
 18 COMMISSIONER:
 19 Q. Okay. Thank you.
 20 MR. CRAWLEY:
 21 A. I guess, you know, again, I just don't have a
 22 recollection of telling him or not telling
 23 him.
 24 COMMISSIONER:
 25 Q. All right.

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1 COFFEY, Q.C.:
 2 Q. And Mr. Crawley, knowing what you do now,
 3 okay, as much as you do now about this matter,
 4 should there have been a briefing note
 5 provided in July?
 6 MR. CRAWLEY:
 7 A. I mean, it's just so easy to sit back with -
 8 COFFEY, Q.C.:
 9 Q. Well, you know -
 10 MR. CRAWLEY:
 11 A. - hindsight, yeah.
 12 COFFEY, Q.C.:
 13 Q. Should there have been?
 14 MR. CRAWLEY:
 15 A. A briefing note, you know, I feel, having
 16 heard the two ministers' testimony and the
 17 genuine concern which they had, I think it
 18 would have been appropriate for them to have a
 19 conversation with the Premier.
 20 COFFEY, Q.C.:
 21 Q. And -
 22 MR. CRAWLEY:
 23 A. And that doesn't mean the Premier would have
 24 done anything differently, but he would have
 25 had the option to intervene had he so chose.

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1 And I do think, yes, sir, I do think that was
 2 appropriate.
 3 COFFEY, Q.C.:
 4 Q. I'm sorry, you said having heard the--that
 5 would be Mr. Ottenheimer, I take it, in this
 6 context?
 7 MR. CRAWLEY:
 8 A. Yes. But I never actually had a conversation
 9 with Minister Osborne on this, either. You
 10 know, if either minister--they both displayed
 11 genuine concern when they were on the stand.
 12 It was clearly an issue that they were worried
 13 about. And you know, if they were that
 14 worried, and I'm sure they were, you know,
 15 yeah, I would have expected them to have a
 16 conversation with the Premier. Again, you
 17 know, it's just the benefit of a couple of
 18 years down the road and, you know, an Inquiry
 19 well under way. But having heard, you know,
 20 their own words, I think it would have been
 21 appropriate for them to have a chat with the
 22 Premier, yes.
 23 COFFEY, Q.C.:
 24 Q. Now, in this context I take it as best, from
 25 what you just told us, Mr. Ottenheimer never

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1 had a conversation with you first nor last
 2 about this?
 3 MR. CRAWLEY:
 4 A. No, sir.
 5 COFFEY, Q.C.:
 6 Q. Nor did Mr. Osborne?
 7 MR. CRAWLEY:
 8 A. No, sir, not until the May 17th.
 9 COFFEY, Q.C.:
 10 Q. May 17th?
 11 MR. CRAWLEY:
 12 A. Yeah.
 13 COFFEY, Q.C.:
 14 Q. Okay. 2007?
 15 MR. CRAWLEY:
 16 A. Yes, sir.
 17 COFFEY, Q.C.:
 18 Q. Okay.
 19 MR. CRAWLEY:
 20 A. And I don't believe either had a conversation
 21 with the Premier, either, to be clear, I'm
 22 quite certain they never.
 23 COFFEY, Q.C.:
 24 Q. Yes. That you're aware of?
 25 MR. CRAWLEY:

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1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. On this point, are you able to tell the
 4 Commissioner, because you live in that world,
 5 okay.
 6 MR. CRAWLEY:
 7 A. Um-hm.
 8 COFFEY, Q.C.:
 9 Q. Can you think of any reason why, bearing in
 10 mind what you've said you understand both
 11 these gentlemen were concerned about this
 12 matter?
 13 MR. CRAWLEY:
 14 A. Clearly, yeah.
 15 COFFEY, Q.C.:
 16 Q. Why, can you think of any rational reason why
 17 they did not bring it to the Premier's
 18 attention?
 19 MR. CRAWLEY:
 20 A. No, sir. I mean, that's really the question
 21 that has to be asked of them, you know, and -
 22 COFFEY, Q.C.:
 23 Q. And I appreciate that. But -
 24 MR. CRAWLEY:
 25 A. Probably (inaudible) in their files.

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1 COFFEY, Q.C.:
 2 Q. - as a participant in the system, I'm just
 3 asking you, can you think of any?
 4 MR. CRAWLEY:
 5 A. I can offer a guess, but that's all it would
 6 be. I mean, if they feel they were handling
 7 the issue, then that's, you know, that's their
 8 explanation. But really, you know, to me
 9 that's immaterial, you know; they didn't.
 10 COFFEY, Q.C.:
 11 Q. Now, is it--on that point, because we have
 12 heard at least some evidence here that
 13 suggests that Mr. Ottenheimer on July 19th or
 14 thereabouts made or sought some assurance from
 15 Ms. Chaplin that the Premier's office had been
 16 contacted about the matter.
 17 MR. CRAWLEY:
 18 A. Um-hm.
 19 COFFEY, Q.C.:
 20 Q. So if he was given such assurance, and
 21 apparently she had.
 22 MR. CRAWLEY:
 23 A. Um-hm.
 24 COFFEY, Q.C.:
 25 Q. Okay. So that the Premier's office, at least,

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1 was advised, in Mr. Ottenheimer's mind, I take
 2 it, at least, they were aware that it somehow
 3 existed.
 4 MR. CRAWLEY:
 5 A. Yeah, on that day we were advised and we were
 6 told to stand down. And you know, then the
 7 issue didn't just fade away then, it was being
 8 dealt with from what, you know, I've learned
 9 since the Inquiry started, in some detail.
 10 So, you know, the contact on that day was what
 11 it was. You know, if the issue was continuing
 12 and meetings were occurring that were heated
 13 and frustrations arose, I think it would be
 14 appropriate for them to have a conversation
 15 with the Premier, very appropriate.
 16 COFFEY, Q.C.:
 17 Q. If we could, please, Exhibit P-, I think it's
 18 0125? Actually, it's, I apologize, 0124. I
 19 can never keep track of--just going to scroll
 20 down. This is, just to put this in context,
 21 Commissioner, this is the October 5th, see
 22 that, 2005 briefing note?
 23 MR. CRAWLEY:
 24 A. October 5th? Yeah.
 25 COFFEY, Q.C.:

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1 Q. Okay, and the distribution list is there with
 2 your name on it?
 3 MR. CRAWLEY:
 4 A. Um-hm.
 5 COFFEY, Q.C.:
 6 Q. Did you ask that this be prepared?
 7 MR. CRAWLEY:
 8 A. No, sir, I did not.
 9 COFFEY, Q.C.:
 10 Q. Do you have any knowledge of who did?
 11 MR. CRAWLEY:
 12 A. No, I don't.
 13 COFFEY, Q.C.:
 14 Q. Have you made any inquiries?
 15 MR. CRAWLEY:
 16 A. No, sir.
 17 COFFEY, Q.C.:
 18 Q. At that time who was responsible within that
 19 group or within the Cabinet Secretariat for
 20 social policy?
 21 MR. CRAWLEY:
 22 A. My goodness. May of 2005--or, sorry, October
 23 of 2005.
 24 COFFEY, Q.C.:
 25 Q. Sheree MacDonald, maybe?

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1 MR. CRAWLEY:
 2 A. It may very well have been, yeah. Sheree was
 3 promoted at some point. I'm not sure if it
 4 was around here or not.
 5 COFFEY, Q.C.:
 6 Q. Well, her name is in the top right-hand
 7 corner, that's why, S. MacDonald.
 8 MR. CRAWLEY:
 9 A. Oh, okay, sorry.
 10 COFFEY, Q.C.:
 11 Q. Just looking at this, at the bottom it says,
 12 "Prepared by M. Hennessey, J. Abbott."
 13 MR. CRAWLEY:
 14 A. Um-hm.
 15 COFFEY, Q.C.:
 16 Q. "Department of Health." and reviewed by "B.
 17 Cooper, S. MacDonald, Cabinet Secretariat,
 18 October 5, 2005." What, if any, significance
 19 do the words "Prepared by" and "Reviewed by"
 20 have at that point in time?
 21 MR. CRAWLEY:
 22 A. Nothing. To me it was just information there
 23 should, you know, should I want to know.
 24 COFFEY, Q.C.:
 25 Q. At the time, reading that -

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1 MR. CRAWLEY:
 2 A. Mr. Coffey, that's not something I would focus
 3 on, really. I'd be more concerned with the
 4 note itself.
 5 COFFEY, Q.C.:
 6 Q. In terms of the reliability of what's in the
 7 note, I take it -
 8 MR. CRAWLEY:
 9 A. If a briefing note is coming to the Premier's
 10 office, I would fully expect it to be accurate
 11 in all senses. It's something that the
 12 Premier could very well take and speak out
 13 publicly on, so for there to be inaccuracies,
 14 you know, I don't consider that to be
 15 acceptable.
 16 COFFEY, Q.C.:
 17 Q. Yeah.
 18 MR. CRAWLEY:
 19 A. Given what they're used for.
 20 COFFEY, Q.C.:
 21 Q. And in terms of the usage of the words
 22 "Prepared by" and "Reviewed by" at that time
 23 and into 2006, in particular, August, 2006,
 24 was there any understanding that if your name
 25 appears there after the words "Prepared by"

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1 and "Reviewed by" that you're responsible for
 2 it?
 3 MR. CRAWLEY:
 4 A. I don't -
 5 COFFEY, Q.C.:
 6 Q. Is that -
 7 MR. CRAWLEY:
 8 A. I mean, that's really a role for the Cabinet
 9 Secretariat folks. I mean, you know, if
 10 something goes wrong, I don't call, you know,
 11 Moira or John, I mean, it would be very rare,
 12 I would call the minister, so that would have
 13 no real bearing for me in terms of following
 14 onto it.
 15 COFFEY, Q.C.:
 16 Q. And you would have read this in October?
 17 MR. CRAWLEY:
 18 A. Yes, I would, you know, I certainly--if it was
 19 in my in-tray, I would have read it, yeah. I
 20 can't tell you the detail, but I would have
 21 went through it.
 22 COFFEY, Q.C.:
 23 Q. Do you recall speaking to anyone or
 24 communicating with anyone about this at the
 25 time?

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1 MR. CRAWLEY:
 2 A. No, sir, no. No, my reaction would have been,
 3 you know, there was a story in the Independent
 4 and this is a little bit of background
 5 information as to what it was all about.
 6 COFFEY, Q.C.:
 7 Q. Did you have any understanding, having read
 8 this, as to what sort of impact there might be
 9 on patients?
 10 MR. CRAWLEY:
 11 A. I have to just quickly flick through it here.
 12 COFFEY, Q.C.:
 13 Q. Sure, you go right ahead. You have it there
 14 in front of you.
 15 MR. CRAWLEY:
 16 A. Could I actually get some more water, as well,
 17 please?
 18 COFFEY, Q.C.:
 19 Q. Sure.
 20 MR. CRAWLEY:
 21 A. It's very dry in here.
 22 COFFEY, Q.C.:
 23 Q. Yeah, it is.
 24 MR. CRAWLEY:
 25 A. Thank you, very much. So what's your

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1 question?
 2 COFFEY, Q.C.:
 3 Q. Did you have any understanding at the time as
 4 to what the potential impact could be on
 5 patients of their original test results having
 6 been incorrect?
 7 MR. CRAWLEY:
 8 A. No, I don't think I would.
 9 COFFEY, Q.C.:
 10 Q. Yes.
 11 MR. CRAWLEY:
 12 A. I don't have the exposure to cancer to be able
 13 to give that type of commentary.
 14 COFFEY, Q.C.:
 15 Q. If we look at page 1 of the actual briefing
 16 note, the first page of it under "Current
 17 Status", the third and fourth line read, "To
 18 date 73 of the samples have been reviewed and
 19 it appears that of these there are 16 to 20
 20 individuals whose treatment could be
 21 impacted." Now, so you made no inquiries as
 22 to what sorts of impact we're talking about
 23 here?
 24 MR. CRAWLEY:
 25 A. No, sir.

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1 COFFEY, Q.C.:
 2 Q. Whether it's serious, how serious, very
 3 serious, no inquiry?
 4 MR. CRAWLEY:
 5 A. No.
 6 COFFEY, Q.C.:
 7 Q. Now, looking under the heading "Current
 8 Status" and continuing on through the second
 9 page, the fourth-last bullet, see right here,
 10 "There could be", it says, "There could be
 11 some potential litigation issues for the
 12 families of deceased patients once the
 13 families are notified."
 14 MR. CRAWLEY:
 15 A. Yes, sir, yeah.
 16 COFFEY, Q.C.:
 17 Q. So would you have understood that if you're
 18 talking about the families of deceased
 19 patients suing, that there might be some,
 20 possibly some connection between the errors
 21 and the patients' deaths?
 22 MR. CRAWLEY:
 23 A. I never -
 24 COFFEY, Q.C.:
 25 Q. Would you have understood that?

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1 MR. CRAWLEY:
 2 A. I never drew that conclusion, but I didn't
 3 read it in that kind of detail. I mean, you
 4 know, again, it was seen as being an update
 5 for an issue that was in the paper. I thought
 6 the issue was well handled in the paper and I
 7 was pleased with where it was going. No flags
 8 were raised at that point.
 9 COFFEY, Q.C.:
 10 Q. And did you have any concern at the time,
 11 having read the newspaper, but this is much
 12 more detailed, in fact, than the newspaper
 13 article?
 14 MR. CRAWLEY:
 15 A. Um-hm. Yeah.
 16 COFFEY, Q.C.:
 17 Q. About, well, okay, as to the future, but what
 18 about the past, how did this happen, why did
 19 this happen?
 20 MR. CRAWLEY:
 21 A. No, sir, no.
 22 COFFEY, Q.C.:
 23 Q. Okay.
 24 MR. CRAWLEY:
 25 A. But I do believe this says that "All current

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1 requests for ER/PR testing of breast cancer
 2 patients are being forwarded to Mount Sinai."
 3 COFFEY, Q.C.:
 4 Q. Oh, yeah, that's on the go-forward basis.
 5 MR. CRAWLEY:
 6 A. Yes.
 7 COFFEY, Q.C.:
 8 Q. Yes. But I'm talking about to know, that's
 9 all very well and good for going ahead, but
 10 kind of how could this go on for seven years?
 11 MR. CRAWLEY:
 12 A. Yeah.
 13 COFFEY, Q.C.:
 14 Q. And more to the point, what went on?
 15 MR. CRAWLEY:
 16 A. Yeah.
 17 COFFEY, Q.C.:
 18 Q. That's not spelled out here, is it?
 19 MR. CRAWLEY:
 20 A. No, sir, no.
 21 COFFEY, Q.C.:
 22 Q. What, if anything, did you understand was
 23 being done in relation to that, trying to
 24 figure that out?
 25 MR. CRAWLEY:

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1 A. I wouldn't have gotten into that. I mean,
 2 that's not my job to step into a department
 3 and into an authority to look at what was
 4 being managed. I mean, if Eastern Health has
 5 concerns, they share it with the department,
 6 the department investigates it and then they
 7 bring it to us should there be something.
 8 COFFEY, Q.C.:
 9 Q. And why would they bring it to you, that's
 10 what I'm--if you're not going to intervene,
 11 why would you be--why bring it to you at all?
 12 MR. CRAWLEY:
 13 A. I mean, if there's a concern there, obviously
 14 a concern that impacted patient care in a
 15 significant way, I would think we'd want to
 16 know that.
 17 COFFEY, Q.C.:
 18 Q. I'm sorry, if there was -
 19 MR. CRAWLEY:
 20 A. If--I'm struggling with where you're with on
 21 this.
 22 COFFEY, Q.C.:
 23 Q. Well, what it is is--well, I'm just asking you
 24 about from--I'm trying to get some sense and
 25 the Commissioner was, I think, earlier, as to

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1 what the role of the Premier's office sees its
 2 own role as vis-a-vis an issue like this?
 3 MR. CRAWLEY:
 4 A. Yeah. At this -
 5 COFFEY, Q.C.:
 6 Q. Bearing in mind at this point, bearing in mind
 7 what you're being told here.
 8 MR. CRAWLEY:
 9 A. At this stage of the game our role would have
 10 been very much just to have been advised of
 11 it, and I would have treated this issue the
 12 same as, you know, 99 percent of the other
 13 issues that come forward, you know. It's the
 14 department's job to manage it and if there is
 15 something there we should be aware of, I would
 16 expect to be made aware of it.
 17 COMMISSIONER:
 18 Q. So forgive me, but that means no role, doesn't
 19 it?
 20 MR. CRAWLEY:
 21 A. Yeah, no role in the sense of we actually have
 22 to do anything.
 23 COMMISSIONER:
 24 Q. Well, precisely. But if that's--it seems to
 25 me that that's a long way around of saying,

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1 from your perspective there was no role for
 2 the Premier's office in this at this stage?
 3 MR. CRAWLEY:
 4 A. Yeah, I would think that's an accurate
 5 statement.
 6 COMMISSIONER:
 7 Q. Okay.
 8 COFFEY, Q.C.:
 9 Q. And you know, in the context here, how often,
 10 you know, how likely is it really that the
 11 department in a briefing note is going to say
 12 that we can't handle this?
 13 MR. CRAWLEY:
 14 A. Well, that's, you know, if the department
 15 feels that way, that's what a telephone is
 16 for. And it's not uncommon for a briefing
 17 note to say, you know, direction is sought
 18 from the Premier. That happens.
 19 COMMISSIONER:
 20 Q. Mr. Coffey, wherever you can find a spot,
 21 we'll break for the morning break.
 22 COFFEY, Q.C.:
 23 Q. So then, Mr. Crawley, after this then, you've
 24 read this, went on, how much do you pay
 25 attention to the media? You say you read the

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1 newspaper, how much -
 2 MR. CRAWLEY:
 3 A. I watch the news every evening, you know, and
 4 tend to chase the ratings, so, you know,
 5 having a young family, I'd watch whatever most
 6 of the people in the province are watching.
 7 COFFEY, Q.C.:
 8 Q. Okay. And were you aware then, as the fall
 9 went on, that this stayed in the media, this
 10 issue?
 11 MR. CRAWLEY:
 12 A. Vaguely. I remember seeing some ads. And you
 13 know, it just appeared that Eastern Health was
 14 out there commenting on it and doing what they
 15 should be doing and I took comfort in that.
 16 COFFEY, Q.C.:
 17 Q. And did you observe or notice anybody
 18 expressing dissatisfaction with what Eastern
 19 Health was doing or not doing?
 20 MR. CRAWLEY:
 21 A. Looking back, Mr. Coffey, I don't recall,
 22 don't recall.
 23 COFFEY, Q.C.:
 24 Q. And before we break, is there--did your office
 25 have any system in place to bring to your

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1 attention a persistent or any kind of--well,
 2 any public expression of dissatisfaction and
 3 particularly any persistent expression of
 4 public dissatisfaction with the way an
 5 organization such as Eastern Health was
 6 handling something?
 7 MR. CRAWLEY:
 8 A. Do you mean if we have media monitoring
 9 system?
 10 COFFEY, Q.C.:
 11 Q. Yeah.
 12 MR. CRAWLEY:
 13 A. Yeah, we do.
 14 COFFEY, Q.C.:
 15 Q. And because when we look, I took Ms. Matthews
 16 through some of it yesterday, in the fall of
 17 2005 there were a number of interviews of
 18 people, patients, some, some Mr. Dawe's, Peter
 19 Dawe is another example, people were just
 20 unhappy about it.
 21 MR. CRAWLEY:
 22 A. Yeah.
 23 COFFEY, Q.C.:
 24 Q. About the way Eastern Health was handling
 25 this. You media monitoring, would that bring

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1 that to your attention?
 2 MR. CRAWLEY:
 3 A. I mean, if it was in the media, sure. Would
 4 it have been flagged and said, look, you have
 5 an issue here with disgruntled people, no.
 6 COFFEY, Q.C.:
 7 Q. Okay. Thank you, Commissioner.
 8 COMMISSIONER:
 9 Q. Take 15 minutes.
 10 (RECESS)
 11 COMMISSIONER:
 12 Q. Please be seated. Mr. Coffey.
 13 COFFEY, Q.C.:
 14 Q. Thank you, Commissioner. If we could bring up
 15 P-0124, please, again? This is this October
 16 5th briefing note, Mr. Crawley. This format,
 17 is this the regular format for a briefing note
 18 from Cabinet Secretariat, do you know?
 19 MR. CRAWLEY:
 20 A. It appears to be, but I don't write briefing
 21 notes.
 22 COFFEY, Q.C.:
 23 Q. Okay. It's just because you'd referred to it
 24 earlier and we will see on the August 18th
 25 one, there's -

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1 MR. CRAWLEY:
 2 A. Action required.
 3 COFFEY, Q.C.:
 4 Q. Action required, and there's no--that's
 5 omitted from this one. Would there be any
 6 reason why it would be omitted, do you know,
 7 or just an oversight perhaps?
 8 MR. CRAWLEY:
 9 A. I have no idea.
 10 COFFEY, Q.C.:
 11 Q. Okay. Again, I just noticed the difference in
 12 the kind of formatting in the sense of
 13 certain--I gather kind of generally
 14 religiously there are certain titles put in
 15 these, and this one doesn't have one. On
 16 September 30th, apparently Mr. Thompson was
 17 advised, in that e-mail we looked at, about
 18 the fact that this was going to break in The
 19 Independent, and we look back at July 19th, he
 20 had, within minutes, sent you an e-mail heads
 21 up to alert you to it. Do you know of any
 22 reason why he didn't do so on September 30th,
 23 October 1st, in relation to this?
 24 MR. CRAWLEY:
 25 A. No.

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1 COFFEY, Q.C.:
 2 Q. Okay. Just one other point, before I forget
 3 it. The search of the Premier's office in
 4 relation to contacts or inquiries concerning
 5 this issue, breast cancer testing, ER/PR, can
 6 you tell, please, you referred to Mr. Reid
 7 apparently was contacted, were there any other
 8 contacts, do you know, that you're aware of?
 9 MR. CRAWLEY:
 10 A. Off the top of my head, nothing I'm aware of.
 11 COFFEY, Q.C.:
 12 Q. And just on that point, how about since May
 13 2007? Has there been--in the sense of--
 14 because you refer to like the Premier's
 15 correspondence communication system that's
 16 very structured, I take it. Has there been
 17 much--before May 15th 2007, do you know
 18 whether there was any contact concerning this
 19 issue?
 20 MR. CRAWLEY:
 21 A. I couldn't answer that, Mr. Coffey. I'd have
 22 to check.
 23 COFFEY, Q.C.:
 24 Q. Do you know if any--okay, you don't know if
 25 any checks have been made in that regard?

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1 MR. CRAWLEY:
 2 A. I don't know.
 3 COFFEY, Q.C.:
 4 Q. Like from members of the public, the media,
 5 whomever.
 6 MR. CRAWLEY:
 7 A. Can't tell you.
 8 COFFEY, Q.C.:
 9 Q. And since that time?
 10 MR. CRAWLEY:
 11 A. I know one or two patients have called the
 12 office and had conversations, but who they
 13 were or when, you know, I'm not able to tell
 14 you.
 15 COFFEY, Q.C.:
 16 Q. Do you know has that been since May 15th?
 17 MR. CRAWLEY:
 18 A. I believe it is, yes.
 19 COFFEY, Q.C.:
 20 Q. Okay. Could you just check on that, please,
 21 and perhaps you could let Mr.--well, Mr.
 22 Pritchard will keep track of that, will remind
 23 you of that.
 24 MR. CRAWLEY:
 25 A. Keep it there, yeah.

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1 COFFEY, Q.C.:
 2 Q. Now if we could look, please, at Exhibit P-
 3 0125, page 31, please? This, I gather, Mr.
 4 Crawley, your name is there second.
 5 MR. CRAWLEY:
 6 A. Yeah.
 7 COFFEY, Q.C.:
 8 Q. At the top right-hand side, and this is the
 9 August 18th 2006 briefing note that you would
 10 have read back in August?
 11 MR. CRAWLEY:
 12 A. This is it.
 13 COFFEY, Q.C.:
 14 Q. Okay, great. Do you know how this note came
 15 to be prepared?
 16 MR. CRAWLEY:
 17 A. I understand, and I stand to be corrected on
 18 this, but I understand that there was a story
 19 in the media. I don't recall the dates, but
 20 in response to that, Cabinet Secretariat said
 21 well, it's likely time to get an update and
 22 they requested the note.
 23 COFFEY, Q.C.:
 24 Q. Okay. Did you have any involvement in -
 25 MR. CRAWLEY:

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1 A. No, sir.
 2 COFFEY, Q.C.:
 3 Q. - in requesting that? When did you first
 4 become aware that one was being prepared?
 5 MR. CRAWLEY:
 6 A. When it showed up on my desk.
 7 COFFEY, Q.C.:
 8 Q. Okay. Could you tell me, please, from October
 9 5th 2005 until August 18th 2006, do you have
 10 any recollection of any awareness now anyway,
 11 conscious awareness now, of any involvement in
 12 this matter?
 13 MR. CRAWLEY:
 14 A. Are you asking me -
 15 COFFEY, Q.C.:
 16 Q. Between--yes, in terms of yourself. Looking
 17 back on it now, do you have any -
 18 MR. CRAWLEY:
 19 A. Between when and when?
 20 COFFEY, Q.C.:
 21 Q. Between October 5, which is the first briefing
 22 note, and this one, August 18th.
 23 MR. CRAWLEY:
 24 A. No, to the best of my knowledge, I'd had no
 25 interaction, no.

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1 COFFEY, Q.C.:
 2 Q. And if we just look through this, your
 3 understanding of this, the purpose of this,
 4 would be what, when you looked at it? Perhaps
 5 you could just take us through.
 6 MR. CRAWLEY:
 7 A. Sure.
 8 COFFEY, Q.C.:
 9 Q. Get some sense of yourself as the chief of
 10 staff at the time.
 11 MR. CRAWLEY:
 12 A. I guess, as I said, I do recall there being
 13 some stories in the media that summer. I
 14 would have seen this concerning a lawsuit. I
 15 would have seen this as kind of a follow up to
 16 explain what was on the go, and you know, I
 17 don't recall sitting down and reading it,
 18 although I'm sure I did. Looking back on it
 19 now, I would have taken this as basically a
 20 legal update that Eastern Health was being
 21 sued, so an information purpose note.
 22 COFFEY, Q.C.:
 23 Q. And now when we look, if we could just look--
 24 on that point, just going to just show you
 25 something here. In the third page, under

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1 current status (legal activity) see that?
 2 MR. CRAWLEY:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. And it says "currently only two" and two is
 6 bolded "legal claims have been filed as
 7 follows" and they refer to Michelle Hanlon and
 8 Verna Doucette, Michelle Hanlon's having been
 9 filed in December of 2005 and Ms. Doucette's
 10 is described as "this statement of claim was
 11 recently filed with the intention to proceed
 12 under the Class Action legislation. (This will
 13 be the model case)"
 14 MR. CRAWLEY:
 15 A. Um-hm.
 16 COFFEY, Q.C.:
 17 Q. Now sir, I can take you to it, but there is
 18 material that's been filed as exhibits here,
 19 there are media stories relating to December
 20 2005, January 2006, February 2007--I'm sorry,
 21 I apologize. December, I believe, 2005,
 22 certainly January '06 and February of '06 that
 23 refer to Ms. Hanlon and that lawsuit, and I
 24 know for a fact anyway, February, early
 25 February of '06 and the fact that she had

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1 filed a claim.
 2 MR. CRAWLEY:
 3 A. Um-hm.
 4 COFFEY, Q.C.:
 5 Q. What, if anything, was it about Ms. Doucette's
 6 claim that was different? Because Ms.
 7 Hanlon's didn't result in a briefing note.
 8 MR. CRAWLEY:
 9 A. I can't tell you that.
 10 COFFEY, Q.C.:
 11 Q. Okay. Would the class action have had any--
 12 the fact that there's a class action claim
 13 have had any significance?
 14 MR. CRAWLEY:
 15 A. I didn't prepare the note, so I don't know.
 16 COFFEY, Q.C.:
 17 Q. In terms of in reading it though, I appreciate
 18 you didn't prepare it, but in reading it,
 19 would you understand that that had any
 20 significance?
 21 MR. CRAWLEY:
 22 A. No, no. No, I didn't.
 23 COFFEY, Q.C.:
 24 Q. Okay, and from your perspective, as the chief
 25 of staff, why was the Premier's office being

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1 advised as to the status of this ongoing legal
 2 dispute?
 3 MR. CRAWLEY:
 4 A. The Department or Cabinet Secretariat must
 5 have thought it was appropriate.
 6 COFFEY, Q.C.:
 7 Q. And what possible relevance would it have to
 8 the Premier's office as to whether or not
 9 Eastern Health is being sued?
 10 MR. CRAWLEY:
 11 A. Information purposes only.
 12 COFFEY, Q.C.:
 13 Q. Look here, now you would--would you agree that
 14 there are a lot of numbers in this?
 15 MR. CRAWLEY:
 16 A. I would, yeah.
 17 COFFEY, Q.C.:
 18 Q. And fair, or at least it would appear to be
 19 anyway, somewhat detailed descriptions under
 20 category, number and comments.
 21 MR. CRAWLEY:
 22 A. Yeah.
 23 COFFEY, Q.C.:
 24 Q. And there's a--I believe on the third page,
 25 there's a total number of patients. Sir, on

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1 the third page of the briefing note, under
 2 summary, see that at the bottom of the page
 3 there?
 4 MR. CRAWLEY:
 5 A. Yes.
 6 COFFEY, Q.C.:
 7 Q. Okay. It refers to the legal action initiated
 8 by Mrs. Myrtle Lewis and indicates that that
 9 doesn't actually--at least here it's suggested
 10 it's a result of a misdiagnosis and is not
 11 linked to the problems described in the note
 12 with ER/PR receptor tests which had to be
 13 repeated, and then it goes on to say "Eastern
 14 Health advises 22 women were impacted by the
 15 change in status of ER/PR receptor tests.
 16 These women had changes in the progress of
 17 their disease from the initial confirmation of
 18 the disease and the beginning of their
 19 treatment to the retesting done at Mount
 20 Sinai" and then it goes on to say "however,
 21 all of them could potentially sue, as test
 22 results review could potentially become
 23 claimants in the class action."
 24 Your overall impression of this was what,
 25 in terms of the impact on patients? In August

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1 of '06, you're reading this, you're the chief
 2 of staff.
 3 MR. CRAWLEY:
 4 A. Yes.
 5 COFFEY, Q.C.:
 6 Q. What was your overall impression of this, in
 7 terms of its effect, this whole matter's
 8 effect on patients?
 9 MR. CRAWLEY:
 10 A. I can't say that I read it in that context.
 11 You know, it came in as a legal update on a
 12 matter, you know, of a lawsuit against Eastern
 13 Health. My concerns with the patients would
 14 be very much that they're getting the proper
 15 treatment and that they'd been notified and,
 16 you know, I don't have the expertise to do
 17 that, so I'd have to rely on Eastern Health.
 18 But I mean, throughout this whole process, our
 19 concern was very much always over the patients
 20 and the fact that they were being notified.
 21 That was always a priority for us.
 22 COFFEY, Q.C.:
 23 Q. When you look at--and I take it then that you
 24 wouldn't have read this from the perspective
 25 of trying to figure out how many people here

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1 are negatively impacted by this in any kind of
 2 substantive way?
 3 MR. CRAWLEY:
 4 A. No, sir, and I would expect--you know, I would
 5 expect that if there was something significant
 6 in those numbers and in the technical terms,
 7 the fact that it was new, whatever, I would
 8 expect that to be clearly flagged and
 9 explained to me, you know, in some kind of
 10 context.
 11 COFFEY, Q.C.:
 12 Q. Okay. On that point, and this is what I want
 13 to bring to your attention, okay. When we
 14 look at this, look at the second page, one of
 15 those columns, the column to the left-hand
 16 side that begins "patient ER/PR status changed
 17 from negative to positive and there are
 18 treatment recommendations" See that?
 19 MR. CRAWLEY:
 20 A. I'm sorry.
 21 COFFEY, Q.C.:
 22 Q. It's right here.
 23 MR. CRAWLEY:
 24 A. Could you repeat that again? I was just
 25 making a note.

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1 COFFEY, Q.C.:
 2 Q. Oh yes, all right. Right here, Mr. Crawley,
 3 see that?
 4 MR. CRAWLEY:
 5 A. Yes.
 6 COFFEY, Q.C.:
 7 Q. It's 109, see that, and the description here
 8 is--or the explanation, because the first one
 9 is category and the third column is comments.
 10 It says "includes patients who have been
 11 impacted by the delay in receiving Tamoxifen
 12 and patients whose results have not changed
 13 significantly, but the clinical definition of
 14 positive and negative has changed since time
 15 of diagnosis."
 16 MR. CRAWLEY:
 17 A. Um-hm.
 18 COFFEY, Q.C.:
 19 Q. So here it starts out by describing 109 as
 20 "includes patients who have been impacted by
 21 the delay in receiving Tamoxifen," those and
 22 some others, okay, whose results didn't change
 23 significantly, but the definition changed
 24 clinically. You can't tell how that's broken
 25 down here looking at it. It's just 109. And

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1 we look at summary on the next page, and here
 2 broken out from the rows of numbers, or I'm
 3 sorry, the columns of numbers, there's just a
 4 simply declarative sentence "Eastern Health
 5 advises 22 women were impacted by the change
 6 in status of the ER/PR receptor tests." So at
 7 the time, reading this, you know, if somebody
 8 after you'd put it away, an hour later asked
 9 you "well, how many were affected by this?
 10 Whose health was affected by this?" would you
 11 have had any sense of quantity or magnitude?
 12 MR. CRAWLEY:
 13 A. I would have had to--I found the--find the
 14 note somewhat difficult to track when it comes
 15 to originally, I guess, the terminology, but
 16 also in trying to track the significance of it
 17 all. So if someone had to have asked me that
 18 question, I would have had to ask for some
 19 support to explain that.
 20 COFFEY, Q.C.:
 21 Q. Now here, in this, and when we look at that,
 22 the bottom of the third page, it says "Eastern
 23 Health advises 22 women were impacted by the
 24 change in status of the ER/PR receptor tests."
 25 Now if that had instead read "Eastern Health

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1 advises 22 women were greatly impacted by the
 2 change in status of the ER/PR receptor tests,"
 3 would the inclusion of the word "greatly" have
 4 had any significance in the context?
 5 MR. CRAWLEY:
 6 A. It likely would, yes.
 7 COFFEY, Q.C.:
 8 Q. And why is that?
 9 MR. CRAWLEY:
 10 A. It just brings a greater understanding to the
 11 magnitude of it, I guess.
 12 COFFEY, Q.C.:
 13 Q. And I appreciate the word "greatly" is not
 14 here.
 15 MR. CRAWLEY:
 16 A. Yes.
 17 COFFEY, Q.C.:
 18 Q. In the version you saw, it's not there. If we
 19 could, please, here, under the heading on the
 20 fourth page, impacts of treatment with
 21 Tamoxifen, on the last page. There's a brief
 22 explanation of the impacts of treatment with
 23 Tamoxifen there, but the last sentence reads,
 24 "Patients, however, who did not receive
 25 Tamoxifen that are ER/PR positive, may

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1 experience further problems with cancer." Do
 2 you see that?
 3 MR. CRAWLEY:
 4 A. Uh-hm.
 5 COFFEY, Q.C.:
 6 Q. Did you have any understanding, having read
 7 this or any appreciation for what those
 8 effects might be?
 9 MR. CRAWLEY:
 10 A. No, sir, no.
 11 COFFEY, Q.C.:
 12 Q. Did you ask anybody at the time?
 13 MR. CRAWLEY:
 14 A. No, I didn't and the reason why is that the
 15 note came in and was perceived very much as an
 16 update on a legal matter and to me, the
 17 significance of a legal matter is not the same
 18 as the significance of the patient care
 19 matter.
 20 COFFEY, Q.C.:
 21 Q. And what's the distinction in your view, like
 22 in your world view, what would the distinction
 23 be?
 24 MR. CRAWLEY:
 25 A. A legal matter?

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1 COFFEY, Q.C.:
 2 Q. Yes.
 3 COFFEY, Q.C.:
 4 Q. I don't get too worked up over legal matters.
 5 COFFEY, Q.C.:
 6 Q. And I take it that -
 7 MR. CRAWLEY:
 8 A. Patient care, however, you know, I do worry
 9 about.
 10 COFFEY, Q.C.:
 11 Q. If the legal matter relates to patient care or
 12 the quality of patient care, would you make
 13 the connection?
 14 MR. CRAWLEY:
 15 A. No, sir, I would have seen it for what it was,
 16 you know, an update on a possible legal matter
 17 with an agency.
 18 COFFEY, Q.C.:
 19 Q. Now here, looking at this, under "Reason",
 20 there's a title here, "Reasons for the
 21 erroneous results and steps taken to prevent
 22 reoccurrence."
 23 MR. CRAWLEY:
 24 A. Uh-hm.
 25 COFFEY, Q.C.:

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1 Q. And it reads, "Eastern Health has engaged
 2 external consultants to review the procedures
 3 of the laboratory. When all reports are
 4 received, they will be reviewed and the
 5 recommendations will be implemented. The goal
 6 is to have the laboratory accredited, until
 7 these processes are completed, all samples
 8 will continue to be retested at Mount Sinai."
 9 Now at the time that you read this, in August
 10 of 2006, what was or would have been your
 11 understanding as to the kind of current status
 12 of these outside consultants?
 13 MR. CRAWLEY:
 14 A. It would have been exactly what the note says,
 15 that the external consultants would have been
 16 engaged, the work is not completed and once it
 17 is completed, the recommendations will be
 18 implemented.
 19 COFFEY, Q.C.:
 20 Q. Okay, i.e., it's an ongoing, incomplete
 21 process, that was your impression at the time.
 22 MR. CRAWLEY:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. Reading this. Did your office have any system

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1 in place to bring to your attention, like
 2 while you're reading this one, the related
 3 briefing note of October 5th?
 4 MR. CRAWLEY:
 5 A. In the sense that I would have had in my
 6 files, you know, along with, you know, however
 7 many hundred briefing notes were generated
 8 over the period of time, the only way for me
 9 to do that was to physically go and access it
 10 and pull it out and compare it side by side,
 11 which really isn't that practical.
 12 COFFEY, Q.C.:
 13 Q. And here on the briefing note itself, there's
 14 no reference to the fact that there is any
 15 earlier briefing note or notes, is it? The
 16 formatting of these notes doesn't alert the
 17 reader.
 18 MR. CRAWLEY:
 19 A. Not that I recall seeing.
 20 COFFEY, Q.C.:
 21 Q. Well you can look and see if you can find it.
 22 MR. CRAWLEY:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. But there's no indication here in it that, you

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1 know, for those on the distribution list, that
 2 in fact there are earlier briefing notes -
 3 MR. CRAWLEY:
 4 A. Correct.
 5 COFFEY, Q.C.:
 6 Q. And this is how many there are and when they
 7 were.
 8 MR. CRAWLEY:
 9 A. Sure.
 10 COFFEY, Q.C.:
 11 Q. So that if someone wanted it quickly, figure
 12 out well where it was, they could identify
 13 them and have them gathered. Your filing
 14 system, would you have been able to quickly go
 15 to the October 5th one at the time?
 16 MR. CRAWLEY:
 17 A. What I'd have to do is to go back to, you
 18 know, the filing cabinet for 2005, go to the
 19 Department of Health and, you know, I don't
 20 know if they're in chronological order, I
 21 suspect they're not. I'd have to physically
 22 sort through the briefing notes for the
 23 Department of Health and there'd be a number,
 24 so it wouldn't be an easy task for me to do
 25 that in my filing system.

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1 COFFEY, Q.C.:
 2 Q. And if, rather than tasking yourself of
 3 actually doing that manually, would you also
 4 have been able to go to the assistant
 5 secretary responsible at the time, like Mr.
 6 Cake, for example, and ask him are there any
 7 earlier briefing notes, if so, where are they?
 8 MR. CRAWLEY:
 9 A. Yes, I likely would have went to the deputy
 10 clerk had I had such a need.
 11 COFFEY, Q.C.:
 12 Q. Now when one does, okay, if one does compare
 13 what's written here under "Reasons for
 14 erroneous results" on that fourth page. Now
 15 if we could go back to P-0124, page 7, please?
 16 And that's that earlier briefing note of
 17 October 5th, Mr. Crawley, you have both paper
 18 copies there.
 19 MR. CRAWLEY:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. When you look at the second last bullet on the
 23 October 5th briefing note, that refers to an
 24 external peer review and it describes them in
 25 detail, by the two of them, "was conducted in

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1 a particular period to review current
 2 practices and procedures within the laboratory
 3 service. Debriefing was held after each
 4 review and a full report from each is expected
 5 within the next few weeks." So back on
 6 October 5th, 2005, you were informed that
 7 reviewers have been in, they have been
 8 debriefed and a full report from each will be
 9 along within weeks, which would be presumably
 10 sometime in October of early November of 2005.
 11 Now this is, if we could go back, please, to
 12 P-0125, page 34? This is about nine or ten
 13 months later and you're being advised that
 14 these external consultant's work is ongoing.
 15 So I take it you didn't make the connection at
 16 the time?
 17 MR. CRAWLEY:
 18 A. No, sir, it would have been extremely
 19 difficult to do that over such an extended
 20 period of time.
 21 COFFEY, Q.C.:
 22 Q. Now, if today, as I stand and you sit here,
 23 okay, if today you wanted to try to ascertain
 24 who prepared those three lines, beginning with
 25 the words, "Eastern Health has engaged

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1 external consultants"--who actually wrote
 2 them? What would you do?
 3 MR. CRAWLEY:
 4 A. Well my only option would be to call Cabinet
 5 Secretariat and speak to the deputy clerk and
 6 ask her to provide me with that information.
 7 COFFEY, Q.C.:
 8 Q. Do you know who actually prepared this?
 9 MR. CRAWLEY:
 10 A. No, and I would rarely know who would.
 11 COFFEY, Q.C.:
 12 Q. You do now understand, I take it, by now you
 13 understand that those external consultants
 14 reports were long done, by August 2006, they
 15 were finished?
 16 MR. CRAWLEY:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. Have you made any inquiries as to why this was
 20 phrased in the present tense in August of '06
 21 if the actual consultant's reports were
 22 concluded? Have you made any inquiries?
 23 MR. CRAWLEY:
 24 A. I did, but it was subsequent to, I guess,
 25 testimony here at the inquiry.

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1 COFFEY, Q.C.:
 2 Q. I take it subsequent to the interview that -
 3 MR. CRAWLEY:
 4 A. No, subsequent to when this issue was first
 5 discussed at the inquiry.
 6 COFFEY, Q.C.:
 7 Q. Okay.
 8 MR. CRAWLEY:
 9 A. And it was brought to my attention.
 10 COFFEY, Q.C.:
 11 Q. Okay, and what did you find in your inquiries?
 12 MR. CRAWLEY:
 13 A. I mean, if I recall correctly, it was a--staff
 14 put forward one option and it was changed by
 15 another. Am I accurate in that?
 16 COFFEY, Q.C.:
 17 Q. Well I'm asking you in terms of who was at the
 18 inquiry, do you know, whose evidence caused
 19 you to make the inquiry?
 20 MR. CRAWLEY:
 21 A. I thought it was Moira Hennessey's, but I
 22 stand to be corrected on that.
 23 COFFEY, Q.C.:
 24 Q. And so you made inquiries of whom?
 25 MR. CRAWLEY:

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1 A. I talked to Robert Thompson.
 2 COFFEY, Q.C.:
 3 Q. And you were advised of what?
 4 MR. CRAWLEY:
 5 A. That if I'm recalling correctly, that Ms.
 6 Hennessey put forward some wording and Mr.
 7 Abbott changed it.
 8 COFFEY, Q.C.:
 9 Q. And your understanding is Mr. Abbott changed
 10 it to the present tense?
 11 MR. CRAWLEY:
 12 A. Changed it to what's here.
 13 COFFEY, Q.C.:
 14 Q. What's here, okay, whatever was in there
 15 before. Actually present and future tense,
 16 "are received, will be implemented". If at
 17 the time, in August of 2006, as the chief of
 18 staff you would have been advised that the
 19 external reports are in months ago and the
 20 recommendations are all done or almost all
 21 done, would you have been curious to know what
 22 the external consultants found, in this
 23 context, bearing in mind all these numbers and
 24 patients before?
 25 MR. CRAWLEY:

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1 A. I normally do not get down into that detail,
 2 what I'd be more concerned about is, you know,
 3 is the system--and really this is what the
 4 department should be more concerned about, is
 5 is the system working now in a proper manner.
 6 You know, the technicalities of how it worked,
 7 there's enough, you know, on the go in the
 8 office everyday that we just don't have the
 9 time and the expertise to drill down like
 10 that.
 11 COFFEY, Q.C.:
 12 Q. At the time, as the chief of staff, did you
 13 have any--in August of 2006, any understanding
 14 as to whether and if so, when Eastern Health
 15 might say something publicly about this, about
 16 the information in this?
 17 MR. CRAWLEY:
 18 A. Not that I recall.
 19 COFFEY, Q.C.:
 20 Q. Now here under "Action required" it says,
 21 "This notice is provided for information
 22 purposes only. Should the Premier require
 23 further detail, officials from Eastern Health,
 24 as well as their legal counsel, will be
 25 available for an in-person briefing." Well,

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1 first of all, do you know if Mr. Williams ever
 2 took anyone up on this offer?
 3 MR. CRAWLEY:
 4 A. He did not.
 5 COFFEY, Q.C.:
 6 Q. Did you make any inquiries in this regard?
 7 MR. CRAWLEY:
 8 A. I did not
 9 COFFEY, Q.C.:
 10 Q. And I may have asked you this and I apologize
 11 if I did already, did you ever discuss this
 12 with anybody afterward, do you know, until the
 13 Commission was established, this briefing
 14 note?
 15 MR. CRAWLEY:
 16 A. I'm sorry, I -
 17 COFFEY, Q.C.:
 18 Q. I apologize, I'll back up a bit. The briefing
 19 note, after you read it in August, 2006, when
 20 did the topic here next come to your
 21 attention?
 22 MR. CRAWLEY:
 23 A. I suspect it would have been May, 2007.
 24 COFFEY, Q.C.:
 25 Q. Between the time you first read this and then,

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1 did you ever discuss what's set out here with
 2 anyone?
 3 MR. CRAWLEY:
 4 A. To the best of my recollection, no. I may
 5 have been given a heads up or something on the
 6 December news conference, but I would not have
 7 had a substantive conversation on this.
 8 COFFEY, Q.C.:
 9 Q. And what, if anything, do you recall about
 10 that December, 2006 news conference?
 11 MR. CRAWLEY:
 12 A. Very little, I wasn't advised of it and didn't
 13 participate in it in any way.
 14 COFFEY, Q.C.:
 15 Q. I'm sorry, you were not advised?
 16 MR. CRAWLEY:
 17 A. No. I normally wouldn't be.
 18 COFFEY, Q.C.:
 19 Q. And what about the aftermath of it, the media
 20 coverage of it after?
 21 MR. CRAWLEY:
 22 A. I would have likely read it the same as anyone
 23 else. Nothing was brought to my attention,
 24 put it that way.
 25 COFFEY, Q.C.:

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1 Q. Apparently, because we do have the
 2 transcripts, the fact that even after that
 3 news conference or media technical briefing on
 4 December 11th, 2006, the fact that some
 5 people, including Mr. Peter Dawe, were in the
 6 media complaining about Eastern Health's
 7 failure to provide a reason, reasons for the
 8 test problems, failing to provide the number
 9 of conversions during the press conference,
 10 was that brought to your attention, the fact
 11 that there was still being complaints about
 12 this?
 13 MR. CRAWLEY:
 14 A. No.
 15 COFFEY, Q.C.:
 16 Q. On that point, because we have that and I can
 17 take you actually through it, December 12th
 18 and 13th, the media coverage at that time, and
 19 there are certainly complaints, on May 15th
 20 the matter is in the media again.
 21 MR. CRAWLEY:
 22 A. Uh-hm.
 23 COFFEY, Q.C.:
 24 Q. And I suppose, certainly as that day went on,
 25 into the next, there are complaints. What was

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1 different between May 15th, 16th and December
 2 12th, 13th?
 3 MR. CRAWLEY:
 4 A. Well there's a couple of things that were
 5 different, you know, first off nobody in
 6 health had ever flagged to us that there was a
 7 problem, you know, that they were
 8 uncomfortable with anything and in -
 9 COFFEY, Q.C.:
 10 Q. I'm sorry?
 11 MR. CRAWLEY:
 12 A. Nobody in the Department of Health had ever
 13 contacted me and said, you know, that we're
 14 concerned they didn't release information that
 15 they probably should have. I was never
 16 advised of that.
 17 COFFEY, Q.C.:
 18 Q. Okay.
 19 MR. CRAWLEY:
 20 A. And in May of 2007 was the first time I had
 21 ever spoken to a minister on this and when he
 22 called, he was very concerned by that.
 23 COFFEY, Q.C.:
 24 Q. Okay, could the tell the Commissioner what you
 25 recall about that?

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1 MR. CRAWLEY:
 2 A. Sure. It must have been either the 15th or
 3 the 16th, I don't recall which, but there had
 4 been a story on CBC in which--I'm
 5 paraphrasing, I guess, in which it became
 6 apparent that Eastern Health had a news
 7 conference and did not disclose the fact that
 8 there were some two hundred patients who had
 9 conversions, but no change in treatment, and
 10 that information came to light only because a
 11 reporter happened to come across it in an
 12 affidavit filed by Eastern Health.
 13 COFFEY, Q.C.:
 14 Q. Okay. So go ahead, that was what the story
 15 was.
 16 MR. CRAWLEY:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. And were you aware of that before the minister
 20 called you?
 21 MR. CRAWLEY:
 22 A. No, no.
 23 COFFEY, Q.C.:
 24 Q. So who is the minister, where did he call you,
 25 when, you can just take us through it?

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1 MR. CRAWLEY:
 2 A. It was Minister Wiseman, it was likely in my
 3 office and he called and he was quite
 4 concerned, he was hot, he was frustrated, I
 5 guess, by the fact that this information, you
 6 know, was never brought to his attention
 7 before. I think he was disappointed in
 8 Eastern Health for not releasing it. I got
 9 the clear impression from him that his
 10 officials weren't aware of this at that time
 11 and I mean, he got the seriousness of the
 12 issue, I mean, his concerns were for the
 13 patient, you know, as quickly mine were as
 14 well. I mean, he got it.
 15 COFFEY, Q.C.:
 16 Q. So what was he--what he said to you, what was
 17 he concerned about?
 18 MR. CRAWLEY:
 19 A. Well I think he was concerned about the fact
 20 that Eastern Health had likely knowingly
 21 concealed information from the public and the
 22 magnitude of that information was significant.
 23 COFFEY, Q.C.:
 24 Q. Okay, so Mr. Wiseman is on the line, what
 25 happened then?

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1 MR. CRAWLEY:
 2 A. Well I reacted in the sense that I said, you
 3 know, Minister, I agree with you, I think this
 4 is a serious matter. I think you should be
 5 prepared to speak to this at Cabinet in a
 6 couple of days and I'm going to speak to the
 7 Premier on it at the first chance I get and if
 8 he has any instructions, I'll get back to you.
 9 COFFEY, Q.C.:
 10 Q. Go ahead, what then happened?
 11 MR. CRAWLEY:
 12 A. It wasn't that long a phone call, he agreed
 13 that it was appropriate to share it with his
 14 Cabinet colleagues. The next opportunity I
 15 had a conversation with the Premier and he was
 16 also quite concerned, I mean, he got the
 17 significance of it right away and in fact, I
 18 think he probably got it more than I did. He
 19 said, yeah, absolutely, have a presentation on
 20 this, but also let's find out, you know, in
 21 that presentation who knew what and when, what
 22 does this all mean, and you know, whatever
 23 background information we can have. He also
 24 requested at that time all briefing notes that
 25 the department had on this matter. So I

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1 implemented those instructions.
 2 COFFEY, Q.C.:
 3 Q. And how did you do that?
 4 MR. CRAWLEY:
 5 A. I called first Minister Wiseman back and
 6 walked him through exactly what the Premier
 7 had passed on to me and I followed it up with
 8 a phone call to the clerk to make sure that he
 9 was aware and that there was time allotted on
 10 the Cabinet agenda. And this happened very
 11 quickly.
 12 COFFEY, Q.C.:
 13 Q. Yes, go ahead, what happened then?
 14 MR. CRAWLEY:
 15 A. We received the briefing notes and Cabinet
 16 occurred on the 17th.
 17 COFFEY, Q.C.:
 18 Q. And the 17th of?
 19 MR. CRAWLEY:
 20 A. May.
 21 COFFEY, Q.C.:
 22 Q. Would have been probably a Thursday, I
 23 believe?
 24 MR. CRAWLEY:
 25 A. If you say so.

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1 COFFEY, Q.C.:

2 Q. Okay, I believe I'm correct on that. So

3 before the Cabinet briefing--who's responsible

4 for doing the Cabinet briefing, preparing for

5 it? Who is responsible for preparing a

6 Cabinet briefing?

7 MR. CRAWLEY:

8 A. The department.

9 COFFEY, Q.C.:

10 Q. The department, okay.

11 MR. CRAWLEY:

12 A. Yes, sir.

13 COFFEY, Q.C.:

14 Q. And that would be Mr. Wiseman and his deputy,

15 Mr. Abbott in this context?

16 MR. CRAWLEY:

17 A. Correct, I'd look to Minister Wiseman. He

18 decides who he'd want to support him.

19 COFFEY, Q.C.:

20 Q. And your understanding of the purpose of that

21 briefing was what?

22 MR. CRAWLEY:

23 A. To very much have a discussion on the fact

24 that Eastern Health appeared to have knowingly

25 withheld, you know, what I'd call significant

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1 information about the fact that 200 people had

2 conversions in their treatment or conversions

3 in their tests, but had no change in

4 treatment. That was the focus of the

5 discussion, along with then what did the

6 government know and when? And for everybody's

7 background, a bit more of an explanation as to

8 what the whole issue was about, that's my

9 recollection of it anyway.

10 COFFEY, Q.C.:

11 Q. Now did you have, before the Cabinet was

12 actually briefed, did you have a copy of what

13 was going to be shown to the Cabinet?

14 MR. CRAWLEY:

15 A. Not that I recall.

16 COFFEY, Q.C.:

17 Q. The actual briefing -

18 MR. CRAWLEY:

19 A. Not that I recall.

20 COFFEY, Q.C.:

21 Q. Like the slide deck.

22 MR. CRAWLEY:

23 A. Yeah.

24 COFFEY, Q.C.:

25 Q. Did you have the briefing notes?

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1 MR. CRAWLEY:

2 A. I believe I did, but I can't say that with

3 certainty. They either showed up on the 16th

4 or the 17th, but I can't say which with any

5 certainty.

6 COFFEY, Q.C.:

7 Q. And so what--and you attended the Cabinet

8 briefing.

9 MR. CRAWLEY:

10 A. I did.

11 COFFEY, Q.C.:

12 Q. By the end of the Cabinet briefing, what, if

13 anything, did you understand about what the

14 government knew, who knew what and when?

15 MR. CRAWLEY:

16 A. Well I think the presentation deck, you know,

17 mapped that out clearly as to when information

18 came in.

19 COFFEY, Q.C.:

20 Q. And your understanding was what in terms of

21 when the government knew about the 200?

22 MR. CRAWLEY:

23 A. Oh, I guess the department would have had that

24 information through Cabinet Secretariat August

25 18th, if that's what you're asking?

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1 COFFEY, Q.C.:

2 Q. Yes, that's what I'm asking about, and in

3 fact, if we look and kind of do the arithmetic

4 and it's there in that August 18th briefing

5 note.

6 MR. CRAWLEY:

7 A. Uh-hm.

8 COFFEY, Q.C.:

9 Q. By the end of the Cabinet briefing, what was

10 your understanding as to why that 200 number

11 had not been released by Eastern Health?

12 MR. CRAWLEY:

13 A. I don't know when I came to this conclusion,

14 but I did come to the conclusion that they

15 were concerned over the lawsuit, I think

16 that's safe to say, that's my conclusion. I

17 don't recall when I came to it, but a key -

18 COFFEY, Q.C.:

19 Q. And now we have seen the slide deck that was

20 used to brief the Cabinet on May 17th, 2007.

21 One of the briefing notes, in fact, the

22 October 5th briefing note is not referenced in

23 it. Are you able to explain why that is?

24 MR. CRAWLEY:

25 A. No, I'm not, I didn't prepare the deck.

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1 COFFEY, Q.C.:

2 Q. And the briefing notes that you would have

3 received, you would have received them how and

4 from whom? How would you go about obtaining

5 that?

6 MR. CRAWLEY:

7 A. I don't recall. I know my conversations were

8 with the minister and Robert. One of them

9 sent them over in a package and it came to my

10 desk and that's how I got them.

11 COFFEY, Q.C.:

12 Q. Did you share them with anybody?

13 MR. CRAWLEY:

14 A. I believe I shared them with the Premier, yes.

15 COFFEY, Q.C.:

16 Q. And do you think that that was all the actual

17 briefing notes?

18 MR. CRAWLEY:

19 A. I did. I had requested all of the briefing

20 notes and I would have expected all of the

21 briefing notes to show up.

22 COFFEY, Q.C.:

23 Q. And would that have included the October 5th

24 one as well, do you think?

25 MR. CRAWLEY:

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1 A. I'd have to go back and check, sir.

2 COFFEY, Q.C.:

3 Q. Do you actually have that as a package, even

4 to this day?

5 MR. CRAWLEY:

6 A. I believe I do, but I can't guarantee you that

7 they're all stapled together in one little

8 pile.

9 COFFEY, Q.C.:

10 Q. If you could ascertain what it was you

11 actually received in that context at the time,

12 you know, and pass that on to Mr. Pritchard,

13 that might be of some assistance.

14 MR. CRAWLEY:

15 A. Sure.

16 COFFEY, Q.C.:

17 Q. To give some sense of what you understood

18 going into that briefing.

19 MR. CRAWLEY:

20 A. Sure, if Rolf could make a note of that, I

21 will.

22 COFFEY, Q.C.:

23 Q. Or coming out of the briefing anyway, around

24 that time.

25 MR. CRAWLEY:

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1 A. Uh-hm

2 COFFEY, Q.C.:

3 Q. By the conclusion of the Cabinet briefing, had

4 you received--by the conclusion of it or any

5 immediate aftermath of it, any instructions

6 from Mr. Williams as to what was done--what

7 was to be done? I mean, you're briefed -

8 MR. CRAWLEY:

9 A. At the end of the Cabinet meeting, if I recall

10 correctly, the Premier gave instructions to

11 the clerk to look at options for doing some

12 kind of a review on this, and that work was to

13 be assigned over the long weekend and the

14 Premier reconvened Cabinet on Monday of the

15 long weekend to have a subsequent discussion

16 on it. And I believe that would have been the

17 21st.

18 COFFEY, Q.C.:

19 Q. So if I could, please, and in terms of the

20 initial Cabinet briefing that Thursday, the

21 17th -

22 MR. CRAWLEY:

23 A. Yes.

24 COFFEY, Q.C.:

25 Q. Do you recall what happened, what the reaction

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1 was within Cabinet?

2 MR. CRAWLEY:

3 A. Yeah, I mean there was a lot of discussion on

4 it, but things kind of got sidetracked at one

5 point when Minister Osborne pointed out that

6 he didn't have the August 18th briefing note.

7 Now he had the numbers a couple of months

8 after, but he did not receive that briefing

9 note.

10 COFFEY, Q.C.:

11 Q. And what happened in relation to that? What

12 was -

13 MR. CRAWLEY:

14 A. He repeatedly voiced his concerns over that

15 and, you know, it probably, I'm sure if you

16 asked him, he'd say he'd regret it, he really

17 didn't handle himself in the most professional

18 manner.

19 COFFEY, Q.C.:

20 Q. Now at the time, who was actually giving the

21 presentation to Cabinet?

22 MR. CRAWLEY:

23 A. Minister Wiseman introduced it and Minister

24 Abbott, as I recall it, gave the physical

25 presentation.

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1 COFFEY, Q.C.:

2 Q. That would be John Abbott?

3 MR. CRAWLEY:

4 A. Yes.

5 COFFEY, Q.C.:

6 Q. Would be giving the presentation?

7 MR. CRAWLEY:

8 A. Yes.

9 COFFEY, Q.C.:

10 Q. And John Abbott was the same John Abbott who

11 had been the deputy minister for Mr. Osborne

12 back on August 18th?

13 MR. CRAWLEY:

14 A. Correct, yes.

15 COFFEY, Q.C.:

16 Q. So Mr. Osborne in the context is actually

17 witnessing his former deputy give a

18 presentation, including this August 18th

19 briefing note that his former deputy had not

20 gotten to him.

21 MR. CRAWLEY:

22 A. Uh-hm.

23 COFFEY, Q.C.:

24 Q. So that's the context?

25 MR. CRAWLEY:

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1 A. Yes.

2 COFFEY, Q.C.:

3 Q. Okay. Was there any discussion between Mr.

4 Osborne and anyone else about that?

5 MR. CRAWLEY:

6 A. There was certainly discussion between he and

7 the Premier, yes.

8 COFFEY, Q.C.:

9 Q. Do you recall what happened?

10 MR. CRAWLEY:

11 A. Yeah, I mean the reaction, I shouldn't speak

12 for everyone else, but my reaction was that I

13 didn't believe that he didn't see the note

14 and I would suspect others had that same

15 reaction. I mean, it's a fundamental

16 breakdown in the operations of a department

17 and I mean a fundamental breakdown for a

18 deputy not to--or an ADM for that matter, not

19 to ensure that the minister has briefing

20 materials. The expectation is that ministers

21 are responsible for managing their files.

22 They have to be up to speed on it and, you

23 know, that's the expectation, you know, they

24 need to know what's going on in their

25 departments and if a note should be sent over

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1 to the Premier, it would be everybody's

2 expectation that the minister would see it

3 before it went.

4 COFFEY, Q.C.:

5 Q. So some scepticism was expressed, I take it,

6 about Mr. Osborne's claim that he hadn't seen

7 it.

8 MR. CRAWLEY:

9 A. Yes, sir, yes.

10 COFFEY, Q.C.:

11 Q. And you've indicated, in fact you, yourself,

12 were personally sceptical.

13 MR. CRAWLEY:

14 A. I was clearly.

15 COFFEY, Q.C.:

16 Q. Do you know if any inquiries were made in that

17 regard afterward?

18 MR. CRAWLEY:

19 A. Yes.

20 COFFEY, Q.C.:

21 Q. Okay, and what do you know about that?

22 MR. CRAWLEY:

23 A. The Premier called John Abbott and Moira

24 Hennessey over to his office and he and I had

25 a conversation with them. I should say he had

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1 a conversation and he did all the speaking at

2 our end.

3 COFFEY, Q.C.:

4 Q. What happened?

5 MR. CRAWLEY:

6 A. He asked if the minister had seen the briefing

7 note and I believe Mr. Abbott did the speaking

8 and he said it's possible he did not and I

9 think he at one point was even more categorial

10 and said he did not get it.

11 COFFEY, Q.C.:

12 Q. And what was Mr. William's reaction to that?

13 MR. CRAWLEY:

14 A. He was pretty frank with the two of them and

15 said that's just not acceptable in the

16 clearest of terms.

17 COFFEY, Q.C.:

18 Q. Did they offer any explanation as to why Mr.

19 Osborne did not receive the briefing note?

20 MR. CRAWLEY:

21 A. No, not that I recall. I do remember the

22 Premier saying, "how could this happen" and

23 again in a very clear manner and I don't

24 think, you know, an acceptable answer came

25 forward that I can recall.

1 COFFEY, Q.C.:
 2 Q. You've indicated that that was one matter that
 3 during the briefing, kind of sidetracked
 4 things, during the briefing, was there any
 5 understanding to your knowledge in the room
 6 that actually the government had known about
 7 these numbers since August of 2006?

8 MR. CRAWLEY:
 9 A. Yeah, I think, was it discussed? You know, I
 10 don't recall. I can't answer it
 11 categorically, but I mean, at some point there
 12 was, you know, the conclusion that these
 13 numbers existed in government, certainly in
 14 the department, in Cabinet Secretariat and in
 15 my shop that, yes, these numbers had been here
 16 before, I just can't tell you when that
 17 happened.

18 COFFEY, Q.C.:
 19 Q. Was there any discussion or any expression of
 20 concern about the failure on anyone's part to
 21 bring the number of significance to the
 22 attention of the Premier's office?

23 MR. CRAWLEY:
 24 A. Yeah, I've had that conversation a number of
 25 times with the clerk of the day that, you

1 know, there's--you know, and he, Robert
 2 understood that full well, you know. So much
 3 information comes into the Premier's office.
 4 It's an incredibly busy place to work. The
 5 environment there is unlike anywhere that I've
 6 ever worked before, and you know, I think most
 7 people would be quite shocked by the actual
 8 volume of work that goes through there. So
 9 much information comes at you, you know. If
 10 there's something significant, you know, it
 11 needs to be flagged as being significant.
 12 That's the only way it can get detected and in
 13 this case, that didn't occur.

14 COFFEY, Q.C.:
 15 Q. From your perspective, and I took you through
 16 the August 18th briefing note, that the word
 17 "greatly" is not there for the 22, and you've
 18 indicated what you have about the potential
 19 effect on yourself of the usage of or
 20 inclusion of that word.

21 MR. CRAWLEY:
 22 A. But even more so than that, Mr. Coffey, there
 23 was no explanation as to what those numbers
 24 really meant, you know. I'm not a doctor. I
 25 don't have a medical background as such. For

1 me to understand what things like DCIS meant,
 2 you know, it would be very difficult to do
 3 that. You really need--given what goes
 4 through there in the run of a day, you really
 5 need someone to give you context to truly
 6 understand what something like that would
 7 mean. Even if it were to have any
 8 significance at all, I mean, that needs to be
 9 spelled out and spelled out very clearly
 10 upfront so that you know what you're looking
 11 for.

12 COFFEY, Q.C.:
 13 Q. Have any steps been taken to ensure that that
 14 has changed?

15 MR. CRAWLEY:
 16 A. Yes. We've actually--in light of some of the
 17 testimony that's been made here, you know,
 18 concerns on accuracy which I have a very
 19 fundamental problem with, we've commissioned a
 20 complete review by an outside party of our
 21 briefing note process to try and see if
 22 there's things that can be done differently
 23 and can be done better to prevent this from
 24 happening again. I really think, you know,
 25 the fact that accurate information didn't come

1 forward in that note and the fact that there
 2 was no real context there, I think, you know,
 3 that's significant things that should not have
 4 happened.

5 COFFEY, Q.C.:
 6 Q. I take it the information perhaps not being
 7 accurate relates to the--potentially at least,
 8 to the reasons for test failure?

9 MR. CRAWLEY:
 10 A. Yes.

11 COFFEY, Q.C.:
 12 Q. The commentary underneath that?

13 MR. CRAWLEY:
 14 A. Yes.

15 COFFEY, Q.C.:
 16 Q. Sir, was there any discussion, on May 17th and
 17 May 18th or around that time, that you recall,
 18 about--I appreciate the number of 200 not
 19 having been disclosed, but who, if anyone, in
 20 the Department of Health was aware that
 21 Eastern Health consciously chose not to
 22 communicate that to the public? Because that
 23 was conveyed to the Department of Health on
 24 December 11th. Was there any inquiries made
 25 in that regard?

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1 MR. CRAWLEY:
 2 A. No, not that I--I can't categorically say no,
 3 but I don't recall that being discussed.
 4 COFFEY, Q.C.:
 5 Q. The idea of like who, if anyone, in government
 6 knew that Eastern Health had refused, was that
 7 inquiry made at that time?
 8 MR. CRAWLEY:
 9 A. Not that I recall, no.
 10 COFFEY, Q.C.:
 11 Q. Do you know has any inquiry been made in that
 12 regard since?
 13 MR. CRAWLEY:
 14 A. So your explicit question is did anyone ask
 15 the Department of Health who knew what?
 16 COFFEY, Q.C.:
 17 Q. Well, who knew that Eastern Health was not
 18 going--was explicitly going to refuse to tell
 19 the media that 200 number?
 20 MR. CRAWLEY:
 21 A. Just can't tell you off the top of my head,
 22 I'm afraid.
 23 COFFEY, Q.C.:
 24 Q. So there's no--has there been any inquiry
 25 since, do you know, in that regard? I mean,

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1 we asked the question here. I'm just asking -
 2 MR. CRAWLEY:
 3 A. I can't tell you off the top of my head. I'd
 4 have to look into it.
 5 THE COMMISSIONER:
 6 Q. Is that present--what tense was that question
 7 in?
 8 COFFEY, Q.C.:
 9 Q. Well, that would be -
 10 THE COMMISSIONER:
 11 Q. Going to as opposed to have not?
 12 COFFEY, Q.C.:
 13 Q. I'll just rephrase it, I'm sorry,
 14 Commissioner. Are you aware of any inquiries
 15 having been made within Government in respect
 16 of the Department of Health, like who in the
 17 Department of Health, if anyone, was aware,
 18 back in December of '06, that Eastern Health
 19 refused to provide those numbers?
 20 MR. CRAWLEY:
 21 A. I don't know the answer to that, but I know,
 22 you know, it's my opinion that people should
 23 have been aware of that.
 24 COFFEY, Q.C.:
 25 Q. And I appreciate they should have, and I'm

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1 just asking you though, so you don't know if
 2 anyone has actually made the inquiry? Anyone
 3 has fessed up to, as it were, to say that
 4 "yeah, well, I knew the difference"?
 5 MR. CRAWLEY:
 6 A. I believe--and I just want to be careful in my
 7 comments because, you know, I'm under oath
 8 here and I believe that there is an
 9 understanding of that, but I just am not
 10 really comfortable talking about it without
 11 having some more certainty.
 12 COFFEY, Q.C.:
 13 Q. And from your perspective, who, within the
 14 Department, should have been aware of this?
 15 MR. CRAWLEY:
 16 A. Oh, I think, for me, I mean, I would think the
 17 Minister. You know, I don't--if I have a
 18 problem with something, I don't call a
 19 communications director or an ADM or a deputy.
 20 I call the minister.
 21 COFFEY, Q.C.:
 22 Q. And so there was a Cabinet meeting, I take it,
 23 on May 21st as well?
 24 MR. CRAWLEY:
 25 A. Monday, yes.

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1 COFFEY, Q.C.:
 2 Q. Monday. What was decided at that time?
 3 MR. CRAWLEY:
 4 A. I don't have the Order of Council here in
 5 front of me, but the basic decision was that a
 6 number of options were presented to Cabinet to
 7 choose from for doing such a review, and
 8 Cabinet and the Premier selected the option
 9 that they felt was more appropriate, which is
 10 where we are today.
 11 COFFEY, Q.C.:
 12 Q. Okay, and Mr. Crawley, from your perspective
 13 then, because this was announced on May 22nd,
 14 and I showed Ms. Matthews yesterday some e-
 15 mails involving the announcement and the
 16 actual press release, how involved were you in
 17 that process?
 18 MR. CRAWLEY:
 19 A. In terms of what, the news release?
 20 COFFEY, Q.C.:
 21 Q. Yes, the news release.
 22 MR. CRAWLEY:
 23 A. Generally, I rarely get involved in the news
 24 releases. If it's something significant, I'd
 25 like to see it before it goes, but I don't sit

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1 down as a rule of thumb and write news
 2 releases, for the most part. I think it may
 3 have happened once or twice since I assumed
 4 this role.
 5 COFFEY, Q.C.:
 6 Q. And did it happen in relation to this?
 7 MR. CRAWLEY:
 8 A. Oh yes, yeah. I would consider this to be a
 9 significant announcement, worth a review.
 10 COFFEY, Q.C.:
 11 Q. Sir, we looked yesterday at what were termed
 12 key messages in an e-mail -
 13 MR. CRAWLEY:
 14 A. Um-hm.
 15 COFFEY, Q.C.:
 16 Q. - from the Department of Health, kind of
 17 interdepartmental communication and are termed
 18 key messages, and there's a whole list of
 19 them. They end up actually as the background,
 20 or at least a significant portion of them
 21 ended up as your actual backgrounder in the
 22 press release. Were you aware that that had
 23 happened? That what was termed key messages -
 24 MR. CRAWLEY:
 25 A. Could you bring it up on the screen, please?

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1 COFFEY, Q.C.:
 2 Q. Sure, I can do that. Just a moment, please.
 3 Could you bring up, please, Exhibit P-0872?
 4 MR. CRAWLEY:
 5 A. What's the date on this? 22nd or 21st?
 6 COFFEY, Q.C.:
 7 Q. May 21st, 2007. Now this doesn't--it wasn't
 8 sent to you, but it's an e-mail from Tansy
 9 Mundon to John Abbott and Moira Hennessey, key
 10 messages ER/PR, and then the actual press
 11 release with the backgrounder is P-0128, page
 12 43. That's the--you'll see that's the first
 13 page of the news release of May 22nd.
 14 MR. CRAWLEY:
 15 A. Yes.
 16 COFFEY, Q.C.:
 17 Q. But the actual backgrounder begins on the next
 18 page.
 19 MR. CRAWLEY:
 20 A. Um-hm.
 21 COFFEY, Q.C.:
 22 Q. And if one goes through it, kind of line for
 23 line, word for word, it's not verbatim, but
 24 it's close. An awful lot of it is the same.
 25 Were you aware that in preparing the

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1 backgrounder that was going to be issued with
 2 the press release announcing the Commission
 3 of--the establishment of a Commission of
 4 Inquiry that what was included in the test of
 5 the backgrounder was substantively what was
 6 referred to within the Department as key
 7 messages?
 8 MR. CRAWLEY:
 9 A. I wouldn't have played a role in the
 10 preparation of the news release. My role
 11 would have been to review it.
 12 COFFEY, Q.C.:
 13 Q. Were you aware that that was -
 14 MR. CRAWLEY:
 15 A. No.
 16 COFFEY, Q.C.:
 17 Q. Now sir, why--what was your understanding of
 18 why there was a commission of inquiry at all
 19 announced?
 20 MR. CRAWLEY:
 21 A. Well, I mean that's certainly -
 22 COFFEY, Q.C.:
 23 Q. From your perspective, as chief of staff.
 24 MR. CRAWLEY:
 25 A. - a question that should be asked of Cabinet,

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1 but for me, I think there's two things. One,
 2 you know, there was--the significance of the
 3 information that Mr. Wiseman brought forward
 4 in May, the fact that 200 people, you know,
 5 200 women had had a change in their result but
 6 no change in their treatment, I mean, that was
 7 very concerning and I don't think anything--
 8 you know, I just--it was very disturbing to us
 9 and I guess the question was asked, if Eastern
 10 Health knowingly withheld that information,
 11 what else could have been withheld? So that
 12 was one thing. And for me, I had a
 13 conversation with the Premier sometime around
 14 that Cabinet--it may have been before or
 15 after, whatever, and you know, we were just
 16 talking about is an inquiry merited? Is there
 17 merit in an inquiry? Is it the right thing to
 18 do? And he looked at me and I'll never forget
 19 it, I mean, he said to me, you know, "Brian,
 20 what if that was your wife, your daughter or
 21 your mother? Wouldn't you want to know what
 22 happened?" and from that moment on, I can
 23 assure you, sir, you know, I was fully
 24 supportive of calling the inquiry and I think
 25 in the Premier's mind, people's right to know

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1 what happened--his concern has always been
 2 with the patient care and you know, his desire
 3 to ensure that people knew what happened is
 4 why the inquiry was called.
 5 COFFEY, Q.C.:
 6 Q. Now in relation to that, you just pointed out
 7 that you understood that they had refused to
 8 provide the information on the 200.
 9 MR. CRAWLEY:
 10 A. Um-hm.
 11 COFFEY, Q.C.:
 12 Q. And you've said the question arose "well, what
 13 else haven't they told somebody potentially?"
 14 MR. CRAWLEY:
 15 A. Yeah.
 16 COFFEY, Q.C.:
 17 Q. At that point in time, was any thought given
 18 to just simply having in the executive of
 19 Eastern Health, into a boardroom, and say
 20 "what else, if anything, haven't you told us?"
 21 MR. CRAWLEY:
 22 A. No, I don't think so. I think the issue was
 23 perceived as being too serious for that. I
 24 think there was also -
 25 COFFEY, Q.C.:

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1 Q. On that point, by that point in time -
 2 MR. CRAWLEY:
 3 A. Just to finish my thought though. I think
 4 there was also emerging a feeling of lost
 5 confidence in Eastern Health. I can't tell
 6 you when that occurred, but I know all of us
 7 were a little uncomfortable with what had
 8 happened.
 9 COFFEY, Q.C.:
 10 Q. Was there any sense at the time that we're not
 11 certain how--we're not certain whether we can
 12 trust them to actually tell us the full truth?
 13 MR. CRAWLEY:
 14 A. I don't know if I'd categorize it as being
 15 that, but I think it would be more of Premier
 16 Williams' concerns for the patient, getting
 17 the information in an unbiased manner and what
 18 better way to do that than to appoint a judge
 19 for a commissioner and go through a very open
 20 and transparent process.
 21 COFFEY, Q.C.:
 22 Q. In doing so, you understood that the
 23 government hoped to learn what?
 24 MR. CRAWLEY:
 25 A. I think the Government wanted to learn a bunch

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1 of different things. I mean, I think we
 2 wanted to know for sure what went wrong.
 3 COFFEY, Q.C.:
 4 Q. Okay.
 5 MR. CRAWLEY:
 6 A. We wanted to know for sure that at the end of
 7 this process that there'd be recommendations
 8 put forward to ensure that, you know, this
 9 couldn't happen again and on a go-forward
 10 basis that we'd have, you know, the best
 11 system that we could have for providing this
 12 type of testing. And also, I think, you know,
 13 there's an expectation that if people had lost
 14 confidence in Eastern Health, then that
 15 confidence needs to be rebuilt and you can't
 16 do that by sweeping something in under the
 17 rug. It has to be brought to light.
 18 COFFEY, Q.C.:
 19 Q. Now sir, do you know if, at least to your
 20 knowledge, anyone in Government, up until May
 21 22nd 2007, ever actually asked anyone in the
 22 Department of Health or Eastern Health what
 23 went wrong?
 24 MR. CRAWLEY:
 25 A. I know up to May 22nd-ish, you know, no. But

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1 I think there was some comfort in the fact
 2 that, you know, a couple of things. The
 3 testing stopped in 2005. All the samples were
 4 being sent out. The new samples were being
 5 sent out to Mount Sinai and I stand corrected
 6 on when, but it was early 2007, I believe,
 7 that testing resumed. I think, you know,
 8 there was comfort in the fact that, you know,
 9 highly trained medical professionals with
 10 their own career would never put people's
 11 lives at risk by resuming testing if they
 12 weren't able to do so, and that's my take on
 13 it, for whatever it's worth.
 14 COFFEY, Q.C.:
 15 Q. But in terms of what went wrong.
 16 MR. CRAWLEY:
 17 A. Um-hm.
 18 COFFEY, Q.C.:
 19 Q. Did anyone ever actually ask that question, to
 20 your knowledge, of Eastern Health or the
 21 Department of Health?
 22 MR. CRAWLEY:
 23 A. Prior to May?
 24 COFFEY, Q.C.:
 25 Q. Prior to the publication of the May 22nd media

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1 release?
 2 MR. CRAWLEY:
 3 A. I can't recall, Mr. Coffey. That's not saying
 4 it didn't happen, but I don't remember.
 5 COFFEY, Q.C.:
 6 Q. To your knowledge did anyone ever ask and why
 7 not?
 8 MR. CRAWLEY:
 9 A. Again, I think -
 10 COFFEY, Q.C.:
 11 Q. Why wouldn't one ask, simply ask Eastern
 12 Health or the Department of Health what
 13 happened here?
 14 MR. CRAWLEY:
 15 A. I won't speak for anyone else, but from my own
 16 perspective, you know, I took comfort in the
 17 fact that they had gone through this, they had
 18 done their external -
 19 COFFEY, Q.C.:
 20 Q. I appreciate, yeah -
 21 MR. CRAWLEY:
 22 A. But they'd gone through this process, they'd
 23 done their external reviews, they implemented
 24 the recommendations of it and they saw fit,
 25 based on their, you know, years of training

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1 and their years of experience, they saw fit to
 2 re-continue testing.
 3 COFFEY, Q.C.:
 4 Q. I appreciate that. I'm just asking you the
 5 first term of reference is to figure out,
 6 well, or to ask, or try to answer the question
 7 what went wrong.
 8 MR. CRAWLEY:
 9 A. Right.
 10 COFFEY, Q.C.:
 11 Q. Why, at the time, you know, up to the moment
 12 one actually announces the establishment of
 13 Commission of Inquiry, didn't anyone, why it
 14 didn't occur to you to ask someone who might
 15 know -
 16 MR. CRAWLEY:
 17 A. I mean, look at -
 18 COFFEY, Q.C.:
 19 Q. - what went wrong?
 20 MR. CRAWLEY:
 21 A. Look at the time frame we're dealing with
 22 here. I mean, this issue came forward May
 23 15th, 16th, whatever it was, it went to
 24 Cabinet on the 17th, 21st the decision to have
 25 an Inquiry was made, the 22nd it was done.

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1 You know, the focus at that time, you know,
 2 you need to talk to Cabinet about it, but the
 3 focus for me was really the dealing with the
 4 fact that Eastern Health, you know, in my
 5 opinion, knowingly concealed material
 6 information from the public.
 7 COFFEY, Q.C.:
 8 Q. Well, in terms of -
 9 MR. CRAWLEY:
 10 A. It should have disclosed it.
 11 COFFEY, Q.C.:
 12 Q. I appreciate that. What I'm just trying to
 13 focus on is why, like, looking back on it
 14 now, do you find it at all remarkable that
 15 you, yourself, didn't think to ask somebody
 16 who might know what went wrong here?
 17 MR. CRAWLEY:
 18 A. Yeah, but, you know, I mean, is it my role to
 19 go over to Eastern Health and look at their -
 20 COFFEY, Q.C.:
 21 Q. How about to ask, how about to ask Mr.
 22 Wiseman?
 23 MR. CRAWLEY:
 24 A. Maybe Mr. Wiseman could have asked the
 25 question. I don't know, I never -

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1 COFFEY, Q.C.:
 2 Q. So you didn't--okay. Did you have any
 3 discussion with Mr. Wiseman about this, about
 4 what went wrong and what he knew or was trying
 5 to find out?
 6 MR. CRAWLEY:
 7 A. I have had numerous discussions with Mr.
 8 Thompson on this subject.
 9 COFFEY, Q.C.:
 10 Q. What about Mr. Wiseman?
 11 MR. CRAWLEY:
 12 A. I may very well have, but, you know, the
 13 primary contact for me throughout this
 14 exercise was Mr. Thompson.
 15 COFFEY, Q.C.:
 16 Q. We've heard evidence, you see, that Mr.
 17 Wiseman, in the presence of Mr. Tilley, the
 18 subject came up about him getting a copy of or
 19 being forwarded a copy of these external
 20 reviews. So I'm asking you, did Mr. Wiseman
 21 and you ever discuss the idea of he or the
 22 department or both getting a copy of those
 23 external reviews?
 24 MR. CRAWLEY:
 25 A. I just don't remember, sir.

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1 COFFEY, Q.C.:

2 Q. Were you ever told that the department--that

3 Eastern Health was refusing to provide it to

4 government?

5 MR. CRAWLEY:

6 A. These external reviews were not an issue for

7 me or the Premier's office until the court

8 case happened in January, February time frame,

9 I don't recall. But external reviews had

10 never been discussed at all until that time.

11 So that would have been my first exposure to

12 it.

13 COFFEY, Q.C.:

14 Q. Now, the external reviews are in the

15 departmental briefing notes.

16 MR. CRAWLEY:

17 A. Yeah.

18 COFFEY, Q.C.:

19 Q. Throughout.

20 MR. CRAWLEY:

21 A. Yeah.

22 COFFEY, Q.C.:

23 Q. You certainly would have read them on May 17th

24 or thereabouts, those briefing notes?

25 MR. CRAWLEY:

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1 A. Yes.

2 COFFEY, Q.C.:

3 Q. And there are many references to the external

4 reviews?

5 MR. CRAWLEY:

6 A. Yes.

7 COFFEY, Q.C.:

8 Q. Did you ever read, at that time or--the

9 December 11th, 2006 media technical briefing

10 materials?

11 MR. CRAWLEY:

12 A. Can you show -

13 COFFEY, Q.C.:

14 Q. Which is that package that came over?

15 MR. CRAWLEY:

16 A. Can you show it to me, please?

17 COFFEY, Q.C.:

18 Q. Sure, I can do that.

19 MR. CRAWLEY:

20 A. What date was that?

21 COFFEY, Q.C.:

22 Q. December 11th--well, the actual date of them

23 is December 11th, 2006. So we can bring up,

24 please, P-0104? That's the e-mail that

25 accompanied its transmittal from Eastern

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1 Health to Tansy Mundon and the Department of

2 Health. And then this is, it goes on, it's

3 got a ER/PR retesting chronology, it's got a

4 news release, it has ER/PR retesting key

5 messages, confidential. And this was all

6 forwarded to the Department of Health on

7 December 11th.

8 MR. CRAWLEY:

9 A. Um-hm.

10 COFFEY, Q.C.:

11 Q. And distributed. There's a slide deck and

12 there's more of a slide deck. And then there's

13 ER/PR media technical briefing Q and As, and

14 there are questions and answers, a number of

15 them. In particular, example here, question

16 13, "What did the medical experts' review

17 reveal? What recommendations came out of that

18 review?" And they identify them as the visit

19 from the B.C. Cancer Institute and chief tech,

20 Mount Sinai. And when you read through this,

21 there's an actual reference to the fact that

22 they will not disclose it. So do you know if

23 you, you know, in May or June of 2007, or

24 July, have you ever read this?

25 MR. CRAWLEY:

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1 A. I have read the briefing materials that were

2 given to the minister on November 23rd.

3 COFFEY, Q.C.:

4 Q. Okay, that's one page?

5 MR. CRAWLEY:

6 A. That's correct. And I have read the news

7 release that was put out on December 11th.

8 COFFEY, Q.C.:

9 Q. Yes.

10 MR. CRAWLEY:

11 A. The presentation that you put forward looks

12 familiar, so I can't say categorically that I

13 saw that, but I've certainly seen some of the

14 information that's in it before.

15 COFFEY, Q.C.:

16 Q. Okay. So what I'm asking you about is this,

17 is is that, you know, as you've said that you--

18 these external reviews from your perspective

19 and the Premier's office's perspective, you

20 only became or focused on them in January and

21 February of 2008?

22 MR. CRAWLEY:

23 A. If that's when the court cases were.

24 COFFEY, Q.C.:

25 Q. Yes. Before that had anyone brought that to

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1 your attention, the fact that these exist, we,
 2 the department do or do not have them, we, the
 3 department have or haven't asked for them, I,
 4 Mr. Thompson have or haven't asked for them -
 5 MR. CRAWLEY:
 6 A. Not that I -
 7 COFFEY, Q.C.:
 8 Q. - and been told certain things, do you recall
 9 that ever come up?
 10 MR. CRAWLEY:
 11 A. Not that I recall, no. I just don't recall
 12 this being a mention--an issue that required
 13 the Premier's direction until the matter got
 14 to the courts.
 15 COFFEY, Q.C.:
 16 Q. Well, I'm not asking about direction, I'm just
 17 asking you did it come up as a topic with
 18 yourself and Mr. Thompson?
 19 MR. CRAWLEY:
 20 A. Not that I -
 21 COFFEY, Q.C.:
 22 Q. For example, yourself and Mr. Wiseman?
 23 MR. CRAWLEY:
 24 A. Not that I recall, no.
 25 COFFEY, Q.C.:

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1 Q. So, from your perspective, Mr. Crawley, if
 2 someone within government was to ask the
 3 question who knows what happened, who would
 4 you identify as the person responsible for
 5 asking the question, who knows what happened,
 6 ask Eastern Health what happened here?
 7 MR. CRAWLEY:
 8 A. What are you asking me, who would likely ask
 9 that question?
 10 COFFEY, Q.C.:
 11 Q. Yeah, who would you, who would you identify,
 12 because you're saying in your own world you
 13 would not have done so?
 14 MR. CRAWLEY:
 15 A. Yeah.
 16 COFFEY, Q.C.:
 17 Q. Okay. Well, who then would you identify as
 18 the person responsible for asking that sort of
 19 a question?
 20 MR. CRAWLEY:
 21 A. Well, I can come at it from another angle.
 22 You know, first off, again, the departments
 23 are responsible for managing their own issues,
 24 so you know, the responsibility for anything
 25 on that file would first and foremost lie with

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1 the minister. And there was a briefing, you
 2 know, for Cabinet in 2008 that did go through
 3 some of the facts as to what went wrong.
 4 COFFEY, Q.C.:
 5 Q. I appreciate that's 2008, that's after the -
 6 MR. CRAWLEY:
 7 A. Right.
 8 COFFEY, Q.C.:
 9 Q. After Judge Dymond's decision?
 10 MR. CRAWLEY:
 11 A. Um-hm.
 12 COFFEY, Q.C.:
 13 Q. But what I'm asking you is back in 2007, May
 14 15th, 16th, 17th, this is in the media,
 15 there's a controversy about the fact that 200,
 16 the number, the 200 number wasn't disclosed
 17 back in December, '06.
 18 MR. CRAWLEY:
 19 A. Um-hm.
 20 COFFEY, Q.C.:
 21 Q. I understand that. I'm just asking you, at
 22 the time, did the subject come up, well, what
 23 happened here, why did this happen, because if
 24 we look through the briefing notes, there's no
 25 answer?

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1 MR. CRAWLEY:
 2 A. Right.
 3 COFFEY, Q.C.:
 4 Q. So did the subject come up, do you know?
 5 MR. CRAWLEY:
 6 A. Well, I don't recall -
 7 COFFEY, Q.C.:
 8 Q. Like, wanting to know actually why this
 9 happen?
 10 MR. CRAWLEY:
 11 A. Well, first off, you know, in fairness, I
 12 mean, that wasn't the focus of the Cabinet
 13 meeting on the 17th. And you know, the one
 14 who likely would have and should have been
 15 asking that question would have been the
 16 minister of health.
 17 COFFEY, Q.C.:
 18 Q. So you'd point to the minister of health of
 19 the day, Mr. Wiseman?
 20 MR. CRAWLEY:
 21 A. Yes, sir.
 22 COFFEY, Q.C.:
 23 Q. Okay. And did you understand at the time that
 24 patients were asking what went wrong, Mr. Dawe
 25 was asking what went wrong?

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1 MR. CRAWLEY:
 2 A. Vaguely, yes, yeah.
 3 COFFEY, Q.C.:
 4 Q. And if they were asking it, you yourself did
 5 not ask the question?
 6 MR. CRAWLEY:
 7 A. No, sir, no.
 8 COFFEY, Q.C.:
 9 Q. Okay.
 10 MR. CRAWLEY:
 11 A. And normally I wouldn't get involved at that
 12 type of level in a file. I mean, those are
 13 serious questions and I don't mean to diminish
 14 them. People have a right to have them
 15 answered. But I would have left that to the
 16 minister to decide.
 17 COFFEY, Q.C.:
 18 Q. Okay. And the--Mr. Crawley, again, I'm just
 19 trying to get some sense of the interaction
 20 between the Premier's office, which you're
 21 chief of staff of, and the departments,
 22 ministers and, in this context, Eastern
 23 Health. Have you ever actually had a face-to-
 24 face meeting with the senior executive of
 25 Eastern Health to ask him about these matters,

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1 what went on here, why was this done, why was
 2 some things done or not done?
 3 MR. CRAWLEY:
 4 A. No. That would be the responsibility of the
 5 minister and then the minister would take that
 6 back to Cabinet.
 7 COFFEY, Q.C.:
 8 Q. Okay, that's--have you ever asked or inquired
 9 of the minister whether or not that sort of a
 10 conversation has occurred or meeting has
 11 occurred?
 12 MR. CRAWLEY:
 13 A. I'm sure it's come up, but I can't tell you
 14 categorically when and how.
 15 COFFEY, Q.C.:
 16 Q. From your perspective when did the--well, did
 17 the Premier's office ever assume management of
 18 this matter?
 19 MR. CRAWLEY:
 20 A. Ever assume?
 21 COFFEY, Q.C.:
 22 Q. Management of the government's response to
 23 this matter?
 24 MR. CRAWLEY:
 25 A. I'm not quite sure I understand what you mean

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1 by the question.
 2 COFFEY, Q.C.:
 3 Q. Well, the ER/PR.
 4 MR. CRAWLEY:
 5 A. Yeah.
 6 COFFEY, Q.C.:
 7 Q. Okay. You've said that from your perspective
 8 at times the department was overseeing,
 9 oversight managing?
 10 MR. CRAWLEY:
 11 A. Yeah.
 12 COFFEY, Q.C.:
 13 Q. With something that was primarily in Eastern
 14 Health's responsibility?
 15 MR. CRAWLEY:
 16 A. Yeah.
 17 COFFEY, Q.C.:
 18 Q. You've described that. We do see the
 19 government getting involved in May, 2007,
 20 certainly, the Premier's office involved. Who
 21 has management of this issue from the
 22 perspective of the government now? And we'll
 23 work our way backwards in time. Do they have
 24 it now?
 25 MR. CRAWLEY:

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1 A. Well, I'm actually comfortable answering the
 2 question in May. At that time we got involved
 3 and, you know, we requested all of the
 4 information that we could get our hands on and
 5 we brought forward it to the Cabinet level.
 6 So in a sense, Cabinet was managing it at that
 7 time, giving direction as to, you know, who
 8 should do what, with the clear, you know,
 9 responsibility of the department to do it.
 10 That's my take on it.
 11 COFFEY, Q.C.:
 12 Q. Okay, so by May 17th, say?
 13 MR. CRAWLEY:
 14 A. Yeah.
 15 COFFEY, Q.C.:
 16 Q. Certainly by that, from that point on?
 17 MR. CRAWLEY:
 18 A. Yeah.
 19 COFFEY, Q.C.:
 20 Q. The primary responsibility for the management
 21 of this would rest with Cabinet?
 22 MR. CRAWLEY:
 23 A. That's right.
 24 COFFEY, Q.C.:
 25 Q. Okay.

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1 MR. CRAWLEY:
 2 A. And the Premier would have gone on to appoint
 3 Mr. Thompson and, you know, a few other key
 4 initiatives like that.
 5 COFFEY, Q.C.:
 6 Q. Now, the--you've indicated that you've had a
 7 number of discussions with Mr. Thompson about
 8 this matter?
 9 MR. CRAWLEY:
 10 A. Um-hm.
 11 COFFEY, Q.C.:
 12 Q. Could you tell us about those, please?
 13 MR. CRAWLEY:
 14 A. Well, once Robert was assigned to this role, I
 15 would, you know, meet with him from time to
 16 time to make sure I was aware of what was
 17 going on, up to speed, that kind of stuff. It
 18 was, you know, more or less just wanting to
 19 know what was happening with such an important
 20 file and in turn, of course, you know, making
 21 sure the Premier was aware.
 22 COFFEY, Q.C.:
 23 Q. So the--has it at any point been necessary,
 24 from your perspective, for you or you to
 25 advise the Premier to intervene in relation to

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1 Mr. Thompson's activities?
 2 MR. CRAWLEY:
 3 A. Can you be -
 4 COFFEY, Q.C.:
 5 Q. Have you intervened -
 6 MR. CRAWLEY:
 7 A. - more specific?
 8 COFFEY, Q.C.:
 9 Q. Well, no, I'm just asking you in terms of
 10 that.
 11 MR. CRAWLEY:
 12 A. Yeah, well, Robert has certainly asked for
 13 direction on a couple of things and, you know,
 14 direction was given.
 15 COFFEY, Q.C.:
 16 Q. Okay. Do you recall in particular what?
 17 MR. CRAWLEY:
 18 A. There was frequently throughout, I don't
 19 remember the time frame now, but there was
 20 times where matters came up requiring
 21 disclosure to the public and Mr. Thompson
 22 would, you know, bring that information to me
 23 to share with the Premier and, you know, want
 24 to know what do we do with it then. And the
 25 Premier's reaction, you know, consistently was

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1 if it's accurate, you know, let's get it out
 2 right away, as quickly as possible, make sure
 3 Cabinet is aware, I'm aware and we'll go from
 4 there.
 5 COFFEY, Q.C.:
 6 Q. Now, sir, I believe, and again, we looked at
 7 some of this yesterday here, I'll bring it up,
 8 I suppose, to give you some comfort.
 9 MR. CRAWLEY:
 10 A. Could I get some more water again?
 11 COFFEY, Q.C.:
 12 Q. Oh, certainly, yes, you certainly can.
 13 MR. CRAWLEY:
 14 A. I can certainly get it myself if -
 15 COFFEY, Q.C.:
 16 Q. Oh, no, that's fine.
 17 MR. CRAWLEY:
 18 A. If you're okay with that. Thank you, very
 19 much.
 20 COFFEY, Q.C.:
 21 Q. If we could, please, bring up Exhibit P-0233?
 22 Now this, sir, is an e-mail from Mr. Thompson,
 23 June 7th, 2007, 2:51 p.m. to yourself and Ms.
 24 Matthews and others and it points out here, in
 25 the second paragraph, "the key question is

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1 whether Eastern Health statements that all
 2 patients were contacted in October 2005 is
 3 accurate." He's got the short answer, which
 4 is indeed short, and then he has the long
 5 answer, and -
 6 MR. CRAWLEY:
 7 A. Do you mind if I just take a moment to read
 8 this?
 9 COFFEY, Q.C.:
 10 Q. Sure, go right ahead. Take your time.
 11 MR. CRAWLEY:
 12 A. Okay, I'm sorry, what was your question?
 13 COFFEY, Q.C.:
 14 Q. Okay. So my question, well, I hadn't gotten
 15 to one yet. My question is that, this refers
 16 to the issue of all patients having been
 17 contacted.
 18 MR. CRAWLEY:
 19 A. Yeah.
 20 COFFEY, Q.C.:
 21 Q. And there is, and there had been, earlier in
 22 June, an ad published by Eastern Health in
 23 which that kind of categorical statement that
 24 all patients were notified was made.
 25 MR. CRAWLEY:

1 A. Yeah.
 2 COFFEY, Q.C.:
 3 Q. Okay, and here I gather that Mr. Thompson, on
 4 June 7th, was raising some question about
 5 whether or not that was so, okay. So do you
 6 remember that being brought to your attention?
 7 MR. CRAWLEY:
 8 A. I remember all of us getting very--a key thing
 9 for us, from day one, for the Premier in
 10 particular, was that patients, you know, must
 11 be contacted. That has to be the priority
 12 here. The patients need to know. There was a
 13 lot of, you know, doubt being raised to that
 14 at some point. I suspect it was around here,
 15 if the questions were asked, but I do recall
 16 explicitly going to Robert and to the Minister
 17 and saying "are we sure that that statement is
 18 accurate?" and I believe, at one point, Mr.
 19 Tilley said to either Mr. Thompson's face or
 20 to the Minister's face "yes, it is." So you
 21 know, the concerns were raised and that was
 22 the response that came back.
 23 COFFEY, Q.C.:
 24 Q. And that was in--that was before even the ad,
 25 I take it, was -

1 many people were involved, were they
 2 contacted, what was the results, and it became
 3 clear, I think maybe in November of that year,
 4 that indeed patients hadn't been contacted.
 5 COFFEY, Q.C.:
 6 Q. Was it as late as November or was it known for
 7 sometime before that in fact that -
 8 MR. CRAWLEY:
 9 A. My recollection is that the first concrete
 10 evidence that we had that people weren't
 11 contacted was in November, but you know, I
 12 would defer to Mr. Thompson's expertise on it.
 13 That's just my recollection.
 14 COFFEY, Q.C.:
 15 Q. When you say "concrete evidence" might
 16 somebody actually just asserting that they had
 17 not been contacted -
 18 MR. CRAWLEY:
 19 A. Absolutely.
 20 COFFEY, Q.C.:
 21 Q. - that would be concrete evidence?
 22 MR. CRAWLEY:
 23 A. Yes, sir, and that's the exact reason. Again,
 24 I mean, I can't tell you how concerned we all
 25 became by that. I mean, you know, I'm sure

1 MR. CRAWLEY:
 2 A. I can't -
 3 COFFEY, Q.C.:
 4 Q. Okay.
 5 MR. CRAWLEY:
 6 A. I wasn't involved with the ad, so I can't be
 7 certain on the time.
 8 COFFEY, Q.C.:
 9 Q. Do you know if--well, did you ever come to
 10 believe anything different?
 11 MR. CRAWLEY:
 12 A. About patients not being contacted?
 13 COFFEY, Q.C.:
 14 Q. Yes.
 15 MR. CRAWLEY:
 16 A. Oh yes.
 17 COFFEY, Q.C.:
 18 Q. Okay. So when did that happen?
 19 MR. CRAWLEY:
 20 A. Well, as I said, the discomfort started to be
 21 there at some time in July, but because of
 22 that discomfort, we had Robert initiate a
 23 database review of all the patients who were
 24 involved with this, and you know, he looked at
 25 things such as trying to find out exactly how

1 you've heard me say repeatedly today that the
 2 big thing was always making sure that patients
 3 were being treated properly, and when these
 4 patients started making those statements, I
 5 mean, we took that very seriously. We went to
 6 the CEO of the organization, had him validate,
 7 and that wasn't enough, so we took our own
 8 initiative to go in and basically do a
 9 forensic analysis of this to make sure that we
 10 had a clear understanding of what was done.
 11 COFFEY, Q.C.:
 12 Q. If you can look, please, at Exhibit P-0955,
 13 please? This is an e-mail of June 1st 2007,
 14 11:50 a.m., from Ms. Mundon to a number of
 15 individuals, including yourself. She says
 16 "please see attached ad developed by Eastern
 17 Health."
 18 MR. CRAWLEY:
 19 A. Actually, sir, I'm not on that distribution
 20 list.
 21 COFFEY, Q.C.:
 22 Q. I apologize. I apologize, sir, you're not.
 23 So you did not--were not aware of the
 24 advertisement?
 25 MR. CRAWLEY:

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1 A. No, I suspect I was aware they were doing
 2 something, but I wouldn't normally participate
 3 in the development of an ad.
 4 COFFEY, Q.C.:
 5 Q. Okay. When did you first become aware that
 6 there was controversy about the accuracy of
 7 the ad? If the ad was going to go in the
 8 paper the beginning of June, going to go in
 9 the newspapers in the beginning of June.
 10 MR. CRAWLEY:
 11 A. I suspect it would have been after the ad ran.
 12 COFFEY, Q.C.:
 13 Q. And when was it, to your knowledge, that the
 14 government first acknowledged that the
 15 statement, the categorical statement
 16 concerning "we informed all patients and their
 17 doctors of their individual test results by
 18 Eastern Health" in that advertisement, when
 19 did the government first advise the public of
 20 Newfoundland that that was not accurate?
 21 MR. CRAWLEY:
 22 A. Off the top of my head, I can't tell you that,
 23 sir, I'd have to go back and check.
 24 COFFEY, Q.C.:
 25 Q. Perhaps November?

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1 MR. CRAWLEY:
 2 A. I know we categorically stated in a news
 3 release in November because by that time, you
 4 know, the review that we had done, we were
 5 starting to get some strong indications that
 6 that was the case, yeah. I don't mean to give
 7 an impression by saying that we did this
 8 review, that we didn't believe people when
 9 they were saying, you know, I hadn't been
 10 told, the fact that they were saying it, is
 11 why we acted because it was such an important
 12 concern to us.
 13 COFFEY, Q.C.:
 14 Q. Now, sir, we've heard, the Commission has
 15 heard a certain amount of--or some evidence
 16 about problems with the information management
 17 systems that the various health authorities
 18 were using. When did you first become aware
 19 that that was a problem?
 20 MR. CRAWLEY:
 21 A. It would have been part of Robert Thompson's
 22 exercise. It would have been one of the very
 23 early findings that he brought forward.
 24 THE COMMISSIONER:
 25 Q. Mr. Coffey, wherever you find a space, we'll

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1 take the luncheon Break.
 2 COFFEY, Q.C.:
 3 Q. Thank you. And if we could just look, please,
 4 at exhibit P-0955 please, page 4?
 5 MR. CRAWLEY:
 6 A. What's the date around that time, sir?
 7 COFFEY, Q.C.:
 8 Q. This is--go back a bit.
 9 MR. CRAWLEY:
 10 A. I have it, it's okay.
 11 COFFEY, Q.C.:
 12 Q. Sure. It's around the beginning of June, June
 13 1st or so.
 14 MR. CRAWLEY:
 15 A. Okay.
 16 COFFEY, Q.C.:
 17 Q. And it ran in the newspapers and across the
 18 province. And Ms. Matthews has told the
 19 Commissioner that she was certainly or the e-
 20 mail traffic certainly bears it out, she was
 21 very concerned to ensure that, you know,
 22 things were accurate.
 23 MR. CRAWLEY:
 24 A. I have no doubt, she is very thorough.
 25 COFFEY, Q.C.:

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1 Q. When, from your perspective, when you first,
 2 as a chief of staff, first come to realize
 3 that what we had said publicly or what our
 4 agencies have said publicly is not accurate,
 5 how long passes between that and the time you
 6 actually inform the public?
 7 MR. CRAWLEY:
 8 A. I couldn't tell you that, Mr. Coffey.
 9 COFFEY, Q.C.:
 10 Q. See in this context, you don't know, you
 11 haven't made inquiries in that regard.
 12 MR. CRAWLEY:
 13 A. No.
 14 COFFEY, Q.C.:
 15 Q. Like to correct the public record is what I'm
 16 getting at.
 17 MR. CRAWLEY:
 18 A. Yes.
 19 COFFEY, Q.C.:
 20 Q. Is there any system in place to do that?
 21 MR. CRAWLEY:
 22 A. I might have to go back and just review all of
 23 the clippings, I guess.
 24 COFFEY, Q.C.:
 25 Q. Yes, I understand what you told the

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1 Commissioner that up until certainly a point
 2 in mid May, you were accepting everything
 3 Eastern Health said.
 4 MR. CRAWLEY:
 5 A. Yeah.
 6 COFFEY, Q.C.:
 7 Q. Then you had some misgivings, correct?
 8 MR. CRAWLEY:
 9 A. Yeah.
 10 COFFEY, Q.C.:
 11 Q. And then you ran, prepared a backgrounder,
 12 published that with a news release May 22nd.
 13 The government, not yourself, the government
 14 was involved and you were involved in that,
 15 the government -
 16 MR. CRAWLEY:
 17 A. I was involved in what?
 18 COFFEY, Q.C.:
 19 Q. May 22nd -
 20 MR. CRAWLEY:
 21 A. Yes, I reviewed -
 22 COFFEY, Q.C.:
 23 Q. The government was involved, at least some
 24 individuals were involved in the June 1st
 25 advertisement.

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1 MR. CRAWLEY:
 2 A. Uh-hm.
 3 COFFEY, Q.C.:
 4 Q. What or why was it that you accepted Eastern
 5 Health's word for things in relation to May
 6 22nd and June 1st, as a government, in light
 7 of your misgivings about what had happened
 8 back in December 11th and then around May
 9 15th, 16th, 17th, why the change? You have
 10 enough misgivings to call a Commission of
 11 Inquiry -
 12 MR. CRAWLEY:
 13 A. Uh-hm.
 14 COFFEY, Q.C.:
 15 Q. And then within a matter of a week and then
 16 within a couple of weeks, are accepting their
 17 assurances that what they are telling you is
 18 accurate. Why would you continue then to
 19 accept their assurances?
 20 MR. CRAWLEY:
 21 A. I don't think we did continue to accept their
 22 assurances. Mr. Thompson started his review
 23 of the entire database -
 24 COFFEY, Q.C.:
 25 Q. I appreciate that, but that's afterward,

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1 that's after he -
 2 MR. CRAWLEY:
 3 A. It's not long after.
 4 COFFEY, Q.C.:
 5 Q. It is not, but why initially, I'm just asking
 6 you about throughout May, last ten or so days
 7 of May and the first week or so of June, why,
 8 from your perspective, did the government
 9 continue to accept Eastern Health's assurances
 10 when you had some misgivings about, you're
 11 telling the Commissioner, about what they had
 12 done back in December and whether or not you
 13 could rely upon what they were telling you?
 14 MR. CRAWLEY:
 15 A. I suspect we treated them and expected them to
 16 continue to treat themselves, behave
 17 themselves as professionals. I think that's a
 18 reasonable expectation to have of anyone.
 19 COFFEY, Q.C.:
 20 Q. Okay, so you had enough misgivings to call a
 21 Commission of Inquiry?
 22 MR. CRAWLEY:
 23 A. Uh-hm.
 24 COFFEY, Q.C.:
 25 Q. I say "you", the government as a whole,

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1 Cabinet, yet despite that, would continue to
 2 accept, at least until the middle or start of
 3 June, get into that, Mr. Thompson goes off and
 4 makes--gets into his inquiry. Until Mr.
 5 Thompson really began that inquiry, embarked
 6 upon that, the government was continuing to
 7 accept Eastern Health's position?
 8 MR. CRAWLEY:
 9 A. Yes.
 10 COFFEY, Q.C.:
 11 Q. Okay. Do you recall what it was, from your
 12 perspective or understanding that caused Mr.
 13 Thompson the initial misgiving?
 14 MR. CRAWLEY:
 15 A. I think, you know, it wasn't just Mr.
 16 Thompson, I think it was all of us, you know,
 17 took notice of concerns being raised by women
 18 that, you know, I had not been contacted.
 19 COFFEY, Q.C.:
 20 Q. Uh-hm. Thank you, Commissioner.
 21 THE COMMISSIONER:
 22 Q. We'll take a luncheon break and reconvene at
 23 2:10.
 24 (ADJOURNED FOR LUNCH)
 25 THE COMMISSIONER:

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1 Q. Please be seated. Mr. Coffey?
 2 COFFEY, Q.C.:
 3 Q. Thank you, Commissioner.
 4 MR. BRIAN CRAWLEY, EXAMINATION BY BERNARD COFFEY Q.C.
 5 (CONT'D)
 6 COFFEY, Q.C.:
 7 Q. Good day, Mr. Crawley, good afternoon.
 8 MR. CRAWLEY:
 9 A. Good afternoon.
 10 COFFEY, Q.C.:
 11 Q. If we could see, please, exhibit P-0951? This
 12 is an e-mail of May 21st, 2007 at 11:26 a.m.
 13 from Mr. Thompson to yourself? Take your time
 14 and--do you see that?
 15 MR. CRAWLEY:
 16 A. Yes, I do.
 17 COFFEY, Q.C.:
 18 Q. Great. And Mr. Thompson at this point, in the
 19 morning, late in the morning, is providing you
 20 with information, I gather concerning numbers
 21 and test results and so on. What time of the
 22 day was this Cabinet meeting of May 21st
 23 scheduled for, do you recall?
 24 MR. CRAWLEY:
 25 A. It was the evening, but I wouldn't mind just

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1 quickly reading through the e-mail?
 2 COFFEY, Q.C.:
 3 Q. Oh no, no problem, please go right ahead.
 4 MR. CRAWLEY:
 5 A. I'm sorry, what was your question?
 6 COFFEY, Q.C.:
 7 Q. No problem, I'll just ask you about what time
 8 the Cabinet briefing--the Cabinet meeting was
 9 that evening?
 10 MR. CRAWLEY:
 11 A. I don't know for sure, but likely it would
 12 have been in the evening to give ministers
 13 time with their families.
 14 COFFEY, Q.C.:
 15 Q. Okay. And here, I take it yourself and Mr.
 16 Thompson, this reflects the fact that you were
 17 both working on, putting out the options or
 18 laying out the options for the Cabinet?
 19 MR. CRAWLEY:
 20 A. No, to be truthful, I had gone over briefing
 21 materials and I just wanted to make sure that
 22 my understanding of that August 18th note was
 23 the same as Robert's, so he and I had a
 24 conversation and I guess he took upon himself
 25 to, to send me his own thoughts on it.

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1 COFFEY, Q.C.:
 2 Q. Okay. Were you involved in preparing though
 3 for the Cabinet meeting that day?
 4 MR. CRAWLEY:
 5 A. Not that I recall, I mean, I certainly would
 6 have seen something, either at Cabinet or just
 7 prior to, but you know, it's difficult to
 8 remember sometimes, I feel like I'm saying
 9 that a lot, but it's the reality of working
 10 there, there's just so much information that
 11 comes at you, sometimes it's difficult to look
 12 back over a year and try to recall things--not
 13 as an excuse, but a fact.
 14 COFFEY, Q.C.:
 15 Q. Now sir, here looking at this e-mail in the
 16 second last paragraph Mr. Thompson advises you
 17 "the key issue here is that government possess
 18 reasonably complete data on August 18th, 2006,
 19 showing the total rate of error and the
 20 recommended changes in treatment. This
 21 information was not reported in any notes
 22 prior to this date. The information reported
 23 on November 23rd is very similar to the
 24 information reported on November 23rd. There
 25 is no explanation provided in the notes as to

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1 why the completed report took another three
 2 months." And he goes on then to talk about
 3 doctor/patient contact. Obviously, as Ms.
 4 Chaytor is pointing out to me, the last, that
 5 sentence reading is very similar to the
 6 information report on November 23rd, in fact
 7 should be August 18th. So it was your
 8 understanding, I take it and was your
 9 understanding on May 21st, 2007, that the
 10 government at large, certainly, and in fact
 11 the Premier's office had the numbers as of
 12 August 18th, 2006 or at least reasonably
 13 complete numbers.
 14 MR. CRAWLEY:
 15 A. Yes.
 16 COFFEY, Q.C.:
 17 Q. We have heard, as you've pointed out, your
 18 chief contact in relation to departments is
 19 through the minister.
 20 MR. CRAWLEY:
 21 A. Uh-hm.
 22 COFFEY, Q.C.:
 23 Q. Did you have any contact with Mr. Wiseman in
 24 preparation for the Cabinet meeting of May
 25 21st?

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1 MR. CRAWLEY:
 2 A. I couldn't tell you, sir.
 3 COFFEY, Q.C.:
 4 Q. Okay. In particular, do you recall whether or
 5 not Mr. Wiseman spoke to you about the
 6 external reviews?
 7 MR. CRAWLEY:
 8 A. No, I don't recall that conversation.
 9 COFFEY, Q.C.:
 10 Q. Okay, him having obtained legal advice in
 11 relation to those?
 12 MR. CRAWLEY:
 13 A. I don't recall that, no, but again, just to
 14 give some perspective, the volume of
 15 information that goes through that office, I
 16 mean, there's always things coming at you, you
 17 know, it's difficult to look, you know, a
 18 year, two years, three years back and say
 19 yeah, I can remember that happening. I'm not
 20 trying to be evasive, I came here with the
 21 sincere effort to help as best I can, I'm just
 22 having some difficulty recollecting that fact.
 23 COFFEY, Q.C.:
 24 Q. What I'm asking you about is like that Monday,
 25 which would be a holiday, it's the May 24th

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1 weekend holiday, that it would be unusual to
 2 have a Cabinet meeting on a Monday evening, a
 3 holiday evening?
 4 MR. CRAWLEY:
 5 A. Yes, it would, yes.
 6 COFFEY, Q.C.:
 7 Q. The meeting was in particular to address which
 8 option would be exercised or chosen by Cabinet
 9 and it was Mr. Wiseman's department involved,
 10 correct?
 11 MR. CRAWLEY:
 12 A. Yes.
 13 COFFEY, Q.C.:
 14 Q. And there's some evidence -
 15 MR. CRAWLEY:
 16 A. I think we'd actually have to look at the
 17 minute, but my recollection was that the clerk
 18 had the lead on.
 19 COFFEY, Q.C.:
 20 Q. Pardon me?
 21 MR. CRAWLEY:
 22 A. My recollection was that the clerk had the
 23 lead on developing the options.
 24 COFFEY, Q.C.:
 25 Q. Yes, but certainly is it your understanding

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1 that Mr.--people from Mr. Wiseman's department
 2 had--were consulted on it?
 3 MR. CRAWLEY:
 4 A. Oh yes, Robert would have consulted Justice
 5 and Health and probably others.
 6 COFFEY, Q.C.:
 7 Q. Yes. And in relation to this matter then, so
 8 you're telling us that you have no
 9 recollection of Mr. Wiseman ever letting you
 10 know, as chief of staff, that he had sought
 11 and received a legal opinion concerning what a
 12 Commissioner could or couldn't do with those
 13 external reviews?
 14 MR. CRAWLEY:
 15 A. There was at some point a discussion on
 16 external reviews and what the Commission was
 17 able to do. Now I can't tell you when that
 18 occurred and, you know, I don't even know if
 19 I'm allowed to discuss that because it was
 20 conversations with our lawyers, I wouldn't
 21 want -
 22 COFFEY, Q.C.:
 23 Q. No, what was said, okay, we don't want to know
 24 what the legal advice was because where it's
 25 come up here in front of the Commission here -

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1 MR. CRAWLEY:
 2 A. Sure.
 3 COFFEY, Q.C.:
 4 Q. The Commissioner has cautioned the witness not
 5 to say what the legal advice was, okay?
 6 MR. CRAWLEY:
 7 A. Yes.
 8 COFFEY, Q.C.:
 9 Q. But I'm asking you did the topic come up on
 10 May 21st or 22nd between yourself and Mr.
 11 Wiseman or did Mr. Wiseman raise it in your
 12 presence, that topic?
 13 MR. CRAWLEY:
 14 A. I don't remember, sir.
 15 COFFEY, Q.C.:
 16 Q. Do you know if it came up in the Cabinet
 17 meeting?
 18 MR. CRAWLEY:
 19 A. On the 21st?
 20 COFFEY, Q.C.:
 21 Q. 21st, yes.
 22 MR. CRAWLEY:
 23 A. Not that I recall.
 24 COFFEY, Q.C.:
 25 Q. And do you recall ever discussing the external

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1 reviews with Mr. Thompson?
 2 MR. CRAWLEY:
 3 A. Not prior to the court case, no.
 4 COFFEY, Q.C.:
 5 Q. Now when the court case was going on, I
 6 believe you said this morning that when it got
 7 to court that the Premier got involved?
 8 MR. CRAWLEY:
 9 A. Yeah, we were asked for our input as to
 10 whether or not we wanted to have intervenor
 11 status.
 12 COFFEY, Q.C.:
 13 Q. And that was a decision made at the Premier's
 14 office?
 15 MR. CRAWLEY:
 16 A. Yeah, I think it was actually at the Cabinet
 17 table.
 18 COFFEY, Q.C.:
 19 Q. Now in your relaying information to Mr.
 20 Williams, do you do that verbally or in
 21 writing?
 22 MR. CRAWLEY:
 23 A. Verbally.
 24 COFFEY, Q.C.:
 25 Q. Verbal. Do you keep any record of it?

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1 MR. CRAWLEY:
 2 A. No, not when I speak with the Premier.
 3 COFFEY, Q.C.:
 4 Q. Is there any reason for that?
 5 MR. CRAWLEY:
 6 A. I have no reason to.
 7 COFFEY, Q.C.:
 8 Q. No, just in terms of keeping track of what we
 9 have or haven't discussed or what I've let you
 10 know or not, you don't, okay. In your
 11 experience and perhaps, I don't know if this
 12 is a fair or unfair question, is Mr. Williams
 13 a quick study?
 14 MR. CRAWLEY:
 15 A. Yes, he is, yes.
 16 COFFEY, Q.C.:
 17 Q. He would tend to remember what you tell him,
 18 in your experience?
 19 MR. CRAWLEY:
 20 A. I have to tell you, you know, you're talking
 21 about an environment that is not quite like,
 22 you know, any other place that I've ever
 23 worked or heard of anyone where, I mean, and
 24 in fairness to, if I asked you, you know, can
 25 you remember a conversation you had two, three

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1 years ago -
 2 COFFEY, Q.C.:
 3 Q. It might depend on the conversation in
 4 particular.
 5 MR. CRAWLEY:
 6 A. Yeah, well we have lots of important
 7 conversations, so it's hard to differentiate.
 8 COFFEY, Q.C.:
 9 Q. Okay. So, but in the main then I take it,
 10 though, of Mr. Williams, from your perspective
 11 is a quick study?
 12 MR. CRAWLEY:
 13 A. Uh-hm.
 14 COFFEY, Q.C.:
 15 Q. And he tends to remember things?
 16 MR. CRAWLEY:
 17 A. Well, I mean -
 18 COFFEY, Q.C.:
 19 Q. If they stand out--and I'll ask him about
 20 that, but I'm asking about your experience as
 21 chief of staff, in your experience does Mr.
 22 Williams tend to remember things that he's
 23 told if it's apparent that there's some
 24 significance?
 25 MR. CRAWLEY:

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1 A. It depends on the context with which it's
 2 given to him and again, I still stand by my
 3 caveat of the volume, the sheer volume of
 4 information that goes through every year and
 5 the difficulty of being able to pick out one
 6 nugget of information from that, you know,
 7 from everything else and, you know, as we're
 8 talking, I'm not so sure that is a fair
 9 question.
 10 COFFEY, Q.C.:
 11 Q. Okay, and I will certainly anticipate asking
 12 him the same thing. I may even ask him if
 13 you're a quick study.
 14 MR. CRAWLEY:
 15 A. Sure.
 16 COFFEY, Q.C.:
 17 Q. Or in his view. Exhibit P-0466 please? Now
 18 this, I just bring this up here, not because
 19 it was distributed to yourself, Mr. Crawley,
 20 but the topic discussed here I want to ask you
 21 about. This is an e-mail of May 31st, 2007 at
 22 5 p.m. to effectively the trustees and
 23 executive of Eastern Health. And the first
 24 line reads, "In the House of Assembly
 25 yesterday, the Premier released an internal

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1 memo dated June 2003 to the media from the
 2 pathologist who was overseeing
 3 immunohistochemistry lab to the director of
 4 our laboratory medicine, in which the
 5 pathologist raises concerns about ER/PR
 6 testing in 2003, two years prior to the time
 7 that a decision was made to retest." Okay?
 8 And you can take your time and have a look
 9 through it.
 10 MR. CRAWLEY:
 11 A. I've never seen this document before, so I'd
 12 just like to -
 13 COFFEY, Q.C.:
 14 Q. And I appreciate that, just go through that.
 15 MR. CRAWLEY:
 16 A. Is there a hard copy?
 17 COFFEY, Q.C.:
 18 Q. No, but not in your file, but what I will do
 19 and in fact, just to let you know you can
 20 control the mouse there.
 21 MR. CRAWLEY:
 22 A. Oh! Well that's okay, why don't I do that,
 23 thank you.
 24 COFFEY, Q.C.:
 25 Q. Okay.

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1 MR. CRAWLEY:
 2 A. I'm sorry, what was the question?
 3 COFFEY, Q.C.:
 4 Q. Okay, there wasn't one yet, okay, it was just
 5 to point you to this. The--are you aware of,
 6 before the Premier obtained this internal--
 7 it's the Ejeckam, June 2003 memo we've been
 8 referring to it as, had you been aware that,
 9 well first of all, are you aware of when the
 10 Premier first obtained that memo?
 11 MR. CRAWLEY:
 12 A. The same day he tabled it. If I recall, it
 13 was a Cabinet presentation or a Cabinet
 14 discussion and Minister Wiseman brought it to
 15 his attention and he's often to do, he wanted
 16 full public disclosure immediately and I think
 17 he literally went to his office and right down
 18 to the House of Assembly and tabled it
 19 immediately.
 20 COFFEY, Q.C.:
 21 Q. Before that do you recall, up to that point,
 22 being aware that this matter perhaps dated
 23 back to or involved an investigation in 2003?
 24 MR. CRAWLEY:
 25 A. No, sir.

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1 COFFEY, Q.C.:
 2 Q. Had that come up in front of the Cabinet
 3 before that, that you recall?
 4 MR. CRAWLEY:
 5 A. No, sir, not that I recall.
 6 COFFEY, Q.C.:
 7 Q. Was there any discussion about it then?
 8 MR. CRAWLEY:
 9 A. Yes.
 10 COFFEY, Q.C.:
 11 Q. Okay. Well, could you tell us, please, about
 12 that?
 13 MR. CRAWLEY:
 14 A. It was more or less along the lines of, you
 15 know, how come this is just coming to our
 16 attention now and, you know, I don't remember
 17 the specifics of the conversation, but that
 18 was certainly one of the key points, you know,
 19 why is this coming forward to us now, why
 20 wasn't it released earlier and you know, the
 21 Premier's key point of, you know, let's get
 22 this out.
 23 COFFEY, Q.C.:
 24 Q. So this conversation involved yourself, Mr.
 25 Williams and -

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1 MR. CRAWLEY:
 2 A. No, it was a Cabinet table discussion.
 3 COFFEY, Q.C.:
 4 Q. Okay, Cabinet, okay.
 5 MR. CRAWLEY:
 6 A. I didn't participate.
 7 COFFEY, Q.C.:
 8 Q. So the discussion you're talking about
 9 occurred at the Cabinet?
 10 MR. CRAWLEY:
 11 A. I believe it did.
 12 COFFEY, Q.C.:
 13 Q. Were there any inquiries, to your knowledge,
 14 made as to why it was only then coming to your
 15 attention?
 16 MR. CRAWLEY:
 17 A. Yes. And I believe the answer was it was the
 18 first the minister had seen it.
 19 COFFEY, Q.C.:
 20 Q. Then Mr. Ottenheimer?
 21 MR. CRAWLEY:
 22 A. No, Minister Wiseman.
 23 COFFEY, Q.C.:
 24 Q. Oh, this is the first Mr. Wiseman had seen it?
 25 MR. CRAWLEY:

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1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. Oh, I appreciate that. But were any inquiries
 4 made as to, well, why hadn't he seen it
 5 before?
 6 MR. CRAWLEY:
 7 A. By whom, inquiries?
 8 COFFEY, Q.C.:
 9 Q. Well, of people, for example, department
 10 officials, Eastern Health officials?
 11 MR. CRAWLEY:
 12 A. I don't know, sir, I don't know.
 13 COFFEY, Q.C.:
 14 Q. Were you made aware that the department, like,
 15 in May of '07, were you made aware that the
 16 department and the minister of the day, Mr.
 17 Ottenheimer, back in July of '05 had been told
 18 about the 2003 investigation?
 19 MR. CRAWLEY:
 20 A. No, I hadn't.
 21 COFFEY, Q.C.:
 22 Q. Its existence, not about the details, but its
 23 existence?
 24 MR. CRAWLEY:
 25 A. No.

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1 COFFEY, Q.C.:
 2 Q. You didn't?
 3 MR. CRAWLEY:
 4 A. No.
 5 COFFEY, Q.C.:
 6 Q. So that wasn't offered, to your understanding,
 7 during the Cabinet meeting?
 8 MR. CRAWLEY:
 9 A. Not that I recall, no. You know, as I sit
 10 here, it's actually a very fine line, you
 11 know, you're here under oath and you're trying
 12 to cooperate, it's the easiest thing in the
 13 world to try and guess just so that you can
 14 have an answer, but I'm really not comfortable
 15 in doing that, given that I am under oath, so
 16 I hope there's an appreciation of that.
 17 COFFEY, Q.C.:
 18 Q. When did you become aware that Mr. Ottenheimer
 19 had been told back in '05 about this, about
 20 the Ejeckam matter?
 21 MR. CRAWLEY:
 22 A. I suspect, Mr. Coffey, I should have known a
 23 little earlier, but I suspect it was the day
 24 that myself, Ms. Chaytor and you had a
 25 conversation here.

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1 COFFEY, Q.C.:
 2 Q. Okay. That would be when you were being
 3 interviewed?
 4 MR. CRAWLEY:
 5 A. Correct, yes.
 6 COFFEY, Q.C.:
 7 Q. Okay. Sir, I'll ask you this, now you're
 8 certainly, I take it, very familiar with the
 9 terms of references, or certainly have more
 10 than a passing familiarity -
 11 MR. CRAWLEY:
 12 A. I certainly was when they were written. I
 13 haven't looked at them since, mind you, now.
 14 COFFEY, Q.C.:
 15 Q. Is there anything relevant to those terms of
 16 reference that you and I have not discussed
 17 today that the Commissioner should know?
 18 MR. CRAWLEY:
 19 A. I'd have to flick to them if -
 20 COFFEY, Q.C.:
 21 Q. You go right ahead, because you do have some
 22 materials that you -
 23 MR. CRAWLEY:
 24 A. Pardon me?
 25 COFFEY, Q.C.:

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1 Q. You did have some materials that you brought
 2 with you, I just want to ensure that if there
 3 is something that you're aware of, you'll
 4 bring it up. Of course, Mr. Pritchard will,
 5 at some point, be able to ask you questions,
 6 as well. I'm just asking yourself now -
 7 MR. CRAWLEY:
 8 A. And what's your question, do I have -
 9 COFFEY, Q.C.:
 10 Q. Well, just answer is there something, anything
 11 that you're aware of related to the terms of
 12 reference that we have not yet discussed
 13 today?
 14 MR. CRAWLEY:
 15 A. Okay. No, I don't think.
 16 COFFEY, Q.C.:
 17 Q. Okay. If something--what I'm really getting
 18 at is, because you did bring your own notes.
 19 MR. CRAWLEY:
 20 A. I did.
 21 COFFEY, Q.C.:
 22 Q. Some notes and presumably you had some
 23 thought, you gave some thought to this before
 24 you arrived today, so -
 25 MR. CRAWLEY:

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1 A. Indeed I did, yes.
 2 COFFEY, Q.C.:
 3 Q. And just in case there was something, because
 4 there may be something that you were aware of
 5 that I'm not or I've just omitted to ask you.
 6 So thank you, very much, Commissioner.
 7 COMMISSIONER:
 8 Q. Fine. Thank you. Mr. Simmons. Mr. Crawley,
 9 while you have the terms of reference open
 10 there, when is your recollection of when they
 11 were settled, when the actual terms were
 12 settled as opposed to the decision to have an
 13 Inquiry?
 14 MR. CRAWLEY:
 15 A. So on May 22nd Cabinet were giving some
 16 questions as to what the mandate of the
 17 Commission should be. And I believe that was
 18 formalized, I don't know if that -
 19 COMMISSIONER:
 20 Q. Well, the order isn't until July, but -
 21 MR. CRAWLEY:
 22 A. Yeah, they would have been -
 23 COMMISSIONER:
 24 Q. - I'm just looking for a time frame in terms
 25 of when those were kind of finally settled.

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1 MR. CRAWLEY:
 2 A. I would expect it would be when the order was
 3 cut, but, you know, I can't tell you with any
 4 greater clarity. That would be my
 5 expectation.
 6 COMMISSIONER:
 7 Q. All right. Thank you. Mr. Simmons.
 8 MR. BRIAN CRAWLEY, EXAMINATION BY MR. DANIEL SIMMONS
 9 MR. SIMMONS:
 10 Q. Thank you, Commissioner. Good afternoon, Mr.
 11 Crawley. My name is Dan Simmons, I'm the
 12 lawyer here for Eastern Health.
 13 MR. CRAWLEY:
 14 A. Okay.
 15 MR. SIMMONS:
 16 Q. A few things I wanted to ask you about.
 17 MR. CRAWLEY:
 18 A. Sure. And I'm going to go right to the 15th
 19 of May of 2007, which is when the first media
 20 report revealing numbers that had been
 21 included in the affidavit filed in court on
 22 behalf of Eastern Health was reported.
 23 MR. CRAWLEY:
 24 A. Um-hm.
 25 MR. SIMMONS:

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1 Q. And you've told us that following that you had
 2 your first call from Minister Wiseman
 3 concerning this issue?
 4 MR. CRAWLEY:
 5 A. That's correct.
 6 MR. SIMMONS:
 7 Q. And I believe you told us that he had
 8 expressed some frustration that these numbers
 9 had not been brought to his attention before?
 10 MR. CRAWLEY:
 11 A. Correct.
 12 MR. SIMMONS:
 13 Q. And also you told us that you had an
 14 impression, I gathered, that, from him, that
 15 he felt that Eastern Health had, I think your
 16 words were "knowingly concealed information
 17 from the public."
 18 MR. CRAWLEY:
 19 A. Yes.
 20 MR. SIMMONS:
 21 Q. That was the impression you had from him?
 22 MR. CRAWLEY:
 23 A. Yes.
 24 MR. SIMMONS:
 25 Q. And then there's the Cabinet meeting on the

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1 17th of May. And you told us, as well, when
 2 asked about the purpose of having a briefing
 3 of the Cabinet at that meeting that you
 4 related it to Eastern Health having appeared
 5 to have knowingly concealed information about
 6 there being 2000 patients whose test results
 7 had changed but who hadn't had a change in
 8 treatment?
 9 MR. CRAWLEY:
 10 A. Yes.
 11 MR. SIMMONS:
 12 Q. You used that same language, "knowingly
 13 concealed" a couple of more times this
 14 morning.
 15 MR. CRAWLEY:
 16 A. Um-hm.
 17 MR. SIMMONS:
 18 Q. Now, that's fairly strong language to use -
 19 MR. CRAWLEY:
 20 A. Yeah. And that may very well be my words, but
 21 I think it's an accurate description of the
 22 sentiment expressed by Mr. Wiseman.
 23 MR. SIMMONS:
 24 Q. And you gathered that from Mr. Wiseman?
 25 MR. CRAWLEY:

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1 A. Um-hm.
 2 MR. SIMMONS:
 3 Q. And was that the, what you gathered from the
 4 Cabinet meeting, as well, from the
 5 presentation made at the Cabinet meeting?
 6 MR. CRAWLEY:
 7 A. I can't say that with certainty. I mean, I
 8 know it was the absolute impression I had
 9 after speaking to Minister Wiseman, yes.
 10 MR. SIMMONS:
 11 Q. Right. And you told us the purpose of
 12 briefing the Cabinet was because of the
 13 appearance that Eastern Health had knowingly
 14 concealed that -
 15 MR. CRAWLEY:
 16 A. Correct.
 17 MR. SIMMONS:
 18 Q. - that information. Was that issue of whether
 19 Eastern Health had knowingly done that
 20 addressed in the briefing before the Cabinet?
 21 MR. CRAWLEY:
 22 A. There was an explanation of--I actually need
 23 to refer to the presentation of that day to
 24 just familiarize myself with that issue.
 25 MR. SIMMONS:

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1 Q. Okay.
 2 MR. CRAWLEY:
 3 A. If I could have a couple of minutes?
 4 MR. SIMMONS:
 5 Q. P-0799, I believe. And if there's any
 6 particular page you want to refer to, you
 7 might -
 8 MR. CRAWLEY:
 9 A. I can't read that document.
 10 COMMISSIONER:
 11 Q. You have your mouse that's there. Or you have
 12 a copy of it, do you?
 13 MR. CRAWLEY:
 14 A. I believe I do, but the document that's there
 15 is not really readable.
 16 MR. SIMMONS:
 17 Q. I'm told 0827 is a better version.
 18 COMMISSIONER:
 19 Q. All right.
 20 MR. CRAWLEY:
 21 A. So what was your question, sir?
 22 MR. SIMMONS:
 23 Q. My question was, was the presentation made to
 24 the Cabinet, did it--were there any
 25 indications in that presentation one way or

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1 another as to whether Eastern Health had
 2 knowingly concealed that information?
 3 MR. CRAWLEY:
 4 A. No. The presentation says that there was a
 5 media technical briefing provided in December
 6 of 2006 and two numbers were provided, 939
 7 tests sent for retesting, 117 individuals had
 8 treatment changes.
 9 MR. SIMMONS:
 10 Q. Okay. Was--and this presentation was made by
 11 Mr. Abbott?
 12 MR. CRAWLEY:
 13 A. It was, sir, yes.
 14 MR. SIMMONS:
 15 Q. At Cabinet, was it? Did Mr. Abbott offer any
 16 explanation to Cabinet as to why those numbers
 17 were released and others weren't?
 18 MR. CRAWLEY:
 19 A. I'm afraid I can't recall, sir.
 20 MR. SIMMONS:
 21 Q. You don't know?
 22 MR. CRAWLEY:
 23 A. No. No, I didn't say that, I just don't
 24 remember, yeah.
 25 MR. SIMMONS:

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1 Q. You don't remember. Did remember leaving that
 2 Cabinet briefing with your impression of what
 3 the minister had said about knowing
 4 concealment, with your impression being
 5 changed or altered in any way based on the
 6 presentation Mr. Abbott had made?
 7 MR. CRAWLEY:
 8 A. No. And to be honest, my impressions leaving
 9 the Cabinet were about other matters that had
 10 transpired in Cabinet.
 11 MR. SIMMONS:
 12 Q. Were about?
 13 MR. CRAWLEY:
 14 A. Other matters that had transpired in Cabinet.
 15 MR. SIMMONS:
 16 Q. Okay. So can you tell us, then, whether there
 17 was any discussion of this idea that Eastern
 18 Health had set out to knowingly conceal this
 19 information in that Cabinet meeting or in that
 20 presentation?
 21 MR. CRAWLEY:
 22 A. No, I can't tell you if those exact words were
 23 used, sir, no.
 24 MR. SIMMONS:
 25 Q. Okay. Now, Mr. Coffey had mentioned to you

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1 that there were media reports following the
 2 December 11th briefing, and we can refer to
 3 this in any number of them, that in which the
 4 reporters say that they were told the 117,
 5 which were the number of patients with
 6 treatment changes, and despite being asked how
 7 many tests had changed, Eastern Health had not
 8 released that information. Was that fact made
 9 known at the Cabinet briefing, that there had
 10 not been any attempt by Eastern Health to hide
 11 the fact that there was more information about
 12 the number of treatment changes, it's just
 13 that they weren't disclosing it?
 14 MR. CRAWLEY:
 15 A. You have to repeat that, I'm afraid, I didn't
 16 catch what your question was.
 17 MR. SIMMONS:
 18 Q. Okay. We know from the news reports that the
 19 media understood that there were other numbers
 20 -
 21 MR. CRAWLEY:
 22 A. Yes.
 23 MR. SIMMONS:
 24 Q. - that Eastern Health had that they weren't
 25 being told?

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1 MR. CRAWLEY:
 2 A. Yes.
 3 MR. SIMMONS:
 4 Q. And that one of those was the total number of
 5 tests that had changed when they were
 6 retested.
 7 MR. CRAWLEY:
 8 A. Yeah.
 9 MR. SIMMONS:
 10 Q. Was that fact made known to Cabinet at the
 11 briefing?
 12 MR. CRAWLEY:
 13 A. I just can't recall if there was a discussion
 14 on--there was obviously a discussion on the
 15 additional 200 cases.
 16 MR. SIMMONS:
 17 Q. Um-hm.
 18 MR. CRAWLEY:
 19 A. I can't tell you with certainty what the
 20 nature of that discussion was, it's just, it
 21 was too long ago.
 22 MR. SIMMONS:
 23 Q. Okay. Following that Cabinet briefing then
 24 did you have any further discussion with the
 25 minister concerning his view that there had

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1 been this deliberate concealment on the part
 2 of the--of Eastern Health?
 3 MR. CRAWLEY:
 4 A. No. We certainly had conversations about his
 5 discomfort with it.
 6 MR. SIMMONS:
 7 Q. Um-hm. Okay.
 8 MR. CRAWLEY:
 9 A. And he may not have used those words. I mean,
 10 those were my words and that was my perception
 11 of what was said in the conversation and I
 12 stand by them.
 13 MR. SIMMONS:
 14 Q. Okay. So when you--and you used that phrase
 15 four times this morning.
 16 MR. CRAWLEY:
 17 A. Yeah.
 18 MR. SIMMONS:
 19 Q. And when you used that phrase, that's your
 20 perception of one conversation with the
 21 minister?
 22 MR. CRAWLEY:
 23 A. Um-hm.
 24 MR. SIMMONS:
 25 Q. Was there anything else that you observed or

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1 discussions you participated in after that to
 2 cause you to think that there was any
 3 deliberate misleading by Eastern Health or any
 4 deliberate concealment of information by
 5 Eastern Health?
 6 MR. CRAWLEY:
 7 A. I think the fact that the Inquiry was called,
 8 you know, is a reflection of Cabinet's
 9 concern.
 10 MR. SIMMONS:
 11 Q. Um-hm, okay. Are you aware that when that
 12 Cabinet briefing took place and Mr. Abbott was
 13 making the briefing--well, first, was there
 14 anyone else from the department present when
 15 Mr. Abbott gave the briefing?
 16 MR. CRAWLEY:
 17 A. Maybe Moira Hennessey, but I can't say that
 18 with certainty.
 19 MR. SIMMONS:
 20 Q. Right. Do you know if at the briefing there
 21 was any discussion of the fact that the very
 22 numbers that people were taking issue with had
 23 been disclosed to the department and to
 24 Cabinet Secretariat in August of 2006? Was
 25 that -

1 MR. CRAWLEY:
 2 A. There was an awareness -
 3 MR. SIMMONS:
 4 Q. - openly discussed?
 5 MR. CRAWLEY:
 6 A. - that, you know, there was an awareness that
 7 those numbers were with Cabinet Secretariat.
 8 Now, whether that was discussed in Cabinet or
 9 not, but at any rate, there was an awareness.
 10 MR. SIMMONS:
 11 Q. An awareness among whom, by whom?
 12 MR. CRAWLEY:
 13 A. I can't tell you when it occurred, but I mean,
 14 we were all aware at some point that those
 15 numbers were with government.
 16 MR. SIMMONS:
 17 Q. Do you know if that was a topic of discussion
 18 at the Cabinet at the presentation on the
 19 17th?
 20 MR. CRAWLEY:
 21 A. Can't say with certainty.
 22 MR. SIMMONS:
 23 Q. Can't say, okay. Do you know how the media
 24 became aware of the existence of the affidavit
 25 that was filed -

1 MR. CRAWLEY:
 2 A. No, it doesn't.
 3 MR. SIMMONS:
 4 Q. Okay. The date of it, March 16th, 2007 would
 5 be about two months before, almost exactly two
 6 months before his story revealing the 200
 7 number that we're taking issue with now. And
 8 if you take a quick look at the first page
 9 here, you'll see it begins by referring -
 10 MR. CRAWLEY:
 11 A. You know, I need a hard copy of this if I
 12 could, please?
 13 MR. SIMMONS:
 14 Q. I'll give you mine.
 15 COMMISSIONER:
 16 Q. Was one put in your binder?
 17 MR. CRAWLEY:
 18 A. Sorry, I didn't even see it.
 19 COMMISSIONER:
 20 Q. The last page, it's Exhibit--try the last
 21 document in that.
 22 MR. CRAWLEY:
 23 A. There's only one document.
 24 COMMISSIONER:
 25 Q. Well, in that case it is the last document.

1 MR. CRAWLEY:
 2 A. No, actually, I don't.
 3 MR. SIMMONS:
 4 Q. - at court?
 5 MR. CRAWLEY:
 6 A. I understand CBC obtained a copy, the way
 7 reporters often do. I couldn't tell you how.
 8 MR. SIMMONS:
 9 Q. Okay. There's one additional exhibit we'd
 10 like to enter, I'd like to enter, please. I
 11 think it's going to be P-1567.
 12 COMMISSIONER:
 13 Q. Entered.
 14 EXHIBIT ENTERED AND MARKED P-1567.
 15 MR. SIMMONS:
 16 Q. This is a document that I expect you haven't
 17 seen, unless you've seen it in the course of
 18 your preparation for coming to the Commission.
 19 It's an Eastern Health document that hasn't
 20 been placed in evidence yet. It's dated March
 21 16th, 2007. It's addressed to Mr. Mark Quinn
 22 at the Canadian Broadcasting Corporation, and
 23 it's a response to an access to information
 24 request that Mr. Quinn had made. And I doubt
 25 if this looks familiar to you, does it?

1 MR. CRAWLEY:
 2 A. Thank you, Commissioner.
 3 MR. SIMMONS:
 4 Q. Okay. Now this letter starts out by
 5 describing the request that was made for
 6 information and then Eastern Health's response
 7 to it, which in this case was to say that the
 8 individual patient results that Mr. Quinn was
 9 looking for weren't going to be released, and
 10 then when you go to the second page, I think
 11 you've probably just marked the paragraph that
 12 reads "for your information, an affidavit
 13 outlining a summary of the results of the
 14 ER/PR testing has been filed with the Registry
 15 of the Supreme Court of Newfoundland. This is
 16 available to the public. The case number is
 17 2006 01T 2966CP." So it would appear from
 18 this that Mr. Quinn's source of information to
 19 know that the affidavit was there was in fact
 20 Eastern Health told him.
 21 MR. CRAWLEY:
 22 A. Um-hm.
 23 MR. SIMMONS:
 24 Q. Was that a fact that became known to you at
 25 any point in this process?

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1 MR. CRAWLEY:
 2 A. No, and it didn't change the fact that
 3 information, you know, was released in
 4 December of '06 and some information wasn't
 5 released in December of '06.
 6 MR. SIMMONS:
 7 Q. Would this though be consistent with any kind
 8 of deliberate attempt to conceal or hide -
 9 MR. CRAWLEY:
 10 A. No, I see your point.
 11 MR. SIMMONS:
 12 Q. - that information or not?
 13 MR. CRAWLEY:
 14 A. I see your point. My statement was made, and
 15 I still stand by it, based on the information
 16 I had.
 17 MR. SIMMONS:
 18 Q. Right. So your statement simply is that's the
 19 impression you gained from the Minister?
 20 MR. CRAWLEY:
 21 A. Clearly, yes.
 22 MR. SIMMONS:
 23 Q. And nothing more?
 24 MR. CRAWLEY:
 25 A. Yes.

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1 MR. SIMMONS:
 2 Q. Okay. Were you aware that when that Cabinet
 3 meeting was held on the 17th and Mr. Abbott
 4 was making his presentation that Mr. Tilley,
 5 the CEO of Eastern Health, and Dr. Oscar
 6 Howell, the VP Medical, were outside waiting
 7 in case they needed to be called into the -
 8 MR. CRAWLEY:
 9 A. I wasn't at the time, no.
 10 MR. SIMMONS:
 11 Q. You weren't at the time?
 12 MR. CRAWLEY:
 13 A. No, and in fact, it wouldn't be, you know--
 14 anyway, no, I wasn't, I wasn't aware.
 15 MR. SIMMONS:
 16 Q. Are you aware if there was any consideration
 17 given to allowing them an opportunity to speak
 18 to any of these issues at that Cabinet
 19 meeting?
 20 MR. CRAWLEY:
 21 A. No, and it wouldn't be my decision, sir, to
 22 invite them into the room or not invite them
 23 into the room. That's a Cabinet decision.
 24 MR. SIMMONS:
 25 Q. Okay. A short time later, when Dr. Ejeckam's

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1 June 2003 memo passed from the Minister to the
 2 Premier and then it was released publicly by
 3 the Premier in the House, you were aware that
 4 this was happening at the time, I guess, were
 5 you?
 6 MR. CRAWLEY:
 7 A. I was aware that the Premier was -
 8 MR. SIMMONS:
 9 Q. You were aware, yes, you were aware that the
 10 memo had been received by the Minister and had
 11 been transmitted through to the Premier?
 12 MR. CRAWLEY:
 13 A. Correct.
 14 MR. SIMMONS:
 15 Q. And were you aware that it was going to be
 16 released by the Premier in the manner in which
 17 it was released?
 18 MR. CRAWLEY:
 19 A. Indeed I was, yes.
 20 MR. SIMMONS:
 21 Q. Okay. Was any consideration given to
 22 contacting Eastern Health to determine what,
 23 if anything, had been done back in 2003 in
 24 response to that memo?
 25 MR. CRAWLEY:

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1 A. That would have been the responsibility of the
 2 Minister. The Premier has no appetite to sit
 3 on information, you know, that he feels is of
 4 public importance, so he acted and I think he
 5 acted appropriately by tabling that memo that
 6 day.
 7 MR. SIMMONS:
 8 Q. Do you know if there had been any attempt by
 9 the Minister or his staff to inquire of
 10 Eastern Health what, if anything, had been
 11 done back in 2003 in response to those
 12 concerns?
 13 MR. CRAWLEY:
 14 A. No, sir.
 15 MR. SIMMONS:
 16 Q. Do you know if there was any notice given to
 17 Eastern Health that it was about to be
 18 released publicly?
 19 MR. CRAWLEY:
 20 A. You'd have to ask the Minister.
 21 MR. SIMMONS:
 22 Q. Were you aware of any notice being given to
 23 Eastern Health?
 24 MR. CRAWLEY:
 25 A. No.

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1 MR. SIMMONS:
 2 Q. Were you aware of any consideration of giving
 3 Eastern Health notice that this was about to
 4 be released?
 5 MR. CRAWLEY:
 6 A. No.
 7 MR. SIMMONS:
 8 Q. Thank you very much, Mr. Crawley. I don't
 9 have anything else for you.
 10 MR. CRAWLEY:
 11 A. Thank you. Appreciate it.
 12 THE COMMISSIONER:
 13 Q. Mr. Browne?
 14 MR. BROWNE:
 15 Q. Good afternoon, Commissioner. I have no
 16 questions for Mr. Crawley. Thank you for
 17 coming.
 18 THE COMMISSIONER:
 19 Q. Thank you. Ms. O'Dea?
 20 MS. O'DEA:
 21 Q. We don't have any questions.
 22 THE COMMISSIONER:
 23 Q. Ms. Newbury?
 24 MS. NEWBURY:
 25 Q. No questions, thank you.

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1 THE COMMISSIONER:
 2 Q. Ms. Russell?
 3 MS. RUSSELL:
 4 Q. No questions.
 5 THE COMMISSIONER:
 6 Q. Mr. Pike?
 7 MR. PIKE:
 8 Q. No questions.
 9 MR. PRITCHARD:
 10 Q. Commissioner, I don't have any questions for
 11 Mr. Crawley this afternoon. Thank you.
 12 THE COMMISSIONER:
 13 Q. Did you have anything arising?
 14 COFFEY, Q.C.:
 15 Q. No, Commissioner, I don't. Thank you.
 16 THE COMMISSIONER:
 17 Q. Thank you. Thank you, Mr. Crawley.
 18 MR. CRAWLEY:
 19 A. Thank you.
 20 THE COMMISSIONER:
 21 Q. Very much appreciate your contribution.
 22 MR. CRAWLEY:
 23 A. Thank you.
 24 THE COMMISSIONER:
 25 Q. There's another witness. Would you like to

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1 take the afternoon break a little early so we
 2 can all rearrange and have that witness come
 3 in?
 4 COFFEY, Q.C.:
 5 Q. Thank you, Commissioner.
 6 THE COMMISSIONER:
 7 Q. We'll do that.
 8 (RECESS)
 9 THE COMMISSIONER:
 10 Q. Please be seated. Mr. Coffey?
 11 COFFEY, Q.C.:
 12 Q. Thank you, Commissioner. The next witness is
 13 Robert Ritter.
 14 THE COMMISSIONER:
 15 Q. Thank you.
 16 MR. ROBERT RITTER, SWORN, EXAMINATION BY BERNARD COFFEY,
 17 Q.C.
 18 REGISTRAR:
 19 Q. Would you please state and spell your complete
 20 name for the Commission?
 21 MR. RITTER:
 22 A. My name is Robert Ritter, R-O-B-E-R-T, new
 23 word, R-I-T-T-E-R.
 24 REGISTRAR:
 25 Q. Thank you.

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1 COFFEY, Q.C.:
 2 Q. Mr. Ritter, what's your occupation?
 3 MR. RITTER:
 4 A. I'm the chief executive officer of the
 5 Newfoundland Labrador Medical Association.
 6 COFFEY, Q.C.:
 7 Q. And how long have you held that position?
 8 MR. RITTER:
 9 A. Just under seven years.
 10 COFFEY, Q.C.:
 11 Q. Okay. Sir, can you tell us, please, just kind
 12 of a brief overview of your professional
 13 background?
 14 MR. RITTER:
 15 A. Well, I did my undergraduate studies at Sir
 16 George Williams University. I majored in
 17 sociology and organizational behaviour.
 18 Following that, I did a post-graduate studies
 19 at the University of Massachusetts in public
 20 health administration. That's my academic
 21 history.
 22 In terms of my employment experience, I
 23 worked for about 13 years for the Department
 24 of Health, it was called Health and Welfare in
 25 those days, in a variety of positions. It was

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1 the Medical Services branch. I began as a
 2 performance measurement specialist working in
 3 fields like civil aviation medicine. That was
 4 followed by--and that was in Montreal. I
 5 worked for the Quebec region.
 6 Subsequently, I moved to Ottawa and
 7 worked in a variety of positions, culminating
 8 in a five-year position as the assistant
 9 regional director for health care delivery in
 10 Ontario for a Federal program. So that was
 11 primarily aboriginal health.
 12 COFFEY, Q.C.:
 13 Q. And from there?
 14 MR. RITTER:
 15 A. And from there, I switched careers. I went on
 16 to become the CEO of a national advocacy
 17 organization, the Canadian Israel Committee.
 18 I served there for just over 12 years, prior
 19 to accepting the position here in St. John's.
 20 COFFEY, Q.C.:
 21 Q. Now your role as, I believe you said, the CEO?
 22 MR. RITTER:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. Chief executive officer of the NLMA?

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1 MR. RITTER:
 2 A. Correct.
 3 COFFEY, Q.C.:
 4 Q. What are your responsibilities in that regard?
 5 MR. RITTER:
 6 A. Well, primarily it's to lead the organization,
 7 to provide guidance, to assist the
 8 organization in fulfilling its mission, its
 9 objectives, and that's essentially what we do.
 10 We are primarily an advocacy organization. We
 11 are there to represent the physicians of the
 12 province. We have approximately 1700 members,
 13 of which the largest part are full-time
 14 physicians, but we also represent medical
 15 residents and medical students.
 16 COFFEY, Q.C.:
 17 Q. And so full-time positions are how many,
 18 approximately?
 19 MR. RITTER:
 20 A. Just over 1,000.
 21 COFFEY, Q.C.:
 22 Q. Okay, and I suppose doing the arithmetic, the
 23 other 700 are interns and residents?
 24 MR. RITTER:
 25 A. Correct. Well, residents and students to be

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1 precise.
 2 COFFEY, Q.C.:
 3 Q. Residents and students, I apologize, and
 4 medical students as well. An advocacy
 5 organization, what does that involve? What
 6 does that mean?
 7 MR. RITTER:
 8 A. Well, essentially, we focus on three key areas
 9 on behalf of our membership. One has to do
 10 with ensuring that we have an adequate supply
 11 of physicians in the province so that those
 12 physicians that are here working are in a
 13 position to do their work in a reasonable
 14 fashion. So that involves advocating for fair
 15 and competitive compensation. As you know, we
 16 are in an environment where supply of
 17 physicians is fairly challenging and so that's
 18 an ongoing activity of ours. We also are very
 19 concerned about the working conditions of our
 20 physicians and their capacity to be able to
 21 balance their professional lives with their
 22 personal lives and their family
 23 responsibilities. And finally, we focus on
 24 ensuring that physicians have a reasonable and
 25 meaningful voice in the business of medical

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1 care delivery in the province.
 2 COFFEY, Q.C.:
 3 Q. And what does the latter involve, having a
 4 reasonable and effective voice?
 5 MR. RITTER:
 6 A. Well, it could involve a whole host of
 7 activities. For one, I mean, our organization
 8 in and of itself is a body that speaks on
 9 behalf of physicians. So certainly, in terms
 10 of public awareness, we, as an organization
 11 ourselves, do a lot of advocating publicly on
 12 behalf of the physicians. But as well, within
 13 the infrastructure of the system, whether it's
 14 within a hospital setting or other situations,
 15 we look at the organizational mechanisms that
 16 are available for physicians to have input,
 17 meaningful input and effective input into the
 18 decision making, the policy development and
 19 the operations of health care programs.
 20 COFFEY, Q.C.:
 21 Q. And what does the meaningful and effective
 22 input really mean here?
 23 MR. RITTER:
 24 A. Well, it means that when we have a message to
 25 give and make that it's heeded, that it

1 doesn't fall on deaf ears.
 2 COFFEY, Q.C.:
 3 Q. And the ears in question are those of whom?
 4 MR. RITTER:
 5 A. Well, primarily it would be--of course, you're
 6 dealing with a hierarchical organization. So
 7 in some instances where you're dealing with,
 8 say, a small group of physicians, it might
 9 mean the clinical chief they're reporting to.
 10 If you're dealing with, say, a hospital
 11 setting, it would be the Medical Advisory
 12 Committee, which is a group of clinical chiefs
 13 who would be providing advice to the health
 14 authority and so on. And of course, we would
 15 advocate with Government as well. That's a
 16 big part of our job.
 17 COFFEY, Q.C.:
 18 Q. And in relation to Government, what is the--
 19 liaison or advocacy with Government, primarily
 20 involves what?
 21 MR. RITTER:
 22 A. Well, it happens on a number of levels.
 23 Primarily, we would be dealing with senior
 24 officials of the Department, ranging anywhere
 25 from the medical consultant to the deputy

1 know, whether there's a certain type of
 2 equipment that's needed that may not be
 3 available, trying to provide advice on what
 4 kind of equipment, you know. the health
 5 authorities and the Government ought to be
 6 thinking about recommending methodologies. To
 7 give you a recent example, about a year ago,
 8 we developed a methodology to assist the
 9 Government in planning, in sort of a planning
 10 process to maintain, repair and purchase
 11 expensive diagnostic imaging equipment. We
 12 presented that. For example, we spent a
 13 number of months preparing the methodology,
 14 presented it to the Minister just under a year
 15 ago, and we're hoping that in the next couple
 16 of months we'll have an opportunity to see
 17 whether that methodology has been put to good
 18 use and has made a difference in the system.
 19 COFFEY, Q.C.:
 20 Q. Now is the NLMA recognized by law, by statute?
 21 MR. RITTER:
 22 A. Yes, it is. There are really three, well, two
 23 laws and there's, of course, a tradition. The
 24 Canada Health Act has provisions whereby all
 25 provinces that participate in the public

1 minister on sort of ongoing operational issues
 2 that crop up around the province. Similarly,
 3 we would have engagement with the political
 4 sector, meaning the Minister of Health.
 5 COFFEY, Q.C.:
 6 Q. In relation to what? What would be--primarily
 7 money, I take it?
 8 MR. RITTER:
 9 A. Sorry?
 10 COFFEY, Q.C.:
 11 Q. Money?
 12 MR. RITTER:
 13 A. Not necessarily. It would certainly not be
 14 exclusively money. Money is certainly an
 15 issue. Money typically would come up in a
 16 situation where you're really at the
 17 negotiating table and I would say in recent
 18 years, the engagement on issues concerning
 19 money tend to involve more the Minister of
 20 Finance and the Treasury Board officials than
 21 it would the departmental officials at Health.
 22 But there are frequent issues with
 23 respect to operations, whether it's having
 24 adequate OR time, whether it's having--you

1 insurance system have to provide for an
 2 arrangement whereby physicians can
 3 collectively negotiate their compensation
 4 arrangements, and typically, that would be an
 5 organization such as ourselves. There is--we
 6 have counterparts in every province and
 7 territory across the country who are mandated
 8 to do pretty much the same thing as us.
 9 As well, the Medical Act of 2005, the
 10 objects of the NLMA are entrenched in that Act
 11 and I can, you know, refer you to some of the
 12 key objects: promoting and advancing medical
 13 and related arts and science; furtherance of
 14 measures designed to improve health and
 15 prevent disease and disability, that sort of
 16 thing; promote measures designed to improve
 17 standards of hospital and medical services,
 18 and so on.
 19 As well, the tradition has been that we
 20 are the sole representatives in negotiations
 21 and that's been entrenched in certainly every
 22 memorandum of agreement that we've entered
 23 into with a government since I've been around,
 24 and so all of the compensation arrangements
 25 and other operational arrangements involving

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1 physicians are signed on their behalf by the
 2 NLMA.
 3 COFFEY, Q.C.:
 4 Q. And in the latter part of your answer just
 5 then, you referred to that, the tradition, I
 6 take it.
 7 MR. RITTER:
 8 A. Yeah.
 9 COFFEY, Q.C.:
 10 Q. Your understanding, is that by law or
 11 tradition or both?
 12 MR. RITTER:
 13 A. Well, I think it's by law.
 14 COFFEY, Q.C.:
 15 Q. By law?
 16 MR. RITTER:
 17 A. By law. I guess the lawsuit precedes the
 18 tradition.
 19 COFFEY, Q.C.:
 20 Q. Yes. It's my experience most of the time,
 21 yes. With respect to--and just so the
 22 Commissioner understands this, then if a
 23 physician wants to act as a physician in
 24 Newfoundland, what is he or she required to
 25 do?

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1 MR. RITTER:
 2 A. Well -
 3 COFFEY, Q.C.:
 4 Q. You know, they're finishing medical school or
 5 they're, you know, finishing their residency
 6 somewhere, whatever, they're coming from
 7 wherever, what is required of them?
 8 MR. RITTER:
 9 A. Well, the most significant requirement is
 10 licensure, and that, of course, the provisions
 11 for license involve all the academic
 12 requirements and the training requirements and
 13 so on. The arrangements for licensure and the
 14 management of the licensure process is handled
 15 by the College of Physicians and Surgeons in
 16 our province, not by us. We have a close
 17 working relationship with them, but the
 18 licensure is their responsibility.
 19 Now apart from having a license, if a
 20 physician is working in a particular health
 21 care setting, they need to acquire
 22 privileging. Privileging is a spectrum of
 23 entitlement to perform certain activities
 24 within a particular setting, and so it varies,
 25 depending on the physician, what kinds of

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1 services the institution wants the physician
 2 to undertake and so on, and the privileging
 3 process has several steps leading up to it,
 4 including credentialling. So in addition to
 5 the licensure that occurs within the College
 6 institution, each individual health care
 7 delivery institution is required to check the
 8 credentials and make a determination as to the
 9 suitability and the eligibility of the
 10 individual to work in their institution.
 11 COFFEY, Q.C.:
 12 Q. In this context now, each health care
 13 authority, I take it?
 14 MR. RITTER:
 15 A. Correct.
 16 COFFEY, Q.C.:
 17 Q. And what's your understanding as to who or
 18 what body within the health care authority is
 19 charged with actually doing that?
 20 MR. RITTER:
 21 A. Sorry?
 22 COFFEY, Q.C.:
 23 Q. What part of a health care authority actually
 24 deals with privileging, do you know?
 25 MR. RITTER:

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1 A. Yes. There's usually a credentials committee.
 2 Now that's somewhat in transition right now,
 3 although there haven't been major changes
 4 contemplated in the area of credentialling,
 5 but typically, it's a peer process. There is
 6 a credentialling committee that's established
 7 within each institution and its composed
 8 primarily of physicians who make a
 9 determination using various procedures that
 10 they establish within their particular--under
 11 their particular bylaws.
 12 COFFEY, Q.C.:
 13 Q. And is this credentialling committee part of
 14 the MAC, do you know?
 15 MR. RITTER:
 16 A. They're associated with the MAC. As I say,
 17 the bylaw process that governs all of this
 18 stuff is presently in the process of being
 19 modified, and while there is consistency in
 20 some areas from health authority to health
 21 authority, it has not yet been determined, as
 22 far as I can see, that every health authority
 23 will have exactly the same procedures in place
 24 for this.
 25 COFFEY, Q.C.:

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1 Q. And this process of altering or modifying the
 2 bylaws that govern the practice of medicine
 3 within different authorities or across the
 4 province, for that matter, when did that
 5 begin, the modification process?
 6 MR. RITTER:
 7 A. The modification process began shortly after
 8 the amalgamation, the integration of the
 9 various health boards. It unfolded over a
 10 period of time and interestingly enough, the
 11 physicians who typically would be involved in
 12 bylaws affecting them were not actually
 13 consulted until later on in the process. So
 14 there was a group of people--we never were
 15 quite clear on who exactly undertook preparing
 16 what has now been deemed as draft bylaws.
 17 That would have--and that unfolded for, I
 18 guess, over a year, and then I approached the
 19 Department asking about what was happening and
 20 then saw drafts and made comments on some of
 21 the draft material and we certainly advocated
 22 in terms of more physician involvement in that
 23 process, and that's now occurring, and is
 24 still sort of in midstream.
 25 COFFEY, Q.C.:

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1 Q. And these bylaws, when they're concluded and
 2 finally enacted as new bylaws, you expect them
 3 to cover what sorts of subjects?
 4 MR. RITTER:
 5 A. Well, privileging, credentialing, discipline,
 6 you know, that sort of thing. I would say
 7 issues like privacy, confidentiality, quality
 8 assurance, all of those things should really
 9 be part and parcel of the governance process,
 10 the relationships of different people,
 11 authorities of different committees, you know.
 12 Essentially all of the, I guess, the blueprint
 13 or the DNA that governs the governance, so to
 14 speak, and so, as I say, that's still kind of
 15 midstream.
 16 COFFEY, Q.C.:
 17 Q. And -
 18 MR. RITTER:
 19 A. Now I should say, if I--just to clarify, there
 20 is a bit of confusion in some circles about
 21 bylaws, and like everything else, it's a bit
 22 of an evolutionary process, but historically,
 23 and again, now I'll use the word tradition,
 24 and I'm not sure how much of it is linked or
 25 rooted in legislation, but historically,

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1 bylaws were perceived to be medical staff
 2 bylaws and typically it was the medical staff
 3 that would design and manage that process.
 4 The interesting thing--and within, for
 5 example, the draft bylaws that are--that we
 6 are now working on with Eastern Health, there
 7 are provisions for what we call a medical
 8 staff organization or a medical staff
 9 association which is really part of that
 10 process. So it is evolving. There are a
 11 number of physicians that have felt that all
 12 of the bylaw process should have been
 13 medically driven, and there certainly should
 14 have been a lot more medical input in the
 15 earlier days. I'm not sure, in my own mind,
 16 whether it should be entirely medical, because
 17 there are other professionals involved and,
 18 you know, perhaps nomenclature is something
 19 that needs to be clarified, and I certainly
 20 tried to do a bit of consciousness raising
 21 with our membership about that, you know,
 22 helping them understand that, you know, what
 23 these bylaws are certainly govern, to a great
 24 extent, the medical profession, but they also
 25 go beyond that, and so it shouldn't

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1 necessarily be entirely medically driven, but
 2 for sure, there ought to be some very serious
 3 meaningful input by physicians in that
 4 process.
 5 COFFEY, Q.C.:
 6 Q. What stage is that development of the bylaws?
 7 Where is it and who's--to use a phrase I've
 8 used otherwise, who's driving the bus?
 9 MR. RITTER:
 10 A. Well, what's been happening there is the
 11 administration at Eastern Health had asked--
 12 well, let me take a step back. We expressed
 13 some serious concerns to the Deputy Minister
 14 and to the Minister sometime ago about the
 15 fact that the process was unilateral and
 16 insisted, and in fact communicated a number of
 17 concerns to the Minister and the Deputy
 18 Minister and the health authorities about the
 19 draft bylaws that were presented to us.
 20 COFFEY, Q.C.:
 21 Q. If I could, just on that point -
 22 MR. RITTER:
 23 A. Yeah.
 24 COFFEY, Q.C.:
 25 Q. - to get some sense of the -

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1 MR. RITTER:
 2 A. The kind of concerns?
 3 COFFEY, Q.C.:
 4 Q. Well, that and the temporal aspect of this.
 5 Who was the Minister and Deputy Minister at
 6 the time?
 7 MR. RITTER:
 8 A. Ministerially, the only person I've dealt with
 9 is Ross Wiseman. Deputy minister wise, it's
 10 been primarily--it began with John Abbott and
 11 then continued with Robert Thompson. Some of
 12 the concerns we had on a macro level were sort
 13 of the shifting of authorities and the sort of
 14 consolidation of authority and power into a
 15 lot fewer people's hands. We were concerned
 16 about the diminishing of contact or
 17 opportunity for physicians or particularly
 18 physician leaders, people, for example, who
 19 might be the chair of the medical staff
 20 organization, to have direct access to the
 21 Board of Directors. The draft that we were
 22 given put a tremendous amount of authority or
 23 consolidated the authority into the hands of
 24 the CEO. We were concerned at the time that
 25 that was really, in many respects, diluting

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1 the checks and balances in the system.
 2 And as you know from--it came up
 3 certainly at the symposium that you folks
 4 sponsored last April, you know, there needs to
 5 be mechanisms in the system that enable
 6 important stakeholders, such as physicians, to
 7 be able to--when they have a concern, to be
 8 able to address that concern in a way that
 9 leads to a solution. So we were concerned
 10 that there would be a gap in the opportunity
 11 for physicians to exercise that obligation and
 12 responsibility and we made that known.
 13 We did send a letter with a list of about
 14 10 or 12 concerns we had. I'm not sure
 15 whether I submitted that to you folks or the
 16 health authority did. I'm essentially
 17 covering some of the key concerns, you know,
 18 that we communicated at the time.
 19 When I discussed this with Minister
 20 Wiseman, he reassured us that there would be
 21 no implementation of these bylaws until such
 22 time as we had a reasonable period of
 23 consultation and could come to a mutual
 24 understanding that the bylaws made sense, both
 25 for the health authorities and for the

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1 profession.
 2 You asked the question before, I'm sorry,
 3 I guess I went off on a bit of a tangent, but
 4 you asked the question as to where do we stand
 5 now.
 6 COFFEY, Q.C.:
 7 Q. Yes.
 8 MR. RITTER:
 9 A. In Eastern Health, what happened was the
 10 authorities designated a physician, it happens
 11 to be Dr. Benvon Cramer, who led--who pulled
 12 together a team of physicians representing
 13 different services and sort of--and
 14 essentially took the draft and analyzed it and
 15 has introduced a series of amendments and
 16 modifications to that particular document, and
 17 I hasten to add that I was invited to
 18 participate in that process and have done so.
 19 It was our feeling that because Eastern Health
 20 was the most complex of the four health
 21 authorities, that if we could develop a useful
 22 product for Eastern Health, the other three
 23 health authorities could benefit, could take
 24 whatever parts of that worked for them and put
 25 them to good use.

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1 Needless to say, there are elements in
 2 the Eastern Health set of bylaws that wouldn't
 3 cover other health authorities, you know,
 4 relationships with the medical school, things
 5 of that nature, and of course, Eastern Health
 6 being the tertiary centre and so on.
 7 So Benvon Cramer pulled together a group
 8 of physicians and we worked on several, quite
 9 a number of drafts. We're now at the point
 10 where the draft material was sent without
 11 prejudice to the health authority people,
 12 namely John Guy and Oscar Howell, to have a
 13 look at what, concurrent with our seeking
 14 legal advice to simply look at the product
 15 we've developed and make sure that from a
 16 legal perspective we were, you know, within
 17 the boundaries we needed to be in and that we
 18 weren't doing anything foolhardy. So that's
 19 where the process is at right now.
 20 COFFEY, Q.C.:
 21 Q. When was that -
 22 MR. RITTER:
 23 A. We've, by the way, we've posted, we've posted
 24 all of the drafts on our website and invited
 25 physicians from around the province to look at

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1 the drafts and to comment or seek
 2 clarification on any of the elements in the
 3 drafts so they could--so that we were
 4 basically sharing technologies.
 5 COFFEY, Q.C.:
 6 Q. When was this last sent to Dr. Guy? I just
 7 trying to get some sense of the timing.
 8 MR. RITTER:
 9 A. The last version would have--probably about
 10 three or four weeks ago.
 11 COFFEY, Q.C.:
 12 Q. Okay. And do you have any--I take it without
 13 committing yourself, are you able to offer any
 14 opinion as to when it might be anticipated
 15 that there'll be a final version?
 16 MR. RITTER:
 17 A. I tell you, you know, bylaws, I guess, are
 18 always works in progress.
 19 COFFEY, Q.C.:
 20 Q. Sure.
 21 MR. RITTER:
 22 A. What I think we need to do and what we talked
 23 about in the last week or so was the fact that
 24 we think that we are probably 80 percent of
 25 the way there in terms of finding common

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1 ground between the needs of the physicians and
 2 the needs of the health authority. What we
 3 were going to propose was once our lawyer
 4 looked at the material and gave it their
 5 blessing, that we could agree on finding a way
 6 to implement all of that common ground, which
 7 is the most significant stuff, and then agree
 8 on a process to finish the work that's still
 9 undone, so at least a lot of it would, of the
 10 stuff that's been done could be anchored and
 11 introduce a sort of sense of normalacy to the
 12 process. Because I think, understandably,
 13 everybody is feeling a bit awkward not really
 14 knowing, you know, where things stand, whether
 15 the old bylaws still apply, whether the new
 16 bylaws are in effect and so on. So it's a
 17 bit, it is a bit of a conundrum for the people
 18 involved.
 19 COFFEY, Q.C.:
 20 Q. Now, in relation to the aspect of the matter
 21 involving these bylaws, I take it, would cover
 22 the concepts such as peer review, quality
 23 assurance reviews? Do you know if they cover
 24 those?
 25 MR. RITTER:

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1 A. They should be covering them. And as I was
 2 saying, thank you for raising the question.
 3 There was something I neglected to mention.
 4 And I'll get to the quality assurance in just
 5 a moment. Another example of why bylaws are
 6 really works in progress and there's always
 7 something new that comes up, one of the things
 8 that came up recently was--and I raised it at
 9 the part 2 at the Symposium was the whole
 10 question of confidentiality within the
 11 organization. And as you know, Eastern Health
 12 was looking to introduce a confidentiality
 13 requirement that physicians would be required
 14 to sign, and that document involved both
 15 patient confidentiality, but it involved other
 16 forms of confidentiality. We had a problem
 17 with that. We referred it to our legal
 18 counsel. They gave us a reading on and we've
 19 since written to the minister and passed the
 20 information on to Eastern Health. Again, our
 21 view is that it's a resolvable problem. We
 22 would be quite willing to endorse signing an
 23 confidentiality agreement that was intended to
 24 support the Privacy Act and to protect, you
 25 know, information, patient information. We

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1 felt that there were better measures to ensure
 2 that organizational confidentiality was
 3 handled perhaps through bylaws, through,
 4 perhaps through a letter of understanding when
 5 taking employment, but that the bylaws would
 6 also have to include, for instance, measures
 7 or a protocol if someone had a concern about
 8 an organizational matter, a methodology that
 9 they could pursue to find corrective action or
 10 to have the matter that they wanted to address
 11 addressed with some ground rules rather than
 12 simply providing a universal carte blanche
 13 control to the health authority.
 14 COFFEY, Q.C.:
 15 Q. And you were -
 16 MR. RITTER:
 17 A. So that's still in the works.
 18 COFFEY, Q.C.:
 19 Q. That's in the works. The peer review?
 20 MR. RITTER:
 21 A. Yes, that's also being integrated into the new
 22 set of bylaws. I have to confess, that part
 23 of it I wasn't part, I did not participate in.
 24 I know there's been some work done on it and
 25 it's part of the package that's being reviewed

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1 by the lawyers and that's been submitted to
 2 John Guy and Oscar Howell, so that's that. I,
 3 myself, did raise concerns about quality
 4 assurance. It was my--it was our view, I
 5 shouldn't personalize, it's our collective
 6 view that the quality assurance components are
 7 not clear enough, they're essentially very
 8 general in nature, and need to be far more
 9 specific if they are to be seriously
 10 implemented. And so, we noticed, for example,
 11 in the original draft of the bylaws that we
 12 received, when we reviewed them initially, we
 13 noticed that there were many, many references
 14 in the bylaws to ensuring that physicians
 15 exercised caution and serious attention to
 16 matters that involved spending money, but not
 17 a commiserate amount of attention being paid
 18 to quality assurance and patient safety and we
 19 wanted to see more of a balance in that area.
 20 COFFEY, Q.C.:
 21 Q. And so under the bylaw, draft bylaws as they,
 22 you understand them now to be, peer review and
 23 quality assurance, are they treated the same
 24 way within the bylaws?
 25 MR. RITTER:

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1 A. They've been--they've been modified. Again,
 2 we're not--I would have liked to see them even
 3 more rigorous, but again, I think we have to
 4 move forward and I think, you know, you don't
 5 necessarily get perfection instantly. And I
 6 think as long as we have an understanding that
 7 this is a process of continuous refinement and
 8 recognition by all parties, you know, that in
 9 good faith we can work towards improving, that
 10 things don't have to be, you know, absolutely
 11 perfect at the outset.
 12 COFFEY, Q.C.:
 13 Q. So, I take it then that would it be fair to
 14 summarize the situation as it exists today
 15 that is being worked on, no actual estimated
 16 time of arrival, as it were, that you could -
 17 MR. RITTER:
 18 A. I would encourage, I certainly would like to
 19 see our membership to the extent that they're
 20 involved in endorsing this, I'd like to see
 21 something definitive by September, you know,
 22 certainly before the fall. That would be--I
 23 think that's in everybody's best interest to
 24 aim for that. But again, that's my particular
 25 view on things. But we have to find a

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1 consensus amongst many, many physicians, not
 2 necessarily always so easy to do.
 3 COFFEY, Q.C.:
 4 Q. And is it your understanding that these draft
 5 bylaws in respect of, or the provisions in
 6 respect of peer review or quality assurance or
 7 both would come into play when there's an
 8 adverse health event involving a physician?
 9 MR. RITTER:
 10 A. I would sure hope so. Again, I haven't been
 11 involved directly in the peer review part of
 12 things.
 13 COFFEY, Q.C.:
 14 Q. Who is involved in that, who's -
 15 MR. RITTER:
 16 A. It's the physician group. It would be, I'm
 17 trying to remember some of the names of the
 18 people. Benvon Cramer chaired the group,
 19 there's a Cathy Popiaduk who's been involved,
 20 there--Dr. Barry Rose is involved in the
 21 process. A cross section of physicians.
 22 COFFEY, Q.C.:
 23 Q. Sir, I want to return then to the part of the
 24 NLMA's function dealing with negotiations
 25 involving financial arrangements.

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1 MR. RITTER:
 2 A. Um-hm.
 3 COFFEY, Q.C.:
 4 Q. Okay. How does that, in a general way, work,
 5 in the sense of is it done for a period of
 6 time, on whose behalf is it done, how is it
 7 handled? Perhaps you could just tell -
 8 MR. RITTER:
 9 A. Sure.
 10 COFFEY, Q.C.:
 11 Q. - the Commissioner?
 12 MR. RITTER:
 13 A. Well, we're actually gearing up for our next
 14 round of negotiations. The current memorandum
 15 of agreement that we have with the government
 16 expires on September 30th, 2009, which is
 17 about a year and a, just a little under a year
 18 and a half away. Typically what we do is we
 19 organize a group of committees dealing with
 20 various interest groups within the medical
 21 community to oversee a number of exercises
 22 that we undertake. The last agreement, for
 23 example, is, I believe, a three and a half
 24 year agreement. We hadn't been on the
 25 government's fiscal cycle, so it was, there

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1 was a half year built into it to sort of come
 2 on stream with their particular cycle. But
 3 essentially it involves a fairly extensive
 4 consultative process which we will be
 5 launching at the end of this month. And it
 6 involves, first of all, inviting every member
 7 of our community to answer a series of
 8 questions about the priorities, the problems,
 9 the issues that they're confronting on a day-
 10 to-day basis as a way of harvesting the
 11 things, the information about the things that
 12 are important to them. And then we sort of
 13 take all that information from that particular
 14 source and consolidate it into, I would say, a
 15 discussion paper that's then recirculated. In
 16 addition to that, the president and myself and
 17 others travel around the province and go
 18 directly to sites to meet with physicians on
 19 their own turf, so to speak, and talk to them
 20 about the things that are important to them.
 21 In addition to that we survey the national,
 22 the national scene. We look at the different
 23 provincial arrangements. And the reason we
 24 have to do that is, one is to learn some best
 25 practices, but also if you go back to the

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1 comment I made earlier about competition,
 2 competitiveness and the laws of the
 3 marketplace and the difficulties with respect
 4 to competition, it's important that we somehow
 5 maintain some form of competitive positioning
 6 so we don't find ourselves in a situation
 7 where we're unable to attract or retain, for
 8 that matter, the physician cadre that we
 9 require. So that's, as I say, it's a series--
 10 it goes on for about a year. We have the
 11 right to ask to enter into negotiations 180
 12 days before the agreement expires which we
 13 intend to do. So we'll be spending the next
 14 nine months working very rigorously in putting
 15 together a proposal to government. Now, in
 16 addition to that, there are from time to time
 17 circumstances that arise that aren't
 18 exclusively monetary in nature and problems
 19 that need to be fixed relative to--I have to
 20 apologize, that's probably my phone in there.
 21 COFFEY, Q.C.:
 22 Q. You can turn it off if you like.
 23 MR. RITTER:
 24 A. Oh, okay. If I can find it. I rushed over
 25 here, so I'm terribly sorry. So essentially

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1 we go through that refinement process and--
 2 excuse me. That'll do it. So we go through
 3 that refinement process and then engage. Now,
 4 so going back to sort of what happens between,
 5 between negotiations.
 6 COFFEY, Q.C.:
 7 Q. Yes.
 8 MR. RITTER:
 9 A. Issues arise. An example, and I think a very
 10 applicable example would be the situation with
 11 pathology. Governments tend to and certainly
 12 was the case in our last round of negotiations
 13 where government will say, you know, this is
 14 the ceiling of what you're going to get for
 15 all your doctors. And -
 16 COFFEY, Q.C.:
 17 Q. If we could, because make it concrete now for
 18 the Commissioner. The last round of
 19 negotiations was when, do you recall?
 20 MR. RITTER:
 21 A. I told you I'm bad with dates. Work backwards
 22 with me. We're a year and a half away from
 23 the end of this agreement, so we're two years
 24 into the agreement, so that would have been
 25 two years ago.

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1 COFFEY, Q.C.:
 2 Q. So 2006 sound about right?
 3 MR. RITTER:
 4 A. Yeah.
 5 COFFEY, Q.C.:
 6 Q. Okay.
 7 MR. RITTER:
 8 A. Yeah.
 9 COFFEY, Q.C.:
 10 Q. How did the, in particular involving how the
 11 pathologists ended up where they did when the
 12 agreement was signed in '06, perhaps you could
 13 take the Commissioner through that as a
 14 concrete example of -
 15 MR. RITTER:
 16 A. Yeah, sure.
 17 COFFEY, Q.C.:
 18 Q. - what's happened?
 19 MR. RITTER:
 20 A. Well, what happened as, as you--I don't know
 21 how commonly informed people are about this,
 22 but -
 23 COFFEY, Q.C.:
 24 Q. Assume nothing.
 25 MR. RITTER:

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1 A. Okay. So -
 2 COFFEY, Q.C.:
 3 Q. Assume we know nothing about it.
 4 MR. RITTER:
 5 A. Negotiations in the last round were based on
 6 what they call pattern bargaining where a
 7 limit was set, everybody was told this is what
 8 you're going to get and that's it and that's
 9 all. And the problem for us with that
 10 particular situation is that when you--if you
 11 want to introduce specific areas of
 12 difficulty, like pathology, which is something
 13 we had been advocating for for quite some
 14 time, if you introduce it in the context of
 15 the negotiations, you're robbing Peter to pay
 16 Paul. The cost at the time, we were looking
 17 to get them as a bare minimum the \$60,000 odd
 18 bonus that all the oncologists got on the
 19 basis that most of the work that they did
 20 related to cancer and so on. If we would have
 21 agreed to give them, to include the
 22 pathologists in that round of negotiations, it
 23 would have taken money away from everybody
 24 else in order to accommodate them. So we,
 25 what we did was, I told the government that we

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1 weren't prepared to do that and I asked them
 2 and they agreed, I believe it was Lyola
 3 Sullivan at the time, that we would deal with
 4 that issue independently, that that would be
 5 dealt with as an ad hoc issue. And that
 6 raises, I think, an important principle that's
 7 worth noting in terms of the whole planning
 8 process and the way funding is allocated in
 9 the health care sector. Fixing health care
 10 problems and defining the urgency of a
 11 particular health care problem does not belong
 12 at a negotiating table where you're dealing
 13 with compensation. Every service in the
 14 province has a unique set of circumstances
 15 that involve perhaps compensation indirectly
 16 because in most instances the fight that we're
 17 fighting is trying to get enough of a
 18 particular group of physicians into the
 19 province, so the compensation is an issue
 20 because that's one of the incentives you need
 21 to attract people in here, But if you include
 22 all of that into a pattern bargaining
 23 arrangement, it just won't work. So our view
 24 is that really what needs to happen is that
 25 there needs to be kind of two streams of

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1 activity that have to take place; one stream
 2 of activity where you're looking at all the
 3 different services in and of themselves, apart
 4 from the financial aspects of it and saying,
 5 look, urology or pathology or vascular
 6 surgery, here's what's going on, here's the
 7 problem we're having, here's what we need to
 8 anticipate for the future. What options do we
 9 have to fix the problem? And, of course,
 10 ultimately money will come into play, but it's
 11 much bigger than just negotiating a
 12 compensation package, and that's why in many
 13 provinces today what you have, rather than a
 14 sort of cross the board kind of agreement, is
 15 a breakdown or sort of a division where block-
 16 funding arrangements are negotiated for
 17 individual services areas, depending on the
 18 circumstances and the needs of that particular
 19 area. And I think that somehow speaks a bit
 20 to the kind of problem that we're having in
 21 the area of pathology. You know, we kind of
 22 rang the alarm bells for quite some time, we
 23 were very concerned, you know, about the
 24 messages we were getting from our pathologists
 25 about the workload, about the stress level,

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1 about the shortage of staff, about their fear
 2 that, you know, they can't keep working like
 3 this indefinitely and so on, and our hope was
 4 and to be very honest about it, to reveal sort
 5 of our poker hand in a sense. Our original
 6 intent, we felt that when we first started
 7 negotiating with government that actually the
 8 money we needed to attract more pathologists
 9 was more than that \$60,000.00 but we felt that
 10 we needed to walk before we run and we felt it
 11 would be a fairly easy compelling case to
 12 make, to give them that \$60,000.00. We found
 13 out over time that that wasn't--that it wasn't
 14 going to be quite so simple, so that's
 15 basically what happened.
 16 COFFEY, Q.C.:
 17 Q. Okay, sir, so your own experience here in
 18 Newfoundland goes back to around 2000, 2001 or
 19 so?
 20 MR. RITTER:
 21 A. When I first came?
 22 COFFEY, Q.C.:
 23 Q. Yes.
 24 MR. RITTER:
 25 A. Yes.

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1 COFFEY, Q.C.:

2 Q. So you would have been here for the, was there

3 a contractual arrangement between the NLMA and

4 the government around 2003?

5 MR. RITTER:

6 A. 2002.

7 COFFEY, Q.C.:

8 Q. 2002. And that lasted until when?

9 MR. RITTER:

10 A. That was a four-year--yeah, that was a four-

11 year agreement, I believe.

12 COFFEY, Q.C.:

13 Q. And that particular agreement in '02 -

14 MR. RITTER:

15 A. The agreement was signed in 2002, but it was

16 retroactive back to 2001, I believe.

17 COFFEY, Q.C.:

18 Q. Okay, and it extended out until -

19 MR. RITTER:

20 A. Until this one.

21 COFFEY, Q.C.:

22 Q. Until 2005 or so, I take it?

23 MR. RITTER:

24 A. Yeah.

25 COFFEY, Q.C.:

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1 Q. Was the '02 one a block-funding arrangement?

2 MR. RITTER:

3 A. No, it was a Memorandum of Agreement that

4 covered fee for service, fee scales, as well

5 as salary scales for the salaried physicians.

6 We have two types of compensation--well really

7 three, but most physicians in the province

8 work on a fee for service basis where there's

9 a schedule and every procedure has a

10 particular amount of money associated with it.

11 About 60 percent of our physicians work under

12 that kind of an arrangement. In addition to

13 that, about 40 percent of our physicians work

14 on a salary scale. There are two scales. One

15 scale is geared to general practitioners and

16 another one is geared to specialists. And the

17 salary scales, the grids that exist are

18 negotiated through each agreement, and that's

19 essentially how it works. In addition to

20 that, we have about a dozen and a half, what

21 we call APP's, which are essentially block-

22 funding arrangements for specialized services.

23 One example of an alternate payment plan, we

24 call it, is the extra workload arrangement

25 that we have for the radiation and medical

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1 oncologists. The way that works is in, there

2 are standards in Canada for what a normal

3 workload would be for a radiation oncologist

4 and for a medical oncologist. I believe for

5 radiation oncology the standard workload

6 measurement would be 185 new patients a year;

7 for medical oncologists, about 140 patients a

8 year. Because we were short handed a few

9 years ago, and we were unable to attract

10 physicians, we negotiated an arrangement

11 whereby the physicians who were here who

12 tackled or took care of the patients over and

13 above that threshold, were paid a fixed amount

14 of money per extra patient. And that would be

15 covered under what we call an APP.

16 COFFEY, Q.C.:

17 Q. Was that negotiated during the -

18 MR. RITTER:

19 A. No, that was an independent ad hoc kind of

20 negotiation, and we have similar agreements,

21 for example, that are negotiated outside of

22 the--what we call the master agreement. For

23 example, emergency services in St. John's, we

24 have an APP where we negotiate a certain

25 amount--a block of money that allows the

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1 people who run the emergency service to

2 deliver the services that are required.

3 COFFEY, Q.C.:

4 Q. Now the oncologist's stipend, when does that

5 go back to or where does that go back to?

6 MR. RITTER:

7 A. I'd have to check that, that goes back, oh,

8 two or three years ago, maybe a little longer.

9 COFFEY, Q.C.:

10 Q. So in the 2002 contract, that didn't exist at

11 the time?

12 MR. RITTER:

13 A. I can't say for sure, I'd have to check into

14 it.

15 COFFEY, Q.C.:

16 Q. Okay, so but oncologists, medical oncologists,

17 radiation oncologists, I take it there are

18 other kinds of oncologists?

19 MR. RITTER:

20 A. Oh yes.

21 COFFEY, Q.C.:

22 Q. A number of other specialists.

23 MR. RITTER:

24 A. There are pediatric oncologists, gynecological

25 oncologists, hematologists sometimes identify

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1 themselves as oncologists as well, they do a
 2 lot of work with blood cancers and so on.
 3 COFFEY, Q.C.:
 4 Q. So would those doctors who, either would be
 5 commonly referred to as oncologists or might
 6 call themselves oncologists, they're
 7 hematologists but they're actually doing
 8 oncology work, would they fall into the
 9 category of specialists?
 10 MR. RITTER:
 11 A. Oh yes, in fact, they would be in some
 12 instance I would call them subspecialists.
 13 COFFEY, Q.C.:
 14 Q. Now this salaried scale recognizes GP's.
 15 MR. RITTER:
 16 A. Yes.
 17 COFFEY, Q.C.:
 18 Q. And recognizes specialists?
 19 MR. RITTER:
 20 A. Correct.
 21 COFFEY, Q.C.:
 22 Q. Is there any particular classification for
 23 subspecialists?
 24 MR. RITTER:
 25 A. No.

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1 COFFEY, Q.C.:
 2 Q. So the subspecialists would fall under
 3 specialists?
 4 MR. RITTER:
 5 A. Correct.
 6 COFFEY, Q.C.:
 7 Q. Is there any differentiation between the
 8 specialists within that?
 9 MR. RITTER:
 10 A. Yes, are you talking from a monetary
 11 compensation -
 12 COFFEY, Q.C.:
 13 Q. Yes, monetary perspective.
 14 MR. RITTER:
 15 A. Yes, I think it's fair to say that within the
 16 health care system, through evolution, what
 17 you have is sort of, how do I put this? Some
 18 disconnects in terms of the level playing
 19 field, so you have, again, and you have to
 20 make a distinction here between fee for
 21 service physicians and salaried physicians.
 22 COFFEY, Q.C.:
 23 Q. Yes, and I'm only talking about the salary
 24 ones at this point.
 25 MR. RITTER:

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1 A. Yeah, from a salary perspective, the field has
 2 been fairly level, until recently. As I think
 3 most of you know in the last month or so, the
 4 government announced a new salary scale for
 5 pathologists and oncologists -
 6 COFFEY, Q.C.:
 7 Q. Or at least for, I take it, certain
 8 oncologists?
 9 MR. RITTER:
 10 A. Correct, correct, thank you for -
 11 COFFEY, Q.C.:
 12 Q. Which ones are they?
 13 MR. RITTER:
 14 A. That would be strictly the medical and
 15 radiation oncologists. And in fact, you're
 16 quite correct, there's been quite an outcry by
 17 other oncologists about sort of level playing
 18 fields, so that is clearly an issue. But the
 19 issue of relativity within the medical
 20 profession has been a long-standing one and
 21 because most specialists or subspecialists
 22 have, you know, fairly similar training and go
 23 through some pretty rough, you know, difficult
 24 circumstances getting to where they are, and
 25 yet, there are some pretty serious gaps. For

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1 example, between pathology, especially, you
 2 know, before all these changes and say,
 3 radiology which is another diagnostic
 4 speciality, there's a huge disconnect in that
 5 area. And so there is, you know, there is a
 6 need to find a way to create a more level
 7 playing field amongst the different
 8 specialties. The challenge though, as well,
 9 what sort of compounds, what makes the issue a
 10 lot more complex than simply saying we need to
 11 have a more of a level playing field, are
 12 again the laws of the marketplace and the
 13 potential to attract the supply. The supply
 14 issue becomes really important, so if there is
 15 a very short supply of a particular type of
 16 specialists, the likelihood is that there is
 17 going to be a lot more financial incentives
 18 introduced to try to attract the few that are
 19 there.
 20 COFFEY, Q.C.:
 21 Q. The Commissioner, I'd like to put this in some
 22 sort of context, vis-a-vis pathology within
 23 Newfoundland and, you know, what their
 24 experience as been, as a group, to your
 25 knowledge during your time here, in relation

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1 to their compensation, okay? In the '02
 2 round, how would the pathologists within
 3 Newfoundland have fallen into the specialist
 4 salary classification?
 5 MR. RITTER:
 6 A. Yes.
 7 COFFEY, Q.C.:
 8 Q. At the time, would there have been any
 9 distinction between them and other
 10 specialists, like so many dollars for a
 11 specialist?
 12 MR. RITTER:
 13 A. No, every specialist would have been the same.
 14 COFFEY, Q.C.:
 15 Q. Same, okay. And would it vary depending upon
 16 your years of service?
 17 MR. RITTER:
 18 A. Yes, there are provisions there for seniority.
 19 COFFEY, Q.C.:
 20 Q. But in the main, it was they were specialists,
 21 recognized as specialists, lumped into
 22 specialists or grouped as specialists and were
 23 there for, depending upon their years of
 24 service, paid a certain amount of money,
 25 whatever was stipulated?

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1 MR. RITTER:
 2 A. Correct.
 3 COFFEY, Q.C.:
 4 Q. For their service. And that, I take it,
 5 applied no matter how much or how--in effect,
 6 how little they worked. And I'm not
 7 suggesting they didn't work a lot.
 8 MR. RITTER:
 9 A. Yeah.
 10 COFFEY, Q.C.:
 11 Q. I'm just saying between doctors themselves,
 12 there was no distinguishing, if you worked on
 13 a staff position, you were paid whatever
 14 amount -
 15 MR. RITTER:
 16 A. If you were a specialist and you had so many
 17 years of service, this is what you got.
 18 THE COMMISSIONER:
 19 Q. And is that just for pathologists or would
 20 that work across the board for people who were
 21 staff specialists?
 22 MR. RITTER:
 23 A. Up until the recent decision by government, it
 24 was the same for every single specialist.
 25 THE COMMISSIONER:

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1 Q. So whether you were a pathologist or an
 2 oncologist or a pediatrician?
 3 MR. RITTER:
 4 A. Well with the exception of the medical and
 5 radiation oncologists, who had that extra
 6 arrangement, but the salary scale was
 7 consistent.
 8 THE COMMISSIONER:
 9 Q. Okay.
 10 MR. RITTER:
 11 A. Okay, so even the medical and radiation
 12 oncologists still had the same salary -
 13 COFFEY, Q.C.:
 14 Q. Same base salary.
 15 MR. RITTER:
 16 A. Same base salary but had an extra bonus to
 17 address -
 18 COFFEY, Q.C.:
 19 Q. So that was in '02, in that -
 20 MR. RITTER:
 21 A. Yeah, the previous agreement.
 22 COFFEY, Q.C.:
 23 Q. Previous agreement, okay. In '02 when that
 24 agreement was signed, coming out of that
 25 agreement and into '03, that era, pathologists

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1 were paid on the specialist salary scale?
 2 MR. RITTER:
 3 A. Correct.
 4 COFFEY, Q.C.:
 5 Q. With no bonus, no differential?
 6 MR. RITTER:
 7 A. Correct.
 8 COFFEY, Q.C.:
 9 Q. Except on the scale for the years of service.
 10 At that time, I take it were the oncologists
 11 paid the same at that time?
 12 MR. RITTER:
 13 A. In terms of the salary scale, yes.
 14 COFFEY, Q.C.:
 15 Q. Okay. There was another set of salary
 16 negotiations in '05/'06, that era.
 17 MR. RITTER:
 18 A. Yes.
 19 COFFEY, Q.C.:
 20 Q. I gather I'm about right, just from doing the
 21 arithmetic.
 22 MR. RITTER:
 23 A. Yes, what I'll do is we'll verify all those
 24 numbers for you.
 25 COFFEY, Q.C.:

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1 Q. Sure, if you would please. But what I'm
 2 trying to get some sense for the Commissioner
 3 is this, is they've been going into the
 4 '05/'06, that era, into the current regime,
 5 what is not the current regime, negotiations
 6 there. You referred to the fact that the
 7 government certainly at that point took the
 8 position that they wanted block funding in
 9 '05/'06, a block of money for physicians
 10 overall and you could kind of -
 11 MR. RITTER:
 12 A. Oh yes, yeah, you have to be careful, yes.
 13 COFFEY, Q.C.:
 14 Q. Because I'm using your phrase because I wrote
 15 it down.
 16 MR. RITTER:
 17 A. No, block funding typically means a fixed
 18 amount of money for a subgroup to deliver a
 19 particular service. I guess you could say a
 20 macro block funding verses a micro block
 21 funding.
 22 COFFEY, Q.C.:
 23 Q. You did, when you first started to talk about
 24 this -
 25 MR. RITTER:

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1 A. Yeah, we tend to use the nomenclature a little
 2 bit differently, yeah, but yeah, it is--
 3 essentially what they were saying is there is
 4 a ceiling on how much we're going to pay you
 5 and you got to work within that ceiling.
 6 COFFEY, Q.C.:
 7 Q. So, during the last round of negotiations,
 8 during the round itself in the negotiations,
 9 were you aware, was the NLMA aware that
 10 pathologists as a group were unhappy?
 11 MR. RITTER:
 12 A. Yes, as we were aware that every other group
 13 was unhappy.
 14 COFFEY, Q.C.:
 15 Q. And -
 16 MR. RITTER:
 17 A. Bar none.
 18 COFFEY, Q.C.:
 19 Q. And during that negotiation, was--when it was
 20 finally arrived at, the current contract, was
 21 there any provision made for oncologists to be
 22 paid extra?
 23 MR. RITTER:
 24 A. No.
 25 COFFEY, Q.C.:

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1 Q. Nor for pathologists.
 2 MR. RITTER:
 3 A. Keep in mind that the 60,000 was already in
 4 place.
 5 COFFEY, Q.C.:
 6 Q. Yeah, that's what I'm going to ask you about.
 7 Okay, so this APP, alternate payment plan,
 8 APP, do you--you don't recall off the top of
 9 your head when the oncologists, medical and
 10 radiation oncologists first obtained that?
 11 MR. RITTER:
 12 A. No, I don't recall off the top of my head, but
 13 I will double check.
 14 COFFEY, Q.C.:
 15 Q. You can check that, and I appreciate that,
 16 thank you. And that, your recollection, I
 17 gather based upon what you told us earlier
 18 today, is that that arose or it was negotiated
 19 because of a particular set of circumstances
 20 involving a shortage of both those groups?
 21 MR. RITTER:
 22 A. Correct.
 23 THE COMMISSIONER:
 24 Q. But it was before the most recent contract?
 25 MR. RITTER:

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1 A. Yes.
 2 THE COMMISSIONER:
 3 Q. So, wait now, let's sure I understand this,
 4 back in say 2003, the contract before this
 5 one, you would have had all salaried
 6 specialists paid on essentially the same
 7 scale, they might have gotten more because of
 8 their experience, but they, in terms of the
 9 salary scale, would not have gotten more
 10 because they happen to be a particular kind of
 11 specialist. There were two exceptions,
 12 medical oncologist and radiology -
 13 MR. RITTER:
 14 A. Radiation oncologists.
 15 THE COMMISSIONER:
 16 Q. Radiation, sorry, oncology, and they had this
 17 extra, what is it called -
 18 MR. RITTER:
 19 A. They had two things. They had--first of all,
 20 let me clarify, every oncologist, including
 21 the pediatric, the gynecological, all the
 22 oncologists get the \$60,000.00, everybody gets
 23 the \$60,000.00 bonus that's in the oncology
 24 service.
 25 COFFEY, Q.C.:

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1 Q. The APP -
 2 MR. RITTER:
 3 A. The APP is different, the APP is the extra
 4 workload agreement.
 5 COFFEY, Q.C.:
 6 Q. Oh, okay.
 7 MR. RITTER:
 8 A. For the medical and radiation oncologists
 9 where if they exceed their threshold of 185 or
 10 140 for radiation and medical oncology
 11 respectively, they get a fee, a one-time fee
 12 for each additional case to offset--well
 13 essentially equivalent to what they would have
 14 been getting for the patients that they do so.
 15 THE COMMISSIONER:
 16 Q. Okay. So, in 2003 they would have gotten the
 17 same basic salary that all other specialists
 18 got -
 19 MR. RITTER:
 20 A. Correct.
 21 THE COMMISSIONER:
 22 Q. - depending on your years of experience. They
 23 would, all oncologists in addition to that
 24 would have gotten \$60,000.00, that was not
 25 negotiated or was it in the contract itself or

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1 was that a separate thing?
 2 MR. RITTER:
 3 A. That had been negotiated previously, but was
 4 entrenched in the last agreement.
 5 THE COMMISSIONER:
 6 Q. Okay. And then over and above that, there was
 7 a special feature for radiation oncologists
 8 and medical oncologists which was sort of a
 9 kick in feature which occurred when they
 10 exceeded the number of new patients, was it?
 11 MR. RITTER:
 12 A. Correct. The threshold--the national
 13 benchmarks that had been established -
 14 THE COMMISSIONER:
 15 Q. And -
 16 MR. RITTER:
 17 A. - by--they're two respective associations.
 18 THE COMMISSIONER:
 19 Q. Now, these benchmarks are -
 20 MR. RITTER:
 21 A. I believe it's 140 new patients a year for
 22 medical oncology -
 23 THE COMMISSIONER:
 24 Q. Um-hm.
 25 MR. RITTER:

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1 A. - give or take one or two, but that's the
 2 range.
 3 THE COMMISSIONER:
 4 Q. Yes.
 5 MR. RITTER:
 6 A. And 185 new cases within radiation oncology.
 7 So, if they did 190, they would get so much
 8 for the extra five.
 9 THE COMMISSIONER:
 10 Q. All right. So, sort of towards the end of the
 11 year, as it were, there's -
 12 MR. RITTER:
 13 A. Well, actually--that would be too simple. The
 14 way it works is -
 15 THE COMMISSIONER:
 16 Q. Let's no do it simply.
 17 MR. RITTER:
 18 A. No. It worked on a quarterly basis because
 19 the reality was, what they did was, so they
 20 break that 185 down into four components and
 21 then each quarter that they exceeded the
 22 prorated amount, they would get paid on a
 23 quarterly basis for the extra work.
 24 THE COMMISSIONER:
 25 Q. Yes, and -

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1 MR. RITTER:
 2 A. And then if by chance, in a subsequent
 3 quarter, for whatever reason, their caseload
 4 was less, then it would be offset in the
 5 following, it would be adjusted.
 6 THE COMMISSIONER:
 7 Q. Okay. So, that really it was being counted as
 8 a year basis -
 9 MR. RITTER:
 10 A. Yes.
 11 THE COMMISSIONER:
 12 Q. - it was just a way of spreading the payment
 13 over four quarters.
 14 MR. RITTER:
 15 A. Correct, that's right.
 16 THE COMMISSIONER:
 17 Q. All right. And the national benchmark, tell
 18 me again how that was determined. That's
 19 determined by a group.
 20 MR. RITTER:
 21 A. Yes.
 22 THE COMMISSIONER:
 23 Q. A national group?
 24 MR. RITTER:
 25 A. Yes. The sub-specialists that deal with

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1 radiation oncology and those that deal with
 2 medical oncology have established what they
 3 consider to be a benchmark for their
 4 particular sub-speciality. And that's been
 5 very helpful because then you have a frame of
 6 reference to talk about things like workload.
 7 We have problems in some other areas where if
 8 we had some kind of benchmark, we could make
 9 provisions for those individuals. One example
 10 that came up recently was in hematology which
 11 also is a very complex speciality, sub-
 12 speciality and they also have, you know, some
 13 very tough circumstances, but we don't have
 14 any kind of, sort of, benchmark to say, you
 15 know, this is the cut off point. If you do
 16 more than this, you know, you can earn extra
 17 money, that would have otherwise gone to a
 18 physician who had been filling a vacant
 19 position. Keep in mind that a lot of this is
 20 driven by the fact that we have vacancies. And
 21 so people are carrying more workload than they
 22 should be.
 23 COFFEY, Q.C.:
 24 Q. That would that APP part of it.
 25 MR. RITTER:

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1 A. Correct.
 2 COFFEY, Q.C.:
 3 Q. The \$60,000.00 oncologist bonus--and I'm just
 4 using the phrase, that's the phrase, it's
 5 stipend, not bonus, got to get the word right.
 6 The \$60,000.00 stipend, that is meant to
 7 compensate or to make it more attractive for
 8 oncologists to come to Newfoundland period or
 9 to remain here.
 10 MR. RITTER:
 11 A. That's correct.
 12 COFFEY, Q.C.:
 13 Q. And that's over and above the specialist
 14 salary in the negotiated salary sale.
 15 MR. RITTER:
 16 A. That's correct.
 17 COFFEY, Q.C.:
 18 Q. Up until very recently or up until last month,
 19 I gather that a pathologist then was in a
 20 position where he or she was receiving
 21 \$60,000.00 less than an oncologist, than all
 22 oncologists because they weren't getting the
 23 stipend, that's number one. And they were
 24 receiving--they were not receiving any APP
 25 monies that the medical oncologists or

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1 radiation oncologists might have received.
 2 MR. RITTER:
 3 A. That's correct. Keep in mind that their work
 4 is somewhat different, quite different. And
 5 again, the issue of benchmarks and standards
 6 again comes into play.
 7 COFFEY, Q.C.:
 8 Q. Now, I want to pursue that with you in terms
 9 of pathologists in particular and how that
 10 evolved in the past, over the past several
 11 years. Are you aware of where medical
 12 oncologists and radiation oncologists stand in
 13 terms of their salaries vis-a-vis the Canadian
 14 averages?
 15 MR. RITTER:
 16 A. Yes. Right now I would say that we're
 17 probably on par with the best paid oncologists
 18 across the country, however, the thing to keep
 19 in mind here is that in both--that takes into
 20 account the extra money that they're earning.
 21 COFFEY, Q.C.:
 22 Q. That's the APP?
 23 MR. RITTER:
 24 A. That's the APP. So, with the APP, they're on
 25 par with most--they're well situated. They're

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1 above the middle of the pack as far as I
 2 understand. However, the thing to keep in
 3 mind is that to be there, they're actually
 4 working between 45 and 50 percent more than
 5 their counterparts.
 6 COFFEY, Q.C.:
 7 Q. Their counterparts where?
 8 MR. RITTER:
 9 A. Across the country.
 10 THE COMMISSIONER:
 11 Q. Is Newfoundland the only place that has
 12 (unintelligible).
 13 MR. RITTER:
 14 A. I believe so. I think it's also important,
 15 just for your information, as far as I know,
 16 every province has a slightly different kind
 17 of arrangement. So, there is a bit of apples
 18 and oranges happening here.
 19 THE COMMISSIONER:
 20 Q. Yes, okay.
 21 COFFEY, Q.C.:
 22 Q. And before I leave it, the agreement reached
 23 in the past month--I don't know if it's an
 24 agreement, but the--I don't know if anyone has
 25 agreed to anything yet.

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1 MR. RITTER:
 2 A. The announcement that was made.
 3 COFFEY, Q.C.:
 4 Q. The announcement, yes, that's the word I'm
 5 looking for. The announcement would result in
 6 what adjustment to the oncologists' income?
 7 Like oncologists period and then radiation and
 8 medical oncologists.
 9 MR. RITTER:
 10 A. The only information I have is what I've read
 11 in the press release of the government. We
 12 had not had any discussions with the
 13 department on this, but as I read it, the work
 14 that's done under this, this APP, the extra
 15 workload has now been increased by 35 percent.
 16 So, for example, if they were earning an extra
 17 \$2,000.00 per new patient up to now, they
 18 would now earn an additional 35 percent over
 19 and above that. I guess that comes to \$700.00
 20 more per patient.
 21 COFFEY, Q.C.:
 22 Q. And that's for medical oncologists and
 23 radiation oncologists?
 24 MR. RITTER:
 25 A. Correct, only.

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1 COFFEY, Q.C.:
 2 Q. And no one else?
 3 MR. RITTER:
 4 A. Correct.
 5 COFFEY, Q.C.:
 6 Q. Okay. Now, this most recent announcement
 7 involving the, as it relates to that
 8 particular aspect of the matter, how have
 9 other oncologists reacted to that?
 10 MR. RITTER:
 11 A. Very badly, they're very upset and they have
 12 certainly given us that message. And I have
 13 to be honest, we're very upset. I guess this
 14 is the right time to inform you about how that
 15 process unfolded. We -
 16 COFFEY, Q.C.:
 17 Q. I'm going to ask you about it, in a -
 18 MR. RITTER:
 19 A. Okay.
 20 MR. PIKE:
 21 Q. One point there, I hate to interrupt my
 22 learned friend in his questioning and I
 23 understand the importance of these issues, but
 24 are we now getting into an area where my
 25 learned friend is going to ask Mr. Ritter now,

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1 who represents the doctors in ongoing
 2 negotiations about how its membership is
 3 reacting and feeling to the situation and the
 4 announcements that are made by government? I
 5 understand that that may be a sensitive area
 6 now and my learned friend might want to
 7 consider exercising some caution in proceeding
 8 down that road.
 9 THE COMMISSIONER:
 10 Q. I'm sure Mr. Coffey is mindful of the fact
 11 that what we need to hear is information which
 12 will assist in respect of the Terms of
 13 Reference. And as I see it, that includes at
 14 least oncologists and pathologists,
 15 particularly we're interested in what impact
 16 obviously, the numbers of people in certain
 17 specialities has on the provision of care and
 18 what impact, if any, numbers and turnovers and
 19 rotations and under staffing of people in
 20 those two specialities in particular may have
 21 on the provision of the service. So, it seems
 22 to me we do have to get into how they're paid,
 23 the nature of their pay and how that all
 24 works. Frankly, I don't think how much
 25 somebody in pediatrics is paid or a

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1 psychiatrist is paid has any impact on the
 2 question of keeping pathologists in labs in
 3 Newfoundland. But I suspect there's, at least
 4 from what I have seen and perhaps I'm being
 5 mislead and the witness can tell me otherwise,
 6 there seems to be a relationship between what
 7 oncologists get and what pathologists, at
 8 least in terms of their views. But perhaps
 9 I'm wrong on that; perhaps it doesn't make any
 10 difference.
 11 MR. RITTER:
 12 A. Well, I think there are differences of opinion
 13 on that as well. I -
 14 THE COMMISSIONER:
 15 Q. I'm sorry, Mr. Ritter--but does that assist
 16 you, Mr. Pike?
 17 MR. PIKE:
 18 Q. It does and perhaps it assists Commission
 19 counsel as well. We've always been anxious to
 20 help the Commission in its work to discharge
 21 its mandate. It's just that I don't want to
 22 get into a situation where we're--our side of
 23 the negotiations coming out at the, in a
 24 public way.
 25 THE COMMISSIONER:

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1 Q. Yes.
 2 COFFEY, Q.C.:
 3 Q. And I hear what you're saying, Mr. Pike. What
 4 it is directed at is the, I gather that from
 5 what we've heard and I anticipate, have reason
 6 to believe what we may anticipate hearing,
 7 that morale is influenced by a number of
 8 different factors, workload, the amount of
 9 compensation one is getting, the amount of
 10 compensation one is perhaps not getting, vis-
 11 a-vis others who you view as doing comparable
 12 work and it's in that context, Mr. Pike that
 13 I'm raising it.
 14 MR. RITTER:
 15 A. Yes, and that's okay. I think that's quite
 16 right. The reality is that, I guess to get to
 17 the real essence of the is, you know, how are
 18 we managing health care services in the
 19 province. And it seems to me, if you look at
 20 the way things have unfolded in the last
 21 number of years. It seems to be kind of a
 22 crisis management approach. A crisis happens
 23 and then suddenly, you know, it gets a lot of
 24 media attention and then money surfaces. The
 25 sad reality is that every physician in this

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1 province, every physician in this province is
 2 working under very, very difficult
 3 circumstances. We have serious shortages of
 4 physicians on most fronts, and the challenges
 5 are tough, and so it's particularly difficult
 6 for a physician who is doing similar work to a
 7 colleague to find out suddenly that that
 8 colleague is making, you know, significantly
 9 more money than they are, when they're doing,
 10 you know, very similar work, and I understand
 11 that. I'm sympathetic to that.
 12 In our proposal to Government, because
 13 this was not a negotiated kind of arrangement,
 14 we did not seek additional funds for the
 15 medical or radiation oncologists. We did not
 16 seek additional funds. In terms of the
 17 pathologists, our recommendation, our proposal
 18 to Government was that they use the Ontario
 19 model. The Ontario model preserves the
 20 consistency of the base salary for everybody,
 21 but then provides a top up, not unlike the
 22 60,000 you would have, say, for the cancer, so
 23 that the salary scale always remains the same.
 24 But out of recognition for the sort of
 25 problems that a particular specialty, in this

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1 case pathology has, at the end of a given
 2 year, they would top people up to a particular
 3 level. But the salary scales would remain
 4 consistent, and what we have now is a new set
 5 of salary scales that have been introduced and
 6 they have been introduced--well, they've been
 7 introduced unilaterally.
 8 And if you go back, I guess, if you go
 9 back to some of the earlier questions you
 10 asked me about, our mandate and where our
 11 mandate is rooted, which is in the law, the
 12 way that this new set of arrangements was
 13 introduced was certainly, in my opinion, not
 14 in keeping with that requirement.
 15 COFFEY, Q.C.:
 16 Q. Now sir, your understanding of where the
 17 pathologists are right now, okay, with this,
 18 so they are being paid as their specialist
 19 salary under the negotiated salary scale,
 20 under the current contract? Has that changed?
 21 MR. RITTER:
 22 A. Well, it is changed because -
 23 COFFEY, Q.C.:
 24 Q. That's what I'm going to ask you. Okay, so
 25 that before the announcement recently by the

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1 Government, they were paid their salaries as
 2 specialists. The announcement did what to
 3 that?
 4 MR. RITTER:
 5 A. Well, it said--it basically said that from
 6 hereon in, pathologists would be earning a new
 7 salary scale, which was 345 odd thousand
 8 dollars. It would include a number of, you
 9 know, elements to it. And that new
 10 oncologists coming to--I said pathologists
 11 before.
 12 COFFEY, Q.C.:
 13 Q. Yes.
 14 MR. RITTER:
 15 A. And new--they used the word, new radiation and
 16 medical oncologists, exclusively, would also
 17 get that base salary. Would be the same as
 18 the pathology salary. Now this is--the only
 19 information I'm giving you here is what I read
 20 in the -
 21 THE COMMISSIONER:
 22 Q. You say new, as opposed to old oncologists?
 23 MR. RITTER:
 24 A. Correct. The offer, as I understood it, again
 25 the offer was not--the offer, it wasn't an

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1 offer. It was a -
 2 THE COMMISSIONER:
 3 Q. Yes.
 4 MR. RITTER:
 5 A. It was a decision. Was introduced to
 6 individual physicians. The NLMA was not
 7 consulted in that process. It went directly
 8 to individual physicians and the oncologists
 9 were offered two options. One option was to
 10 stay on the old salary scale. Let me see now,
 11 hold on. One option was, yeah, they would be
 12 on the old salary scale, but get this
 13 increased bonus, this 35 percent increase on
 14 extra workload, or they could simply opt to be
 15 on the salary scale at 340--I think it was 345
 16 or something in that general neighbourhood. I
 17 know this because some of the doctors--I
 18 shouldn't say some, all of them approached us
 19 and basically asked us to look at these
 20 letters of arrangement and asked us to -
 21 THE COMMISSIONER:
 22 Q. So within the province now, you have a
 23 specialist salary scale that applies to all
 24 specialists, except two groups, or -
 25 MR. RITTER:

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1 A. Two subgroups.
 2 THE COMMISSIONER:
 3 Q. - one group and two subgroups of another
 4 group, right?
 5 MR. RITTER:
 6 A. Well, the pathologists -
 7 THE COMMISSIONER:
 8 Q. Yeah, because it doesn't apply to pathologists
 9 and it doesn't apply to -
 10 MR. RITTER:
 11 A. If I may?
 12 THE COMMISSIONER:
 13 Q. Yes, okay. Yes, because there's subgroups to
 14 the subgroup, right you are. Yes, okay.
 15 MR. RITTER:
 16 A. I guess the way I would frame it, just to try
 17 to clarify it, okay?
 18 THE COMMISSIONER:
 19 Q. Yes.
 20 MR. RITTER:
 21 A. The pathologists are getting a particular
 22 salary scale, okay. Oncologists have the
 23 option of selecting that salary scale and
 24 again, when I say oncologists, I'm referring
 25 exclusively to medical and radiation

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1 oncologists, not the other oncologists. They
 2 can opt to take that salary scale or the APP
 3 option with a 35 percent additional extra
 4 workload. So they have that option, and
 5 that's essentially--so essentially, what you
 6 have now is you have pathologists, medical
 7 oncologists and radiation oncologists who now
 8 have their own salary scale.
 9 THE COMMISSIONER:
 10 Q. Well, yes, and every other oncologist who gets
 11 a little--gets that bonus.
 12 MR. RITTER:
 13 A. Yeah, does not have that--it's not--has not
 14 been offered that other salary scale.
 15 THE COMMISSIONER:
 16 Q. Yes, but they do have the 60,000 that other
 17 specialists don't have?
 18 MR. RITTER:
 19 A. Right.
 20 THE COMMISSIONER:
 21 Q. Okay.
 22 COFFEY, Q.C.:
 23 Q. They get the 60 stipend, but they don't have
 24 an APP.
 25 THE COMMISSIONER:

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1 Q. Yes.
 2 COFFEY, Q.C.:
 3 Q. Nor the option of going to the new -
 4 MR. RITTER:
 5 A. Now again, I don't want to complicate things
 6 too much.
 7 COFFEY, Q.C.:
 8 Q. No, if the facts complicate it, then that's
 9 it.
 10 MR. RITTER:
 11 A. But for example, in hematology, there is an
 12 APP. It's a different kind of APP. They have
 13 a different arrangement that actually comes
 14 under the--what we call the master agreement,
 15 and that is when you have a certain number of
 16 salaried positions and you have a certain time
 17 of vacancies, if those vacancies occur for a
 18 period of time, there are provisions to
 19 provide some extra of that surplus money that
 20 hasn't been spent on the vacant positions to
 21 help the hematologists, you know, with the
 22 extra workload. It's done in a slightly--it's
 23 done in a different way.
 24 THE COMMISSIONER:
 25 Q. Now are all oncologists and pathologists in

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1 this province on salary? Is there anybody who
 2 would be getting some kind of -
 3 MR. RITTER:
 4 A. Absolutely, they're all on salary.
 5 THE COMMISSIONER:
 6 Q. Okay.
 7 MR. RITTER:
 8 A. They're all on salary.
 9 THE COMMISSIONER:
 10 Q. But that isn't the same for every specialty,
 11 is it? Because some would be on -
 12 MR. RITTER:
 13 A. That's correct.
 14 THE COMMISSIONER:
 15 Q. - on fee for service. Some people perhaps
 16 with the same specialty might not be on fee
 17 for service?
 18 MR. RITTER:
 19 A. That is correct.
 20 THE COMMISSIONER:
 21 Q. Okay. In this process, does it make any
 22 difference if you're a pathologist in Grand
 23 Falls or a pathologist in St. John's, other
 24 than maybe your opportunity of adding to your
 25 salary is greater if you're in the place where

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1 there's more work?
 2 MR. RITTER:
 3 A. No.
 4 THE COMMISSIONER:
 5 Q. More people.
 6 MR. RITTER:
 7 A. Well, keeping in mind that these physicians
 8 are all on salary. The only variance, as I
 9 understand it, again from what I've read, that
 10 you would have read as well, is that the
 11 pathologists in the remote areas, I can't
 12 remember specific, I think the ones that are
 13 in the very remote areas receive an additional
 14 eight or ten thousand dollars, I think which
 15 accommodates the isolation factor and the
 16 extra travel costs when, you know, they need
 17 to do whatever they need to do, in terms of
 18 education or what have you. But you know,
 19 relative to the dollar figures we're talking
 20 about, it's fairly negligible.
 21 THE COMMISSIONER:
 22 Q. Okay.
 23 COFFEY, Q.C.:
 24 Q. Now the pathologists though, no matter where
 25 they are, they're paid the same, leaving aside

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1 that -
 2 MR. RITTER:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. - isolation bonus, as it were.
 6 MR. RITTER:
 7 A. Yeah.
 8 COFFEY, Q.C.:
 9 Q. The fact that they work more doesn't mean--or
 10 work less, doesn't mean that they're paid
 11 more? They're not paid on a fee for service.
 12 MR. RITTER:
 13 A. Yeah. I think, you know, you're raising, I
 14 think, a point that's worth having a word or
 15 two about, and that is our province is very
 16 challenging in terms of delivering care. It's
 17 challenging because we have a very broad span
 18 of land that we have to cover and a lot of
 19 small communities, and so I think it's
 20 important to recognize that it's not about--
 21 it's not exclusively about how hard you work
 22 or how many patients you see. It's about
 23 providing coverage. It's about having the
 24 availability. Every location has a different
 25 set of tough circumstances. People who are

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1 working, say, in a remote area may not be
 2 doing as many as diverse sort of a series of
 3 tests in the laboratory as you would, say, in
 4 a tertiary centre, but they're isolated. They
 5 have--you know, they have other challenges.
 6 So you know, it's--the diversity is enormous
 7 and that's why it's so very important when
 8 you're looking at, you know, how do you manage
 9 this massive enterprise. It's really, really
 10 important to take a look at the distinctions
 11 between different locations and between
 12 different specialties.
 13 COFFEY, Q.C.:
 14 Q. Now on that point--I apologize, Commissioner,
 15 but here I go. In Grand Falls, for example,
 16 how is it decided how many pathologists should
 17 work in Grand Falls-Windsor?
 18 MR. RITTER:
 19 A. Another interesting question.
 20 COFFEY, Q.C.:
 21 Q. And I just pick there because -
 22 MR. RITTER:
 23 A. There is no science to sort of determining,
 24 you know, what the manpower or, you know,
 25 human resource requirements are. There have

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1 been several attempts in the last number of
 2 years, through consultative processes of one
 3 sort or another, to come to some understanding
 4 of what--you know, what the needs are, and
 5 essentially, there is no--you know, there is
 6 no cookbook solution, and I think, like I was
 7 saying earlier about the bylaws is there has
 8 to be a certain amount of flexibility and
 9 adaptability, a nimbleness to the system.
 10 Things change.
 11 So as far as I understand it, in Grand
 12 Falls and in Corner Brook, the agreed, the
 13 consensus is that you need, I believe, two--I
 14 believe you need two pathologists in Grand
 15 Falls. I'm not sure about Corner Brook. I
 16 wouldn't want to say two. It may well be
 17 three. But there is a draft plan out there
 18 that's been developed that's never really been
 19 agreed upon, and there was a previous one that
 20 also never quite got agreed upon, that's the
 21 benchmark we've been using in the past, and so
 22 for example, if you look at the Maung report.
 23 This is the physician who came to sort of
 24 determine the workload factors for pathology.
 25 His calculus actually came very close to the

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1 numbers that people have generally said are
 2 the numbers we need. So there's no fast rule.
 3 It's a judgment call and it can change because
 4 of the way the demography changes and so on.
 5 COFFEY, Q.C.:
 6 Q. And though, there has been, in the past, I
 7 take it, some not formally agreed to, but some
 8 proposals as to allocation of full-time
 9 equivalents for pathologists throughout the
 10 province, and for example, in Grand Falls, if
 11 it happens to be two, I don't know, I'm just
 12 going to pick a figure, two, then there it is,
 13 and if it's four or five in Corner Brook,
 14 that's what it is. And if it's 18 -
 15 MR. RITTER:
 16 A. Right.
 17 COFFEY, Q.C.:
 18 Q. - in St. John's, then that's what it is,
 19 whatever the figures are?
 20 MR. RITTER:
 21 A. That's right.
 22 COFFEY, Q.C.:
 23 Q. Who would be a signatory to that sort of an
 24 agreement?
 25 MR. RITTER:

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1 A. In terms of what the manpower requirements
 2 are?
 3 COFFEY, Q.C.:
 4 Q. Yes.
 5 MR. RITTER:
 6 A. There is no signatory. We've never actually
 7 signed any kind of agreement that this is what
 8 we need.
 9 COFFEY, Q.C.:
 10 Q. Who decides or how has it been decided, for
 11 example, in St. John's that for Eastern Health
 12 there should be, let's pick a figure, 18? And
 13 I'm just picking that out of the air, 18 as
 14 opposed to 16, as opposed to 25, who's setting
 15 that right now?
 16 MR. RITTER:
 17 A. Well, again, I think it's been somewhat
 18 unilateral. There are tools that you can use
 19 to help you zero in.
 20 COFFEY, Q.C.:
 21 Q. Unilaterally by whom?
 22 MR. RITTER:
 23 A. By the Department.
 24 COFFEY, Q.C.:
 25 Q. Okay, that's what I'm--the Department of

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1 Health this would be.
 2 MR. RITTER:
 3 A. Now in fairness though, let me say that when
 4 they were working on these, there was a lot of
 5 consultation with physician groups, again,
 6 asking "how many of these do you think we
 7 need?" or "how many of those do you think we
 8 need?" That always worries me because it's
 9 quite subjective, you know, and what one
 10 clinical chief in a particular area might
 11 think is reasonable, another might not.
 12 That's why, for example, it's good to have the
 13 kind of benchmarks that medical oncology and
 14 radiation oncology have because that gives you
 15 some frame of reference of what's a reasonable
 16 number. So if you know that you need--you
 17 know, that no single physician should see more
 18 than 185 radiation oncology patients, and
 19 you're seeing, you know, 18,500, you can
 20 extrapolate how many people you need.
 21 Similarly, in the area of general
 22 practice, there is a benchmark that seems to
 23 be a consensus, and in fact, it's the
 24 benchmark that the Department gave us with
 25 respect to primary care delivery for GPs.

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1 That benchmark is 1200 patients per physician.
 2 So if you have 500,000 people, you simply
 3 divide that by 1200 and you know how many GPs
 4 you have.
 5 Now we end up getting into big disputes
 6 over things like that. To me, it's pretty
 7 simple. We feel that a GP is a GP is a GP.
 8 Some departmental officials felt that all the
 9 GPs were working in what we call category A
 10 emergency rooms and spending all their time
 11 doing emergency work. They counted that in
 12 the pool which we said is a separate
 13 responsibility and in most jurisdictions it
 14 would be seen as a separate area of activity.
 15 By our calculation, we--so according to that
 16 number, you need about 466 general
 17 practitioners. We have about, I think we have
 18 about 425, 450, which seems like that's not
 19 too bad, but many of the ones we have do
 20 emergency work exclusively and so, you know,
 21 they're not, when they're doing emergency
 22 work, they're not doing GP work.
 23 COFFEY, Q.C.:
 24 Q. A part of the large pool?
 25 MR. RITTER:

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1 A. Yeah.
 2 COMMISSIONER:
 3 Q. You said something a little earlier I just
 4 wanted to clarify and that is the numbers
 5 worked out by the department. Now, that
 6 earlier during this, these hearings at some
 7 point somebody was talking, I can't even
 8 remember who it was now, somebody from Eastern
 9 Health, I'm not quite sure, was talking about
 10 the number of positions approved by the
 11 department for use within their organization.
 12 That would be the same thing, would it?
 13 Because it seemed to me that Eastern Health or
 14 whatever authority was told in effect, we're
 15 prepared to fund X number of these types of
 16 specialist -
 17 MR. RITTER:
 18 A. Well, for salaried, for salaried physicians,
 19 that's absolutely the case. There is a
 20 mechanism in place called the SPAC, The
 21 Salaried Physicians Allocations Committee. As
 22 far as I know that particular--the salaried
 23 physicians budget is under funded, and so what
 24 happens is if a particular position becomes
 25 vacant in a particular location, the SPAC,

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1 this committee, takes control of that
 2 position. And in order to re--and they can
 3 take the money that goes with that position
 4 and reallocate it somewhere else, okay. So -
 5 COFFEY, Q.C.:
 6 Q. What the Commissioner was asking is focusing
 7 on here is is that, for example, I'll pick a
 8 figure, 18 pathologists, Eastern Health.
 9 MR. RITTER:
 10 A. Um-hm.
 11 COFFEY, Q.C.:
 12 Q. St. John's, you know, and there'd be one in
 13 Clarendville and one in Carbonear, whatever
 14 the--I'll pick a figure of 20.
 15 MR. RITTER:
 16 A. Um-hm.
 17 COFFEY, Q.C.:
 18 Q. And it's 20, Eastern Health then would get 20
 19 times whatever, now 345,000.
 20 MR. RITTER:
 21 A. Yeah.
 22 COFFEY, Q.C.:
 23 Q. And that would be a line item, as it were, and
 24 I won't--that's not technical, but that would
 25 be the total amount, that product that they'd

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1 get in their budget?
 2 MR. RITTER:
 3 A. But my understanding is, for example, they're
 4 approved for 20. If they have a full
 5 allocation, yes, they get 20 times whatever
 6 the annual salary is. If, however, two
 7 positions become vacant, they lose--that
 8 money, the money that's allocated to those two
 9 positions goes into a reserve that's
 10 controlled by the department and you need to
 11 then go back to the department to get approval
 12 to restaff those positions. If in the
 13 meantime the department has used that money to
 14 staff a position elsewhere, you could be out
 15 of luck.
 16 COFFEY, Q.C.:
 17 Q. When you go back to staff it?
 18 MR. RITTER:
 19 A. Correct.
 20 COFFEY, Q.C.:
 21 Q. No -
 22 COMMISSIONER:
 23 Q. So but the, I think the point I'm trying to
 24 get at is that the number of pathologists, for
 25 example, that works in Eastern Health's

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1 organizations is determined not by Eastern
 2 Health then effectively, because they don't
 3 get to call the shots as to how many they
 4 have? Can I conclude that?
 5 MR. RITTER:
 6 A. I think you can conclude it. But to put it in
 7 perspective, there is some dialogue that goes
 8 on. I think that if a strong enough case is
 9 made, you know -
 10 COMMISSIONER:
 11 Q. It's a matter of Eastern Health convincing the
 12 department -
 13 MR. RITTER:
 14 A. That is -
 15 COMMISSIONER:
 16 Q. - that indeed they have the genuine need,
 17 presumably -
 18 MR. RITTER:
 19 A. Correct.
 20 COMMISSIONER:
 21 Q. - and I'm sure there would be give and take
 22 about -
 23 MR. RITTER:
 24 A. Correct. And -
 25 COMMISSIONER:

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1 Q. - the subject?
 2 MR. RITTER:
 3 A. That is correct. And but I can tell you that
 4 it does occur from time to time, I'm
 5 approached about these things where a position
 6 has become vacant in a particular area.
 7 Again, I'm being more general now, I'm not
 8 talking about specifically about pathology,
 9 but -
 10 COMMISSIONER:
 11 Q. No.
 12 MR. RITTER:
 13 A. - we need to know how the system works. Where,
 14 for example, a position became vacant in a
 15 particular location, it then it sort of was
 16 transferred back to the department's control.
 17 Then they wanted to restaff the position and
 18 were unable to do so.
 19 COFFEY, Q.C.:
 20 Q. Because the department wouldn't agree to it?
 21 MR. RITTER:
 22 A. Had either reallocated the money elsewhere or
 23 simply isn't approving it.
 24 COFFEY, Q.C.:
 25 Q. Sir, in respect of, and I'll just pick Grand

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1 Falls right now because I gather that there'll
 2 be evidence here that, for example, it's
 3 generally a two person position, pathology
 4 services there. Do you have any understanding
 5 as to what happens if, for example, a single
 6 pathologist provides the services in Grand
 7 Falls, for example, for six months? Two
 8 people are there, one leaves, and the second
 9 position is vacant for six months, how is the
 10 first--the sole remaining pathologist paid,
 11 what's your understanding of that?
 12 MR. RITTER:
 13 A. I'm not entirely certain.
 14 COFFEY, Q.C.:
 15 Q. Okay.
 16 MR. RITTER:
 17 A. What I can tell you, what I do know is that in
 18 some instances, and I think this is the case
 19 in Grand Falls, is what that pathologist would
 20 do is send some of the work out.
 21 COFFEY, Q.C.:
 22 Q. And is there any provision, do you know, or
 23 are aware of any agreement or provision
 24 whereby that pathologist, if, in the case I'm
 25 thinking about it's a he, continued to

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1 actually do the work of what I gather is two
 2 pathologists for a year, how was--was there
 3 any payment plan in effect for him that
 4 involved the NLMA?
 5 MR. RITTER:
 6 A. There is a thing, there is a character, a
 7 feature in the agreement called "Extra
 8 Workload Policy" that was referring to earlier
 9 that--when I was talking about hematology, I
 10 believe there's a critical mass that you need
 11 in order for that to kick in. I think it's
 12 three. Again, I stand to be corrected, so I
 13 can't say for certain from a departmental
 14 perspective. I think that to a certain degree
 15 there are, you know, adjustments made on a
 16 case-by-case basis, but I couldn't say for
 17 certain.
 18 COFFEY, Q.C.:
 19 Q. Okay. We will hear from, I anticipate we'll
 20 hear from this particular doctor about the
 21 position he found himself in. Mr. Ritter, I
 22 take it then that that is, up until, what
 23 you've told us this afternoon in relation to
 24 this most recent announcement, that's where it
 25 stands, the matter, as you testify? Okay, and

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1 you're nodding?
 2 MR. RITTER:
 3 A. That's my understanding.
 4 COFFEY, Q.C.:
 5 Q. What's your understanding of how do the
 6 pathologists of Newfoundland and Labrador or
 7 members of your organization, how do they feel
 8 right now about their compensation situation?
 9 MR. RITTER:
 10 A. Well, I think--look, again, I think there are
 11 a few variables that come into play. I think
 12 they feel, they feel pretty good about it. I
 13 think there are very few people who wouldn't
 14 feel good about getting more money. But I
 15 think you have to look beyond that. I think
 16 you got to remember again the link between
 17 financial incentives and having a large enough
 18 workforce. And I think if the news is
 19 accurate, it appears that there may be two new
 20 candidates who are applying for pathology
 21 positions, so that would be good news. You
 22 know, I'm not sure when those candidates
 23 actually applied, but if they come on board,
 24 that's helpful. So I think that there's a
 25 sense of relief that by being in a more

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1 competitive position the likelihood of being
 2 able to strengthen their workforce to, you
 3 know, to the levels that they need is going to
 4 be much improved.
 5 COFFEY, Q.C.:
 6 Q. Do you know if the proposal announced by the
 7 government involves any money for continuing
 8 medical education?
 9 MR. RITTER:
 10 A. Yes, it does.
 11 COFFEY, Q.C.:
 12 Q. Okay. So there's some kind of a proviso?
 13 MR. RITTER:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. That deals with that?
 17 MR. RITTER:
 18 A. There are provisions there for continuing
 19 medical education. We asked for, in the
 20 proposal we put forward, we did ask for some
 21 money in that area.
 22 COFFEY, Q.C.:
 23 Q. And in relation to that, okay, in the past was
 24 there any provision in the NLMA agreement with
 25 government involving remuneration, any

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1 provision dealing with medical education
 2 benefits, in the past, under the existing -
 3 MR. RITTER:
 4 A. Oh, yes, yeah. We have in the past looked for
 5 funding for medical education. It's on the
 6 table at every negotiation. Sometimes it
 7 drops off in favour of other things.
 8 COFFEY, Q.C.:
 9 Q. So, for example, for the salaried specialists
 10 under the current contract or arrangement or
 11 agreement is there any provision for salaried
 12 specialists for medical education?
 13 MR. RITTER:
 14 A. You mean -
 15 COFFEY, Q.C.:
 16 Q. Continuing medical education?
 17 MR. RITTER:
 18 A. - before the announcement?
 19 COFFEY, Q.C.:
 20 Q. Yes, before the announcement.
 21 MR. RITTER:
 22 A. I believe, yes, there was some. There are
 23 some provisions.
 24 COFFEY, Q.C.:
 25 Q. There's some provision there?

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1 MR. RITTER:
 2 A. Yes.
 3 COFFEY, Q.C.:
 4 Q. How significant, if any, is it, the amount of
 5 money per capita, do you recall off the top of
 6 your head how much doctors -
 7 MR. RITTER:
 8 A. I think it ranges somewhere between five and
 9 ten thousand dollars a year. Again, it varies
 10 from location to location. It's much harder
 11 for someone living in the north in, say, Happy
 12 Valley-Goose Bay to get to an education
 13 program than it would be for someone from St.
 14 John's, both in terms of the time that it
 15 takes and the, you know, and the costs of
 16 travel and so forth. So there is a lot of
 17 diversity there.
 18 COFFEY, Q.C.:
 19 Q. And another thing, salaried specialists, can
 20 they also do fee for service work?
 21 MR. RITTER:
 22 A. In some instances they can. If they take, for
 23 example, if they take leave without pay and
 24 want to work fee for service, they can.
 25 COFFEY, Q.C.:

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1 Q. Okay. But while -
 2 MR. RITTER:
 3 A. While they're on leave without pay.
 4 COFFEY, Q.C.:
 5 Q. While they're salaried, do you know if -
 6 MR. RITTER:
 7 A. Typically, no.
 8 COFFEY, Q.C.:
 9 Q. Certainly pathologists, I take it?
 10 MR. RITTER:
 11 A. Pathologists have no fee code whatsoever which
 12 by the way is not the same in other provinces.
 13 For example, in Ontario, a pathologist is able
 14 to work on a fee for service basis over and
 15 above their salary.
 16 COFFEY, Q.C.:
 17 Q. Is there any provision for remuneration, for
 18 example, for pathologists in relation to
 19 administrative duties?
 20 MR. RITTER:
 21 A. There are provisions for people to take on
 22 administrative tasks. There is no specific
 23 formula that exists from situation to
 24 situation. And it's sort of done on an ad hoc
 25 basis within, and differently, within each

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1 health authority. I suspect that that money
 2 comes from within the operating budget of each
 3 health authority. I'm not sure how much
 4 involvement the department would have there.
 5 COFFEY, Q.C.:
 6 Q. And does the NLMA have any involvement in it?
 7 MR. RITTER:
 8 A. We certainly try to. We feel very strongly
 9 that--and this may come up, I don't want to,
 10 sort of, preempt you, it may come up in other
 11 situations in my testimony. I mentioned
 12 earlier the importance of having physician
 13 leadership and a physician voice. One of the
 14 avenues for such a voice and for some
 15 meaningful input is in positions of
 16 leadership, like for example a clinical chief
 17 or some other form of administrative
 18 responsibility. That's not something that
 19 should be taken lightly. It's something that
 20 should be valued and should be compensated
 21 accordingly. So, when you ask the question,
 22 is it something you have been involved with?
 23 Not that much, but it is certainly something
 24 we want to be and are certainly pursuing
 25 because we feel that some of the problems that

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1 have occurred are because there has been an
 2 absence of sufficient physician leadership in
 3 guiding how things operate. And so there is
 4 quite a bit of diversity. We feel that there
 5 needs to be some principled approach to how
 6 these people are compensated and some very,
 7 very clear arrangements about what they're
 8 supposed to do. I, for example, have
 9 requested form Eastern Health and other areas
 10 job descriptions that basically delineate what
 11 the responsibilities of a clinical chief might
 12 be. And for instance, in the case of Eastern
 13 Health, I was given what was called a generic
 14 job description and it listed many, many
 15 activities that a clinical chief would be
 16 expected to do. It doesn't say--and of
 17 course, a big part of those activities is
 18 quality assurance, but the job description
 19 doesn't say, you know, what percentage of your
 20 time or how many specific hours you need to be
 21 dedicating to do that particular kind of work.
 22 And unless you sort of, put some work value on
 23 it, it's hard to put a monetary value on it.
 24 And so we've been pushing very hard to ensure
 25 that there's some very, very clear definition

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1 of what a clinical chief ought to be and that
 2 every clinical chief needs to have a full
 3 dedicated job description that spells out
 4 what's expected of them, that defines how much
 5 time they need to invest in those activities,
 6 especially things like quality assurance and
 7 patient safety and, you know, you get what you
 8 pay for. If you pay a physician who might
 9 earn say, \$400,000.00 a year, \$10,000.00 to
 10 carry out the activities of a clinical chief,
 11 you know, you're going to get what you pay
 12 for. And so there needs to be some
 13 recognition of lost opportunity for physicians
 14 who are in leadership roles.
 15 So, if they're expected to spend two days
 16 a week of their time being leaders and
 17 ensuring that certain things get done, they
 18 should be compensated in terms of the income
 19 that they might have lost otherwise.
 20 COFFEY, Q.C.:
 21 Q. Has that, up until now, been pursued?
 22 MR. RITTER:
 23 A. Well, we pursued it in the area--we actually
 24 pursued it very much in the cancer area. We
 25 spent a long time negotiating an arrangement

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1 for the clinical chief and the two divisional
 2 chiefs who report to her, what we call,
 3 protected time. Recognition that the time
 4 that they spend doing leadership work and
 5 providing direction is protected and they
 6 don't lose income as a result.
 7 COFFEY, Q.C.:
 8 Q. And that will come up as I go through this
 9 chronologically.
 10 MR. RITTER:
 11 A. Okay.
 12 COFFEY, Q.C.:
 13 Q. So, that's one area -
 14 MR. RITTER:
 15 A. Okay, sir, I -
 16 COFFEY, Q.C.:
 17 Q. No, no, no, that's one area in which it's
 18 happened, but other than that, has it
 19 otherwise--in particular, here's what I'm
 20 focused on, Donald Cook was the clinical
 21 chief; David Haggart was a clinical chief at
 22 one point before Dr. Cook was clinical chief;
 23 Dr. Denic is clinical chief now at Eastern
 24 Health, has the NLMA, in any way, been
 25 involved in talking about how much of their

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1 time should be devoted to the administrative
 2 quality assurance peer review leadership
 3 duties, vis-a-vis, their clinical work?
 4 MR. RITTER:
 5 A. No. What we've said is that--it's not for us
 6 to determine what an organization like Eastern
 7 Health needs to be doing. What we do say is
 8 that it needs to be defined. You need to--the
 9 organization with the appropriate--the
 10 clinical chief should sit down, determine what
 11 needs to get done, define it in clear terms,
 12 put a dollar value to it and then proceed.
 13 COFFEY, Q.C.:
 14 Q. Okay.
 15 MR. RITTER:
 16 A. We would simply want to be sure that the
 17 methods and procedures are reasonable and
 18 fair.
 19 COFFEY, Q.C.:
 20 Q. Now, Commissioner, if I could please, break
 21 for the day, could I ask that certain exhibits
 22 be entered, be dated today's date, if I could
 23 please?
 24 THE COMMISSIONER:
 25 Q. Um-hm.

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1 COFFEY, Q.C.:
 2 Q. Exhibits P-1640 through 1653 inclusive.
 3 EXHIBITS P-1640 - 1653 INCLUSIVE, MARKED AND ENTERED
 4 THE COMMISSIONER:
 5 Q. Entered.
 6 COFFEY, Q.C.:
 7 Q. And then if I could I'd like to ask to adjourn
 8 for the day and we'll come back tomorrow and
 9 take Mr. Ritter through his involvement in the
 10 actual ER/PR.
 11 THE COMMISSIONER:
 12 Q. Okay then, 9:30.
 13 COFFEY, Q.C.:
 14 Q. Thank you.
 15 Upon conclusion at 4:45 p.m.

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

<p style="text-align: center;">-\$-</p> <p>\$10,000.00 [1] 348:9 \$2,000.00 [1] 313:17 \$400,000.00 [1] 348:9 \$60,000 [1] 285:17 \$60,000.00 [8] 288:9,12 304:22,23 305:24 310:3 310:6,21 \$700.00 [1] 313:19</p> <hr/> <p style="text-align: center;">-'-</p> <p>'02 [5] 289:13 290:1 297:1 299:19,23 '03 [1] 299:25 '05 [2] 225:17 226:19 '05/'06 [3] 300:16 301:4 301:9 '06 [12] 37:15,17 121:22 121:22,25 125:1 137:20 166:18 187:17 245:4,5 284:12 '07 [2] 83:5 225:15</p> <hr/> <p style="text-align: center;">---</p> <p>-and [1] 16:13 -breaches [1] 59:17 -I've [2] 28:9 62:15 -these [1] 184:18</p> <hr/> <p style="text-align: center;">-0-</p> <p>0124 [1] 99:18 0125 [2] 99:18 118:3 01T [1] 244:17 0827 [1] 234:17</p> <hr/> <p style="text-align: center;">-1-</p> <p>1 [2] 38:20 105:15 1,000 [1] 254:20 10 [1] 270:14 100 [2] 14:4 15:4 109 [3] 127:7,19,25 10:32 [2] 54:23 55:13 10:49 [1] 55:1 11 [1] 1:4 117 [2] 235:7 237:4 11:26 [1] 209:12 11:50 [1] 200:14 11th [11] 143:4 164:24 182:9,22,23 183:7 184:7 206:8 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