

COMMISSION OF INQUIRY
ON HORMONE RECEPTOR TESTING

BEFORE THE HONOURABLE JUSTICE CAMERON - COMMISSIONER

MAY 23, 2008

Appearances:

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LIST OF EXHIBITS

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Examination by Sandra Chaytor, Q.C. Pgs. 4 - 329

Certificate

1 COMMISSIONER:

2 Q. Please be seated. Ms. Chaytor.

3 CHAYTOR, Q.C.:

4 Q. Thank you, Commissioner. A couple of
5 housekeeping matters this morning. The
6 exhibit that we were having difficulty reading
7 yesterday, P-1190, we have a better version of
8 that. It’s P-1425, I’d ask to have it
9 entered, please?

10 COMMISSIONER:

11 Q. P-1425. All right, that’s entered.

12 EXHIBIT P-1425 ENTERED INTO EVIDENCE.

13 CHAYTOR, Q.C.:

14 Q. And thank you, Mr. Simmons pointed that out to
15 us.

16 COMMISSIONER:

17 Q. And what was the number of the old version?

18 CHAYTOR, Q.C.:

19 Q. 1190. That exhibit is not cancelled, we will
20 still keep that exhibit because it has some
21 handwritten notes on it, but this is the slide
22 presentation that was given to the medical
23 staff and technical staff.

24 COMMISSIONER:

25 Q. All right, thank you.

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1 CHAYTOR, Q.C.:

2 Q. And this is a much better version.

3 COMMISSIONER:

4 Q. Thank you. Thanks.

5 CHAYTOR, Q.C.:

6 Q. And also, Janet Grant is in attendance and

7 she's the solicitor for HIROC and HIROC has,

8 of course, is a party with standing in part 2.

9 And Ms. Grant actually was here yesterday

10 sitting in with respect to this witness

11 evidence. And I apologize, Ms. Grant, that I

12 forgot to acknowledge your presence yesterday.

13 COMMISSIONER:

14 Q. Welcome, Ms. Grant.

15 MS. GRANT:

16 Q. Thank you.

17 COMMISSIONER:

18 Q. Now.

19 DR. OSCAR HOWELL, EXAMINATION-IN-CHIEF BY SANDRA CHAYTOR,

20 Q.C.

21 CHAYTOR, Q.C.:

22 Q. Good morning, Dr. Howell.

23 DR. HOWELL:

24 A. Good morning.

25 CHAYTOR, Q.C.:

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1 Q. I believe when we left off, we were speaking

2 of the November 21st, 2006 executive

3 management committee meeting. And I would

4 like to take you then to your notes of that

5 meeting, which I believe is 1422, page 28.

6 And there's just a couple of points, I believe

7 it's down towards, you see the middle of the

8 page here, EMC. I take it these are your

9 notes and while the date is cut off -

10 DR. HOWELL:

11 A. That's correct.

12 CHAYTOR, Q.C.:

13 Q. These are your notes, okay, from that meeting,

14 November 21st. So again, this is the day

15 after the presentation to the medical staff.

16 And there's just a couple of points that I'd

17 like to bring you to here. On the bottom of

18 the page says, "Moved from one system to

19 another, 74 to 82 percent." Is that referring

20 to the positivity rate went from 74 to 82

21 percent, the ER positivity rate? Do you

22 understand what that refers to?

23 DR. HOWELL:

24 A. I'm not sure what that note--again, this would

25 be notes that I would be taking through the--

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1 when others are presenting. Perhaps it might

2 be helpful, with your indulgence, Ms. Chaytor,

3 as we left yesterday and we were talking about

4 error, it made me reflect and go back

5 overnight to say, how did all that evolve and

6 have another look at that, and I went back

7 through the presentation.

8 CHAYTOR, Q.C.:

9 Q. Yes.

10 DR. HOWELL:

11 A. In great detail to get that back in my mind

12 and trying to understand how that improved my

13 understanding and might have influenced the go

14 forward.

15 CHAYTOR, Q.C.:

16 Q. And you're talking about the presentation on

17 November 20th?

18 DR. HOWELL:

19 A. That's correct, the day before this.

20 CHAYTOR, Q.C.:

21 Q. Yes. So did you have any--or did you find

22 anything that might explain the 74 to 82?

23 DR. HOWELL:

24 A. Well, if you would indulge me and go back into

25 that presentation for a moment -

Page 8

1 CHAYTOR, Q.C.:

2 Q. Oh, sure we can go -

3 DR. HOWELL:

4 A. Just to, particularly if you have a better

5 quality. And I wouldn't go through the whole

6 thing but -

7 REGISTRAR:

8 Q. 1425?

9 CHAYTOR, Q.C.:

10 Q. 1425, please.

11 DR. HOWELL:

12 A. So in this presentation the components of

13 this--and I think we've talked about who the

14 audience was. So Dr. Elms is really talking

15 about the whole science of

16 immunohistochemistry. And then we move into

17 Dr. Carter talking about the tests and the

18 frailties of the test and talking about the

19 importance of fixation and, you know, what

20 fixatives are used and the importance of

21 managing the tissue in a certain way and

22 quickly refrigerating it, etcetera.

23 CHAYTOR, Q.C.:

24 Q. Yes.

25 DR. HOWELL:

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1 A. And then we moved into Dr. Laing really
 2 talking about how we manage breast cancer and
 3 the changes that are occurring there. And then
 4 Dr. Cook talked about the evolution of
 5 learning that there was a problem with ER/PR
 6 testing. But then Dr. Denic finished the
 7 presentation. And if you would go to his
 8 presentation?
 9 CHAYTOR, Q.C.:
 10 Q. Okay.
 11 DR. HOWELL:
 12 A. He's really bringing it to a -
 13 CHAYTOR, Q.C.:
 14 Q. We'll bring that up for you now.
 15 DR. HOWELL:
 16 A. - conclusion. Sorry, I don't want to hold you
 17 up -
 18 CHAYTOR, Q.C.:
 19 Q. No, that's fine, no.
 20 DR. HOWELL:
 21 A. - but I think it'll help understand.
 22 CHAYTOR, Q.C.:
 23 Q. Absolutely. This is his presentation, "How We
 24 Have Responded."
 25 DR. HOWELL:

Page 10

1 A. Right.
 2 CHAYTOR, Q.C.:
 3 Q. "What we have done to improve the service."
 4 DR. HOWELL:
 5 A. And "What we have done to improve the
 6 service."
 7 CHAYTOR, Q.C.:
 8 Q. Okay.
 9 DR. HOWELL:
 10 A. And so he gives--he tries to wrap this whole
 11 thing up and give information that really
 12 arose from the external reviews. But in the
 13 interests of saving time, if you jump to slide
 14 110?
 15 CHAYTOR, Q.C.:
 16 Q. Okay, slide 110 as opposed to page?
 17 DR. HOWELL:
 18 A. Yeah, I think it's 110 -
 19 CHAYTOR, Q.C.:
 20 Q. And perhaps what I'll do is I'll--no, that's
 21 page.
 22 DR. HOWELL:
 23 A. Yeah, so -
 24 CHAYTOR, Q.C.:
 25 Q. Is this it?

Page 11

1 DR. HOWELL:
 2 A. Right.
 3 CHAYTOR, Q.C.:
 4 Q. "What was the problem?"
 5 DR. HOWELL:
 6 A. So when we finished yesterday, you were asking
 7 me about what these folks were talking about
 8 in terms of the error.
 9 CHAYTOR, Q.C.:
 10 Q. Yes.
 11 DR. HOWELL:
 12 A. And my understanding about what their view of
 13 error was. And so if you look at even what he
 14 called that, if you just go back to 110 again
 15 for a second? "What was the problem in ER/PR
 16 testing?" So this is where I was really
 17 starting to get some understanding along with
 18 the external reviews. So he's now conveying
 19 this information.
 20 CHAYTOR, Q.C.:
 21 Q. Yes.
 22 DR. HOWELL:
 23 A. To his colleagues and the technical staff.
 24 CHAYTOR, Q.C.:
 25 Q. Okay. Well, let's look at what he says. He

Page 12

1 says that "The scientific understanding about
 2 ER and PR has evolved." And he refers to the
 3 cutoff range from one to 30 percent.
 4 DR. HOWELL:
 5 A. Thirty percent.
 6 CHAYTOR, Q.C.:
 7 Q. And how many of the patients do you understand
 8 who had a change in result, that change could-
 9 -was attributed to this change in the cutoff,
 10 do you know that number?
 11 DR. HOWELL:
 12 A. If there were -
 13 CHAYTOR, Q.C.:
 14 Q. Our understanding is that that would be about
 15 13. Does that sound about right to you?
 16 DR. HOWELL:
 17 A. Yes, that sounds right, correct.
 18 CHAYTOR, Q.C.:
 19 Q. Then he talks about the different technology.
 20 DR. HOWELL:
 21 A. Right.
 22 CHAYTOR, Q.C.:
 23 Q. And how it went from the immunohistochemical
 24 assay before 1997 and then to the DAKO and
 25 then to the automated Ventana.

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1 DR. HOWELL:
 2 A. Correct.
 3 CHAYTOR, Q.C.:
 4 Q. Now, did you understand that any of that, any
 5 of the changes were due to the change in the
 6 technology?
 7 DR. HOWELL:
 8 A. Certainly there was a lot of discussion. I
 9 understood that when they first became aware
 10 of this problem, that some of the question
 11 evolved around was this technology related,
 12 was it the DAKO was much more hands on, many
 13 more steps. The move to the Ventana was much
 14 more automated and maybe that had made a
 15 difference. I understood they were
 16 considering that as part of the issue.
 17 CHAYTOR, Q.C.:
 18 Q. But certainly nothing in terms of the
 19 technology itself? I mean, Dr. Banerjee says
 20 others have been successfully using -
 21 DR. HOWELL:
 22 A. With DAKO, absolute.
 23 CHAYTOR, Q.C.:
 24 Q. - DAKO. In fact, Mount Sinai, who did the
 25 retesting, was using DAKO?

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1 DR. HOWELL:
 2 A. Did it with DAKO.
 3 CHAYTOR, Q.C.:
 4 Q. And then there's reference to the antibodies
 5 that were being used and the antigen -
 6 DR. HOWELL:
 7 A. Antibodies are changing -
 8 CHAYTOR, Q.C.:
 9 Q. - retrieval technique?
 10 DR. HOWELL:
 11 A. That's correct.
 12 CHAYTOR, Q.C.:
 13 Q. And then he indicates, "No standardized IHC
 14 testing methodologies worldwide."
 15 DR. HOWELL:
 16 A. "Worldwide."
 17 CHAYTOR, Q.C.:
 18 Q. Now, did you understand that anything that
 19 happened in the problem from Eastern Health in
 20 their testing procedures was related to any
 21 lack of standardization worldwide for these
 22 tests?
 23 DR. HOWELL:
 24 A. My understanding was the point that he was
 25 making is that this whole immunohistochemistry

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1 science still has a long ways to go, lots of
 2 changes are occurring and we're still learning
 3 a lot about it, and standardized protocols are
 4 critical to improve the accuracy.
 5 CHAYTOR, Q.C.:
 6 Q. Absolutely. I don't--Dr. Banerjee, though, in
 7 terms of listing the reasons for test failure
 8 did not list that as a reason for test
 9 failure?
 10 DR. HOWELL:
 11 A. Right. But this is what Dr. Denic is
 12 delivering to the group.
 13 CHAYTOR, Q.C.:
 14 Q. Yes, absolutely. And then "No national
 15 laboratory accreditation process for
 16 immunohistochemical labs."
 17 DR. HOWELL:
 18 A. Correct.
 19 CHAYTOR, Q.C.:
 20 Q. "IHC complex process." And this is what you
 21 were saying about the over 40 steps. "Testing
 22 laboratory has no control over the
 23 preanalytical phase, for example, fixation
 24 across the other provincial labs that utilize
 25 the service of the testing laboratory." Now,

Page 16

1 do you recall did Dr. Denic elaborate on that
 2 and speak about the issues that had arose
 3 regarding fixation?
 4 DR. HOWELL:
 5 A. I can't be certain as to what degree he talked
 6 about that. In every slide he had commentary.
 7 Exactly how he played that out, I'm not
 8 positive.
 9 CHAYTOR, Q.C.:
 10 Q. And then "The immunohistochemistry tests are
 11 probabilistic, not accurate." "No resources."
 12 "Financial constraints affects educational
 13 activities for the technologists." "Absent
 14 QMP." What does that mean?
 15 DR. HOWELL:
 16 A. Quality management program.
 17 CHAYTOR, Q.C.:
 18 Q. Yes. "Pathology assistants." And there's no
 19 mention of any educational activities for the
 20 pathologists, which was one of the
 21 recommendations of Banerjee and, I believe -
 22 DR. HOWELL:
 23 A. But I think that may have been written that
 24 way, but I think he's pointing out there were
 25 financial constraints that would impact the

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1 ability to do as much education as maybe we
 2 should have.
 3 CHAYTOR, Q.C.:
 4 Q. And "The proper documentation of procedures
 5 and technical and clinical quality
 6 monitoring," which, of course, was of
 7 particular significance in Ms. Wegrynowski's
 8 report?
 9 DR. HOWELL:
 10 A. Correct.
 11 CHAYTOR, Q.C.:
 12 Q. "Lack of continued external quality assessment
 13 programs." And what was being referred to
 14 there, what did you understand that to mean?
 15 DR. HOWELL:
 16 A. That the external proficiency testing, those
 17 things were not in place and being done on a
 18 regular basis. Well, they weren't in place,
 19 period.
 20 CHAYTOR, Q.C.:
 21 Q. They weren't in place at all. It wasn't--yes.
 22 DR. HOWELL:
 23 A. Correct.
 24 CHAYTOR, Q.C.:
 25 Q. And that would have been sending out the

Page 18

1 external proficiency, sending out samples and
 2 specimens from the lab in St. John's to an
 3 external lab to compare results?
 4 DR. HOWELL:
 5 A. Well, it goes both ways.
 6 CHAYTOR, Q.C.:
 7 Q. Yes.
 8 DR. HOWELL:
 9 A. Slides prepared by somewhere else are sent in
 10 for interpretation and reading and education
 11 purposes and are sent back and we would
 12 compare the results of both and our slides
 13 would be sent out and read by somebody else
 14 and it would be correlation of those results.
 15 CHAYTOR, Q.C.:
 16 Q. And with the, I guess, understanding that
 17 perhaps if that had been happening, any
 18 difficulties or problems with interpretation
 19 or otherwise would have been picked up earlier
 20 if you had an external proficiency program
 21 running?
 22 DR. HOWELL:
 23 A. If your accuracy and your interpretation, I
 24 mean, that would be a good way to pick it up,
 25 that's correct.

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1 CHAYTOR, Q.C.:
 2 Q. And then there's reference to the large
 3 turnover of pathologists. "Impossible to
 4 develop subspecialized service." And "Large
 5 turnover of oncologists, difficult to monitor,
 6 correlate and clinically validate ER results."
 7 Just on that last point. Obviously there was
 8 a review conducted of the pathology service
 9 and the lab medicine service. Through this
 10 process was there any review of the
 11 oncologists or the oncology service?
 12 DR. HOWELL:
 13 A. Not that I'm aware of.
 14 CHAYTOR, Q.C.:
 15 Q. Okay. And in terms of tracking or monitoring
 16 trends, for example, we know that some breast
 17 cancers are more likely to be ER positive than
 18 others and that it's relatively rare, I think
 19 in the range of two percent that you would be
 20 PR positive and ER negative, that that's
 21 regular--that's a rare occurrence. So in
 22 terms of tracking those trends, are you aware
 23 of whether or not oncologists were tracking
 24 trends?
 25 DR. HOWELL:

Page 20

1 A. I'm not. You would have to ask the
 2 oncologists.
 3 CHAYTOR, Q.C.:
 4 Q. Are you aware if they currently track such
 5 trends?
 6 DR. HOWELL:
 7 A. I am not personally aware, no.
 8 CHAYTOR, Q.C.:
 9 Q. And are you aware that Dr. Banerjee commented
 10 that in his opinion the fact that there was an
 11 ER negative lobular invasive breast cancer,
 12 that that should have been questioned
 13 initially? Do you recall reading that in Dr.
 14 Banerjee's report?
 15 DR. HOWELL:
 16 A. I don't recall reading it in Dr. Banerjee's
 17 report, but I do recall reading that
 18 somewhere.
 19 CHAYTOR, Q.C.:
 20 Q. I take it this comment by Dr. Elms, "Large
 21 turnover of oncologist, difficult to monitor,
 22 correlate" -
 23 DR. HOWELL:
 24 A. Dr. Denic.
 25 CHAYTOR, Q.C.:

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1 Q. Sorry, yes, I'm sorry, Dr. Denic. "Correlate
 2 and clinically validate ER results." That is
 3 referring to keeping track of trends,
 4 basically?
 5 DR. HOWELL:
 6 A. That's correct.
 7 CHAYTOR, Q.C.:
 8 Q. And the fact that there's a large turnover
 9 made it difficult to do that, is that what's
 10 being suggested?
 11 DR. HOWELL:
 12 A. Yes, and you know, having strong relationships
 13 between these two groups, I think, is very
 14 critical. I mean, when I arrived on the scene
 15 and I was asking my own questions about some
 16 of this, it was trying to get an understanding
 17 of, you know, how the pathologists and the
 18 oncologists communicated with each other and,
 19 you know, was it just through the receiving of
 20 a report. Was it--because the science changes
 21 so rapidly and, you know, you've got these
 22 individuals going off to international
 23 meetings on a regular basis, and so there's
 24 new learning and new science all the time, but
 25 there has to be a mechanism whereby that is

Page 22

1 communicated to each other. I know in meeting
 2 with Dr. Denic on occasion I'm saying, okay,
 3 I want all the pathologists attending the
 4 rounds and you know, that's how we're going to
 5 get this knowledge transfer. If someone's
 6 going away to a meeting and if the oncologists
 7 are depending on the pathologists, then we
 8 need to know how the oncologists are thinking
 9 and the pathologists, their science is
 10 changing, how do we make sure that that
 11 knowledge transfer occurs. And Dr. Denic was
 12 quick to remind me, yes, that was the ideal
 13 situation, but he said, "You also want the
 14 work done and you also are telling me you--
 15 that we're sending far too much to DynaCare,
 16 so there are so many rounds that occur in our
 17 organization on a daily basis, if pathologists
 18 attend them all, when will the work be done?"
 19 So it's trying to find that common ground. So
 20 if there had been a stable group of
 21 oncologists and pathologists who were relating
 22 to each other on a regular basis, then, you
 23 know, I would hope that that would allow us,
 24 number one, to make sure that we're on top of
 25 the best science that today has to offer, and

Page 23

1 so we're trying to make that happen more and
 2 more. But when there's a turnover and when
 3 there's a shortage of people, then that
 4 obviously is going to be more challenging.
 5 CHAYTOR, Q.C.:
 6 Q. And I take it if there's a large turnover,
 7 your documentation becomes all the more
 8 important because that becomes your corporate
 9 memory, for lack of a better term? If the
 10 person is not going to be there to relay the
 11 story or keep track of certain things, your
 12 documentation would speak for you?
 13 DR. HOWELL:
 14 A. Correct. And when you have a large turnover
 15 where you have people coming and going and
 16 they come from different training programs,
 17 different countries, they have different
 18 styles of doing things, and so that whole
 19 business of standardizing an approach becomes
 20 increasingly difficult. So, you know, somehow
 21 we have got to get to a point where we
 22 stabilize this pathologists and oncologists
 23 group. That's how we're going to give the
 24 best care to people in this province.
 25 CHAYTOR, Q.C.:

Page 24

1 Q. And the issue, then, of the communication
 2 between the pathologists and oncologists, I
 3 take it then when you arrived, you found that
 4 there was some need for improvement?
 5 DR. HOWELL:
 6 A. Yes, but I also understood that in talking to
 7 both Dr. Laing and to Dr. Denic that, you
 8 know, there were--I mean, in the pathologists
 9 they had a weekly breast round, and I knew
 10 that there were tumor rounds where the
 11 pathologists and the oncologists got together.
 12 So I was starting to get -
 13 CHAYTOR, Q.C.:
 14 Q. And that's late 2006. Were you aware of
 15 whether or not that was happening before?
 16 DR. HOWELL:
 17 A. No, I don't know to what degree.
 18 CHAYTOR, Q.C.:
 19 Q. And has there been further improvements in the
 20 communication and interaction between
 21 pathologists and oncologists?
 22 DR. HOWELL:
 23 A. I believe there has only in as much as I am
 24 advised that they do meet on a regular basis
 25 and there are pathologist attending various

Page 25

1 surgical rounds, etcetera.
 2 CHAYTOR, Q.C.:
 3 Q. And has that been somehow made a requirement,
 4 that there be attendance, has Eastern Health
 5 looked at there be a requirement that so many
 6 of rounds would have to be attended per annum?
 7 DR. HOWELL:
 8 A. No.
 9 CHAYTOR, Q.C.:
 10 Q. And is there any consideration to doing that?
 11 DR. HOWELL:
 12 A. As I explained, it's a challenge to get the
 13 work done in a timely manner. If I had the
 14 luxury, I would put such a rule in place and
 15 insist that the pathologists attend rounds,
 16 all the surgical rounds. The best we could
 17 hope for maybe would be to have one
 18 pathologist attend and transfer that
 19 information back to the other.
 20 CHAYTOR, Q.C.:
 21 Q. But there's been no requirement for that?
 22 DR. HOWELL:
 23 A. No, there has not.
 24 CHAYTOR, Q.C.:
 25 Q. And would you agree that not only does the

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1 work have to get done, the best quality work
 2 has to get done, and if that includes
 3 communication and interaction with your
 4 colleagues, then that may be worthwhile to
 5 look at having that as a requirement?
 6 DR. HOWELL:
 7 A. Absolutely, that is the catch 22 that we find
 8 ourselves within.
 9 CHAYTOR, Q.C.:
 10 Q. And that was it for the reasons for failure
 11 given by--or reasons for the problems, sorry,
 12 given by Dr. Denic?
 13 DR. HOWELL:
 14 A. That's correct.
 15 THE COMMISSIONER:
 16 Q. Dr. Howell, you mentioned pathologist rounds.
 17 Tell me, who goes to pathologist rounds?
 18 DR. HOWELL:
 19 A. Commissioner, you're probably better talking
 20 to Dr. Denic about the different rounds that
 21 they have, but -
 22 THE COMMISSIONER:
 23 Q. All right. That's fine, I'll ask him.
 24 DR. HOWELL:
 25 A. - on the breast side, I know that they have a

Page 27

1 weekly breast round.
 2 THE COMMISSIONER:
 3 Q. They, pathologists?
 4 DR. HOWELL:
 5 A. They, pathologists, but specifically, I think
 6 those involved in managing breast pathology.
 7 But again -
 8 THE COMMISSIONER:
 9 Q. Well that's what, two people?
 10 DR. HOWELL:
 11 A. That was three, it is two.
 12 THE COMMISSIONER:
 13 Q. Okay.
 14 CHAYTOR, Q.C.:
 15 Q. And there are witnesses -
 16 THE COMMISSIONER:
 17 Q. So a pathologist--well, I'll ask Dr. Denic
 18 about those. Thank you.
 19 CHAYTOR, Q.C.:
 20 Q. In looking through then, we've looked through
 21 the slide presentation now then, Doctor, from
 22 Dr. Denic and thank you for suggesting that.
 23 I didn't see any mention in there of the issue
 24 of internal controls, the lack or inadequacy
 25 of internal controls, which of course was a

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1 key finding of Dr. Banerjee. Do you recall
 2 whether or not Dr. Denic mentioned that in his
 3 presentation?
 4 DR. HOWELL:
 5 A. I do not.
 6 CHAYTOR, Q.C.:
 7 Q. If we could back then to 1422, page 28, and I
 8 was asking you about this issue of moving from
 9 one system to another, going from 74 to 82
 10 percent, and do you have any recollection as
 11 to what that might be referring to?
 12 DR. HOWELL:
 13 A. I don't.
 14 CHAYTOR, Q.C.:
 15 Q. And did you have any understanding or did
 16 anyone suggest to you that there was an
 17 improvement in the positivity rates, the ER
 18 positivity rates when Eastern Health moved
 19 from the DAKO system to the Ventana system?
 20 DR. HOWELL:
 21 A. No, I don't. You know, the only impression in
 22 hearing people talk was that there was some
 23 question about where did the technology fall
 24 into this problem.
 25 CHAYTOR, Q.C.:

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1 Q. Okay, and was it ever suggested to you that
 2 perhaps the improvement in positivity rates
 3 occurred in 2003, not in 2004 when the Ventana
 4 system came on, but perhaps in 2003 when Dr.
 5 Ejeckam made certain adjustments to the
 6 testing procedures. Do you recall anyone
 7 having that discussion?
 8 DR. HOWELL:
 9 A. No, I don't.
 10 CHAYTOR, Q.C.:
 11 Q. The next page, Doctor, is this a continuation
 12 of your notes from the meeting of November
 13 21st? It's also in the book, if you want -
 14 DR. HOWELL:
 15 A. I think it is, but some of this may start to
 16 become notes for me of things that are coming
 17 in my mind that I want to do.
 18 CHAYTOR, Q.C.:
 19 Q. Okay. This refers, at the top, 939, 109
 20 converted, 13 of 109 would require different
 21 treatment.
 22 DR. HOWELL:
 23 A. Yes.
 24 CHAYTOR, Q.C.:
 25 Q. 3,000 people. 13 required different treatment.

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1 Is that what that suggests?
 2 DR. HOWELL:
 3 A. Required change in treatment.
 4 CHAYTOR, Q.C.:
 5 Q. Change in treatment, okay, and I take it
 6 that's not--that's not correct.
 7 DR. HOWELL:
 8 A. That is a total, yes, wrong note.
 9 CHAYTOR, Q.C.:
 10 Q. Okay. But on November 21st, was that your
 11 understanding, November 21st, 2006, only 13
 12 people would have required a change in their
 13 treatment?
 14 DR. HOWELL:
 15 A. No, no, I--as I'm sure we'll get onto in a
 16 little while, the whole discussion around
 17 numbers was becoming a very confusing
 18 discussion for me.
 19 CHAYTOR, Q.C.:
 20 Q. I take it you were never this confused to
 21 think -
 22 DR. HOWELL:
 23 A. Well -
 24 CHAYTOR, Q.C.:
 25 Q. - that only 13 people had a change in

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1 treatment?
 2 DR. HOWELL:
 3 A. I don't know why I would have written that
 4 note.
 5 CHAYTOR, Q.C.:
 6 Q. Okay. Then the middle of the page then, you
 7 have an asterisk by this comment, it says
 8 "check recommendation external reviewers.
 9 Need peripheral pathologists involved. Can't
 10 get into specific recommendations due to class
 11 action. Here are some of changes." Now if
 12 this, in fact, is your notes or are your notes
 13 from the November 21st meeting, perhaps that
 14 touches on the questioning that I was asking
 15 you about yesterday about, you recall in the
 16 minutes reflected the need to get the
 17 information out to other pathologists, but
 18 some concern about how to best do that in
 19 light of the class action suit. So is this
 20 what this is referring to, your notes
 21 regarding that discussion?
 22 DR. HOWELL:
 23 A. You know, I can't totally recall, but usually
 24 when I write a note like that and I asterisk
 25 it, it's a memo to Howell that says this is

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1 something that you need to consider, go back
 2 and have a look at those external reviews
 3 again, and -
 4 CHAYTOR, Q.C.:
 5 Q. And this is something that, according to the
 6 minutes, you were tasked with following up
 7 with Dan Boone to figure out a way in which
 8 you could do that?
 9 DR. HOWELL:
 10 A. That's correct.
 11 CHAYTOR, Q.C.:
 12 Q. So if--and I don't want to interpret what
 13 you've written here, but it says "can't get
 14 into specific recommendations due to the class
 15 action. Here are some of changes." So does
 16 that jog your memory as to the discussion
 17 around that issue?
 18 DR. HOWELL:
 19 A. No, you know, if you marry that to the
 20 minutes, I guess, as you're saying, I've got
 21 to go back and look at that again and that
 22 which we can talk about now is somewhat
 23 constrained by the fact that there is a class
 24 action law suit. I can't expound on it any
 25 further than that.

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1 CHAYTOR, Q.C.:

2 Q. Okay, the bottom of the page, you've written

3 "call Dan Fontaine to see -

4 DR. HOWELL:

5 A. Me.

6 CHAYTOR, Q.C.:

7 Q. - see me. Set up meeting with Kara." I take

8 it that's Kara Laing?

9 DR. HOWELL:

10 A. Correct.

11 CHAYTOR, Q.C.:

12 Q. "Who is accountable?" What is that

13 referencing?

14 DR. HOWELL:

15 A. I think as my understanding of this is I'm

16 still struggling to understand who's doing

17 what and who's accountable for what and I'm

18 looking at who the players are, on the

19 pathology side, on the oncology side, and

20 who's accountable for doing what.

21 CHAYTOR, Q.C.:

22 Q. And what answers did you come up with?

23 DR. HOWELL:

24 A. I don't know that there's a simple answer to

25 that. This is more, again, a musing note to

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1 myself to go back and again, look at--I mean,

2 I'm looking at what the external reviewers

3 said. There's two components of dealing with

4 communication and the things arising out of

5 that executive management meeting, but there's

6 still the part that's playing on my soul about

7 what I'm accountable for and of the people

8 that report to me, what are they accountable

9 for, and I'm still trying to strengthen that

10 process in my own mind and also figure out how

11 to work with those individuals to make sure

12 what needs to be done is being done. I don't

13 think it was--that that comment was any deeper

14 than that at that point.

15 CHAYTOR, Q.C.:

16 Q. So on November 21st, 2006, the accountability

17 issue is not clear in your mind? You're

18 posing a question to yourself who is

19 accountable, and it's in reference to two

20 groups, I would take it here, the pathologists

21 and oncologists, not singly individuals out,

22 Dr. Fontaine or Dr. Laing. I would take it

23 they're represent -

24 DR. HOWELL:

25 A. No, no, those are separate.

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1 CHAYTOR, Q.C.:

2 Q. They're representatives of groups not -

3 THE COMMISSIONER:

4 Q. Or are you saying these are two different

5 notes?

6 CHAYTOR, Q.C.:

7 Q. Or is it two different notes?

8 DR. HOWELL:

9 A. No, these are--I mean, this is a journal in

10 which I run my day and I try not to forget

11 something that I have to do. So it might be--

12 I'm trying to under--I mean, Dr. Fontaine, at

13 that time, I may have become aware that he was

14 looking at leaving the organization. This

15 would be a note to me, I need to have a chat

16 with Dr. Fontaine to see what the -

17 CHAYTOR, Q.C.:

18 Q. In November 2006?

19 DR. HOWELL:

20 A. Again, this is supposition on my part. From

21 the point of view of note taking, you know,

22 many things are coming at me at the same time.

23 I'm trying not to lose track of these and I

24 take these notes. I often asterisk them

25 because I'm skimming back through the page

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1 that these are to do items for me and

2 eventually they're going to mature into a to-

3 do list.

4 CHAYTOR, Q.C.:

5 Q. Now, Doctor, so are you suggesting -

6 THE COMMISSIONER:

7 Q. Okay. Sorry.

8 CHAYTOR, Q.C.:

9 Q. Yes.

10 THE COMMISSIONER:

11 Q. So when, as I looked at your notes, which

12 congratulations, I can actually read them, it

13 seems to me that, frankly, they're extremely

14 well organized and you seem to deal with

15 topics and you make little breaks. Now like

16 everybody else, you got your own shorthand and

17 it's concise references, and maybe you

18 remember what you were thinking about when you

19 took them or maybe you don't. Just tell us if

20 you don't. But then we get down to the bottom

21 of the page and you have "call Dan Fontaine to

22 see me. Set up meeting with Kara," who we've

23 assumed Dr. Laing, "and who is accountable."

24 Now what I'd be interesting in knowing is if

25 that's three different notes, and if they

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1 relate to each other at all.
 2 DR. HOWELL:
 3 A. I think, Commissioner, I can't say with any
 4 certainty other than I don't think those three
 5 items are related at all. I think they are
 6 musings for me for things that I think I want
 7 to do.
 8 THE COMMISSIONER:
 9 Q. And do we know--can you tell from the content
 10 whether all those notes were made during the
 11 same meeting?
 12 DR. HOWELL:
 13 A. I would be fairly certain they were all made
 14 from that same day, that same meeting.
 15 THE COMMISSIONER:
 16 Q. Well, there's a numbering system, you know,
 17 you can see.
 18 DR. HOWELL:
 19 A. Right.
 20 THE COMMISSIONER:
 21 Q. And then we go to seven. So it would seem that
 22 it's in the context--during that meeting,
 23 these things came to you?
 24 DR. HOWELL:
 25 A. That would be correct.

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1 THE COMMISSIONER:
 2 Q. Okay.
 3 CHAYTOR, Q.C.:
 4 Q. And Doctor, the discussion throughout, if I
 5 take you back to where we see the date and the
 6 fact that it's an AMC meeting, there's no
 7 other heading then until we get, and page
 8 seven, then you leave a gap, and when you get
 9 to page eight, it's new date, new meeting, and
 10 I'll take you through that one as well.
 11 So it would appear that, in fact, it is
 12 all the November 21st '06 executive management
 13 committee meeting, and that the entire note
 14 taking from the number that I took you
 15 through, with the number of 939 on down
 16 through, "checking recommendations, external
 17 reviews," issue of a 1995 accreditation, "now
 18 no provincial hospital accreditation program."
 19 I take it that refers to the lab. And then
 20 when we come to actions, and we look at those
 21 actions there in terms of "to medical advisory
 22 committee, sub-team to produce a public
 23 information," and that's Susan and you going
 24 to work on that, which we saw in the minutes
 25 from the meeting. "Communication with

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1 provincial pathologists, QA monitoring, have a
 2 tumour group, have a breast disease site
 3 group." So all of these notes relate to the
 4 ER/PR issue?
 5 DR. HOWELL:
 6 A. That's correct.
 7 CHAYTOR, Q.C.:
 8 Q. So do you have any reason to think that this
 9 reference, "call Dan Fontaine to see me. Set
 10 up meeting with Kara. Who is accountable?"
 11 that that would not relate to the ER/PR issue?
 12 DR. HOWELL:
 13 A. I can't answer your question. I don't know.
 14 Because it is there, it does not necessarily
 15 mean that this wasn't something that occurred
 16 to me through the course of that meeting that
 17 I don't want to lose.
 18 CHAYTOR, Q.C.:
 19 Q. Totally unrelated?
 20 DR. HOWELL:
 21 A. It could be. I -
 22 CHAYTOR, Q.C.:
 23 Q. And you have no -
 24 DR. HOWELL:
 25 A. If that is not so, then I cannot recall how I

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1 would relate that into the rest of that
 2 discussion, but it could be that Dr. Laing
 3 said something in her part of the presentation
 4 and I'm thinking "I got to talk to her about
 5 that. I didn't understand that." But I can't
 6 recall.
 7 CHAYTOR, Q.C.:
 8 Q. And at this point in time, Dr. Fontaine would
 9 be the site chief for the Health Sciences
 10 Centre?
 11 DR. HOWELL:
 12 A. I'm not certain of that.
 13 CHAYTOR, Q.C.:
 14 Q. You wouldn't know that, okay. And you have no
 15 recollection then as to what, in fact, that
 16 may be referring to, and you also have no
 17 recollection of any follow-up discussions with
 18 Dr. Fontaine and/or Dr. Laing which would shed
 19 any light on what this was about?
 20 DR. HOWELL:
 21 A. I have had several meetings with -
 22 CHAYTOR, Q.C.:
 23 Q. No, but which would shed any light on what
 24 this is about?
 25 DR. HOWELL:

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1 A. I mean, I had meetings with Dr. Fontaine, but
 2 it was--and it was not in relation to ER/PR.
 3 It was in relation to trying to retain him in
 4 our organization.
 5 CHAYTOR, Q.C.:
 6 Q. And anything at all that would shed any light
 7 on the context in which these notes appear?
 8 DR. HOWELL:
 9 A. I'm sorry, no.
 10 CHAYTOR, Q.C.:
 11 Q. And then the next page which I just quickly
 12 took you through were the actions which I take
 13 it came out of the meeting?
 14 DR. HOWELL:
 15 A. That's correct.
 16 CHAYTOR, Q.C.:
 17 Q. And this is referring to having a tumour group
 18 and have a breast disease site group. So I
 19 take it these would be new endeavours, to have
 20 a tumour group and a breast disease site
 21 group?
 22 DR. HOWELL:
 23 A. No, I don't think that's correct.
 24 CHAYTOR, Q.C.:
 25 Q. Or is it that you all -

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1 DR. HOWELL:
 2 A. I think that I am becoming aware -
 3 CHAYTOR, Q.C.:
 4 Q. - or that you would already have?
 5 DR. HOWELL:
 6 A. - of that these are in existence, and that's
 7 part of my reassurance.
 8 CHAYTOR, Q.C.:
 9 Q. So they already have a tumour group and
 10 already have a breast disease site group.
 11 DR. HOWELL:
 12 A. That's correct.
 13 CHAYTOR, Q.C.:
 14 Q. Okay, and the actions then, so that doesn't
 15 come under actions. That's separate. The
 16 actions are one through four. Is that right?
 17 DR. HOWELL:
 18 A. That's correct.
 19 CHAYTOR, Q.C.:
 20 Q. And again, it refers to "the sub-team to
 21 produce a public information" and Susan and
 22 you were tasked with that?
 23 DR. HOWELL:
 24 A. Correct.
 25 CHAYTOR, Q.C.:

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1 Q. And in terms of looking back and checking the
 2 recommendations, and you had an asterisk by
 3 that "check the recommendations for external
 4 reviewers" and do you recall, did you, in
 5 fact, do that following this meeting?
 6 DR. HOWELL:
 7 A. I think I checked that report more times than
 8 I can count.
 9 CHAYTOR, Q.C.:
 10 Q. And perhaps you could tell us then what
 11 specific, in particular, quality assurance
 12 measures have been implemented?
 13 DR. HOWELL:
 14 A. I don't think about it from a cheese
 15 perspective. I think about it more from an
 16 onion perspective, and I start within the
 17 immunohistochemistry lab itself and the
 18 structuring of the immunohistochemistry lab,
 19 putting in place a medical director, getting
 20 in place formal training for that individual,
 21 getting in place dedicated technologists, not
 22 rotating technologists. So we now have
 23 dedicated technologists who have been sent to
 24 leading centres for training. So stabilizing
 25 that group. Then getting subspecialty group

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1 of pathologists, not all pathologists reading
 2 this, just a very select group who develop
 3 expertise in that area. Getting the
 4 immunohistochemistry lab focused in one area
 5 as a stand-alone unit. Putting in place,
 6 within that group of individuals, a senior
 7 technologist with quality assurance
 8 responsibilities or quality control
 9 responsibilities, and -
 10 THE COMMISSIONER:
 11 Q. I'm sorry, I don't think I quite understood
 12 what you were saying about putting the senior
 13 technologist in place.
 14 DR. HOWELL:
 15 A. For the quality assurance process.
 16 THE COMMISSIONER:
 17 Q. Is that a senior--are you saying that for this
 18 subgroup or for the whole of the -
 19 DR. HOWELL:
 20 A. Yes, for the pathology area. Not necessarily
 21 just for immunohistochemistry. I think she
 22 has responsibilities for pathology, but -
 23 THE COMMISSIONER:
 24 Q. That was my question.
 25 DR. HOWELL:

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1 A. Right, we now have a person who is dedicated
 2 to that quality assurance process.
 3 THE COMMISSIONER:
 4 Q. Would that mean Ms. Wade?
 5 DR. HOWELL:
 6 A. No, that's another layer that came
 7 subsequently, which Commissioner, I'll -
 8 THE COMMISSIONER:
 9 Q. So who does this work?
 10 DR. HOWELL:
 11 A. Catherine Parnell was her name who has since--
 12 is retired.
 13 THE COMMISSIONER:
 14 Q. All right.
 15 DR. HOWELL:
 16 A. So we now have an immunohistochemistry lab,
 17 it's a very contained area; we now have a
 18 medical director; we have dedicated
 19 technologists, not rotating technologists; and
 20 we have a dedicated sub-pathology group who is
 21 focused in on the area of breast cancer in
 22 particular. So at that we--we have that
 23 kernel (phonetic). Then the work that goes on
 24 in that immunohistochemistry lab--so we've had
 25 then on top of that the two, we've had the

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1 external reviewers in. They have made fifty-
 2 odd recommendations and the leaders who report
 3 to me are advising that those recommendations
 4 have been enacted. Included within that now,
 5 as we layer on the added protections, we put
 6 in the proficiency testing. So we have
 7 proficiency testing going on at multiple
 8 levels. And I'll try and remember all of
 9 this. We have proficiency testing that's
 10 going on with the group in the UK that
 11 apparently is a world authority in this area,
 12 and that group looks at the quality of the
 13 staining and of the interpretation.
 14 CHAYTOR, Q.C.:
 15 Q. If I could just stop you there, what has--
 16 that's your external proficiency testing.
 17 DR. HOWELL:
 18 A. Correct.
 19 CHAYTOR, Q.C.:
 20 Q. And how often or how frequently has that group
 21 looked at the product from the lab and what
 22 have been the outcomes to date?
 23 DR. HOWELL:
 24 A. Dr. Denic will speak much more eloquently to
 25 that and that is done on a quarterly basis, as

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1 I understand. Some of this goes on quarterly;
 2 some of it goes on twice a year; some of it is
 3 monthly because there is proficiency testing
 4 that is, an external review that's going on
 5 through the UK, through the College of
 6 American Pathologists, through a relationship
 7 with Mount Sinai, on a month basis a
 8 percentage check. For other areas, we have a
 9 quality check going on with Calgary on the
 10 area of prostate. We've got peer to peer
 11 review that's going on, any cases that are any
 12 way questionable or what they call the low
 13 expressors, the one to ten percent, two
 14 pathologists must review that. And I'm sure
 15 I'm forgetting other things. And then -
 16 CHAYTOR, Q.C.:
 17 Q. It's just my question though on the external
 18 proficiency and I will follow it up with Dr.
 19 Denic if you're not able to provide more
 20 detail, but you're not sure exactly how often
 21 or frequently that particular testing is sent
 22 out.
 23 DR. HOWELL:
 24 A. The UK I understand is quarterly.
 25 CHAYTOR, Q.C.:

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1 Q. Quarterly.
 2 DR. HOWELL:
 3 A. I have that documentation.
 4 CHAYTOR, Q.C.:
 5 Q. And what about the other?
 6 DR. HOWELL:
 7 A. The College of American Pathologists, I think
 8 that's done twice a year, but I really would
 9 defer to Dr. Denic.
 10 CHAYTOR, Q.C.:
 11 Q. And have you had discussions or followed up
 12 with Dr. Denic to say, well how are we doing?
 13 DR. HOWELL:
 14 A. That's correct.
 15 CHAYTOR, Q.C.:
 16 Q. You have?
 17 DR. HOWELL:
 18 A. I have.
 19 CHAYTOR, Q.C.:
 20 Q. And what have you been told?
 21 DR. HOWELL:
 22 A. I have been advised we're scoring very highly.
 23 CHAYTOR, Q.C.:
 24 Q. And have you been advised of any concerns or
 25 issues that may have been identified?

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1 DR. HOWELL:
 2 A. I have not.
 3 CHAYTOR, Q.C.:
 4 Q. So to your knowledge there hasn't been any
 5 concerns or issues and that you're scoring
 6 well?
 7 DR. HOWELL:
 8 A. That's correct.
 9 CHAYTOR, Q.C.:
 10 Q. And is that, is that just ER/PR or does that
 11 involve other, IHC?
 12 DR. HOWELL:
 13 A. Oh no, we're doing that for multiple other
 14 areas now.
 15 CHAYTOR, Q.C.:
 16 Q. Okay, I'm sorry, I didn't mean to cut you off.
 17 And what -
 18 DR. HOWELL:
 19 A. So I guess then the next layer for me is the
 20 additional of a new position which was Ms.
 21 Wade's position, which is quality and safety.
 22 For my whole port folio, was primary
 23 concentration right now on the laboratory.
 24 CHAYTOR, Q.C.:
 25 Q. And Doctor, is that an entirely new position

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1 or is that something that existed during the
 2 Health Care Corporation days and was abolished
 3 or is that entirely new?
 4 DR. HOWELL:
 5 A. No, that's--I think Ms. Wade took her position
 6 in May 2007.
 7 CHAYTOR, Q.C.:
 8 Q. So it's not a situation where that position
 9 had been eliminated to whatever reason,
 10 restructuring or financial constraints.
 11 DR. HOWELL:
 12 A. It did not exist before -
 13 CHAYTOR, Q.C.:
 14 Q. It didn't exist before, okay.
 15 DR. HOWELL:
 16 A. It was a new role that I brought in and I
 17 have--Ms. Wade does not report to Dr. Denic,
 18 does not report to Mr. Gulliver. She reports
 19 directly to me and so, we've added that other
 20 layer that is looking from the outside in and
 21 reporting directly to me.
 22 CHAYTOR, Q.C.:
 23 Q. And how is that going? Have you received
 24 feedback from Ms. Wade?
 25 DR. HOWELL:

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1 A. Yes, I meet with Ms. Wade on a monthly basis,
 2 review the work that she's doing, any concerns
 3 that she's identifying. She's driving many
 4 initiatives, from pushing completion of
 5 standard operating procedures in all aspects
 6 of the lab, ensuring there are quality
 7 assurance activities going on in all areas of
 8 the lab. She has built educational programs,
 9 she has done at least one two-day session with
 10 all the managers in the lab. She meets with
 11 the managers in the lab on a regular basis, as
 12 I said, she meets with me monthly. I've had
 13 her preparing--we're trying to get down to a
 14 standardized group of indicators, from a
 15 quality point of view, that with one--what I
 16 want to get to is a one or two pager that very
 17 quickly gives me a picture of how we are
 18 doing. I don't want just someone telling me
 19 that we're doing well. I want to see it.
 20 CHAYTOR, Q.C.:
 21 Q. And you want documentation that someone else
 22 can go back and see, if need be?
 23 DR. HOWELL:
 24 A. That's correct, and if I had my way, one day
 25 that will appear on our web page and anyone

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1 can look at it, and maybe that will give a
 2 greater level of confidence to people.
 3 CHAYTOR, Q.C.:
 4 Q. I just want to ask you, I know a significant
 5 part of her lab work, anyhow, involved the
 6 development or drafting of the standard
 7 operating procedures and of course, that was a
 8 key recommendation of Ms. Wegrynowski and
 9 you've indicated that all the recommendations
 10 have now been implemented, although I think
 11 you said yesterday the Sakara Express, that's--
 12 -that hasn't been.
 13 DR. HOWELL:
 14 A. My understanding is that's the one that has
 15 not been.
 16 CHAYTOR, Q.C.:
 17 Q. Okay, and what about the change to the
 18 antibody that Dr. Banerjee was recommending,
 19 as that taken place?
 20 MR. SIMMONS:
 21 Q. He recommended it be considered.
 22 DR. HOWELL:
 23 A. Yes, it was to be considered and I had a
 24 conversation with Dr. Elms specifically on
 25 that, and I cannot recall whether he told me

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1 we had in fact moved to the rabbit mono clonal
 2 antibody or not. I'm not--I don't know for
 3 sure.
 4 CHAYTOR, Q.C.:
 5 Q. And Ms. Wegrynowski's recommendations, in
 6 terms of standard operating procedures, those
 7 have now all been implemented? Is that
 8 correct?
 9 DR. HOWELL:
 10 A. My understanding is that they have been
 11 written and, of course, we have had--I would
 12 bet there's still improvements that can be
 13 made in all of that, but we have come a long
 14 way, and I guess the further confidence for me
 15 in that is that the CCHSA accreditation took
 16 place in September 2007, and I know we're
 17 jumping ahead a ways, but that took place and
 18 so of the ten, I think, accreditors that came
 19 in, four of them were focused on the lab, and
 20 as you know, they did come back with 35
 21 recommendations, which we are working through,
 22 but my understanding from them is that they
 23 saw no glaring problems within the lab. They
 24 had recommendations, as I would have expected,
 25 and we are working through.

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1 CHAYTOR, Q.C.:
 2 Q. So you have another set of recommendations
 3 that you're working through.
 4 DR. HOWELL:
 5 A. Right.
 6 CHAYTOR, Q.C.:
 7 Q. Some of which may have, in fact, overlapped
 8 with the previous.
 9 DR. HOWELL:
 10 A. There were many overlaps in their
 11 recommendations, but that--you know, I believe
 12 that will always be the case. We will never
 13 be at a point where somebody can come into us
 14 and not make a recommendation to be better,
 15 but I guess then, the final layer on that, for
 16 me, was bringing in QMPLS, the quality
 17 management -
 18 CHAYTOR, Q.C.:
 19 Q. Yes. Now, Doctor, if I may, I don't want to
 20 get away from my question, because you had
 21 indicated that all the recommendations from
 22 the external reviews had been implemented, and
 23 my question was whether or not the standard
 24 operating procedures that Ms. Wegrynowski had
 25 recommended, in fact, are now in place and

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1 operationalized.
 2 DR. HOWELL:
 3 A. And my understanding is that they have been
 4 and that when QMPLS came in and reviewed that,
 5 while they made some recommendations, that
 6 they said it was at the standard of any
 7 laboratory in Ontario and that was reassuring
 8 to me.
 9 CHAYTOR, Q.C.:
 10 Q. And did you ask them whether or not that was
 11 of the standard of tertiary care facilities in
 12 Ontario?
 13 DR. HOWELL:
 14 A. I did not ask them that.
 15 CHAYTOR, Q.C.:
 16 Q. Okay, and if we could look please at P-0764.
 17 And of course, Dr. Howell, one of the key
 18 recommendations concern fixation, key
 19 recommendations of the reviewers, correct?
 20 DR. HOWELL:
 21 A. Correct.
 22 CHAYTOR, Q.C.:
 23 Q. This is a fixation policy that we've been
 24 given which is you are the issuing authority,
 25 Dr. Oscar Howell, and you'll see the document

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1 we've been given is indicated to be draft and
 2 at that last time we spoke and when we spoke
 3 with Ms. Wade, I believe this was still in the
 4 draft phase. And it indicates here that
 5 overview, "fixation is the most important step
 6 for paraffin embedded human tissues.
 7 Inadequate fixation may adversely affect
 8 p r o p e r a s s e s s m e n t , d i a g n o s i s ,
 9 immunohistochemistry procedures and
 10 interpretation. Inadequate fixation includes
 11 under and over fixation of tissues and
 12 formula." And then the policy goes on to say
 13 "All tissues requiring formalin fixation must
 14 be placed in formalin as soon as possible and
 15 no later than 30 minutes after removal from
 16 the body." And it goes on to discuss small
 17 tissue samples and then larger tissues, such
 18 as the breast and the colon to be fixed within
 19 a certain period of time. It continues on
 20 down, "If a breast specimen is removed after
 21 regular hours, there is a procedure to call
 22 the pathologist on call." Is this then--
 23 you're telling us this is no longer in draft
 24 and has now been signed off on, is that
 25 correct?

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1 DR. HOWELL:
 2 A. I can't say for certainty. I -
 3 CHAYTOR, Q.C.:
 4 Q. Who would sign off on it, is this for you to
 5 sign off? Have you signed off on it?
 6 DR. HOWELL:
 7 A. Well to be honest, that is an issue that I
 8 want to deal with, I don't think that that
 9 should be me signing off on a fixation policy
 10 when this is above my area of expertise. I
 11 think it might be within the organization,
 12 certain levels of policy have to be signed off
 13 at certain levels. But I would hope that we
 14 will move to the point where somebody who
 15 knows what they're talking about, when it
 16 talks about fixation, so that the chief of
 17 laboratory service will ultimately sign off on
 18 that. I am not certain that that has moved
 19 from draft mode to execution. I would have to
 20 -
 21 CHAYTOR, Q.C.:
 22 Q. But Doctor, if the administration at Eastern
 23 Health has made a decision that in fact you
 24 would be the person to sign off on it, are you
 25 saying that you have taken issue with that,

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1 that you don't think you're the appropriate
 2 person to sign off on?
 3 DR. HOWELL:
 4 A. If one looks at the accountability for an
 5 issue around fixation and what that policy
 6 should contain, I would like to see the person
 7 who knows and has the ultimate accountability
 8 for the content of that fixation policy, can
 9 defend the fixation policy, can argue it with
 10 their colleagues, if need be, would be the
 11 person who owns the policy.
 12 CHAYTOR, Q.C.:
 13 Q. So I take it that's a "yes", you have an issue
 14 with signing off on this policy.
 15 DR. HOWELL:
 16 A. I don't have an issue with the policy and its
 17 direction -
 18 CHAYTOR, Q.C.:
 19 Q. But you have an issue being the person who
 20 would sign off on the policy, you're saying
 21 that it should be the clinical chief?
 22 DR. HOWELL:
 23 A. From an accountability point of view, I would
 24 like it to be the chief of laboratory
 25 medicine.

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1 CHAYTOR, Q.C.:
 2 Q. So you do have an issue with you being the
 3 person who signs off on the policy, not taking
 4 issue with the content of the policy because I
 5 hear what you're saying is that you don't know
 6 if this is the best policy or not.
 7 DR. HOWELL:
 8 A. Right, right.
 9 CHAYTOR, Q.C.:
 10 Q. But you have an issue with signing off to be
 11 the person who would be accountable, is that
 12 what you're saying?
 13 DR. HOWELL:
 14 A. As long as you take that in context, I'm
 15 totally supportive of the policy, I'm saying
 16 that from an accountability point of view,
 17 let's have somebody signing off on this policy
 18 who understands it and who can promote it in a
 19 scientific manner.
 20 CHAYTOR, Q.C.:
 21 Q. So, Doctor, I take it you have not signed off
 22 on this policy?
 23 DR. HOWELL:
 24 A. I don't know where that policy is now from--
 25 this would be a policy that would have been

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1 prepared by somebody else, would appear on my
 2 desk, would be discussed with me. It would be
 3 okay if you say this is the way it needs to
 4 be, then -
 5 CHAYTOR, Q.C.:
 6 Q. And so has that happened, has it arrived on
 7 your desk and you've had that discussion?
 8 DR. HOWELL:
 9 A. I can't say for certain where that policy is
 10 right now.
 11 THE COMMISSIONER:
 12 Q. Who would be able to do that?
 13 DR. HOWELL:
 14 A. Dr. Denic and Ms. Wade.
 15 CHAYTOR, Q.C.:
 16 Q. And I take it if you had signed off on it, you
 17 would recall that?
 18 DR. HOWELL:
 19 A. Yes, I think that is so.
 20 CHAYTOR, Q.C.:
 21 Q. So do you know whether or not there is in
 22 fact, this fixation policy has been
 23 implemented?
 24 DR. HOWELL:
 25 A. I don't know.

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1 THE COMMISSIONER:
 2 Q. Is there some central person who takes care of
 3 policies within Eastern Health?
 4 DR. HOWELL:
 5 A. There is.
 6 THE COMMISSIONER:
 7 Q. And so if one wanted to, one could walk in
 8 through a door and find a spot and a person
 9 and say does a policy exist for "X" and if it
 10 officially is there, then that person can pull
 11 it up?
 12 DR. HOWELL:
 13 A. There is a person who manages all of the
 14 policies.
 15 THE COMMISSIONER:
 16 Q. Okay, so the secret is knowing what the policy
 17 is named, if you want the information.
 18 DR. HOWELL:
 19 A. I'm not sure how they collate the policies and
 20 -
 21 THE COMMISSIONER:
 22 Q. Thank you.
 23 CHAYTOR, Q.C.:
 24 Q. And do you know who is, who the person -
 25 DR. HOWELL:

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1 A. Who that person is?
 2 CHAYTOR, Q.C.:
 3 Q. Yes.
 4 DR. HOWELL:
 5 A. It was Tracey Tizzard Drover, but she's
 6 currently off on sick leave and there is
 7 another person in that position now, whose
 8 name escapes me.
 9 THE COMMISSIONER:
 10 Q. And in whose office would that person, I mean,
 11 is that like in senior administration office -
 12 DR. HOWELL:
 13 A. Yes.
 14 THE COMMISSIONER:
 15 Q. If we went to Ms. Jones' office, for example,
 16 would that person be far away?
 17 DR. HOWELL:
 18 A. No, the person who sits on the executive with
 19 that would be Wayne Miller who is a senior
 20 director for planning.
 21 THE COMMISSIONER:
 22 Q. Okay. So, through Mr. Miller's office we
 23 should be able to identify the person who has
 24 the key to the policies?
 25 DR. HOWELL:

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1 A. That's correct.
 2 THE COMMISSIONER:
 3 Q. Okay. Thank you.
 4 CHAYTOR, Q.C.:
 5 Q. So, Doctor, you don't know whether or not this
 6 standardized operating policy with respect to
 7 fixation has been adopted or implemented or
 8 not?
 9 DR. HOWELL:
 10 A. What I would say is if it has reached this
 11 level, it has gone through multiple people.
 12 Whether, in fact, it has been adopted, I can't
 13 say for certainty.
 14 CHAYTOR, Q.C.:
 15 Q. And insofar as the importance of having an SOP
 16 for fixation was identified by Ms. Wegrynowski
 17 back in 2005, you're not able to say whether
 18 or not that recommendation, in fact, has been
 19 implemented?
 20 DR. HOWELL:
 21 A. The only thing that I can say is I reviewed
 22 the list of the recommendations from this
 23 spreadsheet with the leaders involved and I
 24 was ensured--when we released all of the
 25 external reviews publicly, at that point in

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1 time I asked the team where are we with these
 2 recommendations? And I think at that time
 3 they told me that there were four left to be
 4 completed, but--and I think two of those were
 5 not arising out of the external reviews. They
 6 were items that had been added internally by
 7 staff. And the last time that I spoke to Mr.
 8 Gulliver and Dr. Denic, I think I was advised
 9 that all but one was completed. And my
 10 understanding was that was a tissue tech
 11 processor and there was no plan to execute
 12 that recommendation at this time.
 13 CHAYTOR, Q.C.:
 14 Q. Okay. So, your source of information on that
 15 would be Dr. Denic and Dr. Gulliver.
 16 DR. HOWELL:
 17 A. Mr. Gulliver, correct.
 18 CHAYTOR, Q.C.:
 19 Q. Now, of course, the fixation, as we've heard,
 20 that starts in the OR, proper fixation begins
 21 when the tissue is removed from the body. And
 22 that would involve the peri-operative program,
 23 I would take it, in terms of -
 24 DR. HOWELL:
 25 A. That's correct.

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1 CHAYTOR, Q.C.:

2 Q. And which, of course, you're not--it's not one

3 of your areas that you're responsible for.

4 DR. HOWELL:

5 A. No.

6 CHAYTOR, Q.C.:

7 Q. And do you know then whether or not there has

8 been any review of the practices and

9 procedures in the peri-operative program?

10 DR. HOWELL:

11 A. I could not speak to that.

12 CHAYTOR, Q.C.:

13 Q. Now Doctor, the original line of questioning

14 was about the quality assurance measures that

15 have been implemented. And I want to make

16 sure that we've covered everything and we've

17 talked about, of course, the dedicated

18 technologists, Ms. Wade's position and a

19 number of things that you've listed. Is there

20 anything else that we haven't covered?

21 DR. HOWELL:

22 A. No, only that you then later on, the CCHSA

23 accreditation review of the lab and the QMP-LS

24 review of the lab that have occurred

25 subsequently which are further external

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1 reviews of how the lab is operating.

2 CHAYTOR, Q.C.:

3 Q. Okay. Thank you.

4 THE COMMISSIONER:

5 Q. I understood from a prior witness that the

6 business of including the lab function in the

7 general accreditation will become the rule

8 rather than the exception shortly. So, I'm

9 assuming that one can assume that in the

10 future, that process will includes, at least

11 to some extent, lab.

12 DR. HOWELL:

13 A. That is correct.

14 THE COMMISSIONER:

15 Q. QMP-LS, was that a one-time endeavour or is

16 there a long term plan in respect to that?

17 DR. HOWELL:

18 A. There is a--well, on the accreditation piece,

19 my understanding is in the past and this is

20 information provided to me in the past in the

21 accreditation of hospitals, there was a very

22 limited review of the laboratory that was not

23 in depth at all, but that that has evolved and

24 now will become a regular part of the

25 accreditation process. When we went through

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1 that in September of 2007, it was not part of

2 the hospital accreditation at that point, but

3 we knew it was coming and it was available and

4 we volunteered and asked to have them do that

5 to our laboratory.

6 THE COMMISSIONER:

7 Q. That was my understanding from another

8 witness.

9 DR. HOWELL:

10 A. Then the QMP-LS was done more specific to the

11 immunohistochemistry lab, but as my notes,

12 that I think have been entered in evidence

13 yesterday, attest, I was looking for what are--

14 want the full lab accredited as a lab. How

15 do I get that done? And that arose from a

16 discussion about why did you use Mount Sinai

17 and I keep hearing about why is Mount Sinai

18 the gold standard? Why can't we be the gold

19 standard? And through that I learned that in

20 the province of Ontario, Alberta and I think

21 BC, that they had provincial accreditation

22 programs. And in trying to understand that

23 fully why those provinces had it, other than

24 their wealth, I understood it had evolved over

25 the entry of private labs to those provinces.

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1 So that it was my interest then to pursue

2 having a full accreditation of our lab. We

3 managed to get the IHC lab done. They said

4 they couldn't accredit us, but they could come

5 down and review the lab and do a similar sort

6 of activity.

7 So, my focus now is to move to the full

8 accreditation of the lab. And I have a

9 meeting mid June with Dr. Greg Flynn who is

10 the managing director of QMP-LS. And the goal

11 of that meeting is to commence a process

12 whereby we will look at how--and I've had a

13 preliminary discussion with him as to how to

14 do this--how we would achieve a level of

15 accreditation for our lab. And I have had

16 discussions with my counterparts at the VP

17 level in the other areas of the region, the

18 other regional health authorities and they

19 have expressed some interest as well. I have

20 agreed that I will take the lead on that. My

21 understanding is that there is some support

22 from government to--although I've had no

23 discussion with anyone in government, but

24 there is some support to proceed in that

25 direction.

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1 THE COMMISSIONER:
 2 Q. So, I take it from that, not yet a permanent
 3 feature, but something that you're now
 4 exploring?
 5 DR. HOWELL:
 6 A. That is correct, Commissioner.
 7 THE COMMISSIONER:
 8 Q. Thank you.
 9 CHAYTOR, Q.C.:
 10 Q. Okay. Thank you, Commissioner. So, Doctor,
 11 if that's it in terms of, if we've fully
 12 covered the improvements, I'd like to move now
 13 to your involvement in the technical media
 14 briefing and the lead up to that. If we could
 15 have P-0117 please. And perhaps you could
 16 perhaps tell us, Doctor, were you involved in
 17 the preparation for the technical media
 18 briefing on December 11, 2006?
 19 DR. HOWELL:
 20 A. I was.
 21 CHAYTOR, Q.C.:
 22 Q. Okay. And did you, in fact, take part in that
 23 briefing?
 24 DR. HOWELL:
 25 A. I did.

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1 CHAYTOR, Q.C.:
 2 Q. Okay. I'm sorry, it's P-0177.
 3 REGISTRAR:
 4 Q. 177?
 5 CHAYTOR, Q.C.:
 6 Q. Yes, 177. And this is an e-mail exchange.
 7 I'll just take you down to the bottom. It's
 8 usually the beginning at the bottom. And it's
 9 an e-mail exchange, Tansy Mundon to Leona
 10 Barrington, Susan Bonnell and you're not
 11 copied on this, George Tilley and John Abbott.
 12 And it refers to breast cancer screening
 13 which, of course, would be an error. "In
 14 light of this request, can you please ask that
 15 a status report is sent to the minister this
 16 week". This is November 22, '06. And then
 17 the e-mail exchange from Susan to Tansy back
 18 on that, she refers to--again, it's November
 19 22--"can you call me. I'm talking to Dr.
 20 Howell on the phone now and we'd like to know
 21 what the Minister would want, would a verbal
 22 briefing be helpful despite what Chris says,"
 23 and we have reason to believe this is Chris
 24 O'Neill-Yates, reporter, "we aren't in a
 25 position to give a detailed briefing this week

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1 (rate of error, etcetera)." Now, do you
 2 recall that discussion with Ms. Bonnell?
 3 DR. HOWELL:
 4 A. Not that specific one. I mean, there were
 5 many discussions between Ms. Bonnell and
 6 myself.
 7 CHAYTOR, Q.C.:
 8 Q. But this appears to be that she's talking to
 9 you on the phone while she's e-mailing back to
 10 the Department of Health's communication
 11 director. Appears that the minister of the
 12 day, who would be Mr. Osborne, was looking for
 13 a briefing. And she's indicating that she's
 14 speaking to you and you'd like to know what
 15 the minister would want and whether a verbal
 16 briefing would be helpful and that you're not
 17 in a position to give a detailed briefing, for
 18 example, rate of error.
 19 DR. HOWELL:
 20 A. I can only read what's written there and go by
 21 it.
 22 CHAYTOR, Q.C.:
 23 Q. And you have no independent recollection then
 24 as to what this may be referring to?
 25 DR. HOWELL:

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1 A. Well, I assume the minister wants a briefing
 2 on where we are and what we're doing. I mean,
 3 the--in this period of time in the job, I
 4 don't know, whatever it was, three months or
 5 so, I'm still trying to learn how this whole
 6 system works in relationship with the
 7 Department of Health and the communication
 8 that goes on and with whom and how it's
 9 initiated and so on. And, you know, I'm
 10 learning that there is very regular contact
 11 between the communications folks with
 12 government and with Eastern Health and that
 13 before we go public with things that the
 14 minister would expect to be briefed.
 15 CHAYTOR, Q.C.:
 16 Q. And I take it then at this point in time in
 17 terms of figuring out what the minister may
 18 want in terms of the briefing, you're involved
 19 in that?
 20 DR. HOWELL:
 21 A. I'm, obviously I'm on the phone talking to Ms.
 22 Bonnell now about what we are going to be
 23 doing.
 24 CHAYTOR, Q.C.:
 25 Q. And this is on November 22nd. We understand

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1 that a briefing in the minister took place
 2 then the next day, the 23rd, and I'll ask you
 3 a bit about that. Do you recall then in that
 4 time frame discussions within your group who
 5 were dealing with the ER/PR issue in not being
 6 in a position to give a detailed briefing at
 7 that point in time, and in particular, part of
 8 that detail including rate of error? Now, was
 9 that discussed with you or with the group or
 10 is this something that Ms. Bonnell is
 11 articulating on her own?
 12 DR. HOWELL:
 13 A. Well, I guess we've had the meeting of the
 14 20th with the staff, we've had the meeting
 15 with the executive management. We're now
 16 going to be going--as I try to piece what the
 17 angles were to this, that the quality and risk
 18 management folks have completed their analysis
 19 and have their numbers, but we have not--it
 20 was only the day before that we are charged to
 21 go away and pull this together. My
 22 presumption was this being the next day, that
 23 we're being asked to do this but it has not
 24 been pulled together. This subgroup that was
 25 referred to has not met. We haven't got that-

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1 -again, I can't recall exactly what the
 2 conversation was that Ms. Bonnell and myself
 3 would have been having at that point. It
 4 probably more was about who's getting together
 5 and when. And getting a group together in our
 6 organization is a challenge at the best of
 7 times considering many of the people that we
 8 would want to be there are active clinicians,
 9 you know, with patients booked.
 10 CHAYTOR, Q.C.:
 11 Q. If we could look at P-0125, please, page 42?
 12 Now, Doctor, this is a, it's referred to a
 13 briefing note. It's on Eastern Health
 14 letterhead. And we understand this is what
 15 was presented to the minister on November 23rd
 16 in the meeting. Is this what you're referring
 17 to in terms of the quality group having had
 18 their numbers now in place. These are the
 19 numbers that we see here?
 20 DR. HOWELL:
 21 A. This would be the summary document that was
 22 prepared and delivered to the minister.
 23 CHAYTOR, Q.C.:
 24 Q. Okay. Did you have any involvement in the
 25 drafting of this document?

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1 DR. HOWELL:
 2 A. No. I think that document would have been
 3 presented to me as it was presented to the
 4 minister. I would think that quality and risk
 5 management folks would have shared that with
 6 Ms. Bonnell and she would have put it in. And
 7 I'm not even certain that that was how it
 8 happened -
 9 CHAYTOR, Q.C.:
 10 Q. That's fine.
 11 DR. HOWELL:
 12 A. - but that it ended up in this document.
 13 CHAYTOR, Q.C.:
 14 Q. I was just wondering if you had any
 15 involvement. The meeting then with the
 16 minister on November 23rd, did you attend?
 17 DR. HOWELL:
 18 A. I did.
 19 CHAYTOR, Q.C.:
 20 Q. And who else?
 21 DR. HOWELL:
 22 A. Mr. Tilley, myself, Dr. Denic, Dr. Laing and
 23 Ms. Bonnell.
 24 CHAYTOR, Q.C.:
 25 Q. And who was there from the department?

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1 DR. HOWELL:
 2 A. This is stretching my memory. I remember us
 3 arriving at Confederation Building and I
 4 believe the house was in session. And so we
 5 were brought up and outside the House of
 6 Assembly and put in a small meeting room off
 7 the House of Assembly and waited for the
 8 minister to come out of the house. And I
 9 think that the minister, his communication
 10 director and -
 11 CHAYTOR, Q.C.:
 12 Q. Tansy Mundon?
 13 DR. HOWELL:
 14 A. Yes, I think it was her. And Mr. Hynes, who I
 15 think was one of his administrative aids.
 16 CHAYTOR, Q.C.:
 17 Q. Darrell Hynes?
 18 DR. HOWELL:
 19 A. I think so.
 20 CHAYTOR, Q.C.:
 21 Q. So those are the three people you recall being
 22 there from government?
 23 DR. HOWELL:
 24 A. That's as best I can remember.
 25 CHAYTOR, Q.C.:

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1 Q. And what about Mr. Abbott, John Abbott, was he
 2 in attendance?
 3 DR. HOWELL:
 4 A. I don't know for certain.
 5 CHAYTOR, Q.C.:
 6 Q. You can't remember that?
 7 DR. HOWELL:
 8 A. I think he was, but I -
 9 CHAYTOR, Q.C.:
 10 Q. Had you ever met Mr. Abbott up until that
 11 point?
 12 DR. HOWELL:
 13 A. I think I met Mr. Abbott once before or maybe
 14 a couple of times before when I think once--
 15 the first time I met Mr. Abbott was he was in
 16 the Health Sciences and he and Dr. Williams
 17 were talking and I met him at that time. And
 18 I think I had one other meeting with him on a
 19 matter relating to Coast Guard or something.
 20 CHAYTOR, Q.C.:
 21 Q. Was that meeting with him and Dr. Williams in
 22 relation to the ER/PR issue?
 23 DR. HOWELL:
 24 A. I have no idea what that meeting was about.
 25 CHAYTOR, Q.C.:

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1 Q. Okay. Did you have, prior to November 23rd,
 2 2006, did you have any meetings with any
 3 departmental officials regarding the ER/PR
 4 issue?
 5 DR. HOWELL:
 6 A. Not to the best of my recollection.
 7 CHAYTOR, Q.C.:
 8 Q. Did you have any discussions with anyone from
 9 the department regarding the issue prior to
 10 November 23rd?
 11 DR. HOWELL:
 12 A. Not to the best of my recollection.
 13 CHAYTOR, Q.C.:
 14 Q. Was Moira Hennessey in attendance at the
 15 November 23rd meeting?
 16 DR. HOWELL:
 17 A. I don't know.
 18 CHAYTOR, Q.C.:
 19 Q. You don't recall her being there?
 20 DR. HOWELL:
 21 A. I don't recall.
 22 CHAYTOR, Q.C.:
 23 Q. Okay. So tell us what you do recall about the
 24 meeting?
 25 DR. HOWELL:

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1 A. Well, remember that this process is a somewhat
 2 a new process to me and I'm not sure how it
 3 plays out and what the protocols are. I
 4 remember saying to Mr. Tilley, I guess I will
 5 play off you and if there's something you wish
 6 me to comment on, I will comment on it,
 7 assuming that the relationship is primarily
 8 between the CEO and the minister. And other
 9 than that, I remember these sheets being
 10 handed around and I remember, I think that
 11 there was a discussion between Dr. Laing and
 12 Mr. Hynes.
 13 CHAYTOR, Q.C.:
 14 Q. And when you say the sheets being handed
 15 around, you mean, this briefing note at -
 16 DR. HOWELL:
 17 A. Yes, this document, this briefing note here
 18 with the numbers.
 19 CHAYTOR, Q.C.:
 20 Q. That's the only document--is that the only
 21 document that you recall?
 22 DR. HOWELL:
 23 A. That's the only one I recall, whether there
 24 was more, I'm not certain.
 25 CHAYTOR, Q.C.:

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1 Q. And Doctor Howell, Ms. Pilgrim isn't in
 2 attendance, she's not at this meeting?
 3 DR. HOWELL:
 4 A. No.
 5 CHAYTOR, Q.C.:
 6 Q. Okay. And so in terms of the division of
 7 responsibility between yourself and her for
 8 the ER/PR issue. I take it this fell within
 9 your camp?
 10 DR. HOWELL:
 11 A. Well, I was asking myself that too in that I
 12 had somewhat of a forward looking view and not
 13 the backward looking view, but the CEO has
 14 asked me to go to this meeting.
 15 CHAYTOR, Q.C.:
 16 Q. It was you he tapped, not Ms. Pilgrim.
 17 DR. HOWELL:
 18 A. He tapped me.
 19 CHAYTOR, Q.C.:
 20 Q. Right, okay. I'm sorry, go ahead then, you
 21 recall a discussion between Doctor Laing and
 22 Mr. Hynes.
 23 DR. HOWELL:
 24 A. And really I have no other memory. I think
 25 the only comment that I made in the meeting

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1 was I just summarized that there had been two
 2 external reviews and -
 3 CHAYTOR, Q.C.:
 4 Q. What did you summarize about the external
 5 reviews?
 6 DR. HOWELL:
 7 A. I don't recall. I remember that I just made
 8 four points that we had done four things and I
 9 don't recall even what that was. It was just
 10 to show that we were taking action, but beyond
 11 that -
 12 CHAYTOR, Q.C.:
 13 Q. So, you recall that you made four points?
 14 DR. HOWELL:
 15 A. Yes.
 16 CHAYTOR, Q.C.:
 17 Q. But you don't recall what those were?
 18 DR. HOWELL:
 19 A. Well, I recall that I said we had done the
 20 technical review, professional review, that we
 21 put in place proficiency testing and there
 22 was--they were four very general points and a
 23 very short statement.
 24 CHAYTOR, Q.C.:
 25 Q. You didn't get into the details of what the

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1 external reviewers found?
 2 DR. HOWELL:
 3 A. Absolutely not.
 4 CHAYTOR, Q.C.:
 5 Q. Was there any request by anyone in the room to
 6 see the reports from the external reviews?
 7 DR. HOWELL:
 8 A. Not that I recall.
 9 CHAYTOR, Q.C.:
 10 Q. And you think that's something you would
 11 recall if that had been requested of you or
 12 Mr. Tilley?
 13 DR. HOWELL:
 14 A. I think I would recall if that had been asked
 15 for.
 16 CHAYTOR, Q.C.:
 17 Q. And was there any detail asked of you in terms
 18 of the findings of the external review
 19 reports?
 20 DR. HOWELL:
 21 A. No, I do not recollect that.
 22 CHAYTOR, Q.C.:
 23 Q. So you just gave your four general points and
 24 no questions arose from that?
 25 DR. HOWELL:

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1 A. No, and again, I was attempting to play off
 2 Mr. Tilley and that if he wished me to make a
 3 point and there might have seemed to be a
 4 natural point at which, like that comment
 5 needed to be made, but it was probably a less
 6 than 30 second blurb.
 7 CHAYTOR, Q.C.:
 8 Q. Yes, and I'm just wondering if it generated
 9 any further questioning from the department?
 10 DR. HOWELL:
 11 A. Not that I recall.
 12 CHAYTOR, Q.C.:
 13 Q. All right, sorry, go ahead, what else do you
 14 recall?
 15 DR. HOWELL:
 16 A. That's really -
 17 CHAYTOR, Q.C.:
 18 Q. Well what about the discussion with Dr. Laing
 19 and Dr. Hynes, what was that about?
 20 DR. HOWELL:
 21 A. I don't--you know, part of my recollection of
 22 that is really hearing others talk about it
 23 since and I remember that there was--my
 24 thoughts at the time were first of all that
 25 the Minister obviously knew Dr. Laing because

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1 he called her Kara, I remember thinking at the
 2 time well there is somewhere along the way the
 3 Minister has had some dealings with Dr. Laing
 4 in the past. And Dr. Laing seemed comfortable
 5 in having a conversation with the Minister.
 6 And I'm thinking I truly am the new person on
 7 the block here and I remember there being a
 8 fairly strident conversation maybe between Mr.
 9 Hynes and Dr. Laing and others have told me
 10 since that it was in reference to deceased
 11 patients.
 12 CHAYTOR, Q.C.:
 13 Q. And who has told you that since?
 14 DR. HOWELL:
 15 A. I can't recall. I honestly can't.
 16 CHAYTOR, Q.C.:
 17 Q. You're on the committee for Eastern Health for
 18 co-ordinating the inquiry?
 19 DR. HOWELL:
 20 A. Yes, that's correct.
 21 CHAYTOR, Q.C.:
 22 Q. And has that been the subject of discussion
 23 and meetings of that committee?
 24 DR. HOWELL:
 25 A. I don't recall that being in that committee,

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1 but I am not certain where my memory was being
 2 jogged about what took place in that meeting.
 3 CHAYTOR, Q.C.:
 4 Q. Okay, is there anything else then you recall
 5 from the November 23rd meeting?
 6 DR. HOWELL:
 7 A. No.
 8 CHAYTOR, Q.C.:
 9 Q. And so the Minister was provided with this
 10 document that we have here on the screen
 11 DR. HOWELL:
 12 A. That's correct.
 13 CHAYTOR, Q.C.:
 14 Q. Which has all of the numbers or all of the
 15 numbers known to that point in time by Eastern
 16 Health?
 17 DR. HOWELL:
 18 A. Correct.
 19 CHAYTOR, Q.C.:
 20 Q. Which referred to the total number of cases,
 21 the total retested being 939; results obtained
 22 and reviewed, there was 763; no change in
 23 results; requires change in treatment as
 24 definition of negative has changed, that's the
 25 threshold that we talked about earlier, I take

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1 it.
 2 DR. HOWELL:
 3 A. Correct.
 4 CHAYTOR, Q.C.:
 5 Q. And there's 13 people. Change in results but
 6 does not require treatment change, there was
 7 213; and changes in results and requires
 8 treatment change, 104; and then there's 176
 9 patients who are deceased and 101 were
 10 retested and results received. And there have
 11 been two retested upon request. "The
 12 remaining 73 will not be retested until the
 13 families approach us." So I take it that was
 14 the position of Eastern Health at that point
 15 in time that the remaining 73 would not be
 16 retested unless requested?
 17 DR. HOWELL:
 18 A. Correct.
 19 CHAYTOR, Q.C.:
 20 Q. And so these numbers were discussed, I take
 21 it, or the information on this page was
 22 discussed during the meeting?
 23 DR. HOWELL:
 24 A. Correct.
 25 CHAYTOR, Q.C.:

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1 Q. Do you recall any discussion in that meeting
 2 as to certain numbers would not be disclosed
 3 in the upcoming media technical briefing?
 4 DR. HOWELL:
 5 A. I do not.
 6 CHAYTOR, Q.C.:
 7 Q. And at the end of the meeting, do you know
 8 whether or not there was any suggestions or
 9 direction coming from the department?
 10 DR. HOWELL:
 11 A. None that were shared with me.
 12 CHAYTOR, Q.C.:
 13 Q. And I take it during this meeting the
 14 department was aware that the technical
 15 briefing was coming up?
 16 DR. HOWELL:
 17 A. I'm certain they were aware. There seemed to
 18 be a steady stream of traffic back and forth
 19 between Ms. Bonnell and Ms. Mundon.
 20 CHAYTOR, Q.C.:
 21 Q. And do you recall perhaps one of the reasons
 22 for this meeting taking place was to brief the
 23 Minister prior to the media technical briefing
 24 itself?
 25 DR. HOWELL:

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1 A. I honestly don't know how that meeting came
 2 about, I mean, typically for me to attend a
 3 meeting at Confederation Building, I would get
 4 a call from Mr. Tilley's executive assistant
 5 saying you have to be at a meeting at 2:00 at
 6 the Confederation Building and it might be
 7 with two hour's notice.
 8 CHAYTOR, Q.C.:
 9 Q. Okay. If we could look at P-1422, page 31,
 10 please. This is back to your handwritten
 11 notes.
 12 REGISTRAR:
 13 Q. I'm sorry, what page was that?
 14 CHAYTOR, Q.C.:
 15 Q. Page 31. Now, Doctor, I didn't see in your
 16 book any notes of the meeting of November
 17 23rd. Did you not take notes of that meeting
 18 with the Minister?
 19 DR. HOWELL:
 20 A. I would presume I did not.
 21 CHAYTOR, Q.C.:
 22 Q. So the next entry we have here, the date is--
 23 we understand this is November 29th, 2006. Is
 24 that correct?
 25 DR. HOWELL:

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1 A. Correct.
 2 CHAYTOR, Q.C.:
 3 Q. And this is regarding ER/PR, and over on the
 4 top of the page, to the right, you've written
 5 "Dan Boone, Susan Bonnell, Nash Denic, Heather
 6 Predham." So I take it this was a meeting
 7 involving those individuals and yourself?
 8 DR. HOWELL:
 9 A. Correct.
 10 CHAYTOR, Q.C.:
 11 Q. And I believe you told us yesterday that this
 12 was probably the subgroup that was to meet to
 13 discuss communication strategy. Is that
 14 correct?
 15 DR. HOWELL:
 16 A. That's correct, although, you know, my very
 17 hazy memory of that is that there were other
 18 people--I mean, I'm sure Dr. Laing had input
 19 to this somewhere along the way. She would
 20 not be going into a technical briefing not
 21 having any knowledge of what we were talking,
 22 but in my notes, this is really the only
 23 meeting that I could find there of this
 24 preparation, other than Ms. Bonnell and I
 25 getting together.

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1 CHAYTOR, Q.C.:
 2 Q. Okay. Now there are more--I will take you
 3 through this. It's brief, but I notice that
 4 December 9th '06, there's much more detail.
 5 This is entitled ER/PR as well, but there's no
 6 indication that this is a meeting. It seems
 7 your practice is if there's a meeting that you
 8 indicate either it's EMC or you indicate
 9 people in attendance. So this note, December
 10 9th notes, are those just your notes of
 11 preparing yourself for the briefing?
 12 DR. HOWELL:
 13 A. Yes, I went through a rather difficult weekend
 14 preparing for this particular briefing.
 15 CHAYTOR, Q.C.:
 16 Q. Okay, and I'll take you through that and you
 17 can tell us all about it. I just want to be
 18 fair to you and when you're saying you thought
 19 Dr. Laing and others would have had--I'm just
 20 wondering if they're in attendance on December
 21 9th when you're going through this more
 22 detailed analysis, but those are your personal
 23 notes? Is that right?
 24 DR. HOWELL:
 25 A. I think these are my notes trying to

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1 understand what's happening.
 2 CHAYTOR, Q.C.:
 3 Q. Okay, and we'll come to that and you can tell
 4 us about it. So let's go back to November
 5 29th, and on this occasion, so what you're
 6 saying is that you recall having discussions
 7 with Dr. Laing as well at some point, but her
 8 name is not mentioned here, so whether she was
 9 in attendance and you didn't write her name
 10 down or whether that was a different time.
 11 DR. HOWELL:
 12 A. If her name wasn't there, more than likely she
 13 was not in that meeting.
 14 CHAYTOR, Q.C.:
 15 Q. Okay, and do you recall then how long this
 16 meeting lasted?
 17 DR. HOWELL:
 18 A. I don't.
 19 CHAYTOR, Q.C.:
 20 Q. Do you recall what was discussed?
 21 DR. HOWELL:
 22 A. I didn't even remember the meeting.
 23 CHAYTOR, Q.C.:
 24 Q. So you don't remember the meeting at all. Do
 25 you recall the purpose of the meeting?

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1 DR. HOWELL:
 2 A. The purpose of the meeting was to, as directed
 3 from the executive management meeting, to
 4 start to put together a technical briefing for
 5 the media.
 6 CHAYTOR, Q.C.:
 7 Q. Okay, and why was Mr. Boone included in the
 8 people who would decide that or prepare for
 9 that?
 10 DR. HOWELL:
 11 A. I'm not sure how he ended up in that group,
 12 but I would presume he was there because we
 13 now had the class action law suit before us
 14 and so he was there as the representative of
 15 the insurer to understand what we were going
 16 forward with.
 17 CHAYTOR, Q.C.:
 18 Q. And perhaps to give some direction on what you
 19 could go forward with? Would that be fair?
 20 DR. HOWELL:
 21 A. Well, to certainly offer his view, I would
 22 think.
 23 CHAYTOR, Q.C.:
 24 Q. And so you have--you can't tell me what was
 25 discussed, other than--because you don't

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1 recall, so this, we rely on your notes, I
 2 guess?
 3 DR. HOWELL:
 4 A. We have to rely on my notes.
 5 CHAYTOR, Q.C.:
 6 Q. And the first notes, number one, you have
 7 "people, conscious decision if could help one
 8 patient. Two, positive should be 75 to 80
 9 percent. We were 84 percent." Do you recall
 10 what's that referring to?
 11 DR. HOWELL:
 12 A. I think it was my trying to understand, you
 13 know, what should our positivity rate have
 14 been, considering, in any given lab with
 15 managing breast cancer cases, what should the
 16 positivity rate be, and being told it would be
 17 75 to 80 percent. I'd be saying what were we?
 18 Answer: 84 percent.
 19 CHAYTOR, Q.C.:
 20 Q. So higher than what the range would be?
 21 DR. HOWELL:
 22 A. That's what the note -
 23 CHAYTOR, Q.C.:
 24 Q. And who provided that information in this
 25 meeting?

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1 DR. HOWELL:
 2 A. I can't say for sure who provided--I mean -
 3 CHAYTOR, Q.C.:
 4 Q. Who would you think that -
 5 DR. HOWELL:
 6 A. - most logically of that group, I would expect
 7 it would be Dr. Denic, but you know, all of
 8 those individuals had been dealing with this
 9 for a considerable period of time and would
 10 have heard much information, more than I had
 11 heard up to this point in time. So I don't
 12 know.
 13 CHAYTOR, Q.C.:
 14 Q. And what did you understand the 84 percent to
 15 be? Was that supposed to be for the time
 16 period of 1997 through to 2005?
 17 DR. HOWELL:
 18 A. I don't know.
 19 CHAYTOR, Q.C.:
 20 Q. And had you ever heard anything different than
 21 that? Anything different than that figure?
 22 DR. HOWELL:
 23 A. No, not that I recall.
 24 CHAYTOR, Q.C.:
 25 Q. And have you since?

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1 DR. HOWELL:
 2 A. You know, I've heard numbers that it should be
 3 in the 75 to 85 percent range.
 4 CHAYTOR, Q.C.:
 5 Q. But in terms of the 84 percent?
 6 DR. HOWELL:
 7 A. No, I don't know where that 84 percent came
 8 from.
 9 CHAYTOR, Q.C.:
 10 Q. And you don't know whether you've heard any
 11 other figure than the 84 percent, either
 12 before or after?
 13 DR. HOWELL:
 14 A. No.
 15 CHAYTOR, Q.C.:
 16 Q. The known false negative rate, five percent.
 17 What was that in relation to?
 18 DR. HOWELL:
 19 A. I think the--maybe just to put in context, as
 20 I look back at that note, as you've seen from
 21 many of my other notes, it is very unusual for
 22 me to write a note that is that sparse, and so
 23 there was considerable discussion about this
 24 is getting into the whole concept of error
 25 rate and what is the error rate and talking

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1 about error versus talking about false
 2 negative rates and there were many opinions,
 3 many numbers being thrown around and it seemed
 4 there were so many variables and so many
 5 different opinions and so many changes that I
 6 was not getting a clear perspective on what
 7 all these numbers meant.
 8 CHAYTOR, Q.C.:
 9 Q. So who was suggesting though, in this group,
 10 the known false negative rate was five
 11 percent?
 12 DR. HOWELL:
 13 A. I don't know who made that statement.
 14 CHAYTOR, Q.C.:
 15 Q. But it was someone in attendance?
 16 DR. HOWELL:
 17 A. Someone would have made a statement that false
 18 negative rate was five percent. I find that
 19 strange because if you look at--it seems to
 20 me, back in the presentation that we looked at
 21 earlier that somebody had mentioned that the
 22 false negative rate was 20 percent, and I
 23 recall Dr. Denic saying that if you reviewed
 24 the literature, it was all over the map in
 25 terms of how high the false negative rate for

Page 97

1 this test could be and that there was
 2 tremendous variability from lab to lab.
 3 CHAYTOR, Q.C.:
 4 Q. And was Dr. Denic saying this in the
 5 presentation you mean or he's saying this on
 6 November 29th?
 7 DR. HOWELL:
 8 A. No, I think back--and I'm not sure it was even
 9 Dr. Denic who made the statement, but I think
 10 so, if we went back and looked at the slides
 11 that--the point being made is that there is a
 12 known false negative rate with this test and
 13 it is quite variable from lab to lab and I had
 14 seen--here I wrote five percent, but I
 15 remember seeing somewhere else it was 20
 16 percent and, you know, I remember saying like
 17 I don't trust any of these numbers. Like
 18 there just doesn't seem to be any clarity
 19 around numbers here for me.
 20 CHAYTOR, Q.C.:
 21 Q. And that was your feeling as of November 29th?
 22 DR. HOWELL:
 23 A. Correct. Well, I don't even remember the
 24 meeting of November the 29th, but from these
 25 notes -

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1 CHAYTOR, Q.C.:
 2 Q. But you'd come to--well, yes, and I'm not
 3 being specific as to that date. My point
 4 being that around this time period, that's the
 5 conclusion you have reached, as opposed to May
 6 2008. Is it like, you know, this early in the
 7 process that you came to the conclusion that
 8 you didn't trust any of the numbers?
 9 DR. HOWELL:
 10 A. You know, I -
 11 CHAYTOR, Q.C.:
 12 Q. Or is that a realization that comes much
 13 later?
 14 DR. HOWELL:
 15 A. No, well, there didn't seem to be any great
 16 clarity to the numbers. And I wasn't sure
 17 whether that was my personal inadequacies of
 18 being unable to digest all these numbers and
 19 these people with--you know, someone would say
 20 a number, but someone would say "but, but" and
 21 explain something else. And I'm there
 22 thinking, so I've got to go into a technical
 23 briefing with the media and I'm going to be
 24 the front person and I don't have any great
 25 comfort level that I understand these numbers.

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1 CHAYTOR, Q.C.:
 2 Q. So you weren't comfortable with what you were
 3 being asked to do?
 4 DR. HOWELL:
 5 A. Well, the CEO had wanted me to do it, I had to
 6 do it, but I did not have a comfort level with
 7 the numbers. And -
 8 CHAYTOR, Q.C.:
 9 Q. And did you talk to Mr. Tilley about that, did
 10 you tell him about your discomfort?
 11 DR. HOWELL:
 12 A. I remember on a Saturday having a--starting
 13 very early in the morning and trying to work
 14 my head around this. And I remember at
 15 lunchtime thinking, I can't do this.
 16 CHAYTOR, Q.C.:
 17 Q. Okay. And that perhaps -
 18 DR. HOWELL:
 19 A. And I did go to the phone, I was going to call
 20 Mr. Tilley and say, "I cannot do this." But I
 21 did, I recognized that now I carried the
 22 mantle and the CEO did expect me to do it and
 23 so I guess I hunkered down and did the best I
 24 could with it.
 25 CHAYTOR, Q.C.:

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1 Q. And did you suggest that Mr.--to Mr. Tilley
 2 when he approached you to do this, that
 3 perhaps he would be the more appropriate
 4 person to be -
 5 DR. HOWELL:
 6 A. I did not.
 7 CHAYTOR, Q.C.:
 8 Q. You didn't. Was there any discussion with him
 9 as to why me?
 10 DR. HOWELL:
 11 A. There was not.
 12 CHAYTOR, Q.C.:
 13 Q. So you didn't let him know then afterwards on
 14 that Saturday when you were having misgivings,
 15 you didn't make that phone call or otherwise
 16 let him know that you were feeling a sense of
 17 discomfort?
 18 DR. HOWELL:
 19 A. I let him know after we did the media briefing
 20 that I had discomfort.
 21 CHAYTOR, Q.C.:
 22 Q. Okay. I'll bring you to that then. If we
 23 could just finish then with this page on the
 24 29th? It goes on, after saying that the known
 25 false negative rate, 5 percent, then Eastern

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1 Health 317/2760. Now, Dr. Howell, what's the
 2 317?
 3 DR. HOWELL:
 4 A. I think that was the negatives that were
 5 changed.
 6 CHAYTOR, Q.C.:
 7 Q. Okay. So the number of people who actually
 8 had conversions?
 9 DR. HOWELL:
 10 A. Change in treatment -
 11 CHAYTOR, Q.C.:
 12 Q. Which was known to Eastern Health at this
 13 point in time?
 14 DR. HOWELL:
 15 A. Right.
 16 CHAYTOR, Q.C.:
 17 Q. Right. So that's the total number of
 18 conversions. And the 2760, 2760?
 19 DR. HOWELL:
 20 A. Was the total number of tests.
 21 CHAYTOR, Q.C.:
 22 Q. Total number of tests, ER/PR tests conducted -
 23 DR. HOWELL:
 24 A. Over the period -
 25 CHAYTOR, Q.C.:

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1 Q. - in the time period that -
 2 DR. HOWELL:
 3 A. - over the time period.
 4 CHAYTOR, Q.C.:
 5 Q. - was retested, okay. Negatives and
 6 positives. And that someone has done the
 7 math. Did you do this math yourself or was
 8 that provided to you, 11.2?
 9 DR. HOWELL:
 10 A. No, I think it was provided to me, but the
 11 math wasn't working for me, as I've suggested,
 12 and I remember there being -
 13 CHAYTOR, Q.C.:
 14 Q. Oh, this figure, this figure wasn't working
 15 for you, the 11.2 percent?
 16 DR. HOWELL:
 17 A. Well, no, it really wasn't working for me
 18 because--and I remember -
 19 CHAYTOR, Q.C.:
 20 Q. Well, that figure would be accurate, though, I
 21 take it, in terms of this is how you did the
 22 math?
 23 DR. HOWELL:
 24 A. Yes, if--I remember there being considerable
 25 discussion, and this is really the only part

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1 that has really retained in my memory is that
 2 there was tremendous discussion about you
 3 can't talk about the error rate. And then
 4 there was argument about, well, what do you
 5 use for the denominator. And I was trying to
 6 follow this line of discussion and thought.
 7 And I realized that this had not been set up
 8 in any scientific way. This was not a
 9 research project. There was really not a lot
 10 of science to this. And you know, to do an
 11 error rate on the test, you'd have to look at
 12 the full cohort, the cohort meaning all of the
 13 people involved, and that had not been done.
 14 And so this whole thing was breaking down, as
 15 I've suggested, for me, in terms of any
 16 scientific analysis. So that I remember at
 17 some point getting back to, okay, like, these
 18 numbers are not working for me. So, why do we
 19 do this? You know, let's go back to why we
 20 did this. And it was to find that patient
 21 that might benefit from a further treatment
 22 change. And so when that was all distilled
 23 down, that was the pertinent number and we
 24 ended up with that number of 117. And to me
 25 that was bad enough, 117 was, to me, a bad

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1 enough number.
 2 CHAYTOR, Q.C.:
 3 Q. Okay. So that was at your suggestion, to
 4 concentrate on the 117?
 5 DR. HOWELL:
 6 A. No, I don't think that was particularly my
 7 suggestion. It was many people discussing how
 8 to do this and in the end seeming to be going
 9 around in circles and ultimately drawing back
 10 to that point.
 11 CHAYTOR, Q.C.:
 12 Q. Who was having the argument about what, you
 13 know, what do you use for the denominator, who
 14 was engaged in that kind of discussion?
 15 You're saying ultimately you came to a
 16 consensus, but who was saying one thing and
 17 someone else saying something else?
 18 DR. HOWELL:
 19 A. Everybody participated in the discussion. I
 20 don't have a recollection that any one person
 21 was particularly more strident or insistent
 22 than another.
 23 CHAYTOR, Q.C.:
 24 Q. Okay. And, Doctor, then, I just want to
 25 understand. Your concern to do an error rate

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1 or the concern that was expressed in the
 2 meeting to do an error rate regarding the
 3 test, you would need all of the results
 4 retested, I take it? So, for example, when we
 5 look here to the conversion or the calculation
 6 which is made, 317 patients having converted,
 7 and then putting the denominator as being
 8 2760, I take it that's where the discussion
 9 arose as to the denominator, well, can you
 10 really use that as your denominator when we
 11 haven't tested or retested all 2760 people?
 12 DR. HOWELL:
 13 A. That's correct.
 14 CHAYTOR, Q.C.:
 15 Q. That's correct, okay. Was there any
 16 discussion as opposed to trying to calculate
 17 an error rate on the test to calculate an
 18 error rate with respect to those, the
 19 subgroup, those who had, in fact, been
 20 retested?
 21 DR. HOWELL:
 22 A. Not that I recall.
 23 CHAYTOR, Q.C.:
 24 Q. So that didn't cross anyone's mind, that we
 25 can say, well, we've retested over 900, 317 of

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1 them have converted, why don't we just look
 2 at, well, what was our rate of error regarding
 3 those people?
 4 DR. HOWELL:
 5 A. No, not that I recall. It was, the discussion
 6 was just a discussion about how we portray the
 7 numbers and knowing full well that the media
 8 were going to be most interested in knowing
 9 the error rate.
 10 CHAYTOR, Q.C.:
 11 Q. Okay.
 12 DR. HOWELL:
 13 A. And so the discussion ensued as to how do you
 14 give that number, what meaning does that
 15 number have and if you haven't done that
 16 properly and scientifically, how can you do
 17 that. The added part in that discussion was
 18 that the whole discussion about what is part
 19 of the expected false negative rate with this
 20 test and how do you effectively communicate
 21 that to the media and the public. And then
 22 the final, I guess, layer and caveat to that,
 23 which I guess is why Mr. Boone was there, is
 24 now that there is now a class action lawsuit
 25 in which all of this will be discussed in the

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1 court and ultimately the court will decide on
 2 error, should you even be talking about error.
 3 CHAYTOR, Q.C.:
 4 Q. Yes. And we can have more of a discussion
 5 about that, the use of the word "error". But
 6 certainly you could talk about the rate of
 7 conversions?
 8 DR. HOWELL:
 9 A. Right. But, you know, as I reflect back on
 10 this now, why in the name of God we just did
 11 not--what we should have done is that same
 12 document that we handed to the minister, we
 13 should have given out in the media briefing.
 14 CHAYTOR, Q.C.:
 15 Q. Yes, okay. And, Doctor, before I leave that
 16 point, because I think we're overdue for the
 17 morning break -
 18 COMMISSIONER:
 19 Q. We are.
 20 CHAYTOR, Q.C.:
 21 Q. We are. Just before we leave it, though, if I
 22 could just ask one more question on that? The
 23 discussion of the false negative rate and the
 24 number of 20 percent that you recall having
 25 heard of, not 5 percent, the discussion of it

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1 being 20 percent or the understanding of it
 2 being as high as 20 percent for this
 3 particular test, I hear what you're saying,
 4 117 is bad enough, 317, of course, is a lot
 5 worse. And when you do the math of 317 over
 6 960 whatever, test, you're well above the 20
 7 percent. Was that discussed?
 8 DR. HOWELL:
 9 A. Through, again, the detail of what was
 10 discussed, I am sure that that particular
 11 fraction would have come up in that discussion
 12 because the whole discussion is over what
 13 numerator, what denominator, particularly what
 14 denominator and so the short answer is I'm
 15 sure that would have been discussed somewhere
 16 in all of those equations that were being
 17 talked about.
 18 CHAYTOR, Q.C.:
 19 Q. Okay. Thank you. Commissioner, this is a
 20 convenient point.
 21 COMMISSIONER:
 22 Q. All right then, we'll take 15 minutes.
 23 (RECESS)
 24 COMMISSIONER:
 25 Q. Please be seated. Ms. Chaytor.

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1 CHAYTOR, Q.C.:

2 Q. Thank you, Commissioner. If we could go back,

3 please, to 1422, page 31? Doctor, this is

4 your note from November 29th meeting. And it

5 concludes then with 104 had a change of

6 treatment plan. And then there's some numbers

7 over on the side, 1997 through 2004, the

8 number of total tests, number reviewed and 104

9 having a treatment change. And then you've

10 got at the bottom here, is that an "A" "Susan

11 to draft notes for me."

12 DR. HOWELL:

13 A. A for action, action item.

14 CHAYTOR, Q.C.:

15 Q. Okay. And the numbers that we have over on

16 the right, the total number of tests, the

17 number reviewed and then the number of

18 treatment changes. Was that the outcome of

19 this meeting in terms of any numbers that

20 would be discussed at the media technical

21 briefing?

22 DR. HOWELL:

23 A. I think this was just the raw numbers that I

24 was trying to distil down to some sense of

25 understanding for me.

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1 CHAYTOR, Q.C.:

2 Q. Okay. And is there any reason we don't see

3 then reflected in that list the number 317

4 being the total number of conversions? We had

5 seen it up here when you were figuring out a

6 false negative rate.

7 DR. HOWELL:

8 A. You know, no specific reason other than those

9 points that I have made in prior testimony.

10 CHAYTOR, Q.C.:

11 Q. So what was the outcome of the meeting then on

12 November 29th?

13 DR. HOWELL:

14 A. The outcome was that Ms. Bonnell, with her

15 team, would start to pull together the

16 components for a technical briefing.

17 CHAYTOR, Q.C.:

18 Q. Okay. And then if we look at December 9th,

19 2006. And I take it were there any other

20 meetings of this group that was put together

21 for the communication strategy?

22 DR. HOWELL:

23 A. Not of which I'm aware.

24 CHAYTOR, Q.C.:

25 Q. And nothing that you have notes of?

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1 DR. HOWELL:

2 A. None that I have notes of.

3 CHAYTOR, Q.C.:

4 Q. And, of course, without your notes you didn't

5 recall this meeting?

6 DR. HOWELL:

7 A. That's correct.

8 CHAYTOR, Q.C.:

9 Q. Okay. And the next page, then, refers to

10 December 9th, 2006, ER/PR. And there are a

11 number of those notes. This goes on through

12 up to at least page 35, it appears. Four,

13 five, page 36, actually, continues, it

14 appears. And, Doctor, again, you have this in

15 your binder there. Can you tell us what--are

16 these your personal notes, I believe you said

17 earlier?

18 DR. HOWELL:

19 A. That's correct.

20 CHAYTOR, Q.C.:

21 Q. Okay. And so what's going on on December 9th?

22 This is two days now before the media

23 technical briefing is to take place.

24 DR. HOWELL:

25 A. I think I'm still struggling to understand and

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1 put into some context in my mind everything

2 from the science to the chronology and history

3 of events to the numbers, and I'm just trying

4 to build it from the bottom up starting with

5 what's the test about.

6 CHAYTOR, Q.C.:

7 Q. Okay. And, actually, before I take you

8 through that, perhaps if we could have 0487,

9 page 86? This actually chronologically comes

10 before your notes of December 9th. This is

11 December 6th, 2006, meeting of executive

12 management. And you'll see the list of people

13 in attendance includes yourself. And I

14 believe that there is discussion then on page

15 87 about the upcoming media briefing, ER/PR,

16 estrogen and progesterone, patient review,

17 media briefing. "Dr. Howell advised that next

18 week there will be a briefing to the media on

19 ER/PR. Susan Bonnell is involved in preparing

20 the media briefing. Executive discussed the

21 pros and cons of going back to the media on

22 this issue, including the limitations in light

23 of the fact that the findings in the review

24 are protected under the Evidence Act. However,

25 executive was supportive of moving forward

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1 with the media briefing, including the
 2 technical briefing to cover areas such as
 3 chronology of events, understanding of the
 4 principles and practices of disclosure,
 5 understanding the ER/PR test." Now, Dr.
 6 Howell, it appears there was some concerns
 7 being expressed by the executive, there was a
 8 discussion of the pros and cons given the
 9 limitations in light of the fact of the
 10 findings of the review being protected. Whose
 11 idea was it then to hold this media briefing?
 12 Was there any person or group advocating for
 13 going out to the public with the information
 14 from the ER/PR testing review?
 15 DR. HOWELL:
 16 A. With certainty I can't say where any given
 17 member of the executive was on that particular
 18 issue, but if there was anyone who would be
 19 saying you must go out, I believe it would be
 20 Ms. Bonnell.
 21 CHAYTOR, Q.C.:
 22 Q. Okay. So she was an advocate for public
 23 disclosure?
 24 DR. HOWELL:
 25 A. I believe that is so.

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1 CHAYTOR, Q.C.:
 2 Q. And what about the department, was the
 3 department urging Eastern Health to go out
 4 with something?
 5 DR. HOWELL:
 6 A. That would have been--those conversations
 7 would have been at a level that I would not be
 8 party to, so I have--no, the short answer is
 9 not that I have knowledge of.
 10 CHAYTOR, Q.C.:
 11 Q. Okay. So it wasn't discussed in the November
 12 23rd meeting with the minister, that the
 13 minister would like to see something out
 14 there, was -
 15 DR. HOWELL:
 16 A. Not that I recall.
 17 CHAYTOR, Q.C.:
 18 Q. Okay. So I take it based on the minutes, and
 19 it appears that you're tasked with this, we
 20 see your name under "Action", it's yourself
 21 and Ms. Bonnell. And I take it based on
 22 what's written here that there was some
 23 acknowledgment about, by the executive that
 24 there would be limitations placed on what
 25 could be said at the media briefing?

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1 DR. HOWELL:
 2 A. I believe that to be correct.
 3 CHAYTOR, Q.C.:
 4 Q. And that seems to be, the concern seems to be,
 5 at least what's written here, is around the
 6 findings of the review being protected under
 7 the Evidence Act. Is that your recollection
 8 of the executive's concern?
 9 DR. HOWELL:
 10 A. Again, the two issues, the belief that the
 11 reviews were protected by the Evidence Act and
 12 the fact that there was a class action
 13 lawsuit.
 14 CHAYTOR, Q.C.:
 15 Q. Okay. Was there any concern expressed by the
 16 executive as to disclosing all the numbers?
 17 DR. HOWELL:
 18 A. Not that I recall.
 19 CHAYTOR, Q.C.:
 20 Q. Now, of course, this is, this meeting takes
 21 place after your November 29th meeting. And
 22 did you raise with the executive concerns that
 23 had been expressed in that meeting regarding
 24 the full numbers being disclosed?
 25 DR. HOWELL:

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1 A. I don't recall how the discussion went with
 2 the executive. Other than what's written in
 3 the notes, I would not recall how that
 4 conversation would have gone.
 5 CHAYTOR, Q.C.:
 6 Q. Was the executive part of the decision not to
 7 disclose the full numbers?
 8 DR. HOWELL:
 9 A. I can't say yes or no in whether every member
 10 of the executive was party to that decision.
 11 I would suspect more the answer to that would
 12 be no, but I cannot say with certainty.
 13 CHAYTOR, Q.C.:
 14 Q. Okay. And then who--the decision was made, I
 15 take it then, at the November 29th meeting as
 16 to what numbers would be discussed or does
 17 that come later?
 18 DR. HOWELL:
 19 A. I'm thinking there had to be more
 20 communication that was going on through that
 21 next week, but I have no notes of those
 22 meetings. So how it all translated into--I
 23 think Ms. Bonnell would have developed a draft
 24 from the conversation from what she's heard,
 25 probably would have had some discussions with

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1 Ms. Predham and then would have developed a
 2 draft that probably would have been shared
 3 with all parties. And it would not be unusual
 4 that that would go through multiple drafts
 5 before we ended up with a final document.
 6 CHAYTOR, Q.C.:
 7 Q. Okay. And then it goes on, the minutes, to
 8 say, "On a related note, Dr. Howell advised
 9 that," first bullet, "Dr. K Laing has agreed
 10 to stay on as clinical chief. Campaign by
 11 oncologists to resign effective January 1,
 12 2007 is ongoing." is the second bullet. And
 13 what was that about and how was that related
 14 to the ER/PR testing review?
 15 DR. HOWELL:
 16 A. That had nothing to do with ER/PR testing. It
 17 related to the remuneration scale that was
 18 used for paying oncologists and the situation
 19 that we had a clinical chief and we had
 20 divisions chiefs of radiation oncology and
 21 medical oncology who had administrative duties
 22 and they felt that under the memorandum of
 23 understanding with government about their
 24 thresholds of pay, there was a--there were so
 25 many new patients one would see and beyond

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1 that threshold there was additional payments,
 2 as I understand it, that an oncologist would
 3 receive. The oncologists in leadership
 4 positions felt that it was not, the amount of
 5 time that they had to put into administrative
 6 duties was not adequately reflected in the
 7 threshold that should be used for their
 8 payment.
 9 CHAYTOR, Q.C.:
 10 Q. Okay. So even though that comes under the
 11 heading here, 3.7, which is the ER testing
 12 review and it's noted to be on a related note,
 13 what you're saying is that's not correct,
 14 that's a totally separate issue?
 15 DR. HOWELL:
 16 A. I think the only reason it would have been
 17 there is that to me that was a threat to
 18 delivering the service to cancer patients and
 19 I probably talked about it in this particular
 20 part of the meeting.
 21 CHAYTOR, Q.C.:
 22 Q. Okay. If we could look now, then, please, at
 23 P-0183? And this is, you've indicated that
 24 there probably were other discussions then
 25 going on that week leading up to the media

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1 briefing of December 11th. And we do have a
 2 couple of e-mail exchanges and whether or not
 3 there were discussions, I can't point you to
 4 notes of any meetings, but there certainly are
 5 a couple of e-mail exchanges that I can point
 6 you to. And this one at P-0183 is e-mail
 7 exchange from Susan Bonnell to yourself, Dr.
 8 Denic, Dr. Laing, Heather Predham, Leona
 9 Barrington. And the subject is forwarding
 10 error rate. And attachments is a technical
 11 briefing agenda, key messages, a draft press
 12 release and technical briefing. So I take it,
 13 and this is December 7th, 2006. I take it
 14 this is the package or the draft package that
 15 Ms. Bonnell has put together?
 16 DR. HOWELL:
 17 A. I would think that's true.
 18 CHAYTOR, Q.C.:
 19 Q. She indicates, "Attached to this e-mail you
 20 will see Heather's explanation of our error
 21 rate. This is not to be shared with the
 22 media, but I thought you would like to see it
 23 for your own understanding." She goes on to
 24 say, "Dr. Howell, Leona and I will be meeting
 25 on Sunday afternoon to review for Monday. You

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1 are welcome to join us for this briefing.
 2 Leona will be booking two media briefings for
 3 Monday, beginning at 10 and 11:30. The first
 4 briefing will be for three CBC reporters and
 5 the second for The Telegram, The Independent,
 6 NTV and VOCM."
 7 First of all, on that, before I forget,
 8 Dr. Howell, why was it proposed that there be
 9 two separate briefings? CBC would have their
 10 own briefing, why would that be?
 11 DR. HOWELL:
 12 A. I think there was a large number of CBC
 13 reporters who wished to attend.
 14 CHAYTOR, Q.C.:
 15 Q. It says here it's going to be three, three CBC
 16 reporters.
 17 DR. HOWELL:
 18 A. Yes, I don't know. There were more than that
 19 that were in that briefing, as I remember.
 20 CHAYTOR, Q.C.:
 21 Q. More showed up?
 22 DR. HOWELL:
 23 A. I think so, but that was an area of detail
 24 that I was not -
 25 CHAYTOR, Q.C.:

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1 Q. And you didn't question that. You didn't say
 2 "well, why are we having to do this twice?"
 3 You were reluctant to do it once.
 4 DR. HOWELL:
 5 A. I didn't want to do it once, but no, I was
 6 doing what I had to do, and they were
 7 organizing that part.
 8 CHAYTOR, Q.C.:
 9 Q. So you didn't ask why, and your understanding
 10 was that it was because CBC had a lot of
 11 reporters? Is that it?
 12 DR. HOWELL:
 13 A. Correct, and CBC, I guess, seemed to be really
 14 maybe interested in this even more than
 15 others. I don't know why, but -
 16 CHAYTOR, Q.C.:
 17 Q. Okay, so we'll take that up with Ms. Bonnell.
 18 Okay, it continues on in her e-mail then, she
 19 says "going to begin the briefing session with
 20 an explanation that this is an unprecedented
 21 event because of the" and that should be
 22 "class action, but that we believe we had an
 23 obligation to inform the general public about
 24 our outcomes and to provide the reporters with
 25 an opportunity to fully understand the test

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1 procedure and our actions since May 2005, so
 2 that they can report effectively on the issue.
 3 However, because of the law suit, we are
 4 limited in what we can talk about in terms of
 5 causative factors" and that appears to be
 6 consistent with what we just looked at from
 7 the executive management, not wanting to look
 8 at the findings from the external reviews.
 9 "This will have to be dealt with by the
 10 Courts. Secondly, we will not be talking
 11 about any individual cases." I guess that
 12 makes sense because it's patient information.
 13 "This information is protected and can only be
 14 discussed between the patient and care
 15 provider."
 16 She then goes on and asks you to review
 17 what she's forwarding. "I am very open to
 18 your concerns, suggestions, ideas, etcetera.
 19 Following our meeting with Dan, I think I have
 20 a sense of how far we can go, but Heather will
 21 be sharing all of this as well as the Q & A
 22 with him and I hope to get his feedback as
 23 well," and I take it that refers to Dan Boone
 24 and the meeting that you had had on the 29th?
 25 DR. HOWELL:

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1 A. That's correct.
 2 CHAYTOR, Q.C.:
 3 Q. And it appears that Heather Predham is going
 4 to also provide him with further information
 5 and solicit his further feedback.
 6 DR. HOWELL:
 7 A. Correct.
 8 CHAYTOR, Q.C.:
 9 Q. Okay. Now at this point in time, it appears
 10 that the limitations on what you would be
 11 discussing, at least as articulated here, is
 12 the causative factors and she indicates
 13 that'll be dealt with by the Courts, and
 14 "secondly, we will not be talking about
 15 individual patients." Now I appreciate at the
 16 top, she's attaching what Heather is
 17 calculating, "here is the document attached in
 18 terms of Heather's calculations on error
 19 rates" and she does indicate at the top that
 20 "this is not to be shared with the media." So
 21 that particular document, I would take it.
 22 But was it also decided at this point in time
 23 that no discussion of error rate would take
 24 place or conversion rate?
 25 DR. HOWELL:

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1 A. As I recall, we were--that's correct, we were
 2 not going to talk about error rate.
 3 CHAYTOR, Q.C.:
 4 Q. Yes, but was that decided on December 7th or
 5 does that come later?
 6 DR. HOWELL:
 7 A. I think that decision was probably made back
 8 more in November 29th and, you know, that's
 9 why I say, I believe there were--that you
 10 know, there were discussions. It just seems
 11 to me that there was a lot of discussion that
 12 was happening somewhere through this period of
 13 time to finally get to that decision and that
 14 final document and what that technical
 15 briefing was going to look like.
 16 CHAYTOR, Q.C.:
 17 Q. And do you have any specific recollection as
 18 to who you were having those discussions with?
 19 DR. HOWELL:
 20 A. No, but the principle players would be the
 21 people, for example, that you see that e-mail
 22 addressed to.
 23 CHAYTOR, Q.C.:
 24 Q. Okay. If we could look at 0184, please? And
 25 we're now to the Saturday, December 9th, the

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1 Saturday that I'm sure you're going to give us
 2 some more detail about when we look at your
 3 notes. But it certainly appears as of this
 4 date, the limitation on what can be disclosed
 5 has been expanded to the total number of test
 6 results that converted, and if we look at
 7 this, it's an e-mail from Susan Bonnell, again
 8 the date, December 9th, and it goes to
 9 yourself, along with Heather Predham, Leona
 10 Barrington, Dr. Laing, Dr. Denic, J. Bussey at
 11 Stewart McKelvey and Dan Boone at Stewart
 12 McKelvey, and George Tilley and it's
 13 "materials for tomorrow."
 14 So I take it whatever feedback that Susan
 15 has solicited in terms of the draft materials,
 16 she's now received and she's now attaching the
 17 materials for the technical briefing.
 18 And this says "hello again, everyone.
 19 Following conversations with Nash, Heather,
 20 Dan and Oscar, I have revised the original
 21 drafts in anticipation for our meeting at one
 22 p.m. tomorrow" and she says "we can make
 23 further revisions at that point, and I will
 24 bring copies with me. Please note that I have
 25 added speaking notes to the slides, especially

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1 for Oscar, less so for Kara and Nash," and I
 2 assume that's because you were the least
 3 familiar with all this and perhaps the least
 4 comfortable? Is that fair, Doctor?
 5 DR. HOWELL:
 6 A. That is a fair statement.
 7 CHAYTOR, Q.C.:
 8 Q. Okay. "I guess the most significant change
 9 you will note from the original material is
 10 the lack of reference to a rate of error." So
 11 it appears that she changed what had been in
 12 her draft material and what's coming forward
 13 now. She says the most significant change
 14 from her original material is the lack of
 15 reference to a rate of error. "We can
 16 anticipate that this will be a major pressing
 17 point with the media." So Susan is
 18 anticipating that's going to be a major
 19 pressing point, but it's been revised from
 20 what she originally proposed, and it's now no
 21 reference to rate of error. "But the approach
 22 we will be taking here is that (a) we can't
 23 indicate that an error is actual"--and I take
 24 it that should be "has actually occurred, and
 25 (b) the whole process wasn't about identifying

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1 a rate of error anyways. It was about
 2 identifying patients whose treatment would
 3 change as a result of the review and the
 4 panelling. Hence, the number of individuals
 5 impacted has changed from 104 to 117" and that
 6 was taking into account the additional 13 who,
 7 in fact, I think it's because of the new
 8 definition of positivity, she says, would have
 9 been offered Tamoxifen.
 10 DR. HOWELL:
 11 A. Um-hm.
 12 CHAYTOR, Q.C.:
 13 Q. "We won't be spelling it out like that
 14 though." And then she goes on regarding "re:
 15 the dead, we must also be prepared. Our
 16 statement will need to be that in almost a
 17 ten-year period, individuals have died, either
 18 as a result of their breast cancer or for a
 19 number of reasons."
 20 So Doctor, it appears that what Susan
 21 Bonnell originally prepared did reference
 22 something in the way of a rate of error?
 23 DR. HOWELL:
 24 A. That's correct.
 25 CHAYTOR, Q.C.:

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1 Q. That is correct? Do you recall that?
 2 DR. HOWELL:
 3 A. I don't recall it, but I'm certain that by
 4 that e-mail that--that's why I think there
 5 was, between November 29th and that, that
 6 there were drafts prepared and must have been
 7 being reviewed and comments being received
 8 because adjustments are being made.
 9 CHAYTOR, Q.C.:
 10 Q. And again she says, at the beginning, that
 11 this is following conversations with Nash,
 12 Heather, Dan, Dan Boone I take it, and
 13 yourself.
 14 DR. HOWELL:
 15 A. Um-hm.
 16 CHAYTOR, Q.C.:
 17 Q. So you were a part of the discussions in which
 18 the revisions were made.
 19 DR. HOWELL:
 20 A. And that is the group that met on November the
 21 29th, so you know, in reading that, I would
 22 have thought she's reflecting back to that
 23 meeting, but I can't be certain.
 24 CHAYTOR, Q.C.:
 25 Q. And she was in attendance at that meeting as

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1 well though?

2 DR. HOWELL:

3 A. She was.

4 CHAYTOR, Q.C.:

5 Q. And the materials she distributed apparently

6 after that meeting did include a rate of

7 error?

8 DR. HOWELL:

9 A. Yes.

10 CHAYTOR, Q.C.:

11 Q. Okay. So certainly by December 9th, the

12 decision has been made, in consultation with

13 those group of key players, which include

14 yourself, to not refer to a rate of error?

15 DR. HOWELL:

16 A. Correct.

17 CHAYTOR, Q.C.:

18 Q. And I take it, Dr. Howell, in terms of--we

19 don't see Ms. Pilgrim's name here.

20 DR. HOWELL:

21 A. No.

22 CHAYTOR, Q.C.:

23 Q. And we don't see Mr. Tilley's name, while he's

24 involved though, it is forwarded to him.

25 DR. HOWELL:

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1 A. No, Mr. Tilley has it and -

2 CHAYTOR, Q.C.:

3 Q. It's sent to him.

4 DR. HOWELL:

5 A. Absolutely.

6 CHAYTOR, Q.C.:

7 Q. Do you recall then in terms of between

8 yourself and Ms. Pilgrim, it appears that you

9 are the person who's managing this aspect.

10 DR. HOWELL:

11 A. That's correct.

12 CHAYTOR, Q.C.:

13 Q. Did you then discuss this with Mr. Tilley and

14 get any direction from him on whether or not

15 to disclose the total number of patients?

16 DR. HOWELL:

17 A. I do not recall that discussion. I think as

18 you see from the e-mail, I know that he's

19 aware and I'm presuming that Ms. Bonnell is

20 dealing with the CEO on this.

21 CHAYTOR, Q.C.:

22 Q. And I take it you received nothing back from

23 him disagreeing with the approach?

24 DR. HOWELL:

25 A. No, and I mean, I think, since in preparation

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1 for my testimony, I've seen a document where--

2 that I didn't recall, where--an e-mail where

3 he said "carry on, you know, this is important

4 work. Good work," but no, I had no contact

5 with Mr. Tilley during this period.

6 CHAYTOR, Q.C.:

7 Q. In those discussions that you had, leading up

8 to this, was there any discussion as to,

9 "well, what will happen? What will our plan

10 be or what will Eastern Health's position be

11 should the total number of conversions become

12 known at a later date?"

13 DR. HOWELL:

14 A. At this point in time, there was no

15 discussion, no thought of that. It was

16 totally in preparation for the technical

17 briefing for the media.

18 CHAYTOR, Q.C.:

19 Q. And according to Ms. Bonnell, she notes that

20 she anticipates that a key focus or a major

21 pressing point, in her words, for the media

22 would be the rate of error. So I take it that

23 was well known amongst the group?

24 DR. HOWELL:

25 A. That's correct.

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1 CHAYTOR, Q.C.:

2 Q. And I just want to understand if the word

3 "error" was of some concern, what was wrong

4 with talking about the total number of

5 conversions?

6 DR. HOWELL:

7 A. The -

8 CHAYTOR, Q.C.:

9 Q. Forget the word "error" but talk about the

10 total number of people who had converted.

11 DR. HOWELL:

12 A. As I recall from the discussion, it would be

13 that--again, it goes back to that overall

14 discussion that to release all the numbers

15 will immediately have people starting to apply

16 their own equations and their own formulas and

17 come to their conclusions, and even in the

18 group who was intimately involved and had, I

19 guess, were used to the science world and

20 talking about rates of error and false

21 negative rates and so on, that doing those

22 sorts of calculations, what was the relevance

23 of that, and that wrong conclusions could be

24 derived from that.

25 In retrospect, it would have been much

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1 better to release all of those numbers and
 2 then deal with that exactly in talking to the
 3 press, talk about the formulas. That should
 4 have been what happened.
 5 CHAYTOR, Q.C.:
 6 Q. And I gathered that from your comments before
 7 the break.
 8 DR. HOWELL:
 9 A. Correct.
 10 CHAYTOR, Q.C.:
 11 Q. That if you had your time back to do this
 12 again, you would have simply handed out all
 13 the information that was in the briefing note
 14 given to the Minister on November 23rd.
 15 DR. HOWELL:
 16 A. And done my best then to anticipate how people
 17 would do the calculations and try to explain
 18 them why that may or may not be a valid
 19 conclusion.
 20 CHAYTOR, Q.C.:
 21 Q. If we could then look back please at 1422,
 22 page 32, and these, Doctor, are your notes
 23 that we came to a few moments ago, and you've
 24 explained this is you trying to get yourself
 25 ready, basically, for the December 11th

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1 briefing.
 2 DR. HOWELL:
 3 A. Correct.
 4 CHAYTOR, Q.C.:
 5 Q. And you've started with, over on the left, we
 6 have process, and you start with "breast
 7 tissue" and then something in the formula.
 8 DR. HOWELL:
 9 A. Right, that -
 10 CHAYTOR, Q.C.:
 11 Q. Formalin, sorry, formalin.
 12 DR. HOWELL:
 13 A. - that's the temperature, centigrade, the Ph
 14 solution.
 15 CHAYTOR, Q.C.:
 16 Q. Okay, and this is--so you're really giving
 17 yourself a fairly detailed education on this.
 18 Are you referring back to the presentation
 19 that took place on November 20th? Is that -
 20 DR. HOWELL:
 21 A. I'm probably drawing from many sources and
 22 trying to put it all together.
 23 CHAYTOR, Q.C.:
 24 Q. Okay.
 25 DR. HOWELL:

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1 A. Before I appear before the media.
 2 CHAYTOR, Q.C.:
 3 Q. Yes, and "no standardized IHC testing
 4 worldwide," and we certainly saw reference to
 5 that in Dr. Denic's presentation, and this
 6 history, so then you go through the history or
 7 the chronology, I guess it is, of what lead to
 8 the retesting and on from there.
 9 DR. HOWELL:
 10 A. Um-hm.
 11 CHAYTOR, Q.C.:
 12 Q. What do we have top of page 34? What does
 13 that say?
 14 DR. HOWELL:
 15 A. I don't know. It's not my writing.
 16 CHAYTOR, Q.C.:
 17 Q. Not your writing? Looks like there was a
 18 post-it note placed on here and says "must
 19 have been" looks to me like "group meeting."
 20 DR. HOWELL:
 21 A. Yeah. I don't know. I think that was Mr.
 22 Simmons' colleague when we were photocopying
 23 these records, but I don't know what that--
 24 that is not my writing and I don't know why
 25 that's there.

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1 CHAYTOR, Q.C.:
 2 Q. Okay, and those -
 3 MR. SIMMONS:
 4 Q. I can say that in the hurry of getting them
 5 copied, I think that was a post-it note which
 6 should have--that got stuck on.
 7 CHAYTOR, Q.C.:
 8 Q. And it doesn't belong to these notes?
 9 MR. SIMMONS:
 10 Q. And it doesn't belong to this.
 11 CHAYTOR, Q.C.:
 12 Q. Thank you, Mr. Simmons. So Dr. Howell, this
 13 isn't notes taken from the group meeting then?
 14 DR. HOWELL:
 15 A. No, no, this is -
 16 CHAYTOR, Q.C.:
 17 Q. This is your own education session or from a
 18 group meeting, is that what you're saying?
 19 DR. HOWELL:
 20 A. It's me still trying to work my way through,
 21 not only what happened here, but I'm trying to
 22 ultimately arrive at the patient.
 23 CHAYTOR, Q.C.:
 24 Q. Dr. Howell, these notes though, what my
 25 question is, were these being taken while

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1 you're in a meeting with any other people?
 2 DR. HOWELL:
 3 A. No, these were coming from multiple sources.
 4 Could be coming from my own reading. It could
 5 be from a multitude of sources.
 6 CHAYTOR, Q.C.:
 7 Q. Okay, and then your next section is treatment,
 8 and then you list down some detail about the
 9 treatment, Tamoxifen. Into the next page,
 10 you're still talking about treatment,
 11 aromatase inhibitors, and then you've got
 12 "impact of false negative, unnecessary chemo,
 13 not best treatment" is it?
 14 DR. HOWELL:
 15 A. Correct.
 16 CHAYTOR, Q.C.:
 17 Q. Increase in recurrence rate?
 18 DR. HOWELL:
 19 A. Correct.
 20 CHAYTOR, Q.C.:
 21 Q. Decrease in survival?
 22 DR. HOWELL:
 23 A. Correct.
 24 CHAYTOR, Q.C.:
 25 Q. And the stress of retesting and uncertainty.

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1 So that was your understanding of the impact
 2 that false negatives could have on patients?
 3 DR. HOWELL:
 4 A. Correct.
 5 CHAYTOR, Q.C.:
 6 Q. And then we see that sticky again, which we're
 7 ignoring. It's on this page as well. Okay,
 8 and this page then, actions, and even though
 9 we have a gap, I take it this is still your
 10 notes of December 9th, trying to get yourself
 11 ready?
 12 DR. HOWELL:
 13 A. Yes, and it's not unusual for me to leave a
 14 gap, only in that I might think of something
 15 else that pertains to that section. I think
 16 all my colleagues know I'm a little bit anal
 17 in having to have the detail flow in a certain
 18 way.
 19 CHAYTOR, Q.C.:
 20 Q. Okay. Hence, we have a doctor whose notes we
 21 can read. Actions, then we have what Eastern
 22 Health did in terms of stop testing, having
 23 external technical review, external
 24 professional review, a designated team,
 25 technologists and pathologists. What does

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1 this mean when you draw your arrows backwards?
 2 What do you mean by that?
 3 DR. HOWELL:
 4 A. It means that there was regular--there was
 5 training, it was done on a regular basis and
 6 it's done for technologists and it's done for
 7 pathologists.
 8 CHAYTOR, Q.C.:
 9 Q. So this is indicating that they were having
 10 regular training?
 11 DR. HOWELL:
 12 A. Correct.
 13 CHAYTOR, Q.C.:
 14 Q. Okay, all right, and then you indicate, of
 15 course, the external proficiency program which
 16 we've talked about, and then you have a list
 17 of questions. Now are these questions that
 18 you, yourself, were anticipating the media
 19 might have of you?
 20 DR. HOWELL:
 21 A. I'm not sure. They might be questions that I
 22 thought I would get asked about, but they
 23 might also be questions that I had for myself.
 24 CHAYTOR, Q.C.:
 25 Q. Okay. Now Ms. Bonnell had offered, I believe,

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1 that there was going to be a meeting on
 2 Sunday. Did you attend that meeting?
 3 DR. HOWELL:
 4 A. I did.
 5 CHAYTOR, Q.C.:
 6 Q. You did, okay, and who else attended that
 7 meeting?
 8 DR. HOWELL:
 9 A. I'm not certain who was at that meeting.
 10 CHAYTOR, Q.C.:
 11 Q. Other than yourself and Ms. Bonnell?
 12 DR. HOWELL:
 13 A. Yes, other than the two of us. I know she put
 14 the invite out to the others, but I'm not
 15 certain whether--you know, certainly I would
 16 have wanted, if at all possible, Dr. Denic and
 17 Dr. Laing to be there and if I had to guess,
 18 and it would be a guess, I would think that
 19 they were there, but they both have young
 20 families and so.
 21 CHAYTOR, Q.C.:
 22 Q. Okay, and so these questions, you don't know
 23 if these were just your own or if this may
 24 have been in consultation with anyone else?
 25 DR. HOWELL:

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1 A. No, again, they would be questions that could
 2 be that I anticipated I might be asked and
 3 bothered me, or it might be that they were
 4 questions that I sought answers for myself,
 5 regardless of what anyone in the media might
 6 want to know.
 7 CHAYTOR, Q.C.:
 8 Q. Okay, and number four is what did go wrong?
 9 DR. HOWELL:
 10 A. Um-hm.
 11 CHAYTOR, Q.C.:
 12 Q. Number six is what were recommendations of
 13 external reviewers, and number seven, how many
 14 people did we meet with?
 15 DR. HOWELL:
 16 A. Correct.
 17 CHAYTOR, Q.C.:
 18 Q. Okay, and at this point in time, while you're
 19 contemplating that those may be questions
 20 you're asked, what did go wrong and what were
 21 the recommendations of the external reviewers,
 22 those two questions, you understand that you
 23 will not be able to speak to? Is that
 24 correct?
 25 DR. HOWELL:

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1 A. I know that I certainly have limitations in
 2 what I can say in those areas.
 3 CHAYTOR, Q.C.:
 4 Q. And then we go on to the next page, and again,
 5 this does have a post-it note appears to have
 6 been put on the top, "must have been group
 7 meeting" and then there's key messages. Is
 8 this, in fact, coming out of a group meeting
 9 or is this, again, just your own thoughts?
 10 DR. HOWELL:
 11 A. No, this is--I would presume that is again Mr.
 12 Simmons' colleague, but these would be some of
 13 my own thoughts, but these keys messages, this
 14 part obviously would have been in some of the
 15 meetings I would have had with the rest of
 16 that group, with Ms. Bonnell, etcetera.
 17 Again, as I'm sure you'll bring up in a few
 18 minutes, you know, they do Q's and A's for
 19 you.
 20 CHAYTOR, Q.C.:
 21 Q. Yes, and we'll get to those.
 22 DR. HOWELL:
 23 A. But I have to do my own thing, and so I'm
 24 doing my own thing.
 25 CHAYTOR, Q.C.:

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1 Q. So this is still just you doing your own
 2 thing?
 3 DR. HOWELL:
 4 A. Correct.
 5 CHAYTOR, Q.C.:
 6 Q. And the key message that you've come down
 7 under history, and I take it this would be a
 8 key message, it appears that it was in quotes,
 9 "if only one patient can benefit, we have to
 10 do this."
 11 DR. HOWELL:
 12 A. Correct.
 13 CHAYTOR, Q.C.:
 14 Q. So that was to be a key message that would be
 15 delivered?
 16 DR. HOWELL:
 17 A. That's correct.
 18 CHAYTOR, Q.C.:
 19 Q. And the under "Results", you have "104
 20 patients recommended for a change in
 21 treatment, communicate with responsible
 22 treatment doctor." So there's no reference to
 23 the results in terms of total number of
 24 conversions?
 25 DR. HOWELL:

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1 A. No.
 2 CHAYTOR, Q.C.:
 3 Q. And then under 8) "Actions Taken" you do have
 4 "reviewed all cases" and I'm not sure what--
 5 looks like something scratched out here, but
 6 then "(900), set new recommendations,
 7 communicate with doctor, make sure best
 8 treatment offered with current knowledge", is
 9 that correct?
 10 DR. HOWELL:
 11 A. Correct.
 12 CHAYTOR, Q.C.:
 13 Q. And again, I don't want to--these are points
 14 that we've already talked about, the other
 15 steps that were taken, external reviews. And
 16 again, this is still your own notes, is that
 17 right?
 18 DR. HOWELL:
 19 A. Correct.
 20 CHAYTOR, Q.C.:
 21 Q. The next page? Page 40?
 22 DR. HOWELL:
 23 A. That's correct.
 24 CHAYTOR, Q.C.:
 25 Q. I believe we're at 40, yes, okay. And you

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1 have three more questions, "Why send tests out
 2 for retesting?" Number two, "Rate of error-
 3 how many converted." And, "Where do we go
 4 from here?" So this is still your own
 5 thinking, is that right.
 6 DR. HOWELL:
 7 A. That's correct.
 8 CHAYTOR, Q.C.:
 9 Q. And you are contemplating again that you're
 10 going to be asked about how many people
 11 converted?
 12 DR. HOWELL:
 13 A. Correct.
 14 CHAYTOR, Q.C.:
 15 Q. And here you have "What was conversion rate?"
 16 And the points you have written down are
 17 "facing legal action, not a research protect,
 18 patient care, total number of conversions not
 19 relevant, each case was treated individually,
 20 looked at current history and status, best
 21 treatment. We don't have a number, such a
 22 number would not be meaningful. No longer
 23 positive or negative" you now refer to one
 24 percent. Now, Doctor, "facing legal action,
 25 total number of conversions not being relevant

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1 and we don't have a number, such a number
 2 would not be meaningful." Those are your
 3 thoughts?
 4 DR. HOWELL:
 5 A. No, that would arising now from the discussion
 6 and I'm thinking about, okay, this is a key
 7 question and how are we dealing with this
 8 question?
 9 CHAYTOR, Q.C.:
 10 Q. So this is your trying to get your thoughts in
 11 order as to how you will deal with this
 12 question of what was the conversion rate,
 13 given the limitations that are surrounding the
 14 issue and what you can and cannot say?
 15 DR. HOWELL:
 16 A. That's correct, and as in my earlier testimony
 17 that I was struggling with the numbers in any
 18 case.
 19 CHAYTOR, Q.C.:
 20 Q. And you were a part, though of that decision.
 21 DR. HOWELL:
 22 A. I was.
 23 CHAYTOR, Q.C.:
 24 Q. And the person who was managing the issue for
 25 Eastern Health when that decision was made?

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1 DR. HOWELL:
 2 A. That is correct.
 3 CHAYTOR, Q.C.:
 4 Q. How is it that the total number of conversions
 5 is not relevant?
 6 DR. HOWELL:
 7 A. It's the numbers are not relevant, what was
 8 relevant is why was it done? It was done to
 9 find those patients who would benefit from a
 10 treatment change, that's what was important.
 11 That's why the project was undertaken and so
 12 that the most relevant number was that number,
 13 117, which as I said was distressing enough.
 14 CHAYTOR, Q.C.:
 15 Q. Did you realize that some of the people who
 16 did not require a treatment change, did not
 17 require a change because they were already on
 18 Tamoxifen or a similar drug because their
 19 cancer had already metastasized?
 20 DR. HOWELL:
 21 A. Can you repeat the question again? Sorry.
 22 CHAYTOR, Q.C.:
 23 Q. Were you aware that some people did not
 24 require a treatment change because they were
 25 already on Tamoxifen or a similar drug because

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1 their cancer had already metastasized?
 2 DR. HOWELL:
 3 A. You know, I certainly would have had
 4 discussions with the oncologists about some of
 5 the treatment decisions and things that they
 6 were making, but again, what I understood that
 7 they had done when they went into this
 8 project, it was to find the people who could
 9 benefit from hormone treatment and had not
 10 received that. So that was the focus of, I
 11 guess my thinking that this had all taken
 12 place around.
 13 CHAYTOR, Q.C.:
 14 Q. Those women or patients would not be part of
 15 the 117, but they would be included in the
 16 broader number of 317. If the number of total
 17 people who had conversions is not a relevant
 18 number, why was Eastern Health even keeping
 19 track of that number?
 20 DR. HOWELL:
 21 A. It's a very--I mean, it is still a relevant
 22 number to--I mean to say that the total number
 23 of conversions is not relevant I think is an
 24 incorrect statement, it was relevant and we do
 25 need to under--I mean, trying to get that test

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1 to be as accurate as it possibly can be and
 2 have the false negative rate as low as
 3 reasonable achievable is an expectation that
 4 we should have of our laboratory.
 5 CHAYTOR, Q.C.:
 6 Q. So, Doctor, I want to be fair to you on this
 7 because you wrote this on December 9th, 2006.
 8 You've already told the Commissioner if you
 9 had your time back to do this again, you would
 10 have given out those numbers. So sitting here
 11 now, today, May 2008, do you--do I take it
 12 that you no longer are of the opinion that the
 13 total number of conversions is not relevant
 14 and you're no longer of the opinion that such
 15 a number would not be meaningful?
 16 DR. HOWELL:
 17 A. Every single one of those numbers are
 18 important, every number. And I hope that we
 19 can evolve to a stage and I think I gave
 20 testimony to this earlier, whereby we can
 21 extract data in a manner that is efficient and
 22 effective and accurate that will allow us to
 23 be constantly monitoring this and if such an
 24 event occurs again, I never want to be facing
 25 a situation where I don't have confidence in

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1 the data and that I'm in a situation where I
 2 can't understand the data.
 3 CHAYTOR, Q.C.:
 4 Q. Yes. And, Doctor, here under this topic that
 5 you've written "what was conversion rate",
 6 you've said "we don't have a number", that's
 7 not correct, you gave the number to the
 8 Minister just a few days before, so there was
 9 such a number.
 10 MR. SIMMONS:
 11 Q. But there wasn't a rate given to Mr.
 12 Ottenheimer.
 13 CHAYTOR, Q.C.:
 14 Q. No, but the numbers were there by which you
 15 can calculate the rate and in fact, in your
 16 meeting on November 29th, there were some
 17 rudimentary calculations.
 18 DR. HOWELL:
 19 A. The numbers were there and calculations were
 20 being done, but as I said, a lot of that math
 21 didn't add up for me. And it didn't see to
 22 add up for others and that was part of my
 23 dilemma.
 24 CHAYTOR, Q.C.:
 25 Q. Rate of error, you've written "Our focus is

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1 treating the patients".
 2 DR. HOWELL:
 3 A. Treating the patient.
 4 CHAYTOR, Q.C.:
 5 Q. "We have not identified an error."
 6 DR. HOWELL:
 7 A. Uh-hm.
 8 CHAYTOR, Q.C.:
 9 Q. Now, Doctor, on December 9th, 2006, was that
 10 an accurate statement?
 11 DR. HOWELL:
 12 A. If you took a--if I were to take any given
 13 cancer patient and have them sit down in my
 14 office who had had their treatment changed and
 15 I would have to say to them, here is the error
 16 that caused your change in the result on that
 17 test, there would not be one thing that I
 18 would point to. Best what I could do with
 19 them is share with them the results of the
 20 external reviews and say here's what was found
 21 and here's what we fixed.
 22 CHAYTOR, Q.C.:
 23 Q. Well I guess you could, if an individual
 24 patient asked to have that happen, I guess
 25 their slides could be reviewed, their original

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1 slides and it could be identified whether or
 2 not any of the issues identified by Dr.
 3 Banerjee pertained to their particular case.
 4 But overall, Doctor, "we have not identified
 5 an error", does it matter if it's an error or
 6 a multitude of errors?
 7 DR. HOWELL:
 8 A. What would matter is that there is a
 9 significant number--and again, I'm in a little
 10 bit over my head in talking about some of
 11 this, but in any given test, accepting that
 12 there is the tests are never, from a
 13 scientific point of view, one hundred percent
 14 correct, that there will be this false
 15 negative rate, a false positive rate, but that
 16 we must always get that as low as is
 17 reasonably possible. And in order to do that,
 18 we've seen the things that you must do in
 19 order to make that happen and then you must
 20 layer on the proficiency testing around that
 21 to ensure that if you are diverting at all--
 22 and then, of course, you have to lay on the
 23 education and all the other pieces to make
 24 sure you're keeping up with the current
 25 science, so that's the best way that I can

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1 describe it. If we were to talk about error,
 2 one would have to point to the findings of the
 3 external reviewers.
 4 THE COMMISSIONER:
 5 Q. And do you think you could have done that?
 6 DR. HOWELL:
 7 A. The, as I under -
 8 THE COMMISSIONER:
 9 Q. If you had a patient come through the door at
 10 this stage and that was a patient that you
 11 knew had "converted" and that patient said
 12 what I would suspect patients would be
 13 inclined to say, "what went wrong, how could I
 14 didn't get the "right" result?" What would
 15 you have said?
 16 DR. HOWELL:
 17 A. I think I would go back through the
 18 recommendations from the external review and
 19 say there were areas of improvement that were
 20 needed in that lab that would have reduced the
 21 likelihood that we would have ended up with a
 22 false negative rate or false negative result
 23 on your particular test.
 24 THE COMMISSIONER:
 25 Q. So why couldn't you have said that on the day?

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1 DR. HOWELL:
 2 A. I think we should have. I think we should
 3 have put all the numbers out and try to
 4 explain it to the best of our ability.
 5 THE COMMISSIONER:
 6 Q. Was there a protocol or a standard response
 7 developed which might have been used by either
 8 physicians, general physicians of the day,
 9 were dealing with patients or oncologists when
 10 they were dealing with patients as to how to
 11 explain why the results had now changed or was
 12 that left to the individual physician?
 13 DR. HOWELL:
 14 A. There is a disclosure policy that, I think
 15 you've probably seen, but that really was
 16 aimed more at the individual event or case,
 17 rather than a large scale case. So I'm not
 18 aware of a protocol, Commissioner, that we
 19 would say -
 20 THE COMMISSIONER:
 21 Q. I'm just wondering whether in light of this,
 22 because the plan was, as I understood it, that
 23 when the results came back, then it would be
 24 reviewed by the panel. If it was a case where
 25 the panel believed that a change in treatment

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1 was warranted, that would be communicated with
 2 the patient via their treating physician, who
 3 I believe at least one and perhaps more
 4 witnesses have said would normally--would
 5 probably for most of them have been an
 6 oncologist, although for a number it would be
 7 a general practitioner to whom they would have
 8 been referred back after their course of
 9 treatment were over. And what I was wondering
 10 was whether or not there was developed for
 11 this disparate group of people, it was not
 12 like there was only one oncologist going to be
 13 dealing with them, there were a number, a
 14 commonly accepted explanation?
 15 DR. HOWELL:
 16 A. Not that I'm aware, Commissioner. I cannot
 17 recall having seen such a protocol.
 18 THE COMMISSIONER:
 19 Q. Sorry, Ms. Chaytor.
 20 CHAYTOR, Q.C.:
 21 Q. Thank you, Commissioner. So, Doctor, you've
 22 indicated that you would have put all the
 23 numbers out there. If you had to do it again,
 24 would you be articulating that we have not
 25 identified an error?

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1 DR. HOWELL:
 2 A. I would put the numbers out there and I would
 3 talk to the way that--I would try to
 4 anticipate how people might calculate their
 5 own numbers. I would try to provide
 6 explanations for that, I would draw -
 7 CHAYTOR, Q.C.:
 8 Q. I'm not talking about error rate, I'm talking
 9 about "have not identified an error"?
 10 DR. HOWELL:
 11 A. I would be talking to the external review and
 12 the findings of the external review, but
 13 again, remember at that time my understanding
 14 was that the external reviews were protected
 15 by the Evidence Act and there were limitations
 16 in how they could be used and that also there
 17 was the class action lawsuit and that
 18 discussions around error would be dealt with
 19 in a court of law.
 20 CHAYTOR, Q.C.:
 21 Q. How much of a factor, in terms of limiting
 22 what was said on December 11th, 2006, was the
 23 litigation?
 24 DR. HOWELL:
 25 A. You know, my recollection was that that was an

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1 influence but it was not the predominant
 2 influence, I think there was more an influence
 3 around the whole discussion around the
 4 numbers.
 5 CHAYTOR, Q.C.:
 6 Q. What was the predominant factor then?
 7 DR. HOWELL:
 8 A. Well it was both of, you know, it was the
 9 whole debate around the numbers and what they
 10 meant and what did we do and why did we do it,
 11 and then there was, on top of that, the whole
 12 class action lawsuit and how did that
 13 influence about what you could talk about that
 14 was later going to appear in a court of law.
 15 CHAYTOR, Q.C.:
 16 Q. But if there hadn't been the class action
 17 lawsuit, would there have even been any debate
 18 over those numbers?
 19 DR. HOWELL:
 20 A. I, I mean, that would be yes, but I think
 21 there still would have been debate over the
 22 numbers. Listening to people talk and the
 23 varying view points about the numbers, I think
 24 that people still would have been struggling
 25 with the numbers.

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1 CHAYTOR, Q.C.:
 2 Q. So who, who was saying what? Small group of
 3 people, it's Dr. Laing, what was she saying?
 4 DR. HOWELL:
 5 A. I honestly cannot reflect back and say that
 6 any one person was in a stronger camp than
 7 another about talking about the numbers.
 8 CHAYTOR, Q.C.:
 9 Q. So Dr. Denic, Heather Predham?
 10 DR. HOWELL:
 11 A. All of those individuals would have had view
 12 points and all I can tell you is that me
 13 coming into that group and listening to them
 14 talk, I certainly had difficulty achieving a
 15 clarity of view about talking about that
 16 subject.
 17 CHAYTOR, Q.C.:
 18 Q. And I take it you, with the fresh perspective
 19 that I referred to yesterday, didn't offer any
 20 advice to them or to try to dissuade the
 21 concern of releasing all of the information?
 22 DR. HOWELL:
 23 A. When faced with a group of people who were
 24 very knowledgeable in their fields, who had
 25 been living this for quite a number of months

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1 and had strong view points, and my not able to
 2 achieve a comfort level on the numbers myself
 3 or what they meant, the best that I could do
 4 was draw back to why did you do it?
 5 CHAYTOR, Q.C.:
 6 Q. Well and we appreciate that they are experts
 7 in their field, but Dr. Denic is a
 8 pathologist, Dr. Laing is an oncologist. The
 9 person who has expertise in communications and
 10 what the public may or may not want is Susan
 11 Bonnell. Susan Bonnell, you've told us was
 12 advocating for fuller disclosure. Why would,
 13 why would it be that the advice of others,
 14 than Ms. Bonnell, would be the advice which
 15 was followed?
 16 DR. HOWELL:
 17 A. I can offer no more explanation or clarity
 18 than that which I have already provided.
 19 CHAYTOR, Q.C.:
 20 Q. The next page of your notes, page 41, you've
 21 written "All along we have been in contact
 22 with the patients impacted, talking to
 23 patients, talking to family, talking to
 24 supporters." So where are you getting that
 25 information?

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1 DR. HOWELL:
 2 A. I think this, you know, would have been
 3 information that would have come from Ms.
 4 Predham and would have been part of what I
 5 would have heard in some of the discussions
 6 and the people that were getting ready to do
 7 this.
 8 CHAYTOR, Q.C.:
 9 Q. And you've got "took so long" and then you
 10 have a number of bullets, I guess trying to
 11 explain why the process took as long as it
 12 did. And coming down under, towards the
 13 bottom you have "phone/meet with patient,
 14 family, let digest, meet again." Did you
 15 understand that patients were phoned or met
 16 with or perhaps patients and their family and
 17 then they were given a period of time to let
 18 the information digest and then there were
 19 meetings again?
 20 DR. HOWELL:
 21 A. That's what I understood.
 22 CHAYTOR, Q.C.:
 23 Q. And who told you that?
 24 DR. HOWELL:
 25 A. That would predominantly come from Ms.

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1 Predham.
 2 THE COMMISSIONER:
 3 Q. Sorry, can I just run back to that reference
 4 again, either have phone/meet with patient, I
 5 presume that's family or patient or family, is
 6 that either they're phoned or they're met with
 7 and then you meet with them again, or is it a
 8 phone call, a meeting and a second meeting?
 9 DR. HOWELL:
 10 A. My understanding, Commissioner, is that both
 11 events had happened, some patients were
 12 phoned, sometimes there were meetings with
 13 patients.
 14 THE COMMISSIONER:
 15 Q. And then a second meeting?
 16 DR. HOWELL:
 17 A. That was my understanding. Not in all cases,
 18 but in -
 19 THE COMMISSIONER:
 20 Q. Where requested, is that it?
 21 DR. HOWELL:
 22 A. That was my understanding.
 23 THE COMMISSIONER:
 24 Q. I suppose what I'm asking is whether or not,
 25 for example when somebody called an

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1 individual, as I understand it a number of
 2 patients were actually telephoned, would that
 3 patient at the end of the conversation
 4 understand that he or she should feel free to
 5 seek a meeting with somebody or another
 6 contact for better fuller information or even
 7 if they just suddenly had a question about
 8 what they were informed about on the phone?
 9 DR. HOWELL:
 10 A. Those mechanics are best talked to in
 11 logistics with Ms. Predham, but I know that
 12 some of these patients were, you know, the
 13 oncologist had meet with them. I think Dr.
 14 Denic and Dr. Laing had met with some people,
 15 has I recollect.
 16 THE COMMISSIONER:
 17 Q. All right.
 18 CHAYTOR, Q.C.:
 19 Q. And the next page, 42, you've written a note
 20 to yourself "What went wrong?" and then you
 21 have four bullets, "There is no one thing that
 22 we can identify." Secondly, "Complex test
 23 that has multiple steps." Thirdly, "We have
 24 had changes in oncology and pathology
 25 practice." And fourthly, "Use today's science

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1 knowledge, understanding." So, Doctor, I take
 2 it that's what you came up with yourself that
 3 you would respond with, should you be asked
 4 what went wrong?
 5 DR. HOWELL:
 6 A. Well it wasn't just me coming up with that,
 7 that would have been in discussion with, you
 8 know, those other individuals, in particular
 9 Ms. Bonnell. But it was again, me trying to
 10 formulate in my mind how I might explain to
 11 people.
 12 CHAYTOR, Q.C.:
 13 Q. Doctor, having read Dr. Banerjee and Ms.
 14 Wegrynowski's reports, how comfortable were
 15 you with giving that type of an answer?
 16 DR. HOWELL:
 17 A. Well certainly to bullet one, there's no one
 18 thing that we can identify. I mean, if I read
 19 those reports, there were multiple things that
 20 could be -
 21 CHAYTOR, Q.C.:
 22 Q. So what's wrong with saying that? There's not
 23 one thing but there were a number of things,
 24 we've worked on that and we're doing better.
 25 What's wrong with saying that?

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1 DR. HOWELL:
 2 A. Nothing, and I think that's what I said. I
 3 think that's what I said.
 4 CHAYTOR, Q.C.:
 5 Q. That you actually said the next day or the day
 6 after?
 7 DR. HOWELL:
 8 A. Somewhere along the way I think I said, I
 9 remember an interview where someone asked me
 10 if--I'm trying to think what the reporter's
 11 question was. It may have been has anyone
 12 lost their job or has anyone been fired.
 13 Somewhere along the way I alluded that there
 14 was not just one thing, there were--it was a
 15 complex--and then it sort of feeds into the
 16 next one, it is a complex process and that
 17 there were many elements, not just one thing.
 18 CHAYTOR, Q.C.:
 19 Q. Well let's look at P-428, page 7. This is an
 20 interview that you did, December 12th, 2006
 21 with CBC TV and perhaps there was more said
 22 than what's recorded here, but Chris O'Neill-
 23 Yates says "it all started here in the
 24 pathology lab at the Health Sciences Complex.
 25 Breast tumor tissue was tested to determine

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1 hormone levels, one indicator that is used to
 2 come up with treatment. But in May 2005, the
 3 lab discovered that some of the tests were
 4 giving false results. Eastern Health still
 5 can't say what went wrong." And then you're
 6 quoted as saying, "There's not one thing along
 7 that process that I can look at you and say
 8 we've identified that is the event or that
 9 person made an error, there's not one place
 10 along that where we have identified this." Is
 11 that an accurate quote from you, Doctor?
 12 DR. HOWELL:
 13 A. I believe that is accurate.
 14 CHAYTOR, Q.C.:
 15 Q. And, Doctor, again my question is what's wrong
 16 with saying, well yes, there's not one person
 17 I can point at or one particular event, but
 18 there were a number of things that we have
 19 reason to believe went wrong or weren't done
 20 appropriately and that we've now addressed
 21 that?
 22 DR. HOWELL:
 23 A. You know, I could say that, I guess what I'm
 24 trying to do is point out that there isn't one
 25 thing, but you're right, I could have also

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1 added in that that there were a multitude of
 2 things in areas of improvement that could have
 3 taken place here. But again, I guess I'm
 4 struggling with the advice that I'm getting
 5 that those external reports are protected by
 6 the Evidence Act and you've got a class action
 7 lawsuit where errors--I mean, that is in the
 8 back of your mind as you're trying to deal
 9 with this technical briefing and then the
 10 subsequent media interviews and layer that on
 11 top of the fact of your own personal
 12 discomfort that you haven't owned this until
 13 90 days ago, creates a challenge.
 14 CHAYTOR, Q.C.:
 15 Q. And you do acknowledge that later in the
 16 interview that you are limited in what you can
 17 say because of the litigation, "the class
 18 action lawsuit, you know, is what it is.
 19 People have a right, if they have a concern
 20 and feel wrong, to enter the legal system and
 21 will follow through and certainly it does
 22 change the rules somewhat on what you can talk
 23 about." And, Doctor, my question is that how
 24 comfortable do you feel today in terms of
 25 saying that there's no one thing that we can

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1 identify? How comfortable are you with that
 2 answer and whether or not you think that that
 3 answer could be, quite frankly, misleading?
 4 DR. HOWELL:
 5 A. I mean, when I look back at and reflect, as I
 6 said earlier in testimony, my view in this has
 7 always been the forward looking view. It's
 8 how do I make this lab as good as any in the
 9 country? How do I support the people who are
 10 working there to ensure that happens? And how
 11 do I layer on the protection, the pick up if
 12 it's not delivering at the level it should,
 13 and I think we have done that. To my comfort
 14 level about telling the public about what went
 15 wrong here, I can only draw back on the
 16 professionals that were brought in and had the
 17 expertise to look at that lab and then say,
 18 these are the issues. And what I read in
 19 those reports is it was not one thing, there
 20 were many things that could have been done
 21 better.
 22 CHAYTOR, Q.C.:
 23 Q. Yes, but that's not what was told to the
 24 public.
 25 DR. HOWELL:

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1 A. Well what was told to the public is that there
 2 was not one thing and again -
 3 CHAYTOR, Q.C.:
 4 Q. The missing point is there were multiple
 5 things.
 6 DR. HOWELL:
 7 A. Yes, and I guess I tried to explain to you
 8 that the people around me were placing some
 9 constraints on that discussion.
 10 CHAYTOR, Q.C.:
 11 Q. And those people are whom?
 12 DR. HOWELL:
 13 A. It would be all the parties in this who were
 14 debating what the numbers were and what the
 15 numbers meant. It would have been Mr. Boone,
 16 to some degree, in terms of the class action
 17 law suit. It would have been the Evidence
 18 Act. It was--I don't think there's anything
 19 new that I can add to what I've contributed so
 20 far.
 21 CHAYTOR, Q.C.:
 22 Q. Thank you. If we could go back then to 1422,
 23 and I think it's the last page of your notes
 24 for that day, 43, and "questions from public,
 25 number one, how did it happen? How many

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1 people impacted? Can patients feel confident
 2 in results? What has been done," I guess, "to
 3 ensure"--can you read that, Doctor?
 4 DR. HOWELL:
 5 A. Fixed.
 6 CHAYTOR, Q.C.:
 7 Q. Fixed, thank you. So those again were some
 8 questions that you were anticipating may be
 9 asked of you? Is that what that is?
 10 DR. HOWELL:
 11 A. I think that's true, yes.
 12 CHAYTOR, Q.C.:
 13 Q. Now Doctor, there were speaking notes prepared
 14 for you going into the technical briefing, and
 15 there were question and answers that you've
 16 alluded to earlier. Given your discomfort in
 17 going into this and with not having quite the
 18 same knowledge or background in dealing with
 19 the issues as others who took part, did you
 20 stick with your speaking notes for the most
 21 part or stick with the answers provided to the
 22 Q and A's?
 23 DR. HOWELL:
 24 A. I can't attest that I particularly stuck to
 25 that. That would not typically be my style,

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1 you know. The normal course of events of
 2 there being a query come in from the media and
 3 a question typically goes through the
 4 communications folks. It might then come to
 5 me. There would be a discussion about what
 6 some of the issues were and there would be an
 7 attempt to gather the data, and then these
 8 questions and answers are put together, and I
 9 would read them and try to digest it and might
 10 look for more, but in the end, I don't have
 11 those in front of me when I--even in that
 12 technical briefing, while that was there in
 13 the outline underneath, that is not my style
 14 to be reading through that, and certainly when
 15 I'm doing an interview with the media, you
 16 know, I don't have those things before me.
 17 It's try to answer it to the best of your
 18 knowledge.
 19 CHAYTOR, Q.C.:
 20 Q. Okay. So Ms. Bonnell got the materials over
 21 to you a couple of days before or a day--
 22 certainly drafts of it were going back and
 23 forth, and you did meet with her on Sunday
 24 afternoon.
 25 DR. HOWELL:

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1 A. I did.
 2 CHAYTOR, Q.C.:
 3 Q. Okay, and I take it you did read the materials
 4 that she prepared?
 5 DR. HOWELL:
 6 A. I did.
 7 CHAYTOR, Q.C.:
 8 Q. Did you take issue with any of the material,
 9 any of the proposed answers to questions or
 10 any of the proposed notes which were given to
 11 you as speaking notes?
 12 DR. HOWELL:
 13 A. Not that I recall.
 14 CHAYTOR, Q.C.:
 15 Q. If we could have 1410, please.
 16 DR. HOWELL:
 17 A. Might I make one other comment?
 18 CHAYTOR, Q.C.:
 19 Q. Sure, yes, absolutely.
 20 DR. HOWELL:
 21 A. I guess as I--as that rather lonely weekend
 22 occurred and I reflected on Sunday night, I
 23 think the only thing that really gave me the
 24 comfort level to proceed with that the
 25 following day was the fact that I knew that I

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1 did have Dr. Laing on one side of me and Dr.
 2 Denic on the other side and that I knew that
 3 Ms. Predham was in the room, as was Ms.
 4 Bonnell, so that I had to--and this is not to
 5 deflect from the fact that I now carried the
 6 mantel and I carried the responsibility, but
 7 as I tried to get myself through this event,
 8 it was the fact that those people who had the
 9 knowledge and had lived and breathed this for
 10 many months were beside me in this particular
 11 encounter.
 12 CHAYTOR, Q.C.:
 13 Q. 1410, please, and this, Doctor, you probably
 14 recognize. It's the slide presentation from
 15 December 11th 2006, and I take it this went
 16 through--the slide presentation was done for
 17 both the briefings, for both lots of media?
 18 Is that right?
 19 DR. HOWELL:
 20 A. That's correct.
 21 CHAYTOR, Q.C.:
 22 Q. I won't take you through all of this, but just
 23 point out a couple of things, and it's
 24 yourself, as you've indicated, and Dr. Denic
 25 and Dr. Laing, and your speaking notes are on

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1 the bottom of the slides here, and obviously
 2 that would just have been your speaking notes,
 3 and the chronology. Under chronology, in your
 4 speaking notes here, it refers to the Tumor
 5 Board panel. "By October, we began to review
 6 the first results from Mount Sinai. Eastern
 7 Health established a Tumor Board to review all
 8 of the test results. This panel of experts
 9 continued to meet every week for the next
 10 eight months as the results flowed in." Did
 11 you understand that the panel met every week
 12 for an eight-month period?
 13 DR. HOWELL:
 14 A. Yes, I thought they met every Tuesday evening.
 15 CHAYTOR, Q.C.:
 16 Q. Okay, and coming down, the last paragraph,
 17 "unfortunately we experienced unanticipated
 18 delays in getting results back as Mount Sinai
 19 was experiencing workload and human resource
 20 issues. Disclosures had already begun and the
 21 issue became public in October. We conducted
 22 numerous media interviews, purchased
 23 advertising and contacted all patients
 24 directly by telephone to let them know about
 25 the review." So is that what you understood

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1 that all the patients had been contacted by
 2 telephone in October?
 3 DR. HOWELL:
 4 A. I understood that the patients had all been
 5 contacted. That's correct.
 6 THE COMMISSIONER:
 7 Q. By telephone?
 8 CHAYTOR, Q.C.:
 9 Q. By telephone?
 10 DR. HOWELL:
 11 A. I think my understanding was that that was the
 12 decided method that they had chosen to contact
 13 patients, yes.
 14 CHAYTOR, Q.C.:
 15 Q. And again, Ms. Bonnell wrote those notes for
 16 you?
 17 DR. HOWELL:
 18 A. She did.
 19 CHAYTOR, Q.C.:
 20 Q. "Since that point, we have had thousands of
 21 phone calls with individuals and we have kept
 22 open the lines of communication for any
 23 individual or their family members who have
 24 had questions and concerns." Who told you
 25 that?

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1 DR. HOWELL:
 2 A. That would have been what I would have
 3 understood from Ms. Predham and Ms. Bonnell.
 4 CHAYTOR, Q.C.:
 5 Q. Okay, and then under the next slide, still
 6 dealing with the chronology, you refer to the
 7 protection from disclosure recognized in the
 8 Evidence Act, and do you know how--do you know
 9 if this, if any of this you actually would
 10 have spoken to during the briefing? Did you
 11 actually speak about the Evidence Act and any
 12 restrictions that placed on you, in terms of
 13 your ability to disclose information?
 14 DR. HOWELL:
 15 A. I don't recall, but as I said, I wasn't
 16 following the speaking notes to the letter.
 17 The only thing that I can attest that I did do
 18 is at the beginning of the event say that we
 19 were somewhat hampered in what we could talk
 20 about, as a result of the class action law
 21 suit.
 22 CHAYTOR, Q.C.:
 23 Q. Okay, and this paragraph says "this protection
 24 from disclosure is recognized in the Evidence
 25 Act, which provides that quality assurance

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1 material is not to be disclosed within a legal
 2 proceeding. It also recognized--it is also,"
 3 sorry, "recognized in the Access to
 4 Information and Privacy Act which protects
 5 that opinions or recommendations made to an
 6 agency do not have to be disclosed." Doctor,
 7 was there ever any discussion as to whether or
 8 not there were provisions in the Access to
 9 Information and Privacy Act which may require
 10 certain disclosures to be made?
 11 DR. HOWELL:
 12 A. I don't remember such discussions, and once
 13 again, I don't think that I was particularly
 14 articulate or had a deep knowledge of this
 15 area in any case.
 16 CHAYTOR, Q.C.:
 17 Q. "However, it is important to note that there
 18 is no protection from disclosure for facts
 19 uncovered or disclosed during quality review
 20 investigations. We will not be talking about
 21 these facts today, as this is a matter that is
 22 before the Courts." So now, Doctor, in
 23 reading that, at least these notes suggest
 24 that there's no protection from disclosure for
 25 facts uncovered, and the reason, however, that

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1 you're not going to discuss the facts during
 2 the December 11th briefing is that the matter
 3 is before the Courts. Was that the position
 4 of Eastern Health?
 5 DR. HOWELL:
 6 A. Certainly that the matter was before the
 7 Courts was influencing what could be talked
 8 about in that technical briefing. More detail
 9 than that, I can't provide.
 10 CHAYTOR, Q.C.:
 11 Q. And under the disclosure piece, there's some
 12 notes for you there, and then if we go to the
 13 next page, this is actually the disclosure
 14 policy and the Commissioner, you had mentioned
 15 you were aware of a disclosure policy in
 16 answering a question from the Commissioner,
 17 and this seems to be basically a summary of
 18 that disclosure policy, which includes "remain
 19 factual. Concentrate on what happened and
 20 possible consequences. Remain factual; (c)
 21 take the lead in disclosure; (d) outline a
 22 plan of care to rectify the harm and prevent
 23 recurrence for this patient and others; (e)
 24 offer to obtain second opinions, where
 25 appropriate; (f) offer the option of a family

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1 meeting; (g) document the discussion and the
 2 patient's health record; (h) determine the
 3 need for follow-up meetings and who should
 4 attend; (i) be prepared for strong emotions
 5 and offer personal support and support from
 6 others; (j) accept responsibility for
 7 outcomes; and (k) apologies are appropriate."
 8 And then, "Oscar:" your speaking note
 9 indicates "this would be the process that we
 10 used with all patients affected by ER/PR
 11 retesting that we contacted ourselves." Now,
 12 Doctor, who told you that?
 13 DR. HOWELL:
 14 A. That largely would be Ms. Predham and Ms.
 15 Bonnell.
 16 CHAYTOR, Q.C.:
 17 Q. And do you have any reason to believe that is
 18 not an accurate statement?
 19 DR. HOWELL:
 20 A. Well, I mean, subsequently to this particular
 21 technical briefing, I mean, we have become
 22 aware of patients who were not contacted.
 23 CHAYTOR, Q.C.:
 24 Q. Were not even contacted?
 25 DR. HOWELL:

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1 A. That's correct.
 2 CHAYTOR, Q.C.:
 3 Q. Yes. And out of those that were contacted,
 4 the statement that "This," meaning your
 5 disclosure policy "was the process that we use
 6 with all patients all patients affected by the
 7 retesting that we contacted ourselves," do you
 8 have reason to believe that that, in fact, is
 9 not correct?
 10 DR. HOWELL:
 11 A. Well, that's what I, at the time of doing this
 12 briefing, that's what I had been advised had
 13 been done.
 14 CHAYTOR, Q.C.:
 15 Q. As of December, 2006?
 16 DR. HOWELL:
 17 A. That's what I was being told had been done.
 18 CHAYTOR, Q.C.:
 19 Q. And that's Ms. Predham and Ms. Bonnell?
 20 DR. HOWELL:
 21 A. Correct. Ms. Predham having, I think, the
 22 primary responsibility for this through the
 23 quality and risk management group.
 24 CHAYTOR, Q.C.:
 25 Q. And have you since learned differently, and if

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1 so, when?
 2 DR. HOWELL:
 3 A. Again, that wasn't an area that in the go
 4 forward that I was following. Now, quality
 5 and risk management had that responsibility
 6 and were--as I understand it, I would get an
 7 e-mail sometimes from Ms. Predham saying that
 8 another patient had contacted that we didn't
 9 know about, and I think there were multiple
 10 instances of that. And then I think there
 11 were some cases that came out of the other
 12 health regions and I had a phone call at one
 13 time from Dr. Gary Baker, who is a pathologist
 14 in Carbonear, saying that he had discovered
 15 another number of patients. So over a period
 16 of time subsequent to this it was becoming
 17 apparent that there were patients out there
 18 who had not been contacted.
 19 CHAYTOR, Q.C.:
 20 Q. Yes.
 21 COMMISSIONER:
 22 Q. Dr. Howell, I think the question was directed
 23 to whether or not the disclosure policy had
 24 been followed.
 25 DR. HOWELL:

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1 A. All I could go with is that I think this
 2 disclosure policy was more aimed at a single--
 3 and again, I wasn't around when the disclosure
 4 policy was built and what the background
 5 behind it, etcetera, but certainly the first
 6 time I read it, you know, my thinking was this
 7 was aimed at an individual event, that patient
 8 who had surgery on the wrong limb or some such
 9 thing as opposed to any large scale event.
 10 COMMISSIONER:
 11 Q. Okay. But at the bottom here, what's being
 12 advised to you, are you going--perhaps you
 13 didn't say this, but as I understand it, the
 14 suggestion to you by this document is that you
 15 could be able to say that this, ie, the
 16 disclosure policy outlined about would be the
 17 process that we used with all patients
 18 affected by ER/PR retesting that we contacted
 19 ourselves?
 20 DR. HOWELL:
 21 A. That -
 22 COMMISSIONER:
 23 Q. So am I taking -
 24 DR. HOWELL:
 25 A. - I would be told that this is the thing to

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1 say, Commissioner.
 2 CHAYTOR, Q.C.:
 3 Q. And, in fact -
 4 COMMISSIONER:
 5 Q. But were you also being told that that was
 6 done?
 7 DR. HOWELL:
 8 A. Well, that would have -
 9 COMMISSIONER:
 10 Q. Was the question.
 11 DR. HOWELL:
 12 A. That would have been the implication to me,
 13 that that's what was done.
 14 COMMISSIONER:
 15 Q. All right, thank you.
 16 CHAYTOR, Q.C.:
 17 Q. And, Doctor, whether or not you think the
 18 policy, when you first read it, now did you
 19 read it before this or is this the first time
 20 you would have been reading the policy?
 21 DR. HOWELL:
 22 A. No, the first time I saw that policy, I think,
 23 was when we went to Halifax to the symposium
 24 there. And I think Mr. Tilley spoke on a
 25 policy and that was the first time I saw the

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1 policy and really probably didn't see it again
 2 or give any thought to it until -
 3 CHAYTOR, Q.C.:
 4 Q. Until it shows up here?
 5 DR. HOWELL:
 6 A. Until it shows up here. And even then it
 7 wasn't at the forefront of my mind.
 8 CHAYTOR, Q.C.:
 9 Q. And whether or not, in your opinion, it was
 10 the appropriate policy for this group
 11 situation, as you describe it, it is, this is
 12 what was put up on the screen and used in the
 13 PowerPoint presentation to the public on
 14 December 11th, 2006?
 15 DR. HOWELL:
 16 A. Right.
 17 CHAYTOR, Q.C.:
 18 Q. And with the only comment give for you to say
 19 regarding it being that this was the policy
 20 followed, correct?
 21 DR. HOWELL:
 22 A. That's correct. And I guess the other point
 23 in the discussions with me and what I was
 24 hearing was that it was felt that we had, in
 25 fact, disclosed that to those patients that

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1 were known, that there had been every attempt
 2 to contact those patients so that in terms of
 3 the people who were, who were primarily
 4 affected by this and most relevant, that
 5 disclosure had been made to those patients.
 6 CHAYTOR, Q.C.:
 7 Q. And the next page then there's some things
 8 crossed out. Do you know if you crossed those
 9 things out?
 10 DR. HOWELL:
 11 A. I didn't cross it out, to the best of my
 12 knowledge.
 13 CHAYTOR, Q.C.:
 14 Q. Okay. And do you know whether or not these
 15 things were crossed out before the
 16 presentation was made or is this just
 17 somebody's draft?
 18 DR. HOWELL:
 19 A. I don't know who crossed--I don't know
 20 whether--I don't know who crossed that out.
 21 CHAYTOR, Q.C.:
 22 Q. Okay. So this is not your notes, okay. And
 23 it looks -
 24 DR. HOWELL:
 25 A. It might be, but I don't recall.

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1 CHAYTOR, Q.C.:

2 Q. Systems issue and crossed out is, "not a

3 typical medical error," and that's crossed

4 out?

5 DR. HOWELL:

6 A. Right.

7 CHAYTOR, Q.C.:

8 Q. And "quality review" is crossed out at least

9 on this copy of the slide. And "A complicated

10 disclosure" is the heading on this slide. And

11 the speaking notes for you indicate "The ER/PR

12 case falls into the category of a complicated

13 disclosure. This is a systems issue rather

14 than a typical 'medical error'. No one

15 individual is responsible. Who will contact

16 the patients if their physicians is no longer

17 with us?" And then in bold, "We still have

18 not yet determined that an error has even

19 occurred." Closed bracket. Now, Doctor, in

20 reading through what was being proposed for

21 you to say, did you have any concern with that

22 statement?

23 DR. HOWELL:

24 A. The thinking of the individuals there, and I'm

25 really going back over the same things, and I

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1 apologize for that, but the thinking of the

2 individuals there, I think they've always been

3 used to thinking about error as a single

4 entity event that you put your finger on and

5 that's where you made a mistake, you did

6 something wrong here. And in this case that

7 was not what they were facing. They were

8 facing not being able to look at something and

9 saying that the error was there. What they

10 were having was external reviewers come in and

11 say, you know, you weren't using controls

12 properly, that you didn't have the

13 documentation in place, that you hadn't

14 optimized your staining, it was a multitude of

15 issues. So rather than---and I think that was

16 the thinking, be it right or wrong, when it

17 truly was what I was hearing from them as they

18 viewed this as a systems event as opposed to a

19 specific error. Maybe a deficiency versus an

20 error. I can only reflect and try to reflect

21 to you and to the Commissioner the thoughts

22 that I was hearing and seemed to be very

23 genuine to me.

24 COMMISSIONER:

25 Q. Ms. Chaytor, wherever you can find a place,

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1 we'll take the luncheon break.

2 CHAYTOR, Q.C.:

3 Q. Okay, I'll just finish then with this. Then

4 the next--then there are one, two, three,

5 four, five, six bullets which fall under that

6 or included under this. And it refers to

7 again this idea the oncology practice has

8 changed and again, talking about the threshold

9 mark of 30 percent. So that's given for as an

10 explanation, I would take it, or being put

11 forward as a possible explanation, and we

12 spoke about that earlier, and that was 13

13 people fell into that category, correct?

14 DR. HOWELL:

15 A. Correct.

16 CHAYTOR, Q.C.:

17 Q. Then "The laboratory technology is changed.

18 Our processes have become more automated, our

19 antibodies have become more precise and

20 there's more that Dr. Denic will speak on

21 that," it's indicated. Then, "The situation

22 was unfolding daily. It was unclear what we

23 were going to discover. The scope of the

24 issue changed several times over the initial

25 couple of months." And who was telling you

Page 188

1 that?

2 DR. HOWELL:

3 A. Well, these were notes prepared by Ms.

4 Bonnell.

5 CHAYTOR, Q.C.:

6 Q. Okay. And was that something that you had

7 heard prior to Ms. Bonnell writing it here for

8 you?

9 DR. HOWELL:

10 A. I think that was a feeling that I would have

11 gotten from the participants.

12 CHAYTOR, Q.C.:

13 Q. And we heard -

14 COMMISSIONER:

15 Q. What does that mean?

16 DR. HOWELL:

17 A. I think, Commissioner, it would best reflect

18 perhaps some of the testimony you would have

19 heard from Dr. Williams about how they

20 identified that they had an issue and that

21 there was a constant flow of activity going on

22 from there. That's as best I can explain.

23 COMMISSIONER:

24 Q. So it's merely a reflection of the process

25 that went--that people had to go through to

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1 determine what had occurred?
 2 DR. HOWELL:
 3 A. That is what I believe she meant when she put
 4 that bullet there.
 5 COMMISSIONER:
 6 Q. All right, thank you.
 7 CHAYTOR, Q.C.:
 8 Q. I understood Dr. Williams to say that he
 9 understood this was a major issue from the get
 10 go.
 11 DR. HOWELL:
 12 A. He lived it, he would best know. But I think
 13 it certainly was an event that was unfolding
 14 over many, many days.
 15 CHAYTOR, Q.C.:
 16 Q. And then again there's reference to "the
 17 potential for a class action lawsuit was
 18 always great and when one was filed, it
 19 changed the way we could talk about the issue
 20 in the public realm." And I think we've
 21 already discussed that. Okay, Commissioner,
 22 this would be a convenient place.
 23 COMMISSIONER:
 24 Q. All right, 2:15.
 25 (LUNCH BREAK)

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1 COMMISSIONER:
 2 Q. Please be seated. Ms. Chaytor.
 3 CHAYTOR, Q.C.:
 4 Q. Good afternoon, Commissioner. Good afternoon,
 5 Dr. Howell.
 6 DR. HOWELL:
 7 A. Good afternoon, Ms. Chaytor.
 8 CHAYTOR, Q.C.:
 9 Q. We received further documentation this morning
 10 from Eastern Health through Mr. Simmons. And
 11 we have two new exhibits out of the
 12 documentation that we received which I'd like
 13 to enter now, Commissioner.
 14 COMMISSIONER:
 15 Q. All right.
 16 CHAYTOR, Q.C.:
 17 Q. And the exhibit numbers are P-1426 and P-1427.
 18 COMMISSIONER:
 19 Q. 1426 and 1427.
 20 CHAYTOR, Q.C.:
 21 Q. Copies have been provided to counsel.
 22 COMMISSIONER:
 23 Q. All right, entered.
 24 EXHIBIT P-1426 ENTERED INTO EVIDENCE.
 25 EXHIBIT P-1427 ENTERED INTO EVIDENCE.

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1 CHAYTOR, Q.C.:
 2 Q. Thank you. P-0104, page 28, please,
 3 Registrar. These are the Q and As, the
 4 questions and answers prepared for the media
 5 technical briefing, Dr. Howell. And I take it
 6 Susan Bonnell also prepared those?
 7 DR. HOWELL:
 8 A. That's correct.
 9 CHAYTOR, Q.C.:
 10 Q. Do you know, did Ms. Bonnell know the findings
 11 of the external reviews at this point in time?
 12 DR. HOWELL:
 13 A. I would think that she would not.
 14 CHAYTOR, Q.C.:
 15 Q. And would you have been aware that Ms. Bonnell
 16 would not know that information?
 17 DR. HOWELL:
 18 A. Until you asked me that question I really
 19 never, ever thought about that. And in fact,
 20 in all these preparations and this
 21 information, I think I thought that she was
 22 fully informed in all of these areas.
 23 CHAYTOR, Q.C.:
 24 Q. And if we look at some of the questions and
 25 the proposed answers, bring your attention to

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1 the page 30 of the exhibit. Question 7, "What
 2 do you say to those women who were left for
 3 months wondering if they received the wrong
 4 care plan?" And the proposed answer, "We
 5 regret that this may have been stressful
 6 period for some of our patients. We were in
 7 constant contact with many of these patients
 8 and we provided them with their personal
 9 information as quickly as possible." Doctor,
 10 are you aware of any documentation to verify
 11 constant contact with many of the patients?
 12 DR. HOWELL:
 13 A. That was not an area that I had responsibility
 14 for and that it was not an area that I was
 15 following to any close degree. It rested with
 16 quality and risk management.
 17 CHAYTOR, Q.C.:
 18 Q. So this would be Ms. Pilgrim's area of
 19 responsibility?
 20 DR. HOWELL:
 21 A. Correct.
 22 CHAYTOR, Q.C.:
 23 Q. Question 8, "How many patients have been
 24 impacted by this?" "In the vast majority of
 25 cases tested and treated between 1997 and 2005

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1 the patient's treatment was confirmed
 2 appropriate." Doctor, did you understand that
 3 to be accurate, in the vast majority of cases
 4 tested and treated, the patients treatment was
 5 confirmed appropriate?
 6 DR. HOWELL:
 7 A. Just as I attempt to answer that question,
 8 just again, to clarify that Ms. Bonnell might
 9 give me these questions and she might give me
 10 the proposed answers, but not necessarily was-
 11 -I did not sit down and commit these answers
 12 to memory. I took it as an attempt to convey
 13 information to me. In terms of the vast
 14 majority, I think that's an overstatement. I
 15 think if one looked at the total numbers,
 16 there were more that came back still as
 17 negative than came back positive, but I think
 18 that adjective, "vast majority" is certainly
 19 overstating it.
 20 CHAYTOR, Q.C.:
 21 Q. And it goes on to give numbers, and these
 22 numbers aren't really much different than what
 23 we saw in your notes in preparing yourself.
 24 "From 1997 to 2005, 2760 individuals had ER/PR
 25 tests. 939 of these patients originally

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1 received negative results. 117 of these
 2 patients have recommended changes in their
 3 treatment plans as a result of a review by the
 4 panel." And question 9 follows again with the
 5 rate of error. And I don't want to go through
 6 that, I think we've been through your notes.
 7 But it does indicate here "What is the rate of
 8 error and how many people converted?" So Ms.
 9 Bonnell was also anticipating that to be a
 10 question as you had yourself in preparing your
 11 questions. And she writes down here that,
 12 "The numbers of individual conversions are not
 13 relevant and turn the process into a numbers
 14 game." And "What is relevant is the number of
 15 people whose care may change as a result of
 16 the process and that was 117." And my
 17 question to you on both of those proposed
 18 responses, Doctor, you had indicated this
 19 morning when we were talking about this area
 20 that the reason for the reluctance to give out
 21 the 317 number, that there was concern that
 22 people would come to their own formulas and
 23 their own conclusions if that number were to
 24 be put out there. And, Doctor, the number of
 25 939, there appears to be no hesitation putting

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1 that number out there, the number of 117 is
 2 proposed to be put out there, and the number
 3 2760 is proposed to be put out. And, in fact,
 4 those numbers, I believe, appear in a press
 5 release that you're quoted in following the
 6 news conference?
 7 DR. HOWELL:
 8 A. That's correct. That's correct.
 9 CHAYTOR, Q.C.:
 10 Q. So why wasn't there any concern that people
 11 might draw conclusions or come up with their
 12 own formula using those numbers?
 13 DR. HOWELL:
 14 A. Just as I lead into that, you made one
 15 statement that I'm thinking that maybe I've
 16 left a wrong impression. In many of my notes
 17 that would have similarities to this, those
 18 notes that I would have generated would not
 19 necessarily be my thoughts, but more
 20 information arising from the various people to
 21 whom we were talking that probably helped Ms.
 22 Bonnell generate her questions and answers
 23 right there. In terms of putting out those
 24 numbers versus other numbers, I don't think I
 25 can add anything substantive to my earlier

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1 testimony. The decision was we are going to
 2 focus on why we did this and that the most
 3 relevant thing was we were looking for those
 4 patients who could benefit from a treatment
 5 change and there were 117 of those.
 6 CHAYTOR, Q.C.:
 7 Q. So I take it there was no concern by Eastern
 8 Health if people wanted to do the math using
 9 those numbers?
 10 DR. HOWELL:
 11 A. Those were the numbers that it was decided to
 12 put out.
 13 CHAYTOR, Q.C.:
 14 Q. And question 10, "What caused the conflicting
 15 results?" And we have that statement again
 16 about the vast majority of cases having their
 17 treatment confirmed appropriate. And then it
 18 goes on with, "The test used for most of the
 19 review period for ER/PR is a complicated one
 20 with more than 40 manual steps. Additionally
 21 there has been in this period changes in
 22 practice and new understanding about treatment
 23 protocols," and it goes on again with the 30
 24 percent, the threshold issue. "Today
 25 oncologists believe a positivity rate of

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1 greater than one percent may mean hormone
 2 therapy could be effective." And "The reason
 3 for the new numbers will be explored in detail
 4 during legal proceedings"--sorry, "will be
 5 explored in detail during legal proceedings.
 6 Are we unable as a result to speculate
 7 further. However, what is most important is
 8 that when we identified what we consider to be
 9 a potential problem, we acted immediately to
 10 take whatever action we could to ensure our
 11 patients have every treatment option
 12 possible." So, Doctor, in answering the
 13 question what caused the conflicting results,
 14 the proposed answer, in any event, is just to
 15 refer to it being a complicated procedure with
 16 40 steps and the reference to the threshold
 17 cutoff having changed, which, according to the
 18 numbers at this point in time, affected 13
 19 people?
 20 DR. HOWELL:
 21 A. That was the answer proposed.
 22 CHAYTOR, Q.C.:
 23 Q. Doctor, in proposing question 11, "Are
 24 pathologists to blame for this? Did these
 25 errors occur because of the difficulty to

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1 recruit pathologists and because some haven't
 2 achieved their national examinations, is this
 3 a competence issue?" Doctor, are there
 4 pathologists who haven't achieved their
 5 national examinations?
 6 DR. HOWELL:
 7 A. Yes, there--and I can't speak for, obviously,
 8 the time from--that was in question in this
 9 review, but at any given point in time there
 10 would be pathologists within the organization,
 11 some of which have their Canadian
 12 certifications, others may have their American
 13 Board certifications. There may be others who
 14 trained with, even within our own university
 15 training program who wrote their exam, were
 16 not successful in getting the exam the first
 17 time and were working with the laboratory
 18 under the supervision of another pathologist
 19 while they waited a year to write their exam
 20 again, and that's not an unusual practice or
 21 event.
 22 CHAYTOR, Q.C.:
 23 Q. Question 12, "Were there quality checks in
 24 place when the error was discovered?" And the
 25 proposed answer is "All laboratory testing

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1 conducted at Eastern Health uses standard
 2 controls." Now, Doctor, at this point in time
 3 you would have been aware that there were over
 4 50 recommendations from the external reviews
 5 and many of those identified deficiencies in
 6 quality assurance measures within the lab that
 7 Dr. Banerjee had noted, the lack of
 8 insufficient attention being paid to internal
 9 controls by pathologists and, of course, that
 10 there was no external proficiency testing
 11 taking place with respect to the IHC lab,
 12 unlike other areas of the lab. So the
 13 proposed answer to "Were there quality checks
 14 in place when the error was discovered?" and
 15 the proposed answer being, "All laboratory
 16 testing conducted at Eastern Health uses
 17 standard controls." Would you agree with me
 18 that that appears to be disingenuous?
 19 DR. HOWELL:
 20 A. What I would tell you is that in my
 21 discussions with Dr. Denic and Mr. Gulliver
 22 and with Dr. Cook and other members of that
 23 laboratory team my understanding is there are,
 24 in fact, standardized processes and protocols
 25 that existed and there was daily calibration

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1 of equipment in certain areas of the lab, so
 2 that there was, in fact, some processes in
 3 place. As we saw from the external reviews,
 4 were they at the level that they needed to be,
 5 I think that was shown not to be the case.
 6 CHAYTOR, Q.C.:
 7 Q. What would this proposed answer lead the
 8 recipient of the information to conclude?
 9 DR. HOWELL:
 10 A. I don't think I ever used this particular -
 11 CHAYTOR, Q.C.:
 12 Q. Yes, but what would--this was the proposed
 13 answer and you indicated that you didn't take
 14 issue with anything that Susan had drafted.
 15 So I'm jus asking you what would this lead the
 16 recipient of the information to conclude?
 17 DR. HOWELL:
 18 A. Well, I just want to back up a little bit. I
 19 don't want to leave the impression that
 20 everything that was given to me in a Q and A,
 21 that I was, number one, saying I agreed or
 22 disagreed with it. In fact, I had been on the
 23 job such a short period of time I was not in a
 24 position to agree or disagree with anything.
 25 And these are suggested answers that are given

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1 to me. Were there quality checks in place
 2 when the error was discovered? That's very,
 3 very broad question. And I don't think that
 4 one could say that they were totally deficient
 5 in having any quality checks in place. Was it
 6 adequate? There was certainly significant
 7 room for improvement, as shown in those
 8 reports. And I really--what's my comfort
 9 level with being asked that question? I don't
 10 think I was asked it, but you know, I don't
 11 think I would be prepared to say that there
 12 was nothing in place.
 13 CHAYTOR, Q.C.:
 14 Q. I just want to understand. You're on the job
 15 a short period of time, as you say, three
 16 months, about that, at this point, I guess.
 17 And you weren't in a position to agree or
 18 disagree with anything that Susan Bonnell was
 19 putting before you?
 20 DR. HOWELL:
 21 A. No, I'm not saying that.
 22 CHAYTOR, Q.C.:
 23 Q. Okay.
 24 DR. HOWELL:
 25 A. I'm saying that because someone prepared Qs

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1 and As for me, it doesn't necessarily mean
 2 that I am endorsing everything they say or
 3 prepared to go that route. And in most of
 4 these cases if a query has come in to
 5 communications and subsequently they call me
 6 and say so and so wishes to do an interview
 7 with you, then we go about trying to get the
 8 information. They may provide Qs and As for
 9 me, but ultimately in the end I usually usher
 10 them out of the room and say, "Leave me along
 11 and let me work this up in my own mind." And
 12 I might well come to the conclusion at the end
 13 that I'm prepared to talk in this area but not
 14 in that area. I've already alluded that I was
 15 not totally comfortable with having to do this
 16 particular event, but it was charged to me to
 17 do and so I was doing it to the best of my
 18 ability.
 19 CHAYTOR, Q.C.:
 20 Q. Okay. And so then what do you think about the
 21 sufficiency of the proposed answer to question
 22 12?
 23 DR. HOWELL:
 24 A. I think that, you know, I would stand by the
 25 external reviews that were done that found

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1 that there were deficiencies. But I certainly
 2 was of the opinion from the laboratory
 3 professionals that there were things in place.
 4 CHAYTOR, Q.C.:
 5 Q. If we could have P-0184, page 4, please? And
 6 perhaps before I go there, Doctor, tell me
 7 about--so you went ahead with the media
 8 technical briefing and how did it go?
 9 DR. HOWELL:
 10 A. It, I guess you're alluding to the start to
 11 the day and how that -
 12 CHAYTOR, Q.C.:
 13 Q. Yeah, the whole thing. Like, you were a bit
 14 apprehensive, you've told us, in doing it.
 15 And I'm just wondering, well, how did it go?
 16 It was anticipated certain questions might be
 17 of concern to the media, but the information
 18 wasn't going to be provided. How overall did
 19 it go, from your perspective?
 20 DR. HOWELL:
 21 A. I thought it went reasonably well. I know
 22 that at least from CBC's perspective, I think
 23 they were perturbed. I think the area you're
 24 trying to take me that I had given in my
 25 interview is as this had started, I arrived in

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1 the morning early in preparation for this. Ms.
 2 Barrington was there, Ms. Bonnell was there.
 3 The media had arrived, the CBC reporters had
 4 arrived. They had been taken over to the
 5 Medcore boardroom, which was on another area
 6 of the building. Ms. Bonnell was with me.
 7 Ms. Barrington had met with the press. She
 8 had given out the package which was the deck
 9 of slides that you have there. Ms.--they had
 10 read it, they had been upset and Ms.
 11 Barrington came back and said, "They're not
 12 happy and they're threatening to leave."
 13 CHAYTOR, Q.C.:
 14 Q. And then what happened?
 15 DR. HOWELL:
 16 A. You know, at this point in time we had had a
 17 very long weekend, a tough weekend and I think
 18 I just had enough of it, so I just said,
 19 "Fine. Come with me." and I walked over and
 20 walked in. I said to them, "I understand that
 21 you are not happy with the material. I know
 22 you all have deadlines. And we have spent a
 23 considerable period of time putting this
 24 technical briefing together and I would like
 25 to give you the opportunity, I'd like you to

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1 take the opportunity to hear particularly from
 2 our professionals about this." And I said,
 3 "We will do interviews tomorrow." I think
 4 they were very put out that we not do
 5 interviews immediately after that briefing.
 6 The decision had been made that we would
 7 complete the technical briefing for all press,
 8 and I think that some of that were the
 9 communications people, it was not to allow one
 10 media to get ahead of another in terms of
 11 putting out their story.
 12 CHAYTOR, Q.C.:
 13 Q. And so then you went ahead with--you and Dr.
 14 Denic, and Dr. Laing went ahead with the
 15 briefing?
 16 DR. HOWELL:
 17 A. That's correct.
 18 CHAYTOR, Q.C.:
 19 Q. Okay, and what questions did you encounter?
 20 And perhaps, what questions did you encounter
 21 that were problematic?
 22 DR. HOWELL:
 23 A. I don't remember any.
 24 CHAYTOR, Q.C.:
 25 Q. You don't remember questions -

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1 DR. HOWELL:
 2 A. I do not re--there's nothing that stands out
 3 in my mind that a question that I was asked
 4 that was particularly problematic or that any
 5 of the others were--I remember there was a
 6 question where Ms. Predham who wasn't--who was
 7 in the room, but not a presenter of material
 8 from this deck of slides, that she did answer.
 9 CHAYTOR, Q.C.:
 10 Q. And do you recall what that question was?
 11 DR. HOWELL:
 12 A. I do not.
 13 CHAYTOR, Q.C.:
 14 Q. And did you--I take it you told the media
 15 upfront that there were certain things that
 16 you would not be speaking to?
 17 DR. HOWELL:
 18 A. That was the--to the best of my knowledge,
 19 that was the opening comment, that we are
 20 somewhat limited by the pending legal action.
 21 CHAYTOR, Q.C.:
 22 Q. And you made it clear to them that you
 23 wouldn't be talking about overall conversions,
 24 numbers of conversions?
 25 DR. HOWELL:

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1 A. I don't recall -
 2 CHAYTOR, Q.C.:
 3 Q. You don't know if you -
 4 DR. HOWELL:
 5 A. - saying that, but you know, you could be
 6 right, but I -
 7 CHAYTOR, Q.C.:
 8 Q. It's just a question, I'm wondering what
 9 exactly they were told that you would not be
 10 speaking to?
 11 DR. HOWELL:
 12 A. I only remember making that one statement that
 13 we--you know that we are somewhat limited by
 14 the outstanding legal action.
 15 CHAYTOR, Q.C.:
 16 Q. And did anyone ask then what were the overall
 17 numbers, numbers of conversions?
 18 DR. HOWELL:
 19 A. I don't recall any particular reporter's
 20 questions.
 21 CHAYTOR, Q.C.:
 22 Q. And do you recall whether anyone asked how
 23 this happened, what went wrong?
 24 DR. HOWELL:
 25 A. I don't recall any reporter's questions.

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1 CHAYTOR, Q.C.:
 2 Q. How did you feel at the end of it? Were you
 3 satisfied? Did it go well?
 4 DR. HOWELL:
 5 A. I felt fatigued, would be the only word that I
 6 would use.
 7 CHAYTOR, Q.C.:
 8 Q. Did you have concerns? Did you have concerns
 9 coming out of it? You've now--this has been,
 10 you know, a substantial amount of work went
 11 into this piece that's been contemplated for
 12 at least a period of a couple of weeks to put
 13 this together, in terms of disclosure of the
 14 overall review to the public. Did you have the
 15 sense that it went well? That this had been a
 16 good exercise or did you have any concerns?
 17 DR. HOWELL:
 18 A. My focus all along, I had not been focused on
 19 the disclosure piece. That was a piece of
 20 work that resided, I thought, within the
 21 quality risk management area. My focus all
 22 the way along was what is it that we have to
 23 do to make sure that this never happens again.
 24 CHAYTOR, Q.C.:
 25 Q. So you had no opinion one way or the other as

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1 to how well it went?

2 DR. HOWELL:

3 A. No, I had no opinion. I was just let me move

4 on and do my job.

5 CHAYTOR, Q.C.:

6 Q. Okay. P-0184 is the press release, and you're

7 the person who's quoted--by the way, is Ms.

8 Pilgrim out of town? Is that why you're

9 tasked with this?

10 DR. HOWELL:

11 A. I don't know why I was tasked with this. The

12 CEO directed me to do it and I did it.

13 CHAYTOR, Q.C.:

14 Q. And a couple of this we've already discussed,

15 in terms of it shows the numbers that were

16 also in that Q and A that I showed to you, and

17 if we come down then to this paragraph,

18 "Eastern Health's first priority is its

19 patients and the organization is committed to

20 notifying them about issues that may impact

21 upon their diagnosis or treatment" and then

22 it's a quote attributed to you, "'our clinical

23 team members have communicated individually

24 with all patients impacted by this review,'

25 says Dr. Howell. 'We have had many

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1 conversations with the patients involved and

2 we are always willing to discuss the details

3 of patient's care with them. However, patient

4 confidentiality is an important principle,"

5 and it goes on from there.

6 Doctor, that's a quote attributed, as I

7 said, to you that there had been communication

8 individually with all patients impacted by the

9 review. What was your source of knowledge,

10 not having been the person, as you've just

11 said, tasked with disclosure, what was your

12 source of that information?

13 DR. HOWELL:

14 A. That would have come from Ms. Predham.

15 CHAYTOR, Q.C.:

16 Q. And did you ask for any documentation to

17 verify that prior to allowing that quote to be

18 attributed to you?

19 DR. HOWELL:

20 A. I accepted the information as provided to me.

21 CHAYTOR, Q.C.:

22 Q. There's another quote attributed to you, in

23 the next paragraph. "We have been assured

24 through our review process, which included

25 consultation with national and international

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1 experts in laboratory medicine, that when we

2 reinstate testing, we will provide the people

3 of this province with a high standard of

4 estrogen and progesterone receptor testing."

5 Who are the national and international experts

6 who gave you that assurance?

7 DR. HOWELL:

8 A. That would have been referring to the two

9 external reviews, the one from Dr. Banerjee

10 and Ms. Wegrynowski, and the other review was

11 done, Dr. Gowan.

12 CHAYTOR, Q.C.:

13 Q. Now at this point in time, December 2006, Ms.

14 Wegrynowski had been back in the spring of

15 2006 and did you understand that there were a

16 number of recommendations still outstanding as

17 of the date of her last visit?

18 DR. HOWELL:

19 A. I knew that they were working through the list

20 and that many of them had been completed and

21 pretty well all of them or most of them were

22 ongoing or in progress. I also knew that Dr.

23 Banerjee had said, when he came back to do his

24 second review, that it was, in his opinion,

25 okay to restart ER/PR tests at that time.

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1 CHAYTOR, Q.C.:

2 Q. And did he provide anything that you're aware

3 of, in writing or verbally, that was an

4 assurance that when you reinstated you would

5 be providing a high standard of ER/PR testing?

6 DR. HOWELL:

7 A. Well, I would presume that if Dr. Banerjee had

8 come in, done an assessment and came back and

9 done another assessment and said, you know,

10 "you've made good progress. It's now safe for

11 you to do that," that it was at an acceptable

12 standard, at least from his perspective.

13 CHAYTOR, Q.C.:

14 Q. And -

15 DR. HOWELL:

16 A. I was also told, and I don't know who this is

17 attributed to, that one of the consultants

18 that had come in and done that review had said

19 "you're neither the best lab in the country,

20 nor the worst lab in the country." So I'm

21 thinking, okay, well -

22 CHAYTOR, Q.C.:

23 Q. So you're comfortable, on the basis of that--

24 now Ms. Wegrynowski, the last time she'd been

25 in, there were numerous recommendations still

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1 to be implemented. But you're comfortable in
 2 having this quote attributed to you on the
 3 knowledge you had at that point in time?
 4 DR. HOWELL:
 5 A. In the information that I was given, I could
 6 live with that quote being attributed to me.
 7 CHAYTOR, Q.C.:
 8 Q. And you're the person responsible for
 9 implementing the recommendations?
 10 DR. HOWELL:
 11 A. Yes.
 12 CHAYTOR, Q.C.:
 13 Q. Doctor, in terms of the numbers, overall
 14 number of conversions not having been
 15 disclosed on December 11th, 2006, were you
 16 aware that all of the numbers were to be
 17 disclosed in an affidavit shortly after that
 18 media briefing took place?
 19 DR. HOWELL:
 20 A. I certainly was not.
 21 CHAYTOR, Q.C.:
 22 Q. Were you, in fact, approached about signing
 23 that affidavit?
 24 DR. HOWELL:
 25 A. I was.

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1 CHAYTOR, Q.C.:
 2 Q. And tell us about that.
 3 DR. HOWELL:
 4 A. Ms. Predham had been involved in writing the--
 5 been sent the questions to have answered and
 6 the affidavit was being prepared and she
 7 brought it to me to say would I sign it.
 8 CHAYTOR, Q.C.:
 9 Q. And when was that?
 10 DR. HOWELL:
 11 A. I honestly don't know. It would have been
 12 sometime shortly before, I guess, it was
 13 filed, but I don't know the exact date.
 14 CHAYTOR, Q.C.:
 15 Q. Now it was filed in February, we understand.
 16 Originally, there was some indication that it
 17 was going to be filed in December, but it was
 18 ultimately filed in February. That discussion
 19 with Ms. Predham, did it take place before or
 20 after the media technical briefing?
 21 DR. HOWELL:
 22 A. After.
 23 CHAYTOR, Q.C.:
 24 Q. And was it still within the month of December?
 25 DR. HOWELL:

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1 A. I don't know.
 2 CHAYTOR, Q.C.:
 3 Q. Was it into the new year, do you recall that?
 4 DR. HOWELL:
 5 A. I could not say with any great certainty.
 6 CHAYTOR, Q.C.:
 7 Q. And why is it that you weren't comfortable
 8 signing the affidavit?
 9 DR. HOWELL:
 10 A. Because I read it and I was signing an oath
 11 attesting to certain events that was going
 12 into a court of law that I wasn't even present
 13 for, and I--my discomfort level was certainly
 14 I was not going to proceed. I was not
 15 prepared to sign that document and to defend
 16 it in Court.
 17 CHAYTOR, Q.C.:
 18 Q. Doctor, so the distinction in terms of your
 19 comfort level, in terms of what information
 20 you're prepared to speak to or disseminate and
 21 your refusal to sign the affidavit was because
 22 you didn't have, I take it, the personal
 23 knowledge or background and so you weren't
 24 prepared to sign an oath to that effect?
 25 DR. HOWELL:

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1 A. That's correct.
 2 CHAYTOR, Q.C.:
 3 Q. And in terms of December, in speaking and
 4 releasing information at that time and
 5 speaking to these events, is the distinction
 6 being that you weren't doing that under oath?
 7 DR. HOWELL:
 8 A. No, I think that would be--the December
 9 presentation, you know, and I don't want to
 10 belabour this. I mean, I did have a
 11 responsibility here, but the CEO--I am in a
 12 new job, a new position. I have a leadership.
 13 I have had a very steep learning curve. I
 14 have had multiple events going on. There has
 15 been very little orientation. The CEO has
 16 asked me to take the lead on this. Why, he
 17 would have to say. So I'm faced with a
 18 situation that I'm in a new position in this
 19 role; the CEO has asked me to take this and
 20 run with it. So I have a choice. Do I say no
 21 or do I do the best I can? And I did the best
 22 I could. I knew that I had around me
 23 individuals who had been present throughout
 24 this. I had respect and admiration for those
 25 individuals. I felt they--I had confidence in

1 them. They were giving me information, and
 2 yes, there were many touch points along this
 3 way that I had discomfort and that I struggled
 4 with, but I--using the information that I was
 5 provided, I did the best I could to take the
 6 organization through that particular technical
 7 briefing.
 8 CHAYTOR, Q.C.:
 9 Q. Could we have P-0432, please? And this is an
 10 e-mail from Ms. Bonnell sent January 25th,
 11 2007 to yourself, Heather Predham, George
 12 Tilley, Leona Barrington, Denise Dunn, and the
 13 subject is "key messages, high importance."
 14 She indicates that she's "spoken with George
 15 and he's good with the following messages.
 16 Leona has spoken to Stephanie," and perhaps I
 17 should take you to page--the second page
 18 first. Is there another page to this exhibit?
 19 Actually, I think it's a different exhibit
 20 number, 1209, please.
 21 This is--my understanding on this is that
 22 it's a reporter from 'The Independent'
 23 Stephanie Porter has contacted looking for
 24 information, and if we can just go back now
 25 then, please, to 0432.

1 forward and said there had been a lengthy ten-
 2 month delay or something in having been told
 3 her test results. Do you recall this, Doctor?
 4 DR. HOWELL:
 5 A. Yes, I vaguely recall this.
 6 CHAYTOR, Q.C.:
 7 Q. Okay, and this is the beginning of 2007, and
 8 what's being proposed is rather than do an
 9 interview, that certain quotes would be
 10 attributed and attributed to you, and what did
 11 you understand Susan to mean when she says "we
 12 don't want a follow-up story next week, and
 13 rather than speak to Stephanie directly, we
 14 can send this to her and attribute it to you,
 15 so as to avoid opening up any other line of
 16 questioning that we would rather not." What
 17 other line of questioning was Eastern Health
 18 trying to avoid opening up?
 19 DR. HOWELL:
 20 A. I don't know.
 21 CHAYTOR, Q.C.:
 22 Q. Do you recall any discussion around that?
 23 DR. HOWELL:
 24 A. I don't.
 25 CHAYTOR, Q.C.:

1 So Susan is writing saying that Leona had
 2 spoken to Stephanie. There's some issue about
 3 her deadline. "Otherwise, they would be
 4 willing to do a follow-up story next week, but
 5 we don't want that. Rather than speak to
 6 Stephanie directly, we can send this to her
 7 and attribute it to you, so as to avoid
 8 opening up any other line of questioning that
 9 we would rather not. Leona can explain to
 10 Stephanie that given the short notice we are
 11 unable to do an interview, but we can provide
 12 the short statements." And then it goes on to
 13 say "we are surprised by this information. It
 14 was our understanding that all individuals
 15 impacted by the review had been contacted.
 16 The process of notifying individual patients
 17 has involved numerous individuals, physicians
 18 and specialists, both within and outside the
 19 organization, and Eastern Health is now
 20 rechecking the list to verify with the
 21 physicians and specialists involved that these
 22 patients have all been contacted."
 23 So the story apparently was about a
 24 patient who had not, in fact, been contacted
 25 or I think there was a patient who had come

1 Q. And do you -
 2 DR. HOWELL:
 3 A. I vaguely remember--you know, this would have
 4 been coming into me with amongst all the other
 5 things that are going on and I just have very
 6 vague recollection, but no detail.
 7 CHAYTOR, Q.C.:
 8 Q. And did you ask any question of Susan when you
 9 received this, "well, what is it that we don't
 10 want to talk about?"
 11 DR. HOWELL:
 12 A. I can't enlighten you on that e-mail even a
 13 little bit.
 14 CHAYTOR, Q.C.:
 15 Q. Okay. And if we could go back then, please,
 16 to 1209, and this is an e-mail then forwarding
 17 it on to Stephanie at "The Independent" and
 18 "you can attribute the following to Dr. Oscar
 19 Howell," and it is, in fact, the same quote
 20 that we just saw. So I take it you were okay
 21 with having this attributed to you?
 22 DR. HOWELL:
 23 A. I guess so.
 24 CHAYTOR, Q.C.:
 25 Q. 0429, please. And Doctor, 0429, sorry, page--

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1 I can't do it. It's page four. If we look
 2 at, this is the article that Ms. Porter wrote,
 3 "wait time, ten months after patient's breast
 4 cancer test results arrive, she got the news"
 5 and the quote attributed to you "Oscar Howell,
 6 Vice President of Diagnostic and Medical
 7 Services for Eastern Health says 'he was just
 8 as surprised by Morgan's wait as she was'" and
 9 then there's a quote, and again, it is the
 10 same quote or certainly appears to be, based
 11 on my review, "Eastern Health is now
 12 rechecking the list to verify with the
 13 physicians and specialists involved that these
 14 patients have been contacted."
 15 Did that happen? This is January 2007.
 16 Did Eastern Health then begin a rechecking of
 17 the list to verify with physicians that in
 18 fact the patients had been contacted?
 19 DR. HOWELL:
 20 A. I believe that is so, but it was not under my
 21 direction or mandate. I was not the person
 22 who was supervising that.
 23 CHAYTOR, Q.C.:
 24 Q. That was Ms. Pilgrim?
 25 DR. HOWELL:

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1 A. Correct.
 2 CHAYTOR, Q.C.:
 3 Q. And why are you being asked to speak to this?
 4 DR. HOWELL:
 5 A. I don't have an answer. I guess it's being
 6 attributed to me. You know, the only thing
 7 that I can think is that people are still--Dr.
 8 Williams had been running with this prior to
 9 this retirement and I had come on the scene
 10 and people were still thinking that I was the
 11 person managing this, but it really was Ms.
 12 Predham who was working through this and, you
 13 know, it was becoming apparent that there were
 14 patients, even though we had said we had
 15 contacted all, and I truly believe that they
 16 thought they had contacted all patients, but
 17 then there were patients who were--they were
 18 becoming aware of that had not been contacted.
 19 CHAYTOR, Q.C.:
 20 Q. So you were asked to speak to this, although
 21 you understood that that was Ms. Pilgrim was
 22 managing that aspect. Did you then follow up
 23 with Ms. Pilgrim on this issue?
 24 DR. HOWELL:
 25 A. No, I would have had it--I may well have, I

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1 don't remember talking to Ms. Pilgrim about
 2 it, but I do remember talking to and again, in
 3 no detail, but I remember talking to Ms.
 4 Predham and somewhere along the way I remember
 5 becoming aware of a case and my comment to Ms.
 6 Predham was, "Heather, if there's one, there's
 7 two. Go find the other." And, but that was
 8 now--again, that was in the quality risk
 9 management area and she reported to Ms.
 10 Pilgrim and gradually over time I think that
 11 started to take on a life of its own and I'm
 12 sure we'll come on to some other exhibits in a
 13 moment that will show how NLCHI became
 14 involved.
 15 THE COMMISSIONER:
 16 Q. Dr. Howell, as I'm listening to the evidence
 17 this afternoon, I'm getting some impressions
 18 and I'd like to know whether or not I'm
 19 getting the right impressions. Number one
 20 impression is that not only did you not want
 21 to take on this speaking for the institution
 22 role, at that time arriving on the scene, but
 23 that you were, had a quite high level of
 24 discomfort with that role, given as I
 25 understand it, your lack of knowledge of the

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1 situation, once again because you're just
 2 coming on the scene, is that right?
 3 DR. HOWELL:
 4 A. That's correct. Commissioner, I had no
 5 problem with talking to the public, talking to
 6 the media, but when I do it, I like to have a
 7 firm grasp of the material and a confidence in
 8 the material and if I had been around from day
 9 one, this was very detailed, complex issues of
 10 great importance and I just did not have the
 11 heart and soul confidence to be a good speaker
 12 on this. And I would prefer to have been
 13 there with the passion and belief that what I
 14 was being told that now was going to be
 15 attributed to me, was correct. But if the CEO
 16 felt that he wished me to be the point person,
 17 well, I will do what I can.
 18 THE COMMISSIONER:
 19 Q. And then this kind of thing comes along, which
 20 we now have here in document 429, in which
 21 effectively there's a request from the press,
 22 which naturally enough would go through
 23 communications. And it appears that
 24 communications perhaps in consultation with
 25 other people, but certainly not in

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1 consultation with you, developed what was
 2 viewed to be the appropriate response and then
 3 says you can be the person that's quoted as
 4 having made that response. So it sounds to me
 5 like somebody, I have no idea whom, had
 6 decided that you were sort of going to be the
 7 public face of Eastern Health on this one.
 8 DR. HOWELL:
 9 A. That may be so, Commissioner. I think had I a
 10 greater depth of knowledge of the
 11 organization, if I had built the relationships
 12 within the organization and certainly within
 13 the executive team, I feel stronger in that
 14 role now, then I think I would probably be
 15 handling myself somewhat differently and may
 16 be pushing back a little bit more or
 17 questioning, well now, is it really me that
 18 should be--that this should be attributed to.
 19 THE COMMISSIONER:
 20 Q. Well I suppose there comes my second question,
 21 do you have any reason--do you understand why
 22 it is you were chosen for this role?
 23 DR. HOWELL:
 24 A. As the front person for this particular -
 25 THE COMMISSIONER:

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1 Q. Uh-hm.
 2 DR. HOWELL:
 3 A. - issue? No, I do not.
 4 THE COMMISSIONER:
 5 Q. What is it about you that gave you that
 6 benefit?
 7 DR. HOWELL:
 8 A. I don't know the answer.
 9 THE COMMISSIONER:
 10 Q. When this material came through from Ms.
 11 Bonnell?
 12 CHAYTOR, Q.C.:
 13 Q. Ms. Bonnell, yes.
 14 THE COMMISSIONER:
 15 Q. It seemed to me that you were saying you sort
 16 of didn't pay a lot of attention to it, is
 17 that fair too, it was just another one of
 18 those things that came across your desk,
 19 really wasn't in your bailiwick, so you sort
 20 of said, okay, fly with it, or did you sort of
 21 read it and say can I sign onto this and say,
 22 once again, well, the organization must know,
 23 I'll take the bullet?
 24 DR. HOWELL:
 25 A. I think in, in the run of the day there are so

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1 many things that come at me and this would be
 2 coming at me in the midst of other things.
 3 Often I would be told we've had a query on
 4 this, we're putting out a response, we're
 5 going to attribute it to you and sometimes
 6 that's, it might be a flash glance and I'm on
 7 to whatever the other thing is, and I think I
 8 certainly, I better mature in that area.
 9 THE COMMISSIONER:
 10 Q. So what--let us say at least it is possible
 11 that things, statements had been put out by
 12 Eastern Health to be attributable to you,
 13 which you at best would have given a fleeting
 14 glance to and perhaps did not even read?
 15 DR. HOWELL:
 16 A. I don't think they would ever send it out
 17 without giving an opportunity for me to read
 18 it.
 19 THE COMMISSIONER:
 20 Q. Okay, no, I wasn't suggesting that, I was
 21 suggesting that you were on the e-mail which
 22 sort of said this is what we're going to do,
 23 but were there circumstances where you would
 24 have sort of either by silence assented to it
 25 or else said okay, without having given it any

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1 consideration or alternatively having given it
 2 a very cursory glance?
 3 DR. HOWELL:
 4 A. Never no consideration, but certainly
 5 superficial.
 6 THE COMMISSIONER:
 7 Q. Okay, thank you.
 8 CHAYTOR, Q.C.:
 9 Q. Doctor, I turn now to the resumption of the
 10 ER/PR testing and I understand that took place
 11 in February of 2007, so shortly after this e-
 12 mail exchange that I was directing your
 13 attention to. What measures were undertaken
 14 to ensure that the lab was ready for the
 15 testing to resume?
 16 DR. HOWELL:
 17 A. It really was a point for me where Mr.
 18 Gulliver, Dr. Denic, Dr. Elms advised me that
 19 we were now ready to resume ER/PR testing and
 20 that we were well along the way with all the
 21 recommendations and I basically accepted their
 22 position on that.
 23 CHAYTOR, Q.C.:
 24 Q. If we could look at P-1423, page 8? Now,
 25 Doctor, this document or this is your

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1 handwritten notes, January 30th, 2007 and lab
 2 quality. So is this a meeting of the lab
 3 quality committee or what is this?
 4 DR. HOWELL:
 5 A. Because there's no list of who attended, I'm
 6 thinking this might be again me sort of
 7 starting to firm up in my mind, okay, what are
 8 we doing here, what needs to be done to really
 9 have quality where it needs to be, some of
 10 which was done, some of which was planned to
 11 be done.
 12 CHAYTOR, Q.C.:
 13 Q. Okay, and included here, number four, you have
 14 "Pathologist Education", number five, "CME for
 15 technical staff" and what is this out to the
 16 right margin?
 17 DR. HOWELL:
 18 A. "Used Tela Health".
 19 CHAYTOR, Q.C.:
 20 Q. What's that?
 21 DR. HOWELL:
 22 A. What I'm trying to do is to find a way, an
 23 economical way to have regular ongoing
 24 continuing education for both the pathologist
 25 and the technical staff whereby we might

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1 either be bringing in experts on a regular
 2 basis or alternatively taking advantage of
 3 technology and using Tela Health media.
 4 CHAYTOR, Q.C.:
 5 Q. Number six is "Check spreadsheet for ER/PR", I
 6 take it that's the spreadsheet with the
 7 recommendations from the external reviews?
 8 DR. HOWELL:
 9 A. Correct.
 10 CHAYTOR, Q.C.:
 11 Q. Or most of which are from the external
 12 reviews. Did you do that, have you checked
 13 the spreadsheet to see the status of the
 14 recommendations? Was that something you were
 15 doing on a regular basis?
 16 DR. HOWELL:
 17 A. I might not go through it line by line, but I
 18 would ask about the progress and I was assured
 19 we were making progress. There have been
 20 times where I would go, okay, take me through
 21 one by one. But mostly I would trust that
 22 those individuals, are we making progress?
 23 Yes. Are you comfortable that it's where it
 24 needs to be? Yes. And I would expect that
 25 they would come to me only if they hit a

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1 barrier. If they were having difficulty
 2 advancing something that was important, then
 3 it would be my job to work with them to get
 4 that resolved.
 5 CHAYTOR, Q.C.:
 6 Q. So you relied on what you were being told by
 7 Mr. Gulliver and Dr. Denic in that respect?
 8 DR. HOWELL:
 9 A. That's correct.
 10 CHAYTOR, Q.C.:
 11 Q. And they were tasked with the responsibility
 12 to ensure the recommendations were
 13 implemented?
 14 DR. HOWELL:
 15 A. Correct.
 16 CHAYTOR, Q.C.:
 17 Q. Was there--prior to the testing resuming, was
 18 there any consideration given to having Ms.
 19 Wegrynowski come back and see if she was
 20 satisfied that now all of her recommendations
 21 had been implemented?
 22 DR. HOWELL:
 23 A. That was never discussed.
 24 CHAYTOR, Q.C.:
 25 Q. And do you know why not?

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1 DR. HOWELL:
 2 A. My understanding was after they did their, the
 3 follow up after the six months, at least from
 4 Dr. Banerjee, that he said it was okay to
 5 resume then.
 6 CHAYTOR, Q.C.:
 7 Q. Yes, I'm just thinking about Ms. Wegrynowski
 8 though because she still had quite a number of
 9 recommendations when she did her second
 10 review. You would have read her second report
 11 as well, I take it?
 12 DR. HOWELL:
 13 A. I did, yes. The short answer to your question
 14 was there any thought to bring her back again?
 15 The answer is no.
 16 CHAYTOR, Q.C.:
 17 Q. And my question was, though, do you know why
 18 not?
 19 DR. HOWELL:
 20 A. It was not considered. Dr. Denic and Mr.
 21 Gulliver felt very confident that we could
 22 resume the testing.
 23 CHAYTOR, Q.C.:
 24 Q. Okay, number seven you've listed here, "Hire
 25 safety quality manager." That's Ms. Wade's

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1 position?

2 DR. HOWELL:

3 A. That's correct.

4 CHAYTOR, Q.C.:

5 Q. So she hadn't been hired as of January 30th?

6 DR. HOWELL:

7 A. No, I think she was hired--I think she started

8 her job in May, 2007, I think.

9 CHAYTOR, Q.C.:

10 Q. And eight, "Laboratory accreditation program"

11 and you're looking into options there,

12 including you note Dr. Flynn's name, so that

13 there hadn't been any--the lab hadn't gone

14 through that process at this point in time,

15 that's something that comes later, I

16 understand, September 2007?

17 DR. HOWELL:

18 A. That's correct.

19 CHAYTOR, Q.C.:

20 Q. And then QMPLS, that takes place in December

21 of 2007?

22 DR. HOWELL:

23 A. That's correct.

24 CHAYTOR, Q.C.:

25 Q. So other than asking Dr. Denic and Mr.

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1 Gulliver about the status, was anything else

2 done from an external point of view to ensure

3 the lab was ready to resume testing in

4 February, 2007?

5 DR. HOWELL:

6 A. Well we had proficiency testing in place and -

7 CHAYTOR, Q.C.:

8 Q. And do you know how many--how many results you

9 had back from that at that point?

10 DR. HOWELL:

11 A. No, I don't, you'd have to--you'd have to

12 check with Dr. Denic.

13 CHAYTOR, Q.C.:

14 Q. Would that have been something you would have

15 asked of them, though, prior to the testing

16 resuming?

17 DR. HOWELL:

18 A. I had great faith, I mean, with all that we

19 had been through and with the recommendations

20 that had been made and the actions that were

21 ongoing, I had to have faith in the leaders

22 who work for me that they were giving me the

23 correct information.

24 CHAYTOR, Q.C.:

25 Q. And when it resumed, did you know whether or

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1 not it included just the St. John's' hospitals

2 or all the regions across the province?

3 DR. HOWELL:

4 A. No, I certainly had--when they resumed, I

5 initially thought that he had made his

6 colleagues aware and I thought that there had

7 been some consultation across the region and I

8 did not understand that he was just starting

9 it for St. John's.

10 CHAYTOR, Q.C.:

11 Q. You did not understand that?

12 DR. HOWELL:

13 A. No, not initially, I subsequently learned of

14 that.

15 CHAYTOR, Q.C.:

16 Q. You thought it was for the entire province?

17 DR. HOWELL:

18 A. I thought we were resuming ER/PR testing and

19 referrals.

20 CHAYTOR, Q.C.:

21 Q. And when did you learn the difference?

22 DR. HOWELL:

23 A. It will be there in one of the lab leadership

24 team meetings where I learned that we were

25 just offering it in St. John's and they

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1 provided an explanation as to why that was.

2 CHAYTOR, Q.C.:

3 Q. And laboratory accreditation program here in

4 this note, it says, one of your bullets "Do

5 site visit", is that OMA, Ontario Medical

6 Association?

7 DR. HOWELL:

8 A. Yes.

9 CHAYTOR, Q.C.:

10 Q. And Mount Sinai?

11 DR. HOWELL:

12 A. That was, which I gave earlier testimony my

13 intention to go visit some of these other labs

14 and see for myself.

15 CHAYTOR, Q.C.:

16 Q. And is the next bullet "lock down lab".

17 DR. HOWELL:

18 A. Lock down the lab.

19 CHAYTOR, Q.C.:

20 Q. What does that mean?

21 DR. HOWELL:

22 A. I had a--the lab in the Health Sciences was,

23 while there was a sign on the door saying "no

24 entry" it was freely open to anyone and

25 everyone to walk through that lab and people

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1 did take short cuts to go from one end of the
 2 building to the other and sometimes people
 3 inadvertently wandered in there, et cetera,
 4 and I was not happy with that, I was not
 5 comfortable with that. And I wanted it locked
 6 down, I wanted no entry unless you had a
 7 reason to be in that lab and it was also part
 8 of my process to help, I guess, drive the
 9 culture. I wanted the lab to become, I guess
 10 a temple within the hospital. I wanted it to
 11 be viewed as a different place, as a place
 12 that only professionals with the knowledge and
 13 the abilities of the laboratory professional
 14 to be in that particular area.
 15 CHAYTOR, Q.C.:
 16 Q. Okay. And if we could have then 1423, page
 17 12? I take it then that has happened, has it,
 18 the lock down of the lab?
 19 DR. HOWELL:
 20 A. In the Health Science Centre that has
 21 happened.
 22 CHAYTOR, Q.C.:
 23 Q. Page 12, and this is a meeting of February
 24 13th, 2007 of the pathology leadership team
 25 and in attendance, Dr. Denic, Mr. Gulliver,

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1 Keith Bowden and yourself?
 2 DR. HOWELL:
 3 A. Correct, Mr. Bowden is with facilities
 4 management, he would have been invited because
 5 we were trying to advance some of the
 6 initiatives around facilities.
 7 CHAYTOR, Q.C.:
 8 Q. Okay, and including here is "sign off on
 9 policies, program leadership, Tracey Tizzard
 10 discounted clinical chief"-- is that what that
 11 says?
 12 DR. HOWELL:
 13 A. It does.
 14 CHAYTOR, Q.C.:
 15 Q. Is this around what we discussed before about
 16 the fixation policy and who should be signing
 17 off?
 18 DR. HOWELL:
 19 A. Yes, she was the lady who was responsible for
 20 collating and bringing all the policies
 21 together, but this particular issue was one in
 22 which she had attended a manager's meeting and
 23 she had alluded to the fact that Mr. Gulliver
 24 would be signing off on all the laboratory
 25 policies, and Dr. Denic would not even be

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1 involved in that and that was not acceptable
 2 to me.
 3 CHAYTOR, Q.C.:
 4 Q. Okay. And then number six says, "ER/PR
 5 started again" and again this is February 13,
 6 so "ER/PR started again" and it says,
 7 "including HER2/neu"?
 8 DR. HOWELL:
 9 A. Correct.
 10 CHAYTOR, Q.C.:
 11 Q. Did you understand at this point in time that
 12 HER2/neu was included.
 13 DR. HOWELL:
 14 A. From that note, obviously, I felt that we were
 15 doing HER2/new--I learned subsequently that
 16 they were not happy with HER2/neu and they had
 17 not started offering HER2/neu and that's why
 18 they did not offer it outside to the rest of
 19 the regions because HER2/neu was going to be
 20 needed. So, if other regional health
 21 authorities wishes to send a specimen, we were
 22 only going to be able to do part of it for me,
 23 so that they may as well send it to Mount
 24 Sinai and get the three tests done.
 25 CHAYTOR, Q.C.:

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1 Q. So, at this point in time, February 13, you
 2 thought that ER/PR had started again including
 3 the entire province and that it did include
 4 HER2/neu.
 5 DR. HOWELL:
 6 A. That's what my note indicates.
 7 CHAYTOR, Q.C.:
 8 Q. Okay. And what does "QA report end of March"
 9 mean?
 10 DR. HOWELL:
 11 A. I can't say for certainty. I guess -
 12 CHAYTOR, Q.C.:
 13 Q. Is that the external proficiency report?
 14 DR. HOWELL:
 15 A. I'm not sure what that note--which QA report
 16 that's referring to.
 17 CHAYTOR, Q.C.:
 18 Q. And this next note then is February 19, 2007
 19 Quality and Safety Team and we see Dr.
 20 Williams apparently did attend that meeting.
 21 If we could turn please to P-1423, page 18.
 22 And Doctor, this I'm not sure, the date up at
 23 the top is May 10 - 15, if we go to the page
 24 before that, it seems to be not the same. It
 25 starts with number one anyhow and it goes on

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1 down the page. And if we look down to--this
 2 is a meeting again of the laboratories, this
 3 leadership team or -
 4 DR. HOWELL:
 5 A. I believe that to be so.
 6 CHAYTOR, Q.C.:
 7 Q. And it says, "Don and Bev only two left ER/PR.
 8 BB leaving", so I take it that's Don Cook and
 9 Bev Carter are the only two doing ER/PR.c
 10 DR. HOWELL:
 11 A. Correct.
 12 CHAYTOR, Q.C.:
 13 Q. Prostate and this is external proficiency
 14 being sent to Alberta regarding prostate, is
 15 that right?
 16 DR. HOWELL:
 17 A. Correct.
 18 CHAYTOR, Q.C.:
 19 Q. And then number four, "still experimenting
 20 with HER2/neu. ER/PR down to two people.
 21 Only doing St. John's, not Clarenville or
 22 Carbonear. May as well do ER/PR with
 23 HER2/neu". So, it looks like at this,
 24 whatever date this is, if it is May, you're
 25 learning that it's not including Clarenville

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1 and Carbonear.
 2 DR. HOWELL:
 3 A. That's correct.
 4 CHAYTOR, Q.C.:
 5 Q. And it says, "still having trouble with
 6 HER2/neu". So, I take it that this is when
 7 you learned that it's not including
 8 Clarenville and Carbonear which are actually
 9 part of Eastern Health?
 10 DR. HOWELL:
 11 A. That's correct.
 12 CHAYTOR, Q.C.:
 13 Q. What's the current status on that? Is
 14 Clarenville now and Carbonear now sending
 15 their samples to St. John's?
 16 DR. HOWELL:
 17 A. My understanding is that they are, but I think
 18 Dr. Denic can clarify that better.
 19 CHAYTOR, Q.C.:
 20 Q. And how about the other regions?
 21 DR. HOWELL:
 22 A. I'm not certain. Because we are still not
 23 offering HER2/neu, I think they still--Dr.
 24 Elms has not agreed that he's happy with the
 25 validation on that test. That was at the last

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1 time I talked to them which would be several
 2 months ago. And so we're not offering the
 3 three tests, only doing the two.
 4 CHAYTOR, Q.C.:
 5 Q. Okay. And Clarenville now, to your
 6 understanding is sending their samples?
 7 DR. HOWELL:
 8 A. I can't say with a great deal of certainty,
 9 but I believe that is so, but I am not
 10 certain.
 11 CHAYTOR, Q.C.:
 12 Q. Okay. And we understand that Clarenville had
 13 not, for a number of years been using St.
 14 John's.
 15 DR. HOWELL:
 16 A. That's correct.
 17 CHAYTOR, Q.C.:
 18 Q. They had been sending their samples to Mount
 19 Sinai for quite a number of years.
 20 DR. HOWELL:
 21 A. That's correct.
 22 CHAYTOR, Q.C.:
 23 Q. Do you know why? Why had Clarenville chosen
 24 Mount Sinai years ago?
 25 DR. HOWELL:

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1 A. I don't know the answer.
 2 CHAYTOR, Q.C.:
 3 Q. Had you ever asked or made any inquiries in
 4 that respect?
 5 DR. HOWELL:
 6 A. Somewhere, I think someone explained it to me,
 7 somewhere along the way, but I don't know; I
 8 don't know that history.
 9 CHAYTOR, Q.C.:
 10 Q. If we could look at please, P-1423, page 39.
 11 And this is--sorry, 39. And this looks like
 12 it's a lab medicine meeting again of August
 13 14, 2007. And on the bottom, number three,
 14 "ER/PR", you have an asterisk again, "negative
 15 and weak positives for Clarenville done at
 16 Mount Sinai. Master list of all patients for
 17 ER/PR next to be done. Clarenville patients
 18 have not been retested". And then "1997 to
 19 mid 1998, Khalifa left and centralized
 20 reporting stopped. No reporting. Clarenville
 21 sent to Mount Sinai". What was being told to
 22 you in this meeting about this?
 23 DR. HOWELL:
 24 A. Going back to the top, I think, Mr. Gulliver
 25 is advising me that--no -

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1 CHAYTOR, Q.C.:

2 Q. Sorry.

3 DR. HOWELL:

4 A. - the ER/PR, item number three, Mr. Gulliver

5 is advising me that the Clarenville patients

6 had not been retested, but then those patients

7 had always been sent to Mount Sinai.

8 CHAYTOR, Q.C.:

9 Q. Did it have anything to do with Dr. Khalifa

10 leaving and no centralized reporting?

11 DR. HOWELL:

12 A. Other than what we have in my note there, I

13 really don't have any great recollection of

14 what they were referring to with that note.

15 And I don't think I realized, even that Dr.

16 Khalifa had been in Clarenville.

17 CHAYTOR, Q.C.:

18 Q. No, I don't think he was.

19 DR. HOWELL:

20 A. Okay. Then I am unable to explain the detail

21 behind that note. The principal thing that

22 was being discussed with me at this time is

23 that we haven't gone back and retested

24 Clarenville patients and I'm saying, but

25 Clarenville patients were done at Mount Sinai.

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1 So, -

2 THE COMMISSIONER:

3 Q. So, are you saying the source of this

4 information is -

5 CHAYTOR, Q.C.:

6 Q. Terry -

7 THE COMMISSIONER:

8 Q. - Mr. Gulliver?

9 DR. HOWELL:

10 A. That is correct.

11 CHAYTOR, Q.C.:

12 Q. What's the bottom line, "Reza will give this

13 to" -

14 DR. HOWELL:

15 A. Government. By this time NLCHI is now

16 building a database and Dr. Reza was involved.

17 CHAYTOR, Q.C.:

18 Q. Okay, I'd like to continue on then. Doctor,

19 continuing on then, I believe, chronologically

20 we had been at May and I skipped forward to

21 August to look at that Clarenville reference.

22 Did you have any meetings with the government

23 on the ER/PR issue in May or what's your next

24 involvement on the ER/PR issue?

25 DR. HOWELL:

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1 A. We'd have to go to my notes for me to be able

2 to talk about the date.

3 CHAYTOR, Q.C.:

4 Q. Well, there's no note that I could find

5 regarding any meeting with government

6 officials and I'm wondering--there was a

7 meeting, we understand on May 15, 2007 with

8 Minister Wiseman along with others. Did you

9 attend that meeting?

10 DR. HOWELL:

11 A. I do remember, yes, several meetings maybe,

12 where, again I would get a call from Mr.

13 Tilley's executive assistant saying that Mr.

14 Tilley wanted me to join him with a meeting

15 with the minister or the deputy minister.

16 CHAYTOR, Q.C.:

17 Q. And what do you recall happening at that

18 meeting? What was discussed? First of all,

19 tell us who else attended. You and Mr. Tilley

20 -

21 DR. HOWELL:

22 A. I don't know which meeting that you're

23 referring to.

24 CHAYTOR, Q.C.:

25 Q. No, you tell me which meeting you attended and

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1 what you recall, who else attended.

2 DR. HOWELL:

3 A. You know I remember going to a meeting. I

4 remember a meeting with Mr. Tilley and I

5 sitting on one side of the table. I remember

6 Mr. Abbott on the other and Minister Wiseman

7 at the head of the table. I remember Minister

8 Wiseman asking did we know about this?

9 CHAYTOR, Q.C.:

10 Q. About what?

11 DR. HOWELL:

12 A. That's as much as I can remember. And I think

13 it was along the lines of had we been

14 informed? Were we aware of this? And I

15 remember Mr. Abbott speaking up and saying,

16 yes, Minister, we were informed. But the

17 detail of that, I honestly cannot -

18 THE COMMISSIONER:

19 Q. But you don't know what it was you were

20 talking about?

21 DR. HOWELL:

22 A. It was in relation, I believe, Commissioner,

23 to ER/PR issues, but I--the detail of that

24 meeting, that was the only event--I thought

25 Mr. Tilley was going to answer the question.

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1 Before he did, Mr. Abbott answered the
 2 question. And that was the only thing that
 3 stood out in my mind.
 4 CHAYTOR, Q.C.:
 5 Q. So, would this have been the first time that
 6 you met Mr. Wiseman?
 7 DR. HOWELL:
 8 A. I don't know for sure. It probably was, but I
 9 couldn't say for certain.
 10 CHAYTOR, Q.C.:
 11 Q. So, you recall a meeting with him and with Mr.
 12 Abbott and you and Mr. Tilley, was anybody
 13 else in the room?
 14 DR. HOWELL:
 15 A. I'm not certain.
 16 CHAYTOR, Q.C.:
 17 Q. Do you know whether or not Heather Predham was
 18 there?
 19 DR. HOWELL:
 20 A. I don't know, but I don't think she was, but
 21 I'm not certain.
 22 CHAYTOR, Q.C.:
 23 Q. And you recall Minister Wiseman asking--you
 24 recall it being in relation to ER/PR and
 25 Minister Wiseman asking Eastern Health or

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1 asking Mr. Abbott whether or not they were
 2 aware of something. Who was being asked that
 3 question?
 4 DR. HOWELL:
 5 A. I think--my sense was that he asked Mr.
 6 Tilley, but I think before Mr. Tilley
 7 answered, Mr. Abbott answered.
 8 CHAYTOR, Q.C.:
 9 Q. Mr. Abbott answered saying that he was aware?
 10 Or answered saying that Eastern Health -
 11 DR. HOWELL:
 12 A. As I remember--this is tough to go back and
 13 remember the detail of the exact words that
 14 were -
 15 CHAYTOR, Q.C.:
 16 Q. But even if we could have the exact subject
 17 matter might help. We understand there was a
 18 meeting on May 15 with Minister Wiseman that
 19 this matter--do you recall it coming out in
 20 the media, that it had broke in the media that
 21 there was an issue that Eastern Health hadn't
 22 disclosed all the numbers? Do you recall that
 23 coming out in the media?
 24 DR. HOWELL:
 25 A. I mean it is an absolute blur to me and I know

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1 there was something that came out and I know
 2 that we went up and met with the Minister, but
 3 the exact detail of the full content of that
 4 meeting, other than what I have told you, I
 5 have no other detail that I can share.
 6 CHAYTOR, Q.C.:
 7 Q. Okay, let's just back -
 8 DR. HOWELL:
 9 A. And I did not take notes from the meeting.
 10 CHAYTOR, Q.C.:
 11 Q. No, I know--I don't have any notes. Doctor,
 12 five months before, December 2006 and the
 13 preparation for that, and you're able to give
 14 fairly good recollection of what went into the
 15 preparation for the media technical briefing
 16 and then what happened and the aftermath of
 17 that and you had some misgivings going into
 18 it. In terms of your own role, because you
 19 didn't feel you had the requisite knowledge or
 20 background. So now, five months after that it
 21 comes out in the news and there's, I would
 22 suggest, it's fair to say there was a fair
 23 amount of media coverage and it dates back to
 24 what had happened in December and now numbers
 25 are known through an affidavit that was filed

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1 in court in February. And are you saying that
 2 you don't have much recollection around that
 3 and what happened or transpired in the
 4 immediate aftermath?
 5 DR. HOWELL:
 6 A. I don't know--unfortunately, I don't have a
 7 lot of recollection and even as you talk and
 8 outline that, it starts to piece together that
 9 I didn't know that the affidavit was going to
 10 be filed in February or whatever. And then
 11 once that was filed and became public
 12 knowledge that then, I guess, it became a much
 13 bigger story in the media and I do remember
 14 getting called to go to Confederation Building
 15 with Mr. Tilley but beyond that, the content
 16 of that meeting and what the outcome. And
 17 there were many times that, not many times, I
 18 wasn't there that many times, but there were
 19 times when I might leave and Mr. Tilley would
 20 remain with the Minister or the Deputy
 21 Minister.
 22 THE COMMISSIONER:
 23 Q. Do you recall how many meetings you would have
 24 had where Minister Wiseman would have been
 25 present?

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1 DR. HOWELL:
 2 A. I don't recall.
 3 THE COMMISSIONER:
 4 Q. And you say that you didn't know the affidavit
 5 was going to be filed in February?
 6 DR. HOWELL:
 7 A. I did not.
 8 THE COMMISSIONER:
 9 Q. But you did know that there was going to be an
 10 affidavit filed because you'd refused to sign
 11 it, right? So, you knew there was one in the
 12 works?
 13 DR. HOWELL:
 14 A. Oh, I knew there were--well, first of all,
 15 Commissioner, I really didn't even know how
 16 that process worked, the filing of an
 17 affidavit and that was not an area that I had
 18 previously been exposed to.
 19 THE COMMISSIONER:
 20 Q. Um-hm, but somebody came to you and asked you
 21 to sign an affidavit which you looked at
 22 carefully and then decided that you would not
 23 sign it.
 24 DR. HOWELL:
 25 A. That's correct.

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1 THE COMMISSIONER:
 2 Q. For the reasons which you've given us.
 3 DR. HOWELL:
 4 A. That's correct.
 5 THE COMMISSIONER:
 6 Q. So, I assume that from that you would have
 7 concluded that somebody was going to have to
 8 file an affidavit addressing those points
 9 within your organization. Someone within your
 10 organization would have to do that?
 11 DR. HOWELL:
 12 A. Yes.
 13 THE COMMISSIONER:
 14 Q. And having looked at the information in the
 15 affidavit, carefully enough to decide you
 16 could not sign it. Then you must have known
 17 that the information in that affidavit
 18 included information that had not yet been
 19 made public by Eastern Health.
 20 DR. HOWELL:
 21 A. Yes, I had read the affidavit and saw the
 22 material that was in it.
 23 THE COMMISSIONER:
 24 Q. Okay. To your knowledge, did anybody within
 25 Eastern Health, sort of, twig to the idea

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1 that, oops, we better deal with this.
 2 DR. HOWELL:
 3 A. You know, I wasn't party to discussions about
 4 that. It -
 5 THE COMMISSIONER:
 6 Q. Well, who would have been? I mean, just from
 7 the point of view of somebody that's looking
 8 at it from the outside, it seems more than
 9 passing strange that a few months after a
 10 rather organized presentation is made by
 11 Eastern Health in which specific decisions are
 12 made about what can or cannot be said, and
 13 then within a few months, whether you knew it
 14 or not, an affidavit is filed in a court
 15 proceeding which provide information that you
 16 were then earlier saying you're not going to
 17 provide, sooner or later somebody was going to
 18 figure it out and put the pieces together.
 19 And I would have thought well, perhaps
 20 somebody in the organization would have said,
 21 okay, what are we going to do when that
 22 happens? Now, whose job, if anybody's, would
 23 it be to do that? Don't you have to prepare
 24 for what you know is coming through the door
 25 in an organization your size?

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1 DR. HOWELL:
 2 A. I believe that that is so. I -
 3 THE COMMISSIONER:
 4 Q. Whose job would it be to prepare for that kind
 5 of thing?
 6 DR. HOWELL:
 7 A. Well, it rested in the Quality and Risk
 8 Management area.
 9 THE COMMISSIONER:
 10 Q. Okay.
 11 DR. HOWELL:
 12 A. And those would be the individuals who were
 13 dealing with the filing of the affidavit and
 14 dealing with Mr. Boone as a solicitor who was
 15 working that case.
 16 THE COMMISSIONER:
 17 Q. Ms. Chaytor, wherever you can find a
 18 convenient spot, we'll take an afternoon
 19 break.
 20 CHAYTOR, Q.C.:
 21 Q. Okay, perhaps, I'll just finish then with this
 22 meeting.
 23 THE COMMISSIONER:
 24 Q. Okay.
 25 CHAYTOR, Q.C.:

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1 Q. So, I just want to be clear then, you do have
 2 a recollection of being called to a meeting at
 3 Confederation Building and Mr. Abbott, Mr.
 4 Tilley and Mr. Wiseman and yourself being in
 5 attendance. And perhaps if we could pull up
 6 please, P-0436, page 5. Mr. Tilley has told
 7 us that this date is likely an error, that
 8 it's May 15, 2007. It's a meeting with
 9 Department of Health and Community Services
 10 regarding ER/PR and these are his notes of
 11 what was presented at the time. And I'm not
 12 going to pretend to be able to read most of
 13 this, but certainly we can figure out
 14 "perception of media" is that "mislead. Focus
 15 was on treatment, only because pending
 16 lawsuit. Avoided an error rate. Fifteen to
 17 twenty percent" and I'm not sure, "can we
 18 identify error rate" written there. It goes
 19 on from there. Does that help job your
 20 memory, Dr. Howell?
 21 DR. HOWELL:
 22 A. Not even a little bit.
 23 CHAYTOR, Q.C.:
 24 Q. Okay. In the meeting that you do recall
 25 attending, was there any discussion about the

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1 external review reports?
 2 DR. HOWELL:
 3 A. I don't remember the discussion in the
 4 meeting, other than that one point that I have
 5 already -
 6 CHAYTOR, Q.C.:
 7 Q. And you're not sure what that was in relation
 8 to?
 9 DR. HOWELL:
 10 A. No, just were we informed, something along
 11 that line and the deputy minister saying, yes,
 12 minister we were fully informed along the way.
 13 CHAYTOR, Q.C.:
 14 Q. Have you ever been present in a meeting where
 15 Mr. Tilley agreed to provide the external
 16 review reports to the Department of Health?
 17 DR. HOWELL:
 18 A. I was not in a meeting, I don't think, where
 19 that happened, but I, in fact, brought copies
 20 of the external reviews to Mr. Tilley. And it
 21 was my understanding that he was going to be
 22 sending those on to Mr. Abbott.
 23 CHAYTOR, Q.C.:
 24 Q. And do you know whether or not that ever
 25 happened?

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1 DR. HOWELL:
 2 A. After Mr. Tilley's resignation and Ms. Jones
 3 took the role, I learned that she had found
 4 them on his desk and they had not been, I
 5 presume, had not been sent.
 6 CHAYTOR, Q.C.:
 7 Q. Okay.
 8 THE COMMISSIONER:
 9 Q. Do you know when that was? When you would
 10 have brought the copies to Mr. Tilley?
 11 DR. HOWELL:
 12 A. No, I don't know for sure, Commissioner.
 13 THE COMMISSIONER:
 14 Q. Have any view in relation to when, for
 15 example, Mr. Tilley left the organization?
 16 DR. HOWELL:
 17 A. How long before that?
 18 THE COMMISSIONER:
 19 Q. Before that, obviously it had to be before
 20 that, so -
 21 DR. HOWELL:
 22 A. Yes, it would be, again, total supposition on
 23 my part, but it might be a month, but I really
 24 am not certain.
 25 THE COMMISSIONER:

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1 Q. Okay. Thank you.
 2 CHAYTOR, Q.C.:
 3 Q. And did Mr. Tilley tell you about how that
 4 came about, that Mr. Abbott, he was forwarding
 5 these reports now to Mr. Abbott. Was there a
 6 discussion around that?
 7 DR. HOWELL:
 8 A. I don't remember him sharing any detail as to
 9 why or how or, you know -
 10 CHAYTOR, Q.C.:
 11 Q. And did you have discussion with him about any
 12 protection of the information in the reports?
 13 DR. HOWELL:
 14 A. I don't recall having that discussion with
 15 him. I think I do remember trying to sort out
 16 in my own mind, so you haven't seen this
 17 before and is that because it was protected
 18 and does not even the CEO get those materials.
 19 CHAYTOR, Q.C.:
 20 Q. So you understood that Mr. Tilley himself
 21 hadn't seen the reports up until then?
 22 DR. HOWELL:
 23 A. I didn't--I'm not certain whether he had seen
 24 them or not, but he obviously did not have
 25 copies of them, because he had directed me to

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1 bring them to him.
 2 CHAYTOR, Q.C.:
 3 Q. And after when you learn, I take it, from Ms.
 4 Jones that she found the correspondence and
 5 the reports intended for Dr. Abbott, did you
 6 then--sorry, Mr. Abbott, did you then have a
 7 discussion with Ms. Jones as to your knowledge
 8 of how that came to be, why there would be
 9 this letter and reports on Mr. Tilley's desk
 10 addressed to Mr. Abbott?
 11 DR. HOWELL:
 12 A. I remember, yeah, I did talk to her about
 13 those reports and that I had brought them to
 14 Mr. Tilley and I understood that he was going
 15 to share them with the Department of Health,
 16 but beyond that, I don't think we had any
 17 lengthy discussion about that at that time.
 18 CHAYTOR, Q.C.:
 19 Q. And did you understand that Ms. Jones too
 20 would then be forwarding the reports?
 21 DR. HOWELL:
 22 A. I think, I--I don't think I pursued that
 23 thought process. I don't think she was
 24 sending them, no.
 25 CHAYTOR, Q.C.:

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1 Q. And do you recall any discussion around that
 2 and why she wasn't going to be forwarding
 3 them?
 4 DR. HOWELL:
 5 A. No, I don't.
 6 CHAYTOR, Q.C.:
 7 Q. This is a convenient point, Commissioner.
 8 THE COMMISSIONER:
 9 Q. All right, we'll take the afternoon break.
 10 (BREAK)
 11 THE COMMISSIONER:
 12 Q. Please be seated. Ms. Chaytor.
 13 CHAYTOR, Q.C.:
 14 Q. Thank you, Commissioner. Dr. Howell, do you
 15 recall the--we understand there was a Cabinet
 16 briefing on May 17th 2007. Did you have any
 17 involvement in that?
 18 DR. HOWELL:
 19 A. I was present outside the Cabinet room.
 20 CHAYTOR, Q.C.:
 21 Q. And why was that? Who asked you to attend?
 22 DR. HOWELL:
 23 A. Again, Mr. Tilley would have contacted me and
 24 requested me to accompany him there. We went
 25 to Confederation Building, I think went to Mr.

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1 Abbott's office, and from there, walked with
 2 Mr. Abbott--this really does stand out in my
 3 mind. It was the first time that I'd actually
 4 been at the Cabinet floor, and we walked over
 5 with Ms. Hennessey and Ms. Mundon, I think,
 6 and then up and outside the Cabinet area. I
 7 remember a very large group of people in that
 8 area. I'm looking for some clarification on
 9 why all these people, and it presumably were
 10 all people who might potentially get on--I was
 11 advised, might get on the Cabinet agenda for
 12 that day, and we all sat outside and waited to
 13 be called.
 14 CHAYTOR, Q.C.:
 15 Q. And what did you understand, what issue was
 16 being discussed that you and Mr. Tilley might
 17 have any input into?
 18 DR. HOWELL:
 19 A. My recollection, it was in reference to ER/PR,
 20 but Mr. Abbott was the one who was doing a
 21 presentation, as I understand it, and that he
 22 was--and in the end, we waited outside the
 23 room. He went in and we were never asked to
 24 enter the room.
 25 CHAYTOR, Q.C.:

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1 Q. And you waited outside with Ms. Hennessey and
 2 Ms. Mundon?
 3 DR. HOWELL:
 4 A. That's correct.
 5 CHAYTOR, Q.C.:
 6 Q. And did you have discussions with Ms.
 7 Hennessey and Ms. Mundon and Mr. Tilley about
 8 the issue while you sat outside?
 9 DR. HOWELL:
 10 A. It was basic chit chat. There was no--that I
 11 recall that there was any particular business
 12 discussion as such.
 13 CHAYTOR, Q.C.:
 14 Q. What do--why would this issue now be being
 15 discussed at Cabinet? What did you understand
 16 the significance at this point in time?
 17 DR. HOWELL:
 18 A. I think that the whole issue was one of
 19 disclosure, full disclosure to the public. It
 20 was public disclosure, I think, was the basic
 21 issue.
 22 CHAYTOR, Q.C.:
 23 Q. Arising out of what had happened in December
 24 11th?
 25 DR. HOWELL:

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1 A. And the subsequent affidavits that were filed.
 2 CHAYTOR, Q.C.:
 3 Q. Yes, okay, and this waiting outside the
 4 Cabinet door, did that happen before or after
 5 your meeting that you recall having with the
 6 Minister?
 7 DR. HOWELL:
 8 A. I believe it was after, but again, vague
 9 recollections of those things.
 10 CHAYTOR, Q.C.:
 11 Q. So the meeting that you're recalling could
 12 well have been the May 15th meeting?
 13 DR. HOWELL:
 14 A. It could be.
 15 CHAYTOR, Q.C.:
 16 Q. So ultimately you weren't called in to speak
 17 to Cabinet?
 18 DR. HOWELL:
 19 A. That's correct.
 20 CHAYTOR, Q.C.:
 21 Q. And what happened next? What did you
 22 understand came out of that?
 23 DR. HOWELL:
 24 A. My understanding next is that Mr. Tilley was
 25 directed to do a press conference and there

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1 was preparation for that press conference.
 2 CHAYTOR, Q.C.:
 3 Q. And were you involved in that preparation?
 4 DR. HOWELL:
 5 A. I was.
 6 CHAYTOR, Q.C.:
 7 Q. And were you asked to be the spokesperson at
 8 the press conference?
 9 DR. HOWELL:
 10 A. Initially, it appeared that Mr. Tilley was
 11 looking for me to be the spokesperson.
 12 CHAYTOR, Q.C.:
 13 Q. So Mr. Tilley had asked you to be the
 14 spokesperson?
 15 DR. HOWELL:
 16 A. I certainly got the impression that it was his
 17 intention that I would be the spokesperson.
 18 CHAYTOR, Q.C.:
 19 Q. And how did that change?
 20 DR. HOWELL:
 21 A. There was an evening meeting in preparation
 22 for that and one of the professionals from
 23 Bristol Communication attended that meeting
 24 and during that meeting, she indicated to Mr.
 25 Tilley that he would have to be the one.

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1 CHAYTOR, Q.C.:
 2 Q. And was that the first time that Bristol
 3 Communications had been brought in for advice
 4 on this issue?
 5 DR. HOWELL:
 6 A. To the best of my knowledge, that's so.
 7 CHAYTOR, Q.C.:
 8 Q. And who was that person?
 9 DR. HOWELL:
 10 A. Oh my, I can't remember the name. I'm blank.
 11 CHAYTOR, Q.C.:
 12 Q. So it was her, as opposed to anyone from
 13 government who directed that it be Mr. Tilley
 14 not you?
 15 DR. HOWELL:
 16 A. I know in that meeting, she said it had to be
 17 him.
 18 CHAYTOR, Q.C.:
 19 Q. And did she say why?
 20 DR. HOWELL:
 21 A. I don't remember the specifics of the
 22 discussion. He was the leader of the
 23 organization. I don't remember the specifics
 24 any more than that.
 25 CHAYTOR, Q.C.:

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1 Q. If we could look then at 1423, page 20, and
 2 this is cut off, but I think the date is
 3 probably May 17th 2007, media prep. Is that
 4 right, Doctor? They're your notes.
 5 DR. HOWELL:
 6 A. I think that's probably notes from that
 7 evening.
 8 CHAYTOR, Q.C.:
 9 Q. You weren't doing any media prep at May 7th, I
 10 take it.
 11 DR. HOWELL:
 12 A. No, I think you're right with the date.
 13 CHAYTOR, Q.C.:
 14 Q. And then there's a list of what appears to be
 15 questions, the first one being "why didn't
 16 talk about those other 200," and then it says
 17 "cancer specialists." What does that mean?
 18 DR. HOWELL:
 19 A. I don't recall, "why didn't talk about those
 20 other 200, cancer specialists."
 21 CHAYTOR, Q.C.:
 22 Q. I take it the question is why weren't the
 23 other 200 patients referred to in the media
 24 technical briefing.
 25 DR. HOWELL:

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1 A. Yeah.

2 CHAYTOR, Q.C.:

3 Q. And then the bullet is "cancer specialists."

4 Did the cancer specialists have any input into

5 that issue about the disclosure of the entire

6 317 number?

7 DR. HOWELL:

8 A. Well, Dr. Laing certainly would be, you know,

9 part of the team who was talking about that

10 data, but I'm not sure what that bullet about

11 cancer specialist. I think there were themes

12 and questions that the communications people

13 were talking about in that meeting, and again,

14 it was almost like a question and answer

15 session and I think they were helping prepare

16 Mr. Tilley for that meeting, for that press

17 conference.

18 CHAYTOR, Q.C.:

19 Q. So who else attended besides you and Mr.

20 Tilley and the person from Bristol?

21 DR. HOWELL:

22 A. Ms. Bonnell would be there. I'm thinking it

23 was in--held out at the Waterford site in

24 corporate office. I think I was there, Dr.

25 Denic, Dr. Laing, Ms. Predham was there, Mrs.

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1 Pilgrim was there. Those are the only ones I

2 can recall at the moment. There may be

3 others. I seem to think it was a large number

4 of people.

5 CHAYTOR, Q.C.:

6 Q. And why was Bristol Communications brought in

7 at this point?

8 DR. HOWELL:

9 A. I think Ms. Bonnell had suggested we bring

10 them in for advice on crisis communication.

11 CHAYTOR, Q.C.:

12 Q. And then the second question is "what do you

13 say to husband of woman with breast cancer?"

14 and the first bullet is "I'm sorry. Can't

15 know if Tamoxifen helped before and now."

16 What is your recollection as to who's posing

17 these questions and who's coming up with the

18 answers? Is this a group discussion? Is this

19 a brainstorming to come up with questions and

20 answers?

21 DR. HOWELL:

22 A. I guess that's about the best way to say it,

23 is that the communications people are saying

24 what are some of the areas that you need to

25 cover off here, what are some of the questions

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1 that you may get asked, and you know, you need

2 to be upfront on certain things and here are

3 some of the points that you should make.

4 CHAYTOR, Q.C.:

5 Q. And then the third is "Premier calling for

6 inquiry," with a question mark, and support.

7 Do you understand at this point in time the

8 Premier was looking for an inquiry or was

9 calling an inquiry?

10 DR. HOWELL:

11 A. That's what that would suggest, and that Mr.

12 Tilley would be supportive of that.

13 CHAYTOR, Q.C.:

14 Q. "When did Eastern Health tell the Department

15 of Health?" and then there's no full answer

16 written there. Was there any discussion

17 around that?

18 DR. HOWELL:

19 A. No major, other than that the Department of

20 Health was informed.

21 CHAYTOR, Q.C.:

22 Q. And when, based on the information that's been

23 provided to you, when did you understand that

24 the Department of Health had been informed?

25 DR. HOWELL:

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1 A. To the best of my knowledge, it would be when

2 we delivered that--well, from when I was

3 present, when we delivered that note to

4 Minister Osborne, outside the House of

5 Assembly.

6 CHAYTOR, Q.C.:

7 Q. That's your first involvement?

8 DR. HOWELL:

9 A. That would be my first involvement with it.

10 CHAYTOR, Q.C.:

11 Q. When Eastern Health told the full numbers, is

12 that what you're suggesting?

13 DR. HOWELL:

14 A. That's what I'm suggesting, but you know, I

15 certainly would have the impression that, you

16 know, there was ongoing communication between

17 Mr. Tilley and certainly the Deputy Minister

18 on a fairly regular basis.

19 CHAYTOR, Q.C.:

20 Q. And the existence of the briefing note of

21 August 18th, 2006, shortly before you began

22 your time with Eastern Health and numbers

23 contained in that, you weren't aware of that?

24 DR. HOWELL:

25 A. No.

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1 CHAYTOR, Q.C.:

2 Q. And then there's a question who's, I guess

3 that should be "to blame?"

4 DR. HOWELL:

5 A. Correct.

6 CHAYTOR, Q.C.:

7 Q. And "as president, I have to take the

8 responsibility." That's Mr. Tilley saying

9 that, I assume?

10 DR. HOWELL:

11 A. That's correct.

12 CHAYTOR, Q.C.:

13 Q. "We have had external consultants." Who is

14 being referred to as the external consultants?

15 DR. HOWELL:

16 A. I would presume that that was Mr. Banerjee and

17 Ms. Wegrynowski.

18 CHAYTOR, Q.C.:

19 Q. Okay. So at the end of that evening, and into

20 the next day, I take it the press conference

21 went ahead May 18th?

22 DR. HOWELL:

23 A. It did.

24 CHAYTOR, Q.C.:

25 Q. And what can you tell the Commissioner with

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1 respect to that?

2 DR. HOWELL:

3 A. It was a very high pressure event for those of

4 us that had to participate. It was well

5 attended by the press. There were surprises,

6 one of which was CBC's satellite truck, and I

7 don't think Mr. Tilley realized that there was

8 going to be a national live feed into News

9 World. Really, there's not much more to say

10 than that. He delivered his comments. He--

11 there were the questions from the audience, I

12 think the only questions were directed to Dr.

13 Denic, Dr. Denic answered those questions.

14 And that's as much as I recollect from that

15 event.

16 CHAYTOR, Q.C.:

17 Q. So did you sit on the panel?

18 DR. HOWELL:

19 A. I did.

20 CHAYTOR, Q.C.:

21 Q. So yourself, Mr. Tilley, Dr. Denic, who else?

22 DR. HOWELL:

23 A. And Dr. Laing.

24 CHAYTOR, Q.C.:

25 Q. And Dr. Laing. And did you speak at all?

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1 DR. HOWELL:

2 A. I did not.

3 CHAYTOR, Q.C.:

4 Q. Coming out of the cabinet briefing, was there

5 any discussion between officials at the

6 department and Eastern Health requiring that

7 the press conference take place?

8 DR. HOWELL:

9 A. My understanding is that Mr. Tilley was

10 directed to do the press conference.

11 CHAYTOR, Q.C.:

12 Q. Okay. Were you present when that was

13 discussed?

14 DR. HOWELL:

15 A. When he was directed to do it?

16 CHAYTOR, Q.C.:

17 Q. Yes.

18 DR. HOWELL:

19 A. I don't think so.

20 CHAYTOR, Q.C.:

21 Q. And what did Mr. Tilley tell you about that?

22 DR. HOWELL:

23 A. I don't know how that message got to me.

24 CHAYTOR, Q.C.:

25 Q. And what were you told by whoever told you?

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1 DR. HOWELL:

2 A. I think I was just, somehow a message got to

3 me that we were going to have to do a press

4 conference and we were all asked to come to a

5 meeting in the evening to help prepare for

6 that press conference.

7 CHAYTOR, Q.C.:

8 Q. Okay. If we could have, please, P-0854?

9 COMMISSIONER:

10 Q. Just before we move onto that, are you saying

11 you don't know who directed Mr. Tilley to do

12 this?

13 DR. HOWELL:

14 A. I do not, no.

15 COMMISSIONER:

16 Q. Thank you.

17 CHAYTOR, Q.C.:

18 Q. And this is an e-mail, Dr. Howell, from John

19 Abbott to yourself, May 23rd, 2007. The

20 subject is "Please call me. Urgent." "Please

21 call on cell." I assume he means, and there's

22 a number there. "Also need for you to arrange

23 a conference call tomorrow a.m. with other VPs

24 of medical service in province on the ER/PR

25 issue and current testing processes. Please

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1 include Cathi Bradbury and Moira Hennessey on
 2 the call." What can you tell us what this is
 3 about?
 4 DR. HOWELL:
 5 A. Well, first of all what I would say is in
 6 receiving that e-mail that was a very unusual
 7 situation. I perhaps had been contacted once
 8 ever before that directly from Mr. Abbott.
 9 Most of the interaction between Mr. Abbott and
 10 I would have been through Mr. Tilley, so that
 11 was unusual for me to get an e-mail of that
 12 sort. Also, it was very unusual for me to be
 13 directed to arrange a conference call with the
 14 other VPs of medicine because normally he
 15 would have said to his own staff, Ms.
 16 Hennessey or Dr. Bradbury and ask them to
 17 arrange that. So this was a most unusual
 18 request.
 19 CHAYTOR, Q.C.:
 20 Q. So I take it you called Mr. Abbott back?
 21 DR. HOWELL:
 22 A. I called him back. And later that evening I,
 23 after reviewing my notes, there was a meeting
 24 with the minister, and I think that's the
 25 time.

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1 CHAYTOR, Q.C.:
 2 Q. Okay. If we could look then at 1423, page 21?
 3 The same day, "Meeting 10 to 11 p.m.,
 4 conference call." And the attendees are
 5 Minister Wiseman, John Abbott, Karen McGrath,
 6 Tansy. And I take it yourself?
 7 DR. HOWELL:
 8 A. Correct.
 9 CHAYTOR, Q.C.:
 10 Q. And so is this taking place--are any people in
 11 the same room with you?
 12 DR. HOWELL:
 13 A. No. I'm at home.
 14 CHAYTOR, Q.C.:
 15 Q. You're at home, okay. And who is Karen
 16 McGrath?
 17 DR. HOWELL:
 18 A. She was the new CEO of Central.
 19 CHAYTOR, Q.C.:
 20 Q. Okay. And it says, "The issue. Minister
 21 blindsided, ER/PR restarted, ie, open for
 22 business but did not realize only St. John's."
 23 Can you tell us what's about, what was
 24 discussed?
 25 DR. HOWELL:

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1 A. I think the minister had gotten up in the
 2 house and spoke to this that it had been
 3 restarted and he was not aware that--it was
 4 his understanding that we were now providing
 5 the service province wide and he had learned
 6 that that was not the case.
 7 CHAYTOR, Q.C.:
 8 Q. And were you, yourself, aware of that at this
 9 point in time?
 10 DR. HOWELL:
 11 A. I had only become aware of that myself a few
 12 days before that, as earlier notes have shown.
 13 CHAYTOR, Q.C.:
 14 Q. And then the questions, "Why haven't,"--and
 15 who used this word, by the way, "blindsided"?
 16 DR. HOWELL:
 17 A. Who used that?
 18 CHAYTOR, Q.C.:
 19 Q. Yes.
 20 DR. HOWELL:
 21 A. I believe it was directly from the minister
 22 himself. It may have been Mr. Abbott telling
 23 me that the minister -
 24 CHAYTOR, Q.C.:
 25 Q. So I take it the minister was non too pleased?

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1 DR. HOWELL:
 2 A. He was not.
 3 CHAYTOR, Q.C.:
 4 Q. Questions, "Why haven't we started providing
 5 service to other regions?" No. 2, "How many
 6 Her2," I guess that should be "Her2/neu
 7 requests?"
 8 DR. HOWELL:
 9 A. Right.
 10 CHAYTOR, Q.C.:
 11 Q. Three, "Any concerns for regional quality of
 12 samples?" Four, "Overall volume from various
 13 regions." Is that what that's supposed to
 14 say?
 15 DR. HOWELL:
 16 A. I think so.
 17 CHAYTOR, Q.C.:
 18 Q. And five, "Retest breakdown by regions, by
 19 region error rate." So No. 3 in particular,
 20 any concerns for regional quality of sample.
 21 These were questions being posed by whom?
 22 DR. HOWELL:
 23 A. That's, I think, by the minister.
 24 CHAYTOR, Q.C.:
 25 Q. And what was your answer from Eastern Health

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1 on that?

2 DR. HOWELL:

3 A. Well, the--any concerns for the regional

4 quality of the sample, I mean, we had

5 restarted the testing for St. John's and the

6 professionals with Eastern responsible for

7 that, as I've talked to earlier, were quite

8 comfortable in restarting that testing. As

9 for the--I think I could not answer some of

10 these questions and as a result of that we did

11 subsequently arrange to have another

12 conference call with all the participating

13 parties from all the regions on that call the

14 next day.

15 CHAYTOR, Q.C.:

16 Q. Okay. And I take it that if there's concerns

17 for the quality of samples coming from the

18 outside regions into St. John's for

19 processing, that would have to do with the

20 processing of the sample before it arrives in

21 St. John's?

22 DR. HOWELL:

23 A. That would be correct, but I--these were

24 questions posed, you know, that needed

25 answers.

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1 CHAYTOR, Q.C.:

2 Q. And did Ms. McGrath have anything to say about

3 that issue or any of these issues, what was

4 she saying the position was in Central?

5 DR. HOWELL:

6 A. I don't remember any comments that Ms. McGrath

7 made.

8 CHAYTOR, Q.C.:

9 Q. Okay. No. 5 says, "Retest breakdown by region

10 error rate." I take it that means figuring

11 out the error rate for each of the four

12 regions, is that what that is about?

13 DR. HOWELL:

14 A. I think that's what that is about.

15 CHAYTOR, Q.C.:

16 Q. And are you aware of whether or not that

17 exercise has taken place?

18 DR. HOWELL:

19 A. I believe that has taken place with NLCHI

20 under the direction of Mr. Thompson.

21 CHAYTOR, Q.C.:

22 Q. And what do you understand to be the outcome

23 to that exercise?

24 DR. HOWELL:

25 A. I don't recall. I'd have to go back and look

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1 at the database myself.

2 CHAYTOR, Q.C.:

3 Q. So I take it for this conference call to

4 happen 10 o'clock at night, 10 to 11 o'clock

5 at night, that too is unusual for you to be on

6 a conference call with the minister at 10

7 o'clock at night?

8 DR. HOWELL:

9 A. It's only happened once.

10 CHAYTOR, Q.C.:

11 Q. This is it?

12 DR. HOWELL:

13 A. That's it.

14 CHAYTOR, Q.C.:

15 Q. Right. And at the end of it was the minister

16 satisfied with the answers that he received?

17 DR. HOWELL:

18 A. I think you'd have to ask the minister. I'm -

19 CHAYTOR, Q.C.:

20 Q. How did the call end?

21 DR. HOWELL:

22 A. The call ended only with that there would be

23 another meeting, there would be a meeting of

24 the CEOs and VPs, pathologists the following

25 day.

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1 CHAYTOR, Q.C.:

2 Q. Okay. And at the end it says here, "10 a.m.

3 conference call, CEOs, VPs, pathologists, John

4 Abbot, Cathi Bradbury and Moira Hennessey."

5 DR. HOWELL:

6 A. Correct.

7 CHAYTOR, Q.C.:

8 Q. So that's to take place the next morning?

9 DR. HOWELL:

10 A. Correct.

11 CHAYTOR, Q.C.:

12 Q. Okay. And did that call take place?

13 DR. HOWELL:

14 A. Yes, I believe it did.

15 CHAYTOR, Q.C.:

16 Q. Okay. And were you on the call?

17 DR. HOWELL:

18 A. I believe I was.

19 CHAYTOR, Q.C.:

20 Q. And what do you recall?

21 DR. HOWELL:

22 A. I'd need to have notes to recall.

23 CHAYTOR, Q.C.:

24 Q. Okay. The next page, I believe. Let's see.

25 Here we go, page 22, 1423. And this is again

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1 your page is cut off but I understand this is
 2 supposed to be May 24th, 2007?
 3 DR. HOWELL:
 4 A. I believe that to be correct.
 5 CHAYTOR, Q.C.:
 6 Q. "Meeting with RHAs on ER/PR."
 7 DR. HOWELL:
 8 A. Um-hm.
 9 CHAYTOR, Q.C.:
 10 Q. John Abbott and government?
 11 DR. HOWELL:
 12 A. Um-hm.
 13 CHAYTOR, Q.C.:
 14 Q. Who else from government was on the call?
 15 DR. HOWELL:
 16 A. Ms. Hennessey and Cathi Bradbury, I think, but
 17 again, I'm not positive.
 18 CHAYTOR, Q.C.:
 19 Q. And Karen McGrath and et al. Ken Jenkins, et
 20 al. And you've got a question mark,
 21 "Pathologists from St. Anthony."?
 22 DR. HOWELL:
 23 A. There were two people on from St. Anthony, one
 24 name I didn't get.
 25 CHAYTOR, Q.C.:

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1 Q. Okay. And from Eastern Health we have Dr.
 2 Denic, Ms. Predham, Mr. Gulliver?
 3 DR. HOWELL:
 4 A. Correct.
 5 CHAYTOR, Q.C.:
 6 Q. And yourself?
 7 DR. HOWELL:
 8 A. Correct.
 9 CHAYTOR, Q.C.:
 10 Q. Okay. If we come down to the middle of the
 11 page then comments, I take it then you've
 12 attributed comments to different people. You
 13 have a couple of points from Mr. Gulliver, and
 14 then four points from Dr. Denic. The third
 15 point is "Need protocol for fixation," with an
 16 arrow, "expect regions to follow."
 17 DR. HOWELL:
 18 A. Correct.
 19 CHAYTOR, Q.C.:
 20 Q. So I take it this was discussion on the
 21 fixation protocol we had looked at earlier,
 22 fixation policy. So Dr. Denic is advising
 23 that the protocol would be expected to be
 24 followed by anyone sending in the samples?
 25 DR. HOWELL:

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1 A. That's correct.
 2 CHAYTOR, Q.C.:
 3 Q. Did anyone on the call express any concern or
 4 surprise about that information or any
 5 information with respect to the issue of
 6 fixation?
 7 DR. HOWELL:
 8 A. Not that I recall.
 9 CHAYTOR, Q.C.:
 10 Q. Do you recall anyone indicating that this was
 11 relatively new information for them to be
 12 hearing about issues of fixation?
 13 DR. HOWELL:
 14 A. No, I don't.
 15 CHAYTOR, Q.C.:
 16 Q. And if we continue on down, ER/PR regions, is
 17 that regions?
 18 DR. HOWELL:
 19 A. Regions.
 20 CHAYTOR, Q.C.:
 21 Q. Does it say "central"?
 22 DR. HOWELL:
 23 A. Correct.
 24 CHAYTOR, Q.C.:
 25 Q. "Vast majority samples sent to Dr."--

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1 DR. HOWELL:
 2 A. Carter.
 3 CHAYTOR, Q.C.:
 4 Q. "Carter for second opinion. New protocol for
 5 fixing samples." What do you recall that
 6 being about, the vast majority of samples
 7 being sent to Dr. Carter for second opinion?
 8 DR. HOWELL:
 9 A. I think the pathologist in Central was
 10 advising that they used Dr. Carter for second
 11 opinions and they sent the vast majority of
 12 their samples to her and that they had adopted
 13 the new protocol for fixing all their samples.
 14 CHAYTOR, Q.C.:
 15 Q. Okay, and was that Eastern Health's protocol?
 16 DR. HOWELL:
 17 A. I don't know.
 18 CHAYTOR, Q.C.:
 19 Q. Did Central even have or know of Eastern
 20 Health's protocol or draft protocol at that
 21 point in time?
 22 DR. HOWELL:
 23 A. When Dr. Denic appears, he'll clarify that.
 24 My understanding from him is that he had had
 25 discussions with his colleagues across the

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1 island and talked about the fixation protocol
 2 and that my understanding from him is that
 3 there had been an agreement that they all
 4 would adopt that particular protocol.
 5 CHAYTOR, Q.C.:
 6 Q. And that that discussion had happened before
 7 this call of May 24th?
 8 DR. HOWELL:
 9 A. That, I'm not certain.
 10 CHAYTOR, Q.C.:
 11 Q. Okay, so ask Dr. Denic. Western, "fixation is
 12 part of quality fixation."
 13 DR. HOWELL:
 14 A. So they're indicating that they have a quality
 15 process in place that ensures that their
 16 fixation of a given standard.
 17 CHAYTOR, Q.C.:
 18 Q. "Getting good results and good turn-around
 19 time from Mount Sinai." So I take it they're
 20 indicating that they're happy with Mount
 21 Sinai?
 22 DR. HOWELL:
 23 A. Correct.
 24 CHAYTOR, Q.C.:
 25 Q. And St. Anthony, what does your note say here?

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1 DR. HOWELL:
 2 A. It says the technique is changing and the
 3 pathologist had indicated in whatever he was
 4 talking about was as important to him as
 5 fixation.
 6 CHAYTOR, Q.C.:
 7 Q. And, Doctor, what was the outcome then of this
 8 conference call? Obviously this was important
 9 to the Minister that this take place and
 10 everybody from the regions have now had a
 11 discussion around this, so what was the
 12 outcome?
 13 DR. HOWELL:
 14 A. I think there was information shared, beyond
 15 that, I don't think much changed.
 16 CHAYTOR, Q.C.:
 17 Q. If we could have P-0894 please? This is an e-
 18 mail exchange where I believe Dr. Bradbury did
 19 a briefing note, as such, following the May
 20 24th conference call and she sent it on to a
 21 number of people, including yourself,
 22 "Attaching a briefing that was provided to the
 23 Minister in follow up to the teleconference
 24 this morning." And this is her briefing note,
 25 refers to "Eastern Health having suspended the

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1 testing of ER/PR specimens in August of 2005
 2 and since that date, Mount Sinai has been
 3 retesting new specimen, as well as retesting
 4 all ER negative specimens reported between
 5 1997 and 2005. What is the current status of
 6 ER/PR testing in the province?" And then she
 7 concludes her note with, "The changes that
 8 have been implemented following the external
 9 review of ER/PR testing to ensure quality
 10 reporting." Now was all of that, I went
 11 through that kind of quickly because I'm
 12 conscious of our time here, but is this
 13 basically, was all of this discussed on the
 14 conference call?
 15 DR. HOWELL:
 16 A. I believe it was.
 17 CHAYTOR, Q.C.:
 18 Q. So it seems to be a fair summary of what took
 19 place?
 20 DR. HOWELL:
 21 A. I think as I read it subsequently that, you
 22 know, it seemed a pretty good summary.
 23 CHAYTOR, Q.C.:
 24 Q. If I could have then please, P-1423, page 24?
 25 This is the next day and is that quality

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1 committee, quality of lab, meeting with Lynn
 2 and yourself?
 3 DR. HOWELL:
 4 A. It would be Lynn and I talking about quality
 5 assurance activities for the lab.
 6 CHAYTOR, Q.C.:
 7 Q. I just have one question out of these notes
 8 for you, "Newfoundland only hire qualified but
 9 don't require ongoing education." What does
 10 that mean?
 11 DR. HOWELL:
 12 A. Oh this is technologists.
 13 CHAYTOR, Q.C.:
 14 Q. Technologists?
 15 DR. HOWELL:
 16 A. Technologists when they are hired, they come
 17 out of their training program, but after that
 18 it's not a regulated profession and it was a
 19 sore point, I think, with technologists in
 20 this province.
 21 CHAYTOR, Q.C.:
 22 Q. Okay. Doctor, when did you first learn of
 23 the, that there had been issues raised by Dr.
 24 Ejeckam in 2003 regarding IHC?
 25 DR. HOWELL:

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1 A. It would have been shortly before I ended up
 2 faxing Dr. Ejeckam's letter to Mr. Abbott.
 3 CHAYTOR, Q.C.:
 4 Q. Okay, and do you recall when that was?
 5 DR. HOWELL:
 6 A. No, I don't, but the date should be in the
 7 documentation that you have.
 8 CHAYTOR, Q.C.:
 9 Q. If we could look at P-0111 please? And this
 10 is a fax transmission sheet, it's indicated to
 11 have been received in the deputy minister's
 12 office, May 25th. It's dated May 24th, 2007
 13 and it's from yourself to Mr. Abbott. And if
 14 we look, you forwarded the June 19th, 2003
 15 memo of Dr. Ejeckam. So you only learned of
 16 the existence of this memo, I take it, shortly
 17 before you actually sent it over to Mr.
 18 Abbott?
 19 DR. HOWELL:
 20 A. Very shortly.
 21 CHAYTOR, Q.C.:
 22 Q. How did you learn about it?
 23 DR. HOWELL:
 24 A. I am not certain. Mr. Simmons asked me that
 25 and I tried to think back on how I would have

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1 become aware of that. What I think may have
 2 happened is Ms. Predham made me aware that it
 3 existed, but I really am not certain. The
 4 other possibility is that I found it in the
 5 binders because when I got a free minute, I'd
 6 sometimes take out the binders and try to go
 7 through it again, trying to learn the history.
 8 But more likely there is somebody who brought
 9 it to my attention and the mostly likely
 10 person for that and she may be able to clarify
 11 that, would be Ms. Predham.
 12 CHAYTOR, Q.C.:
 13 Q. And why, though, would it be brought to your
 14 attention at this point in time? You've been
 15 in the job since September 2006 and nobody had
 16 even informed you of Dr. Ejeckam's concerns.
 17 DR. HOWELL:
 18 A. Absolutely. This was totally news to me. I
 19 read it, I think I contacted Mr. Tilley and
 20 asked was he aware of this.
 21 CHAYTOR, Q.C.:
 22 Q. So I take it you were concerned when you read
 23 this?
 24 DR. HOWELL:
 25 A. Well it certainly indicated that Dr. Ejeckam

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1 had concerns back in 2003 and yes, I felt that
 2 that was significant information and I wasn't
 3 sure how broadly that was known.
 4 CHAYTOR, Q.C.:
 5 Q. And if Ms. Predham did give it to you, do you
 6 recall any discussion with her -
 7 DR. HOWELL:
 8 A. And I'm not certain it was her.
 9 CHAYTOR, Q.C.:
 10 Q. But do you recall then any discussion to say
 11 I've been managing aspects of this issue
 12 since, you know, good six, seven months at
 13 this point and how come this didn't get told
 14 to me in any of our many discussions on the
 15 issue?
 16 DR. HOWELL:
 17 A. You know, I recall very vaguely that I spoke
 18 to Mr. Gulliver about it and I asked about
 19 this letter because it was addressed to him,
 20 though I did not that it was also cc'd to many
 21 of the leaders at the time. I'm not sure I
 22 picked up on that right away when the first
 23 time I read it, and I think Mr. Gulliver
 24 indicated to me that he had had discussions
 25 with Dr. Ejeckam and that he asked Dr. Ejeckam

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1 to write that letter to him, that would give
 2 him additional ammunition to lobby for
 3 additional changes in the laboratory.
 4 CHAYTOR, Q.C.:
 5 Q. And that's what Mr. Gulliver told you?
 6 DR. HOWELL:
 7 A. I vaguely remember that when I inquired of Mr.
 8 Gulliver, since it was addressed to him.
 9 CHAYTOR, Q.C.:
 10 Q. And you told me that when you received this
 11 and read it, you went to Mr. Tilley to find
 12 out whether or not he was aware of this.
 13 DR. HOWELL:
 14 A. Correct.
 15 CHAYTOR, Q.C.:
 16 Q. And what did Mr. Tilley tell you?
 17 DR. HOWELL:
 18 A. Mr. Tilley said you should send this to John
 19 Abbott.
 20 CHAYTOR, Q.C.:
 21 Q. What did Mr. Tilley tell you in terms of his
 22 own awareness of the existence of the memos or
 23 the issue?
 24 DR. HOWELL:
 25 A. I don't recall. I don't recall whether he

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1 said to me he had seen it before or Dr.
 2 Williams had--it may have been that Dr.
 3 Williams had told him before, I cannot be
 4 certain. I was more surprised that his
 5 immediate response was send it to Mr. Abbott.
 6 CHAYTOR, Q.C.:
 7 Q. And did you ask him why? Why did you have to
 8 send this to Mr. Abbott at that point in time?
 9 If Mr. Tilley knew about it before, why would
 10 he be instructing you now, in May of 2007, to
 11 send it to Mr. Abbott?
 12 DR. HOWELL:
 13 A. I don't have the answer to that.
 14 CHAYTOR, Q.C.:
 15 Q. Did you ask him?
 16 DR. HOWELL:
 17 A. I did not ask him why.
 18 CHAYTOR, Q.C.:
 19 Q. Did you ask him why am I now just learning
 20 about this, Mr. Tilley?
 21 DR. HOWELL:
 22 A. No, I didn't.
 23 CHAYTOR, Q.C.:
 24 Q. And why not? You've been the spokesperson on
 25 the issue and agreed to do that some

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1 reluctantly for him.
 2 DR. HOWELL:
 3 A. I did not question any of it, my mind was
 4 still in, it was the forward thinking view
 5 that this was, this was something that
 6 happened in 2003. I did think that that was
 7 significant, but I really still in my heart,
 8 my responsibility was to make sure that all of
 9 those recommendations had been acted on and
 10 that we were going to make this the best lab
 11 possible.
 12 CHAYTOR, Q.C.:
 13 Q. Did you have any concern that there may be
 14 other information regarding the issue that you
 15 didn't know about?
 16 DR. HOWELL:
 17 A. Most assuredly I'm wondering what else exists
 18 here that I don't know about, but ultimately
 19 we were headed into the class action lawsuit
 20 and I knew that all of this documentation
 21 would ultimately be coming forward for review
 22 by the courts.
 23 CHAYTOR, Q.C.:
 24 Q. Well at this point you're headed into an
 25 inquiry.

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1 DR. HOWELL:
 2 A. Correct, and so again, I read it, it was a
 3 surprise to me when I saw it. Someone had, I
 4 think, indicated to me that, did you know
 5 this, did you see this? And obviously they
 6 felt that I, I was not aware of it and should
 7 be made aware of it.
 8 CHAYTOR, Q.C.:
 9 Q. And Mr. Tilley's reaction is send it to Mr.
 10 Abbott?
 11 DR. HOWELL:
 12 A. Correct.
 13 CHAYTOR, Q.C.:
 14 Q. And you have no recollection as to why that
 15 would be?
 16 DR. HOWELL:
 17 A. No, I don't.
 18 CHAYTOR, Q.C.:
 19 Q. Do you recall any discussion with Mr. Abbott
 20 prior to sending this to him? Because
 21 obviously he's probably going to be surprised
 22 on the other end as well.
 23 DR. HOWELL:
 24 A. I phoned him, I spoke to him, I think I called
 25 him on his cell phone. I spoke to him, he

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1 said "fax it to me". And -
 2 CHAYTOR, Q.C.:
 3 Q. What did you tell him when you called?
 4 DR. HOWELL:
 5 A. I told him--I don't remember exactly what I
 6 told him, I told him I had a letter from a
 7 pathologist with concerns about ER/PR back
 8 from 2003 and again, me remembering exactly
 9 the wording I used when I phoned Mr. Abbott on
 10 his cell phone, that's a stretch that I can't
 11 go. He gave me a fax number and ultimately we
 12 faxed the report to him.
 13 CHAYTOR, Q.C.:
 14 Q. And this does say that "Mr. Abbott has
 15 discussed with Dr. Howell." And did you have
 16 any follow-up conversation with Mr. Abbott
 17 after he received it?
 18 DR. HOWELL:
 19 A. Not that I recall.
 20 CHAYTOR, Q.C.:
 21 Q. So he didn't call you back to discuss it once
 22 he had a chance to review it?
 23 DR. HOWELL:
 24 A. Not that I recall.
 25 CHAYTOR, Q.C.:

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1 Q. And why, Dr. Howell, is it the June 19th, 2003
 2 memo that gets sent over? There are three
 3 memos of Dr. Ejeckam, why is it this one?
 4 DR. HOWELL:
 5 A. That's the only one that I had seen at that
 6 point in time and in fact, I think at that
 7 point in time I wasn't even aware of the other
 8 memos.
 9 CHAYTOR, Q.C.:
 10 Q. So at this point in time, whoever had brought
 11 this to your attention, only brought this memo
 12 to your attention?
 13 DR. HOWELL:
 14 A. That's correct.
 15 CHAYTOR, Q.C.:
 16 Q. When did you then learn that there were in
 17 fact two others and that there had been a
 18 shutdown of the lab in 2003 or the IHC
 19 portion?
 20 DR. HOWELL:
 21 A. Well it took on a life of its own once again
 22 because I think the next time that I became
 23 aware of it, I was told that the Premier had,
 24 as it was told me, had waved it around in the
 25 House and then handed it to a CBC reporter.

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1 CHAYTOR, Q.C.:
 2 Q. And what did you think about that?
 3 DR. HOWELL:
 4 A. I was very surprised.
 5 CHAYTOR, Q.C.:
 6 Q. So when you went to speak with Mr. Tilley on
 7 the day that you learned of the existence of
 8 the June 19th, 2003 memo, Mr. Tilley didn't
 9 tell you there were, in fact, three memos or
 10 that the lab had been shut down?
 11 DR. HOWELL:
 12 A. No, not to my recollection.
 13 CHAYTOR, Q.C.:
 14 Q. Who ultimately provided you with that
 15 information?
 16 DR. HOWELL:
 17 A. I think subsequent to CBC receiving that
 18 initial report, it seems to me that there was,
 19 there may have been a meeting with Mr. Tilley
 20 and I think maybe Mr. Gulliver and Dr. Denic,
 21 I'm stretching now, but it may be in my notes.
 22 And as a result of that, it was decided, I
 23 think I became aware that there were other Dr.
 24 Ejeckam documents and I received some
 25 explanation that he had, Dr. Ejeckam had

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1 subsequently been happy with the changes that
 2 had been made and had restarted the ER/PR
 3 testing, so the other--it was decided then
 4 that the CBC would be called in and those
 5 other documents that, first I heard of that,
 6 would be then shared with them as well, to
 7 show the full gamut of, not just one snapshot
 8 of a period of time, but the full gamut of
 9 when Dr. Ejeckam as here, the whole picture.
 10 CHAYTOR, Q.C.:
 11 Q. And was the decision also made to provide that
 12 information to the department?
 13 DR. HOWELL:
 14 A. I did not send it to the department and I'm
 15 not certain--I would be surprised if Mr.
 16 Tilley had not done so.
 17 CHAYTOR, Q.C.:
 18 Q. Did you take any particular care in forwarding
 19 this memo to Mr. Abbott?
 20 DR. HOWELL:
 21 A. I did.
 22 CHAYTOR, Q.C.:
 23 Q. What did you do?
 24 DR. HOWELL:
 25 A. Mr. Abbott had given me a fax number and I

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1 asked my assistant to check the fax number
 2 when she called his office, she was given a
 3 different fax number. That made me,
 4 certainly, quite anxious about faxing a
 5 document and so I, we subsequently faxed a
 6 test document, called the office and ensured
 7 that they had received it.
 8 CHAYTOR, Q.C.:
 9 Q. So you sent a document other than the memo
 10 first?
 11 DR. HOWELL:
 12 A. We just sent a paper marked "test" to ensure
 13 that it was going to the right destination.
 14 CHAYTOR, Q.C.:
 15 Q. Uh-hm.
 16 DR. HOWELL:
 17 A. And we then subsequently sent Dr. Ejeckam's
 18 letter and we asked them to call us back and
 19 confirm receipt of it.
 20 CHAYTOR, Q.C.:
 21 Q. And that was Mr. Abbott's office, I take it
 22 you asked to call back?
 23 DR. HOWELL:
 24 A. That's correct.
 25 CHAYTOR, Q.C.:

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1 Q. That's where you understood it was going, even
 2 though it was a different fax number?
 3 DR. HOWELL:
 4 A. Yes, I don't know what the first fax number
 5 was about. I'm always nervous faxing reports
 6 anywhere or any nature.
 7 CHAYTOR, Q.C.:
 8 Q. And you've highlighted in rather large
 9 letters, "Highly private and confidential"?
 10 DR. HOWELL:
 11 A. That's correct.
 12 CHAYTOR, Q.C.:
 13 Q. So I take it you were treating this as highly
 14 private and confidential information?
 15 DR. HOWELL:
 16 A. Absolutely.
 17 CHAYTOR, Q.C.:
 18 Q. And hence your surprise, I take it, when you
 19 next hear of the memo in the manner in which
 20 it was referred to?
 21 DR. HOWELL:
 22 A. Well only because all along I had been
 23 operating under this premise that there is a
 24 class action lawsuit here and once that
 25 happens, there is a process that's followed

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1 and that all information will ultimately come
 2 out through the Court system and I believed
 3 this to be a document that would be one of
 4 those important to that, so I'm surprised that
 5 suddenly it's here I am, taking all these
 6 precautions, believing that's the appropriate
 7 thing to do in such a circumstance, but I
 8 guess others felt that it didn't have that
 9 same degree of protection.
 10 CHAYTOR, Q.C.:
 11 Q. Did the provision of this memo to the
 12 department have anything to do with the
 13 conference call with the other regions held on
 14 the same date?
 15 DR. HOWELL:
 16 A. No, I don't think it had anything to do with
 17 it whatsoever.
 18 CHAYTOR, Q.C.:
 19 Q. It wasn't anything that came up in that
 20 discussion?
 21 DR. HOWELL:
 22 A. No.
 23 CHAYTOR, Q.C.:
 24 Q. So that's just -
 25 DR. HOWELL:

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1 A. Not to the best of my knowledge and
 2 recollection.
 3 CHAYTOR, Q.C.:
 4 Q. Doctor, why would this information to you be
 5 considered something that shouldn't have been
 6 made public because the class action was
 7 ongoing?
 8 DR. HOWELL:
 9 A. Obviously that was a wrong assumption of mine.
 10 I just thought that all matters pertaining to
 11 those events and all that had gone on in that
 12 period of time where a Court system may
 13 eventually make a decision whether there was
 14 an error or fault had now entered a new realm
 15 as it was entering the Court system. That may
 16 have been my own naivety. That is what I
 17 understood and that wouldn't have been the way
 18 that I thought that ultimately would have been
 19 introduced to the Court.
 20 CHAYTOR, Q.C.:
 21 Q. Well, this document, did someone suggest to
 22 you that this document or Dr. Ejeckam's memos
 23 were also protected documents under the
 24 Evidence Act?
 25 DR. HOWELL:

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1 A. No.
 2 CHAYTOR, Q.C.:
 3 Q. Okay. So I take it if they were relevant at
 4 all to the class action law suit, these are
 5 documents that would have been provided in any
 6 event to the parties involved?
 7 DR. HOWELL:
 8 A. And I think that is certainly true.
 9 CHAYTOR, Q.C.:
 10 Q. If we could look at, please, P-1423, page 26,
 11 and this is the meeting you've referred to
 12 with CBC on Dr. Ejeckam?
 13 DR. HOWELL:
 14 A. Correct.
 15 CHAYTOR, Q.C.:
 16 Q. And this is the meeting, I take it, where you
 17 provided the memos to CBC?
 18 DR. HOWELL:
 19 A. Correct.
 20 CHAYTOR, Q.C.:
 21 Q. And why just CBC?
 22 DR. HOWELL:
 23 A. I'm not sure. They had--my understanding was
 24 it was a CBC reporter that had the original
 25 document, but beyond that, I don't know.

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1 CHAYTOR, Q.C.:

2 Q. And have four people in attendance for CBC,

3 Mike Rossiter, Vic Atopia (phonetic), Peter

4 Gulliver and Matthew somebody?

5 DR. HOWELL:

6 A. Yeah, I think I have those names wrong, but -

7 CHAYTOR, Q.C.:

8 Q. Okay, yes, perhaps. George Tilley, Susan

9 Bonnell, Dr. Denic and Dr. Cook and yourself?

10 DR. HOWELL:

11 A. Correct.

12 CHAYTOR, Q.C.:

13 Q. All attended this meeting with CBC to give

14 over those memos?

15 DR. HOWELL:

16 A. Correct.

17 CHAYTOR, Q.C.:

18 Q. And then at the bottom, there's quality

19 assurance process mentioned. So I take it

20 there was--and it says "number one, new system

21 Ventana" and is this regarding what happened

22 in the aftermath in 2003? Is that what those

23 four points are?

24 DR. HOWELL:

25 A. Yes, that would be so. I think -

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1 CHAYTOR, Q.C.:

2 Q. And is this what was told to CBC that day?

3 DR. HOWELL:

4 A. I think I was taking notes. I really wasn't--

5 I think Dr. Cook and Mr. Tilley were

6 conducting most of the discussion here and I

7 think these were some of the points that I

8 heard made, and I think the key point was the

9 fourth one that Dr. Ejeckam had restarted

10 ER/PR testing, was satisfied with it, and in

11 fact chaired the surgical pathology review

12 committee that would have been the ultimate

13 body that would have been happy or unhappy

14 with the reports that were being received.

15 CHAYTOR, Q.C.:

16 Q. And this then, the new system Ventana is

17 mentioned. Secondly, stop rotation of staff.

18 Was it your understanding that had happened

19 after Dr. Ejeckam initiated changes in 2003?

20 DR. HOWELL:

21 A. I can't be certain. I was more taking notes

22 through this and -

23 CHAYTOR, Q.C.:

24 Q. Well, when did you understand the rotation of

25 staff stopped?

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1 DR. HOWELL:

2 A. My thought was that that had happened

3 subsequent to the external review, so I don't

4 know if that--I'm not aware that that happened

5 around Dr. Ejeckam's time, but I don't know

6 for certain. I think Mr. Gulliver and Dr.

7 Cook will be able to answer that better for

8 you.

9 CHAYTOR, Q.C.:

10 Q. And three, remains on site making changes, is

11 it?

12 DR. HOWELL:

13 A. Correct.

14 CHAYTOR, Q.C.:

15 Q. What does that refer to?

16 DR. HOWELL:

17 A. Oh, Dr. Ejeckam remained in position and was

18 executing, I think, changes to the process.

19 CHAYTOR, Q.C.:

20 Q. And number four, surgical pathology review

21 committee, and you've already spoken to that.

22 DR. HOWELL:

23 A. That he remained as the chair of that.

24 CHAYTOR, Q.C.:

25 Q. Have you ever had any discussions personally

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1 with Dr. Ejeckam on this matter?

2 DR. HOWELL:

3 A. I have not.

4 CHAYTOR, Q.C.:

5 Q. Then your next page is May 31st, 2005. Dr.

6 Ejeckam's name is at the top, but I take it

7 that he's the subject of discussion and not in

8 attendance?

9 DR. HOWELL:

10 A. That's correct.

11 CHAYTOR, Q.C.:

12 Q. Okay, and he was--well, it's indicated May '03

13 to June '06. I take it that's the period of

14 time he was--what's that meant to -

15 DR. HOWELL:

16 A. That's the period of time that he was working

17 in Eastern Health.

18 CHAYTOR, Q.C.:

19 Q. I think he would have been there before May of

20 '03. One of his memos predates that.

21 DR. HOWELL:

22 A. I stand corrected.

23 CHAYTOR, Q.C.:

24 Q. George Tilley, Don Cook, Terry Gulliver and

25 yourself. So you're meeting to discuss this

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1 on May 31st, and this is the meeting, I take
 2 it, that you referred to in which you got more
 3 information?
 4 DR. HOWELL:
 5 A. Correct.
 6 CHAYTOR, Q.C.:
 7 Q. And this does indeed refer to then the three
 8 memos, April 4th memo, May 2nd 2003 and the
 9 June 9th 2003 memo.
 10 DR. HOWELL:
 11 A. Correct.
 12 CHAYTOR, Q.C.:
 13 Q. So this is when you first learn about the
 14 existence of the other two memos?
 15 DR. HOWELL:
 16 A. I think that would be correct.
 17 CHAYTOR, Q.C.:
 18 Q. Okay, and who provided the memos on that date?
 19 DR. HOWELL:
 20 A. I'm not sure who provided them. Most likely
 21 it would have been Mr. Gulliver.
 22 CHAYTOR, Q.C.:
 23 Q. Oh, I'm sorry, no, you would have had those
 24 memos before that, I guess, because you gave
 25 them to CBC the day before, wasn't it, or

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1 around the same time, I guess.
 2 DR. HOWELL:
 3 A. I'm not certain how I came to know about two
 4 other memos, but most likely it was Mr.
 5 Gulliver.
 6 CHAYTOR, Q.C.:
 7 Q. Okay, and at that point in time, did you ask
 8 "well, gentlemen, any more surprises? What
 9 else don't I know?"
 10 DR. HOWELL:
 11 A. I don't know that I ever asked that question,
 12 but -
 13 CHAYTOR, Q.C.:
 14 Q. Probably not as direct as me, but did you
 15 wonder, you know, what else should you know or
 16 don't you know?
 17 DR. HOWELL:
 18 A. Yeah, I think I was--I mean, I was certainly,
 19 I guess, at this point concerned that you say
 20 you've contacted all people and you haven't
 21 contacted all people, and there are--again, it
 22 was part of my whole discomfort. Here's
 23 something else that has existed back in the
 24 past that I knew nothing about and it sort of
 25 comes to me out of the blue and yeah, you--it

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1 certainly increases your level of discomfort
 2 that you have the full picture and that you
 3 have all the information and that--and you
 4 know, there was lots of other things happening
 5 within the organization as well that it was a
 6 major challenge.
 7 CHAYTOR, Q.C.:
 8 Q. Doctor, on the patient contact issue, were you
 9 ever aware of any assurances being given to
 10 the Department of Health--in this time period,
 11 May of 2007, were you aware of assurances
 12 being given to the Department that all
 13 patients had in fact been contacted?
 14 DR. HOWELL:
 15 A. My understanding is that Ms. Predham believed
 16 that all contact had been made, that that
 17 would have been conveyed to Dr. Williams, I
 18 guess, to me, to Mr. Tilley and I would -
 19 CHAYTOR, Q.C.:
 20 Q. Well, not Dr. Williams, he -
 21 DR. HOWELL:
 22 A. Well -
 23 CHAYTOR, Q.C.:
 24 Q. Or back in his day.
 25 DR. HOWELL:

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1 A. Well, I guess the evaluation -
 2 CHAYTOR, Q.C.:
 3 Q. I'm talking -
 4 DR. HOWELL:
 5 A. Yeah.
 6 CHAYTOR, Q.C.:
 7 Q. - May of 2007.
 8 DR. HOWELL:
 9 A. I guess through that process, there was
 10 certainly an understanding, I think, within
 11 Eastern Health that it--of all the patients
 12 that it knew about, it had contacted them and
 13 that it had tried to contact all patients, and
 14 I think they felt they'd contacted all the
 15 patients. I think that had been conveyed to
 16 Mr. Tilley and I think that that most likely
 17 had been conveyed to the Department.
 18 CHAYTOR, Q.C.:
 19 Q. And did you convey that message to Mr. Tilley?
 20 DR. HOWELL:
 21 A. That all patients had been contacted?
 22 CHAYTOR, Q.C.:
 23 Q. Yes.
 24 DR. HOWELL:
 25 A. I guess only through, as you see, preparation

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1 for the briefing, but I mean, I was not in a
 2 position to say that, other than being told by
 3 others that it had been done.
 4 CHAYTOR, Q.C.:
 5 Q. But back in January of '07, when we looked at
 6 the communications around the patient and the
 7 media, statement that went out attributable to
 8 you, you indicated that you had doubts then
 9 and you had spoken with Ms. Predham and said
 10 "well, if there's one missed, there's probably
 11 two."
 12 DR. HOWELL:
 13 A. Yes, and then Ms. Predham and quality and risk
 14 would have proceeded with that, and I can't
 15 say whether I had further discussions with Mr.
 16 Tilley or with--I would have subsequently had
 17 discussions with Mrs. Pilgrim, in as much as
 18 she was the chief operating officer with
 19 responsible for that area. Whether I talked
 20 to Mr. Tilley about it, I can't be certain.
 21 CHAYTOR, Q.C.:
 22 Q. So did you ever convey your scepticism on that
 23 issue to either Mr. Tilley or anyone at the
 24 Department of Health?
 25 DR. HOWELL:

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1 A. I didn't speak to anyone at the Department of
 2 Health and don't remember speaking to Mr.
 3 Tilley to utter my scepticism.
 4 CHAYTOR, Q.C.:
 5 Q. And you were aware that others were assuring
 6 the Department that all patients had been
 7 contacted?
 8 DR. HOWELL:
 9 A. And I believe that they felt that that was
 10 true.
 11 CHAYTOR, Q.C.:
 12 Q. But you, yourself, had doubts?
 13 DR. HOWELL:
 14 A. I was not happy with the whole data management
 15 system that existed.
 16 CHAYTOR, Q.C.:
 17 Q. And did you -
 18 DR. HOWELL:
 19 A. Nor am I happy with it today.
 20 CHAYTOR, Q.C.:
 21 Q. And did you express that at the time?
 22 DR. HOWELL:
 23 A. I think I expressed that in multiple venues.
 24 I think the executive of Eastern would know my
 25 feelings about that, that I wasn't happy with

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1 that.
 2 CHAYTOR, Q.C.:
 3 Q. But in the context of linking that to, well,
 4 can we be certain that all patients have been
 5 contacted?
 6 DR. HOWELL:
 7 A. As far as ER/PR was concerned and the
 8 contacting of patients and the managing of
 9 that database, I was very much at the
 10 periphery of that and felt that that was with
 11 quality risk management.
 12 CHAYTOR, Q.C.:
 13 Q. Okay. So I take it, no, you didn't express
 14 your concerns or doubts?
 15 DR. HOWELL:
 16 A. Specifically to ER/PR?
 17 CHAYTOR, Q.C.:
 18 Q. Yes, and patient contact?
 19 DR. HOWELL:
 20 A. Other than--no, no, I really didn't go any
 21 further with it.
 22 CHAYTOR, Q.C.:
 23 Q. Okay. P-0455, please?
 24 COMMISSIONER:
 25 Q. Ms. Chaytor, we'll break for the day after you

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1 deal with this issue.
 2 CHAYTOR, Q.C.:
 3 Q. Okay, thank you. I'm very happy to say that
 4 I'm almost there. This is e-mail from
 5 yourself to Mr. Tilley, May 24th, 2007. And
 6 we should scroll down to the bottom. This is
 7 the beginning here. And it actually starts
 8 with an e-mail from Mr. Dyer, May 23rd, 2007
 9 to Mr. Gulliver. The importance is "High."
 10 "Hi Terry, Trish was notified on Wednesday,
 11 May 23rd, at 12:40 hours. She does not want
 12 the report to go public." Signed "Barry."
 13 And then there's e-mail from Terry Gulliver to
 14 Dr. Denic the same date. And then Dr. Denic
 15 to you, same date, 3:45 in the afternoon. "Hi
 16 Oscar, Trish Wegrynowski, the lab reviewer,
 17 doesn't want her report to go public." And
 18 then again you pass it on, so it's gone from
 19 Barry to Terry, Terry to Dr. Denic, Dr. Denic
 20 to you, so the chain is working this day, I
 21 take it?
 22 DR. HOWELL:
 23 A. Um-hm.
 24 CHAYTOR, Q.C.:
 25 Q. And then from you to Mr. Tilley?

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1 DR. HOWELL:
 2 A. Correct.
 3 CHAYTOR, Q.C.:
 4 Q. And it's the next day you forward it on. And,
 5 "FYI, for what it's worth. Oscar." What's
 6 that all about, Dr. Howell?
 7 DR. HOWELL:
 8 A. I think this is the whole issue of the
 9 releasing these reports and whether they are
 10 protected under the Evidence Act and
 11 clarifying what the actual reviewers' thoughts
 12 were in terms of whether they were protected
 13 and whether they were comfortable with them
 14 being released. And -
 15 CHAYTOR, Q.C.:
 16 Q. Who was asking to have Ms. Wegrynowski's
 17 report released on this time, May 23rd, 2007?
 18 DR. HOWELL:
 19 A. I don't remember the history of how that -
 20 CHAYTOR, Q.C.:
 21 Q. Why--what is -
 22 DR. HOWELL:
 23 A. - evolved to ask her if she was comfortable
 24 with it being released.
 25 CHAYTOR, Q.C.:

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1 Q. If we look here, it initiates with Mr. Dyer
 2 and he's saying that Trish was notified.
 3 DR. HOWELL:
 4 A. Um-hm.
 5 CHAYTOR, Q.C.:
 6 Q. And she does not want her report to go public.
 7 Notified of what, how did this all originate?
 8 DR. HOWELL:
 9 A. So if we look at historically, I'd have to try
 10 to build that back from -
 11 CHAYTOR, Q.C.:
 12 Q. Had there been a request from anybody for Ms.
 13 Wegrynowski's report?
 14 DR. HOWELL:
 15 A. I'm not sure. I think this is tied into the
 16 press conference and -
 17 CHAYTOR, Q.C.:
 18 Q. Now, your press conference was May 18th.
 19 DR. HOWELL:
 20 A. Yes. And--but I'm--I can't recall how we were
 21 trying to decide about whether these reports
 22 were--what their level of protection actually
 23 was under the Evidence Act and whether the two
 24 individuals were comfortable with them being
 25 released in some way, and all the people that

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1 participated, whether they thought that these
 2 reports were protected. And I think through
 3 that process we're contacting the individuals
 4 to say, so, you know, there is some pressure
 5 here on disclosure and for release of these
 6 reports, what is your feeling about it. I
 7 think that's how it was evolving.
 8 CHAYTOR, Q.C.:
 9 Q. And where that pressure for release of the
 10 reports were coming from, you don't recall?
 11 DR. HOWELL:
 12 A. I think there was a general level of pressure
 13 and concern. The whole issue of disclosure to
 14 the individual versus public disclosure was
 15 becoming one of community debate, and so the
 16 releasing of these reports was one of the
 17 things to talk about in terms of public
 18 disclosure. So now the issue is, well, as the
 19 authors of those reports, we should have their
 20 version of what they feel about the release.
 21 CHAYTOR, Q.C.:
 22 Q. But that in--just let me backtrack a bit
 23 because in December, 2006 Eastern Health
 24 clearly came out with a strong position in its
 25 enunciations to the public that these reports

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1 are, in fact, protected -
 2 DR. HOWELL:
 3 A. And that was the belief.
 4 CHAYTOR, Q.C.:
 5 Q. - under the Evidence Act, yes. And there was
 6 no consultation, I take it, with either Dr.
 7 Banerjee or Ms. Wegrynowski at that point in
 8 time?
 9 DR. HOWELL:
 10 A. That is correct.
 11 CHAYTOR, Q.C.:
 12 Q. So why in May of 2007 is that consultation now
 13 taking place?
 14 DR. HOWELL:
 15 A. Because we have entered a whole new level of
 16 debate in the public level about individual
 17 versus public disclosure. And the issue is,
 18 you know, can we show the public what we did
 19 and actually put the full reports out there
 20 for full disclosure.
 21 CHAYTOR, Q.C.:
 22 Q. Okay. So I just want to be--sorry, I don't
 23 want to cut you off.
 24 DR. HOWELL:
 25 A. No.

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1 CHAYTOR, Q.C.:

2 Q. Was there something else?

3 DR. HOWELL:

4 A. No, that's, I think I've made what points I'm

5 able to make.

6 CHAYTOR, Q.C.:

7 Q. Okay. So in your recollection, you have no

8 recollection of any specific request, whether

9 from the department, whether from the media,

10 from anyone as to a specific request for the

11 reports at this point in time?

12 DR. HOWELL:

13 A. I think there's just tremendous public

14 discussion about full public disclosure.

15 CHAYTOR, Q.C.:

16 Q. Was the Department of Health looking for the

17 reports at this point in time?

18 DR. HOWELL:

19 A. I don't remember having a request from the

20 department to me for them.

21 CHAYTOR, Q.C.:

22 Q. Okay. You do recall, though, that Mr. Tilley

23 came to you to request copies of the reports

24 and he planned to send them to the department?

25 DR. HOWELL:

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1 A. I do remember that.

2 CHAYTOR, Q.C.:

3 Q. Okay. Was there concern at Eastern Health

4 that if that report was sent over, that that

5 too would become a public document?

6 DR. HOWELL:

7 A. I think that was--having experienced the Dr.

8 Ejeckam letter, I guess that's -

9 CHAYTOR, Q.C.:

10 Q. Well, in fairness, that doesn't happen until

11 the next day.

12 DR. HOWELL:

13 A. Okay. Well, I don't know that I was at that

14 level of that thought process. It was Mr.

15 Tilley looking for it and I knew he was going

16 to send them, so there may well have been

17 discussion about was that a breach of the

18 undertaking with these individuals.

19 CHAYTOR, Q.C.:

20 Q. So you don't know if the request for the

21 report from the department was what triggered

22 this exchange with -

23 DR. HOWELL:

24 A. I do not.

25 CHAYTOR, Q.C.:

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1 Q. - Ms. Wegrynowski?

2 DR. HOWELL:

3 A. I do not.

4 CHAYTOR, Q.C.:

5 Q. Thank you, Commissioner.

6 COMMISSIONER:

7 Q. All right. I think we'll adjourn for the day.

8 You've indicated you're near completion?

9 CHAYTOR, Q.C.:

10 Q. I am, yes, I am, yes, I am.

11 COMMISSIONER:

12 Q. Could you tell me how long you're going to

13 need?

14 CHAYTOR, Q.C.:

15 Q. I will be finished before, easily before the

16 break on Monday, pending no further new

17 documentation or anything else.

18 COMMISSIONER:

19 Q. Okay.

20 CHAYTOR, Q.C.:

21 Q. But I really would anticipate being a half an

22 hour.

23 COMMISSIONER:

24 Q. Okay.

25 CHAYTOR, Q.C.:

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1 Q. Forty-five minutes.

2 COMMISSIONER:

3 Q. Let's do the rounds.

4 MR. PRITCHARD:

5 Q. Around 10 minutes, Commissioner.

6 COMMISSIONER:

7 Q. Mr. Browne?

8 MR. BROWNE:

9 Q. Maybe 15 minutes.

10 MS. NEWBURY:

11 Q. Probably about a half an hour or so.

12 MS. TAYLOR:

13 Q. About ten minutes. And Ms. O'Dea has

14 indicated that she will probably be 10

15 minutes.

16 COMMISSIONER:

17 Q. Okay.

18 MR. PIKE:

19 Q. I don't have very much at all, Commissioner, I

20 don't say.

21 COMMISSIONER:

22 Q. All right.

23 MS. GRANT:

24 Q. I expect I'll be about five or ten minutes.

25 COMMISSIONER:

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1 Q. All right. Then, Mr. Simmons, I know you're
2 going to want to hear what these people have
3 to hear before you do a estimate.
4 MR. SIMMONS:
5 Q. Not very much planned at all.
6 COMMISSIONER:
7 Q. All right. So I'm just thinking in terms of
8 planning for Monday, then perhaps we could
9 arrange to have the witness who's scheduled
10 for Monday here for after the break. Thank
11 you, 9:30 on Monday. Have a good weekend.
12 Upon conclusion at 5:02 p.m.

Page 330

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 23rd day of May, A.D., 2008 before the
6 Honourable Justice Margaret A. Cameron,
7 Commissioner, at the Commission of Inquiry, St.
8 John's, Newfoundland and Labrador and was
9 transcribed by me to the best of my ability by
10 means of a sound apparatus.
11 Dated at St. John's, Newfoundland and Labrador
12 this 23rd day of May, A.D., 2008
13 Judy Moss

Inquiry on Hormone Receptor Testing

<p style="text-align: center;">-&-</p> <p>& [1] 122:21</p> <hr/> <p style="text-align: center;">-?-</p> <p>' [2] 209:24 210:4</p> <p>'03 [2] 312:12,20</p> <p>'06 [4] 38:12 70:16 90:4 312:13</p> <p>'07 [1] 317:5</p> <p>'he [1] 221:7</p> <p>'medical [1] 185:14</p> <p>'our [1] 209:22</p> <p>'The [1] 217:22</p> <p>'We [1] 209:25</p> <hr/> <p style="text-align: center;">---</p> <p>-again [1] 74:1</p> <p>-I [1] 193:11</p> <p>-that [1] 52:12</p> <p>-want [1] 67:14</p> <p>-was [1] 12:9</p> <hr/> <p style="text-align: center;">-0-</p> <p>0184 [1] 124:24</p> <p>0429 [2] 220:25,25</p> <p>0432 [1] 217:25</p> <p>0487 [1] 112:8</p> <hr/> <p style="text-align: center;">-1-</p> <p>1 [1] 117:11</p> <p>10 [10] 120:3 196:14 240:23 278:3 283:4,4,6 284:2 328:5,14</p> <p>101 [1] 86:9</p> <p>104 [5] 86:8 109:5,8 127:5 143:19</p> <p>109 [2] 29:19,20</p> <p>11 [4] 69:18 197:23 278:3 283:4</p> <p>11.2 [2] 102:8,15</p> <p>110 [4] 10:14,16,18 11:14</p> <p>117 [11] 103:24,25 104:4 108:4 127:5 147:13 148:15 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