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COMMISSION OF INQUIRY
ON HORMONE RECEPTOR TESTING

BEFORE THE HONOURABLE JUSTICE CAMERON - COMMISSIONER

APRIL 9, 2008

Appearances:

- Bernard Coffey, Q.C. Commission Co-counsel
- Sandra Chaytor, Q.C. Commission Co-counsel
- Rolf Pritchard/Jenny Chai Her Majesty in Right of NL
- Jane Hennebury Doctors Kara Laing et al
- Daniel Simmons Eastern Regional Integrated
. Health Authority
- Pamela Taylor. Members of the Breast Cancer
. Testing Class Action
- Mark Pike NL Medical Association
- Jennifer Newbury Canadian Cancer Society (NL Division)
- Stacey O’Dea Central, Western and Labrador-Grenfell
Regional Integrated Health Authorities

1 APRIL 9, 2008

2 THE COMMISSIONER:

3 Q. Mr. Coffey.

4 MR. TOM OSBORNE - EXAMINATION BY COFFEY, Q.C. (CONT'D)

5 COFFEY, Q.C.:

6 Q. Thank you, Commissioner. If we could, please,

7 Exhibit P-0125. Page 31, please. Mr.

8 Osborne, this is pages 31 through 34 of this

9 exhibit, the one with the Executive Council

10 Registry stamp on it we looked at yesterday.

11 There’s just one further point on that I want

12 to ask you about. If we could go to page 33,

13 please. Now I appreciate you haven’t seen

14 this -- you indicated you hadn’t seen this

15 actually until May of ’07.

16 MR. OSBORNE:

17 A. That’s correct.

18 COFFEY, Q.C.:

19 Q. But there’s a particular paragraph here.

20 Under summary, the second paragraph says,

21 "Eastern Health advised (audio failure) were

22 impacted by the change and status of the ER/PR

23 receptor tests. These women had changes in

24 the progress of their disease from the initial

25 confirmation of the disease and the beginning

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Certificate

1 of their treatment to the retesting done at

2 Mount Sinai", and it goes on to speak about

3 all of the 939 patients or their families and

4 those who have died whose test results were

5 reviewed could potentially become applicants

6 in a class action lawsuit. In respect of the

7 22 women, that figure, see that there --

8 MR. OSBORNE:

9 A. Yes.

10 COFFEY, Q.C.:

11 Q. Do you recall in the summer of 2006 whether or

12 not the figure of 22 was ever brought to your

13 attention as Minister?

14 MR. OSBORNE:

15 A. No. I was told in 2006 -- there are two

16 things that I recall about this particular

17 number when I had read the briefing note. I

18 recall in the summer of 2006 having been told

19 that there’s a very small number of

20 individuals that Eastern Health felt had a

21 legitimate claim against them. When I read

22 this briefing note initially --

23 COFFEY, Q.C.:

24 Q. This would be in May of ’07 you read this?

25 MR. OSBORNE:

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1 A. Yes, that's correct, in May of '07. It kind
 2 of took my thoughts back to that. I'm not
 3 sure if that's what they meant in this
 4 briefing note, but the number when I read that
 5 in May of 2007 kind of alarmed me because
 6 obviously there were much more than 22 people
 7 affected by this.

8 COFFEY, Q.C.:

9 Q. Okay. If we could, please, bring up Exhibit
 10 P-0173. Mr. Osborne, this is an e-mail from
 11 Tansy Mundon to John Abbott, Moira Hennessey,
 12 Darrell Hynes, and yourself. It's dated
 13 Thursday, October 19th, 2006, at 4:04 p.m.
 14 The subject is 41 joined class action bid on
 15 faulty breast cancer tests, and what it
 16 appears to be is a forwarding of a posting to
 17 a CBC news website from October 19th, 2006, at
 18 1:03 p.m. It's indicated that was the last
 19 update. In the fall of -- in this period in
 20 the fall of 2006, why would this have been
 21 forwarded to you?

22 MR. OSBORNE:

23 A. The only thing that I can figure here is that
 24 it's a result of a media clipping and the
 25 Communications Director for the Department

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1 would have provided me very regularly with
 2 clippings that were in the media on my
 3 Blackberry or through the e-mail.

4 COFFEY, Q.C.:

5 Q. Now this particular article is entitled, "No
 6 official word yet on error rate of tissue
 7 tests", and it opens with a comment about 41
 8 women have so far come forward to ask the
 9 Newfoundland Supreme Court to certify a class
 10 action lawsuit arising from errors made in
 11 testing tissue samples, and the fifth
 12 paragraph quoting Ches Crosbie, "They haven't
 13 been given any information since a year ago
 14 about the rate of reversal or error rate, if
 15 you want to call it that", Crosbie told CBC
 16 news. Three paragraphs further on, it stated,
 17 "Eastern Health said it does not yet know for
 18 certain what the rate of error was in the
 19 tissue sampling", and at the very bottom of
 20 this page it's quoting Gerri Rogers, they
 21 attribute the following quote to her, "I want
 22 to know what went wrong. I want to know
 23 whether it was human error, was it the test
 24 itself", said Rogers, who is not part of the
 25 class action request, but who may join. I

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1 take it that just past midpoint, October,
 2 2006, the fact that at least in the media
 3 there were questions being raised about error
 4 rates, you were aware of that?

5 MR. OSBORNE:

6 A. That's correct.

7 COFFEY, Q.C.:

8 Q. If you would go, please, to Exhibit P-0174.
 9 Mr. Osborne, this is -- it begins at the
 10 bottom. The first e-mail in this is the one
 11 toward the bottom of the text. It's from Tom
 12 Osborne, October 19th, 2006, at 10:08 p.m.
 13 sent via your Blackberry. You've written,
 14 "Please get me a briefing note on this", and
 15 the "this" is not specified, but above there
 16 is an e-mail from Angela Bull to John Abbott,
 17 Friday, October 20th, 2006, at 8:57 p.m. early
 18 the next morning. The subject is "Forwarding
 19 forward 41 joint class action bid on faulty
 20 breast cancer tests", and Ms. Bull has
 21 written, "The Minister needs a briefing note,
 22 re; the attached. Thanks". So I take it, Mr.
 23 Osborne, that you had received and looked at
 24 the CBC article of October 19th involving the
 25 class action bid and forwarded that to Ms.

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1 Bull with a request she contact John Abbott
 2 about a briefing note?

3 MR. OSBORNE:

4 A. Yes. I had noticed in the article -- there
 5 were two things really that I can recall. One
 6 was that for the first time I had been alerted
 7 to the fact that Eastern Health had contacted
 8 all women, so I wanted to get the current
 9 status, and as well the comments by Ches
 10 Crosbie had -- you know, I wanted information
 11 around those comments as well.

12 COFFEY, Q.C.:

13 Q. And which comments -- if we could look back,
 14 please, at P-0173. What in particular caught
 15 your eye in the article?

16 MR. OSBORNE:

17 A. The fact that, I guess, in the third
 18 paragraph, it says, "Eastern Health Regional
 19 Authority, which recently finished contacting
 20 women involved in the case", so I felt if they
 21 had finished contacting individuals affected,
 22 I wanted to know what the results were, and as
 23 well Mr. Crosbie is quoted there as saying,
 24 "Little information has been revealed about
 25 how many women received erroneous results".

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1 COFFEY, Q.C.:

2 Q. Which is the next paragraph, yes.

3 MR. OSBORNE:

4 A. Which is the next paragraph. So, I mean,

5 obviously if they had contacted all

6 individuals, I felt that perhaps they would be

7 in a position to start providing the

8 information on the number of people who had

9 received erroneous results.

10 COFFEY, Q.C.:

11 Q. So I take it then that the assertion in the

12 third paragraph that, "Eastern Health, which

13 recently finished contacting women involved in

14 the case", that was news to you, I take it?

15 MR. OSBORNE:

16 A. Yes.

17 COFFEY, Q.C.:

18 Q. That was new to you?

19 MR. OSBORNE:

20 A. It was, yes.

21 COFFEY, Q.C.:

22 Q. So the fact that or the assertion that Eastern

23 Health was being attributed, anyway,

24 presumably to someone, may or may not be

25 Eastern Health, that Eastern Health had

Page 10

1 recently finished contacting women, you hadn't

2 heard that before?

3 MR. OSBORNE:

4 A. No.

5 COFFEY, Q.C.:

6 Q. You thought the contacting had still been

7 going on?

8 MR. OSBORNE:

9 A. That's correct.

10 COFFEY, Q.C.:

11 Q. Were you surprised to see that assertion

12 without you having been informed?

13 MR. OSBORNE:

14 A. I was surprised, which I think is the reason I

15 wrote an e-mail almost immediately upon

16 reading this, which would have been

17 approximately 10 o'clock at night. I was

18 surprised that I was learning this myself from

19 the media.

20 COFFEY, Q.C.:

21 Q. And in terms of the erroneous results, I take

22 it you weren't looking for any particular

23 result, you were looking for overall numbers?

24 MR. OSBORNE:

25 A. That's correct.

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1 COFFEY, Q.C.:

2 Q. And you hadn't received any such information

3 up to that point on that issue?

4 MR. OSBORNE:

5 A. Not on overall numbers, no.

6 COFFEY, Q.C.:

7 Q. Now Angela Bull, again remind me is whom?

8 MR. OSBORNE:

9 A. The Departmental Secretary. She would have

10 been the -- she's the Minister's Secretary in

11 the Department of Health.

12 COFFEY, Q.C.:

13 Q. No matter who the Minister is, she's the

14 continuity, as it were?

15 MR. OSBORNE:

16 A. Yes.

17 COFFEY, Q.C.:

18 Q. If we could go, please, to Exhibit P-0125,

19 page 35. I'm just going to scroll down

20 through this, Mr. Osborne. This is prepared

21 by Beverly Griffiths, approved by Moira

22 Hennessey. This is entitled "Briefing note,

23 October 24th, 2006".

24 MR. OSBORNE:

25 A. Yes.

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1 COFFEY, Q.C.:

2 Q. And I take it this is the briefing note that

3 was forthcoming?

4 MR. OSBORNE:

5 A. That's correct.

6 COFFEY, Q.C.:

7 Q. Pursuant to your e-mail. What did you take

8 from this then? You received it on October

9 24th, and would have reviewed it that day or

10 presumably the next.

11 MR. OSBORNE:

12 A. The one here --

13 COFFEY, Q.C.:

14 Q. This is toward the bottom. Just scroll down,

15 thank you. It's toward the bottom of the page,

16 yes, the first page. Go ahead.

17 MR. OSBORNE:

18 A. The first paragraph under current status, it

19 does say that, "Eastern has not publicly

20 released the results of retesting at this

21 time, except confidentially to individual

22 patients. The Authority is currently

23 reviewing all charts to ensure that all

24 individuals have been contacted and this full

25 review should be completed by the end of

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1 November". I mean, it's -- as we heard in the
 2 media this morning, it's not always uncommon
 3 that what's exactly said at a Commission is
 4 not exactly what's reflected. So here it was
 5 my understanding that they believed all
 6 individuals had been contacted, they wanted to
 7 review all of their files and charts to ensure
 8 that that was, in fact, the case.
 9 COFFEY, Q.C.:
 10 Q. Before they sort of assured you that they had
 11 done so, they wanted to review their own
 12 records, and the "they" is Eastern Health?
 13 MR. OSBORNE:
 14 A. That's correct, and to do an full review and
 15 to compile the numbers of individuals that had
 16 been affected in different ways.
 17 COFFEY, Q.C.:
 18 Q. And I take it at that point in time you
 19 anticipated that -- the last sentence you just
 20 read, you anticipated being so briefed in that
 21 regard by the end of November?
 22 MR. OSBORNE:
 23 A. That's correct.
 24 COFFEY, Q.C.:
 25 Q. When looking at this, to draw your attention

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1 to it, under background, the second bullet,
 2 the second sentence reads, "This number",
 3 which is the 939, "represents about 27 percent
 4 of the patients tested for breast cancer".
 5 MR. OSBORNE:
 6 A. Yes.
 7 COFFEY, Q.C.:
 8 Q. It's still being reported to you that way. Is
 9 there anything else -- I'm not suggesting
 10 there was, but anything else from the --
 11 MR. OSBORNE:
 12 A. No.
 13 COFFEY, Q.C.:
 14 Q. Any other thoughts at the time?
 15 MR. OSBORNE:
 16 A. No.
 17 COFFEY, Q.C.:
 18 Q. If we could, please -- as well while we're on
 19 the topic because it had come up yesterday,
 20 this I take it is the other type of briefing
 21 note, the informational one, not the Q & A
 22 one?
 23 MR. OSBORNE:
 24 A. Yes, that is correct.
 25 COFFEY, Q.C.:

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1 Q. Or the one that doesn't involve questions and
 2 key messages?
 3 MR. OSBORNE:
 4 A. Yes, a general -- I think they refer to it as
 5 a general note.
 6 COFFEY, Q.C.:
 7 Q. Yes, and just looking at the contents of this
 8 when we have it there on the screen in front
 9 of you, under background and then current
 10 status, the informational component of this,
 11 Mr. Osborne, is very factual, isn't it?
 12 MR. OSBORNE:
 13 A. Yes.
 14 COFFEY, Q.C.:
 15 Q. It's not -- it's germane to the issue and it's
 16 factual.
 17 MR. OSBORNE:
 18 A. Yes.
 19 COFFEY, Q.C.:
 20 Q. There are no irrelevancies or potential
 21 irrelevancies here, are there?
 22 MR. OSBORNE:
 23 A. No, not that I would have --
 24 COFFEY, Q.C.:
 25 Q. Not that you know of?

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1 MR. OSBORNE:
 2 A. No.
 3 COFFEY, Q.C.:
 4 Q. If we could, please, go to Exhibit P-0314,
 5 page seven.
 6 MR. OSBORNE:
 7 A. Can I ask what the date is on that?
 8 COFFEY, Q.C.:
 9 Q. Yes, November 6th.
 10 MR. OSBORNE:
 11 A. Okay.
 12 COFFEY, Q.C.:
 13 Q. It's the one that you, at least for a period
 14 of time, were the only identified custodian of
 15 it in the sense that you were the only one
 16 that had a copy.
 17 MR. OSBORNE:
 18 A. Yes.
 19 COFFEY, Q.C.:
 20 Q. You described that yesterday. Now this is a
 21 question and answer briefing note, Department
 22 of Health and Community Services. If we look
 23 at this, this is a -- well, the text we have
 24 is a copy of your own working copy, as it
 25 were?

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1 MR. OSBORNE:
 2 A. Yes.
 3 COFFEY, Q.C.:
 4 Q. I'll be taking you through this, but just so
 5 the Commissioner appreciates this, the second
 6 page of the exhibit is page eight, P-0314,
 7 page eight. Do you see it there in front of
 8 you, "Public to be notified as soon as all
 9 individuals are contacted".
 10 MR. OSBORNE:
 11 A. Yes.
 12 COFFEY, Q.C.:
 13 Q. Where is that actually written on? Is that
 14 written on your document?
 15 MR. OSBORNE:
 16 A. Not on this one. It's -- yes, I'm sorry,
 17 "When will the public be notified". I've got,
 18 "When it is confirmed that everyone is
 19 contacted".
 20 THE COMMISSIONER:
 21 Q. This is your handwriting, is it, sir?
 22 MR. OSBORNE:
 23 A. Yes, it is.
 24 COFFEY, Q.C.:
 25 Q. Now this was prepared, I take it, for the

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1 purposes of the opening of the House?
 2 MR. OSBORNE:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. Now the issue on page one -- that's page one
 6 of the document, page seven of the Exhibit,
 7 Commissioner. It's framed as, "The retesting
 8 of patients and informing them of the ER/PR
 9 test results has taken about 18 months. This
 10 is too long for cancer patients to wait for
 11 answers", and then there are certain
 12 anticipated questions and key messages. Could
 13 you take us through what happened after you
 14 received this? You read it. What happened in
 15 terms of the briefing, notes you made on it?
 16 MR. OSBORNE:
 17 A. Let me see. The copy that you've got is
 18 actually out of my briefing book. This is
 19 what I had for the pre-testimony where I had -
 20 -
 21 COFFEY, Q.C.:
 22 Q. Oh, the interview itself?
 23 MR. OSBORNE:
 24 A. Pardon me?
 25 COFFEY, Q.C.:

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1 Q. The interview by Commission co-counsel?
 2 MR. OSBORNE:
 3 A. That's correct.
 4 COFFEY, Q.C.:
 5 Q. This is the one that was actually made at the
 6 time?
 7 MR. OSBORNE:
 8 A. That's right.
 9 COFFEY, Q.C.:
 10 Q. You utilized at the time --
 11 MR. OSBORNE:
 12 A. It came directly out of my briefing book.
 13 COFFEY, Q.C.:
 14 Q. The briefing book itself, which is P-0314?
 15 MR. OSBORNE:
 16 A. Yes.
 17 COFFEY, Q.C.:
 18 Q. So if you could, and you can take control
 19 because you have a mouse there in front of you
 20 if you want to scroll up or down, and take us
 21 through it.
 22 MR. OSBORNE:
 23 A. Okay.
 24 COFFEY, Q.C.:
 25 Q. Some things are highlighted and there are

Page 20

1 certain things written out to the side there.
 2 MR. OSBORNE:
 3 A. Yeah. I guess on the side where it says,
 4 "More than 900 samples were sent to Mount
 5 Sinai", would have been --
 6 COFFEY, Q.C.:
 7 Q. That's the second key message, yes. Go ahead.
 8 MR. OSBORNE:
 9 A. "Number of tests all back". I got, "Notified
 10 Eastern Health is rechecking charts to ensure
 11 all individuals or their families have been
 12 contacted". The "notified" would have just
 13 been a jot note in the event I was asked a
 14 question for a quick reference.
 15 COFFEY, Q.C.:
 16 Q. Uh-hm.
 17 MR. OSBORNE:
 18 A. I'm not sure --
 19 COFFEY, Q.C.:
 20 Q. If we could while we're at it -- just a second
 21 because the question would otherwise come up.
 22 You'll notice that, of course, there's
 23 underlining which you've done and
 24 highlighting. Was there any reason for the --
 25 any significance to what you would underline

Page 21

1 versus highlight?
 2 MR. OSBORNE:
 3 A. Just my own bizarre way of distinguishing
 4 between messages that I would give if I was
 5 asked a question in the House generally.
 6 COFFEY, Q.C.:
 7 Q. And in this context or this briefing note,
 8 what was the distinction based on?
 9 MR. OSBORNE:
 10 A. Well, the highlighted part here, our first
 11 priority was and continues to be that patients
 12 who had negative ER/PR results and Eastern
 13 Health is rechecking charts to ensure that all
 14 patients or their families have been
 15 contacted. I can't recall now why I would
 16 have distinguished, Mr. Coffey.
 17 COFFEY, Q.C.:
 18 Q. If you can't -- there was a significance, and
 19 if you can't recall it now, then you can't.
 20 MR. OSBORNE:
 21 A. Yeah.
 22 COFFEY, Q.C.:
 23 Q. Just out to the side there, Mr. Osborne,
 24 there's what appears to me to be two different
 25 G's. I'll just point on the screen here. See

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1 that?
 2 MR. OSBORNE:
 3 A. Yeah.
 4 COFFEY, Q.C.:
 5 Q. There's kind of an arrow, as it were, and is
 6 that a G?
 7 MR. OSBORNE:
 8 A. Yeah, that would be things that generally, I
 9 would say, you know, that -- because these
 10 were areas that I felt were important, you
 11 know, we're focusing on patients, have very
 12 treatment option available.
 13 COFFEY, Q.C.:
 14 Q. So the "G" signifies that these are what,
 15 comments that --
 16 MR. OSBORNE:
 17 A. That generally -- they're comments that
 18 generally I would be focused on.
 19 COFFEY, Q.C.:
 20 Q. Okay. Then there's a reference here
 21 handwritten next to "other suggested
 22 responses". What is that,
 23 consultation/recommendation implemented?
 24 MR. OSBORNE:
 25 A. Yes, that would have referred to the

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1 consultant's recommendations and that the
 2 recommendations had been implemented.
 3 COFFEY, Q.C.:
 4 Q. Which was, I take it, consistent with what you
 5 had thought in the spring of '06, you told us
 6 yesterday?
 7 MR. OSBORNE:
 8 A. That's correct.
 9 COFFEY, Q.C.:
 10 Q. If we could just -- you can scroll through if
 11 you like the actual Exhibit 0314. Is there
 12 anything else that caught your attention at
 13 the time or stands out now?
 14 MR. OSBORNE:
 15 A. Well, going into the House, I would have been
 16 notified here that the public to be notified
 17 as soon as all individuals are contacted. So
 18 that was still the information that I'd been
 19 given.
 20 COFFEY, Q.C.:
 21 Q. And you were still -- this is the beginning of
 22 November. So Eastern Health was saying or had
 23 said in their October briefing note --
 24 MR. OSBORNE:
 25 A. Yes.

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1 COFFEY, Q.C.:
 2 Q. Had said, presumably through your officials,
 3 that it would be the end of November before it
 4 would be finished?
 5 MR. OSBORNE:
 6 A. That's correct, and I had been anticipating
 7 that within weeks literally that the
 8 information would be presented to me.
 9 COFFEY, Q.C.:
 10 Q. Is there anything else, just looking at the
 11 second page? Take your time and have a look.
 12 MR. OSBORNE:
 13 A. The only other thing I have underlined is,
 14 "The Authority is currently reviewing all
 15 charts to ensure that all individuals have
 16 been contacted. The full review to be
 17 completed by the end of November", which would
 18 have been consistent with my handwritten note
 19 underneath.
 20 COFFEY, Q.C.:
 21 Q. As well, the first bullet on the second page
 22 of the briefing note, which is page nine of
 23 the exhibit, again refers to the 929
 24 representing 27 percent of the patients?
 25 MR. OSBORNE:

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1 A. Yes, that's correct.
 2 COFFEY, Q.C.:
 3 Q. Tested for breast cancer. Go back to the
 4 first page of the exhibit, scroll back here.
 5 Now under "Other suggested responses", there
 6 is a reference to a quality review began
 7 immediately when the problem was discovered in
 8 May, 2005, "Eastern Health had external
 9 consultants review the method of testing for
 10 ER/PR receptors being used", and then you've
 11 highlighted, "The consultant's recommendations
 12 have been implemented. They returned to
 13 Eastern Health in early April of this year to
 14 assess the progress and were pleased that
 15 measures we put in place to address the
 16 concerns". So there was a reference in early
 17 November of 2006 in the briefing note for you
 18 to the external consultants, but as you
 19 indicated yesterday, it just didn't occur to
 20 you at the time to ask again?
 21 MR. OSBORNE:
 22 A. No. Again I felt I'd been asking all of the
 23 right questions, what are the recommendations,
 24 what's being done, what was the cause, but,
 25 no, I didn't specifically ask for the report.

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1 COFFEY, Q.C.:
 2 Q. If we could please move to P-0175 -- before I
 3 do, there's nothing else, I take it then, at
 4 the time. This is early November '06.
 5 MR. OSBORNE:
 6 A. No. I mean, knowledge of the full information
 7 available today -- you know, when I had
 8 received the August 18th note in May of 2007,
 9 obviously, you know, that information is not
 10 reflected in this note.
 11 COFFEY, Q.C.:
 12 Q. Yes.
 13 MR. OSBORNE:
 14 A. You know, so --
 15 COFFEY, Q.C.:
 16 Q. And that's something now looking at it, you
 17 can --
 18 MR. OSBORNE:
 19 A. Yes. Well, in November of 2006, I wouldn't
 20 have noticed it wasn't there obviously, but --
 21 COFFEY, Q.C.:
 22 Q. Because you didn't know about the August
 23 briefing note?
 24 MR. OSBORNE:
 25 A. That's correct.

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1 COFFEY, Q.C.:
 2 Q. But now looking back on it --
 3 MR. OSBORNE:
 4 A. Well, I mean, you know, the information should
 5 have been there if it was available.
 6 COFFEY, Q.C.:
 7 Q. Because the -- and you feel that that
 8 information that is contained in the August
 9 18th briefing note, the one that went to
 10 Cabinet Secretariat without your knowledge,
 11 there's very detailed numbers on that one,
 12 aren't there?
 13 MR. OSBORNE:
 14 A. There are, yes.
 15 COFFEY, Q.C.:
 16 Q. And they're not reflected in this -- well,
 17 either the October 24th, 2006 briefing note,
 18 the general one?
 19 MR. OSBORNE:
 20 A. No, or the November 6th.
 21 COFFEY, Q.C.:
 22 Q. Nor in the question and answer briefing note
 23 of November 6th?
 24 MR. OSBORNE:
 25 A. No, that's correct.

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1 COFFEY, Q.C.:
 2 Q. And you, now looking back on it, would have
 3 expected those numbers or at least some
 4 summary of them to be there?
 5 MR. OSBORNE:
 6 A. Very much, yeah, absolutely. I mean, I took
 7 my role as Minister of Health very seriously
 8 and this was an issue that was very important,
 9 and a very sensitive issue because of the
 10 nature of the subject we're dealing with, and
 11 this was information that I had requested, you
 12 know, so obviously it should have been there.
 13 COFFEY, Q.C.:
 14 Q. If we could just go back, so we're clear,
 15 Exhibit P-0125, please? And if we could go to
 16 page 31, please? And I'm just going to--this
 17 is the August 18th filed version of the
 18 briefing note, filed in the Registry. And
 19 just to the bottom of the first page, which is
 20 page 31 of the Exhibit, Commissioner, there's
 21 a "Current status (pathology reports)" and it
 22 says, "The total number of patient tissue sent
 23 for retesting at Mount Sinai was 939 and the
 24 majority of the test results, 923, have been
 25 returned. The following table details the

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1 results from Mount Sinai and also provides
 2 information on the 422 test results with
 3 changes that were reviewed by the Newfoundland
 4 and Labrador panel upon receipt from Mount
 5 Sinai. The test results include," and then
 6 there are category, there's a series of
 7 columns which span a page and a half under the
 8 headings "Category," "Number" and "Comments."
 9 And there's a total at the end, 939. So, Mr.
 10 Osborne, I take it that all these descriptions
 11 under "Category" various categories are all
 12 listed there, the numbers associated with
 13 those categories and comments, presumably
 14 describing, you know, the significance of
 15 those numbers or explaining them?
 16 MR. OSBORNE:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. Appeared throughout. And jump ahead for a
 20 moment, Mr. Osborne. At the time when you
 21 saw, finally saw this briefing note, the
 22 August 18th one in May of 2007, May 17th, I
 23 gather, how did you feel at the time?
 24 MR. OSBORNE:
 25 A. I was really quite angry. I read this, it was

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1 at a Cabinet meeting where the--as a result of
 2 the discovery of the disclosure by Eastern
 3 Health and all of the information, so we had a
 4 briefing at Cabinet to determine what exactly
 5 these numbers were and what they meant. And I
 6 was really quite upset. I recall that when I
 7 saw the briefing note and started to read it,
 8 that like I say, I mean, I took my role very
 9 seriously and this was an issue that was very
 10 sensitive. While it was under the management
 11 of Eastern Health, it was still an issue.
 12 They were providing us with regular updates on
 13 and obviously the Department had this, as
 14 well. But the rest of the Cabinet meeting was
 15 a blur. I was so upset all I could focus on
 16 was this and wondering and just, you know, the
 17 thoughts going through my mind of why did I
 18 not receive the briefing note and, you know,
 19 as a result, you know, the more I thought
 20 about it, the more upset I got. In fact, you
 21 know, in hindsight and on reflection of that
 22 particular day I should have perhaps left the
 23 Cabinet room just to get a breather.
 24 COFFEY, Q.C.:
 25 Q. That's how upset you were?

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1 MR. OSBORNE:
 2 A. I was very upset, yes.
 3 COFFEY, Q.C.:
 4 Q. Okay. And what is it about what's contained
 5 in this briefing note that so upset you? I
 6 take it the fact that you hadn't seen it, but
 7 -
 8 MR. OSBORNE:
 9 A. Well, the fact that I had not seen it, the
 10 fact that, you know, there was a great deal of
 11 detail compared to what was provided to me in
 12 November. This is much more detailed. The
 13 fact that, you know, I was wondering if I had
 14 received this briefing note in August, would I
 15 have been able to influence Eastern Health to
 16 release the numbers any earlier. I mean,
 17 that's a difficult question to answer because
 18 their need to review charts and so on, to
 19 ensure everybody had been contacted. But, I
 20 mean, quite obviously the numbers and the
 21 statistics were there in August versus when I
 22 had received them in November. I don't
 23 believe it would have made any change to the
 24 improvements that were taking place at Eastern
 25 Health because I, you know, I do believe

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1 Eastern Health had done a very solid job and I
 2 had confidence in what they were doing for
 3 improvements, but the public disclosure of
 4 these numbers and what it would have meant to
 5 individuals to have these numbers disclosed
 6 earlier, if I had seen this level of detail,
 7 perhaps I would have had a greater
 8 understanding of what each of the numbers
 9 meant and perhaps would have been able to ask
 10 some additional questions on what each of the
 11 numbers meant. I mean, just, you know, a
 12 whole bunch of things going through my mind.
 13 And you know, I can't say with 100 percent
 14 certainty, Mr. Coffey, that it would have
 15 changed the course of the next three months, I
 16 can't say that with absolute certainty, but,
 17 you know, I believe it could have.
 18 COFFEY, Q.C.:
 19 Q. If we could look at, please, P-0175? Now,
 20 this is an e-mail from Tansy Mundon dated
 21 November 21st, 2006, 1346 a.m. Actually, it's
 22 9:13 a.m. because that would be a strange
 23 time. It's 9:13 a.m., I'm sorry,
 24 Commissioner. To John Abbott, Moira
 25 Hennessey, Tom Osborne, Rosemary Boyd and

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1 Janice Sanger. Just while we're on it, who is
 2 Rosemary Boyd?
 3 MR. OSBORNE:
 4 A. She was a consultant in the Department.
 5 Janice Sanger was Wait Times Coordinator.
 6 THE COMMISSIONER:
 7 Q. I'm sorry, what kind of coordinator?
 8 MR. OSBORNE:
 9 A. Wait Times Coordinator.
 10 COFFEY, Q.C.:
 11 Q. Okay. And so this is, the subject "Vow broken
 12 on cancer wait times." And I don't believe, I
 13 stand to be corrected, but I don't think
 14 there's a whole lot here about Eastern Health
 15 and ER/PR, but and this reflects, I take it,
 16 the fact that you were receiving routinely -
 17 MR. OSBORNE:
 18 A. Yes.
 19 COFFEY, Q.C.:
 20 Q. - all kinds of media stories?
 21 MR. OSBORNE:
 22 A. Yes, that's correct. I relied, in fact,
 23 heavily on--you know, I found this quite
 24 useful. And the communications director had
 25 always copied me on these. And there are

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1 times, as Minister of Health, because of the
 2 nature of the Department, that you're not
 3 always able to see the news in the evening or
 4 to see the media, and I found that by
 5 receiving these over Blackberry, maybe in
 6 hindsight had become too dependent on
 7 reviewing the media over Blackberry, but I
 8 found it quite convenient.
 9 COFFEY, Q.C.:
 10 Q. And, yeah, the particular story is, involves
 11 wait times and it's from a Globe and Mail
 12 article. If we could move, please, to P-0176?
 13 Now, this is an e-mail from Chris O'Neill-
 14 Yates of CBC, Wednesday, November 22nd, 2006
 15 at 1:06 p.m. to Tansy Mundon. The subject is
 16 "Breast Cancer Screening," is the way it's
 17 typed into the subject caption. And Ms.
 18 O'Neill-Yates writes, "Hi Tansy, I'm doing a
 19 story on the breast cancer screening tests
 20 that went awry. I have been for weeks trying
 21 to get an interview with Eastern Health. They
 22 say they have nothing to say until the end of
 23 the month even though for weeks they have had
 24 the results of the retesting from Mount Sinai.
 25 Experts I've spoken with indicate that they

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1 should be able to tell us what the rate of
 2 error was based on that, but so far, no go. I
 3 have two people involved in this story and I'm
 4 filing on it tomorrow. The questions I've
 5 been asked by individuals affected are, 'Why
 6 are they hearing from the Minister about what
 7 went wrong?' Is this something that the
 8 Minister could address? I have spoken to many
 9 people and there is great consternation about
 10 how this matter has been handled. Thanks,
 11 Chris." Now, with respect to that if we could
 12 open, please, Exhibit P-0177? And go, please,
 13 to page 2? Mr. Osborne, this is an e-mail at,
 14 it's sent from Tansy Mundon, November 22nd,
 15 2006 at 1:43 p.m., about 37 minutes after the
 16 e-mail from Ms. O'Neill-Yates to Leona
 17 Barrington and Susan Bonnell, carboned to
 18 George Tilley and John Abbott. The subject
 19 is, Forwarding: Breast Cancer Screening." And
 20 she writes, "In light of this request, can you
 21 please ask that a status report is sent to the
 22 Minister this week. Thanks." So do you
 23 recall on November 22nd being made aware of
 24 Chris O'Neill-Yates' request?
 25 MR. OSBORNE:

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1 A. I don't recall. And up to this point I felt
 2 confident in saying that I've never been
 3 requested to do a media story on this
 4 particular issue. Obviously there was a
 5 request there. The only explanation that I
 6 can provide is perhaps, you know, the
 7 Department's knowing that I was going to be
 8 briefed within days, you know, it turned out
 9 to be the next day, but within days, and--but,
 10 you know, I can't say for certain.
 11 COFFEY, Q.C.:
 12 Q. And if we could go back to page 1, please? Up
 13 to this point in time, November 22nd, 2006,
 14 during your tenure as Minister of Health, at
 15 least on the ER/PR issue, as far as you knew
 16 no one, no media had asked to speak to you on
 17 this point?
 18 MR. OSBORNE:
 19 A. No. You know, I think that the media
 20 recognized that it was largely an issue
 21 managed by Eastern Health.
 22 COFFEY, Q.C.:
 23 Q. Now, at the bottom of this page there's an e-
 24 mail from Susan Bonnell to Tansy Mundon,
 25 November 22nd at 2:54 p.m. The subject is

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1 "Re: Breast Cancer Screening." And she
 2 writes, "Can you call me? I'm talking to Dr.
 3 Howell on the phone now and we'd like to know
 4 what the Minister would want. Would a verbal
 5 briefing be helpful? Despite what Chris says,
 6 we aren't in a position to give a detailed
 7 briefing this week (rate of error, etcetera)."
 8 Signed, "Susan Bonnell, Director of Corporate
 9 Communications. And then just above that
 10 Tansy responds, Tansy Mundon responds the same
 11 day at 2:59 p.m. to Susan Bonnell writing,
 12 "Just waiting for the Minister to come out of
 13 the House of Assembly and I'll call you." And
 14 there's an e-mail at the same time, actually,
 15 at least dated the same time and same time of
 16 day, 2:59 p.m. from Susan to Tansy Mundon,
 17 "We've been trying to get herself on the
 18 phone. We left her a couple of messages."
 19 I'm sorry. Thank you. "We're attempting to
 20 set up the media briefing for the first week
 21 of December. Just trying to line up all the
 22 players we need to do this." And then, sir,
 23 at the top of the page there's an e-mail from
 24 Tansy Mundon, Wednesday, November 22nd, 2006
 25 at 3:55 p.m. to Leona Barrington and Susan

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1 Bonnell, the subject is "Re: Breast Cancer
 2 Screening." She writes, "Susan, the Minister
 3 doesn't need a briefing today, but we would
 4 like to set up a briefing for him ASAP. I
 5 will advise you once I discuss with John
 6 Abbott and we can find a time. Thanks,
 7 Tansy." Now, do you recall on November 22nd
 8 being asked if you wanted to be briefed that
 9 day or would the next day suffice, do you
 10 recall anything about that?
 11 MR. OSBORNE:
 12 A. I don't recall, but I mean, it very well may
 13 have happened because around that time I was
 14 anticipating a briefing and to have a
 15 conversation on being briefed by Eastern
 16 Health, you know, would have been normal at
 17 that particular time.
 18 COFFEY, Q.C.:
 19 Q. If we could go, please, to Exhibit P-0178?
 20 Sir, when one looks down through this, the
 21 text below is in the main, if not the
 22 entirety, the series of e-mails I just
 23 referred you to?
 24 MR. OSBORNE:
 25 A. Yes.

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1 COFFEY, Q.C.:
 2 Q. But the top one is an e-mail from Susan
 3 Bonnell to Tansy Mundon, carboned to or copied
 4 to Leona Barrington. It's sent at 4:18 p.m.
 5 on November 22nd. It says, "We are going to
 6 brief Peter Dawe next Friday, December 1, and
 7 are going to arrange a media for December
 8 11th. Oscar can make himself available
 9 whenever this week." Signed, "Susan Bonnell."
 10 Do you recall whether or not you were made
 11 aware or it was brought to your attention that
 12 Eastern Health was going to give a briefing to
 13 Mr. Dawe before the media briefing?
 14 MR. OSBORNE:
 15 A. Yes, on November 23rd, in fact, I did make a
 16 note of that on my own notes that Peter Dawe
 17 was to be briefed.
 18 COFFEY, Q.C.:
 19 Q. If we could go, please -
 20 MR. OSBORNE:
 21 A. Actually, Mr. Coffey.
 22 COFFEY, Q.C.:
 23 Q. Yes.
 24 MR. OSBORNE:
 25 A. I apologize, I just located my November 23rd

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1 briefing note. It doesn't mention Peter Dawe
 2 by name, but it does say "Media briefing next
 3 week. CCS to get pre-briefing."
 4 COFFEY, Q.C.:
 5 Q. Which would be the Canadian Cancer Society?
 6 MR. OSBORNE:
 7 A. Which would be the Canadian Cancer Society,
 8 yeah.
 9 COFFEY, Q.C.:
 10 Q. Yeah. Mr. Dawe is not actually -
 11 MR. OSBORNE:
 12 A. Mentioned, no.
 13 COFFEY, Q.C.:
 14 Q. No, but. If we could, please, turn to Exhibit
 15 P-0314, page 10? Now, Mr. Osborne, as you
 16 just indicated, as it turned out you were
 17 going to end up being briefed the next day,
 18 November 23rd. This is a document on Eastern
 19 Health letterhead. Across the top it's in
 20 bold and italics, "ER/PR Case Analysis" and
 21 slightly lower font, "Briefing for the
 22 Department of Health and Community Services,
 23 November 23rd, 2006." So do you recall when
 24 you received this document?
 25 MR. OSBORNE:

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1 A. Yes, on November 23rd. The House was sitting
 2 that day, I recall, and in the clerk's
 3 boardroom, just outside the House of Assembly
 4 within the presence of the House of Assembly,
 5 when I was advised that Eastern Health were
 6 ready to brief me or asked when I wanted a
 7 briefing. We held it the next day, and even
 8 though the House was sitting, I took an hour
 9 out of the House. We generally book with the
 10 whip in the House time if we need to. So I
 11 booked some time out, we did the briefing and
 12 it would have been the afternoon of the 23rd.
 13 I can't recall the exact time, but it was
 14 definitely in the afternoon of the 23rd.
 15 COFFEY, Q.C.:
 16 Q. Could you tell us, please, tell the
 17 Commissioner what you recall about that right
 18 from who was there, describe the room, who was
 19 there and what you can recall about what was
 20 said?
 21 MR. OSBORNE:
 22 A. There would have been myself, John Abbott,
 23 Oscar Howell, George Tilley, Kara Laing, Dr.
 24 Denic, Tansy Mundon, Darrell Hynes. I can't
 25 recall if there were others, you know.

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1 COFFEY, Q.C.:
 2 Q. Did you name--was Susan Bonnell there, do you
 3 know? I'm not suggesting she was, I'm just--
 4 in your mind's eye kind of go around the room,
 5 as it were?
 6 MR. OSBORNE:
 7 A. I can't recall.
 8 COFFEY, Q.C.:
 9 Q. Okay, you can't recall. Okay, could you tell
 10 us, please, how the meeting unfolded?
 11 MR. OSBORNE:
 12 A. Well, we started, we basically went down
 13 through in, if you want to call it,
 14 chronological order within the page. We were
 15 informed that results were obtained and
 16 reviewed for 763 patients. The -
 17 COFFEY, Q.C.:
 18 Q. So, yeah, the total cases reviewed 1997 to
 19 August, 2005 was 2760 cases?
 20 MR. OSBORNE:
 21 A. Yes, that's correct.
 22 COFFEY, Q.C.:
 23 Q. And you've circled the 2760?
 24 MR. OSBORNE:
 25 A. Yeah. And I can't recall now why I would have

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1 done that, but something in the meeting must
 2 have sparked me to do that, but.
 3 COFFEY, Q.C.:
 4 Q. And the total retested is 939?
 5 MR. OSBORNE:
 6 A. Yeah. And we'd gone down through this very
 7 quickly, in fact. I remember, you know, we
 8 brushed through relatively quickly until we
 9 got to the patients, the change in results
 10 that required treatment. I can say that we
 11 were told by Eastern Health that this was the
 12 primary focus, this was the number we need to
 13 focus on, these were the individuals who
 14 required a change in treatment, and I mean,
 15 you know, you know, a very deliberate focus on
 16 these numbers, the 104. And I recall at one
 17 point during the meeting having said, you
 18 know, there are 13, I can't recall if it's the
 19 13 that changed because of the threshold
 20 changing or the 13 that changed because it
 21 says they were potentially impacted, because
 22 they weren't placed on Tamoxifen for their
 23 original disease but for other reasons. I
 24 don't recall which of the 13 we added, but I
 25 do recall saying that, you know, there are 13

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1 that have to be added, which would be 117, to
 2 get a true picture of those who are affected
 3 by a change in treatment.
 4 COFFEY, Q.C.:
 5 Q. On that point, because I'll be taking you
 6 through that in some detail, but 104 is
 7 actually written here?
 8 MR. OSBORNE:
 9 A. Yeah.
 10 COFFEY, Q.C.:
 11 Q. "Change in results and requires treatment
 12 change, 104."?
 13 MR. OSBORNE:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. And you had noticed the 13 figure, and you
 17 can't recall whether it's--which of the two?
 18 MR. OSBORNE:
 19 A. No, I can't recall -
 20 COFFEY, Q.C.:
 21 Q. Is there two, are there two 13 figures here on
 22 this page?
 23 MR. OSBORNE:
 24 A. Yes, there are 13 as a result of a change in
 25 treatment because of the definition of

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1 negative has changed.
 2 COFFEY, Q.C.:
 3 Q. Yes.
 4 MR. OSBORNE:
 5 A. Which would have been the threshold. At one
 6 point they were looking at 30 percent and I
 7 think it dropped in subsequent years at least
 8 once, maybe a couple of times the threshold
 9 had changed.
 10 COFFEY, Q.C.:
 11 Q. Yes. So you noticed that, you noticed -
 12 MR. OSBORNE:
 13 A. Yeah. I'm not sure if it was that or if it
 14 was the other 13 individuals where cancer had
 15 spread from breast cancer to other parts of
 16 their body. You know, I'm not sure if it was
 17 -
 18 COFFEY, Q.C.:
 19 Q. Which of the two 13s?
 20 MR. OSBORNE:
 21 A. Which of the two.
 22 COFFEY, Q.C.:
 23 Q. But, whichever of the two it was, you reasoned
 24 that it should be 104 plus 13?
 25 MR. OSBORNE:

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1 A. That's correct.
 2 COFFEY, Q.C.:
 3 Q. Which is the 117 figure?
 4 MR. OSBORNE:
 5 A. Yes. I seem to think it were, the 13 where
 6 the cancer had spread because there's a
 7 bracket. I can't say with absolute certainty,
 8 Mr. Coffey.
 9 COFFEY, Q.C.:
 10 Q. Sure.
 11 MR. OSBORNE:
 12 A. But, I mean, there's a bracket there, if we
 13 scroll down the page.
 14 COFFEY, Q.C.:
 15 Q. Yes, I'm sorry, I'll bring that -
 16 MR. OSBORNE:
 17 A. There's a bracket there, why I -
 18 COFFEY, Q.C.:
 19 Q. It says, "Change in results but does not
 20 require change of treatment." I'm sorry,
 21 "does not require treatment change, 213." And
 22 then there's a bullet, second bullet and then
 23 a third bullet "with Tamoxifen or another
 24 Aromatase inhibitor, 148. This group includes
 25 a group identified as being potentially

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1 impacted, those not placed on Tamoxifen for
 2 their original disease, but for subsequent
 3 metastatic disease." And it's in brackets,
 4 "(13)".
 5 MR. OSBORNE:
 6 A. Yeah.
 7 COFFEY, Q.C.:
 8 Q. So it may be that.
 9 MR. OSBORNE:
 10 A. And I understand that that, you know, that's
 11 where the cancer would spread from breast
 12 cancer to other parts of the body.
 13 COFFEY, Q.C.:
 14 Q. So the purpose, then, of you identifying the
 15 13 number and asking that it be added or
 16 suggesting it be added to the 104 was what?
 17 MR. OSBORNE:
 18 A. Was that these individuals were impacted, as
 19 well, by a change in treatment.
 20 COFFEY, Q.C.:
 21 Q. And had had a change in results?
 22 MR. OSBORNE:
 23 A. And had a change in results, absolutely.
 24 COFFEY, Q.C.:
 25 Q. Okay.

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1 MR. OSBORNE:
 2 A. You know, so both of these groups would have
 3 had a change in the results. The first group
 4 was not that their sample had changed, which
 5 is why I'm thinking it was the second group.
 6 The first group would not be because their
 7 samples had changed, but because the
 8 definition would have changed. So that's why
 9 I'm thinking it was the second group, because
 10 they actually had a change in result which if
 11 they had not been on Tamoxifen for other
 12 reasons, they would have had a change in
 13 treatment, as well.
 14 COFFEY, Q.C.:
 15 Q. Okay. And so you communicated this, 104 and
 16 the 13 to Eastern Health's people?
 17 MR. OSBORNE:
 18 A. Yes.
 19 COFFEY, Q.C.:
 20 Q. How did they receive your views?
 21 MR. OSBORNE:
 22 A. Very readily agreed at that meeting and the
 23 numbers were changed.
 24 COFFEY, Q.C.:
 25 Q. That's the 117 figure, I take it -

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1 MR. OSBORNE:
 2 A. Yes.
 3 COFFEY, Q.C.:
 4 Q. - that was subsequently used. In fact, on
 5 that, toward the bottom of the page there's
 6 handwriting, it says, in fact, if we just
 7 follow the cursor here on the screen, you can
 8 see you've underlined the part you identified
 9 earlier, "This group includes the group
 10 identified as being potentially impacted."
 11 MR. OSBORNE:
 12 A. Yes.
 13 COFFEY, Q.C.:
 14 Q. And there's a line running to the left, down
 15 the page and then to the right. And then
 16 below it's written, "Add the" -
 17 MR. OSBORNE:
 18 A. "These."
 19 COFFEY, Q.C.:
 20 Q. "These," I'm sorry, "equals 117 to get true
 21 number."
 22 MR. OSBORNE:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. And that's your handwriting?

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1 MR. OSBORNE:
 2 A. That is my writing, yes. I mean, the meeting
 3 went exceptionally well up to that point.
 4 Again, I mean, the primary focus was on the
 5 117 then. And then we had talked about--the
 6 176, I'm sorry, the patients who are deceased.
 7 The meeting got very heated. It's safe to say
 8 the meeting went off the rails at that
 9 particular point.
 10 COFFEY, Q.C.:
 11 Q. Okay. What happened?
 12 MR. OSBORNE:
 13 A. We were told that they didn't have the numbers
 14 calculated for the deceased. 101 results were
 15 received back from Mount Sinai. 73 would not
 16 be retested unless families approached Eastern
 17 Health. The understanding that I had was that
 18 all results were going to be received from
 19 Mount Sinai, retested, and that -
 20 COFFEY, Q.C.:
 21 Q. That whole of the 939?
 22 MR. OSBORNE:
 23 A. That's correct. And even with the patients
 24 who are deceased, I understood that because of
 25 an ethics review that they wouldn't release

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1 these results to families unless requested.
 2 And I mean, that, I didn't see a problem with
 3 that. The results would be available, here
 4 they're clearly not, but the results would be
 5 available and if a family member requested it,
 6 they would be there. The question was asked
 7 by Darrell Hynes why these numbers were not
 8 available and the response was that, you know,
 9 their time and resources were better spent
 10 treating or, you know, reviewing and treating
 11 patients who could benefit from their
 12 treatment. They were concerned with the
 13 living.
 14 COFFEY, Q.C.:
 15 Q. You've written there and put just below the
 16 heading "Patients Who are Deceased, 176" and
 17 the numbers of 101 and so on you just referred
 18 to, the 73, it's handwritten there, "Concerned
 19 with the living." and it's kind of a circle
 20 around it, as it were. Who said they're
 21 concerned with the living or what was said,
 22 what do you recall about what was said, who
 23 said what?
 24 MR. OSBORNE:
 25 A. Kara Laing, I recall, saying that she wasn't

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1 concerned with the dead, her concern was with
 2 the living. Darrell Hynes at that particular
 3 point said, "You had better come up with a
 4 better response" or something to that effect,
 5 "when you present this in the media briefing,
 6 because that's clearly not acceptable."
 7 COFFEY, Q.C.:
 8 Q. I take it this was the part of the meeting
 9 you've referred to as deteriorated at this
 10 point?
 11 MR. OSBORNE:
 12 A. Well, the whole conversation around the
 13 deceased had deteriorated. You know, the
 14 voices were raised, there was a bit of
 15 shouting back and forth and, you know, the
 16 meeting was quite heated at that particular
 17 point. Up to that point, you know, the
 18 meeting had gone quite well, but at that
 19 particular point it got heated. I do have a
 20 note here and I recall saying that the--you
 21 know, asking when they could have these
 22 results available and they said they would not
 23 have them available for the media briefing.
 24 COFFEY, Q.C.:
 25 Q. Which results, that's -

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1 MR. OSBORNE:
 2 A. The results on the numbers of individuals who
 3 potentially would have had a benefit in a
 4 change in treatment were they still alive.
 5 COFFEY, Q.C.:
 6 Q. Okay, were they still alive?
 7 MR. OSBORNE:
 8 A. Yes.
 9 COFFEY, Q.C.:
 10 Q. In other words, the number of 101 who were
 11 retested and the results were back?
 12 MR. OSBORNE:
 13 A. Yes. Well, the 176.
 14 COFFEY, Q.C.:
 15 Q. The whole of the 176?
 16 MR. OSBORNE:
 17 A. Yeah.
 18 COFFEY, Q.C.:
 19 Q. Including the ones who had not yet even been
 20 retested?
 21 MR. OSBORNE:
 22 A. Absolutely. Because, I mean, obviously, you
 23 know, if a true picture were to be presented
 24 to the public on the overall impact of this
 25 review, the individuals who would have had a

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1 change in treatment or would have benefitted
 2 or potentially benefitted had they not been
 3 deceased obviously would have factored into
 4 the overall number.
 5 COFFEY, Q.C.:
 6 Q. And you conveyed that thought to Eastern
 7 Health's representatives at the time?
 8 MR. OSBORNE:
 9 A. I did, I said, you know, that it's important
 10 that this information is available. I got a
 11 note here basically saying "Can't add before
 12 public briefing, but it should be added to get
 13 an accurate number." And -
 14 COFFEY, Q.C.:
 15 Q. Yes. Actually, it's here, looking at the
 16 cursor, and you've written, in fact, I'll just
 17 go up the page a bit, it says, and there's a
 18 line running from the word "how" down to
 19 "below." It says, perhaps you could just read
 20 out what you've written there? It's your
 21 handwriting.
 22 MR. OSBORNE:
 23 A. I wrote, "How many deceased would have had a
 24 change in treatment? Don't know."
 25 COFFEY, Q.C.:

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1 Q. That was Eastern Health, I take it?
 2 MR. OSBORNE:
 3 A. Yeah. And I'm not sure why that line was
 4 there, to be honest with you.
 5 COFFEY, Q.C.:
 6 Q. And then what else? There's something else
 7 written down here, the word "important" is
 8 there?
 9 MR. OSBORNE:
 10 A. Well, that would have been relating to the
 11 117, that it's -
 12 COFFEY, Q.C.:
 13 Q. Oh, the 117?
 14 MR. OSBORNE:
 15 A. Yeah.
 16 COFFEY, Q.C.:
 17 Q. Okay, so we'll come back to that.
 18 MR. OSBORNE:
 19 A. "Important that these patients get treatment
 20 required." And the note underneath, I think,
 21 is perhaps referring to the reason that the
 22 media briefing was going to be the following
 23 the week and that, you know, files had to be
 24 reviewed to make sure all individuals were
 25 contacted or that all were contacted. So, I

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1 mean, that had nothing to do with the upper
 2 note of "important."
 3 COFFEY, Q.C.:
 4 Q. Sure. Now, there is, as well--is there
 5 anything else here on the page dealing with
 6 the deceased that you've handwritten?
 7 MR. OSBORNE:
 8 A. Well, just under "Can't add before public
 9 briefing."
 10 COFFEY, Q.C.:
 11 Q. So the references to "can't add before public
 12 briefing" is to the -
 13 MR. OSBORNE:
 14 A. Deceased.
 15 COFFEY, Q.C.:
 16 Q. Deceased numbers.
 17 MR. OSBORNE:
 18 A. Yeah, "can't add before public briefing but
 19 should be added to get true number. GP should
 20 know this." Meaning general public.
 21 COFFEY, Q.C.:
 22 Q. And in fact, after the "this", there are a
 23 couple of lines there. Just bring it up
 24 there. There are two exclamation marks there.
 25 MR. OSBORNE:

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1 A. Yes, sorry.
 2 COFFEY, Q.C:
 3 Q. They're your's?
 4 MR. OSBORNE:
 5 A. Yes.
 6 COFFEY, Q.C:
 7 Q. Okay. So I take it, does the exclamation
 8 marks indicate that you were adamant about
 9 this at the time and you expressed that?
 10 MR. OSBORNE:
 11 A. Well that's certainly the way, you know, I had
 12 indicated that those numbers should be
 13 available and, you know, I think it was at
 14 that point actually that they said that, you
 15 know, they couldn't--or the resources were
 16 better spent on living patients and, you know,
 17 that's--shortly after there was a
 18 confrontation between Darrell Hynes and Kara
 19 Laing.
 20 COFFEY, Q.C:
 21 Q. They were the two raised voices, I take it?
 22 MR. OSBORNE:
 23 A. Yes.
 24 COFFEY, Q.C:
 25 Q. Anybody else do you recall?

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1 MR. OSBORNE:
 2 A. You know, I think that a number of people,
 3 including myself, had raised voices. It had
 4 become a heated meeting or a heated
 5 discussion around this particular topic.
 6 COFFEY, Q.C:
 7 Q. Now there is as well, if I could, in terms of
 8 the handwriting, you've written at the top
 9 right-hand side of the page, I take it it's
 10 your writing, it says "Media briefing next
 11 week. CCS to get pre-briefing"--which would be
 12 the Canadian Cancer Society. That was
 13 important to you why or of significance to you
 14 why?
 15 MR. OSBORNE:
 16 A. Well they'd been, you know, Peter Dawe in
 17 particular had been vocal on the issue. I
 18 mean, it's the Canadian Cancer Society, the
 19 main advocate, public advocate, I guess, for
 20 cancer patients.
 21 COFFEY, Q.C:
 22 Q. And I'm pointing at something here, what is
 23 that, do you know?
 24 MR. OSBORNE:
 25 A. "All professionals to be at briefing, question

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1 and answer."
 2 COFFEY, Q.C:
 3 Q. And what was that about?
 4 MR. OSBORNE:
 5 A. I don't recall why I wrote that there, other
 6 than the fact that I guess the pathologist,
 7 the oncologist, the people who could answer
 8 the technical questions, I guess, were going
 9 to be at the briefing.
 10 COFFEY, Q.C:
 11 Q. And "Q & A" what was that about?
 12 MR. OSBORNE:
 13 A. Questions and answers, that was at the media
 14 briefing that Eastern Health were going to
 15 hold, so that they could answer questions from
 16 the media.
 17 COFFEY, Q.C:
 18 Q. Oh, okay.
 19 MR. OSBORNE:
 20 A. And I guess, you know, it was just important,
 21 you know, that technical questions would have
 22 been answered as well.
 23 COFFEY, Q.C:
 24 Q. Now there are some other things written here,
 25 there is a figure there--there's two figures,

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1 it's 3-4 percent is in the bottom left-hand
 2 side of the page. It's circled, the figures
 3 3-4 are scribbled out and then handwritten
 4 next to it is "within rate of error". Do you
 5 recall what that was about?
 6 MR. OSBORNE:
 7 A. I think just because the meeting was going so
 8 quickly and maybe rate of error was on my
 9 mind, that should be "within margin of error"
 10 because I recall them telling us that this was
 11 within the margin of error.
 12 COFFEY, Q.C:
 13 Q. That was Eastern Health?
 14 MR. OSBORNE:
 15 A. Yeah, and I'm not sure how the three to four
 16 percent came up at the meeting, but I
 17 generally don't like using numbers unless I'm
 18 absolutely certain, so that's perhaps why I
 19 scratched that out, you know, so I wouldn't
 20 say if I was questioned in the House or by the
 21 media or providing other information that, you
 22 know, the margin of error was three or four
 23 percent. I find that if you use numbers,
 24 sometimes they get you in trouble, to be
 25 honest with you, unless you're absolutely

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1 certain.
 2 COFFEY, Q.C:
 3 Q. And then as well, below the numbers, there's a
 4 line and you've written "center of excellence"
 5 and you kind of boxed it out. What did that
 6 refer to?
 7 MR. OSBORNE:
 8 A. We must have talked at the meeting and I can't
 9 recall, but, you know, if I wrote it there, I
 10 don't know if it was a thought that I had to
 11 remind me that, you know, there was a lot of
 12 very good work done by Eastern Health to
 13 restore public confidence or if it was raised
 14 at the meeting, I can't say for certain.
 15 COFFEY, Q.C:
 16 Q. And if it was raised at the meeting, if it
 17 wasn't your thought, if it was raised at the
 18 meeting, do you remember whom--which group
 19 would it have been raised by? Department or
 20 Eastern Health, or do you know?
 21 MR. OSBORNE:
 22 A. I can't recall, you know, I still say today I
 23 think there were, there was a lot of very good
 24 work done and even though my confidence has
 25 been shaken in how the information has been

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1 released, my confidence in Eastern Health is
 2 very strong in regards to the improvements
 3 that they made at the lab and, you know, to
 4 put measures in place to create a center of
 5 excellence, to put measures in place to ensure
 6 that patient confidence is there in the lab,
 7 those were things, you know--I mean, through
 8 all of this, and yes, I, you know, I amongst
 9 others are perhaps angry at Eastern Health
 10 that this information--well not perhaps, I am
 11 angry at Eastern Health that this information
 12 didn't come out. But I think it is important
 13 to say as well that they did do a lot of very
 14 positive things in ensuring that the lab
 15 restored its credibility or confidence and was
 16 considered a center of excellence.
 17 COFFEY, Q.C:
 18 Q. On this page at the bottom, there is something
 19 that's handwritten and then scribbled out. I
 20 think you referred to that yesterday.
 21 MR. OSBORNE:
 22 A. Yes.
 23 COFFEY, Q.C:
 24 Q. Could be systems -
 25 MR. OSBORNE:

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1 A. Error.
 2 COFFEY, Q.C:
 3 Q. Error. And there's something written
 4 underneath it, do you know -
 5 MR. OSBORNE:
 6 A. "Legal process."
 7 COFFEY, Q.C:
 8 Q. I'm sorry?
 9 MR. OSBORNE:
 10 A. "Legal process."
 11 COFFEY, Q.C:
 12 Q. So what was that about?
 13 MR. OSBORNE:
 14 A. That's the only talk at that meeting of the
 15 legal process, but I had asked has it been
 16 determined that this is a system's error, you
 17 know, like are we able to now say that--so
 18 Eastern Health officials then had said, you
 19 know, we've got confidence in our
 20 professionals, we don't believe that they were
 21 the cause of the error. We stand behind them,
 22 this type of thing. But we can't say that at
 23 the media briefing because that's the question
 24 that's before the Courts and it's a question
 25 for the Courts to decide. Again, I'm

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1 paraphrasing, not exactly that language, but
 2 that was the message I received.
 3 COFFEY, Q.C:
 4 Q. Okay. Sure. So I take it did you infer from
 5 that that they would not be referring to
 6 errors or error rates?
 7 MR. OSBORNE:
 8 A. No, there's two comments I'd wish to make on
 9 this.
 10 COFFEY, Q.C:
 11 Q. Sure.
 12 MR. OSBORNE:
 13 A. The only thing that I understood from the
 14 meeting that they weren't going to refer to
 15 was the cause of error because that was before
 16 the Courts and for the Courts to decide. That
 17 was the only talk of legalities, if you would,
 18 or legal process or Courts at that meeting. I
 19 did understand personally, not that it was
 20 said, I don't think--I don't recall it being
 21 said, it was just my own conclusion that if
 22 they weren't able to provide the statistics on
 23 the deceased and, you know, whether or not
 24 there were errors in the patients who are now
 25 deceased, how could they possibly provide, you

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1 know, a full picture of the error that had
 2 occurred and, you know, I believe that that
 3 was my own conclusion drawn from the meeting.
 4 And I was a little disappointed that they
 5 weren't able to indicate what the full error
 6 was, but I believe that was my conclusion
 7 because of them not having all of the
 8 information.
 9 COFFEY, Q.C:
 10 Q. When you say "full error", I take it you mean
 11 the full number of people whose results had
 12 changed?
 13 MR. OSBORNE:
 14 A. The full number of people whose results had
 15 changed and, you know, the full number of
 16 people that would have benefited from -
 17 COFFEY, Q.C:
 18 Q. The results had changed and it would have
 19 affected--did or it would have affected or
 20 could have affected their treatment?
 21 MR. OSBORNE:
 22 A. Exactly, yes.
 23 COFFEY, Q.C:
 24 Q. Okay.
 25 MR. OSBORNE:

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1 A. Essentially how many of the deceased had
 2 missed out on treatment was one of the things
 3 that I realized perhaps couldn't be
 4 identified.
 5 COFFEY, Q.C:
 6 Q. Could we look, please, at--before we leave
 7 this, Ms. Chaytor reminds me of something.
 8 "Change in results but does not require
 9 treatment change, 213", it's right in the
 10 middle of the page.
 11 MR. OSBORNE:
 12 A. Yes.
 13 COFFEY, Q.C:
 14 Q. Now the figure there, actually the second and
 15 third bullet, I presume it looks like should
 16 run together because of the language. It
 17 says, "No recommendation because they are
 18 previously treated with Tamoxifen or another
 19 Aromatase inhibitor, 148." Do you see that
 20 right there?
 21 MR. OSBORNE:
 22 A. Yes.
 23 COFFEY, Q.C:
 24 Q. Was that discussed? I appreciate the 13
 25 figure below was in the italic's portion, but-

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1 MR. OSBORNE:
 2 A. I mean, it would have been referred to, but I
 3 think up until we got to the change in
 4 treatment, you know, the important thing
 5 through this, for me, was ensuring that
 6 patients who needed treatment got it. So I
 7 think part of my focus was on the 117 because
 8 of that, but there was a very deliberate focus
 9 by Eastern Health to focus on the 117 as well,
 10 so I think the combination of two. Having
 11 said that, the other numbers we ran through
 12 that information very, very quickly. We were
 13 told, you know, that the 104, now 117--that
 14 the 117 were the numbers we needed to focus
 15 on, that these are the numbers that are
 16 important here. And, so you know, the meeting
 17 had primarily focused on those numbers until
 18 we started talking about patients who are
 19 deceased.
 20 COFFEY, Q.C:
 21 Q. Now when we look at the top of the page,
 22 there's a reference to "of the results
 23 obtained and reviewed, 763", did you like at
 24 that meeting or subsequently actually look
 25 down through the numbers to try to figure out,

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1 you know, what numbers added up to 763?
 2 MR. OSBORNE:
 3 A. I didn't at that meeting. I have subsequently
 4 looked, and the 433, 213 and 104 -
 5 COFFEY, Q.C:
 6 Q. Do add up to 763.
 7 MR. OSBORNE:
 8 A. Actually I'd have to add those again, but you
 9 know, I did look at the numbers. I'd refer
 10 this back to the August 18th note, I've
 11 reviewed the numbers that I was told compared
 12 to the August 18th note, but no, at that
 13 meeting I didn't add up--I didn't add the
 14 numbers to see if they had added to 763.
 15 COFFEY, Q.C:
 16 Q. See, if you look at the figure of 763, results
 17 obtained and reviewed, the immediate entry
 18 below it is "no change in results and
 19 subsequently no change in treatment, 433".
 20 MR. OSBORNE:
 21 A. That's right, so the 433, 213 and 104 would
 22 add to -
 23 COFFEY, Q.C:
 24 Q. In fact, I'm going to suggest to you if you
 25 add another 13 to it, which is the second

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1 entry "no change in results, requires no
 2 change in treatment", but one can do the
 3 arithmetic--what I want to ask you about is
 4 this, the idea of just simply subtracting out
 5 those that had no change in results from the
 6 total number of results received, if you have,
 7 you know, 763 results received and you have no
 8 change in results for 433 and then no change
 9 in results for another 13, which means
 10 probably about 446 no change in results,
 11 subtract that from 763, you get the change in
 12 results. I mean, anybody can kind of do the
 13 arithmetic, it would take a couple of minutes
 14 or less, depending on how fast you are doing
 15 arithmetic, you could figure out very easily
 16 from this what the total number of change in
 17 results was, couldn't you?
 18 MR. OSBORNE:
 19 A. With the exception of the deceased.
 20 COFFEY, Q.C:
 21 Q. Yes, I appreciate that, with the exception of
 22 the deceased.
 23 MR. OSBORNE:
 24 A. Yes, I mean, those numbers all add up with the
 25 exception of the 176.

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1 COFFEY, Q.C:
 2 Q. And do you know whether or not you or anybody
 3 in your department itself actually did that
 4 arithmetic calculation at the time?
 5 MR. OSBORNE:
 6 A. I didn't. The reason I didn't, you know, when
 7 I realized that they didn't have the full
 8 statistics for the deceased, I just concluded
 9 that they weren't able to tell us what the,
 10 you know, the total impact of the situation
 11 was.
 12 COFFEY, Q.C:
 13 Q. Well being that in mind and bearing in mind
 14 that at the time, I gather you understood that
 15 that 10, 11, 12 days into December there was
 16 going to be a media briefing by Eastern
 17 Health, did you have any misgivings about the
 18 fact that they're going to hold a media
 19 briefing and yet you, yourself, felt there was
 20 information that they hadn't yet obtained that
 21 you felt should be obtained?
 22 MR. OSBORNE:
 23 A. There was one comment made at the media
 24 briefing when we were told that they couldn't
 25 have the numbers ready for the media briefing.

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1 COFFEY, Q.C:
 2 Q. That's the numbers on the deceased.
 3 MR. OSBORNE:
 4 A. The numbers on the deceased. I had said I'd
 5 like to have the full numbers released to the
 6 general public, including the numbers for the
 7 deceased and somebody had said--and I don't
 8 recall who it was, but somebody had said, you
 9 know, we can't provide that information prior
 10 to the media briefing and I had asked why not.
 11 It was suggested that if they were to provide
 12 that, it would take a considerable period of
 13 time. My response was present to the media
 14 what we have, but get the rest of the
 15 information.
 16 COFFEY, Q.C:
 17 Q. And their response to that was what?
 18 MR. OSBORNE:
 19 A. Well there was no contradiction to that
 20 response.
 21 COFFEY, Q.C:
 22 Q. That's the one I was asking about. If we
 23 could just look at here, there's something
 24 here scribbled out next to "change in results
 25 and requires treatment change, 104", do you

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1 recall--can you decipher what was there?
 2 MR. OSBORNE:
 3 A. No, I mean the other one could be system's
 4 error, I could read through the scratches, but
 5 that I've--I've studied that over and over; I
 6 have absolutely no idea what that was or why I
 7 scratched it out.
 8 COFFEY, Q.C:
 9 Q. Okay. So then your overall, by the time that
 10 meeting ended with the Eastern Health
 11 representatives, and to put it in context for
 12 the Commissioner, had you ever had before that
 13 any sort of heated meeting with Eastern
 14 Health's officials or where the meeting, you
 15 know, degenerated into a heated debate, that
 16 you recall?
 17 MR. OSBORNE:
 18 A. No, not that I recall. We've had
 19 disagreements, but nothing heated.
 20 COFFEY, Q.C:
 21 Q. And how about since then?
 22 MR. OSBORNE:
 23 A. No.
 24 COFFEY, Q.C:
 25 Q. So this is the one time is what I'm getting

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1 at, is the one time that there was a -
 2 MR. OSBORNE:
 3 A. Yes.
 4 COFFEY, Q.C:
 5 Q. Voices ended up being raised.
 6 MR. OSBORNE:
 7 A. Yes, absolutely.
 8 COFFEY, Q.C:
 9 Q. So the meeting ended, what did you understand
 10 then was the status of the situation?
 11 MR. OSBORNE:
 12 A. I understood that they were going to release
 13 this information to the media.
 14 COFFEY, Q.C:
 15 Q. Which information is that?
 16 MR. OSBORNE:
 17 A. All of it, I mean there was absolutely no
 18 indication provided by anybody at that meeting
 19 that some of this information wouldn't be
 20 released or we're only releasing part of the
 21 information. There was absolutely no
 22 indication provided by anybody that some of it
 23 would be withheld.
 24 COFFEY, Q.C:
 25 Q. If we could bring up, please--is there any

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1 other recollection or thoughts that the
 2 Commissioner, you know, you can recall now in
 3 terms of that meeting that the Commissioner
 4 should be aware of?
 5 MR. OSBORNE:
 6 A. No, Madam Commissioner, I think that's it. I
 7 don't recall anything else that stands out.
 8 COFFEY, Q.C:
 9 Q. In terms of whose hands or responsibility
 10 then, at the time the meeting ended, did you
 11 understand to be the content of the media
 12 briefing? Who was, you know, going to carry
 13 it out and who was responsible for what
 14 occurred?
 15 MR. OSBORNE:
 16 A. Eastern Health.
 17 COFFEY, Q.C:
 18 Q. Eastern Health.
 19 MR. OSBORNE:
 20 A. Yeah, I mean, this was, like I say, was an
 21 issue that was under the management of Eastern
 22 Health for a variety of reasons, operationally
 23 but as well, you know, in order to fully
 24 understand, fully explain these numbers and so
 25 on, you need the people with the academic and

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1 professional background to answer the
 2 questions correctly and in detail.
 3 COFFEY, Q.C:
 4 Q. And if we could, please, it was November 23rd.
 5 If we could bring up, please, P-0180,
 6 Commissioner. Now this is an e-mail from
 7 Tansy Mundon to John Abbott, Moira Hennessey,
 8 Darrell Hynes and Tom Osborne, November 27th,
 9 2006 at 10:30 a.m. The subject is ER/PR
 10 transcript. The transcript is of a CBC News
 11 Here and Now, Thursday, November 23rd, 2006
 12 interview by Jonathan Crowe of Chris O'Neill-
 13 Yates.
 14 MR. OSBORNE:
 15 A. Yes, could you tell me the exhibit number
 16 again?
 17 COFFEY, Q.C:
 18 Q. It's P-0180, I apologize. Okay?
 19 MR. OSBORNE:
 20 A. Yes.
 21 COFFEY, Q.C:
 22 Q. And this, because we presumably have to ask
 23 Ms. Chris O'Neill-Yates whether this is the
 24 story or the filing that we saw or referred to
 25 in the earlier e-mail, but she is interviewed

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1 or is part of this interview. When you look
 2 at the second entry for Chris O'Neill-Yates,
 3 the last sentence reads, "Eastern Health
 4 hasn't yet said what went wrong with Hoyles
 5 test and possibly hundred of others or how
 6 many women had false results." And then
 7 there's a quotation, it's attributed to Peter
 8 Dawe, "This is the type of information that
 9 should be made public. Obviously it's a
 10 concern that has taken up to 18 months and we
 11 still don't have that information being made
 12 public." And Chris O'Neill-Yates says "Dawe
 13 says the lack of information is distressing
 14 for breast cancer survivors and their
 15 families." And then Mr. Dawe is quoted as
 16 having said, "What happened? Why was this
 17 mistake made or these series of mistakes?
 18 That then leads into what have we done about
 19 it now? What has the system done about it to
 20 fix it?" So when you received this e-mail on
 21 November 27th, do you recall having any
 22 thoughts about it at the time?
 23 MR. OSBORNE:
 24 A. The only thought that I would have had is that
 25 the information was soon to be released by

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1 Eastern Health. I mean, they're all very good
 2 questions and, you know, but the thought that
 3 I would have had is that this information is
 4 soon to be released.
 5 COFFEY, Q.C:
 6 Q. If we could look, please, at Exhibit P-0181.
 7 Now this is a series of e-mails beginning on
 8 the bottom, November 27th, 2006 at 1:43 p.m.,
 9 do you have that?
 10 MR. OSBORNE:
 11 A. Yes.
 12 COFFEY, Q.C:
 13 Q. Tansy is sending an e-mail to Leona Barrington
 14 and Susan Bonnell and she says "Hi there, as a
 15 follow-up to the briefing last week, just
 16 wondering if a date has been confirmed for a
 17 briefing with the media and Peter Dawe.
 18 Thanks. Tansy" And the response here on
 19 November 27th, 2006 at 2:42 p.m. by Susan
 20 Bonnell, response to Tansy, saying "Tansy, the
 21 media briefings are going to be set up for
 22 December 11th. We will try to make time for
 23 Peter on that day, but I'm not sure if we will
 24 be able to fit him in. He won't be getting
 25 the advanced "good will" presentation I

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1 offered him last week.... You throw someone
 2 an olive branch and they whip you to death
 3 with it....fool me once..." Susan Bonnell
 4 signs. Then at 5:01 p.m. on November 27th,
 5 2006, Tansy Mundon responds to Susan Bonnell.
 6 Subject is Re: ER/PR. She says, "Thanks
 7 Susan, FYI John Abbott is attempting to set up
 8 a meeting between him, George, you and I
 9 regarding ER/PR and communications. I think
 10 they were looking at Monday of next week."
 11 Signed Tansy. Now, Mr. Osborne, I have a
 12 couple of questions about this. In terms of
 13 December 11th, was it around this time that
 14 you learned about the date for the media
 15 briefing? This is November 27th and they're
 16 planning now, Susan says, December 11th.
 17 MR. OSBORNE:
 18 A. I recall initially, I understood that it was
 19 going to be the following week.
 20 COFFEY, Q.C:
 21 Q. From November 23rd?
 22 MR. OSBORNE:
 23 A. From November 23rd, it was going to be within
 24 a week to ten days, which would have been the
 25 first week of December. It obviously led into

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1 the second week of December.
 2 COFFEY, Q.C:
 3 Q. Were you ever told--did you make any inquiries
 4 about the reason for the delay?
 5 MR. OSBORNE:
 6 A. I can't recall. I recall it getting delayed,
 7 the meeting was delayed. I'm sure I would
 8 have, I can't recall what the response or what
 9 the answer was.
 10 COFFEY, Q.C:
 11 Q. And the reference by Susan Bonnell and the
 12 2:42 p.m. e-mail to Tansy Mundon about Peter
 13 Dawe and him not getting the advanced
 14 "goodwill" presentation that he had been
 15 offered and the "olive branch", "whip you to
 16 death", "fool me once" comments. Did Tansy
 17 ever convey that sort of information or the
 18 fact that she had received such an e-mail from
 19 Susan Bonnell concerning Peter Dawe or the
 20 Canadian Cancer Society and the apparent
 21 attitude expressed here by Susan Bonnell, did
 22 she ever convey that to you? That's Tansy
 23 ever convey that to you?
 24 MR. OSBORNE:
 25 A. Not that I recall.

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1 COFFEY, Q.C:
 2 Q. In terms of let you know this is their
 3 attitude?
 4 MR. OSBORNE:
 5 A. Not that I can recall.
 6 COFFEY, Q.C:
 7 Q. Okay. If it had been conveyed to you, do you
 8 think it would stand out in your mind?
 9 MR. OSBORNE:
 10 A. I think it would be something that would stand
 11 out, you know, Peter was very vocal and there
 12 were times that Peter had made comments about
 13 issues that were taking place within the
 14 department and, you know, I'd phone him up and
 15 say, well what did you mean that for, and we'd
 16 have a conversation about it. But I always
 17 considered him to be a valuable stakeholder.
 18 I mean, you don't always agree with your
 19 stakeholders, but you know, it doesn't mean
 20 that they don't play a valuable role and I
 21 always felt that Peter was a valuable
 22 stakeholder.
 23 COFFEY, Q.C:
 24 Q. As on your November 23rd, 2006 briefing note,
 25 at page--Exhibit P-0314, page 10.

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1 MR. OSBORNE:
 2 A. November 23rd, okay.
 3 COFFEY, Q.C:
 4 Q. Yes, that single page. You had written, "CCS
 5 to get pre-briefing" which I presume is what
 6 you were advised on November 23rd, 2006. And
 7 now, on November 27th, Ms. Bonnell is advising
 8 your communication's director that that's not
 9 going to occur, apparently.
 10 MR. OSBORNE:
 11 A. Yes.
 12 COFFEY, Q.C:
 13 Q. Would you have expected then that Tansy Mundon
 14 or would you have thought Tansy Mundon, you
 15 know, should have brought the fact that there
 16 wasn't going to be a pre-briefing or advanced
 17 briefing to your attention?
 18 MR. OSBORNE:
 19 A. I mean, that's difficult for me to comment on.
 20 COFFEY, Q.C:
 21 Q. Because you had been led to believe there was
 22 going to be and she'd been in the room when
 23 that happened.
 24 MR. OSBORNE:
 25 A. Yes. I mean, absolutely, we were told that

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1 they were going to get a pre-briefing.
 2 Whether or not she--I mean, she obviously
 3 wouldn't have seen my notes or the fact that I
 4 thought it was important. I can't comment,
 5 you know, I don't know why and I can't even
 6 comment on whether or not she had informed me.
 7 I don't recall. I think I would have remember
 8 if she had, but I honestly don't recall.
 9 THE COMMISSIONER:
 10 Q. Mr. Coffey, is this a convenient place to take
 11 the morning break?
 12 COFFEY, Q.C:
 13 Q. If I could ask one more question, please?
 14 THE COMMISSIONER:
 15 Q. One more, yes, all right.
 16 COFFEY, Q.C:
 17 Q. If you look toward the top of the page of P-
 18 0181, thank you, Registrar. The reference
 19 here to "John Abbott is attempting to set up a
 20 meeting between him", as John, "George" would
 21 be George Tilley, "you" would be Susan Bonnell
 22 and "I" would be Tansy Mundon, "regarding
 23 ER/PR and communications. I think they were
 24 looking at Monday of next week." Now this is
 25 Monday, November 27th, so that would be

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1 Monday, December 4th. Were you made aware
 2 that this sort of arrangement was being made,
 3 that there was going to be a meeting between
 4 the CEO of Eastern Health, your Deputy
 5 Minister and the Directors of Communications
 6 for the department and Eastern Health about
 7 ER/PR communications?
 8 MR. OSBORNE:
 9 A. I don't believe I was aware of that.
 10 COFFEY, Q.C:
 11 Q. Now, Commissioner, thank you.
 12 THE COMMISSIONER:
 13 Q. All right then, fifteen minutes.
 14 (RECESS)
 15 THE COMMISSIONER:
 16 Q. Please be seated. Mr. Coffey.
 17 COFFEY, Q.C:
 18 Q. Thank you, Commissioner. If we could look,
 19 please, at Exhibit P-0314, page 11. Now this
 20 is a three-page question and answer briefing
 21 note, Department of Health and Community
 22 Services. This particular version of it is
 23 the one with your handwritten notes on it, and
 24 it's three pages long. On November 27th, 2006
 25 drafted by Beverly Griffiths, approved by

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1 Moira Hennessey. Do you recall the purpose
 2 for which this was drafted?
 3 MR. OSBORNE:
 4 A. That would have been an update directly after
 5 the November 23rd meeting to update my House
 6 of Assembly briefing note.
 7 COFFEY, Q.C:
 8 Q. Okay. And I take it to incorporate the
 9 numbers that you had been given on November
 10 23rd?
 11 MR. OSBORNE:
 12 A. That's correct, yes.
 13 COFFEY, Q.C:
 14 Q. And the other information. When you look at
 15 key messages here, well actually before we get
 16 to that, "Issue: the issue was framed for you
 17 as breast cancer survivors want answers about
 18 mistakes in the breast cancer screening test.
 19 Eastern Health discovered the problem a year
 20 and a half ago, but they are still not saying
 21 what went wrong or how many women got false
 22 results." And there are four anticipated
 23 questions and then four key messages. You
 24 have some handwriting here, could you take us
 25 through your handwriting please? I'm just

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1 going to scroll down.

2 MR. OSBORNE:

3 A. It says "900 tests of patient's families

4 contacted, briefing to public" and the others

5 are just the Gs.

6 COFFEY, Q.C:

7 Q. Yes. And on the left-hand side of the page?

8 MR. OSBORNE:

9 A. "Measures"--I guess that would have been the

10 measures put in place by Eastern Health--and

11 "review" meaning the external review and

12 quality review.

13 COFFEY, Q.C:

14 Q. So at the time you received this or in your

15 preparation for, I take it the sitting of the

16 House of Assembly -

17 MR. OSBORNE:

18 A. Yes.

19 COFFEY, Q.C:

20 Q. Which would have occurred, I mean ongoing or

21 would have occurred shortly thereafter.

22 MR. OSBORNE:

23 A. Well it was ongoing, yes.

24 COFFEY, Q.C:

25 Q. Ongoing at that time? You recall that. Now,

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1 here in terms of--well perhaps while we're on

2 it, go to the second page of this briefing

3 note, there's certain things underlined but

4 towards the bottom of the page, there is

5 something written out to the left-hand side,

6 what is that, do you know?

7 MR. OSBORNE:

8 A. "Measures".

9 COFFEY, Q.C:

10 Q. "Measures" because it says, the bullet there

11 is "Eastern Health has also taken measures to

12 address the system's issues, including a

13 review by two laboratory experts from outside

14 the province. Investments in technology,

15 recruitment of four pathology assistants and

16 consolidation of pathologist's review of

17 breast tissue samples. Eastern is also

18 pursuing accreditation of the laboratory

19 sciences." And then you've handwritten out

20 here to the side, "Systems issue"?

21 MR. OSBORNE:

22 A. Yes.

23 COFFEY, Q.C:

24 Q. What was the significance of that?

25 MR. OSBORNE:

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1 A. Well, I mean I was lead to believe that it was

2 a system's issue or a system's error, you

3 know, for several months.

4 COFFEY, Q.C:

5 Q. Including, I take it--and this is under the

6 heading, this particular bullet at the bottom

7 of page two is under the heading "Background"

8 which appears on page one. This is background

9 information for yourself. This doesn't fall

10 then into the category of suggestive responses

11 or other suggested responses or key messages.

12 Under the background material, you expected to

13 find what type of information?

14 MR. OSBORNE:

15 A. I would often use the information that was in

16 the background to provide answers as well, so

17 -

18 COFFEY, Q.C:

19 Q. Yes, but I take it they would tend to be

20 factual and address the actual issue?

21 MR. OSBORNE:

22 A. Yes.

23 COFFEY, Q.C:

24 Q. And you interpreted the assertion that Eastern

25 Health has also taken measures to address the

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1 system's issue, including a review, et cetera,

2 you inferred from that what, about the nature

3 of the problem?

4 MR. OSBORNE:

5 A. Well I still believed and again, I mean on

6 November 23rd I had asked has we determined

7 that this has been, you know, that this is a

8 system's error or system's issue and they

9 said, well you know, basically we can't say

10 that because that's the issue before the

11 Courts, but we have full confidence in our lab

12 staff. We stand behind them and so on. So,

13 you know, this wouldn't have stood out because

14 -

15 COFFEY, Q.C:

16 Q. Of what you had been told before.

17 MR. OSBORNE:

18 A. And even at the November 23rd meeting, you

19 know, that would have been consistent with

20 what I understood from the November 23rd

21 meeting.

22 COFFEY, Q.C:

23 Q. Now, sir, in this briefing note on the first

24 page under "Key Messages" the second bullet,

25 the last two sentences says--well actually

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1 focusing on that whole bullet, second bullet,
 2 it says, "More than 900 test samples were sent
 3 to Mount Sinai Laboratory and all test results
 4 are back. Eastern Health has made every
 5 effort to contact the patients or families
 6 involved. This review is in the final stages
 7 and should be concluded in the near future.
 8 Eastern will provide a briefing to the public
 9 within a week or two." So I take it at that
 10 point in time you understood your officials
 11 were suggesting to you, that you could say
 12 that to the public, if you were asked?
 13 MR. OSBORNE:
 14 A. Yes. And again, I mean looking at the
 15 November 23rd meeting, I don't know if I'd
 16 mentioned it here in testimony before or not,
 17 but the reason the media briefing was going to
 18 be a week or two later was because they did
 19 want to go back and check all of their files
 20 to make absolutely certain that patients had
 21 been contacted.
 22 COFFEY, Q.C:
 23 Q. Okay.
 24 MR. OSBORNE:
 25 A. So that would have been consistent.

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1 COFFEY, Q.C:
 2 Q. Now the third bullet says, "Eastern Health has
 3 put a number of measures in place to reduce
 4 the risk of a recurrence of a similar issue.
 5 Eastern Health expects to begin testing of new
 6 patients in St. John's shortly after the
 7 review is completed." Now what did you
 8 understand from that?
 9 MR. OSBORNE:
 10 A. I believe that would have referred to the
 11 internal review that they were doing,
 12 including the measures that they were putting
 13 in place, you know, creating a designated lab,
 14 designated staff, training, you know, that
 15 they had--they were going to hire pathologist
 16 technicians or, I believe that's the right
 17 term that they were using. They were going to
 18 hire technicians, a designated cutter, I can't
 19 recall of it, you know, but they were doing a
 20 number of things to ensure that the lab was
 21 one of the best in the country.
 22 COFFEY, Q.C:
 23 Q. And when were you first told that, that list
 24 of measures they were taking?
 25 MR. OSBORNE:

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1 A. Again, my memory now is getting blurred
 2 between--but I recall, I'm thinking it was
 3 either October of November in a meeting that
 4 we had with George Tilley. The meeting wasn't
 5 necessarily on ER/PR. I don't recall if it
 6 was specifically for that or if it was for a
 7 number of issues to discuss, but--and it may
 8 have even been September, October, November,
 9 but sometime in, somewhere in that timeframe I
 10 recall asking what the measures were and the
 11 response was some of these are very technical
 12 in nature, some of these are more easy to
 13 understand and he listed off a number of, from
 14 my knowledge, of the measures that were being
 15 put in place. So I don't recall if all of
 16 those were at that time or if I had learned of
 17 some of those at a later date, you know, but
 18 amongst the list of measures, I mean there
 19 were others as well, you know, the dedicated
 20 staff, there was a dedicated area within the
 21 lab specifically for this type of testing now,
 22 as opposed to having it integrated with other
 23 testing and so on.
 24 COFFEY, Q.C:
 25 Q. Under "Other Suggested Responses" on the same

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1 page, it is written there, "A quality review
 2 began immediately when the problem was
 3 discovered in May 2005. Eastern Health had
 4 external consultants review the method of
 5 testing for ER/PR receptors being used. The
 6 consultants' recommendations have been
 7 implemented. They returned to Eastern Health
 8 in early April of this year to assess the
 9 progress and were pleased that measures were
 10 put in place to address the concerns." I can
 11 see that that's written there. Was that ever
 12 elaborated upon for you?
 13 MR. OSBORNE:
 14 A. I recall in the Spring session having asked
 15 what the external consultants had said and was
 16 told that they were very pleased with the
 17 progress that was being made. There were a
 18 couple of issues that were outstanding, as far
 19 as the external consultants were concerned,
 20 but overall they were generally very pleased.
 21 And then it led into, you know, I guess
 22 eventually they were pleased with the measures
 23 that were put in place.
 24 COFFEY, Q.C:
 25 Q. And then I take it having been so advised back

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1 in the Spring of 2006, this assertion in this
 2 briefing note of November 27th, 2006 didn't
 3 surprise you? That was consistent with what
 4 you'd been told earlier?
 5 MR. OSBORNE:
 6 A. Yes, yes.
 7 COFFEY, Q.C:
 8 Q. Now you did write here "review" in the left-
 9 hand side. What did you mean by "review"?
 10 MR. OSBORNE:
 11 A. Well just to remind me that that's the area,
 12 there were two reviews or maybe, you know, the
 13 two that I had understood were part of one,
 14 but I understood there was an external
 15 consultants' review, as well as an internal
 16 review. So that would have just, you know, if
 17 I was asked a question about what had been
 18 done, it just would have directed me to that
 19 paragraph to say that there were, you know,
 20 there was an internal review, as well as
 21 external consultants that had looked at the
 22 problem.
 23 COFFEY, Q.C:
 24 Q. When we look at the second page of this, I'm
 25 just going to--this is under the "Background",

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1 it starts at the bottom of the first page.
 2 Here, again, the first bullet on the second
 3 page of the briefing note, which is page 12 of
 4 the exhibit, there's again in the second
 5 sentence of that bullet, says "This number"--
 6 referring to the 939--"represents about 27
 7 percent of the patients tested for breast
 8 cancer."
 9 MR. OSBORNE:
 10 A. Yes.
 11 COFFEY, Q.C:
 12 Q. Beginning with the third bullet on that page,
 13 there's a reference to a claim having been
 14 filed by the family of the late Michelle
 15 Hanlon against Eastern Health. Then there's a
 16 reference to CBC News reported on October 19th
 17 that "41 women joined class action bid on
 18 faulty breast cancer tests". They refer to an
 19 article in "The Independent" on October 20th.
 20 Next bullet is about a claim filed by Verna
 21 Doucette, the lawyers and judge involved, as a
 22 case management judge. The next bullet
 23 details the nature of the claim, that is the
 24 claim filed by Mr. Crosbie's firm and the next
 25 bullet deals again with Eastern Health having

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1 to file an affidavit in Court by December
 2 15th, 2006. And it goes on about what else is
 3 required or the anticipated timelines in the
 4 lawsuit. What was your understanding of why
 5 all this information concern lawsuits against
 6 Eastern Health was included here?
 7 MR. OSBORNE:
 8 A. Just background information.
 9 COFFEY, Q.C:
 10 Q. As Minister of Health, why would that matter
 11 to you?
 12 MR. OSBORNE:
 13 A. I mean, as part of the overall file, I can say
 14 that at no time, I mean, I wasn't particularly
 15 interested in the legal aspect of this file.
 16 At no time did that ever enter my mind, as far
 17 as what answers I would provide or the
 18 direction that Eastern Health were really
 19 taking on the file. I mean, that hadn't been
 20 mentioned, but it wouldn't be uncommon to add
 21 this type of detail as background. I mean, it
 22 is part of the file and if they had not
 23 provided the information that there was legal
 24 issues surrounding this particular file, one
 25 would wonder why the department were not

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1 informed that that was taking place.
 2 COFFEY, Q.C:
 3 Q. Okay. In connection with that and in your
 4 tenure as Minister of Health, were you ever
 5 aware of whether or not your Department of
 6 Justice was following these lawsuits?
 7 MR. OSBORNE:
 8 A. I had never--I mean government was not named
 9 as a claimant. In my opinion there were no
 10 legal actions required by the department.
 11 There were no legal issues for the department
 12 and I had absolutely no reason to confer with
 13 the Minister of Justice. I had never
 14 contacted the Minister of Justice on the
 15 issue.
 16 COFFEY, Q.C:
 17 Q. And as well, you had no reason to believe
 18 that, I take it you were never led to believe
 19 that they were following--leaving aside
 20 whether you contacted him or not.
 21 MR. OSBORNE:
 22 A. No, I had no -
 23 COFFEY, Q.C:
 24 Q. No one came along and said, "Tom, we're
 25 following this" or anything like that?

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1 MR. OSBORNE:
 2 A. No. Again, I mean, this issue was under the
 3 management of Eastern Health and the claim was
 4 against Eastern Health, you know, so they were
 5 dealing with the legal aspect of this.
 6 COFFEY, Q.C:
 7 Q. Sure. And so this is again, it's just simply
 8 background, just simply so you know what's
 9 going on the public forum.
 10 MR. OSBORNE:
 11 A. Yes.
 12 COFFEY, Q.C:
 13 Q. Okay. The last bullet--I'm sorry, the second
 14 last bullet on that page refers to "Eastern
 15 Health provided a briefing to the HCS Minister
 16 on November 23rd, the details are as follows"-
 17 -thank you, Registrar, I'm just going to bring
 18 this down a bit. The figures given there are
 19 total cases reviewed, 1997 to 2005, 2,760;
 20 total patients retested, 939; results obtained
 21 and reviewed, 763; and patients who are
 22 deceased, 176. Just turn the page, there's
 23 nothing else about the numbers referenced
 24 there. In this briefing note, there's no
 25 reference to the number of changed results,

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1 nor even to the number of patients whose
 2 treatment had changed?
 3 MR. OSBORNE:
 4 A. No, I think that the 117 number was referred
 5 to earlier in the briefing note.
 6 COFFEY, Q.C:
 7 Q. Yes. I believe it's referred to in November
 8 23rd briefing note. Do you see it anywhere in
 9 this one? Just take your time.
 10 MR. OSBORNE:
 11 A. Yeah, I think under "Key Messages".
 12 COFFEY, Q.C:
 13 Q. "Key Messages". I'll go back up the page here
 14 for those following on the screen.
 15 MR. OSBORNE:
 16 A. Well that's really odd, I must have the wrong
 17 -
 18 COFFEY, Q.C:
 19 Q. This is the November 27th briefing note. The
 20 December 12th one, I believe, does.
 21 MR. OSBORNE:
 22 A. Okay, just give me one second.
 23 COFFEY, Q.C:
 24 Q. Sure, you take your time, it's Exhibit 0314,
 25 page 11.

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1 MR. OSBORNE:
 2 A. You're correct, it doesn't.
 3 COFFEY, Q.C:
 4 Q. There is no reference in this briefing note
 5 to--and I appreciate you had been advised just
 6 four days before as to what that whole list of
 7 numbers are on that November 23rd briefing
 8 note, but this one doesn't actually have it
 9 spelled out here, does it?
 10 MR. OSBORNE:
 11 A. No, it doesn't, no.
 12 COFFEY, Q.C:
 13 Q. The number of patients whose treatment had
 14 changed as a result of changes in their ER/PR
 15 status, the number of changed results is not
 16 spelled out here either.
 17 MR. OSBORNE:
 18 A. No.
 19 COFFEY, Q.C:
 20 Q. Did you realize at the time that those figures
 21 weren't included here?
 22 MR. OSBORNE:
 23 A. I can't recall. I mean I knew that we were
 24 presented with the numbers, obviously, and I
 25 mean if it was information that I'd known, I

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1 never sent a briefing note back to say, you
 2 know, there's a mistake here. If this was the
 3 department's advice to me and, you know, if I
 4 felt there was more to add, I would add it.
 5 THE COMMISSIONER:
 6 Q. Mr. Coffey, do we have an attached referred to
 7 there? "Further details on the retesting
 8 results are attached." I'm looking at page
 9 12? Ah, Mr. Pritchard?
 10 MR. PRITCHARD:
 11 Q. Commissioner, I believe the document that that
 12 refers to is the November 23rd note that's
 13 been put into evidence earlier.
 14 COFFEY, Q.C:
 15 Q. And I believe Mr. Pritchard is correct. It
 16 was simply attaching -
 17 THE COMMISSIONER:
 18 Q. Attaching another--oh, the Eastern Health that
 19 we've already seen today.
 20 MR. PRITCHARD:
 21 Q. That's correct.
 22 COFFEY, Q.C:
 23 Q. So at the time then, if you'd been asked a
 24 question in the House of Assembly about this,
 25 if you had, okay, at the time if the figures

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1 were available to you, all the figures were
 2 readily at hand, what was your attitude
 3 towards disclosing them at that point?
 4 MR. OSBORNE:
 5 A. On the 27th?
 6 COFFEY, Q.C:
 7 Q. Yes.
 8 MR. OSBORNE:
 9 A. That's an interesting question, Mr. Coffey.
 10 Knowing that the Eastern Health briefing was
 11 coming up and knowing that they had to go back
 12 and review all of their files to ensure all
 13 patients were contacted, I probably would have
 14 referred to the fact that there was an Eastern
 15 Health briefing within the next week or so,
 16 and all of those numbers would have been
 17 revealed.
 18 COFFEY, Q.C:
 19 Q. Rather than simply yourself giving out the
 20 numbers at that point because the
 21 professionals would be better situate to even
 22 explain the numbers, wouldn't they?
 23 MR. OSBORNE:
 24 A. Yes, and the whole purpose of the Eastern
 25 Health briefing was to ensure that, I mean,

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1 any questions that were asked on--I mean, if I
 2 had provided the information that was provided
 3 to me, for example on November 23rd and had
 4 gotten asked a question on DCIS without
 5 Eastern Health being there to explain exactly
 6 what that meant, I'd be getting into technical
 7 information, so it really was better to have
 8 Eastern Health reveal this information.
 9 COFFEY, Q.C:
 10 Q. So having received the briefing note dated
 11 November 27th, 2006, I take it then that based
 12 upon what you just said that it was then left
 13 in--from your perspective, in Eastern Health's
 14 hands?
 15 MR. OSBORNE:
 16 A. Yes, the full media and -
 17 COFFEY, Q.C:
 18 Q. In terms of the briefing.
 19 MR. OSBORNE:
 20 A. Yes.
 21 COFFEY, Q.C:
 22 Q. And you were not alerted to the apparent fact
 23 that there was going to be this, in early
 24 December, a meeting between the CEO of Eastern
 25 Health, your deputy minister and their two

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1 directors about the ER/PR communications
 2 issue?
 3 MR. OSBORNE:
 4 A. Yes, I can say with some certainty that I
 5 don't believe I was informed of that.
 6 COFFEY, Q.C:
 7 Q. And presumably you'd be asking them why is
 8 that?
 9 MR. OSBORNE:
 10 A. Yes, you know, I think if I was aware of that,
 11 I'd, you know, I would inquire, but these
 12 questions oftentimes you have to say "I'm not
 13 sure" because the last thing you want is for
 14 someone to follow you and say, you know, I
 15 told him about that. I honestly don't believe
 16 I was told about it.
 17 COFFEY, Q.C:
 18 Q. Okay. In terms of this matter, what then is
 19 your next recollection of your involvement of
 20 ER/PR? You've had your briefing note of
 21 November 27th, you understand it's in the
 22 works, the briefing is going to be, the media
 23 briefing, what then happened?
 24 MR. OSBORNE:
 25 A. Well shortly after this I was moved to

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1 Justice, so my next involvement with ER/PR
 2 would have been May of 2007 at the Cabinet
 3 meeting.
 4 COFFEY, Q.C:
 5 Q. Before we get to that, how about the actual
 6 briefing itself, December 11th, 2006? Do you
 7 recall anything about that?
 8 MR. OSBORNE:
 9 A. Well I didn't attend the briefing.
 10 COFFEY, Q.C:
 11 Q. I appreciate that. How about follow it? Did
 12 you pay any attention to it?
 13 MR. OSBORNE:
 14 A. Not as closely now as I wish I had, you know I
 15 had absolutely no reason to doubt that the
 16 information they provided to us on November
 17 23rd would not be provided to the public. If
 18 I had been suspicious of that for any reason,
 19 but nothing had alerted me to the fact that
 20 that information was not going to be provided
 21 and knowing the issue was under the management
 22 of Eastern Health, I felt comfortable that
 23 what was provided to me on November 23rd was
 24 in fact going to be provided during that media
 25 and technical briefing.

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1 COFFEY, Q.C:
 2 Q. If we could bring up, please, Exhibit P-0104.
 3 Now, Mr. Osborne, this is an e-mail from Susan
 4 Bonnell sent Monday, December 11th, 2006 at
 5 8:52 a.m. to Tansy Mundon, your Director of
 6 Communications. And the attachments are
 7 described as "Media Briefing, Dec. 11. ppt",
 8 which I presume is a power point, "Q and As,
 9 ER/PR Media Briefing, December 7th.doc" "Key
 10 Messages.doc.", "Technical Briefing
 11 Agenda.doc.", "Chronology.doc.", "Eastern
 12 Health Releases Outcomes of Laboratory Review,
 13 Final News Release, December 12th.doc." And
 14 then if you look through this, and do you have
 15 that one? I'll just scroll down through it,
 16 okay, as I go, if you wish or you can look at
 17 the paper.
 18 MR. OSBORNE:
 19 A. That was the evidence that was submitted late
 20 last week, maybe?
 21 COFFEY, Q.C.:
 22 Q. No, this is something else. Perhaps you could
 23 just follow on the screen, if you like, and
 24 that's the first page of the Exhibit right
 25 there, that's the e-mail.

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1 MR. OSBORNE:
 2 A. Yes.
 3 COFFEY, Q.C.:
 4 Q. Before 9:00 that morning, the morning of the
 5 briefing. Up here. Page 2 of Exhibit P- 0104
 6 is a document entitled "ER/PR Retesting
 7 Chronology" is the title, December 11th, 2006.
 8 It's on Eastern Health letterhead.
 9 MR. OSBORNE:
 10 A. Um-hm.
 11 COFFEY, Q.C.:
 12 Q. And it has a chronology that covers some two
 13 pages. Fairly detailed chronology. The next
 14 document, which is page 4, again, on Eastern
 15 Health letterhead, it's entitled, "News
 16 Release" and the caption is "Eastern Health
 17 Releases Outcomes of Laboratory Review." And
 18 it's one page long. Actually, it spills over
 19 here on the second page, page 5 of the
 20 Exhibit. Then there is a document at page 6
 21 of P-0104, "ER/PR Retesting Key Messages
 22 (CONFIDENTIAL)." And the headings are "The
 23 Process", "The Results", "The Test", "The
 24 Lawsuit". And then beginning at page 7 of
 25 Exhibit P-0104 there is a, appears to be a

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1 power point presentation in colour, and it
 2 goes on through to page 27. If we could go to
 3 page 27, please? Okay. It's the end of the
 4 power point presentation. And then at page 28
 5 of the Exhibit there's a heading "ER/PR Media
 6 Technical Briefing", "Q and As" and has "Q1,"
 7 which would be Question 1, and "A1", Answer 1.
 8 Page 29 is blank but none of the questions and
 9 answers are missed. Goes on to, in terms of
 10 questions and answers. And if we could go to
 11 page 33, please? Thank you. The last of them
 12 is Question 25 and then Answer 25. Page 34 of
 13 the exhibit is blank. And page 35 is on
 14 Eastern Health letterhead, it's entitled,
 15 "Media Technical Briefing, Estrogen and
 16 Progesterone Testing Review, Monday, December
 17 11th, 2006, 11:30 a.m. to 1 p.m. Level 1, Room
 18 1767, Medical Boardroom, Health Sciences
 19 Centre." So this apparently, this material
 20 was apparently sent to your Director of
 21 Communications before 9 a.m. that morning,
 22 okay?
 23 MR. OSBORNE:
 24 A. Um-hm.
 25 COFFEY, Q.C.:

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1 Q. You would have been aware that this was going
 2 on that day?
 3 MR. OSBORNE:
 4 A. Yes.
 5 COFFEY, Q.C.:
 6 Q. If we could go, please, to Exhibit P-0196?
 7 And this is an e-mail from Tansy Mundon to
 8 Susan Bonnell dated Monday, December 11th,
 9 2006 at 9:50 a.m. The subject is "Re" is left
 10 blank. She writes, "Thanks, Susan. I was in
 11 Moncton on Friday and Saturday for FPT Health
 12 Ministers meetings." Signed, well, it's not
 13 signed, it's there's a reference then to Susan
 14 Bonnell's e-mail address. That reference,
 15 though, in terms of Susan Bonnell is to a
 16 message that was sent apparently by Susan,
 17 December 11th, 2006 at 8:52 a.m., which is the
 18 e-mail we just looked at, presumably. If we
 19 could go, please, to page, I'm going to go to
 20 page 2 of this Exhibit.
 21 THE COMMISSIONER:
 22 Q. Does being in Moncton on an FPT meeting mean
 23 that this witness was not in the province at
 24 the time?
 25 COFFEY, Q.C.:

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1 Q. This one, well, this is his Director of
 2 Communications, actually.
 3 THE COMMISSIONER:
 4 Q. I just don't know what FPT is.
 5 COFFEY, Q.C.:
 6 Q. Could you perhaps tell us what -
 7 MR. OSBORNE:
 8 A. Yes, Madam Commissioner, it's Federal,
 9 Provincial, Territorial Minister's meetings.
 10 THE COMMISSIONER:
 11 Q. So would you have been at that meeting?
 12 MR. OSBORNE:
 13 A. Yes.
 14 THE COMMISSIONER:
 15 Q. All right, thank you.
 16 COFFEY, Q.C.:
 17 Q. So that would be on Friday and Saturday, which
 18 would be three and two days before?
 19 MR. OSBORNE:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. This Monday, December 11th. You were in St.
 23 John's on December 11th, 2006?
 24 MR. OSBORNE:
 25 A. I was.

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1 COFFEY, Q.C.:
 2 Q. Yes.
 3 THE COMMISSIONER:
 4 Q. And St. John the two days--or was it?
 5 COFFEY, Q.C.:
 6 Q. In Moncton, actually.
 7 THE COMMISSIONER:
 8 Q. Sorry.
 9 COFFEY, Q.C.:
 10 Q. So I think the Commissioner's point is, is you
 11 weren't actually in St. John's in the days
 12 immediately before the last business day
 13 before Monday, the Friday, you were away
 14 Friday and Saturday?
 15 MR. OSBORNE:
 16 A. That's correct, yes.
 17 COFFEY, Q.C.:
 18 Q. Now, this is a--page 2 of Exhibit P-0196 is an
 19 e-mail from Tansy Mundon to John Abbott, Moira
 20 Hennessey, Darrell Hynes and Tom Osborne,
 21 December 11th, 2006 at 10:25 a.m. The subject
 22 is an "EMBARGOed News Release" and there's a
 23 news release there and it's entitled, "Eastern
 24 Health Releases Outcomes of Laboratory Review"
 25 and then it says, "EMBARGO - 9 a.m., December

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1 12th, 2006." And it's signed off, the media
 2 contact at the bottom of the page is, I'll
 3 show you, is Leona Barrington. Could you tell
 4 us, please, explain to the Commissioner how
 5 this EMBARGO works? Like, you were getting
 6 this at 10:25 a.m. or it was being sent to you
 7 that day, December, 11th. It's a news
 8 release, it's referenced "EMBARGO" and there's
 9 a time, 9 a.m., December 12th, 2006. What did
 10 that mean?
 11 MR. OSBORNE:
 12 A. It means that essentially that news release
 13 was to be held by the Department as opposed to
 14 being released to anybody else until such time
 15 that Eastern Health had the opportunity to
 16 release it.
 17 COFFEY, Q.C.:
 18 Q. And the specification of 9 a.m., December
 19 12th, 2006, I take it, is is that that was a
 20 message that as of 9 a.m., December 12th,
 21 2006, the information in it, the Department
 22 could release?
 23 MR. OSBORNE:
 24 A. That's correct.
 25 COFFEY, Q.C.:

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1 Q. Which would be the next day, because this is
 2 December 11th?
 3 MR. OSBORNE:
 4 A. Yeah. Now, that must have been a typo on the
 5 date. I see that, but I'm not certain why
 6 that was. The actual media and technical
 7 briefing did take place on the 11th.
 8 COFFEY, Q.C.:
 9 Q. Yes. If we could go back to P-0104, please,
 10 page 35? You'll see there, Mr. Osborne, that
 11 apparently the media technical briefing was,
 12 at least the times indicated there is 11:30
 13 a.m. on the 11th, so -
 14 MR. OSBORNE:
 15 A. That's correct.
 16 COFFEY, Q.C.:
 17 Q. So it wouldn't begin until two and a half
 18 hours, you know, after 9 a.m.?
 19 MR. OSBORNE:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. So is it--if we could go to, please, P-0196,
 23 page 3? Now, this is an e-mail from Tansy
 24 Mundon to John Abbott, Moira Hennessey and
 25 Darrell Hynes and Tom Osborne, Monday,

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1 December 11th, 2006, 10:36 a.m. It says, "As
 2 promised, please see attached. Minister, I
 3 have printed off a copy for you. Tansy."
 4 MR. OSBORNE:
 5 A. Um-hm.
 6 COFFEY, Q.C.:
 7 Q. And do you know what that, what was the
 8 attached?
 9 MR. OSBORNE:
 10 A. It would have been the information as you'd
 11 just gone through.
 12 COFFEY, Q.C.:
 13 Q. You mean that whole, like the 30 odd pages of
 14 -
 15 MR. OSBORNE:
 16 A. Yes.
 17 COFFEY, Q.C.:
 18 Q. That had been sent over that morning from
 19 Eastern Health to Tansy?
 20 MR. OSBORNE:
 21 A. That is correct.
 22 COFFEY, Q.C.:
 23 Q. Okay. The Q and As, the press release, the
 24 power point presentation, all that material?
 25 MR. OSBORNE:

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1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. Okay. And so there was that morning a copy of
 4 that printed off for you. Do you recall
 5 whether or not you reviewed it?
 6 MR. OSBORNE:
 7 A. I read the news release. As you had pointed
 8 out, it was 30 odd pages. The House was open
 9 that day and the following day and I believed
 10 that Eastern Health were going to release the
 11 information that they had provided to us. You
 12 know, I didn't read the 30 odd pages because,
 13 I mean, it was my understanding that that
 14 information was going to be released and I
 15 felt that I had known the information that
 16 they were providing here. I mean, they were
 17 providing at least 30 odd pages were getting
 18 into some of the technical details and some of
 19 the improvements at the lab and so on. I wish
 20 now that I had read through, maybe it would
 21 have tipped me off that maybe not everything
 22 was going to be released. But even having
 23 said that, the power point presentation
 24 generally would be speaking points, and
 25 whether or not they would have released the

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1 other information. But no, I had not read
 2 through the 35 pages.
 3 COFFEY, Q.C.:
 4 Q. Do you recall--if you could just bring, bring
 5 it up on the screen, please, P-0104? And if
 6 we could go back to page 1 of it, which is the
 7 e-mail itself? Mr. Osborne, again, you have a
 8 mouse there in front of you, if you wish. Are
 9 you able, just looking at it, able to advise
 10 the Commissioner if you recall what, if any of
 11 it, you did read?
 12 MR. OSBORNE:
 13 A. I'd read the new release, I recall doing that
 14 and -
 15 COFFEY, Q.C.:
 16 Q. Okay. Page 4, please? Which is this EMBARGO
 17 9 a.m., December 12th, 2006 one?
 18 MR. OSBORNE:
 19 A. Yes. And I did scan through very quickly the
 20 other pages, but I had not read that.
 21 COFFEY, Q.C.:
 22 Q. Sir, if we could go, please, to Exhibit P-
 23 0196, page 4? And I appreciate this is not
 24 the originator and recipient of this e-mail is
 25 not yourself, but it was coming from your

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1 Director of Communications, Tansy Mundon, to
 2 Leona Barrington and Susan Bonnell, Monday,
 3 December 11th, 2006 at 11:11 a.m. The subject
 4 is "How is it Going?" And it says, "Can one
 5 of you please give me a call following the
 6 briefings on ER/PR so I can update the
 7 Minister before the House of Assembly opens
 8 this afternoon? Thanks, Tansy." Okay. So,
 9 the House would open what time?
 10 MR. OSBORNE:
 11 A. 1:30.
 12 COFFEY, Q.C.:
 13 Q. And did you anticipate that you might be asked
 14 some questions in the House that day?
 15 MR. OSBORNE:
 16 A. With the media briefing taking place that day,
 17 yes, I felt that once the information was
 18 provided, there was a possibility I could be
 19 asked a question. And based on the
 20 information that was provided to me on
 21 November 23rd I felt that I was prepared then
 22 to answer questions and my knowledge, I mean,
 23 the knowledge that I had of measures that were
 24 put in place and so on.
 25 COFFEY, Q.C.:

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1 Q. Do you recall whether or not you were so
 2 briefed that day, December 11th?
 3 MR. OSBORNE:
 4 A. Yes.
 5 COFFEY, Q.C.:
 6 Q. Before going into the House?
 7 MR. OSBORNE:
 8 A. I recall asking the Communications Director to
 9 provide me with information just to let me
 10 know whether there were issues that would have
 11 stood out at that media briefing or anything
 12 that I should be aware of prior to going to
 13 the House of Assembly.
 14 COFFEY, Q.C.:
 15 Q. And what were you advised about that?
 16 MR. OSBORNE:
 17 A. I don't recall specifically other than to say
 18 that there was nothing that really raised
 19 alarm at the media briefing. I probably
 20 understand now why nothing raised alarm, but
 21 there was nothing that really raised alarm.
 22 COFFEY, Q.C.:
 23 Q. If we could, please, look at page 6 of this
 24 Exhibit P-0196? This is from Leona
 25 Barrington, it's dated Monday, December 11th,

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1 2006, 4:13 p.m. The subject is "A News
 2 Release, Eastern Health Released Outcomes of
 3 Laboratory Review." And this one is dated
 4 December 11th, 2006. And the front, the "To"
 5 is not spelled out here, but when you look in
 6 the top left-hand side of the page, you'll see
 7 apparently it was printed out from Tansy
 8 Mundon's computer system or e-mail system.
 9 Now, if we could go to page 8, please? I want
 10 to show you a series of, thank you, of e-
 11 mails. This is an e-mail from Tansy Mundon to
 12 John Abbott, Moira Hennessey, Darrell Hynes
 13 and yourself, Tom Osborne, Monday, December
 14 11th, 2006 at 5:12 p.m. It's forwarding a
 15 news release, "Eastern Health Releases Outcome
 16 of Laboratory Review, FYI." Then if we could
 17 go then to page 9, please? This is an e-mail
 18 from Tansy Mundon to Darrell Hynes, Moira
 19 Hennessey on her Blackberry, John Abbott and
 20 Tom Osborne, Monday, December 11th, 2006 at
 21 8:16 p.m., "ER/PR Coverage." And it lists
 22 CBC Radio, Evening News at 5 p.m., Monday,
 23 December 11th, 2006. And there are a number
 24 of references there to breast cancer patients.
 25 The first one says, "Answers for breast cancer

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1 patients. They are finding more answers about
 2 tests for breast cancer patients in this
 3 province." And that's one item. There's
 4 another item, "Breast Cancer Testing Review."
 5 And then the NTV news at 6 p.m., Monday,
 6 December 11th, 2006, No. 4 is listed there,
 7 "Eastern Health's Report Released." and No. 8,
 8 "Cancer Tests to Continue." What was the
 9 significance of that numbering? I should say
 10 the second numbering there, Commissioner, is
 11 "VOCM Radio News" actually, at 5:30 p.m.
 12 Monday, December 11th, 2006. It says, "No. 1,
 13 Breast Cancer Testing Review." Mr. Osborne,
 14 what's the significance of those numbers or
 15 what did you understand them to be?
 16 MR. OSBORNE:
 17 A. The Central Communications Agency within
 18 government would provide all media, you know,
 19 a synopsis of all media to the various
 20 communications directors. So I imagine out of
 21 the overall synopsis that they received, and I
 22 can't be 100 percent certain, but to give my
 23 best insight, they would cut and paste. So
 24 perhaps the No. 1 synopsis was Breast Cancer
 25 Testing, there would have been 2, 3, then the

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1 No. 4 would have been Eastern Health's, so No.
 2 2 and 3, perhaps would have been for another
 3 department. They would have cut and pasted
 4 what went to Health and sent it to the
 5 communications director there. Those numbers,
 6 you know, typically showed up on--you know, I
 7 imagine, like I say, it's just the listing of
 8 the overall government-wide issues that had
 9 come in.
 10 COFFEY, Q.C.:
 11 Q. So that was your understanding at the time?
 12 MR. OSBORNE:
 13 A. Yes, I would think so.
 14 COFFEY, Q.C.:
 15 Q. The idea that it might be the first, second or
 16 third story or item, did that come up, not in
 17 the list but like within the newscast itself?
 18 MR. OSBORNE:
 19 A. Yes, well, that's what I mean.
 20 COFFEY, Q.C.:
 21 Q. Oh.
 22 MR. OSBORNE:
 23 A. Yeah. So, I mean, the second and third story
 24 may have been something completely different.
 25 COFFEY, Q.C.:

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1 Q. Okay.
 2 MR. OSBORNE:
 3 A. And if it was on, you know, a completely
 4 different issue, obviously that wouldn't be
 5 sent to my Communications Director, so they
 6 would cut and paste.
 7 COFFEY, Q.C.:
 8 Q. Okay.
 9 MR. OSBORNE:
 10 A. So, I mean, the No. 1 story, perhaps, would
 11 have been Breast Cancer, No. 4 and No. 8.
 12 Now, it doesn't necessarily mean that it's the
 13 No. 8 news story, but perhaps No. 8 on the
 14 overall listing that Central Communications
 15 received, perhaps.
 16 COFFEY, Q.C.:
 17 Q. And we'll talk to somebody else about that.
 18 But anyway, in terms of yourself as the
 19 recipient, your understanding is what
 20 you've given us?
 21 MR. OSBORNE:
 22 A. Yeah. I mean, these numbers didn't mean any--
 23 the 148 didn't mean anything to me.
 24 COFFEY, Q.C.:
 25 Q. Of no significance to you, okay. Exhibit P-

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1 0196, page 10, please? This is an e-mail from
 2 Tansy Mundon to Tom Osborne, Moira Hennessey,
 3 John Abbott and Darrell Hynes, Monday,
 4 December 11th, 2006 at 9:10 p.m. "Eastern
 5 Health Releases Outcomes of Laboratory
 6 Review." And that's the subject, and it says,
 7 "Eastern Health releases outcomes of
 8 laboratory review December 11th, 2006" and
 9 then there's some text, fairly--paragraph, I
 10 suppose, about nine, eight or nine or ten
 11 lines long. Signed "Tansy Mundon." Do you
 12 recall what this was about?
 13 MR. OSBORNE:
 14 A. I don't recall specifically what, you know,
 15 "Word is expected tomorrow on a study from
 16 Eastern Health," unless they were releasing
 17 information on their own internal review. I'm
 18 not--I can't be certain.
 19 COFFEY, Q.C.:
 20 Q. Okay. If we could go to page 11, please?
 21 Now, this is an e-mail again sent from Tansy
 22 Mundon to Tom Osborne, Darrell Hynes, Moira
 23 Hennessey and John Abbott, Monday, December
 24 11th, 2006 at 9:11 p.m. The subject is "117
 25 Newfoundland and Labrador Cancer Patients

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1 Receive Belated Hormone Treatment." And then
 2 she's typed here, "Note Peter Dawe's
 3 comments." And then the story appears--that's
 4 right there on the screen. And then below it
 5 the heading, "117 Newfoundland and Labrador
 6 Cancer Patients Receive Belated Hormone
 7 Treatment. Last updated Monday, December
 8 11th, 2006, 5:33 p.m. Newfoundland time. CBC
 9 News." Now, the comments attributed to Peter
 10 Dawe, I mean, when you got this e-mail, would
 11 you have actually looked for Peter Dawe's
 12 comments?
 13 MR. OSBORNE:
 14 A. Absolutely, yeah.
 15 COFFEY, Q.C.:
 16 Q. And could you identify them, please? Look
 17 down through it. Just bring it there on the
 18 screen.
 19 MR. OSBORNE:
 20 A. Could you tell me what exhibit number this is?
 21 COFFEY, Q.C.:
 22 Q. This is Exhibit P-0196, please.
 23 MR. OSBORNE:
 24 A. Okay. I don't have my copy here and I'm
 25 without my glasses. "Not receiving this

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1 treatment could very well mean a life and
 2 death issue for people going through the
 3 process' said Peter Dawe, Director of the
 4 Newfoundland and Labrador Chapter of Canadian
 5 Cancer Society. 'The lack of disclosure
 6 raises questions,' said Dawe, 'about what the
 7 problem is and how it can be fixed.'
 8 COFFEY, Q.C.:
 9 Q. So and this purported to be a news report
 10 about, presumably, a reaction by Mr. Dawe?
 11 MR. OSBORNE:
 12 A. That's correct.
 13 COFFEY, Q.C.:
 14 Q. To the media briefing?
 15 MR. OSBORNE:
 16 A. Yes.
 17 COFFEY, Q.C.:
 18 Q. Did that cause you--I mean, when Mr. Dawe is
 19 going, you know, after that media briefing is
 20 quoted in the media as saying, "The lack of
 21 disclosure raises questions about what the
 22 problem is and how it can be fixed." Did that
 23 raise any concerns in your mind?
 24 MR. OSBORNE:
 25 A. Well, I understood what he was talking -

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1 COFFEY, Q.C.:

2 Q. If he's coming away from the media briefing

3 not knowing what the problem is and how it can

4 be fixed?

5 MR. OSBORNE:

6 A. Yes, I understood what he was talking about

7 there and it says, "Because of a potential

8 lawsuit Provincial health officials refused to

9 explain if the discrepancy resulted from human

10 error or from new methods of interpreting test

11 results." And -

12 COFFEY, Q.C.:

13 Q. And that's about, one, two, that's about the

14 fifth-last paragraph?

15 MR. OSBORNE:

16 A. Yes. You know, so my understanding at the

17 November 23rd meeting was that they weren't

18 going to say what the cause of the problem

19 was, and obviously that's what Peter Dawe is

20 referring to there. So it didn't surprise me

21 that they didn't release, that they said that

22 they weren't going to talk about the cause of

23 problem, it was an issue for the courts.

24 COFFEY, Q.C.:

25 Q. So they had told you that on November 23rd?

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1 MR. OSBORNE:

2 A. Yes.

3 COFFEY, Q.C.:

4 Q. This was an e-mail that was certainly written

5 confirmation that that's what had occurred at

6 the news conference? "Provincial health

7 officials refused to explain if the

8 discrepancy resulted from human error or from

9 new methods of interpreting test results

10 because of a potential lawsuit."?

11 MR. OSBORNE:

12 A. Yes.

13 COFFEY, Q.C.:

14 Q. So that was no surprise to you on December

15 11th?

16 MR. OSBORNE:

17 A. No, no. Like I say, I understood from the

18 November 23rd briefing that that was the issue

19 that was before the courts, it would be

20 decided by the courts.

21 COFFEY, Q.C.:

22 Q. Now, as the Minister, as the Minister of

23 Health at the time were you comfortable with

24 Eastern Health taking that position?

25 MR. OSBORNE:

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1 A. I understood from Eastern Health at the time

2 that even on November 23rd they felt it was a

3 systems issue. They didn't come directly out

4 and say that on November 23rd. I asked if it

5 was a systems issue and the response was they

6 don't believe the lab staff made mistakes,

7 they stand behind their lab staff, have full

8 confidence in them, but they would not be

9 talking about whether it was a systems or lab

10 error at this time because it was an issue

11 before the courts.

12 COFFEY, Q.C.:

13 Q. Well, what about the fact, you know, if it was

14 characterized as a systems issue, what effect,

15 in your mind, did that have, what did you

16 understand might be the effect in terms of the

17 legal issues?

18 MR. OSBORNE:

19 A. I didn't delve into the legal issues with

20 them. That was the only reference to legal

21 issues on November 23rd. But, you know, I

22 understood from November 23rd they had

23 confidence in their lab staff, but because it

24 was currently before the courts, they weren't

25 prepared to entertain discussion about that

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1 within the media and technical briefing.

2 COFFEY, Q.C.:

3 Q. So I take it, then, that as of November 23rd,

4 by the time that meeting ended you understood

5 that because of the pending lawsuit or

6 lawsuits that Eastern Health, during the

7 forthcoming media briefing was going to refuse

8 to talk about the reasons for the changed

9 results because it was before the court?

10 MR. OSBORNE:

11 A. That's what I understood.

12 COFFEY, Q.C.:

13 Q. You understood. I take it you yourself did

14 never go looking for any advice, legal or

15 otherwise, in terms of whether that was wise?

16 MR. OSBORNE:

17 A. I mean, no, it was an issue--like I say, the

18 issue was an Eastern Health issue.

19 COFFEY, Q.C.:

20 Q. But you're Minister of Health?

21 MR. OSBORNE:

22 A. Yes.

23 COFFEY, Q.C.:

24 Q. So and you're being briefed on this and you're

25 being told the rationale, their approach. And

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1 you're not surprised on December 11th that
 2 that's, in fact, what they've done at the
 3 media briefing, the position they've taken,
 4 we're not going to talk about the reasons for
 5 the changed results or the potential reasons
 6 for the changed results because it's before
 7 the courts?
 8 MR. OSBORNE:
 9 A. I understood that from November 23rd, so I
 10 mean, it didn't stand out to me that--I
 11 understood that they weren't going to be
 12 talking about that on December 11th or, you
 13 know, whenever their media and technical
 14 briefing, in fact, took place, which was
 15 December the 11th.
 16 COFFEY, Q.C.:
 17 Q. See, that suggests, though, that you
 18 understood at the time that Eastern Health, in
 19 their own minds, at least, had reached
 20 conclusions about the reasons for the changes.
 21 They themselves had reached certain
 22 conclusions, whatever they might be. And
 23 you've explained that when you asked, they
 24 talked about systems and gave you assurances
 25 about it wasn't a personnel, a personal, like

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1 an individual's error?
 2 MR. OSBORNE:
 3 A. No, the only conclusion that I drew from the
 4 November 23rd meeting was that they felt it
 5 wasn't a laboratory error or, you know, that
 6 they had full confidence in the lab, but
 7 because this is the issue that ultimately is
 8 before the courts, that they couldn't
 9 entertain discussion on it during the media
 10 and technical briefing.
 11 COFFEY, Q.C.:
 12 Q. But see, Mr. Osborne, if somebody is telling
 13 you, "Look, I'm confident that it's not A,"
 14 whatever A is, then, you know, that--the
 15 inference to be drawn from that is is they
 16 have some idea that it's B or C?
 17 MR. OSBORNE:
 18 A. Well, I didn't take that inference from it.
 19 You know, the thing -
 20 COFFEY, Q.C.:
 21 Q. What I'm getting at is this, how would you
 22 accept the assurance from individuals,
 23 professionals, that they were comfortable,
 24 satisfied that it wasn't certain things unless
 25 they were communicating to you that we do know

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1 what it is or it's one of two or three things,
 2 but it isn't that, it's not A, it may be B or
 3 C, but we know it's not A?
 4 MR. OSBORNE:
 5 A. Well, -
 6 COFFEY, Q.C.:
 7 Q. At the time, I mean, because that's, that
 8 would have been apparent in the room?
 9 MR. OSBORNE:
 10 A. Yes. I mean, going back, I'd like to make two
 11 comments on that, if I could. First of all,
 12 at the November 23rd briefing my objective was
 13 that they released the numbers to the public.
 14 The public were calling for the numbers. And
 15 I understand, Mr. Coffey, that's not what
 16 you're asking. I didn't see the December 15th
 17 copy of the Independent, and I'm certain of
 18 that because I had reasons that I wouldn't
 19 have had access to that on December 15th. But
 20 even in the December 15th copy of the
 21 Independent, which is entered as evidence,
 22 Kara Laing, which surprised me when I read it
 23 just over the past few weeks as part of the
 24 evidence, but Kara Laing had said in there
 25 that it's a systems error. She was at that

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1 table on November 23rd. You know, so quite
 2 clearly I understood what was presented to me
 3 by Eastern Health on November 23rd. Why
 4 Eastern Health were not prepared to talk about
 5 it was because that was the issue that was
 6 currently before the courts. And, I mean, I
 7 understood that they couldn't -
 8 COFFEY, Q.C.:
 9 Q. They couldn't talk, you know, and I appreciate
 10 that, in the media, you know, whether they
 11 could or couldn't, they were telling you they
 12 couldn't, but that didn't prevent them or
 13 wouldn't prevent them from talking to you
 14 about it?
 15 MR. OSBORNE:
 16 A. Well, no, they did on November 23rd, they had
 17 said that they have full confidence in their
 18 lab. I mean, that was the answer that had
 19 come back. I asked "Have we determined that
 20 this is a systems error?" And their response
 21 was, "We have full confidence in the lab
 22 staff, we don't believe they made mistakes.
 23 We're standing behind them. But this is the
 24 issue that's before the courts and we have to
 25 allow the courts to decide." And, I mean, I

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1 understood that. I subsequently became
 2 Minister of Justice and had learned more about
 3 the legal process, but I mean, at that time,
 4 you know, I took that at face value. That was
 5 the issue that was before the courts and, you
 6 know, couldn't be debated publicly as it was
 7 for the courts to decide.

8 COFFEY, Q.C.:
 9 Q. And, you know, whether or not that was
 10 actually a correct legal position, you didn't
 11 take any advice on or think to take any advice
 12 on?

13 MR. OSBORNE:
 14 A. The Department of Health had no involvement in
 15 the legal issue, at all.

16 COFFEY, Q.C.:
 17 Q. Okay.

18 MR. OSBORNE:
 19 A. I didn't seek legal counsel from the
 20 Department of Justice. It was truly an
 21 Eastern Health issue.

22 COFFEY, Q.C.:
 23 Q. You see, here on page--I'm sorry, Exhibit P-
 24 0196, page 11, which is up there on the screen
 25 here. Just go up here a bit. Yeah. That

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1 evening, and we can see through the e-mails
 2 I've already taken you through, you and your
 3 staff and your Director of--including your
 4 Director of Communications were keeping
 5 yourself and your senior officials apprised
 6 almost minute by minute of what was going on
 7 in the media?

8 MR. OSBORNE:
 9 A. Yes.

10 COFFEY, Q.C.:
 11 Q. In relation to this matter that night?

12 THE COMMISSIONER:
 13 Q. From 9:11 to 9:11.

14 MR. OSBORNE:
 15 A. Yes.

16 THE COMMISSIONER:
 17 Q. I'm sorry, 9:10 to 9:11.

18 COFFEY, Q.C.:
 19 Q. 9:10, well, there's another one we're going to
 20 get to. Even, you were even following the
 21 open line shows, which is the next, the next
 22 page or two. What did you understand was the
 23 reason that Tansy Mundon had brought to your
 24 attention or was bringing to your attention
 25 Peter Dawe's comments? Because there are

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1 other comments there and there are other
 2 things in that story. Why Peter Dawe's? What
 3 was the significance of Peter Dawe's comments,
 4 if any?

5 MR. OSBORNE:
 6 A. Perhaps to raise my awareness of the fact that
 7 Peter Dawe had said that. The House was
 8 sitting again on the 12th and potentially -- I
 9 mean, we know the House recessed on the 12th,
 10 but, I mean, potentially it could have sat all
 11 that week and -- I mean, that was something
 12 that if I were asked a question in the House,
 13 obviously I'd have to be aware of the fact,
 14 and quite often the Opposition garner their
 15 questions from media stories. I was in
 16 Opposition for seven and a half years, and I
 17 had done the same thing. You'd hear something
 18 in the media, you'd say, okay, well, they're
 19 not going to talk about what the error was, I
 20 think that's a question for the House. So,
 21 you know, the -- that's the only comment on
 22 can make on it was just to make me aware of it
 23 in the event I was asked the question the
 24 following day in the house.

25 COFFEY, Q.C.:

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1 Q. If we could look at page 13, please, of
 2 Exhibit P-0196. This is an e-mail from Tansy
 3 Mundon to yourself, John Abbott, Darrell
 4 Hynes, Moira Hennessey, Monday, December 11th,
 5 2006, at 9:13 p.m. Nightline caller, ER/PR,
 6 and it attributes it to 8:24. The text reads,
 7 "Minnie is a breast cancer patient. In fact,
 8 she's one of the 117 patients whose tests were
 9 conducted incorrectly. To find out last
 10 February that she was tested for positive
 11 receptors and realized she should have been on
 12 a drug for the past eight years was very hard
 13 to hear. She is not getting any answers from
 14 the doctors. Minnie does not even know how
 15 her chemo helped her. The problem that she
 16 has with the health care system is that the
 17 doctors do not know why the problem occurred.
 18 How can they correct something when they
 19 cannot pinpoint the problem, questions Minnie.
 20 Something went awfully wrong if for several
 21 years people were being treated incorrectly
 22 for their breast cancer, Minnie says she may
 23 have to enter the hospital again for her
 24 breast cancer and how can she be certain that
 25 things will be dealt with in a correct and

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1 adequate manner". "Matters" is there, but it
 2 presumably should be "manner". Signed Tansy
 3 Mundon. Sir, just on this point while we're
 4 at it, if you could turn to page 14 and I have
 5 a couple of questions for you. Commissioner,
 6 at page 14, if you look down the page, you
 7 will see that e-mail from Tansy Mundon to the
 8 four individuals of 9:11 p.m. that night with
 9 the CBC news story, but there's a response
 10 then above it from Darrell Hynes to Tansy
 11 Mundon at 10:17 p.m. that evening. The subject
 12 is 117 NL cancer patients received belated
 13 hormone treatment, and Mr. Hynes writes back,
 14 "I hate to say it, but Peter has a point", and
 15 then when we go up further on this page,
 16 there's an e-mail from Tansy Mundon to Darrell
 17 Hynes, Monday, December 11th, 2006, at 10:18
 18 p.m. She responds saying, "He does indeed".
 19 As you've identified one of the points that
 20 Mr. Dawe was making was -- there were
 21 questions raised about what the problem is and
 22 how it can be fixed. Your Chief Policy
 23 Advisor says, "I hate to say it, but Peter has
 24 a point", and your Director of Communications
 25 agrees, "He does indeed", and you're advised

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1 that at least one caller to an open line show,
 2 Minnie, who had identified herself apparently
 3 as a patient, one of the 117, was voicing her
 4 view that the doctors do not know why the
 5 problem occurred; how can they correct
 6 something when they cannot pinpoint the
 7 problem. Now, sir, you're the Minister of
 8 Health. You had been given to understand at
 9 least what the nature of the problem was,
 10 weren't you?
 11 MR. OSBORNE:
 12 A. I believed it was a systems error, yes.
 13 COFFEY, Q.C.:
 14 Q. Was there anything to prevent you from so
 15 advising the people of Newfoundland and
 16 Labrador?
 17 MR. OSBORNE:
 18 A. Based on everything that I had been told, it
 19 was a systems error. Having said that, quite
 20 often in Government when I was in the
 21 Department of Environment, on this particular
 22 issue in the Department of Health, even when I
 23 was Minister of Justice, quite often people
 24 would want an answer such as this, and Peter
 25 Dawe did have a point. I mean, how would

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1 people -- you know, I mean, people still had
 2 questions as to what caused the error, but
 3 quite often, as Minister, we are advised that
 4 if an issue is before the courts, we can't
 5 comment.
 6 COFFEY, Q.C.:
 7 Q. The people you were being advised by weren't
 8 lawyers.
 9 MR. OSBORNE:
 10 A. No, I understand that, but the fact that I was
 11 advised on November 23rd that this is the
 12 issue that's before the courts, Eastern Health
 13 weren't prepared to comment. That didn't seem
 14 strange to me because as Minister of
 15 Environment, when we had issues that were
 16 before the court, our advice was this issue is
 17 before the court, we cannot comment. That's
 18 something, as a Minister in the three
 19 portfolios that I had been in, that I
 20 understood that if something was before the
 21 court, as a Minister, we did not comment on
 22 it. Furthermore, in my years in Opposition
 23 I'd often ask questions of Ministers where
 24 their response was "This is before the courts,
 25 I can't comment". It didn't stop me from

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1 asking, but the reality is I understood that
 2 when an issue is before the court --
 3 COFFEY, Q.C.:
 4 Q. So it didn't stop you from asking the
 5 question?
 6 MR. OSBORNE:
 7 A. When I was in Opposition, absolutely, and I
 8 understood I very likely could get a question
 9 on this as a Minister, but when I was in
 10 Opposition, we understood, but we -- you know,
 11 we often still asked the question, but the
 12 response in the seven and a half years I was
 13 in Opposition, the four years as Minister, was
 14 when this is before the courts, we can't
 15 comment.
 16 COFFEY, Q.C.:
 17 Q. Now, Mr. Osborne, if we could turn to page 16
 18 of Exhibit P-0196. That very evening,
 19 December 11th, 2006, at 10:33 p.m. your e-mail
 20 to Tansy Mundon, re; "Nightline caller,
 21 ER/PR", and below it is appended the Nightline
 22 caller summary involving the reference to this
 23 lady, Minnie, and you have written back, "We
 24 need to be ready for this as well", you wrote
 25 back to Tansy Mundon. Now what is "this as

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1 well"?

2 MR. OSBORNE:

3 A. Well, Minnie raised the same issue that Peter

4 did, and it's a very valid point, I mean, how

5 can they correct something when they cannot

6 pinpoint the problem, questions Minnie.

7 COFFEY, Q.C.:

8 Q. Yeah, and --

9 MR. OSBORNE:

10 A. A very valid question.

11 COFFEY, Q.C.:

12 Q. Did you go and ask the question afterward?

13 MR. OSBORNE:

14 A. Well, that's what I wanted to be ready for.

15 COFFEY, Q.C.:

16 Q. No, but leaving aside the ready for the House,

17 I'm asking you did you go and ask Eastern

18 Health or your officials have you pinpointed

19 the problem, Minnie has got a point? Did you

20 got any of these individuals, these

21 professionals, and I appreciate they're your

22 advisors, but did you even think to go to them

23 and say, "Have you pinpointed the problem; if

24 so, what is it"?

25 MR. OSBORNE:

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1 A. I done that on a number of occasions over

2 months and was given the understanding that it

3 was a systems error.

4 COFFEY, Q.C.:

5 Q. And systems error means what? I just want to

6 be clear on this.

7 MR. OSBORNE:

8 A. Well, again not having a technical background,

9 I --

10 COFFEY, Q.C.:

11 Q. What did you understand, that's what I'm

12 asking?

13 MR. OSBORNE:

14 A. As I understood it, it had to do with the DAKO

15 System.

16 COFFEY, Q.C.:

17 Q. Now what would be wrong with going out and

18 giving people assurances that it was the DAKO

19 System, we have the VENTANA System, and legal

20 issues will continue; whatever is fought out

21 in court is fought out, that's for the lawyers

22 to be concerned about?

23 MR. OSBORNE:

24 A. Yeah.

25 COFFEY, Q.C.:

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1 Q. Because you're the Minister of Health.

2 MR. OSBORNE:

3 A. Again, I mean --

4 COFFEY, Q.C.:

5 Q. So you had information you're telling us, and

6 rightly or wrongly, you thought it was a

7 systems error, i.e. it was the DAKO machine's

8 fault in the sense of it was inherent in the

9 DAKO machine, that was your understanding --

10 am I correct on that?

11 MR. OSBORNE:

12 A. That's what I understood, yes.

13 COFFEY, Q.C.:

14 Q. You understood there was a VENTANA, which was

15 a more sensitive machine, i.e. a better

16 machine, better at doing whatever job it does?

17 MR. OSBORNE:

18 A. Yes.

19 COFFEY, Q.C.:

20 Q. You had had assurances that it wasn't human

21 error from Eastern Health, correct?

22 MR. OSBORNE:

23 A. That's correct.

24 COFFEY, Q.C.:

25 Q. You knew that Peter Dawe had for a long time

Page 144

1 voiced concerns about lack of information

2 about what had caused the problem, weren't

3 you?

4 MR. OSBORNE:

5 A. That is correct.

6 COFFEY, Q.C.:

7 Q. He's the spokesperson for the Newfoundland and

8 Labrador Branch of the Canadian Cancer

9 Society?

10 MR. OSBORNE:

11 A. Yes.

12 COFFEY, Q.C.:

13 Q. You were aware, for example, a caller such as

14 Minnie made a point -- you just acknowledged

15 now that she had a point about the fact that

16 publicly the reason for the problem hadn't

17 been pinpointed, had it, publicly?

18 MR. OSBORNE:

19 A. The issue with, I mean, how can they correct

20 something when they can't pinpoint the

21 problem.

22 COFFEY, Q.C.:

23 Q. Sure, yes.

24 MR. OSBORNE:

25 A. Yes.

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1 COFFEY, Q.C.:

2 Q. And that had been outstanding for a long time

3 at that point, more than a year, in fact.

4 There had been people complaining about this

5 for more than a year, the lack of knowledge,

6 hadn't there?

7 MR. OSBORNE:

8 A. Yes, that's correct.

9 COFFEY, Q.C.:

10 Q. Yes, and you're Minister of Health, and based

11 upon what you've told us this morning, you

12 understood that the problem could be

13 attributed to the usage of an older model

14 machine. You understood that Eastern Health

15 had a newer model machine, which presumably

16 would alleviate the problem?

17 MR. OSBORNE:

18 A. That's correct.

19 COFFEY, Q.C.:

20 Q. You knew there was anxiety in the public,

21 didn't you?

22 MR. OSBORNE:

23 A. That's a fair statement.

24 COFFEY, Q.C.:

25 Q. Yet you chose consciously, because it could

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1 have an effect on -- it may or may not have an

2 effect on legal proceedings. You chose

3 consciously not to speak out about it?

4 MR. OSBORNE:

5 A. I didn't choose consciously. I would argue

6 that.

7 COFFEY, Q.C.:

8 Q. Okay. So you were advised not to speak out

9 because it was before the courts?

10 MR. OSBORNE:

11 A. That is generally the advice within

12 Government. I do want to say, Mr. Coffey,

13 that we were of the full understanding that

14 all of the information would be released to

15 the general public, including the patients,

16 around the numbers of individuals who were

17 affected, how they were affected, you know,

18 whether or not they -- how many people needed

19 additional treatment. I understood that all

20 of that information was going to be released.

21 I also understood that Eastern Health were

22 going to provide in their media and technical

23 briefing a tour of the lab and a great deal of

24 information on what they've done to restore

25 confidence to ensure the general public that

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1 the lab has been brought up to accreditation,

2 that the lab is now considered a centre of

3 excellence, that they had put a number of very

4 positive measures in place to restore the

5 problem, and if I had been asked the question

6 in the House of Assembly, quite honestly I

7 could have stood and said Eastern Health has

8 done a number of very positive things to

9 restore confidence, Eastern Health have taken

10 these measures which I've outlined a number of

11 them already from, you know, designated lab

12 area, to designated technicians, to

13 specialized training, you know, to a number of

14 other issues and I could say with confidence,

15 as I can say today, that Eastern Health have

16 put in a number of very positive measures to

17 restore public confidence in the lab. I had

18 confidence in the fact that that had been

19 done. The external consultants have come back

20 and said that they have confidence in it. The

21 internal review --

22 COFFEY, Q.C.:

23 Q. Wait now, that's what you were told?

24 MR. OSBORNE:

25 A. That's what I was told, absolutely.

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1 COFFEY, Q.C.:

2 Q. Whether they had or not, we'll see, but that's

3 what you'd been told?

4 MR. OSBORNE:

5 A. That's what I had been told, you know, so I

6 had the full confidence to be able to say to

7 the public, in Question Period, to anybody who

8 questioned me, that I believed there was

9 absolute certainty that the general public can

10 have full confidence in the lab at the Health

11 Sciences Complex.

12 COFFEY, Q.C.:

13 Q. Now, Mr. Osborne, the obvious question is then

14 why didn't you stand up in the House and say

15 what you just said? That's the most -- it's

16 obvious. Why didn't you do it?

17 MR. OSBORNE:

18 A. Well, the obvious answer to that is --

19 COFFEY, Q.C.:

20 Q. No one asked you, is that the --

21 MR. OSBORNE:

22 A. No, no.

23 COFFEY, Q.C.:

24 Q. Is that --

25 MR. OSBORNE:

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1 A. Mr. Coffey, please, if I could --

2 COFFEY, Q.C.:

3 Q. Sure.

4 MR. OSBORNE:

5 A. The obvious answer to that is Eastern Health

6 had said it on December 11th. They had a media

7 and technical briefing on December 11th.

8 We're now talking about December 12th.

9 COFFEY, Q.C.:

10 Q. Yeah, but you see --

11 MR. OSBORNE:

12 A. They had released the information, had done a

13 tour of the lab, had provided the media with

14 all of the information.

15 COFFEY, Q.C.:

16 Q. Mr. Osborne, if I could -- yes, you're going

17 to be repeating what you just said. Mr.

18 Osborne, look, you knew before the evening

19 ended on December 11th that Peter Dawe wasn't

20 happy with what he heard in the press

21 conference, certainly that Minnie wasn't happy

22 with it. I can take you through the media

23 material that follows in the days following,

24 and Peter Dawe repeats it in the media,

25 particularly focusing on the reason for -- in

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1 fact, he talks about two things. From his

2 perspective, there's not a full explanation of

3 the numbers of people that were affected

4 overall, nor had there been some idea of what

5 actually went wrong with the process. So you

6 knew in the week following December 11th that

7 Peter Dawe and others were still publicly

8 saying they were concerned that they hadn't

9 been told why things had gone wrong, or why

10 the changes had occurred. You were aware of

11 that, weren't you?

12 MR. OSBORNE:

13 A. Yes.

14 COFFEY, Q.C.:

15 Q. You were aware -- in fact, I'm going to

16 suggest to you that you became aware, if you

17 paid any attention to the media at all, that

18 there were complaints about Eastern Health's

19 failure to address the number of change

20 results because they had refused, and the

21 media reported it -- they explicitly refused,

22 Eastern Health explicitly refused to say the

23 number of change results, and the media did

24 report that, and you would have been aware of

25 that, wouldn't you?

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1 MR. OSBORNE:

2 A. I can't refute that it was reported.

3 COFFEY, Q.C.:

4 Q. Were you aware of it?

5 MR. OSBORNE:

6 A. There wasn't one thing that had come across my

7 Blackberry on the synopsis of the stories that

8 had indicated that they hadn't. Do I regret

9 not having -- I mean, I didn't see the evening

10 news the day before. I can tell you with

11 certainty that on the 12th in preparation for

12 the House, I had asked two officials in the

13 Department was there anything in the media I

14 should be aware of in preparation for the

15 House.

16 COFFEY, Q.C.:

17 Q. Who did you ask, who was that?

18 MR. OSBORNE:

19 A. The Communications Director and the Senior

20 Policy Advisor. I had asked at the Executive

21 Briefing prior to going to the House if there

22 was anything in the media that I should be

23 aware of in preparation for Question Period,

24 and was advised that, no, nothing had stood

25 out. You know, the synopsis of every story

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1 that I had received across my e-mail, which is

2 when I'm busy, and again, I mean, there are

3 times as Minister of Health that I got to

4 review the media in great detail, there were

5 times that I relied on the synopsis that came

6 across my Blackberry, and, you know,

7 unfortunately, can I say today that I regret

8 not having seen the news. I worked through

9 the news the evening before. If I had seen

10 the evening news, would that have told me that

11 they didn't release all the numbers -- well,

12 the transcript is there, but I didn't see the

13 evening news the day before.

14 THE COMMISSIONER:

15 Q. Just so that I'm clear on precisely what

16 you're saying, I want to make sure that I'm --

17 as I understand it, the substance of your

18 evidence is that having had the briefing

19 earlier, you understood what was going to be

20 released by Eastern Health in December was the

21 same information about the numbers of people

22 who had been retested, the numbers who had

23 changed treatment, etc, etc, in all the detail

24 that you had been given in November? Is that

25 what you're saying?

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1 MR. OSBORNE:
 2 A. Yes, Madam Justice.
 3 THE COMMISSIONER:
 4 Q. And are you also saying that when the
 5 information about Eastern Health's news
 6 conference came to you in the manner that it
 7 did, you did not appreciate that that
 8 information had, in fact, not been fully
 9 released? Is that what you're saying?
 10 MR. OSBORNE:
 11 A. Yes, I mean, as entered as part of Exhibit
 12 0196, all of the e-mails that I had received,
 13 the synopsis of the stories, none of them had
 14 indicated that the full numbers had not been
 15 released. Now they were indicated in other
 16 media, and I can say today that that was an
 17 oversight. In fact, it was an oversight by
 18 the entire Executive within the Department
 19 because I had asked the entire Executive at
 20 the Executive House briefing. Being the
 21 Minister of Health and Community Services at
 22 that time, you know, should I have picked up
 23 on it; I can't argue that I should have. I
 24 didn't see other --
 25 THE COMMISSIONER:

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1 Q. Okay, so based on what you had seen about the
 2 media reports, you say you did not appreciate
 3 that the public wasn't receiving the same
 4 numbers you had received?
 5 MR. OSBORNE:
 6 A. That's correct, Madam Commissioner.
 7 THE COMMISSIONER:
 8 Q. And Mr. Dawe's remarks didn't trigger anything
 9 for you?
 10 MR. OSBORNE:
 11 A. Well, no, Mr. Dawe's remarks were related to
 12 the fact that they had not released what the
 13 cause of the error was.
 14 THE COMMISSIONER:
 15 Q. Didn't he remark about two things?
 16 COFFEY, Q.C.:
 17 Q. A lack of disclosure raises questions. P-
 18 0196, page 15, Commissioner, which is the
 19 actual e-mail sent to Mr. Abbott by Tansy
 20 Mundon. The reference to numbers, at least in
 21 the ones we have, doesn't occur until January
 22 13th.
 23 THE COMMISSIONER:
 24 Q. Oh, I'm sorry.
 25 COFFEY, Q.C.:

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1 Q. So in the week afterward, after December 11th,
 2 somehow or another you missed hearing any
 3 complaints in the media that may have been
 4 made about the failure to disclose the total
 5 number of change results?
 6 MR. OSBORNE:
 7 A. That's correct, Mr. Coffey, and, I mean, again
 8 as I did yesterday, I can't give you an excuse
 9 for that. I relied on the synopsis that were
 10 being sent to me by e-mail that I read on my
 11 Blackberry, and, you know, the reality is it
 12 was an oversight. The Department of Health is
 13 a busy department. I can give you all of the
 14 reasons I didn't see that, but there's nobody
 15 can take responsibility for not seeing that in
 16 the news any greater than I can. I was the
 17 Minister of Health and Community Services. I
 18 can't believe that, you know, it was an
 19 oversight by the entire Executive, but I was
 20 one of the Executive, and I had not seen it
 21 either.
 22 COFFEY, Q.C.:
 23 Q. And with respect to the cause, the reason for
 24 the problem, you do, though, take
 25 responsibility for not publicly commenting

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1 upon that in the sense of, well, you were
 2 aware of what you understood was the nature of
 3 the problem, the reason for the problem, you
 4 knew Eastern Health weren't going to say it,
 5 you had known for two weeks before the press
 6 conference, almost three weeks before the
 7 press conference and they weren't going to say
 8 it, and so -- and you had no reason to believe
 9 that they had said it because there were
 10 complaints that night about the fact that they
 11 hadn't. So you do take responsibility,
 12 rightly or wrongly, not speaking out on it or
 13 at least saying something about it?
 14 MR. OSBORNE:
 15 A. I will -- you know, I certainly take
 16 responsibility for anything that I've done
 17 wrong.
 18 COFFEY, Q.C.:
 19 Q. I'm not suggesting it was wrong. I'm not.
 20 MR. OSBORNE:
 21 A. You know, to be fair, Mr. Coffey, I can't say
 22 that I should have said it when advice by
 23 Government, advice by departmental officials,
 24 advice the entire time I was Minister is that
 25 you do not comment on issues that are before

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1 the court. You know, I could have been a
 2 maverick Minister and said I'm not going to
 3 listen to the standard general advice that we
 4 always receive, but there's a good reason
 5 we're given that advice, and not being a
 6 lawyer and not fully understanding -- again, I
 7 mean, it's probably difficult to say that now
 8 after having served as Minister of Justice.
 9 That was prior to, but even as Minister of
 10 Justice, I will submit to you that most often,
 11 especially in the Department of Justice, there
 12 were issues that we were asked to comment on
 13 by the media and if they were before the
 14 courts, we were told we cannot comment. All I
 15 can do, Mr. Coffey, is tell you the truth, and
 16 that is the truth.

17 COFFEY, Q.C.:

18 Q. So with respect to that then -- this is where
 19 this leads, presumably. You weren't going to
 20 comment, right? You're Minister of Health,
 21 and if you weren't going to comment,
 22 presumably you would expect no one who
 23 followed you would either, as Minister of
 24 Health, because if it was inappropriate for
 25 you to comment, it would be inappropriate for

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1 your replacement to comment as well, right?
 2 Is that correct?

3 MR. OSBORNE:

4 A. I mean, the advice is the advice and --

5 COFFEY, Q.C.:

6 Q. Okay.

7 MR. OSBORNE:

8 A. I've testified to that.

9 COFFEY, Q.C.:

10 Q. With respect to that then in terms of how, if
 11 ever, the reason for the problem or problems,
 12 or the reasons for the problem, would become
 13 public knowledge when?

14 MR. OSBORNE:

15 A. Well, I was told on November 23rd that that
 16 was the issue, and again, you know --

17 COFFEY, Q.C.:

18 Q. Whenever the legal - if and when the legal
 19 proceedings ever got to it, I take it?

20 MR. OSBORNE:

21 A. Well, one would presume it was before the
 22 court in a class action case, but --

23 COFFEY, Q.C.:

24 Q. And it was very early stages at that point.
 25 If you look, you'll find your briefing notes

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1 advised you of that. So it would become
 2 public, if it ever did, depending upon what
 3 happened with the lawsuits only in a
 4 courtroom, and some Judge or Judges down the
 5 road would decide or give their own opinions
 6 on it. So that's what you anticipated was
 7 going to happen here?

8 MR. OSBORNE:

9 A. What I can tell you is that given --

10 COFFEY, Q.C.:

11 Q. Is that correct, is it "yes" or "no"? Is that
 12 so?

13 MR. OSBORNE:

14 A. What I'd like to say, Mr. Coffey, is that
 15 giving full and due diligence as Minister of
 16 Health, I ensured that the numbers were
 17 supposed to be released. Now, you know --

18 COFFEY, Q.C.:

19 Q. I'm not asking about the numbers, sir. I'm
 20 asking about the reasons for the -- what you
 21 understood. You've told us clearly in your
 22 own mind you understood the reasons for the
 23 problem or reason for the problem. You
 24 understood that that would become public, if
 25 ever, as part of a lawsuit at some indefinite

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1 point in the future, so people like Peter Dawe
 2 and the people he represented, and the
 3 Minnie's of the world calling in, patients,
 4 that they might find out at some point at an
 5 indeterminate time in the future, and you were
 6 aware of it?

7 MR. OSBORNE:

8 A. What I wasn't aware was absolutely certain
 9 that it was. I was told all the way along we
 10 believe this is a systems error. Nobody said
 11 to me this is absolutely a systems error.
 12 Giving due diligence to that question on
 13 November 23rd, I asked that question again; is
 14 this a systems error. My response was --

15 COFFEY, Q.C.:

16 Q. You've told us. So the legal process --

17 MR. OSBORNE:

18 A. We --

19 COFFEY, Q.C.:

20 Q. If I could, the legal process then was going
 21 to determine --

22 MR. PRITCHARD:

23 Q. Justice Cameron, I wonder if Mr. Osborne could
 24 finish his response.

25 COFFEY, Q.C.:

1 Q. Sure.

2 THE COMMISSIONER:

3 Q. Your response, Mr. Osborne.

4 MR. OSBORNE:

5 A. Thank you, Madam Justice. I had asked the

6 question on November 23rd, have we concluded

7 that this is a systems error. They did not

8 conclude that for me. They did not say, yes,

9 we believe it's a systems error. I was led to

10 believe -- by them saying we have confidence

11 in our lab staff, we don't believe they made a

12 mistake, we're going to stand behind them, so

13 that did not tell me this is absolutely a

14 systems error.

15 COFFEY, Q.C.:

16 Q. Well, they didn't disabuse you of it either,

17 they didn't tell you it's not?

18 MR. OSBORNE:

19 A. No, they didn't, but, I mean, I've testified

20 earlier before we'd ever gotten to this

21 question, that that's what I was told on

22 November 23rd. If nobody had confirmed for me

23 for certain that this was a systems errors,

24 and nobody had -- I'd been led to believe, I'd

25 been told we believe initially this could be a

1 knowledge outside of the court?

2 MR. OSBORNE:

3 A. Well, I was told that it was going to be

4 decided through the court system, Madam

5 Justice.

6 THE COMMISSIONER:

7 Q. So to come back to Mr. Coffey's question, did

8 you therefore assume that until this matter

9 went to trial, it would not be public

10 knowledge?

11 MR. OSBORNE:

12 A. Well, that would be correct, you know, unless

13 Eastern Health had come to the conclusion

14 prior to that that it absolutely was a systems

15 error, but at no time did anybody give me the

16 absolute assurance that it was. I was told it

17 could be, we believe it is, and then that the

18 issue would be decided by the courts. You

19 know, again I believe that -- I asked the

20 question on November 23rd. I didn't get an

21 absolute and complete answer to that because

22 Eastern Health weren't able to provide that to

23 me.

24 COFFEY, Q.C.:

25 Q. Well, is it really fair to say they weren't

1 systems error. Eventually I was told we

2 believe it's a systems error. Nobody has

3 concluded for me that this is a systems error.

4 I think that I would have been absolutely

5 irresponsible to have said this is a systems

6 error when it had not been totally confirmed

7 that it was. Nobody had said that, yes -- I

8 asked the question in due diligence as

9 Minister on November 23rd, have we concluded

10 that this is a systems error. The answer was

11 we believe in our lab staff, we have

12 confidence in them, but this issue has to be

13 decided by the courts.

14 THE COMMISSIONER:

15 Q. Mr. Osborne, to get back to what is, I think,

16 the point being made by Mr. Coffey, I

17 understand that you are saying that you

18 believed, and you believed that that's a

19 logical conclusion from what you were told by

20 Eastern Health that this was a systems error,

21 although as you point out, nobody had said

22 specifically it is a systems error, but if you

23 didn't -- if you felt you were not in a

24 position to answer the question, did you think

25 that it was ever going to become public

1 able to or you didn't push it? They didn't

2 refuse -- they never told you they couldn't

3 give you an answer, did they?

4 MR. OSBORNE:

5 A. Well, they did, they said that they believe in

6 their lab staff, they don't believe they --

7 COFFEY, Q.C.:

8 Q. No, but the thing is you didn't ask them point

9 blank is this a systems error, yes or no?

10 MR. OSBORNE:

11 A. Yes, I did, I said --

12 COFFEY, Q.C.:

13 Q. But did you get an answer "yes" or "no",

14 that's what I'm -- you asked the question.

15 You've told us what the answer was, but did

16 you insist then on an actual answer?

17 MR. OSBORNE:

18 A. I was given the answer that they believe in

19 their lab staff, they don't believe they've

20 made a mistake. I mean, I can only go on the

21 information that I'm given and at that

22 particular time I wasn't given an absolute

23 answer that this is a systems error, I was

24 told they believe in their lab staff, they

25 believe -- they're going to stand behind them,

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1 but this issue now has to be decided by the
 2 courts.
 3 THE COMMISSIONER:
 4 Q. Mr. Osborne, the very point you make is the
 5 nub of the question. Because the answer
 6 wasn't yes, it is a systems, or no, it is not
 7 a systems problem, and you were given an
 8 answer that told you what they did not believe
 9 it was, then you found yourself, you're
 10 telling me, in a position where you could not
 11 say to anybody this is the answer to the
 12 question of what went wrong; therefore, you
 13 weren't able to answer the question, and that
 14 left the only ones who could answer the
 15 question presumably in Eastern Health, and
 16 they were telling you it's in the courts,
 17 therefore, we're not going to answer the
 18 question. So back to Mr. Coffey's point, it
 19 would seem then that you were accepting that
 20 this information would never become public
 21 until that case made its way through the court
 22 system?
 23 MR. OSBORNE:
 24 A. Well, that would be a logical conclusion, but,
 25 I mean, I wasn't in a position to say yes, it

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1 was, or no, it wasn't a systems error.
 2 THE COMMISSIONER:
 3 Q. We're on now to when it should become public.
 4 MR. OSBORNE:
 5 A. Yes.
 6 THE COMMISSIONER:
 7 Q. Did you -- is there another way aside from the
 8 information which might have become public
 9 through the process of this case going through
 10 the courts that you anticipated that this was
 11 going to become public, and if so, would --
 12 MR. OSBORNE:
 13 A. Not at that time.
 14 THE COMMISSIONER:
 15 Q. Not at that time?
 16 MR. OSBORNE:
 17 A. No.
 18 THE COMMISSIONER:
 19 Q. So what you're telling me is that when you
 20 were Minister of Health, you accepted that the
 21 cause of the problem within the lab would not
 22 become public until the class action made its
 23 way through the courts?
 24 MR. OSBORNE:
 25 A. That's correct. I should point out as well, I

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1 mean, after having served as Minister of
 2 Justice, I have a greater appreciation as to
 3 the timelines that those class action cases
 4 can take. As Minister of Health, I have to be
 5 honest, I -- you know, a court decision, I
 6 wouldn't have known if that would have been a
 7 month or five years, you know, that was
 8 something that I would not have known at that
 9 time.
 10 COFFEY, Q.C.:
 11 Q. But you didn't ask either, did you?
 12 MR. OSBORNE:
 13 A. No, I didn't.
 14 COFFEY, Q.C.:
 15 Q. Commissioner, if we could have lunch, please.
 16 THE COMMISSIONER:
 17 Q. Yes, we've run to one o'clock, so why don't I
 18 suggest people return at 2:15.
 19 COFFEY, Q.C.:
 20 Q. Thank you, Commissioner.
 21 (ADJOURNED FOR LUNCH)
 22 THE COMMISSIONER:
 23 Q. Mr. Coffey.
 24 COFFEY, Q.C.:
 25 Q. Thank you, Commissioner. Good afternoon, Mr.

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1 Osborne. Exhibit 0314, please, Exhibit P-
 2 0314, page 14. Mr. Osborne, this is, I
 3 understand, your working copy of a December
 4 12th, 2006, briefing note?
 5 MR. OSBORNE:
 6 A. That's correct.
 7 COFFEY, Q.C.:
 8 Q. And I believe it's three pages long, and
 9 drafted by Beverly Griffiths and approved by
 10 Moira Hennessey. One of those Q & A ones.
 11 I'll take you back to the beginning, the first
 12 page, please, and there's a fair amount -- I
 13 shouldn't say a fair amount, there's a certain
 14 amount of handwriting on this by yourself.
 15 Could you take us down through the
 16 handwriting, please?
 17 MR. OSBORNE:
 18 A. It says, "December 12th '06, after media
 19 briefing". I would have wrote that there just
 20 as a note for the pre-inquiry. As far as I --
 21 COFFEY, Q.C.:
 22 Q. I'm sorry --
 23 MR. OSBORNE:
 24 A. Pardon me?
 25 COFFEY, Q.C.:

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1 Q. I'm sorry, the pre --

2 MR. OSBORNE:

3 A. The pre-inquiry.

4 COFFEY, Q.C.:

5 Q. Okay. This was added after you had left the

6 Ministry?

7 MR. OSBORNE:

8 A. Yes.

9 COFFEY, Q.C.:

10 Q. Okay, yes, and what's added there? I'm sorry,

11 go ahead, after media briefing and --

12 MR. OSBORNE:

13 A. Yes, as far as I understand, Eastern Health is

14 one of few jurisdictions to go back and do

15 retesting.

16 COFFEY, Q.C.:

17 Q. So this was not added at the time in December

18 of '06? This has been added --

19 MR. OSBORNE:

20 A. Yeah, I don't know if the second part of that

21 was or not, I'm not sure, but the December

22 12th -- I had dated the notes as I had taken

23 them out for the pre-inquiry, so that I could

24 put them back in my book.

25 COFFEY, Q.C.:

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1 Q. Okay, thank you, sir. So as an aid to

2 yourself to remember where --

3 MR. OSBORNE:

4 A. That's correct.

5 COFFEY, Q.C.:

6 Q. it came out of the book?

7 MR. OSBORNE:

8 A. Yes.

9 COFFEY, Q.C.:

10 Q. If we could go down then through the page.

11 I'll just scroll down and perhaps you could --

12 I take it the "G" here to the left next to the

13 first key message is what?

14 MR. OSBORNE:

15 A. You know, generally conform with what my

16 general thoughts are.

17 COFFEY, Q.C.:

18 Q. And, in fact, you've written here in the

19 second sentence even, "We regret that this"

20 typed "may have been a stressful period", and

21 you, in fact -- I take it this is your

22 handwriting, you scratched out "may have

23 been", and, in fact, have written in "has"?

24 MR. OSBORNE:

25 A. Yes.

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1 COFFEY, Q.C.:

2 Q. So from your personal perspective, I take it

3 you were making a point to yourself that in

4 your view this wasn't a may be situation, you

5 were satisfied it has been?

6 MR. OSBORNE:

7 A. Well, for any of the individuals involved, it

8 certainly was.

9 COFFEY, Q.C.:

10 Q. And the point of making that kind of a change,

11 because this is actually a change in the text,

12 a handwritten change, I don't think we've seen

13 many of those in the earlier ones we've looked

14 at, actual changes in the text. So what was

15 the point of you making the change?

16 MR. OSBORNE:

17 A. Just so that if I had been asked the question

18 in the House, I wouldn't inadvertently have

19 said "may have been".

20 COFFEY, Q.C.:

21 Q. Okay, because your own view was, as you

22 phrased it, your actual own view?

23 MR. OSBORNE:

24 A. That it has been stressful.

25 COFFEY, Q.C.:

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1 Q. And that's consistent with your earlier

2 evidence, isn't it, that you made up your own

3 mind, in fact, as the Minister, as to what

4 actually you would say if called upon to?

5 MR. OSBORNE:

6 A. Yes.

7 COFFEY, Q.C.:

8 Q. If you could take us down then, please, Mr.

9 Osborne, there's a first response, I take it,

10 here to the left next to the second bullet

11 under key messages. Is that what that says?

12 MR. OSBORNE:

13 A. Yes.

14 COFFEY, Q.C.:

15 Q. And then out to the right hand side, there's a

16 release to general public?

17 MR. OSBORNE:

18 A. That's correct.

19 COFFEY, Q.C.:

20 Q. And why did you put in those two phrases?

21 MR. OSBORNE:

22 A. I can't recall. Perhaps if I was asked the

23 question, you know, the first response after

24 my own general thoughts would be that they had

25 acted quickly to initiate retesting. That's a

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1 presumption at this point. I can't say
 2 absolutely for sure.
 3 COFFEY, Q.C.:
 4 Q. Okay, you can't recall, and the "release to
 5 the general public"?
 6 MR. OSBORNE:
 7 A. Because this would have been a December 12th
 8 note, so by that time the information would
 9 have been released to the general public.
 10 COFFEY, Q.C.:
 11 Q. When we look, there is again further down
 12 here, and I appreciate where it's scanned or
 13 photocopied, the very side of the page looks
 14 to be -- above the word "first", the "F" is
 15 kind of slightly cut off.
 16 MR. OSBORNE:
 17 A. Uh-hm.
 18 COFFEY, Q.C.:
 19 Q. And again I can't tell. Do you know what that
 20 symbol there is? It appears to be 4's, but
 21 something as well before it, or do you know?
 22 MR. OSBORNE:
 23 A. I'm not certain.
 24 COFFEY, Q.C.:
 25 Q. Okay. Then below that, part of the word

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1 "resume", I take it, is there?
 2 MR. OSBORNE:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. "Resume testing", and at this point in time
 6 had you been given any understanding as to
 7 exactly when the retesting would resume in St.
 8 John's?
 9 MR. OSBORNE:
 10 A. It was my understanding that it would be early
 11 in the new year.
 12 COFFEY, Q.C.:
 13 Q. And there's another word down there. What is
 14 that? It's again partly cut off. Would that
 15 be "measures"?
 16 MR. OSBORNE:
 17 A. Yes, I would -- it certainly looks like that,
 18 yes.
 19 COFFEY, Q.C.:
 20 Q. At the time, Mr. Osborne, because you'd been
 21 given to understand that early in the new year
 22 or in the new year they'd begin retesting or
 23 begin testing of ER/PR patients -- I'm sorry,
 24 begin testing breast cancer patients for ER
 25 and PR?

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1 MR. OSBORNE:
 2 A. That's right.
 3 COFFEY, Q.C.:
 4 Q. Locally early in 2007. What was your
 5 understanding at the time as to whether or not
 6 testing would resume for ER and PR for
 7 patients outside -- like, outside the Eastern
 8 Health, or outside St. John's?
 9 MR. OSBORNE:
 10 A. I was given no understanding. I now know that
 11 the other three regions had not, but I was not
 12 given any understanding that it would be just
 13 for Eastern Health at that time.
 14 COFFEY, Q.C.:
 15 Q. So when you were told here that Eastern Health
 16 expects to begin testing of new patients in
 17 St. John's in the new year, you thought what?
 18 MR. OSBORNE:
 19 A. That it was retesting of patients, in general,
 20 of all patients.
 21 COFFEY, Q.C.:
 22 Q. For the province?
 23 MR. OSBORNE:
 24 A. Yes.
 25 COFFEY, Q.C.:

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1 Q. If you would just go to the next page, please,
 2 page 15 of the Exhibit, page two of the actual
 3 note, this word is "recommendations" to the
 4 top right?
 5 MR. OSBORNE:
 6 A. Yes.
 7 COFFEY, Q.C.:
 8 Q. It's hyphenated, and then you have a number of
 9 dates spelled out on the side. I take it that
 10 was quick reference?
 11 MR. OSBORNE:
 12 A. Yes, that's correct.
 13 COFFEY, Q.C.:
 14 Q. That's very apparent, and the bottom of the
 15 page to the bottom right hand side, the second
 16 last bullet on the page reads, "In the review
 17 period from 1997 to 2005, there were 2760
 18 ER/PR tests conducted at the laboratory. 939
 19 of these tests were originally negative and
 20 were sent to Mount Sinai for retesting. This
 21 number represents about 34 percent of the
 22 patients tested for breast cancer. All
 23 retesting has been completed", and then
 24 there's a question mark circled here,
 25 "Previous briefing notes said 27 percent".

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1 MR. OSBORNE:
 2 A. Yes, well, my previous briefing notes did
 3 suggest 27 percent.
 4 COFFEY, Q.C.:
 5 Q. Oh, yes, and I had some pains when we went
 6 through it to point that out.
 7 MR. OSBORNE:
 8 A. Yes.
 9 COFFEY, Q.C.:
 10 Q. You noticed this at the time?
 11 MR. OSBORNE:
 12 A. I did. I put a question mark there with the
 13 intention of our next Executive briefing
 14 asking why that number had changed, but I was
 15 moved to Justice before that happened.
 16 COFFEY, Q.C.:
 17 Q. And as well if you could turn then to the
 18 third page of the briefing note, it says,
 19 "Greater detail than November '06 briefing
 20 note" or November 6th, I'm sorry, briefing
 21 note, or is it November '06?
 22 MR. OSBORNE:
 23 A. November '06.
 24 COFFEY, Q.C.:
 25 Q. November '06. So what was it here that -- why

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1 did you put that endorsement on this?
 2 MR. OSBORNE:
 3 A. That may have been written in for the pre-
 4 inquiry just to point out that --
 5 COFFEY, Q.C.:
 6 Q. Okay.
 7 MR. OSBORNE:
 8 A. I believe that's why that was there.
 9 COFFEY, Q.C.:
 10 Q. That is before you were interviewed by
 11 Commission counsel some time ago?
 12 MR. OSBORNE:
 13 A. Yes, that's correct.
 14 COFFEY, Q.C.:
 15 Q. Now, sir, again with --
 16 MR. OSBORNE:
 17 A. If I had known I'd be providing all these
 18 notes to you, I would have put it on a sticky
 19 just so you could differentiate and so could
 20 I, but --
 21 COFFEY, Q.C.:
 22 Q. I appreciate that, Mr. Osborne. With that as
 23 an aid, and this is December 12th, '06, I
 24 appreciate, the briefing note, and just to put
 25 it in context for the Commissioner, when was

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1 it that you got moved to Justice?
 2 MR. OSBORNE:
 3 A. The 18th of January, I was --
 4 COFFEY, Q.C.:
 5 Q. Of 2007?
 6 MR. OSBORNE:
 7 A. That's correct, I was informed, and it took
 8 official effect the 19th of January.
 9 COFFEY, Q.C.:
 10 Q. The day before?
 11 MR. OSBORNE:
 12 A. Yes.
 13 COFFEY, Q.C.:
 14 Q. Had you known, like, more than a day before
 15 that you would be moving, or was that just you
 16 found out the day before and then you got
 17 moved?
 18 MR. OSBORNE:
 19 A. That's generally how it happens. What
 20 precipitated that would have been the
 21 resignation just after Christmas of Minister
 22 Sullivan. Minister Marshall had gone from
 23 Justice to Finance, and they obviously needed
 24 a replacement as Justice Minister and --
 25 COFFEY, Q.C.:

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1 Q. So there was a certain amount of movement,
 2 okay.
 3 MR. OSBORNE:
 4 A. Yeah.
 5 COFFEY, Q.C.:
 6 Q. So up until the day before you had moved, from
 7 your perspective you anticipated being in
 8 Health sort of indefinitely until something
 9 came along?
 10 MR. OSBORNE:
 11 A. Well, actually, I should correct that. I did
 12 have a conversation with the Premier the first
 13 week in January, I guess -- it would have been
 14 the first week in January. Now I didn't
 15 realize I was going to be moved on the 19th or
 16 officially take effect on the 19th. He
 17 informed me the 18th that that would
 18 officially take effect, but the Premier did
 19 indicate to me perhaps the first week of
 20 January that he anticipated I would be moving.
 21 COFFEY, Q.C.:
 22 Q. What I'm getting at -- because that again, I
 23 suppose, in terms of one's own mindset, not
 24 that you're not going to continue to do your
 25 job, but in terms of how long you anticipate

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1 being in the portfolio --

2 MR. OSBORNE:

3 A. Yes.

4 COFFEY, Q.C.:

5 Q. You had reason to believe the beginning of

6 January that you might not be there a lot

7 longer?

8 MR. OSBORNE:

9 A. That's right.

10 COFFEY, Q.C.:

11 Q. You referred to, I believe -- you had written

12 a note to ask a question about the change from

13 27 to 34 percent yourself to remind yourself

14 to bring it up?

15 MR. OSBORNE:

16 A. Yes.

17 COFFEY, Q.C.:

18 Q. At the next -- I'm sorry, you said at the next

19 --

20 MR. OSBORNE:

21 A. At the next Executive briefing.

22 COFFEY, Q.C.:

23 Q. Okay, how often -- when would that normally

24 have occurred?

25 MR. OSBORNE:

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1 A. Well, just prior to Christmas, I think it was

2 a normal expectation that the House had just

3 recessed, we sort of take a little bit of a

4 break from that, but generally speaking, you

5 know, we certainly would have sat down and met

6 in early January.

7 COFFEY, Q.C.:

8 Q. Do you know if you ever did canvas the 27

9 versus 34 with anybody?

10 MR. OSBORNE:

11 A. I did. I did ask that. It wasn't at a

12 general briefing, but I did ask, and I think

13 it was just explained that it was a

14 recalculation of numbers once all the numbers

15 were in.

16 COFFEY, Q.C.:

17 Q. Could it be as simple as simply dividing 939

18 by 2,760?

19 MR. OSBORNE:

20 A. It perhaps would have been. I didn't --

21 COFFEY, Q.C.:

22 Q. I'm not suggesting it is, but it could be.

23 MR. OSBORNE:

24 COFFEY, Q.C.:

25 Q. Yeah.

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1 COFFEY, Q.C.:

2 Q. In terms of that. Do you recall who you spoke

3 to about it?

4 MR. OSBORNE:

5 A. I'm thinking it was John Abbott. I can't be

6 100 percent certain of that.

7 COFFEY, Q.C.:

8 Q. But again the point, I suppose, I wanted to

9 make with you is, of course, you read it -- in

10 order to notice that, you were reading this

11 fairly closely, in fact, bearing in mind what

12 you had been told before?

13 MR. OSBORNE:

14 A. Yes.

15 COFFEY, Q.C.:

16 Q. Certainly close enough to recognize the

17 difference in numbers. Okay, that particular

18 briefing note, if we could turn, please, to

19 Exhibit P-0197, and I appreciate that briefing

20 note, of course, is not -- you would have

21 received it without any handwriting on it.

22 MR. OSBORNE:

23 A. Yes.

24 COFFEY, Q.C.:

25 Q. In your case, it would be just the plain text,

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1 okay. This is an e-mail from Tansy Mundon,

2 Exhibit P-0197, to Elizabeth Matthews and

3 Andrea Nolan, Tuesday, December 12th, 2006, at

4 12:34 p.m. The subject is a briefing note for

5 Premier on ER/PR, and it says,

6 "Elizabeth/Andrea for the Premier's

7 Information, this issue was in the media

8 today. Thanks, Tansy". Look at page two, if

9 we could, and then go on to page three, and

10 that's page three of the briefing note which

11 is -- I'm sorry, I apologize, page four of the

12 exhibit, page three of the briefing note, this

13 is the December 12th, 2006 briefing note?

14 MR. OSBORNE:

15 A. Yes.

16 COFFEY, Q.C.:

17 Q. Were you aware on December 12th, or did you

18 become aware afterward that this had been sent

19 to Elizabeth Matthews and Andrea Nolan --

20 MR. OSBORNE:

21 A. No, I --

22 COFFEY, Q.C.:

23 Q. For the Premier's information?

24 MR. OSBORNE:

25 A. I recall Ms. Mundon having told me that that

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1 was going to be sent.
 2 COFFEY, Q.C.:
 3 Q. So you do recall that. Do you know if that
 4 was, you know, on the initiative of the
 5 Department or was it asked for?
 6 MR. OSBORNE:
 7 A. I believe it was on the initiative of the
 8 Department.
 9 COFFEY, Q.C.:
 10 Q. And Ms. Mundon had sent it and told you, or
 11 asked you should I send it, or do you recall?
 12 MR. OSBORNE:
 13 A. I believe we discussed it, and then she had
 14 sent it.
 15 COFFEY, Q.C.:
 16 Q. Okay. Now with respect to this, the matter of
 17 ER/PR, had you ever had before May 15th, 2007,
 18 when it really became an issue in the media --
 19 I'm not saying it wasn't before, but certainly
 20 then the media coverage became very
 21 significant. Before that time, had you ever
 22 discussed the issue about this ER/PR issue
 23 that you've been telling the Commissioner
 24 about for the past day and a half, did you
 25 ever --

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1 MR. OSBORNE:
 2 A. Prior to March, you mean?
 3 COFFEY, Q.C.:
 4 Q. Prior to -- no, prior to May 15th, 2007, had
 5 you ever discussed that issue with any of your
 6 fellow Cabinet colleagues?
 7 MR. OSBORNE:
 8 A. It would have -- I mean, in relation to
 9 Treasury Board and the issue of pathologists,
 10 it may have come up. I can't recall for
 11 certain, but it had not come up at the Cabinet
 12 table.
 13 COFFEY, Q.C.:
 14 Q. Okay. How about with the Premier or anybody
 15 from his office, had you ever discussed it
 16 with him?
 17 MR. OSBORNE:
 18 A. No, I hadn't.
 19 COFFEY, Q.C.:
 20 Q. Why was this December 12th briefing note sent
 21 to Ms. Matthews for the Premier's information
 22 because I take it none of the earlier briefing
 23 notes we've looked at were sent?
 24 MR. OSBORNE:
 25 A. No.

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1 COFFEY, Q.C.:
 2 Q. None of your internal departmental ones, is
 3 what I'm talking about.
 4 MR. OSBORNE:
 5 A. No.
 6 COFFEY, Q.C.:
 7 Q. Why was this one sent?
 8 MR. OSBORNE:
 9 A. From March right up until December, Eastern
 10 Health had been -- I mean, again the issue was
 11 under the management of Eastern Health, but
 12 the issue in my mind at that time was managed
 13 well. There was nothing -- you know, I'll be
 14 a little cautious in saying because obviously
 15 for the individuals involved, this was a very
 16 stressful issue, but there was nothing
 17 alarming or nothing critical had come up in
 18 relation to the management of the issue.
 19 Therefore, there was no need to have informed
 20 the Premier's Office. Once the issue had gone
 21 in the media, in relation to the media and
 22 technical briefing by Eastern Health, then it
 23 would have been prudent to have sent the
 24 briefing note.
 25 COFFEY, Q.C.:

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1 Q. For the Premier and his staff's attention as
 2 they saw fit?
 3 MR. OSBORNE:
 4 A. Yes.
 5 COFFEY, Q.C.:
 6 Q. Did you -- after having Tansy forward this to
 7 Ms. Matthews and Ms. Nolan, did you hear
 8 anything back afterward about it, any
 9 questions, comments?
 10 MR. OSBORNE:
 11 A. No.
 12 COFFEY, Q.C.:
 13 Q. With respect to this particular -- if we could
 14 look at, please, page two of the exhibit, the
 15 third anticipated question is what is the rate
 16 of error, and then under key messages, the
 17 fourth bullet says, "Test samples for 939
 18 breast cancer patients between 1997 and 2005
 19 were retested. 117 patients had recommended
 20 changes in their treatment plans as the result
 21 of a review by a panel of experts. There were
 22 multiple factors involved. Since legal
 23 proceedings had been initiated, we will have
 24 to allow the legal process to determine if, in
 25 fact, error has occurred". You presumably

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1 read that on December 12th, 2006. How did
 2 that compare with your understanding the day
 3 before as to the situation?
 4 MR. OSBORNE:
 5 A. Well, I would make two comments on that. I
 6 mean, first of all, again I've never sent a
 7 briefing note back whether I agreed with what
 8 was in there or not. Secondly, and going back
 9 to November 23rd, it was explained at the
 10 November 23rd meeting that the issue of error
 11 would be decided by the court.
 12 COFFEY, Q.C.:
 13 Q. And we spoke about that, so that's consistent
 14 with that. There's a reference there, "There
 15 were multiple factors involved". See that?
 16 MR. OSBORNE:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. Did you notice that at the time, and if so,
 20 did it mean anything in particular to you?
 21 MR. OSBORNE:
 22 A. I can't say now that it would have stood out,
 23 or that it had stood out.
 24 COFFEY, Q.C.:
 25 Q. Now if we go to the first bullet under, "Other

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1 suggested responses" on the next page, please,
 2 it does say, "Eastern Health has implemented
 3 or in the process of implementing all
 4 recommendations from the external reviews",
 5 and it lists -- it says, "A dedicated
 6 laboratory has been identified to perform the
 7 ER/PR testing with three designated
 8 technologists, a lab medical director, and a
 9 dedicated cutter and all staff received
 10 specialized training. A Centre of Excellence
 11 for breast cancer cases has been established,
 12 so that examination reporting will be directed
 13 to a dedicated group of pathologists. The
 14 dedicated lab has established a quality
 15 management program and the accreditation
 16 process has been initiated for the entire
 17 laboratory department". I think you earlier
 18 this morning, in fact, referred to looking
 19 ahead because you can recall that you'd been
 20 told certain things about what had been done
 21 in relation to recommendations, and these are
 22 them, I take it, the dedicated cutter and so
 23 on?
 24 MR. OSBORNE:
 25 A. That's correct.

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1 COFFEY, Q.C.:
 2 Q. And you understood the recommendations,
 3 certainly at least the ones listed here, had
 4 come out of these external reviews?
 5 MR. OSBORNE:
 6 A. Yes, that's the language of the --
 7 COFFEY, Q.C.:
 8 Q. Did you ever at the time you read this pause
 9 and reflect upon, well, what does -- if these
 10 are the recommendations, why would they be
 11 recommending these things? I'm not suggesting
 12 you did or didn't, or should or shouldn't
 13 have. I'm just asking you. There's a list,
 14 and we can kind of order them all out, and if
 15 you read a list, at times you might think,
 16 well, why are you -- why was it necessary that
 17 examination and reporting will be directed to
 18 a dedicated group of pathologists?
 19 MR. OSBORNE:
 20 A. No, I -- I mean, other than the fact that I
 21 was being informed that those were the
 22 recommendations.
 23 COFFEY, Q.C.:
 24 Q. Okay. You didn't kind of stop and analyze it?
 25 MR. OSBORNE:

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1 A. No.
 2 COFFEY, Q.C.:
 3 Q. The reference to, and you've used this word
 4 earlier, a Centre of Excellence for breast
 5 cancer cases, that phrase, did you know where
 6 that came from?
 7 MR. OSBORNE:
 8 A. It's commonly referred in many areas, you
 9 know, both inside and outside of health care.
 10 I'm not sure if I understand what your
 11 question is.
 12 COFFEY, Q.C.:
 13 Q. Well, you see, we can if we look back through
 14 the briefing notes, go back and identify the
 15 first time that that's referred to because
 16 early on it's not.
 17 MR. OSBORNE:
 18 A. Uh-hm.
 19 COFFEY, Q.C.:
 20 Q. You know, in time, if you look back through
 21 all the Q & A's or the general briefing notes,
 22 and it kind of appears at a certain point in
 23 time while you're Minister. Certainly here
 24 the day after the technical media briefing
 25 occurs, it's spelled out under "Other

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1 suggested responses", and there is a
 2 handwritten reference you made earlier, in
 3 fact, to a Centre of Excellence. I believe
 4 it's on the November 23rd briefing note.
 5 MR. OSBORNE:
 6 A. Perhaps, yes.
 7 COFFEY, Q.C.:
 8 Q. I'm just asking you if you have any idea where
 9 in relation to this issue, a Centre of
 10 Excellence for breast cancer cases having been
 11 established, where that first originated, that
 12 term?
 13 MR. OSBORNE:
 14 A. No, I'm not sure.
 15 COFFEY, Q.C.:
 16 Q. Okay. I take it, as you're not sure, it
 17 wasn't something that -- it wasn't a label
 18 that you used, or you had suggested, I'm
 19 sorry?
 20 MR. OSBORNE:
 21 A. No.
 22 COFFEY, Q.C.:
 23 Q. If we could while we're looking at that page,
 24 Mr. Osborne, again I -- background. Under the
 25 second bullet, "The chronology of ER/PR

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1 retesting is as follows", see that?
 2 MR. OSBORNE:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. And under July, 2005, which is the second
 6 entry, it says, "Decision made to retest
 7 internally all patients who are ER/PR negative
 8 from 1997 to 2004. Technology has changed
 9 over time and is more sensitive to picking up
 10 ER/PR negatives and positives". Now in
 11 relation to the DAKO machine and the VENTANA,
 12 was the idea that technology changing over
 13 time and increase in sensitivity, was that
 14 what you had based your original understanding
 15 about systems --
 16 MR. OSBORNE:
 17 A. That would be, yes.
 18 COFFEY, Q.C.:
 19 Q. So reading this, that would be consistent with
 20 what your understanding had been?
 21 MR. OSBORNE:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. In terms of this matter, the day after the
 25 technical briefing, media technical briefing,

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1 you understood what about the contact with all
 2 the patients about the test results, what was
 3 your understanding, had everybody been
 4 contacted?
 5 MR. OSBORNE:
 6 A. I was informed on November 23rd that they were
 7 going to -
 8 COFFEY, Q.C.:
 9 Q. Double check, is that right?
 10 MR. OSBORNE:
 11 A. Double check just to insure prior to the media
 12 and technical briefing.
 13 COFFEY, Q.C.:
 14 Q. Um-hm. And then, well, the media technical
 15 briefing occurred. So this is the day after
 16 and you then--you know, if somebody had asked
 17 you on December 12th, "Have they contacted
 18 everybody?" what would your response have
 19 been, do you think?
 20 MR. OSBORNE:
 21 A. I would have thought they had.
 22 COFFEY, Q.C.:
 23 Q. Oh, yeah, you would have because--now, in
 24 terms of that matter, did anyone ever speak to
 25 you about the manner in which the patients had

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1 been contacted?
 2 MR. OSBORNE:
 3 A. No.
 4 COFFEY, Q.C.:
 5 Q. Whether it was a phone call, a letter, an
 6 office visit?
 7 MR. OSBORNE:
 8 A. No. The only thing that I had understood was
 9 that Eastern Health were either going to
 10 contact the patients directly or through
 11 physicians.
 12 COFFEY, Q.C.:
 13 Q. Okay.
 14 MR. OSBORNE:
 15 A. And -
 16 COFFEY, Q.C.:
 17 Q. And who on behalf of Eastern Health might make
 18 that direct contact -
 19 MR. OSBORNE:
 20 A. I didn't asked.
 21 COFFEY, Q.C.:
 22 Q. Hadn't come up, okay.
 23 MR. OSBORNE:
 24 A. No.
 25 COFFEY, Q.C.:

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1 Q. Now, sir, again, in terms of this matter, if
 2 we could look at page 4 of Exhibit P-0197,
 3 which is the third page of the briefing note?
 4 The last bullet on that page reads, "Eastern
 5 Health has also taken measures to address the
 6 system issues, including a review by two
 7 laboratory experts from outside the province,
 8 investments in technology, recruitment of four
 9 pathology assistants and consolidation of
 10 pathologists' review breast tissue samples.
 11 Eastern is also pursuing accreditation of the
 12 laboratory sciences." So I take it that
 13 reference there to they have taken measures to
 14 address the system issues, that again was
 15 consistent with your understanding back on
 16 November 23rd?
 17 MR. OSBORNE:
 18 A. Yes, that's correct.
 19 COFFEY, Q.C.:
 20 Q. Okay. And the recruitment of four pathology
 21 assistants and consolidation of pathologists'
 22 review of breast tissue samples, that was
 23 generally consistent with what was listed on
 24 the page before?
 25 MR. OSBORNE:

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1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. About the recommendations.
 4 MR. OSBORNE:
 5 A. I will, you know, I will point out that, you
 6 know, at this particular point, obviously with
 7 a full understanding, many of the measures
 8 that were put in place certainly appear to be
 9 addressing laboratory issues.
 10 COFFEY, Q.C.:
 11 Q. Which you would refer--those issues referred
 12 to in Dr. Banerjee's report we looked at, I
 13 believe, yesterday?
 14 MR. OSBORNE:
 15 A. That's correct.
 16 COFFEY, Q.C.:
 17 Q. Laboratory issues as opposed to systems
 18 issues, which is -
 19 MR. OSBORNE:
 20 A. And again, you know, without the technical
 21 understanding of how the system works or how
 22 the lab works, you know, I mean, even now with
 23 a much greater understanding and having
 24 reviewed my own papers and so on, I understand
 25 what the external reports, to a degree, say

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1 now, that in fact that it wasn't the DAKO
 2 system, but--and that goes back to the earlier
 3 point of, you know, until I'm absolutely
 4 certain of an answer, I'm not going to give
 5 it. If I had said it was a systems error,
 6 you'd be asking me today why I mislead the
 7 public.
 8 COFFEY, Q.C.:
 9 Q. No.
 10 MR. OSBORNE:
 11 A. But, you know, the reality is even today,
 12 without the technical knowledge of how the
 13 system works or how the laboratory works,
 14 because that's not my expertise.
 15 COFFEY, Q.C.:
 16 Q. Sure.
 17 MR. OSBORNE:
 18 A. These measures could have been either to
 19 improve laboratory issues or systems issues.
 20 COFFEY, Q.C.:
 21 Q. Sure. And on that point, I think you've
 22 touched on a point, you were relying upon whom
 23 in that regard? I appreciate you've told us,
 24 you know, what you understood. But whom were
 25 you relying upon to, you know, advise you as

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1 to what the nature of the problem was, as best
 2 they could tell?
 3 MR. OSBORNE:
 4 A. Well, officials in the Department would
 5 provide me with, you know, my briefing notes
 6 and/or verbal briefings. There were times
 7 that I had gotten verbal briefings from
 8 officials at Eastern Health. But, I mean, the
 9 officials in the Department wouldn't draft
 10 these notes without the knowledge of what they
 11 were putting in them so, I mean, obviously,
 12 you know, you would have to conclude that this
 13 information had come from somebody at Eastern
 14 Health.
 15 COFFEY, Q.C.:
 16 Q. Presumably you were assuming somebody
 17 knowledgeable about the whole background of
 18 the matter?
 19 MR. OSBORNE:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. Exhibit, if I could, P-0166, P-0166?
 23 Actually, sorry, I apologize, Mr. Osborne.
 24 Before I leave December 12th, I just wanted to
 25 ask you, is there anything else, again,

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1 looking at your own notes and so on in terms
 2 of that briefing note and that time period
 3 that the Commissioner should know that we
 4 haven't covered?
 5 MR. OSBORNE:
 6 A. Not that I can think of offhand.
 7 COFFEY, Q.C.:
 8 Q. Sure. We're at then P-0166. And get your
 9 paper copy out. Do you have that?
 10 MR. OSBORNE:
 11 A. Yes.
 12 COFFEY, Q.C.:
 13 Q. Now, this is actually two e-mails. The first
 14 of them, which is right here a little down the
 15 page, the original message is from George
 16 Tilley to Tom Osborne, copied to Oscar Howell
 17 at Eastern Health, John Abbott at the Deputy
 18 Minister's office. Creation date is January
 19 17th, 5:32 p.m. The subject is "Dr. Ganguly."
 20 And this particular e-mail, if you look at the
 21 top of the page, is an e-mail from John Abbott
 22 to George Tilley on January 17th, 2007 at 5:46
 23 p.m. "Re: Dr. Ganguly." And John Abbott is
 24 telling George Tilley, "Thanks for this."
 25 Now, the actual e-mail sent by George Tilley

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1 to yourself, did you solicit this e-mail?
 2 MR. OSBORNE:
 3 A. No, I did not.
 4 COFFEY, Q.C.:
 5 Q. You are familiar with its contents now?
 6 MR. OSBORNE:
 7 A. Yes.
 8 COFFEY, Q.C.:
 9 Q. And you would have read it at the time, back
 10 when it came in?
 11 MR. OSBORNE:
 12 A. Yes. Well, I mean, having said that, I would
 13 have been informed on the 18th that I was
 14 moving, so I read the letter, I recall reading
 15 the letter and asking to meet with John Abbott
 16 to discuss the letter. And obviously I was in
 17 Justice prior to that discussion.
 18 COFFEY, Q.C.:
 19 Q. Before that, you ever got around to it. I
 20 shouldn't say get around to it, you weren't
 21 able to because of the time frame. Were you
 22 surprised? And we'll look at the contents of
 23 it, but I'm just going to ask you at the
 24 outset, were you surprised?
 25 MR. OSBORNE:

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1 A. In which regard?
 2 COFFEY, Q.C.:
 3 Q. Well, in terms of any aspect of it?
 4 MR. OSBORNE:
 5 A. Well, there were a couple of things stood out.
 6 I wasn't surprised with Dr. Ganguly's request.
 7 Dr. Ganguly on numerous occasions, on numerous
 8 issues, would pick up the phone and contact
 9 myself as Minister and from what I understood
 10 from the Department, previous Ministers, as
 11 well, and generally without allowing the due
 12 process sometimes to be followed through
 13 before the call to the Minister's office. I
 14 wasn't surprised with that. There was--there
 15 was one statement there that I didn't
 16 understand and when I read it again just
 17 recently, receiving in the evidence package,
 18 regarding Kara Laing, "We need her full
 19 support when we move forward on ER/PR
 20 discussions." I have no idea what that means
 21 but, you know, that certainly stood out.
 22 COFFEY, Q.C.:
 23 Q. I take it was that one of the things you might
 24 have discussed with Mr. Abbott if you had had
 25 a chance to meet with him?

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1 MR. OSBORNE:
 2 A. Well, to find out -
 3 COFFEY, Q.C.:
 4 Q. Find out what that was about?
 5 MR. OSBORNE:
 6 A. To find out from George Tilley what, in fact,
 7 that meant.
 8 COFFEY, Q.C.:
 9 Q. Now, because this is an e-mail from George
 10 Tilley directly to you. He's the CEO of
 11 Eastern Health?
 12 MR. OSBORNE:
 13 A. Yes.
 14 COFFEY, Q.C.:
 15 Q. And I stand to be corrected, but I don't
 16 recall a whole lot of, in the material we've
 17 looked at, a whole lot of e-mails from George
 18 Tilley to you?
 19 MR. OSBORNE:
 20 A. No.
 21 COFFEY, Q.C.:
 22 Q. We haven't seen, have we?
 23 MR. OSBORNE:
 24 A. No, no, for sure.
 25 COFFEY, Q.C.:

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1 Q. The normal, I take it, communication path was
 2 what, from -
 3 MR. OSBORNE:
 4 A. Generally would go through the Deputy prior to
 5 the Minister receiving it.
 6 COFFEY, Q.C.:
 7 Q. And was there anything else in the e-mail?
 8 MR. OSBORNE:
 9 A. Not that I can recall at the present moment.
 10 COFFEY, Q.C.:
 11 Q. Okay. So just so, in terms of this, if we
 12 could briefly--I'm sorry. He opens by saying
 13 as Mr. Tilley, "Minister, I was speaking to
 14 John Abbott to learn that Dr. Ganguly has been
 15 in touch with you." Which would be you, Tom
 16 Osborne, I presume.
 17 MR. OSBORNE:
 18 A. Yes.
 19 COFFEY, Q.C.:
 20 Q. "About his resignation from his administrative
 21 duties in our Cancer Care Program. During the
 22 fall representatives from the NLMA met with
 23 Dr. Howell et al to say that they were going
 24 to take on the issue of compensation for the
 25 administrative work of that three (3) of our

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1 oncologists we're providing to our Cancer Care
 2 Program (Laing, Clinical Chief; Ganguly,
 3 Division Chief of Radiation Oncology; and
 4 Siddiqui, Division Chief of Medical Oncology).
 5 Interestingly, shortly before that I had met
 6 with Rob Ritter where he gave me an indication
 7 that they were going to use oncology as the
 8 medical field to talk about in relation to the
 9 upcoming negotiations, feeling that public
 10 support would be there." And Mr. Tilley goes
 11 on, "Back in November with issues around ER/PR
 12 about to be dealt with in the media I asked
 13 Oscar Howell to resolve the compensation issue
 14 for Kara Laing as it was different from the
 15 others (retroactivity) and we needed her full
 16 support when we move forward on the ER/PR
 17 discussions. That left the Division Chiefs
 18 outstanding." And he goes on to say, "There
 19 have been several meetings with the
 20 individuals involved to find resolution to
 21 this and like most things in this field,
 22 things are complex." And then there's a
 23 fairly detailed discussion, is there not,
 24 about the formula for compensation for
 25 oncologists?

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1 MR. OSBORNE:
 2 A. Yes.
 3 COFFEY, Q.C.:
 4 Q. Below here and the division between
 5 administrative duties and clinical duties?
 6 MR. OSBORNE:
 7 A. That's right, the threshold issue.
 8 COFFEY, Q.C.:
 9 Q. In terms of that, it does say, if we could--
 10 when we look at the bottom of that page, this
 11 is carbon copied or copied to Cathy Bradbury,
 12 who I take it is the Cathy Bradbury who
 13 probably drafted that April letter you sent to
 14 Dr. Banerjee?
 15 MR. OSBORNE:
 16 A. Correct.
 17 COFFEY, Q.C.:
 18 Q. In terms of this, the first paragraph on the
 19 second page of the e-mail says, "Cathy can
 20 certainly give you the details." which
 21 presumably is the financial details about the
 22 discussions about it. And it does say in the
 23 second to last paragraph, "While we have
 24 received the resignations for January 1, they
 25 did give us a two-week extension to January

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1 15. Since meetings are still ongoing Dr.
 2 Siddiqui has indicated to us that nothing will
 3 change in terms of his work until all
 4 opportunities to find a resolution have been
 5 explored. He believes that compromise is
 6 possible. Dr. Ganguly, on the other hand, is
 7 being more adamant that this offer is not
 8 acceptable and says he will 'go public.' A
 9 meeting is planned for this Friday with the
 10 physicians involved and our leaders, I
 11 believe, from their follow-up discussions with
 12 Cathy Bradbury." And he concludes by saying,
 13 "History has been that Dr. Ganguly will go to
 14 a Minister to resolve his issues. My
 15 recommendation is to let the planned meeting
 16 occur and have Oscar follow up with Cathy
 17 afterwards if another option to consider."
 18 Presumably "If there is another option to
 19 consider." "If Dr. Ganguly chooses to go
 20 public, we would say the discussions are
 21 ongoing with him, the Department and Eastern
 22 Health to find a resolution." Signed,
 23 "George." Now, sir, and I appreciate this
 24 was, you were out of there within two days,
 25 out of the Ministry of Health. You've

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1 identified the reference to Kara Laing?
 2 MR. OSBORNE:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. As one thing that puzzled you?
 6 MR. OSBORNE:
 7 A. Um-hm.
 8 COFFEY, Q.C.:
 9 Q. And had you had, prior to this, and I'm not
 10 suggesting there was any basis for this at
 11 all, okay, but had this topic ever come up
 12 before, like this linkage of compensation for
 13 Kara Laing with her support for the ER/PR
 14 issue?
 15 MR. OSBORNE:
 16 A. I don't believe it has.
 17 COFFEY, Q.C.:
 18 Q. No. And certainly not that you were aware of?
 19 MR. OSBORNE:
 20 A. No.
 21 COFFEY, Q.C.:
 22 Q. Have you ever had the opportunity to speak to
 23 anyone within government about this, about--
 24 and I appreciate you were out of the
 25 Department, but have you ever spoken to

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1 anybody about it?
 2 MR. OSBORNE:
 3 A. No, no. You know, I'd spoken to Dr. Ganguly
 4 and that was probably the third or fourth time
 5 on, you know, that he had announced to me his
 6 resignation, you know, for whatever reason.
 7 So I mean, the last paragraph here, I
 8 certainly understood, you know, the
 9 recommendation of Mr. Tilley.
 10 COFFEY, Q.C.:
 11 Q. In terms of how it might be handled?
 12 MR. OSBORNE:
 13 A. Yes.
 14 COFFEY, Q.C.:
 15 Q. In terms of dealing with Dr. Ganguly. But I'm
 16 -
 17 MR. OSBORNE:
 18 A. In terms of letter the process unfold.
 19 COFFEY, Q.C.:
 20 Q. Sure.
 21 MR. OSBORNE:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. But in terms of Dr. Laing, you never made any-
 25 -well, you didn't get to make any further

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1 inquiries, and I take it even outside the
 2 Ministry after you left you didn't speak to
 3 anybody afterward?
 4 MR. OSBORNE:
 5 A. No, I hadn't.
 6 COFFEY, Q.C.:
 7 Q. Okay. This sort of a thing, whom would this
 8 have been left to then to deal with within the
 9 Department?
 10 MR. OSBORNE:
 11 A. Well, if there was a letter addressed to my
 12 attention, you know, it was obviously copied
 13 to the Deputy, as well, and similarly to the
 14 letter for Dr. Banerjee, I mean, if a Minister
 15 leaves a Ministry, then the letter is followed
 16 up on, the staff in the Department follow up
 17 on the issue and bring it to the Minister.
 18 Here the Deputy was copied on it and the
 19 normal protocol would be to go through the
 20 Deputy on this issue, in any event.
 21 COFFEY, Q.C.:
 22 Q. Now, if I could, just looking at the first
 23 page, I'm sorry, of P-0166, the first
 24 paragraph, the last full sentence,
 25 "Interestingly, shortly before that I had met

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1 with Rob Ritter where he gave me an indication
 2 they were going to use oncology as the medical
 3 field to talk about in relation to the
 4 upcoming negotiations feeling the public
 5 support would be there." When you read that,
 6 I mean, what, or how did you interpret that?
 7 MR. OSBORNE:
 8 A. I wasn't sure, to be honest with you. It
 9 certainly seemed that they were going to use
 10 oncology to try, you know, Mr. Ritter was
 11 going to try and use oncology to get an
 12 increase in pay for oncologists is the way I
 13 read it. But I do recall getting a letter
 14 from Mr. Ritter, as well, where he held
 15 oncology out as the keystone example to get an
 16 increase for pathologists. So I'm not exactly
 17 sure what that meant.
 18 COFFEY, Q.C.:
 19 Q. This doesn't refer to pathologists, it refers
 20 to the upcoming negotiations. Now, what
 21 stage, what negotiations are we talking about
 22 here?
 23 MR. OSBORNE:
 24 A. Again, you know, I'm not certain. I don't
 25 know exactly what that meant.

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1 COFFEY, Q.C.:

2 Q. Now, on the point of the changeover, you know,

3 from one Ministry to the other referred to

4 just then, within two days you were in the

5 Department of Justice. Your replacement was

6 Mr. Wiseman?

7 MR. OSBORNE:

8 A. That's correct.

9 COFFEY, Q.C.:

10 Q. And he had been your parliamentary what?

11 MR. OSBORNE:

12 A. He was the Parliamentary Assistant, in fact,

13 since 2003.

14 COFFEY, Q.C.:

15 Q. Yeah. And now your relationship then with Mr.

16 Wiseman was what, he was doing what for you or

17 had done what for you?

18 MR. OSBORNE:

19 A. He wouldn't have had any direct involvement in

20 the ER/PR issue. There were other issues in

21 the Department that he was involved in. And

22 having said that, you know, he, I won't say he

23 didn't have any knowledge, he had no

24 involvement in the issue. He did get the

25 briefing books that I did. He wouldn't have

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1 gotten other briefings, he wouldn't have

2 gotten -

3 COFFEY, Q.C.:

4 Q. The verbal briefings?

5 MR. OSBORNE:

6 A. - e-mails. He wouldn't have gotten the verbal

7 briefings, he would not have gotten the e-

8 mails or other information back and forth

9 outside of the general briefing books, so -

10 COFFEY, Q.C.:

11 Q. Those Q and A briefing books, though, he would

12 have had those briefing -

13 MR. OSBORNE:

14 A. Yes.

15 COFFEY, Q.C.:

16 Q. He would have had those available to him?

17 MR. OSBORNE:

18 A. Yes, that's my understanding.

19 THE COMMISSIONER:

20 Q. Are we talking all kinds of briefing books,

21 the Q and A ones and the general ones?

22 MR. OSBORNE:

23 A. No, just the Q and A ones.

24 THE COMMISSIONER:

25 Q. Q and A?

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1 MR. OSBORNE:

2 A. Yeah. So, you know, he would have gotten the

3 briefing books, but he wouldn't have been as

4 knowledgeable on the issue as I was, for

5 certain.

6 COFFEY, Q.C.:

7 Q. With respect to the changeover, did you have

8 any occasion to brief Mr. Wiseman on his--your

9 outgoing, his incoming?

10 MR. OSBORNE:

11 A. No. And, you know, I think you've identified

12 that as probably a weakness within the system.

13 I mean, that generally doesn't happen other

14 than I had a similar conversation and told him

15 if he's got any questions about anything, to

16 call me.

17 COFFEY, Q.C.:

18 Q. Okay.

19 MR. OSBORNE:

20 A. But, you know, perhaps that's something that

21 government in general should look at, a two or

22 three day transition period of some sort.

23 COFFEY, Q.C.:

24 Q. In terms of -

25 THE COMMISSIONER:

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1 Q. I'm sorry, Mr. Coffey, but now that you've

2 raised that thing, when you came into the

3 Department, did you not say that you received

4 from the officials a -

5 MR. OSBORNE:

6 A. I did, yes.

7 THE COMMISSIONER:

8 Q. - large briefing book?

9 MR. OSBORNE:

10 A. Yes.

11 THE COMMISSIONER:

12 Q. That would have hit the major issues in your

13 Department?

14 MR. OSBORNE:

15 A. Yes, I did, Madam Commissioner, yes.

16 COFFEY, Q.C.:

17 Q. And you would have anticipated, I take it, Mr.

18 Wiseman, you would presume he was going to get

19 the same thing?

20 MR. OSBORNE:

21 A. Yes. Well, I mean, he -

22 COFFEY, Q.C.:

23 Q. You would have gotten the equivalent when you

24 went to Justice?

25 MR. OSBORNE:

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1 A. Yeah, yeah. And he would have, I mean, like I
 2 say, he would have had copies of briefing
 3 books in any event.
 4 COFFEY, Q.C.:
 5 Q. Did Mr. Wiseman ever call you, take you up on
 6 your offer?
 7 MR. OSBORNE:
 8 A. No.
 9 COFFEY, Q.C.:
 10 Q. Sir, you're certainly aware now of Dr.
 11 Ejeckam's memos in 2003, you've heard of them?
 12 MR. OSBORNE:
 13 A. I've heard of them. I haven't read them, but
 14 I've heard of them.
 15 COFFEY, Q.C.:
 16 Q. So I take it then that the--you didn't hear of
 17 them while you were, hear of them or see them
 18 while you were Minister of Health?
 19 MR. OSBORNE:
 20 A. Only since this issue has come about.
 21 COFFEY, Q.C.:
 22 Q. Since May of--well, during May of 2007, I
 23 presume, because the Premier had one of them -
 24 MR. OSBORNE:
 25 A. Yes, the Premier raised it in the House was

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1 the first time I've heard, yeah.
 2 COFFEY, Q.C.:
 3 Q. In terms of those external review reports, and
 4 you've referred to the fact that you had, and
 5 given your thoughts on retrospect on, you
 6 know, on them, had you ever asked anybody in
 7 the Department whether they had actually
 8 arrived in the Department or whether Mr.
 9 Ottenheimer had seen them?
 10 MR. OSBORNE:
 11 A. No, I hadn't.
 12 COFFEY, Q.C.:
 13 Q. Okay. If I could, that December 11th, 30-odd
 14 page media, technical media briefing package
 15 that had come over to the Department and had
 16 been printed off for you, and you described
 17 that earlier, have you ever actually read
 18 that, I mean read it in the sense of like
 19 cover to cover? Cover, I should say beginning
 20 to end?
 21 MR. OSBORNE:
 22 A. Yes, since this has started.
 23 COFFEY, Q.C.:
 24 Q. Since, okay, since the Inquiry is -
 25 MR. OSBORNE:

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1 A. That's correct.
 2 COFFEY, Q.C.:
 3 Q. And after December 11th or 12th, did you, like
 4 those days, or during those two days, did you
 5 read them at that time? I appreciate you
 6 didn't on the 11th, you've told us?
 7 MR. OSBORNE:
 8 A. No.
 9 COFFEY, Q.C.:
 10 Q. But you didn't on the 12th either. And the
 11 first time you then went back to them was
 12 when?
 13 MR. OSBORNE:
 14 A. Was when we realized in May of 2007 that all
 15 of the information had not been released.
 16 COFFEY, Q.C.:
 17 Q. Okay. And do you recall now that in fact in
 18 the Q and A's there, those questions and
 19 answers, there are a number of them that
 20 actually spell out that "We"--Eastern Health--
 21 "will not release certain information."
 22 MR. OSBORNE:
 23 A. That's correct.
 24 COFFEY, Q.C.:
 25 Q. And will not talk about what's in the external

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1 review reports and the reasons why.
 2 MR. OSBORNE:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. I take it was that all news to you when you
 6 read it?
 7 MR. OSBORNE:
 8 A. No -
 9 COFFEY, Q.C.:
 10 Q. I'm sorry, the reports, they wouldn't release
 11 the reports.
 12 MR. OSBORNE:
 13 A. No, I think and that -
 14 COFFEY, Q.C.:
 15 Q. If I could, because I'm being unfair, frankly,
 16 I should point you to the actual--and if I
 17 could, please Commissioner, just to go back to
 18 this briefly because I want to be able to show
 19 the witness on this. If we could look up P-
 20 0104 please, bring it up? Particularly page
 21 28 and this is those Q and A's, I pointed you
 22 to this particular page earlier, Mr. Osborne,
 23 but page 31 please? Look at question 13, do
 24 you see it there? "What did the medical
 25 experts' review reveal? What recommendations

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1 came out of that review (visit from the B.C.
 2 Cancer Institute and Chief Tech, Mount
 3 Sinai)." And the answer to 13 is "We are
 4 pleased to have external experts review our
 5 laboratory as part of our quality review.
 6 This is common practice; however, quality
 7 review materials are kept confidential. The
 8 reason for this is that the Courts and the
 9 Legislature recognize that quality review in
 10 the health care sector is vital." And it goes
 11 on from there and refers to the Evidence Act
 12 and the Access to Information and Privacy Act.
 13 Now when did you first become aware of the
 14 information or the position set out in the
 15 answer there?
 16 MR. OSBORNE:
 17 A. I can't recall if it, again, just the blurred
 18 timelines, I can't recall if it was because of
 19 the Commission's determination to get those
 20 reviews or if it was when I read this
 21 question.
 22 COFFEY, Q.C:
 23 Q. Back in May, probably.
 24 MR. OSBORNE:
 25 A. That's right.

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1 COFFEY, Q.C:
 2 Q. That would be May of '07?
 3 MR. OSBORNE:
 4 A. Yes.
 5 COFFEY, Q.C:
 6 Q. So it was either then and if you didn't notice
 7 it then or least, you know, have concentrated
 8 on it when it became an issue in 2008?
 9 MR. OSBORNE:
 10 A. Yes.
 11 COFFEY, Q.C:
 12 Q. Okay. But in terms of that subject matter, I
 13 take it while you were Minister of Health,
 14 that was never brought to your attention, not
 15 only in relation to these reports, these two
 16 reports, but any reports, I take it?
 17 MR. OSBORNE:
 18 A. No, that is correct.
 19 COFFEY, Q.C:
 20 Q. If we could, please, Commissioner, I want to
 21 take Mr. Osborne--well I'll just ask you, Mr.
 22 Osborne, we're through the Dr. Ganguly e-mail
 23 of January. In terms of ER/PR, what's your
 24 next memory of it?
 25 MR. OSBORNE:

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1 A. The Cabinet meeting of 2007.
 2 COFFEY, Q.C:
 3 Q. That's May 17th, 2007?
 4 MR. OSBORNE:
 5 A. Yes.
 6 COFFEY, Q.C:
 7 Q. Could you tell the Commission, please, in as
 8 much as you can recall about the beginning,
 9 middle and end of that?
 10 MR. OSBORNE:
 11 A. Well I mean that the August 18th note was
 12 distributed at the Cabinet meeting. As I
 13 started to read it, the more I read, I guess
 14 the more infuriated I got because I knew I had
 15 been asking for that information and hadn't
 16 received it.
 17 COFFEY, Q.C:
 18 Q. And just so we understand, the Commissioner
 19 understands, who is giving the briefing?
 20 MR. OSBORNE:
 21 A. Sorry, the Department of Health.
 22 COFFEY, Q.C:
 23 Q. Who in fact?
 24 MR. OSBORNE:
 25 A. John Abbott.

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1 COFFEY, Q.C:
 2 Q. Who had been your Deputy Minister?
 3 MR. OSBORNE:
 4 A. Yes.
 5 COFFEY, Q.C:
 6 Q. Okay, I'm sorry, go ahead please. So the same
 7 person who had been your Deputy Minister at
 8 the time was actually the person briefing the
 9 Cabinet on this, amongst other things, this
 10 briefing note?
 11 MR. OSBORNE:
 12 A. Yes.
 13 COFFEY, Q.C:
 14 Q. Okay, I'm sorry, go ahead.
 15 MR. OSBORNE:
 16 A. So I had gotten quite upset myself, didn't
 17 display that at the table, just said that, you
 18 know, I had never seen this, but I was quite
 19 upset, read the briefing note. As I said, I
 20 probably should have left the Cabinet room
 21 because I was quite angry. The rest of the
 22 meeting, I wouldn't be able to tell you what
 23 was said during the meeting because I, you
 24 know, just the thoughts of why I had not
 25 received that note and after the meeting had

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1 concluded -
 2 COFFEY, Q.C:
 3 Q. Well during the meeting, did you indicate to
 4 those present that you had not received the
 5 note?
 6 MR. OSBORNE:
 7 A. Yes.
 8 COFFEY, Q.C:
 9 Q. And that statement, what were you met with
 10 when that happened?
 11 MR. OSBORNE:
 12 A. Nobody had said anything at that time.
 13 COFFEY, Q.C:
 14 Q. Okay, go ahead.
 15 MR. OSBORNE:
 16 A. So at the conclusion of the meeting, I did
 17 raise it with the Premier and as I said, I
 18 probably should have left the room because I
 19 was really quite angry that I hadn't seen it.
 20 I think his response was disbelief that, you
 21 know, a minister would not have seen that type
 22 of briefing note and, you know, we exchanged
 23 words on the fact of whether I had seen it or
 24 not.
 25 COFFEY, Q.C:

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1 Q. You were asserting you had not and he was
 2 expressing scepticism?
 3 MR. OSBORNE:
 4 A. Correct. And from there I had gone back to
 5 the department, you know, I just--still very
 6 frustrated and realized I had to calm down and
 7 relax because in fact we were going into the
 8 House, you know, within a half an hour. Most
 9 of the rest of the day actually was a blur
 10 because I, you know, I was really fixated on
 11 that note and why I hadn't seen it, but -
 12 COFFEY, Q.C:
 13 Q. Did you make any inquires--do you know if any
 14 inquiries were made in relation to checking
 15 whether or not there was any record of whether
 16 you had seen it? Did anybody actually go
 17 looking to see -
 18 MR. OSBORNE:
 19 A. I can't say.
 20 COFFEY, Q.C:
 21 Q. Okay. But you, yourself, are certainly
 22 satisfied and you're telling the Commissioner
 23 that you had not seen that until May 17th?
 24 MR. OSBORNE:
 25 A. I can absolutely tell you, you know, well I'm

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1 under oath, first of all, but I'm an honest
 2 individual in any event, but I can absolutely
 3 tell you that I had never seen that note
 4 until--well, I shouldn't say I had never, I
 5 had not seen it until May 2007.
 6 COFFEY, Q.C:
 7 Q. At the Cabinet briefing and in fact, because
 8 you remained in Cabinet for some period of
 9 time afterward as Minister of Justice.
 10 MR. OSBORNE:
 11 A. Yes.
 12 COFFEY, Q.C:
 13 Q. Has anybody, before the Commission was
 14 established and even after it was established,
 15 but before you spoke with Commission counsel,
 16 had anybody ever asked you about what you knew
 17 about this, and about these external reviews?
 18 MR. OSBORNE:
 19 A. No.
 20 COFFEY, Q.C:
 21 Q. No one had approached you about it?
 22 MR. OSBORNE:
 23 A. No, they haven't.
 24 COFFEY, Q.C:
 25 Q. And at that time, I mean May 17th occurs, the

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1 establishment of it was announced May 22nd and
 2 it wasn't until July, in fact, that the formal
 3 Terms of Reference, I believe, were published.
 4 Did it ever cross your mind, there are a
 5 number of reports out there by external
 6 reviewers that presumably Eastern Health has
 7 and to suggest to anyone, look, why don't you
 8 go and ask or see what's in them or what is in
 9 them? Or were you still continuing to think
 10 of the system's error?
 11 MR. OSBORNE:
 12 A. Well I have no way of answering that because
 13 I, you know -
 14 COFFEY, Q.C:
 15 Q. You just didn't think of it.
 16 MR. OSBORNE:
 17 A. No.
 18 COFFEY, Q.C:
 19 Q. Okay. Madam Commissioner, is there anything--
 20 I'll save any further--I won't be saving any
 21 further question, I'm sure Mr. Pritchard will
 22 ask you if here are so many general comments,
 23 so I'll leave it to him.
 24 THE COMMISSIONER:
 25 Q. You're finished your questions?

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1 COFFEY, Q.C:
 2 Q. Yes, thank you, Commissioner.
 3 THE COMMISSIONER:
 4 Q. Mr. Simmons?
 5 MR. SIMMONS:
 6 Q. Thank you, Mr. Coffey.
 7 MR. TOM OSBORNE, EXAMINATION BY MR. DAN SIMMONS
 8 MR. SIMMONS:
 9 Q. Good afternoon, Mr. Osborne. I'm Dan Simmons,
 10 I'm here representing Eastern Health.
 11 MR. OSBORNE:
 12 A. Good afternoon.
 13 MR. SIMMONS:
 14 Q. You've been on the stand for some time now, so
 15 I'm not going to try and keep you too much
 16 longer. There's a few general things I want
 17 to talk about.
 18 MR. OSBORNE:
 19 A. I would greatly appreciate that.
 20 MR. SIMMONS:
 21 Q. Okay, I'll do my best. We've heard some of
 22 our earlier witnesses describe for us how
 23 communications tends to work between a health
 24 authority, like Eastern Health, and the
 25 Department of Health. And in particular we've

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1 heard that people will often communicate
 2 between those organizations at similar levels,
 3 such that the Deputy Minister tends to
 4 communicate with the CEO of Eastern Health;
 5 the Chair of Eastern Health Board would
 6 communicate with the Minister; and that at the
 7 ADM level, the ADM in the Department of Health
 8 would communicate with people at a similar
 9 level, a VP level within Eastern Health. Was
 10 that the way the communication between those
 11 organizations tended to work while you filled
 12 the Minister's portfolio in that department?
 13 MR. OSBORNE:
 14 A. Yes.
 15 MR. SIMMONS:
 16 Q. That was the general protocol of the way
 17 information was exchanged, was it?
 18 MR. OSBORNE:
 19 A. Well I mean, there was communication between
 20 officials. To what level, I mean, I didn't
 21 get involved with those communications. It
 22 would be impossible for me to comment on the
 23 detail or the depth of that communication.
 24 MR. SIMMONS:
 25 Q. Right. And at your position, as the Minister,

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1 your portfolio you've described to us as being
 2 very large, including the four regional health
 3 authorities, correct?
 4 MR. OSBORNE:
 5 A. Yes, that's correct.
 6 MR. SIMMONS:
 7 Q. And as well there would be operational things
 8 done directly by the Department of Health that
 9 weren't carried out through an agency like a
 10 health authority?
 11 MR. OSBORNE:
 12 A. In which regard?
 13 MR. SIMMONS:
 14 Q. Things such as administration of the Medical
 15 Care Insurance Program or other aspects -
 16 MR. OSBORNE:
 17 A. Outside of Eastern Health, you mean?
 18 MR. SIMMONS:
 19 Q. Certainly, yes.
 20 MR. OSBORNE:
 21 A. Yes.
 22 MR. SIMMONS:
 23 Q. So the portfolio was bigger than just the four
 24 health authorities that run the hospitals and
 25 community care and other direct health

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1 services in the province.
 2 MR. OSBORNE:
 3 A. Yes, well there are, quite correct, as you
 4 point out, there are 15 divisions within the
 5 department. It's a large department, almost
 6 half of the entire provincial budget runs
 7 through that department.
 8 MR. SIMMONS:
 9 Q. So and you've described to us how at, in your
 10 position I gather you would rely very heavily
 11 on your staff, starting with your deputy
 12 minister and then working down through to
 13 ensure that the work of the department is
 14 carried out and that information necessary to
 15 feed up through to you is gathered and
 16 communicated to you?
 17 MR. OSBORNE:
 18 A. That's absolutely correct. I mean, it is such
 19 a large department that you have to have faith
 20 in staff to do those functions.
 21 MR. SIMMONS:
 22 Q. Yes, okay. And the briefing notes, are they
 23 the principle way in which that information is
 24 collected, collated, filtered and refined so
 25 that you can be informed of important things

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1 that are happening within your portfolio?
 2 MR. OSBORNE:
 3 A. That is one of the ways. For myself, I can't
 4 speak for other Ministers either previous or
 5 the present Minister, but I had always asked
 6 for, you know, a greater deal of information
 7 than what was contained on briefing notes.
 8 You know, I think anybody in the departments,
 9 any of the departments that I served in, will
 10 attest to that.
 11 MR. SIMMONS:
 12 Q. So you paid careful attention to your briefing
 13 notes, you read them and you asked questions
 14 arising out of them and asked for more
 15 information when you considered you needed it?
 16 MR. OSBORNE:
 17 A. To the greatest extent possible, you know, I
 18 guess to put that in perspective with
 19 Environment to Conservation when I was there,
 20 you could be very hands on with a number of
 21 the issues. With Justice, maybe to some
 22 degree as well, with Health and Community
 23 Services, if I could describe it as a very
 24 fast moving train, that's what it is because
 25 you get up in the morning and you don't know

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1 what the issues are for that day because the
 2 day is always full of different issues than
 3 the previous day. So it's difficult to say
 4 that you knew everything about every issue
 5 because ever day had brand new issues, brand
 6 new, you know, events happening within the
 7 health care system.
 8 MR. SIMMONS:
 9 Q. So aside from the briefing notes, you've also
 10 told us, I think, that you would have direct
 11 communication, verbal communication with the
 12 personnel in your department from which you
 13 would get information.
 14 MR. OSBORNE:
 15 A. That's correct.
 16 MR. SIMMONS:
 17 Q. And we've seen as well that you'd be e-mailed
 18 information or made party to e-mails as well.
 19 MR. OSBORNE:
 20 A. Yes.
 21 MR. SIMMONS:
 22 Q. Now, I presume in a department as large as
 23 that with as many division, there would be
 24 many internal reports prepared on many
 25 different aspects of the work that the

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1 department does, would that be correct?
 2 MR. OSBORNE:
 3 A. Yes.
 4 MR. SIMMONS:
 5 Q. And unless those reports were prepared for you
 6 specifically, would those be brought to you
 7 very often or would you be informed through
 8 the briefing notes and from your officials of
 9 the summary of the type of things that were
 10 coming out of -
 11 MR. OSBORNE:
 12 A. That would generally be the case.
 13 MR. SIMMONS:
 14 Q. When would you expect to see that a report
 15 that had not been written for you, would find
 16 its way up to you and be given to you as
 17 something that you should read and pay
 18 attention to?
 19 MR. OSBORNE:
 20 A. I mean, that is a difficult question to answer
 21 because I mean, if a report were written for
 22 the Minister, then it generally lands on the
 23 Minister's desk.
 24 MR. SIMMONS:
 25 Q. Yes.

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1 MR. SIMMONS:
 2 Q. If a report is written for the department,
 3 sometimes a Minister would see it, but
 4 certainly a report for Eastern Health and, I
 5 mean, I did take--I said yesterday that, you
 6 know, I would take responsibility for that and
 7 in actual fact, I have to because I didn't
 8 ask, but -
 9 MR. SIMMONS:
 10 Q. Well you've gotten a little bit ahead of me
 11 now.
 12 MR. OSBORNE:
 13 A. Okay.
 14 MR. SIMMONS:
 15 Q. You've gotten a little bit ahead of me. So
 16 would I be correct then that it wouldn't be
 17 often that even a report prepared within the
 18 department, if not intended for you, it
 19 wouldn't be very often that that would make it
 20 to you without you having asked for it?
 21 MR. OSBORNE:
 22 A. That's correct. I mean, that's--that is the
 23 reason why we have officials within the
 24 department and the size of the department, you
 25 know, I'm not going to give anybody the

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1 impression that I'd be able to read every
 2 report that's even done for the department,
 3 you know, so -
 4 MR. SIMMONS:
 5 Q. And the health authorities are one step
 6 removed.
 7 MR. OSBORNE:
 8 A. That's correct.
 9 MR. SIMMONS:
 10 Q. In that they have a degree of autonomy which
 11 has been given to them.
 12 MR. OSBORNE:
 13 A. Yes.
 14 MR. SIMMONS:
 15 Q. And in the case of a report prepared for a
 16 health authority or within a health authority,
 17 can you think of many occasions when reports
 18 on any topics that have originated from that
 19 source, have found their way to you without
 20 you specifically asking for it?
 21 MR. OSBORNE:
 22 A. No.
 23 MR. SIMMONS:
 24 Q. No. So in that sense, we know that you were
 25 informed of the existence of these external

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1 reviews through the briefing notes that we've
 2 looked at, correct?
 3 MR. OSBORNE:
 4 A. That is correct.
 5 MR. SIMMONS:
 6 Q. Right. And you've told us that you chose not
 7 to ask to have those reports given to you and
 8 in those circumstances, is there anything at
 9 all unusual about or of concern about the fact
 10 that no one brought them to you?
 11 MR. OSBORNE:
 12 A. I would have to agree with you, I think, Mr.
 13 Simmons because again, we rely on our
 14 officials to provide us to a large degree with
 15 information that's provided within the
 16 reports, unless it's a report written for the
 17 Minister. And again, I think if it was
 18 written for the Minister, it would land on the
 19 Minister's desk. If it was written for the
 20 department, it may or may not, but again,
 21 you're one step removed as Eastern Health, so
 22 -
 23 MR. SIMMONS:
 24 Q. Yes.
 25 MR. OSBORNE:

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1 A. You know, in fairness, you know, I would have
 2 to agree with you that it would generally be
 3 unlikely that those reports would perhaps land
 4 on the desk of the Minister.
 5 MR. SIMMONS:
 6 Q. Now you're aware now, of course, that as part
 7 of the lead up to this inquiry there was a
 8 matter that ended up being dealt with in the
 9 Supreme Court concerning whether these reports
 10 were protected from use in a hearing, like
 11 this?
 12 MR. OSBORNE:
 13 A. That is correct.
 14 MR. SIMMONS:
 15 Q. And that concern there, whether they were
 16 quality assurance, peer review reports and
 17 whether certain evidentiary protections
 18 applied to them. While you were Minister,
 19 were you even aware that there were any--there
 20 was anything different about the way reports
 21 would be treated if they were regarded as
 22 quality assurance or peer review within the
 23 health care system?
 24 MR. OSBORNE:
 25 A. I can't say for certain. Maybe I'm not

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1 understanding your question.
 2 MR. SIMMONS:
 3 Q. Okay. Within health care, were you aware that
 4 there is, I'll call it a practice or an
 5 approach of conducting reviews that are called
 6 peer reviews, which in many cases would be a
 7 review of a professional's work done by
 8 another professional and that they are often
 9 regarded as confidential and sometimes have
 10 certain protections. Are you aware of how
 11 that works within the health care system? Is
 12 that something you even know about when you
 13 were Minister?
 14 MR. OSBORNE:
 15 A. Not entirely. I mean, we hear of peer reviews
 16 and my guess is that within Eastern Health
 17 there's probably dozens of those every year,
 18 peer reviews that are done. I can't say for
 19 certain, but my knowledge of a peer review,
 20 no, I wouldn't have an extensive knowledge of
 21 how they're done or, I mean, especially on a
 22 technical issue like this, no.
 23 MR. SIMMONS:
 24 Q. Okay, so would you have had any expectations
 25 while you were Minister of whether there would

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1 be any concerns about bringing a peer review
 2 or a quality assurance report forward to your
 3 department?
 4 MR. OSBORNE:
 5 A. As long as I was receiving the information
 6 from those reviews, I wouldn't have expected
 7 to see the reviews land on my desk. I mean,
 8 if the review were pertaining to an issue that
 9 Eastern Health were informing the department
 10 of, such as this particular case, if the
 11 information was being extracted from those
 12 reviews and presented to the department and
 13 therefore, presented to the Minister.
 14 MR. SIMMONS:
 15 Q. And so never having asked to have reports
 16 produced to you, I think it follows from that
 17 that there was never any occasion when anyone
 18 had to say we can't produce them or won't
 19 produce them and here's why.
 20 MR. OSBORNE:
 21 A. I was never presented with that scenario
 22 because of the fact that I had not asked.
 23 MR. SIMMONS:
 24 Q. Okay. Are you familiar with the concept of
 25 accreditation in health care, hospital

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1 accreditations, institutional accreditations,
 2 how that tends to work?
 3 MR. OSBORNE:
 4 A. In a general sense.
 5 MR. SIMMONS:
 6 Q. Yes, okay. Tell me what you understand about
 7 how accreditation would work or what the
 8 purpose of it is? What you expect to see come
 9 out of an accreditation review?
 10 MR. OSBORNE:
 11 A. I can't tell you a great deal, like I say,
 12 it's in a general sense.
 13 MR. SIMMONS:
 14 Q. Yes.
 15 MR. OSBORNE:
 16 A. But, you know, to have a lab accredited would
 17 mean that generally speaking it would meet
 18 certain standards that are set out and, you
 19 know, I understand as well that in the area of
 20 pathology it was recognized, I believe, that
 21 there were a lack of national standards which
 22 would have made it even more difficult to come
 23 about the accreditation recognition for a lab.
 24 MR. SIMMONS:
 25 Q. Okay, are you aware that an institution would

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1 have to be accredited on a regular basis, that
 2 there's a national agency that comes in and
 3 reviews Eastern Health and conducts an
 4 accreditation every three years or so, would
 5 you have been aware of that when you were the
 6 Minister?
 7 MR. OSBORNE:
 8 A. Well I was aware of some accreditations, I
 9 know with some of the hospitals and so on,
 10 I've been presented with information through
 11 my time as Minister that for certain reasons
 12 that certain things had to be done in order
 13 for that to happen.
 14 MR. SIMMONS:
 15 Q. Right, okay, but I gather then that you were
 16 not personally familiar and you're not now
 17 personally familiar with what you would tend
 18 to see in an accreditation report, what kind
 19 of detail, what kind of recommendations -
 20 MR. OSBORNE:
 21 A. No, certainly not.
 22 MR. SIMMONS:
 23 Q. - any of those things.
 24 MR. OSBORNE:
 25 A. Certainly not, no.

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1 MR. SIMMONS:
 2 Q. So not having a lot of personal knowledge
 3 about things like hospital accreditation or
 4 how quality reviews or peer reviews are
 5 conducted, would it have been of any real
 6 value to you to receive these external review
 7 reports while you were the Minister?
 8 MR. OSBORNE:
 9 A. You know, that is a very valuable question on
 10 a number of levels and again, I mean, that is
 11 why officials both within Eastern Health and
 12 within the department would break reports such
 13 as that down into understandable language.
 14 And to give one example was when Mr. Tilley
 15 had--when I had asked what measures were being
 16 put in place?
 17 MR. SIMMONS:
 18 Q. Uh-hm.
 19 MR. OSBORNE:
 20 A. What the recommendations were?
 21 MR. SIMMONS:
 22 Q. Uh-hm.
 23 MR. OSBORNE:
 24 A. It was explained some of these are very
 25 technical and difficult to explain; some of

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1 them are more easily explained, you know, and
 2 therefore, whether the recommendations or the
 3 measures that were evidentially presented to
 4 me in briefing notes, were a compilation of
 5 what could be easily understood by somebody
 6 without the technical knowledge, but no,
 7 you're absolutely correct. I mean, if
 8 somebody without the academic or technical
 9 background were to try and sit down and read
 10 one of those reports, I would suspect it would
 11 be rather difficult to understand large parts
 12 of it.
 13 MR. SIMMONS:
 14 Q. Now you had some direct contact, you described
 15 to us, with officials from Eastern Health,
 16 including Mr. Tilley on a number of occasions
 17 when the ER/PR issues were discussed. Did you
 18 ever encounter any reluctance or resistance to
 19 telling you about what Eastern Health was
 20 doing in response to the recommendations from
 21 those reports?
 22 MR. OSBORNE:
 23 A. No, no. In fact, I had a strong working
 24 relationship with Mr. Tilley.
 25 MR. SIMMONS:

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1 Q. Did you ever have any questions about those
 2 recommendations, either what they were or why
 3 they were being--or why they had been made
 4 that were not answered or were not dealt with
 5 to your satisfaction?
 6 MR. OSBORNE:
 7 A. When I had asked what the recommendations were
 8 and what measures were being put in place, it
 9 was a verbal briefing and again, you know, I
 10 was given six or seven of the recommendations.
 11 Whether the forty-odd recommendations had been
 12 built into those six or seven, I'm not
 13 absolutely certain, but you know, what was
 14 explained to me was easily understood and
 15 again, I'm not sure if some of the technical
 16 recommendations were folded into
 17 recommendations that were more easily
 18 understood, I can't answer that.
 19 MR. SIMMONS:
 20 Q. Right, okay. And, of course, as the Minister,
 21 you're operating at a fairly high level of
 22 information and decision-making and you're in
 23 your department, at the top. Mr. Tilley would
 24 similarly be operating at the--some people
 25 have said the tops of the trees level within

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1 Eastern Health as well, correct?
 2 MR. OSBORNE:
 3 A. That would be fair, I would say.
 4 MR. SIMMONS:
 5 Q. So would it be fair to expect that the kind of
 6 discussion that would happen at that level
 7 would not be to deal with the precise detail
 8 and specifics of those recommendations, but
 9 would deal with in a more general sense, what
 10 the nature of those things were and how they
 11 were being dealt with, is that a fair -
 12 MR. OSBORNE:
 13 A. I think that would be a fair statement.
 14 MR. SIMMONS:
 15 Q. Okay. And if there were to be discussions
 16 about, in greater detail about what the
 17 recommendations were and how they were being
 18 dealt with, would you expect that to happen at
 19 different levels within the Department of
 20 Health and Eastern Health?
 21 MR. OSBORNE:
 22 A. Well for the, you know, the technical aspects
 23 of the recommendations, I think that would be
 24 a fair assumption.
 25 MR. SIMMONS:

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1 Q. Okay. Now you came into this portfolio
 2 partway through this, the ER/PR story. The
 3 change in test results had already been
 4 discovered, retesting was largely done and so
 5 on. In being briefed, though, about the
 6 issue, were you briefed about how this had
 7 come about in the first place, what had
 8 happened to start the process and what the
 9 initial steps were that were taken by Eastern
 10 Health back in the summer of 2005?
 11 MR. OSBORNE:
 12 A. I can tell you what I was told and in fact, it
 13 did build my confidence in Eastern Health
 14 because I understood that they had discovered
 15 a problem with a sample, made the
 16 determination to check and see if it was a
 17 greater problem, took in a number of samples,
 18 I think it was five or six, if memory serves
 19 me correctly. From there, they noticed that
 20 there could have been a pattern and had made a
 21 decision to test all samples--or there may
 22 have been another larger sample within Eastern
 23 Health, I'm not certain, but eventually they
 24 made the determination to test all samples.
 25 As I understood, as it was explained, you

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1 know, the Eastern Health had realized this
 2 would bring about a great deal of criticism
 3 for them, the fact that they had made mistakes
 4 but they had self-reported essentially in
 5 light of that, because it was the right thing
 6 to do. It was the right thing to do to help
 7 patients, so I understood that that's how the
 8 event initially unfolded and it gave me
 9 confidence to feel that, you know, they did
 10 the right thing in the patients' interests.
 11 MR. SIMMONS:
 12 Q. So you knew then that the priority initially
 13 in this process was to retest in order to find
 14 any patients who could benefit from a change
 15 in their treatment? You knew that, did you?
 16 MR. OSBORNE:
 17 A. That's what I understood, yes.
 18 MR. SIMMONS:
 19 Q. And you knew also, as I think you've told us,
 20 that Eastern Health stopped performing these
 21 ER/PR tests in their own lab during the summer
 22 of -
 23 MR. OSBORNE:
 24 A. Yes, I was made aware -
 25 MR. SIMMONS:

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1 Q. - 2005.
 2 MR. OSBORNE:
 3 A. - they shut down the testing of ER/PR within
 4 their own lab until their, both the external
 5 review and internal reviews had been
 6 completed.
 7 MR. SIMMONS:
 8 Q. And in fact, Eastern Health was not conducting
 9 these tests in their own lab at any time
 10 throughout your tenure as Minister of Health?
 11 MR. OSBORNE:
 12 A. That is correct.
 13 MR. SIMMONS:
 14 Q. Now, did you have any understanding about the
 15 purpose for which those external review
 16 reports were commissioned?
 17 MR. OSBORNE:
 18 A. My understanding and again, I had not seen the
 19 reports, but from information that was
 20 provided to me, it was to determine what
 21 measures had to be put in place to correct the
 22 problems that were discovered within the lab
 23 and my understanding as well, which is again a
 24 reason I had confidence in Eastern Health
 25 throughout my time as Minister, was that they

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1 had gone above and beyond to ensure that they
 2 restored public confidence in the lab and to
 3 turn it into one of the better labs in the
 4 country. You know, I'm upset about the
 5 November 23rd meeting, that's a different
 6 issue, but the issue of what they were doing
 7 to correct the problems in the lab, I think
 8 they did, they put the right measures in place
 9 is what I understood and what I understand
 10 still.
 11 MR. SIMMONS:
 12 Q. Okay. Now Mr. Coffey showed you--went through
 13 with you that there were two initial reports
 14 done in the fall of 2005, one by a technical
 15 consultant and one by a pathologist, Dr.
 16 Banerjee, and that they both came back in the
 17 Spring of 2006 and did follow-up reports. And
 18 Mr. Coffey referred you to Ms. Wegrynowski's,
 19 the technologist, her follow-up report. I'd
 20 like to refer you to Dr. Banerjee's follow-up
 21 report, please, it's Exhibit P-0049. Because
 22 I believe you've told us that it was your
 23 understanding that when these reviewers came
 24 back in the Spring of 2006 that they generally
 25 reported that good progress had been made

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1 towards carrying out the recommendations that
 2 had been made?
 3 MR. OSBORNE:
 4 A. That was the understanding I was given.
 5 MR. SIMMONS:
 6 Q. Okay. And you've had a chance now to go back
 7 and look at these reports in preparation for
 8 your evidence here, have you?
 9 MR. OSBORNE:
 10 A. No, I haven't and the reason I haven't is I
 11 found it difficult to distinguish between what
 12 I knew and what I know and in fact, I had
 13 mentioned to, you know, my own counsel and
 14 others that I was really hesitant to do that
 15 because I'm finding that the lines of what I
 16 knew and what I know is blurred.
 17 MR. SIMMONS:
 18 Q. Okay.
 19 MR. OSBORNE:
 20 A. I do intend to read the reports, but I would
 21 rather wait until I'm finished my testimony,
 22 to be honest.
 23 MR. SIMMONS:
 24 Q. So, we do know though that you had been given
 25 the impression or the information that there

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1 was positive things that came out of those
 2 reviews regarding the implementations of
 3 recommendations?
 4 MR. OSBORNE:
 5 A. Yes.
 6 MR. SIMMONS:
 7 Q. Okay. This is Doctor Banerjee's report from--
 8 the cover letter is May 23, 2006 and the
 9 report is dated May 21. It's not very long.
 10 It starts out with the heading "Background.
 11 At the request of Dr. R. Williams, I reviewed
 12 the performance of the immunohistochemistry
 13 laboratory on April 24, '06 in order to
 14 determine whether the quality of
 15 immunohistochemistry has improved since my
 16 last review and whether my previous
 17 recommendations had been implemented". So,
 18 it's pretty direct what he's asked to do here.
 19 And there's a series, then, in this table of
 20 "prior recommendation" and "implementation
 21 status", do you see those?
 22 MR. OSBORNE:
 23 A. Yes.
 24 MR. SIMMONS:
 25 Q. The first recommendation is pathologists

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1 should subspecialize, if possible, covering
 2 two or more sites each with one designated
 3 leader for each major tumor site". Now, is
 4 this one of the recommendations that had been
 5 reported to you as something that had some out
 6 of these reviews? That pathologists should
 7 sub-specialize, does that sound familiar to
 8 you?
 9 MR. OSBORNE:
 10 A. The designated leader does. I can't recall if
 11 the subspecialization did or not.
 12 MR. SIMMONS:
 13 Q. Okay. The implementation status there is "in
 14 progress".
 15 MR. OSBORNE:
 16 A. Yes.
 17 MR. SIMMONS:
 18 Q. Okay. So, it's underway. Recommendation two,
 19 says that "A pathologist should be appointed
 20 section medical director" and then goes on to
 21 speak about the role of the section medical
 22 director. And the implementation status is
 23 "implemented", so that's done. Number three,
 24 "Consideration should be given to switching to
 25 a different antibody". It's a technical thing

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1 which, at that point, was under discussion.
 2 Number four, "An appropriate number of
 3 technologists must be dedicated to the IHC
 4 service and be accountable to the section
 5 medical director". So that deals with
 6 dedicating staff to the lab. Does that sound
 7 familiar?
 8 MR. OSBORNE:
 9 A. Designed staff, yes.
 10 MR. SIMMONS:
 11 Q. It does? And the status there is
 12 "implemented".
 13 MR. OSBORNE:
 14 A. Yes.
 15 MR. SIMMONS:
 16 Q. Three dedicated technologists have been
 17 assigned and that goes on to deal with some
 18 further recommendations coming out of that
 19 about the succession planning for when they
 20 retire and about education continuing. Five,
 21 "Tumor site pathologist leaders must regularly
 22 attend appropriate educational and scientific
 23 conferences" and it says, "in progress". And
 24 that would be an ongoing recommendation that
 25 would have to continue -

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1 MR. OSBORNE:
 2 A. Yes, I was made aware of that as well, Mr.
 3 Simmons.
 4 MR. SIMMONS:
 5 Q. Pardon me?
 6 MR. OSBORNE:
 7 A. I said I was aware of that as well.
 8 MR. SIMMONS:
 9 Q. And you were aware of that one. Six is
 10 "Pathologist assistants should be hired" and I
 11 believe these were the people you were
 12 referring to earlier.
 13 MR. OSBORNE:
 14 A. The technicians.
 15 MR. SIMMONS:
 16 Q. And the status there is "implemented".
 17 MR. OSBORNE:
 18 A. Yes.
 19 MR. SIMMONS:
 20 Q. With some further detail. Seven deals with
 21 implementing a particular type of tissue
 22 processing system, which is not implemented
 23 yet.
 24 MR. OSBORNE:
 25 A. And I wasn't aware of that at the time.

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1 MR. SIMMONS:
 2 Q. Eight is the Ventana--what's in the column
 3 here on the left is the original
 4 recommendation from the first report from
 5 October 13th of '05. "The Ventana platform is
 6 performing adequately and with improvement and
 7 standardization of fixation protocols, there's
 8 no reason that the service could not be
 9 resumed without further delay." That was the
 10 recommendation back in the fall. And in this
 11 follow-up report, Dr. Banerjee says, "Verify
 12 that ER and PR IHC quality is acceptable.
 13 HER/2 neu staining still to be validated." So
 14 regarding ER/PR this recommendation appears to
 15 be dealt with, do you see that?
 16 MR. OSBORNE:
 17 A. Uh-hm, yes.
 18 MR. SIMMONS:
 19 Q. And then nine, "Laboratory should subscribe to
 20 external quality assurance programs." It says
 21 that's implemented, although only one survey
 22 has been returned -
 23 MR. OSBORNE:
 24 A. I was made aware of that one as well.
 25 MR. SIMMONS:

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1 Q. And you were aware of that?
 2 MR. OSBORNE:
 3 A. Yes.
 4 MR. SIMMONS:
 5 Q. And ten is, "Consideration should be given to
 6 organizational chart redesign, in order to
 7 provide better joint technical and medical
 8 accountability, planning and communication."
 9 That one is not implemented.
 10 MR. OSBORNE:
 11 A. No, and I wasn't aware of that one.
 12 MR. SIMMONS:
 13 Q. Okay, so out of those ten recommendations,
 14 would you agree with me that there was very
 15 substantial progress reported by Dr. Banerjee
 16 when he submitted that report in May, 2006?
 17 MR. OSBORNE:
 18 A. It certainly appears that way.
 19 MR. SIMMONS:
 20 Q. And is that consistent with the way that was
 21 reported back to you and the information you
 22 got from your officials in Eastern Health?
 23 MR. OSBORNE:
 24 A. Yes, I was told in May, I believe it was that
 25 the external consultant was generally pleased

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1 with the progress.
 2 MR. SIMMONS:
 3 Q. Okay. Madam Commissioner, I didn't know if
 4 you wanted to do a break this afternoon. I'm
 5 happy to carry on.
 6 THE COMMISSIONER:
 7 Q. I was about to ask you if this was a good
 8 time.
 9 MR. SIMMONS:
 10 Q. Yes.
 11 THE COMMISSIONER:
 12 Q. All right, we'll take a break.
 13 (RECESS)
 14 THE COMMISSIONER:
 15 Q. Mr. Simmons.
 16 MR. SIMMONS:
 17 Q. Mr. Osborne, I got some specific questions for
 18 you now on a number of the documents that you
 19 were shown, they're just a few, some points I
 20 want to follow up on. And first I'd like you
 21 to have a look at P-0170 please? This was
 22 introduced to you as an e-mail message from
 23 Tansy Mundon to Mr. Abbott, Moira Hennessey
 24 and yourself, August 8th, 2006. And attached
 25 to it there's a reference there to a story

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1 running on "The Current" which I think is a
 2 CBC Radio program, you might be familiar with
 3 it?
 4 MR. OSBORNE:
 5 A. Uh-hm.
 6 MR. SIMMONS:
 7 Q. And attached to that e-mail was a statement
 8 that had been sent by Eastern Health.
 9 MR. OSBORNE:
 10 A. Yes.
 11 MR. SIMMONS:
 12 Q. Which is on the second page there. And Mr.
 13 Coffey asked you a number of questions
 14 concerning it. It begins by saying that
 15 "Eastern Health originally began a review of
 16 all ER/PR receptor tests conducted by our
 17 laboratory since 1997 when we discovered
 18 inconsistencies in a small number of results."
 19 Now, from what you told me just before the
 20 break, would you take that reference to the
 21 small number of results there to be those
 22 first few tests that were done that changed
 23 back earlier in 2005? Just read the first
 24 paragraph on that statement there.
 25 MR. OSBORNE:

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1 A. At the top paragraph?
 2 MR. SIMMONS:
 3 Q. Yes.
 4 MR. OSBORNE:
 5 A. I'm sorry, okay, I was reading the wrong
 6 paragraph.
 7 MR. SIMMONS:
 8 Q. I think that's where we were confused before.
 9 MR. OSBORNE:
 10 A. Yes, now that wasn't the reference that I had
 11 made in questioning to Mr. Coffey.
 12 MR. SIMMONS:
 13 Q. No, I realize that. I want to go through and
 14 make sure we understand it correctly. So when
 15 we start reading down through this statement
 16 here that went from Eastern Health to "The
 17 Current" the first paragraph there that refers
 18 to a small number of results, would you agree
 19 with me that that appears to refer to the
 20 small number of test changes that precipitated
 21 the larger retesting program?
 22 MR. OSBORNE:
 23 A. That is correct.
 24 MR. SIMMONS:
 25 Q. Okay, the third paragraph begins, "More than

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1 900 test samples were sent to Mount Sinai
 2 Laboratory" in Toronto and that would be
 3 consistent with your understanding of the
 4 number of retests, would it?
 5 MR. OSBORNE:
 6 A. Yes.
 7 MR. SIMMONS:
 8 Q. And then the third paragraph says, "As part of
 9 the review, we have identified a small number
 10 of cases that require further follow up. We
 11 are in the process of reviewing and addressing
 12 each of these cases individually." And I
 13 think you were asked before about the small
 14 number referred to in that paragraph, do you
 15 recall?
 16 MR. OSBORNE:
 17 A. No, the small number would be in the following
 18 paragraph.
 19 MR. SIMMONS:
 20 Q. Okay.
 21 MR. OSBORNE:
 22 A. The note that I was referring to.
 23 MR. SIMMONS:
 24 Q. "Eastern Health is committed to disclosure and
 25 our clinical team members have communicated

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1 individually with all patients impacted by
 2 this review. However, patient confidentiality
 3 is an important principle in health care, not
 4 only in this province, but across the country
 5 so we do not discuss the details of individual
 6 cases publicly." I don't see any reference to
 7 a small number of patients there?
 8 MR. OSBORNE:
 9 A. Oh, I'll read the paragraph out.
 10 MR. SIMMONS:
 11 Q. Yes, please.
 12 MR. OSBORNE:
 13 A. Okay. "As part of the review we have
 14 identified a small number of cases that
 15 require further follow-up. We are in the
 16 process of reviewing and addressing each of
 17 these cases individually."
 18 MR. SIMMONS:
 19 Q. Right, good, okay. Now, if you sort of keep
 20 your finger there, I'd like you also to look
 21 at Document P-0168, please? Now, you were
 22 shown this one earlier also. And it's an e-
 23 mail message from several days before, on the
 24 31st of July?
 25 MR. OSBORNE:

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1 A. Yes.
 2 MR. SIMMONS:
 3 Q. 2006 from Tansy Mundon to you. And it's
 4 forwarding a briefing note that had been sent
 5 on to Cabinet Secretariat. It says, "Prepared
 6 by Heather Predham, Assistant Director Quality
 7 and Risk Management" date July 31st, 2006.
 8 You see that?
 9 MR. OSBORNE:
 10 A. Yes.
 11 MR. SIMMONS:
 12 Q. Okay. And then if you go on to look at it,
 13 this particular one talks about a number of
 14 particular cases that had arisen out of the
 15 larger ER/PR review, in particular, cases
 16 referred to as DCIS, or Ductal Carcinoma In
 17 Situ and cases referred to as the retro
 18 converters or cases that had changed instead
 19 of from negative to positive, they'd gone from
 20 positive to negative. You recall having
 21 looked at this -
 22 MR. OSBORNE:
 23 A. Yes.
 24 MR. SIMMONS:
 25 Q. - note earlier? Okay. And if you look at

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1 this particular briefing note, we're talking
 2 about, I think, four cases, three cases and
 3 then 14 more that require further review, so
 4 we're talking about a total of fewer than 20
 5 cases in this briefing note from July 31st?
 6 MR. OSBORNE:
 7 A. Yes.
 8 MR. SIMMONS:
 9 Q. And if you look at -
 10 MR. OSBORNE:
 11 A. Now, I understand, though, that that's
 12 referring to DCIS where -
 13 MR. SIMMONS:
 14 Q. Yes.
 15 MR. OSBORNE:
 16 A. If you're trying to make a connection, the
 17 other note would be referring to all 939
 18 individuals.
 19 MR. SIMMONS:
 20 Q. Yes. Well, what I'm asking you is if you look
 21 at the briefing note that was sent to the
 22 Department on July 31st, 2006, which describes
 23 fewer than 20 cases which are still under
 24 review or being dealt with, would you make a
 25 connection between that and the statement in

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1 the August 4th document that "As part of the
 2 review we have identified a small number of
 3 cases that require further follow-up."
 4 MR. OSBORNE:
 5 A. That's not how I read it.
 6 MR. SIMMONS:
 7 Q. Not how you read it?
 8 MR. OSBORNE:
 9 A. No.
 10 MR. SIMMONS:
 11 Q. Okay. Having looked at those two documents
 12 now, can you see that that may, in fact, be
 13 the connection, though, and that that's what
 14 was being referred to?
 15 MR. OSBORNE:
 16 A. You can make that argument, but I would still
 17 have to contend that it wouldn't be how I saw
 18 it.
 19 MR. SIMMONS:
 20 Q. Okay.
 21 MR. OSBORNE:
 22 A. Or even see it.
 23 MR. SIMMONS:
 24 Q. Okay. Thank you. I had a couple of questions
 25 for you, then, on the briefing note from

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1 August 18th that was prepared for the
 2 Premier's office, and that's at P-0172,
 3 please? August 18th, 2006, this is the e-mail
 4 from Ms. McCormick to Moira Hennessey
 5 attaching what's described as the final copy
 6 of the briefing note, "If You Approve of
 7 Same." So it appears that in this case Ms.
 8 McCormick would have had to approve the final
 9 copy of this briefing note before it went to
 10 the Premier's office, is that--would that be
 11 your understanding?
 12 THE COMMISSIONER:
 13 Q. Ms. McCormick or Ms. Hennessey?
 14 MR. OSBORNE:
 15 A. Ms. Hennessey.
 16 MR. SIMMONS:
 17 Q. Ms. Hennessey, I'm sorry.
 18 MR. OSBORNE:
 19 A. Yes.
 20 MR. SIMMONS:
 21 Q. Okay. Who was your ADM?
 22 MR. OSBORNE:
 23 A. Well, Ms.--in this particular case that is
 24 correct. But Ms. Marilyn McCormick would not
 25 be dealing directly with Eastern Health, she

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1 would deal directly with the Department and it
 2 would be up to Ms. Hennessey then to deal with
 3 Eastern Health.
 4 MR. SIMMONS:
 5 Q. Right. So, for this communication here, these
 6 are two people within government, neither of
 7 them connected with Eastern Health, and the
 8 discussion is about getting final approval of
 9 this particular briefing note?
 10 MR. OSBORNE:
 11 A. That's correct.
 12 MR. SIMMONS:
 13 Q. Okay. And when you go down and look at the
 14 note, it starts on page, on the second page of
 15 this document, runs down to the last page
 16 where it says, "Prepared by/approved by," and
 17 it says both "Heather Predham, Eastern Health
 18 and Moira Hennessey, HCS." Can you tell me,
 19 do you know, what role each or either of those
 20 ladies would have played in either preparing
 21 or approving, who would have played what role
 22 in relation to that?
 23 MR. OSBORNE:
 24 A. No. Again, I mean, I had not seen the note.
 25 And I wouldn't be able to indicate how much

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1 input either of them have had on this note.
 2 MR. SIMMONS:
 3 Q. Or which portions of the note were drafted by
 4 either of them, if they each played some part
 5 in it?
 6 MR. OSBORNE:
 7 A. Exactly, I wouldn't be able to say.
 8 MR. SIMMONS:
 9 Q. Okay. One part of this note is a table which
 10 has a description of different numbers of
 11 results from the retesting of the patient
 12 samples. Do you see that? We have it here,
 13 begins with "Patient test results confirm
 14 negative, 341."?
 15 MR. OSBORNE:
 16 A. Yes.
 17 MR. SIMMONS:
 18 Q. Okay. I'd like you to have a quick look at P-
 19 0125, page 18, please? I don't think you've
 20 been shown this page earlier, but it comes out
 21 of a document that contains various briefing
 22 notes, including some copies of that August
 23 18th briefing note.
 24 MR. OSBORNE:
 25 A. Yes.

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1 MR. SIMMONS:
 2 Q. It's headed, this one does say, "Eastern
 3 Health, Summary of ER/PR Retesting, August
 4 11th, 2006." And if you look at it, it
 5 appears to be the same table that was included
 6 in the briefing note we just looked at?
 7 MR. OSBORNE:
 8 A. Yes.
 9 MR. SIMMONS:
 10 Q. Does that appear to be the case? And if we
 11 look down at this one, this document, it ends
 12 with "Total, 939," and that's the end of it,
 13 this particular one. So it would appear that
 14 the table with the numbers likely came from
 15 Eastern Health to the Department for inclusion
 16 in that August briefing note?
 17 MR. OSBORNE:
 18 A. Well, I -
 19 MR. SIMMONS:
 20 Q. Would you agree?
 21 MR. OSBORNE:
 22 A. I would say that that is a reasonable
 23 expectation. The Department would not have
 24 knowledge of these numbers without it being
 25 provided by Eastern Health.

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1 MR. SIMMONS:
 2 Q. Are you aware of whether there was any, ever
 3 any difficulty getting this kind of
 4 information from Eastern Health about these
 5 retest numbers? Anyone in your Department
 6 ever complain to you that we can't get
 7 information from Eastern Health about what's
 8 happening with the resting ER/PR?
 9 MR. OSBORNE:
 10 A. The only thing that I can speak to is that I'd
 11 asked for them a number of times, I'd been
 12 given the information that they're at various
 13 stages of review and so on as it progressed.
 14 MR. SIMMONS:
 15 Q. Um-hm.
 16 MR. OSBORNE:
 17 A. Nobody had told me that Eastern are refusing
 18 to give them or, you know, what I was told is
 19 that "They're at various stages of review.
 20 When the review is complete, we'll be able to
 21 provide you with the package of numbers and
 22 details."
 23 MR. SIMMONS:
 24 Q. We know you didn't see the August 18th, 2006
 25 briefing note until the following May. Did

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1 you see this August 11th, 2006 table from
 2 Eastern Health?
 3 MR. OSBORNE:
 4 A. No, I had not.
 5 MR. SIMMONS:
 6 Q. You had not seen that one, either. And even
 7 though we may be able to assume from this that
 8 the table with the numbers came from Eastern
 9 Health to the Department, the final form of
 10 that briefing note and the content of it for
 11 the Premier had to be approved with in the
 12 Department of Health, not by Eastern Health,
 13 is that correct?
 14 MR. OSBORNE:
 15 A. Well, I think that would be protocol, that any
 16 briefing notes going to Central Agencies would
 17 have to be signed off by a department.
 18 MR. SIMMONS:
 19 Q. Right. And when those briefing notes are
 20 prepared within, for internal government use,
 21 do you know if there's any--and when they deal
 22 with an issue like this in which Eastern
 23 Health is involved, do you know if there's any
 24 practice of clearing the final wording with
 25 Eastern Health before they are further

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1 distributed? Is that part of the protocol?
 2 MR. OSBORNE:
 3 A. I wouldn't be able to comment on that.
 4 MR. SIMMONS:
 5 Q. Okay. Now, you've been asked a number of
 6 questions about the reference to the problem
 7 with the retests changing compared to the
 8 original tests as to whether it was a systems
 9 issue or not. And I believe you've told us
 10 that you had an understanding that systems
 11 issue referred very narrowly to the equipment
 12 that was being used, whether it was a result
 13 of the, something with the original equipment
 14 and then changed to other equipment. Did you
 15 ever actually have a discussion with anyone,
 16 aside from what you described for us on
 17 November 23rd, aside from that did you ever
 18 have any discussion with anyone at Eastern
 19 Health about what they would consider to be a
 20 systems issue within their world, what that
 21 would mean to them?
 22 MR. OSBORNE:
 23 A. I can say it's safe to say that I've had
 24 discussions with officials from Eastern Health
 25 that would have lead me to believe that it was

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1 a systems issue. Whether or not they would
 2 have said that that systems issue is directly
 3 a DAKO issue or a systems issue, I cannot say.
 4 MR. SIMMONS:
 5 Q. Um-hm. So could they have been using that
 6 term, that phrase, "systems issue" to refer to
 7 something bigger or something different?
 8 MR. OSBORNE:
 9 A. That is possible, Mr. Simmons. And, you know,
 10 I can't say that it is or is not the case.
 11 It's certainly possible.
 12 MR. SIMMONS:
 13 Q. Okay.
 14 MR. OSBORNE:
 15 A. I know my briefing notes, which again, the
 16 information would generally come from Eastern
 17 Health, but my briefing notes refer to the
 18 system as DAKO system or Ventana system.
 19 MR. SIMMONS:
 20 Q. Okay. We'll, let's have a look at P-0197
 21 again, please? This is one of the last ones
 22 that you were shown in your examination
 23 earlier this afternoon, one of the latter
 24 ones. Sorry. Okay. This is the December
 25 12th, 2006 e-mail with the briefing note for

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1 the Premier. And this one you were aware of,
 2 correct?
 3 MR. OSBORNE:
 4 A. Yes.
 5 MR. SIMMONS:
 6 Q. Yes. And if we go to the fourth page, at the
 7 very end, last bullet. Mr. Coffey asked you
 8 about this. It says, "Eastern Health has also
 9 taken measures to address the system issues,
 10 including a review by two laboratory experts
 11 from outside the province, investments in
 12 technology, recruitment of four pathology
 13 assistants and consolidation of pathologists
 14 review of breast tissue samples." Now, I read
 15 that grammatically, I read that as saying the
 16 system issues include the four listed items
 17 that I just read. Do you see that?
 18 MR. OSBORNE:
 19 A. Yes.
 20 MR. SIMMONS:
 21 Q. So, from that briefing note would you take it
 22 from that that the review by the two
 23 laboratory experts, the investments in
 24 technology, the recruitment of four pathology
 25 assistants and the consolidation of

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1 pathologists review for breast tissue samples
 2 are all being given as examples of the system
 3 issues that were addressed by Eastern Health?
 4 MR. OSBORNE:
 5 A. You could draw that conclusion from that, yes.
 6 MR. SIMMONS:
 7 Q. Grammatically it reads that way, doesn't it?
 8 MR. OSBORNE:
 9 A. Yes.
 10 MR. SIMMONS:
 11 Q. Yes, okay. And if we go up to the second page
 12 of this briefing note. Have to bear with me a
 13 moment. Yes, okay. Page 2 of the document
 14 under "Key Messages." The fourth bullet under
 15 "Key Messages." Mr. Coffey also referred you
 16 to this one. It says, "Test samples for 939
 17 breast cancer patients between 1997 and 2005
 18 were retested. 117 patients had recommended
 19 changes in their treatment plans as a result
 20 of review by a panel of experts. There were
 21 multiple factors involved. Since legal
 22 proceedings have been initiated we will have
 23 to allow the legal process to determine if, in
 24 fact, error had occurred." The statement is
 25 made there that there were multiple factors

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1 involved. Now, would that, would you read
 2 that as being consistent with an
 3 interpretation of system issues or systemic
 4 issues as being a case where there are
 5 multiple factors as opposed to a single
 6 identifiable cause such as a person making a
 7 mistake?
 8 MR. OSBORNE:
 9 A. You could. I think it's fair to say, as well,
 10 that information when Eastern Health had
 11 referred to both the DAKO system and Ventana
 12 system that that's how they were referred to.
 13 MR. SIMMONS:
 14 Q. As systems?
 15 MR. OSBORNE:
 16 A. As systems.
 17 MR. SIMMONS:
 18 Q. Yes, yes.
 19 MR. OSBORNE:
 20 A. You know, so, you know, I understand the line
 21 of questioning and where you're going, but I
 22 would have to argue that if I was told without
 23 a full explanation that it's a Ventana system
 24 or a DAKO system and it's a system error, you
 25 know, that I would still contend that, you

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1 know, you could also draw the conclusion then
 2 that you're either talking a Ventana or DAKO.
 3 MR. SIMMONS:
 4 Q. Okay. And that is the conclusion you drew
 5 from the way you interpreted the information
 6 that was given to you?
 7 MR. OSBORNE:
 8 A. That is correct.
 9 MR. SIMMONS:
 10 Q. Okay. And you can see from this briefing note
 11 now, though, that that's not consistent with
 12 the way it's presented in this briefing note,
 13 is it?
 14 MR. OSBORNE:
 15 A. No, well, you know, grammatically, as you
 16 pointed out, it says the system issue as well
 17 or including, you know, other issues, as well.
 18 MR. SIMMONS:
 19 Q. Okay. Now, at the November 23rd meeting
 20 you've described to us that things went fine
 21 and when the debate arose, it was over the
 22 issue of retesting samples for those patients
 23 who were deceased?
 24 MR. OSBORNE:
 25 A. That's correct.

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1 MR. SIMMONS:
 2 Q. And if I understand correctly, the view taken
 3 by Mr. Hynes, who seemed to be the proponent,
 4 I understand, of this, was that all those
 5 samples should be retested in the same way
 6 that the samples for the living patients had
 7 been retested? Is that -
 8 MR. OSBORNE:
 9 A. No, I think I made that point.
 10 MR. SIMMONS:
 11 Q. Yes, okay, yeah. And that you met with some
 12 resistance to that and Dr. Laing spoke to that
 13 particular issue, as well?
 14 MR. OSBORNE:
 15 A. She did.
 16 MR. SIMMONS:
 17 Q. Yeah. Do you recall what reason you were
 18 given by her or by anyone else from Eastern
 19 Health as to why they would not have wanted to
 20 move to retest those samples?
 21 MR. OSBORNE:
 22 A. That they would prefer to spend their
 23 resources and time treating living patients.
 24 MR. SIMMONS:
 25 Q. Yes. Did you understand at that point what

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1 the resources and time were that had to be put
 2 into the program of retesting the samples for
 3 the living patients that was--had already been
 4 carried out?
 5 MR. OSBORNE:
 6 A. I did understand in asking why it was taking
 7 so long to get the results back, that it was a
 8 very time consuming process.
 9 MR. SIMMONS:
 10 Q. Yes.
 11 MR. OSBORNE:
 12 A. I was explained that in addition to doing the
 13 normal laboratory work and normal pathology,
 14 oncology work associated with that and seeing
 15 patients that they were doing this on top of
 16 that and that that was adding to the time.
 17 MR. SIMMONS:
 18 Q. Right.
 19 MR. OSBORNE:
 20 A. So I think it is fair to say that I did have
 21 an understanding that it was a very time
 22 consuming process for those involved.
 23 MR. SIMMONS:
 24 Q. Had you understood that many of the patients
 25 whose samples were retested were not, at that

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1 time, under active care by an oncologist but
 2 may have been discharged from care and just
 3 being followed by a family physician or
 4 someone else?
 5 MR. OSBORNE:
 6 A. I think it's fair to say I understood that.
 7 MR. SIMMONS:
 8 Q. Yes. And did you understand that a panel of
 9 physicians had been put together to review the
 10 retests of those living patients whose results
 11 had changed in order to be able to provide
 12 some recommendations to whichever physician
 13 was following them at that point?
 14 MR. OSBORNE:
 15 A. A tumor panel, you mean?
 16 MR. SIMMONS:
 17 Q. You understood that?
 18 MR. OSBORNE:
 19 A. A tumor panel?
 20 MR. SIMMONS:
 21 Q. Yes.
 22 MR. OSBORNE:
 23 A. Yes.
 24 MR. SIMMONS:
 25 Q. Okay. And that the work that had, physicians

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1 and others had to put in on that tumor panel
 2 would have been extra and in addition to their
 3 other duties in providing care to their
 4 patients?
 5 MR. OSBORNE:
 6 A. I did understand that, yes.
 7 MR. SIMMONS:
 8 Q. Yes. And did you know that the panel, in
 9 addition to--in order to finish the job and
 10 get this done worked not just a regular weekly
 11 evening meeting but worked through a number of
 12 Saturdays in order to try to get this work
 13 done when it had to be completed?
 14 MR. OSBORNE:
 15 A. Yes. I mean, it had been explained, Mr.
 16 Simmons, that it was a very time consuming
 17 process and there was a lot of additional
 18 commitment by the two oncologists, two
 19 pathologists, the quality and support staff
 20 that were involved -
 21 MR. SIMMONS:
 22 Q. And you -
 23 MR. OSBORNE:
 24 A. - and surgeons.
 25 MR. SIMMONS:

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1 Q. You would have been aware, as well, that both
 2 those services were not staffed to their full
 3 compliment within Eastern Health?
 4 MR. OSBORNE:
 5 A. Yes.
 6 MR. SIMMONS:
 7 Q. So that those pathologists and oncologists
 8 there, they were carrying more than what might
 9 be expected to be a regular workload apart
 10 from any of this type of extra work?
 11 MR. OSBORNE:
 12 A. Yes. And it did create, without a doubt, on
 13 the 23rd of November, the argument of the
 14 expectation of the public's right to know
 15 those numbers against a reasonable expectation
 16 to treat patients, there's no question. I
 17 mean, that thought was a thought that I had
 18 and, you know, I understood that asking them
 19 to complete these numbers, which is why I
 20 didn't set a time line on it, I asked them to
 21 get these numbers and within a reasonable
 22 period of time.
 23 MR. SIMMONS:
 24 Q. So I just want to make sure we understand what
 25 the context of that discussion was.

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1 MR. OSBORNE:
 2 A. Yes.
 3 MR. SIMMONS:
 4 Q. And was it that the concern was that if the
 5 oncologists and physicians had to devote the
 6 same kind of time and effort to reviewing the
 7 cases of the patients who are now deceased as
 8 they had had to do for the living, that it
 9 risked making it difficult for them to carry
 10 out their regular workload?
 11 MR. OSBORNE:
 12 A. There's no doubt about it, that was a
 13 difficult--that was part of the reason, and I
 14 understood that, part of the reason for the
 15 heated debate.
 16 MR. SIMMONS:
 17 Q. Yes. And so could you appreciate then that
 18 the motivation behind that concern might have
 19 been a genuine desire to ensure that the care
 20 of patients then under those physicians' care
 21 wasn't compromised?
 22 MR. OSBORNE:
 23 A. I have no doubt, Mr. Simmons, that the--that
 24 there was no ill motivation in not having the
 25 numbers for the deceased prepared. I'm still

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1 upset about the November 23rd meeting and the
 2 subsequent release of information by Eastern
 3 Health, but I have no doubt whatsoever that
 4 the intentions of the oncologists and
 5 pathologists in wanting to treat the living
 6 patients was a genuine issue for them.
 7 MR. SIMMONS:
 8 Q. Okay.
 9 THE COMMISSIONER:
 10 Q. I'm sorry, but something crossed my mind while
 11 that line of questioning was being developed.
 12 I'm not quite sure who it was you were saying
 13 the time involved by the exercise of
 14 identifying and processing for the second time
 15 the deceased patients' tests, which people did
 16 you understand they were concerned about their
 17 time being utilized for that purpose as
 18 opposed to patients or then patients -
 19 MR. OSBORNE:
 20 A. Well, there was a tumor panel, Madam
 21 Commissioner, made up of, if memory serves me
 22 correctly, there were oncologists,
 23 pathologists, surgeons, there was -
 24 THE COMMISSIONER:
 25 Q. So the people whose time one was concerned

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1 about was the tumor panel?
 2 MR. OSBORNE:
 3 A. No, that--I have to be fair to those involved
 4 at that meeting. They were saying that they
 5 would rather spend their time treating living
 6 patients than to take their time in compiling
 7 numbers for deceased patients.
 8 THE COMMISSIONER:
 9 Q. Yes, I understood that. But what I'm trying
 10 to determine is who the "they" were. Is it
 11 Eastern Health, the organization saying "We
 12 would rather do this," is it Eastern Health
 13 saying "This aspect of our care is so
 14 stretched that we can't have these people
 15 doing that kind of work."? So what I'm trying
 16 to do is see whether or not it was the whole
 17 organization that was saying the total amount
 18 of time and effort involved in this is such or
 19 were they zeroing in on a particular portion
 20 of the operation to say that aspect of the
 21 operation is now so stretched to the max with
 22 patients who need their care currently that we
 23 just can't do that?
 24 MR. OSBORNE:
 25 A. Yes, Madam Commissioner, I'm not certain that

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1 discussion or that topic entered the
 2 discussion on November 23rd. I understood
 3 from asking questions and being briefed that
 4 there was considerable time put into trying to
 5 deal with patients on an ongoing basis, new
 6 patients, existing patients, in addition to
 7 dealing with the tumor panel trying to come up
 8 with the information. So I would have
 9 understood that meeting when they said that
 10 they wanted to spend their time on living
 11 patients, I believe I would have understood
 12 what they were referring to.
 13 THE COMMISSIONER:
 14 Q. And that would have been?
 15 MR. OSBORNE:
 16 A. That would have been that --
 17 THE COMMISSIONER:
 18 Q. Oncologists?
 19 MR. OSBORNE:
 20 A. Well, the oncologists and pathologists. There
 21 is a recruitment and retention issue with both
 22 of those specialties. There have been in this
 23 province, and, in fact, across the country for
 24 quite some time, and it's fair to say I
 25 understood that through the process of testing

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1 the samples for all of the living patients,
 2 that it did consume time for two groups of
 3 specialties that perhaps were stretched, in
 4 any event, and I understood that.
 5 MR. SIMMONS:
 6 Q. Mr. Osborne, you are aware now, are you, that
 7 after that there was, in fact, retesting done
 8 of the samples from all deceased patients?
 9 MR. OSBORNE:
 10 A. Yes, I am aware.
 11 MR. SIMMONS:
 12 Q. Thank you. I don't have any other questions
 13 for you.
 14 THE COMMISSIONER:
 15 Q. Thank you, Mr. Simmons. Mr. Browne?
 16 MR. BROWNE:
 17 Q. No questions, Commissioner. Thank you very
 18 much. Thank you, Mr. Osborne, for your
 19 testimony.
 20 MR. OSBORNE:
 21 A. Thank you, Mr. Browne.
 22 THE COMMISSIONER:
 23 Q. Ms. O'Dea?
 24 MS. O'DEA:
 25 Q. No questions, thank you.

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1 THE COMMISSIONER:
 2 Q. Ms. Newbury?
 3 MS. NEWBURY:
 4 Q. I have some questions.
 5 THE COMMISSIONER:
 6 Q. All right then.
 7 MR. TOM OSBORNE, EXAMINATION BY MS. JENNIFER NEWBURY
 8 MS. NEWBURY:
 9 Q. Good afternoon, Mr. Osborne.
 10 MR. OSBORNE:
 11 A. Good afternoon.
 12 MS. NEWBURY:
 13 Q. Jennifer Newbury, for the Canadian Cancer
 14 Society, Newfoundland and Labrador Division.
 15 I just have a few questions for you this
 16 afternoon. First of all, I want to refer you
 17 back to the briefing note at P-0172.
 18 MR. OSBORNE:
 19 A. The August 18th briefing note?
 20 MS. NEWBURY:
 21 Q. Yes, that's correct, this is the one that you
 22 didn't become familiar with until the Cabinet
 23 meeting of May, 2007.
 24 MR. OSBORNE:
 25 A. Yes.

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1 MS. NEWBURY:
 2 Q. And would it be fair to say that had you been
 3 aware of the content, the information in the
 4 briefing note in August/September of 2006,
 5 that you would not have been as upset in the
 6 Cabinet meeting in May, 2007, when you found
 7 out about the existence of this particular
 8 briefing note?
 9 MR. OSBORNE:
 10 A. Well, I was upset because this was information
 11 I was asking for and hadn't received it, so
 12 that would be fair.
 13 MS. NEWBURY:
 14 Q. Okay. So not only did you not receive a copy
 15 of the briefing note, you weren't even aware
 16 of the content of the information back in
 17 August/September/October, 2006, when you had
 18 been asking for the information?
 19 MR. OSBORNE:
 20 A. That is correct.
 21 MS. NEWBURY:
 22 Q. And I take it that you were surprised that you
 23 had not been made aware earlier of the
 24 information?
 25 MR. OSBORNE:

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1 A. Absolutely.
 2 MS. NEWBURY:
 3 Q. Okay. I would like to refer to Exhibit P-
 4 0181. That's an e-mail dated November 27th,
 5 2006, and I understand that you weren't ever
 6 specifically made aware or shown a copy of
 7 this particular e-mail?
 8 MR. OSBORNE:
 9 A. No, that is correct.
 10 MS. NEWBURY:
 11 Q. If you had learned back in late November,
 12 early December, 2006, that the proposed pre-
 13 briefing for the Canadian Cancer Society had
 14 been cancelled for the reasons that seemed to
 15 be apparent from this particular e-mail, in
 16 particular, the comments of Susan Bonnell,
 17 would that have caused you any concern?
 18 MR. OSBORNE:
 19 A. I would have been concerned. You know, as I
 20 said, I think Peter Dawe, who I've had a
 21 professional relationship as Minister, and he
 22 as an advocate, while we always didn't see eye
 23 to eye, I understood his role and I believed
 24 him to be a valuable advocate and stakeholder,
 25 so --

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1 MS. NEWBURY:
 2 Q. Okay.
 3 MR. OSBORNE:
 4 A. You know, I think it would have been alarming
 5 to me if I had known Eastern Health were
 6 shutting him out.
 7 MS. NEWBURY:
 8 Q. Okay. What is your view on an advocacy group
 9 such as the Canadian Cancer Society speaking
 10 to the media about concerns that it has about
 11 health issues such as ER/PR?
 12 MR. OSBORNE:
 13 A. I think it's a necessary role.
 14 MS. NEWBURY:
 15 Q. A necessary role?
 16 MR. OSBORNE:
 17 A. A necessary role, absolutely.
 18 MS. NEWBURY:
 19 Q. And do you think that it does contribute to or
 20 help to create a healthy public policy
 21 environment?
 22 MR. OSBORNE:
 23 A. It does.
 24 MS. NEWBURY:
 25 Q. Okay, thank you. Now I'm going to refer you

1 to another exhibit, P-0104, and this is the
 2 material -- I think there's a significant
 3 volume of material at that exhibit for
 4 preparation for the media briefing, and I
 5 would also -- you, I think, testified that you
 6 were generally familiar with the media
 7 briefing, scanned through it. You read, in
 8 particular, I believe, the news release?
 9 MR. OSBORNE:
 10 A. I read the news release, and with my belief
 11 that they were releasing the information they
 12 have presented to us, I very quickly scanned
 13 through questions and answers, and
 14 unfortunately I hadn't read them in detail,
 15 no.
 16 MS. NEWBURY:
 17 Q. Okay, I appreciate that. Actually I want to
 18 flip for a minute to another exhibit, P-0184.
 19 Now this is an e-mail from Susan Bonnell to a
 20 number of individuals, and I don't believe
 21 that you were copied with this or shown a copy
 22 of that e-mail at any time, is that correct?
 23 MR. OSBORNE:
 24 A. That's correct.
 25 MS. NEWBURY:

1 Q. Okay, now it does attach, if you go through
 2 it, some of the same material in preparation
 3 for the media briefing, but if you go down to
 4 the bottom -- actually, I have control now of
 5 the mouse. At the very bottom there of the
 6 first page of the e-mail, it says, "We have no
 7 way of predicting how many, if any, of those
 8 individuals would not have died had they been
 9 offered Tamoxifen after their initial
 10 treatment for cancer", and earlier it's
 11 talking about deceased patient samples and
 12 getting ready to respond to potential
 13 questions about that, but in particular in
 14 relation to that statement, "We have no way of
 15 predicting how many, if any, of those
 16 individuals would not have died had they been
 17 offered Tamoxifen after their initial
 18 treatment for cancer", were you aware of that
 19 position by Eastern Health or by Susan
 20 Bonnell?
 21 MR. OSBORNE:
 22 A. Well, in the November 23rd briefing, I became
 23 aware that the samples for the deceased
 24 patients had not been retested by Eastern
 25 Health. Some of them had not been sent for

1 review for Mount Sinai, and that was the
 2 contention for the most part at the meeting,
 3 the fact that I felt the general public had a
 4 right to know this information, and it wasn't
 5 going to be available, and just how the
 6 discussion in general had unfolded from there.
 7 It had deteriorated.
 8 MS. NEWBURY:
 9 Q. Okay. Now that you've raised that November
 10 23rd meeting, perhaps we could bring up that
 11 exhibit. I think it's P-0314, page 10. Now
 12 scrolling down to the bottom of that page,
 13 "Patients who are deceased, 176". Now it
 14 indicates that actually there are 101 who were
 15 retested and results received. So while all
 16 of the tests hadn't been done, there are, in
 17 fact, more than half at that time of the
 18 deceased patients' samples had been retested,
 19 but the later e-mail that I just showed you at
 20 Exhibit 0184 seems to indicate that we have no
 21 way of predicting how many even of those 101
 22 patients would have not died had they been
 23 offered Tamoxifen after their initial
 24 treatment for cancer. I'm not going to quiz
 25 you on whether that's valid or not. I just

1 want to know if that was expressed to you at
 2 any point in time?
 3 MR. OSBORNE:
 4 A. Well, those 101 were retested at Mount Sinai,
 5 but the -- the results were received by
 6 Eastern Health, but had not been reviewed by
 7 the tumor panel.
 8 MS. NEWBURY:
 9 Q. Okay.
 10 MR. OSBORNE:
 11 A. Therefore, there was no way of understanding
 12 whether these individuals may have benefited
 13 because they had not been reviewed.
 14 MS. NEWBURY:
 15 Q. Is that your understanding now or can you
 16 recall that actually being discussed?
 17 MR. OSBORNE:
 18 A. No, I understood that on November 23rd, yes.
 19 MS. NEWBURY:
 20 Q. You understood that at the time.
 21 MR. OSBORNE:
 22 A. Yes.
 23 MS. NEWBURY:
 24 Q. Okay. Did you understand then, to take it a
 25 step further, that if they had the time and

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1 resources to explore that a little bit
 2 further, that they might have been able to
 3 answer that question?
 4 MR. OSBORNE:
 5 A. I understood that that had not been done on
 6 November 23rd. I was shocked at the time
 7 because it was my understanding that all 939
 8 samples were going to be sent to Mount Sinai,
 9 received, and then retested, and that had not
 10 happened.
 11 MS. NEWBURY:
 12 Q. Okay. Now at Exhibit 0104, page two and
 13 three, again this is the media briefing
 14 preparation materials, I'll call it. At page
 15 two and three, we have a chronology of events.
 16 THE COMMISSIONER:
 17 Q. Which page is that, Ms. Newbury?
 18 MS. NEWBURY:
 19 Q. Two and three. Now there's a chronology of
 20 events there and looking now at the second
 21 page of that chronology -- the second page
 22 right at the very bottom, September, 2006, "A
 23 statistical review is initiated to examine the
 24 numbers and arrive at conclusions. This

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1 information will form the basis of the quality
 2 review. Analysis is currently continuing".
 3 Had this concept of a statistical review been
 4 discussed with you at any time while you were
 5 the Minister of Health?
 6 MR. OSBORNE:
 7 A. I understood that there was a internal review.
 8 I understood as well -- I mean, going back to
 9 the November 23rd meeting when we had met
 10 there, that that was part of the reason they
 11 couldn't completely identify whether it was a
 12 systems error because they were still
 13 reviewing internally.
 14 MS. NEWBURY:
 15 Q. Sure.
 16 MR. OSBORNE:
 17 A. And it was before the courts. So I was aware
 18 that the analysis was continuing.
 19 MS. NEWBURY:
 20 Q. Okay, and presumably did you take from that
 21 then that you would look at the numbers of
 22 samples that were tested to see how many had a
 23 change in results, how many didn't, that sort
 24 of exercise, out of the 939? This is talking
 25 here -- I'm trying to focus you on this

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1 particular comment, "A statistical review is
 2 initiated to examine the numbers and arrive at
 3 conclusions. This information will form the
 4 basis of the quality review". I'm just
 5 wondering if you can elaborate on what that --
 6 MR. OSBORNE:
 7 A. No, I think Eastern Health's position at the
 8 November 23rd meeting was that they weren't
 9 going to retest the additional samples.
 10 MS. NEWBURY:
 11 Q. Uh-hm.
 12 MR. OSBORNE:
 13 A. We had told them that it was our -- that we
 14 had wanted them to test the 101 that had been
 15 received, as well as the 73 that had not been
 16 sent and received. I mean, that was the
 17 direction we'd given. I don't think we had
 18 arrived at a consensus at that November 23rd
 19 meeting.
 20 MS. NEWBURY:
 21 Q. Okay, about the 101 deceased patient samples,
 22 and 76 that --
 23 MR. OSBORNE:
 24 A. And the 73.
 25 MS. NEWBURY:

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1 Q. 73, sorry, that weren't done. So would you
 2 have expected then that this statistical
 3 review that's referred to in September of
 4 2006, keeping in mind that this document or
 5 these materials were distributed in December,
 6 2006, which would have been after your
 7 November 23rd, 2006 meeting, is talking about
 8 a statistical review, it says, "Analysis is
 9 currently continuing", and I'm trying to
 10 reconcile that with the notion that not all of
 11 the samples, in particular, of a certain
 12 number of the deceased patients were not
 13 tested?
 14 MR. OSBORNE:
 15 A. I think in -- maybe we're both getting
 16 something mixed up, but I think that if you're
 17 referring to the other samples, I think in
 18 Eastern Health's own information, they say
 19 that the samples for the deceased right there
 20 will not be done unless it's requested by a
 21 patient.
 22 MS. NEWBURY:
 23 Q. Okay. If you're doing a review for quality
 24 purposes, would you not expect that samples
 25 for deceased patients would have to be

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1 included?

2 MR. OSBORNE:

3 A. I would certainly expect that. You know, in

4 order to arrive at full results and to have a

5 full understanding, I would expect that work

6 to be done, yes.

7 MS. NEWBURY:

8 Q. So if this statistical review is talking about

9 the numbers, in your view as of this date,

10 December, 2006, when these materials are being

11 distributed, there is some, I guess, weakness

12 in that statistical review if it's not going

13 to incorporate the deceased patient samples

14 because they're not going to be retested as of

15 that date, I understand?

16 MR. OSBORNE:

17 A. Well, that's correct, yeah. The position that

18 Eastern Health had at the meeting was that

19 they would not review the results for the

20 deceased unless requested.

21 MS. NEWBURY:

22 Q. Now at page four of the same exhibit, P-0104,

23 there's a news release and that was shown to

24 your earlier this morning, and I think this is

25 the one that you read in some detail.

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1 Paragraph five, there's a quote there

2 attributed to Dr. Howell, "Our clinical team

3 members have communicated individually with

4 all patients impacted by this review. We have

5 had many conversations with the patients

6 involved, and we are always willing to discuss

7 the details of a patient's care with them".

8 First of all, do you understand who the

9 members of the clinical team are to which Dr.

10 Howell refers?

11 MR. OSBORNE:

12 A. No. I mean -- the individuals involved, no.

13 MS. NEWBURY:

14 Q. Even the types of individuals involved,

15 whether they were physicians or members of the

16 quality review?

17 MR. OSBORNE:

18 A. The tumor panel, I understood -- if that's

19 what you're referring to --

20 MS. NEWBURY:

21 Q. I guess I'm trying to understand what you took

22 from this or if you had any sense as to what

23 that would refer to? I actually don't know

24 the answer to that, so I'm trying to find out

25 if you do.

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1 MR. OSBORNE:

2 A. Yeah, I'm not sure if I understand the answer

3 either.

4 MS. NEWBURY:

5 Q. Okay. Do you know who the patients are

6 impacted by this review?

7 MR. OSBORNE:

8 A. They would be the patients who had a change in

9 treatment.

10 MS. NEWBURY:

11 Q. Change in treatment. So it would not --

12 MR. OSBORNE:

13 A. I'm sorry, a change in result.

14 MS. NEWBURY:

15 Q. A change in result, okay. So it would not

16 include all those retested, but it would be

17 more than just those who had a change in

18 treatment?

19 MR. OSBORNE:

20 A. No, I'm sorry, the -- it's my understanding

21 that all patients were contacted when the

22 results came back. I apologize.

23 MS. NEWBURY:

24 Q. Okay.

25 MR. OSBORNE:

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1 A. Yes, all patients had been contacted who were

2 impacted by the review, which would have been

3 everybody, yes.

4 MS. NEWBURY:

5 Q. Okay, and it's your understanding then that

6 the clinical team members have done this, but

7 you're not sure who actually was comprised of

8 --

9 MR. OSBORNE:

10 A. Who had made the contact? I'm aware that

11 contact was made either directly with patients

12 or the patients' physician. Who did the

13 contacting, I can't say.

14 MS. NEWBURY:

15 Q. Okay, thank you.

16 THE COMMISSIONER:

17 Q. Now I just want to make sure I understand this

18 because we've kind of moved back and forth a

19 little. In the end, are you saying that it

20 was your understanding that all persons who

21 had their samples retested, leaving aside for

22 the moment what is to happen in respect of

23 deceased patients, would have been contacted

24 by somebody from Eastern Health?

25 MR. OSBORNE:

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1 A. That would be my understanding, yes.
 2 THE COMMISSIONER:
 3 Q. Whether their results changed or not?
 4 MR. OSBORNE:
 5 A. That's correct.
 6 THE COMMISSIONER:
 7 Q. Thank you.
 8 MS. NEWBURY:
 9 Q. I'm just going to bring you back now to the
 10 chronology of events, and in particular
 11 February to May, 2006. I think it's written
 12 down as a block of time there, so down at the
 13 bottom of the page that's showing on the
 14 screen, February to May, 2006, "Concentrated
 15 effort of the Tumor Board to review results,
 16 write recommendations, and conduct
 17 disclosures. A six month period [May to
 18 October] follows to ensure that the
 19 organization has completed all the disclosures
 20 possible and that every patient has had every
 21 opportunity to contact their physicians". Do
 22 you know why, first of all, six months were
 23 needed to ensure that the organization has
 24 completed all of the disclosures possible?
 25 MR. OSBORNE:

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1 A. From what I understand, it was a time
 2 consuming process, as we had outlined here, to
 3 review each of the files and to contact
 4 patients and give the patients an opportunity
 5 to either meet with or discuss with their
 6 physicians or Eastern Health the recommended
 7 change in treatment.
 8 MS. NEWBURY:
 9 Q. Okay. Now as I understand it from this, the
 10 actual disclosures themselves, as I read this
 11 particular paragraph, would have primarily
 12 occurred between February and May, 2006?
 13 MR. OSBORNE:
 14 A. No, no, that would not be my understanding.
 15 My understanding is that disclosure to
 16 individuals, in May they would have received
 17 the results back from Mount Sinai, all of the
 18 results by May, if memory serves me correctly,
 19 and then from there they would have done
 20 reviews on -- the tumor panel would have done
 21 reviews on the results and contacted
 22 individual patients as those reviews were
 23 completed.
 24 MS. NEWBURY:
 25 Q. Okay. Now where did you get that

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1 understanding?
 2 MR. OSBORNE:
 3 A. Through my own briefing notes.
 4 MS. NEWBURY:
 5 Q. Okay.
 6 MR. OSBORNE:
 7 A. I have to say, I mean, some of the chronology
 8 here doesn't match up exactly with my briefing
 9 notes and what I've been told.
 10 MS. NEWBURY:
 11 Q. So you think that this may not be quite right
 12 because I think if you read it grammatically,
 13 it says that the disclosures would have
 14 occurred, as I read it, between February and
 15 May, 2006, and that the following six month
 16 period, May to October, it would be used to
 17 ensure that the organization has completed all
 18 the disclosures possible. Perhaps there might
 19 be some going on in that period, but it sounds
 20 like certainly the disclosures were primarily
 21 done between February and May, 2006.
 22 MR. OSBORNE:
 23 A. Well, according to what I've been supplied
 24 through briefing notes and verbal briefings,
 25 they had received -- finally received all of

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1 the results back from Mount Sinai around about
 2 May and had worked to continue contacting
 3 patients.
 4 MS. NEWBURY:
 5 Q. Now that paragraph also indicates that this
 6 would give every patient every opportunity to
 7 contact their physicians. That almost makes
 8 it sound like the onus was on the patients to
 9 contact their physicians, but is that
 10 consistent with your understanding how the
 11 disclosures took place?
 12 MR. OSBORNE:
 13 A. My understanding was that either Eastern
 14 Health or the physicians were contacted --
 15 Eastern Health would either contact directly
 16 or have the physicians contact the patients,
 17 and they did want to allow for time for the
 18 patients to discuss treatment options with
 19 their physicians.
 20 MS. NEWBURY:
 21 Q. Thank you very much, Mr. Osborne. Those are
 22 all my questions.
 23 MR. OSBORNE:
 24 A. You're welcome.
 25 THE COMMISSIONER:

1 Q. It's getting towards the end of the day, and I
 2 don't imagine -- looking at Mr. Pritchard, I
 3 don't imagine we're going to finish today, are
 4 we, Mr. Pritchard?
 5 MR. PRITCHARD:
 6 Q. No, I don't think so.
 7 THE COMMISSIONER:
 8 Q. All right, so why don't--before we do break,
 9 can I have some indication from counsel who
 10 are left as to whether or not you need some
 11 time for cross-examination. Ms. Taylor?
 12 MS. TAYLOR:
 13 Q. I just have a couple of questions.
 14 MR. PIKE:
 15 Q. I don't anticipate (phonetic) any questions
 16 for Mr. Osborne, (unintelligible) 15 or 20
 17 minutes.
 18 THE COMMISSIONER:
 19 Q. Okay and then whatever is arising, so we
 20 should be able to complete with this witness
 21 relatively early in the morning and then get
 22 on to the next one. Sorry, Mr. Osborne, but I
 23 do believe we're going to need you for a
 24 little while longer, so we'd ask you to return
 25 in the morning. Thank you.

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

1 MR. OSBORNE:
 2 A. No problem, Madam Commissioner.
 3 THE COMMISSIONER:
 4 Q. 9:30. Thank you.

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