

COMMISSION OF INQUIRY
ON HORMONE RECEPTOR TESTING

BEFORE THE HONOURABLE JUSTICE CAMERON - COMMISSIONER

MAY 2, 2008

Appearances:

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1 THE COMMISSIONER:

2 Q. Good morning. Please be seated.

3 MR. JOHN ABBOTT, EXAMINATION-IN-CHIEF BY BERNARD COFFEY,

4 Q.C. (CONTINUED)

5 COFFEY, Q.C.:

6 Q. Thank you, Commissioner. Good morning, Mr.

7 Abbott. Let’s see.

8 MR. ABBOTT:

9 A. Mr. Coffey, if I may, just before you start?

10 COFFEY, Q.C.:

11 Q. Sure.

12 MR. ABBOTT:

13 A. You asked me yesterday about the board chair

14 previous to my appointment.

15 COFFEY, Q.C.:

16 Q. Yes.

17 MR. ABBOTT:

18 A. And it was Mr. Ed Stratton was--his name

19 escaped me yesterday. I do apologize to Mr.

20 Stratton.

21 COFFEY, Q.C.:

22 Q. I do appreciate that. And as you indicated,

23 you could picture him at the time, you just

24 couldn’t bring his name forward. If we could

25 bring up, please, P-0075? And this is this

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MR. JOHN ABBOTT - RESUMES THE STAND

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1 briefing note which Commission has looked at a
2 number of times, the July 20th, 2005 one.
3 When we look at this, at the bottom of the
4 page, the reference there under May 17th, 2005
5 is that, in the third line, the sentence
6 reads, "It was decided to retest all negative
7 results from 2002 to determine if they were
8 isolated cases or symptomatic of a bigger
9 issue." And then there are certain results
10 noted there. I’m just going to go to the next
11 page. Under the heading, "July 14th, 2005"
12 the second entry, "The decision was made that
13 all patients who were ER and PR negative from
14 ’97 to 2004 would be retested, beginning with
15 the 2002 patients." And the entry before
16 that, "June 13th, 2005 Dr. Cook wrote to all
17 laboratory directors in the province to return
18 all negative ER and PR specimens for the year
19 2002 for retesting on the new more sensitive
20 Ventana system." Now, on July 21st, 2005,
21 during that briefing by Eastern Health’s
22 officials, Mr. Abbott, was the message at the
23 time that, look, we initially are looking at
24 2002 as a problem?

25 MR. ABBOTT:

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1 A. I don't remember the distinction in terms of,
 2 you know, that time frame, 2002 back to, say,
 3 1997 other than that they were planning to
 4 retest back, you know, for several numbers of
 5 years. But, you know, the specific date,
 6 obviously it came up, but I don't recall, you
 7 know, in terms of the specific time frames
 8 that, other than what's here, obviously, in
 9 the note itself.
 10 COFFEY, Q.C.:
 11 Q. Yeah. And I appreciate you're -
 12 MR. ABBOTT:
 13 A. And the distinction between 2002 or 1997, as
 14 it were.
 15 COFFEY, Q.C.:
 16 Q. Because and I appreciate, you know, you're
 17 sitting in a meeting and you've got a piece of
 18 paper in front of you, information is being
 19 verbalized and kind of washing over you, as it
 20 were, and you're listening carefully and
 21 trying to make sense of it. But certainly,
 22 when you left that meeting, went away to think
 23 about it, you would have read this briefing
 24 note? I mean, it's only three pages long.
 25 MR. ABBOTT:

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1 A. Yes, I -
 2 COFFEY, Q.C.:
 3 Q. I'm sure you read it?
 4 MR. ABBOTT:
 5 A. Yes.
 6 COFFEY, Q.C.:
 7 Q. And when you read this briefing note, and
 8 again, somebody with your experience, I'm
 9 going to suggest, so, okay, well, where is the
 10 real problem here, at least, where do they
 11 first focus on. And it's apparent when one
 12 reads this that the first focus was on 2002,
 13 as you read it?
 14 MR. ABBOTT:
 15 A. Yes.
 16 COFFEY, Q.C.:
 17 Q. And you had been chair of the board in 2002,
 18 hadn't you?
 19 MR. ABBOTT:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. Coming away from that meeting, and again,
 23 having done so and then read the briefing
 24 note, you were aware that the problem was
 25 thought to extend, well, across the entire

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1 province, potentially? Would that be correct
 2 in the sense of the results -
 3 MR. ABBOTT:
 4 A. Well, knowing that the testing was done for
 5 the province in the St. John's lab, yes. But
 6 the focus was on what was happening in the lab
 7 here in St. John's.
 8 COFFEY, Q.C.:
 9 Q. The fact that people who were potentially
 10 affected by this were from all across the
 11 province, you were aware of that?
 12 MR. ABBOTT:
 13 A. Yes.
 14 COFFEY, Q.C.:
 15 Q. You were also aware, though the actual numbers
 16 are not spelled out here, that this involved
 17 hundreds of patients, potentially?
 18 MR. ABBOTT:
 19 A. Yes.
 20 COFFEY, Q.C.:
 21 Q. If we could, please, if you bring up, please,
 22 Exhibit P-0800? And now, sir, just looking at
 23 the wording, because you did tell us your e-
 24 mail was sent 1:57 p.m. on July 19th to Mr.
 25 Tilley, copy to Ms. Chaplin, that you had

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1 typed this out yourself. The actual wording
 2 you used is, "George, we would like for you
 3 and the appropriate staff to brief the
 4 minister on Thursday at 9 a.m. respecting the
 5 testing issue affecting breast cancer patients
 6 at Eastern Health." And you end with, "Thank
 7 you. Please call if any questions." Now, Mr.
 8 Abbott, yesterday you told the Commissioner
 9 that it wasn't your briefing, it was the
 10 minister's briefing and it was being done at
 11 Mr. Tilley's behest. Do you recall that?
 12 MR. ABBOTT:
 13 A. Yes.
 14 COFFEY, Q.C.:
 15 Q. Now, the language used here that you typed out
 16 says, "We would like for you and the
 17 appropriate staff to brief the minister. It
 18 would be appreciated that you forward a
 19 briefing note to me on Wednesday." The me in
 20 this context is you. "Prior to the briefing.
 21 Please call if any questions." The tone of
 22 the language suggests, doesn't it, that this
 23 was you giving a direction to Mr. Tilley, show
 24 up at a particular time and before you do so
 25 I'd like a particular document. That's what

Page 9

1 the tone of this is, isn't it?

2 MR. ABBOTT:

3 A. Not, no, definitely not.

4 COFFEY, Q.C.:

5 Q. Is that what the tone of language is, whether

6 you meant it or not?

7 MR. ABBOTT:

8 A. No.

9 COFFEY, Q.C.:

10 Q. It's not?

11 MR. ABBOTT:

12 A. No.

13 COFFEY, Q.C.:

14 Q. "So that we would like for you" the "we" in

15 this context is who?

16 MR. ABBOTT:

17 A. That's, I view that now as you're raising in

18 terms of "we" as a collective. The language

19 could have easily read, "I would like for

20 you," or "I want you" or "I am following up on

21 our conversation," but I don't read anything

22 more into that than we or I am now

23 facilitating that request to have the

24 briefing.

25 COFFEY, Q.C.:

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1 Q. Sir, on that point, were you, in your capacity

2 as deputy minister, you know, you, to use the

3 Latin word, "qua minister" or deputy minister,

4 you as deputy minister, were you ever actually

5 briefed on ER/PR?

6 MR. ABBOTT:

7 A. In what sense?

8 COFFEY, Q.C.:

9 Q. Well, you used the word yesterday, you said,

10 "Look, the July 21st, I wasn't being briefed."

11 MR. ABBOTT:

12 A. The -

13 COFFEY, Q.C.:

14 Q. Is what you told the Commissioner yesterday.

15 So I'm wondering did you ever get briefed?

16 MR. ABBOTT:

17 A. No. What information I have on ER/PR is the

18 same information that was provided to the

19 minister, either through verbal briefings or

20 the briefing notes and materials that were

21 either provided by Eastern Health or developed

22 in our department for the minister.

23 COFFEY, Q.C.:

24 Q. And in terms of that, you have the same

25 information the minister does, minister of the

Page 11

1 day?

2 MR. ABBOTT:

3 A. Yes.

4 COFFEY, Q.C.:

5 Q. Whomever he was. So were you ever briefed in

6 your capacity as deputy minister? I

7 appreciate that the minister may have been

8 briefed, as well, but were you ever briefed?

9 Because you made the distinction yesterday.

10 MR. ABBOTT:

11 A. Well, the answer -

12 COFFEY, Q.C.:

13 Q. - you told the Commissioner that -

14 MR. ABBOTT:

15 A. I understand your question. The answer then

16 is no.

17 COFFEY, Q.C.:

18 Q. And, of course, the one exception to that,

19 presumably, would be the August 18th briefing

20 note which we'll get to, of 2006. At least a

21 version of it passed through your hands and

22 apparently it never made it to Mr. Osborne.

23 MR. ABBOTT:

24 A. That is correct, yes.

25 COFFEY, Q.C.:

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1 Q. Now, sir, if we could bring up, please, let's

2 see, Exhibit P0312, page 5? Now this is this

3 e-mail of 2:37 p.m. from Ms. Chaplin to Mr.

4 Cake, copied to yourself, 2:37 p.m. on July

5 19th. The second sentence she says, "We have

6 arranged a briefing with the health authority

7 for the latter part of this week and will be

8 in a better position to forward relevant

9 briefing materials at that time." Now, does

10 that suggest to you that relevant briefing

11 materials would be forwarded to the Cabinet

12 Secretariat?

13 MR. ABBOTT:

14 A. I would say yes, based on, you know, as that

15 language is presented there.

16 COFFEY, Q.C.:

17 Q. And do you know whether or not in July or

18 August or September of 2005 the Department of

19 Health and Community Services ever prepared

20 its own briefing note for the Cabinet

21 Secretariat?

22 MR. ABBOTT:

23 A. I don't think we did.

24 COFFEY, Q.C.:

25 Q. Can you tell the Commissioner why that never

Page 13

1 happened?

2 MR. ABBOTT:

3 A. Well, in terms of the issue, it was, as I

4 said, the briefing took place, the minister

5 was apprised, there was a course of action

6 taking place, it was within the domain of the

7 minister, Eastern Health, and for this period

8 that was as far as that issue needed to go.

9 COFFEY, Q.C.:

10 Q. Who made that decision?

11 MR. ABBOTT:

12 A. That, I don't know if, in fact, it was, if I

13 can put it, an active decision, but if there

14 was anybody to take responsibility for it

15 would be me from within government. And

16 obviously the minister, whether or not he felt

17 he needed to advise, you know, and I know that

18 you went through that with him, I believe, the

19 premier or his colleagues or cabinet as a

20 whole, obviously there wasn't a feeling that

21 that needed to happen at that juncture.

22 COFFEY, Q.C.:

23 Q. Well, whatever Mr. Ottenheimer, you know -

24 MR. ABBOTT:

25 A. Yes.

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1 COFFEY, Q.C.:

2 Q. - told us or felt about it, I'm asking you as

3 the department civil service head, you're

4 telling the Commissioner then you made the

5 decision, on behalf of your department, for

6 those, you and those below you, that the

7 matter would not, the subject matter would not

8 be communicated to the Cabinet Secretariat or

9 elsewhere within government?

10 MR. ABBOTT:

11 A. Yes. And if I may, and don't want to be--you

12 know, careful in this. There was no

13 direction, say, and do not send it in an

14 active way. It was not required, so we did

15 not do it.

16 COFFEY, Q.C.:

17 Q. And this was so despite that fact that on the

18 afternoon of July 19th or whenever you opened

19 that e-mail, that 2:37 p.m. e-mail of Ms.

20 Chaplin's, despite the fact that you

21 understood that she had told Gary Cake that

22 "we" and in this context presumably we is the

23 Department of Health and Community Services,

24 will be in a better position to forward

25 relevant briefing materials at that time,

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1 meaning latter part of this week. So you knew

2 that she had in effect promised Cabinet

3 Secretariat that that was, we'll send

4 something along?

5 MR. ABBOTT:

6 A. Well, other than, you know, this e-mail, yes.

7 Now, but that was Carolyn Chaplin's view or

8 perspective and approach, it wasn't mine. And

9 -

10 COFFEY, Q.C.:

11 Q. Did you ever disabuse her of that notion?

12 MR. ABBOTT:

13 A. No, no. And as I said yesterday, not uncommon

14 for her or anybody in that position to give

15 heads up. But as things, as more information

16 became available, the issue was still in

17 place, we didn't--Eastern Health couldn't tell

18 the minister or satisfy him that, in fact,

19 there was a specific course of action taking

20 place. Until he had that and we were able to

21 advise that, in fact, something was imminent,

22 there was no reason and nor there should that

23 have gone any further, at least. And that's

24 how I would view that issue and many others.

25 COFFEY, Q.C.:

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1 Q. So you consciously thought about it at the

2 time, I'm not sending this any further?

3 MR. ABBOTT:

4 A. I mean, you know -

5 COFFEY, Q.C.:

6 Q. Mr. Abbott, you know, you're senior -

7 MR. ABBOTT:

8 A. Mr. Coffey, I am telling you that we did not

9 take any further action after the briefing to

10 advise anybody outside the department. The

11 minister had asked Eastern Health for very

12 specific information to help him decide, you

13 know, what this issue is about and how it's

14 going to be communicated. I -

15 COFFEY, Q.C.:

16 Q. So you go to -

17 MR. ABBOTT:

18 A. If I was to speculate from that, if he had

19 more information and that it was imminent that

20 there was going to be either disclosure or

21 public reporting, that, in fact, we would have

22 gone full steam ahead to advise the Cabinet

23 Secretariat in further detail and--but that

24 did not happen.

25 COFFEY, Q.C.:

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1 Q. Just so the Commissioner is clear on this,
 2 okay, so you are the deputy minister of
 3 health. And while I'm on that notion or
 4 topic, you had gone looking for the job as
 5 deputy minister of health in the sense of
 6 asked to be considered for it?
 7 MR. ABBOTT:
 8 A. Well, okay, I won't argue the point.
 9 COFFEY, Q.C.:
 10 Q. Well, would you agree? You had, by raising it
 11 with Robert Thompson in the context you did,
 12 you told us about that yesterday?
 13 MR. ABBOTT:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. That you went looking for the position?
 17 MR. ABBOTT:
 18 A. That's not, I did not say that.
 19 COFFEY, Q.C.:
 20 Q. Okay. Well, what--how would you characterize
 21 what you did?
 22 MR. ABBOTT:
 23 A. I in a conversation with Mr. Thompson.
 24 COFFEY, Q.C.:
 25 Q. Yes.

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1 MR. ABBOTT:
 2 A. I asked how the recruitment was going, he
 3 said, still recruiting. I said, "If you wish
 4 to speak to me about the position," and that
 5 wasn't, "I would be happy to talk to you about
 6 it." I wasn't asking anything more than or
 7 suggesting anything more than that. Now, you
 8 can characterize it as you wish. That's the
 9 basis of the conversation.
 10 COFFEY, Q.C.:
 11 Q. So you conveyed to him the notion or idea that
 12 I, John Abbott, might be interested in being
 13 deputy minister?
 14 MR. ABBOTT:
 15 A. That would be closer to--than your earlier
 16 statement.
 17 COFFEY, Q.C.:
 18 Q. Okay. So, and then this would have been in
 19 the fall of 2004, would I be correct in that?
 20 MR. ABBOTT:
 21 A. Yes.
 22 COFFEY, Q.C.:
 23 Q. And at that point in time was it known, did
 24 you know that there was a plan to reorganize
 25 the fourteen health authorities into four?

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1 MR. ABBOTT:
 2 A. Yes. I was board chair.
 3 COFFEY, Q.C.:
 4 Q. Okay. And therefore then when you had your
 5 subsequent discussion with Mr. Thompson and
 6 you were offered the position, you knew, in
 7 effect, that I'm taking on the role as deputy
 8 minister while, and during my tenure this
 9 process is going to occur?
 10 MR. ABBOTT:
 11 A. Absolutely.
 12 COFFEY, Q.C.:
 13 Q. You knew what you were--in terms of that, you
 14 knew what you were getting yourself into?
 15 MR. ABBOTT:
 16 A. Yes. That was the known piece.
 17 COFFEY, Q.C.:
 18 Q. Okay. In terms of that, as that unfolded, Mr.
 19 Tilley was, I gather, hired or retained to be
 20 CEO of Eastern Health in early 2005?
 21 MR. ABBOTT:
 22 A. Yes. In terms of when I joined the department
 23 in December, 2004 the interview--the board
 24 chairs for the four authorities had been
 25 appointed and the recruitment for the four

Page 20

1 CEOs had been moreorless complete in terms of
 2 interviews. They were doing the reports from
 3 the interviews to be provided to the Minister.
 4 COFFEY, Q.C.:
 5 Q. Were you ever asked to provide any input into
 6 the choices of the CEOs?
 7 MR. ABBOTT:
 8 A. Not in terms of the interviews and the
 9 recruitment, because that had--the interviews
 10 had been completed. Reports had been
 11 developed based on the interviews of the
 12 candidates. Those reports then were sent to
 13 the minister. My role, from there, was to put
 14 that in some language for the minister, in
 15 terms of identifying who the candidates were
 16 and provide that information to the clerk of
 17 the Executive Council.
 18 COFFEY, Q.C.:
 19 Q. So you did have input then, in the sense of
 20 organizing the information that was finally
 21 going to be used to make the decisions?
 22 MR. ABBOTT:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. And did you recommend that Mr. Tilley be

Page 21

1 chosen, rank him that way?
 2 MR. ABBOTT:
 3 A. Well, in terms of how the information came
 4 forward, he was identified, I guess, as the
 5 top candidate.
 6 COFFEY, Q.C.:
 7 Q. Was he identified--was that done before that
 8 ever reached your hands or was that -
 9 MR. ABBOTT:
 10 A. Yes.
 11 COFFEY, Q.C.:
 12 Q. Okay. So you just simply--somebody else had
 13 ranked him?
 14 MR. ABBOTT:
 15 A. There was a committee, which I was not party
 16 to, that had done that.
 17 COFFEY, Q.C.:
 18 Q. Okay. But were you asked for any input into
 19 the choice as to who was CEO, your views on it
 20 in any way?
 21 MR. ABBOTT:
 22 A. I guess it's hard to answer that in any
 23 effective way here for me right now, but
 24 looking at it, you know, if I was asked the
 25 question "John, what--do you think George

Page 22

1 should get the job?" or anything like that, it
 2 would have been asked of the clerk of the
 3 Council, because he was to advise the Premier
 4 as to, you know, the final selection. In
 5 fact, it was the Premier that made the final--
 6 indicated his, shall we say, acceptance or not
 7 of the recommended or preferred candidate.
 8 COFFEY, Q.C.:
 9 Q. So were you asked?
 10 MR. ABBOTT:
 11 A. I really don't recall one way or the other.
 12 Now, if you're--but there was no issue, I
 13 guess, around his candidacy. I think
 14 everybody would have accepted, that were
 15 involved, that he would have come rated the
 16 preferred candidate and that that, in fact, he
 17 would be so appointed. There was no, shall we
 18 say, no red flags at all in terms of that.
 19 The issue for me really was focused on--the
 20 next step in the recruitment obviously was the
 21 compensation, contracts, those kinds of
 22 things.
 23 COFFEY, Q.C.:
 24 Q. So that if you had any objections to his being
 25 named CEO, I take it the people involved would

Page 23

1 have expected you to voice that?
 2 MR. ABBOTT:
 3 A. Absolutely.
 4 COFFEY, Q.C.:
 5 Q. And you didn't voice no such objection?
 6 MR. ABBOTT:
 7 A. I had no basis to raise an objection.
 8 THE COMMISSIONER:
 9 Q. Mr. Abbott, can we go back to something you
 10 said a little earlier? I just want to make
 11 sure that I'm being crystal clear on the point
 12 you were making, and that is the matter of the
 13 e-mail which had been sent by Carolyn Chaplin
 14 to Mr. Gary Cake and then copied to you and
 15 then subsequent to the meeting, the decision
 16 not to send it any further within the
 17 government organization.
 18 MR. ABBOTT:
 19 A. Yes.
 20 THE COMMISSIONER:
 21 Q. I think I have two questions. One is whether
 22 or not the decision to send information to
 23 Cake was Ms. Chaplin's to make, should she
 24 wish to do so. Would she do that, in your
 25 organization, with the sort of separate

Page 24

1 arrangements regarding communication, could
 2 she have felt that she was in a position to
 3 send that information on to Mr. Cake without
 4 running it through you?
 5 MR. ABBOTT:
 6 A. Yes, that would be correct.
 7 THE COMMISSIONER:
 8 Q. That would be within her purview in her
 9 position -
 10 MR. ABBOTT:
 11 A. Yes.
 12 THE COMMISSIONER:
 13 Q. - had she independently decided this
 14 information should go further?
 15 MR. ABBOTT:
 16 A. Yes, and that would be not only there to the
 17 minister, others throughout government, yes.
 18 THE COMMISSIONER:
 19 Q. Okay. So there are two processes for it to go
 20 further to Cabinet secretariat or the
 21 Premier's office?
 22 MR. ABBOTT:
 23 A. Yes.
 24 THE COMMISSIONER:
 25 Q. One would be an independent assessment by Ms.

Page 25

1 Chaplin on the communication side?

2 MR. ABBOTT:

3 A. Yes.

4 THE COMMISSIONER:

5 Q. The other would be an assessment by either

6 your minister or you, as deputy minister, to

7 the effect that this was the kind of issue

8 that had to go further up the chain, as it

9 were, and there should be notification of

10 Cabinet secretariat or the minister? Is that

11 right?

12 MR. ABBOTT:

13 A. Yes, and that would be--yes, ma'am, and that

14 would be either for, again, for information

15 sort of from a heads up point of view, because

16 the Premier would wanted to know and should

17 know about that, or that, in fact, you know,

18 we need to engage the Cabinet secretariat in

19 some kind of response or initiative, what have

20 you. In this case, as I indicated, we were

21 nowhere near that, in my view, at that early

22 stage.

23 THE COMMISSIONER:

24 Q. Now the second thing I heard, I thought I

25 heard you say to Mr. Coffey, and I once again

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1 want to make sure that I understood clearly

2 the point you were making. You seemed to be

3 saying that it was not so much a conscious

4 decision to not send the information further

5 on your part, but rather a case of the

6 situation not yet, in your view, meeting the

7 criteria which you would have for sending it

8 on?

9 MR. ABBOTT:

10 A. Exactly.

11 THE COMMISSIONER:

12 Q. So it's not sort of halt something that's in

13 the process. It's we're not ready to go?

14 MR. ABBOTT:

15 A. Yes.

16 THE COMMISSIONER:

17 Q. All right, thank you. Mr. Coffey.

18 COFFEY, Q.C.:

19 Q. Thank you, Commissioner. What criteria are

20 those?

21 MR. ABBOTT:

22 A. Well, I think we referred to them yesterday.

23 It was in my opinion, based on the information

24 we had or didn't have, what was required and

25 again, this is one of many, many issues that

Page 27

1 we would be dealing with in the department at

2 any point in time, and I'm very judicious

3 around obviously engaging the Cabinet

4 secretariat or the Premier's office on issues.

5 I know their agendas are quite full, but this

6 was, you know, a very specific operational

7 issue affecting, you know, the lab and

8 individual patients and right now, that's--we

9 need to understand what this was before we go

10 anywhere ringing any bells, what have you.

11 That's my style. That's my approach, and so

12 that's, you know, part of my job is to figure

13 that out.

14 COFFEY, Q.C.:

15 Q. Okay, so before we go ringing any bells, okay.

16 Mr. Abbott, you said to the Commissioner just

17 then the Premier would want to know and should

18 know. I'm going to ask you what you

19 understood the Premier would want to know and

20 should want--or should know what?

21 MR. ABBOTT:

22 A. Well, if it's going to be a public issue, you

23 know, picked up in the media, that he, as one

24 indicator, that his office would want to know

25 that. He's not a--you know, that's his style.

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1 He doesn't want to be caught off guard. We

2 knew that, and the ministers are of the same

3 view, and so that's fair enough. Secondly, if

4 it's--so that's, you know, potential media

5 interest in an issue. The other is, you know,

6 as either a very significant issue

7 irrespective of media interest, shall we say,

8 that he should be aware of in the public

9 interest, what have you, then yes, he would be

10 apprised of that.

11 COFFEY, Q.C.:

12 Q. And in terms of that -

13 MR. ABBOTT:

14 A. Or his office anyway.

15 COFFEY, Q.C.:

16 Q. So in terms of on the latter point, first of

17 all. The fact that there was retesting

18 contemplated for hundreds of patients across

19 this province, spanning seven to eight years,

20 wouldn't you characterize that or agree that

21 that probably falls into the latter category

22 of something that Mr. Williams would want to

23 know?

24 MR. ABBOTT:

25 A. And I would say, yes. However, I, in my role

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1 there at that week, did not have anything more
 2 than just as you put it, and you know, the
 3 obvious question to be asked of me if I was to
 4 send something over like that, "well, what is
 5 this about?" and I would say "well, Premier"
 6 or other, whoever was to--whoever I was
 7 speaking with at the time, "well, we got a
 8 briefing arranged. As soon as we have that
 9 information, and we think it's relevant,
 10 important and something that we feel that you
 11 would want to know, we will get it to you."
 12 That again, you know, that's generally how it
 13 could have happened or would have happened.
 14 It did not happen at that point, as I said.
 15 COFFEY, Q.C.:
 16 Q. Now in terms of P-0075, you know, by the end
 17 of that Thursday, on July 21, you certainly
 18 did have a written briefing note?
 19 MR. ABBOTT:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. If there was sufficient information for this
 23 to be reduced to writing to be delivered to
 24 yourself and Mr. Ottenheimer, it would have
 25 been, you would agree, wouldn't you, a simple

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1 matter of simply photocopying it and
 2 delivering it to the Cabinet secretariat,
 3 these three pieces of paper, and that would be
 4 easy enough to do?
 5 MR. ABBOTT:
 6 A. Yes. We wouldn't do it that way, but yes.
 7 COFFEY, Q.C.:
 8 Q. Okay. Well, and it would be relatively simple
 9 to have this reformatted into the appropriate
 10 Cabinet secretariat style, wouldn't it?
 11 MR. ABBOTT:
 12 A. Yes, sure.
 13 COFFEY, Q.C.:
 14 Q. And that sent, that finished product sent up?
 15 MR. ABBOTT:
 16 A. Sure.
 17 COFFEY, Q.C.:
 18 Q. Now I'll come back to this now. That briefing
 19 having ended, you having read the briefing
 20 note, did you address your mind to,
 21 consciously address your mind to whether or
 22 not I will send anything further along to
 23 Cabinet secretariat about this?
 24 MR. ABBOTT:
 25 A. Well, as I indicated earlier, not in a--you

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1 know, it wasn't a very--I didn't--if I did, I
 2 didn't spend much time on it. Because we had
 3 started a process now of getting more
 4 information from Eastern Health, so--and this,
 5 you know, is the beginning of this very long
 6 chain of events, and so we waited on that
 7 front until we got the next piece of
 8 information and briefing. So we had a process
 9 started and, again, we kept it between the
 10 minister's office and Eastern Health, with the
 11 department to follow up, you know, on behalf
 12 of the minister.
 13 COFFEY, Q.C.:
 14 Q. Okay, and you were aware when you attended
 15 that briefing of July 21 that Ms. Chaplin or
 16 somebody from your organization had told
 17 Eastern Health that the briefing materials,
 18 i.e. those, as it turns out, three pieces,
 19 three sheets of paper, would not go beyond the
 20 department for now?
 21 MR. ABBOTT:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. Because that was your direction?
 25 MR. ABBOTT:

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1 A. Well, whether it was at that time or
 2 subsequent to the briefing, but you know, it
 3 was intended for our purpose at that point,
 4 until we knew what, in fact, was in the
 5 material.
 6 COFFEY, Q.C.:
 7 Q. On that point, and this is--if we could bring
 8 up, please, P-0134 because this is where this
 9 is recorded, and if we could, just it's the
 10 July 19th 4:05 p.m. e-mail from Ms. Chaplin to
 11 Deborah Thomas, the last line. "As you can
 12 see, John has asked for briefing materials in
 13 advance of the meeting, but these will not go
 14 beyond the department for now." I believe
 15 yesterday you told the Commissioner that that
 16 would have been, that assurance would have
 17 been given by her at your behest.
 18 MR. ABBOTT:
 19 A. Well, I don't know if I said what you just
 20 said.
 21 COFFEY, Q.C.:
 22 Q. Okay. Well, where did it come from then?
 23 MR. ABBOTT:
 24 A. I really don't know. Whether Carolyn thought
 25 that, again, that was a conversation or an e-

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1 mail that she had. Whether we discussed that
 2 and whether or not it should go any further, I
 3 really--you know, as I said, I don't remember
 4 any conversations around that, but the point
 5 for me would be that that was legitimate, that
 6 "folks, send us over the material. Let's see
 7 what you got, and then we have to decide what
 8 we do with it."
 9 COFFEY, Q.C.:
 10 Q. Could Carolyn Chaplin have the authority to
 11 decide for the Department of Health and
 12 Community Services whether or not briefing
 13 materials would go further than the
 14 department? Did she have that authority?
 15 MR. ABBOTT:
 16 A. Well, if she felt that we, you know, she's
 17 receiving material and she wanted to send it
 18 on to another party and in her judgment that
 19 was allowed. I wouldn't have said she could
 20 not do it or should not do it. My preference,
 21 obviously, would be, as I said, that from a
 22 communications and internal sharing of
 23 information that you bring it together, you
 24 make it a conscious decision on behalf of the
 25 department to do A, B, C, or D vis-a-vis

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1 whether it's Eastern Health, Premier's office,
 2 Cabinet secretariat, others, but that's just
 3 not the way it worked and we rely on, continue
 4 to rely on the judgment of those in those
 5 positions. So I don't take any objection to
 6 what Carolyn Chaplin did, because if she felt
 7 that that was appropriate, with or without my
 8 direction, that was fine.
 9 COFFEY, Q.C.:
 10 Q. Could -
 11 THE COMMISSIONER:
 12 Q. I'm sorry. Ms. Chaplin is saying that "John
 13 has asked for briefing material in advance of
 14 the meeting, but these will not go beyond the
 15 department for now." Now from my earlier
 16 conversation with you, I had understood that
 17 there were two conduits out of the department.
 18 One, Ms. Chaplin. The other, you and the
 19 minister.
 20 MR. ABBOTT:
 21 A. Yes.
 22 THE COMMISSIONER:
 23 Q. I put you on the same side. I recognize the
 24 minister has a final say if he wants to move
 25 things out of the department or not, but if

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1 the other conduit is you, then unless Ms.
 2 Chaplin--Ms. Chaplin might have made the
 3 decision that she did not think it should go
 4 further, but surely she can't convey that it
 5 is not. She has to recognize that unless
 6 you've agreed that it's not going any further,
 7 that's my point.
 8 MR. ABBOTT:
 9 A. And I understand, and so, you know, whether
 10 there was implied, my involvement in that, and
 11 as I said, I'm really not sure what
 12 conversation I had with Carolyn Chaplin at
 13 that point there. So I really can't sort of
 14 add to that at this juncture.
 15 THE COMMISSIONER:
 16 Q. But you would agree that Ms. Chaplin was not
 17 in a position to prevent you from sending it
 18 further -
 19 MR. ABBOTT:
 20 A. Oh no.
 21 THE COMMISSIONER:
 22 Q. - if in your judgment you -
 23 MR. ABBOTT:
 24 A. Oh no, absolutely not, no.
 25 THE COMMISSIONER:

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1 Q. So if she was saying this to those she was
 2 communicating with, Ms. Thomas, then either
 3 she had your concurrence or she was assuming
 4 that you were not going to send it any
 5 further.
 6 MR. ABBOTT:
 7 A. And it may--you know, at the end--I don't want
 8 to speculate, but it may be, you know, just to
 9 give Deborah Thomas some comfort that, you
 10 know, in terms of their process in trying to
 11 extract the information. "Don't worry."
 12 THE COMMISSIONER:
 13 Q. Yes, don't worry about it.
 14 MR. ABBOTT:
 15 A. "Don't worry, we're going to keep it here,"
 16 and obviously if there was a decision
 17 otherwise, she would have said "look, the
 18 deputy minister has said we need to send it
 19 on, and make sure Mr. Tilley knows," you know,
 20 along those lines.
 21 THE COMMISSIONER:
 22 Q. Yes, okay. Sorry, Mr. Coffey, I interrupted
 23 again.
 24 COFFEY, Q.C.:
 25 Q. So she could not bind you and the department

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1 to answer that point, Carolyn Chaplin -
 2 MR. ABBOTT:
 3 A. No.
 4 COFFEY, Q.C.:
 5 Q. Could do as she--within her own bailiwick saw
 6 as appropriate, you said.
 7 MR. ABBOTT:
 8 A. Yes.
 9 COFFEY, Q.C.:
 10 Q. That's why I asked you, could she bind you and
 11 the department in terms of -
 12 MR. ABBOTT:
 13 A. No.
 14 COFFEY, Q.C.:
 15 Q. Okay. Now, when you decided or, you know,
 16 yourself, after having had or attended the
 17 briefing of July 21 and, you know, you were,
 18 as you said, there was a process embarked upon
 19 to gather more information, you decided that
 20 you weren't going to send or reformat the
 21 information in that July 20th briefing note
 22 and send it on to the cabinet secretariat.
 23 Did you make any inquiries of Ms. Chaplin
 24 whether she was going to do so?
 25 MR. ABBOTT:

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1 A. No, I don't think so and one of the points I
 2 wanted to just also add is in terms of
 3 Minister Ottenheimer and how we approached
 4 issues, working together, and I think it's
 5 fair to say his approach and mine were similar
 6 in that in terms of issues that came forward
 7 to his office and do you automatically send
 8 them off, you know, to the cabinet secretariat
 9 or premier's office. Now, he was of the view
 10 that no, these are, you know, my issues,
 11 departmental issues, we will keep them and
 12 address them as we feel appropriate and in our
 13 judgment, whether the minister of deputy feel
 14 that it needs to go further, then we will do
 15 that. And so we approached that relationship
 16 very similar and that's why I'm so comforted
 17 in some of my responses that even though the
 18 minister might not have talked very
 19 specifically about this, we approached it in a
 20 similar fashion.
 21 COFFEY, Q.C.:
 22 Q. And I appreciate that with Mr. Ottenheimer,
 23 but Ms. Chaplin, you knew Ms. Chaplin, on July
 24 19th had contacted the cabinet secretariat
 25 about this.

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1 MR. ABBOTT:
 2 A. Yes.
 3 COFFEY, Q.C.:
 4 Q. So you knew she was off--she had done that
 5 without you knowing about it.
 6 MR. ABBOTT:
 7 A. Sure. That could very well be.
 8 COFFEY, Q.C.:
 9 Q. Well was it?
 10 MR. ABBOTT:
 11 A. I'm not a hundred percent sure one way or the
 12 other, at the initial contact until, you know,
 13 I'm being copied on e-mails, so once I'm
 14 copied, yes, I'm informed. And I would also
 15 say that it would not surprise me, you know,
 16 coming out of that briefing if she felt that,
 17 based on that, look, I should give my
 18 colleagues over in the cabinet secretariat
 19 some, you know, a copy of that briefing note.
 20 That would have been--that would also have
 21 been legitimate. Now whether it happened or
 22 not, I don't know, I don't think it did. So
 23 it's, there's no big mystery for me in any of
 24 this.
 25 COFFEY, Q.C.:

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1 Q. Well, in term of that, why don't you think it
 2 happened? You see, Mr. Abbott, on the
 3 afternoon of July 19th, a Tuesday afternoon,
 4 you find out that the cabinet secretariat has
 5 been informed about something by your
 6 communication's director.
 7 MR. ABBOTT:
 8 A. Uh-hm.
 9 COFFEY, Q.C.:
 10 Q. It's apparent that she's dealing directly with
 11 Gary Cake, copying you, correct? Because you
 12 say you've told the Commission you didn't know
 13 anything about this before that, you didn't
 14 know that she had contacted the cabinet
 15 secretariat before, your first inkling of that
 16 is -
 17 MR. ABBOTT:
 18 A. Yeah, but we've gone through all of that, so
 19 what's your question?
 20 COFFEY, Q.C.:
 21 Q. Well the question is, is this, okay, it comes
 22 back -
 23 MR. ABBOTT:
 24 A. Yes.
 25 COFFEY, Q.C.:

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1 Q. Later that same afternoon, there's an e-mail,
 2 the same line, the same sentence your name is
 3 mentioned saying the, to Eastern Health saying
 4 "briefing materials will not go beyond the
 5 department for now."
 6 MR. ABBOTT:
 7 A. Uh-hm.
 8 COFFEY, Q.C.:
 9 Q. The briefing is held two days later, you make
 10 a decision that you're not going to
 11 communicate with cabinet secretariat about it,
 12 at that point further.
 13 MR. ABBOTT:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. Did you talk to her about whether she would?
 17 MR. ABBOTT:
 18 A. No, I've already answered that.
 19 COFFEY, Q.C.:
 20 Q. Okay, so you did not.
 21 MR. ABBOTT:
 22 A. I think I did.
 23 COFFEY, Q.C.:
 24 Q. Okay. But she, having typed that or sent that
 25 e-mail late on the afternoon of the 19th,

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1 would have known that it was your view that,
 2 at least for now, on Tuesday, that the
 3 materials were not to go beyond the
 4 department?
 5 MR. ABBOTT:
 6 A. That would, you know, that would appear based
 7 on the e-mail and again, Carolyn Chaplin knew
 8 my style, I knew her's, so we were, you know,
 9 it's fair to say we were on the same page, if
 10 not on the same line in most issues, including
 11 this. So I don't think there was any great
 12 difference here, how the language--how e-mails
 13 were written and what was expressed and who
 14 committed what to whom and all those kinds of
 15 things, again, just sort of standard
 16 communication within the department and across
 17 the department in agencies.
 18 COFFEY, Q.C.:
 19 Q. Now, sir, as you pointed out, the one--Mr.
 20 Williams and his office, or certainly premier,
 21 as you refer to him, you understood that he is
 22 the sort of individual or person, in terms of
 23 his approach to things who would like to know,
 24 be apprised beforehand of, if one of two
 25 things is about to happen. If a matter is

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1 going to become a public issue of some
 2 significant interest to the public -
 3 MR. ABBOTT:
 4 A. Yes.
 5 COFFEY, Q.C.:
 6 Q. Or just because of the very nature of the
 7 issue, in terms of its underlying seriousness.
 8 MR. ABBOTT:
 9 A. Yes.
 10 COFFEY, Q.C.:
 11 Q. And you've agreed that what's in that briefing
 12 note of July 20th matches the second
 13 situation.
 14 MR. ABBOTT:
 15 A. Certainly, and I would say certainly in, you
 16 know, in retrospect at the time it was, you
 17 know, we were focused on the--how shall I put
 18 it, in terms of there's a current issue in the
 19 lab, trying to deal with it. Nobody at that
 20 point, at least--well I'll have to speak for
 21 myself, I guess, looked at it in its totality
 22 and obviously how events unfolded. There are,
 23 you know, issues in any of the hospital
 24 operations from time to time that would be
 25 equally significant and, you know, how you

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1 address those and who you advise, it depended
 2 on the issue.
 3 COFFEY, Q.C.:
 4 Q. And in terms of the first criteria that you
 5 cited for whether or not there would be a
 6 thought appropriate to or inform the cabinet
 7 secretary or the premier's office about a
 8 particular matter was if it was going to go
 9 public. And I think you've told the
 10 Commissioner yesterday that certainly by the
 11 time the briefing ended on July 21st, that you
 12 understood that at least 12--well a number of
 13 patients had already been told.
 14 MR. ABBOTT:
 15 A. Yes.
 16 COFFEY, Q.C.:
 17 Q. And as the test results were being--retest
 18 results were being done, that they were being
 19 told of those results.
 20 MR. ABBOTT:
 21 A. Yes.
 22 COFFEY, Q.C.:
 23 Q. If they changed certainly.
 24 MR. ABBOTT:
 25 A. Yes.

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1 COFFEY, Q.C.:

2 Q. And that, I'm going to suggest to you, whether

3 Eastern Health liked it or not or wanted it or

4 not, there was a significant possibility that

5 it would go public.

6 MR. ABBOTT:

7 A. I would agree with you, yes.

8 COFFEY, Q.C.:

9 Q. And you were aware of that.

10 MR. ABBOTT:

11 A. Yes.

12 COFFEY, Q.C.:

13 Q. And yet you didn't think it appropriate or

14 deem it appropriate to inform the cabinet

15 secretariat of what you had found out at that

16 point.

17 MR. ABBOTT:

18 A. And that would be correct and it is fair to

19 say that those particular cases then very

20 quickly got lost into this larger picture that

21 was being presented to us and we focused on

22 the larger picture as the issue and not those

23 particular cases to bring forward.

24 COFFEY, Q.C.:

25 Q. So bearing in mind a potential for this to go

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1 public and you were aware of it -

2 MR. ABBOTT:

3 A. Yes.

4 COFFEY, Q.C.:

5 Q. You would have weighed that and what was

6 weighing in the balance of not telling the

7 cabinet secretariat what you knew at that

8 point, vis-a-vis the risk of this going public

9 in an uncontrolled fashion?

10 MR. ABBOTT:

11 A. Well, again it was based on the briefing with

12 the minister, what the decision or conclusion

13 of that meeting was, in terms of we are going

14 to wait to get some more information to see

15 what we have. And as I said, my preference,

16 opinion at the time expressed, was let's do it

17 now, in light of the cases that we knew about,

18 what have you, it did not--it didn't reach

19 that conclusion at that meeting and the

20 minister was comfortable with where, you know,

21 at least outwardly, saying, fair enough, we'll

22 deal with that. So we kept it within that

23 sphere for that period and so, to answer your

24 question and I look back on it and say, well

25 why didn't I do that? Well, I didn't feel I

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1 needed to do that at that point. Now, I can

2 speculate if one of those cases had gone, made

3 known in the public domain, well then we,

4 obviously we would have scrambled immediately

5 to provide the full briefing over what

6 briefing material, in any event, to the

7 cabinet secretariat and for the premier's

8 office. But again, that didn't happen and

9 that's, you know, where we were at that point.

10 COFFEY, Q.C.:

11 Q. And in terms of like the patients, an

12 uncontrolled going public, as it were, did you

13 address your mind to what the effect might be

14 upon patients who were hearing this through

15 the media, in an uncontrolled manner?

16 MR. ABBOTT:

17 A. Absolutely and that was certainly my that I

18 expressed at the meeting.

19 COFFEY, Q.C.:

20 Q. Okay, now on that, okay, do you know, you

21 expressed that view at the time, you say?

22 MR. ABBOTT:

23 A. Yes.

24 COFFEY, Q.C.:

25 Q. Who was expressing a contrary view? Mr.

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1 Tilley?

2 MR. ABBOTT:

3 A. And views were contrary, but an alternate view

4 in terms of, which was expressed around we are

5 still getting--trying to get information, get

6 a handle on this issue, what is it we are

7 really dealing with here? What is the source

8 of the problem? What do these conversion

9 rates really mean? What can we tell, should

10 we tell at this juncture? So that was the

11 other view primarily we were putting to, but

12 the focus of the discussion was centred around

13 that because it was their focus of the

14 briefing, what have you. Now in retrospect,

15 look back on it, they looked like they were

16 ready to do, go where I thought they should

17 have gone. I did not know anything about that

18 at that point.

19 COFFEY, Q.C.:

20 Q. Do you know, and I think you told the

21 Commissioner yesterday that that view that you

22 expressed at that meeting, you subsequently

23 expressed it at other points, other meetings?

24 MR. ABBOTT:

25 A. Well at different points in time as -

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1 COFFEY, Q.C.:

2 Q. Before October 2nd because that's when -

3 MR. ABBOTT:

4 A. Yes, because we were talking, yes, in August

5 month.

6 COFFEY, Q.C.:

7 Q. So you expressed the same view.

8 MR. ABBOTT:

9 A. Yes.

10 COFFEY, Q.C.:

11 Q. Do you know if your expression of that view is

12 anywhere recorded in writing?

13 MR. ABBOTT:

14 A. Not anything I did, no. And that would not

15 be--and again, I want to be very careful here,

16 it was a view I expressed in the presence of

17 the minister. I wasn't speaking on behalf of

18 the department per se, this may be a fine line

19 here, it was because I was involved, you know,

20 in that briefing, I expressed an opinion based

21 on my experience, but as a department and

22 again, looking back on it, fair enough, we had

23 no particular approach or policy, regulation

24 or legislation on this, so I was making an

25 opinion based on, I was hopefully informed in

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1 terms of what I knew around some of these

2 issues that had come up from time to time, but

3 it was very strong as--and a very strong

4 personal opinion as well, but I felt I needed

5 to express it and made sure that the minister,

6 who I report to, had the--dare I say the

7 benefit of my opinion and that's where it is.

8 But he would have heard what I had said, he

9 obviously heard and listened quite clearly and

10 carefully to what Eastern Health said, started

11 a process and patient notification and

12 reporting was certainly top of mind, how to do

13 it and when to do it was where we got into

14 some of the delay--detail and delay.

15 COFFEY, Q.C.:

16 Q. Sir, if we could just look please at P-0312,

17 please?

18 THE COMMISSIONER:

19 Q. And the page?

20 COFFEY, Q.C.:

21 Q. Yes, page two, please--sorry, page three, I

22 apologize. Now, Mr. Abbott, this is an e-mail

23 that Mr. Thompson sent to Mr. Cake at 10:51 on

24 the morning of the 19th of July. Just in

25 light of a comment you made yesterday toward

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1 the end of the day about the view of your own

2 role or the department's role, vis-a-vis

3 Eastern Health and your authority, whatever

4 your own view may have been, and we'll ask Mr.

5 Thompson about this eventually, from your

6 perspective at the time, looking at this e-

7 mail "Please ensure the department and the

8 board include in their com plan the assurance

9 that once the solution is set into motion, an

10 evaluation will be done."

11 MR. ABBOTT:

12 A. Right.

13 COFFEY, Q.C.:

14 Q. So a com plan is an operational issue in that

15 context, isn't it? In terms of how to

16 communicate with -

17 MR. ABBOTT:

18 A. Well, it's a communication's issue, so that's

19 a communication around an operational issue.

20 If I read--as I read that in terms of the

21 department, which was if the minister is going

22 to be involved or speaking on this, then make

23 sure we have something prepared for him and

24 obviously the health authority is going to be

25 addressing this, we need to know what they are

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1 saying and obviously ideally we'd want them to

2 be consistent and that they re-enforce each

3 other. And so when I read--when I see

4 "department" there, it would be in terms of

5 supporting the minister to make sure his

6 communications on this issue are sound.

7 COFFEY, Q.C.:

8 Q. And, but the notion of, at least the clerk of

9 the council at the time, giving direction, not

10 only to the department but to Eastern Health,

11 this doesn't suggest any reluctance on his

12 part at the time, does it? That language

13 doesn't -

14 MR. ABBOTT:

15 A. I'm not sure I follow.

16 COFFEY, Q.C.:

17 Q. In the sense of he was prepared, apparently,

18 to give direction to both you and Eastern

19 Health.

20 MR. ABBOTT:

21 A. Yeah, and the only--and you know, you raised

22 it yesterday, the only comment and I've

23 thought about it is, you know, and he did

24 that, but he had no context in which to--I

25 feel to reach that conclusion at that point,

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1 the way that e-mail is written. I didn't see
 2 that until, you know, last week or whenever,
 3 but again, it doesn't put me off or, in terms
 4 of -
 5 COFFEY, Q.C.:
 6 Q. I'm not asking you, sir, whether it put you
 7 off, I'm asking you this, okay, you suggested
 8 and told the Commissioner yesterday that it
 9 was your view, as deputy minister, that you
 10 had no authority to tell Eastern Health what
 11 to do.
 12 MR. ABBOTT:
 13 A. With respect to -
 14 COFFEY, Q.C.:
 15 Q. Operational issues in particular.
 16 MR. ABBOTT:
 17 A. That is correct.
 18 COFFEY, Q.C.:
 19 Q. I ask you whether this com plan or this sort
 20 of a com plan in this context would be
 21 considered an operational issue, in the sense
 22 of here disclosing to patients a plan to do
 23 it, by Eastern Health, as to how they were
 24 going to do it. And would you agree that
 25 that's an operational issue in Eastern

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1 Health's hands?
 2 MR. ABBOTT:
 3 A. Not the way you're setting up the question.
 4 In terms of--and we'll see evidence of this
 5 before, during and after, in terms of
 6 communications activity there was an expressed
 7 desire by the government through, you know,
 8 the premier's office and cabinet secretariat
 9 to ensure that when, in this case, health
 10 authorities were going public on issues that
 11 the department, minister's office, department
 12 were advised of what the issue was and how
 13 they were presenting that, in the event
 14 obviously, that the minister of the day would
 15 obviously may have to respond to it. So, it
 16 was no more than that. We didn't direct them
 17 necessarily as a department now, versus the
 18 minister. But I could not call up to Mr.
 19 Tilley and say, go public on this issue
 20 tomorrow.
 21 COFFEY, Q.C.:
 22 Q. Okay.
 23 MR. ABBOTT:
 24 A. And say these things.
 25 COFFEY, Q.C.:

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1 Q. And I appreciate that, that's what you told
 2 the Commissioner yesterday.
 3 MR. ABBOTT:
 4 A. Right.
 5 COFFEY, Q.C.:
 6 Q. I'm not taking any issue at all with that;
 7 that's what you said. I'm asking you, okay,
 8 bearing in mind what's written here -
 9 MR. ABBOTT:
 10 A. Um-hm.
 11 COFFEY, Q.C.:
 12 Q. - does what Mr. Thompson apparently wrote
 13 around the same time this was going on, does
 14 that show any reluctance, looking at what's
 15 written there anyway, suggest any -
 16 MR. ABBOTT:
 17 A. You'll have to ask him because, again, his e-
 18 mail to Mr. Cake, he didn't e-mail or call me
 19 on that point. We may have had a discussion
 20 on it, but it didn't happen. So, I can't say
 21 anything more than what I just did.
 22 COFFEY, Q.C.:
 23 Q. He also says that an evaluation, an assurance,
 24 including the com plan, an assurance that once
 25 the solution is set in motion, that an

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1 evaluation will be done to determine the
 2 specific or systemic reasons why this
 3 occurred, so it will be properly addressed in
 4 the long term. Now, that would be an
 5 operational issue, wouldn't it? Carrying out
 6 a specific--carrying out an evaluation to
 7 determine the specific or systemic reasons why
 8 this occurred. That would be an operational
 9 issue.
 10 MR. ABBOTT:
 11 A. Yes and there's two--but, you know, you can
 12 look at this two ways. One is, please ensure
 13 that they do that and that is communicated to
 14 them. Fair enough. But ultimately to say to
 15 department, you know, given the nature of
 16 this, you know, maybe the department should
 17 conduct and evaluation. But again, that's--it
 18 didn't go any further--well, it didn't come to
 19 me. So, I'm not exactly sure what Robert
 20 Thompson ultimately was getting at here.
 21 COFFEY, Q.C.:
 22 Q. Well, whatever he was getting at -
 23 MR. ABBOTT:
 24 A. You're asking me about an e-mail -
 25 COFFEY, Q.C.:

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1 Q. I'm asking you right now -
 2 MR. ABBOTT:
 3 A. But you're asking me about an e-mail I did not
 4 see.
 5 COFFEY, Q.C.:
 6 Q. I'm not suggesting you did--well, you didn't
 7 see it until a month ago, sir -
 8 MR. ABBOTT:
 9 A. All right.
 10 COFFEY, Q.C.:
 11 Q. - okay. So, but if I could, if I could, this
 12 says and I'm just pointing you to the words,
 13 "evaluation will be done to determine the
 14 specific or systemic reasons why this
 15 occurred". Now, any such evaluation, I'm
 16 going to suggest to you and would you agree
 17 that that is an operational issue in Eastern
 18 Health's hands?
 19 MR. ABBOTT:
 20 A. If they conducted on their own, for their own
 21 purposes, yes.
 22 COFFEY, Q.C.:
 23 Q. Okay.
 24 THE COMMISSIONER:
 25 Q. Actually that raises another point. Is there

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1 any doubt in your mind that had Eastern Health
 2 not done so, the department could conduct such
 3 an evaluation?
 4 MR. ABBOTT:
 5 A. I think, in terms of that, if it went that
 6 way, if it was an expressed wish of the
 7 minister that, you know, I need this done,
 8 then a communication direction to the board to
 9 do it would be--and that would happen and
 10 there wouldn't be any push back -
 11 THE COMMISSIONER:
 12 Q. So, the solution would have been the minister
 13 to direct Eastern Health to do it, not the -
 14 MR. ABBOTT:
 15 A. Yes.
 16 THE COMMISSIONER:
 17 Q. - department to actually go in and do it.
 18 MR. ABBOTT:
 19 A. And Commissioner, if I may, it is not uncommon
 20 for the minister, as we talked about yesterday
 21 in terms of the Hay operational review which
 22 was sort of commissioned by and from the
 23 minister of the day to say, I think we need to
 24 do this. I want it done and the board said
 25 yes, we comply and we will actively

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1 participate. And that is the norm. When
 2 ministers speak and they don't use their power
 3 authority, vis-a-vie, the boards on a daily
 4 basis, but when ministers speak to boards,
 5 boards understand that they need to seriously
 6 consider the minister's view. And that was
 7 under the old legislation. Certainly the new
 8 legislation is much clearer on the point that,
 9 you know, if there was any ambiguity, in fact,
 10 now he can direct.
 11 THE COMMISSIONER:
 12 Q. Now, is there a role for the department
 13 arising out of the fact that this wasn't, in
 14 reality, solely an Eastern Health problem?
 15 MR. ABBOTT:
 16 A. Fair enough, and we have numerous examples
 17 where we would be--reviews, evaluations,
 18 activities and operations would be done. We
 19 may ask a particular board to lead it at that
 20 time or as a department, we may, because it is
 21 provincial in scope and we need to develop
 22 some policy or procedures around that for this
 23 system, then yes, it would reside with the
 24 department.
 25 THE COMMISSIONER:

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1 Q. So, if there is a problem of some nature, not
 2 necessarily this one, but a problem of some
 3 nature which is wider than one authority, the
 4 question of how that problem would be dealt
 5 with depends upon whether or not you need to
 6 develop system wide policies or directives, is
 7 that it?
 8 MR. ABBOTT:
 9 A. Primarily and we recognize that it's going to
 10 impact generally more than one authority or
 11 one operation.
 12 COFFEY, Q.C.:
 13 Q. Thank you, Commissioner. Now, on that point,
 14 did you every ask Mr. Tilley if he'd informed
 15 the other boards at that point in that first
 16 week?
 17 MR. ABBOTT:
 18 A. I, again, I don't remember that point being
 19 discussed. I know it came up a couple of
 20 weeks later, but not at that point.
 21 COFFEY, Q.C.:
 22 Q. And where's Carolyn's Chaplin's office in
 23 relation to yours at the time? Where was it?
 24 MR. ABBOTT:
 25 A. That should be an easy answer, but I'm just

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1 trying to think because the offices have
 2 moved. We had the, so called, executive
 3 suite, the minister's office, mine and the
 4 board room and the two secretaries to the
 5 respective positions. And Mr. Chaplin's
 6 office would have been, you know, on the main
 7 floor pretty well adjacent to that suite.
 8 Actually, the more I think of it, it would
 9 have been sort of on the opposite wall of the
 10 minister's suite and much further down in that
 11 row or bank of windows.

12 COFFEY, Q.C.:
 13 Q. And in terms of that, I take it on a daily
 14 basis, Ms. Chaplin generally would be back and
 15 forth into that common area between the
 16 minister and deputy minister's office?

17 MR. ABBOTT:
 18 A. I would say -

19 COFFEY, Q.C.:
 20 Q. Continuously?

21 MR. ABBOTT:
 22 A. - hourly, continuously, yes.

23 COFFEY, Q.C.:
 24 Q. Yes, okay. So, on July 19 anyway, and we do
 25 see in one of the e-mails, in fact, the first,

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1 that morning, involving apparently--resulting
 2 from a phone call she had made, this 1200 to
 3 1500 clients is referred to there, patients,
 4 were you ever told about that number or that
 5 kind of number?

6 MR. ABBOTT:
 7 A. As I said yesterday, no.

8 COFFEY, Q.C.:
 9 Q. And is it you weren't told or if you were
 10 told, you don't recall?

11 MR. ABBOTT:
 12 A. I'll go with my first answer.

13 COFFEY, Q.C.:
 14 Q. Okay, you weren't. So, if Ms. Chaplin then
 15 did use those numbers in conferring with Mr.
 16 Cake, she didn't pass them on to you? That's
 17 what -

18 MR. ABBOTT:
 19 A. Again, I don't think so.

20 COFFEY, Q.C.:
 21 Q. And the final lines of exhibit P-0312, page 5,
 22 "there's a possibility of the significance of
 23 announcement will be minimized". I asked you
 24 about this yesterday, but you've had the night
 25 to reflect upon it. Can you think of any

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1 reason, looking back on it, that the statement
 2 could have been made at that time, that
 3 afternoon of July 19, any rationale for
 4 saying, at that point, there's a possibility
 5 that the significance of any announcement will
 6 be minimized?

7 MR. ABBOTT:
 8 A. Nothing that comes to mind other than, you
 9 know, we didn't have, you know, the
 10 information and we were dependent on the
 11 briefing. But, you know, what -

12 COFFEY, Q.C.:
 13 Q. It could be worse, in fact.

14 MR. ABBOTT:
 15 A. It may, could be, but in terms of foretelling
 16 what was in the briefing, I had not particular
 17 view or understanding certainly at that time.

18 COFFEY, Q.C.:
 19 Q. And so in terms of that, you're saying, Mr.
 20 Coffey, look, if you--I don't know where that
 21 came from, the notion of that came from,
 22 you'll have to ask Ms. Chaplin about it.

23 MR. ABBOTT:
 24 A. That would be the best answer. Yes, really, -

25 COFFEY, Q.C.:

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1 Q. But in terms of asking her, depending upon -

2 MR. ABBOTT:
 3 A. Well, as I said yesterday, if Ms. Chaplin
 4 comes in and tells you something differently
 5 in the conversation she may have had or did
 6 have with me on this. I will not, can not
 7 take any objection to that. She has better
 8 recall, what have you, perfect. Because I
 9 trusted her opinion and abilities and still
 10 do. So, that's where I am with that.

11 COFFEY, Q.C.:
 12 Q. Okay. In terms of this, that first briefing
 13 you attended, I'm sorry, it was yourself,
 14 people from the department including Ms.
 15 Chaplin. Who was there from Eastern Health?
 16 It was Mr. Tilley, Susan Bonnell, was she
 17 there?

18 MR. ABBOTT:
 19 A. Yes, Dr. Williams and Dr. Cook.

20 COFFEY, Q.C.:
 21 Q. Okay. In terms of that, if we could bring up,
 22 please, Exhibit P-0069, please? Now I
 23 appreciate this, you know, never came to you.
 24 But some of the subject matter in it, just to
 25 give you--to help you put it in some kind of

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1 context, this is a letter of July 14th, 2005,
 2 which is a week before, it's dated a week
 3 before your briefing.
 4 MR. ABBOTT:
 5 A. Um-hm.
 6 COFFEY, Q.C.:
 7 Q. It's to Dr. Cook. It's, you'll see here it's
 8 from Dr. Beverley Carter.
 9 MR. ABBOTT:
 10 A. Yes.
 11 COFFEY, Q.C.:
 12 Q. And it's copied to Dr. Bob Williams.
 13 MR. ABBOTT:
 14 A. Um-hm.
 15 COFFEY, Q.C.:
 16 Q. And you'll see someone has handwritten up
 17 here, "Discussed with Dr. Carter, July 16th,
 18 2005," whomever that might have been. So
 19 someone had discussed, apparently, the
 20 contents of it with Dr. Carter five days
 21 before the briefing. And we look down through
 22 this, she writes to Dr. Cook, I'm just going
 23 to skim over parts of it to bring the overall
 24 sense of it to you, "As per our many recent
 25 discussions, I agree with you that our

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1 estrogen receptor status reports prior to 2003
 2 require immediate investigation." And she
 3 talks about the recent examples of 16 people
 4 converting. And she goes on, "As quickly as
 5 possible I would like to know the estrogen
 6 receptor status of every patient tested in our
 7 laboratory between 1997 and 2004. From that
 8 information I would also like an estimate of
 9 the total of positive cases given out per
 10 year." And she goes on, "All of the slides
 11 from the cases, including estrogen receptor
 12 slides need to be pulled and organized. All
 13 slides then need to reviewed by me, but
 14 estrogen receptor negative and estrogen
 15 receptor positive patients. Estrogen receptor
 16 negative patients should be given priority."
 17 And she talks about, "It will be necessary to
 18 have a computerized database for this
 19 project," and including certain information
 20 and so on for each patient. And when one
 21 reads this, at least one gets the sense that
 22 she proposed, she says in the first paragraph,
 23 "I am therefore eager to review the estrogen
 24 receptor status of all patients seen in our
 25 laboratory from May, '97 when

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1 immunohistochemical staining for estrogen
 2 receptor status first became available up
 3 until March, 2004." Now, when you went to
 4 that briefing on July 21st, 2005, did anybody
 5 advise you as to or tell you, Dr. Williams or
 6 Dr. Cook or Mr. Tilley, tell you that the sole
 7 breast pathologist we have in the province is
 8 about to undertake and, in fact, has begun to
 9 undertake a large-scale review?
 10 MR. ABBOTT:
 11 A. Um-hm.
 12 COFFEY, Q.C.:
 13 Q. Did anybody tell you?
 14 MR. ABBOTT:
 15 A. I don't remember it. I -
 16 COFFEY, Q.C.:
 17 Q. I'm not suggesting they did. I'm just asking,
 18 you know, in terms of--I'm not--again, it's -
 19 MR. ABBOTT:
 20 A. Just let me, Mr. Coffey.
 21 COFFEY, Q.C.:
 22 Q. Sure.
 23 MR. ABBOTT:
 24 A. You know, I'll answer your question. I don't
 25 think it came up in that briefing.

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1 COFFEY, Q.C.:
 2 Q. Did it ever come up, do you know?
 3 MR. ABBOTT:
 4 A. I don't think it did.
 5 COFFEY, Q.C.:
 6 Q. Were you ever advised, do you recall, that,
 7 you know, within a matter of weeks Dr. Carter
 8 removed herself from that review, were you
 9 advised of that?
 10 MR. ABBOTT:
 11 A. I was not made aware of that.
 12 THE COMMISSIONER:
 13 Q. And finally, do I take it that in your view of
 14 the world you shouldn't have been told about
 15 it, anyway?
 16 MR. ABBOTT:
 17 A. Yeah. You know, this was an issue in the lab.
 18 If there were, obviously there were, based on
 19 this and on the other--as information came
 20 forward, there were issues in the lab that
 21 they were obviously struggling with, trying to
 22 figure out the best course of action and see
 23 what Dr. Carter suggested as an approach would
 24 seem logical. But why I, as deputy minister
 25 of the department would ever know about that

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1 or expect to know about that, no. That would
 2 be the simple case. And I--that would be true
 3 with any of the other issues that a particular
 4 hospital or lab would face.
 5 COFFEY, Q.C.:
 6 Q. Exhibit, please, P-0137? Now, this is two e-
 7 mails, these are two e-mails. The first is
 8 July 25, 2005, 11:44 a.m. from Mr. Tilley to
 9 yourself. And then the top of the page your
 10 response of the same date at 3:38 p.m. You
 11 respond by saying, "Thanks for this." Well,
 12 first, before I get to what you were thanking,
 13 go on with what you were thanking him for and
 14 your subsequent comment, Mr. Tilley wrote to
 15 you, "John, had a meeting Sunday morning with
 16 those involved, including an oncologist and a
 17 surgeon. We are clearly not at a point where
 18 we can be confident that we have a problem,
 19 and if so, the extent of it. The physicians
 20 are feeling a little more comfortable based on
 21 the recent information provided, but more is
 22 needed to get to the bottom of this." And he
 23 goes on about what the lab officials are
 24 currently doing. And in terms of this,
 25 though, put this in context as to why he was

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1 sending you that note at the time, earlier
 2 that morning you had sent an e-mail at 9:36
 3 a.m., right here, to Mr. Tilley and carboned
 4 it to Mr. Rumboldt. The subject was
 5 "Government proceeds with two health care
 6 initiatives in Labrador." But after speaking
 7 of that you have a "PS, Anything new on the
 8 ER/PR receptors issue? Minister is quite keen
 9 on this matter." Now, I take it this was,
 10 according to this it was a Monday morning. So
 11 I take it the first thing Monday morning Mr.
 12 Ottenheimer was asking you what's the status?
 13 MR. ABBOTT:
 14 A. That would--yeah, either how we clued up
 15 business on Friday or certainly Monday, but,
 16 yes.
 17 COFFEY, Q.C.:
 18 Q. And so then turn to the first page of the
 19 exhibit, a couple of hours later you get this
 20 response from Mr. Tilley. And then you say,
 21 "Thanks for this. And also, I e-mailed Bob
 22 Williams earlier today to let him know that
 23 Rob Ritter would be in contact with him for a
 24 briefing." Now, the reference to Mr. Ritter
 25 and Bob Williams, was that about ER/PR?

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1 MR. ABBOTT:
 2 A. Yes.
 3 COFFEY, Q.C.:
 4 Q. And now how would that come about, I mean, Rob
 5 Ritter being involved?
 6 MR. ABBOTT:
 7 A. I received a call from Mr. Ritter, who, if my
 8 memory serves me correct on this, said he had
 9 been hearing from some of the physicians, I
 10 don't know if it's singular or plural, that
 11 there is an issue around the lab and wanted to
 12 know what the department knew or I knew or if
 13 I knew anything that was happening. And so I
 14 indicated to him that for him the best person
 15 to call to get any information at this point
 16 would be Dr. Williams and that would be the
 17 normal contact, you know, medical association
 18 dealing with the health authority.
 19 COFFEY, Q.C.:
 20 Q. And what did you do then? So you spoke with
 21 Mr. Ritter. Did you tell him anything about
 22 the nature of the problem?
 23 MR. ABBOTT:
 24 A. No.
 25 COFFEY, Q.C.:

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1 Q. What happened then, you hung up the phone and
 2 -
 3 MR. ABBOTT:
 4 A. I think, you know, by the look of this and if
 5 I remember, Mr. Ritter may have called me that
 6 day.
 7 COFFEY, Q.C.:
 8 Q. And you e-mailed Mr. Williams, Dr. Williams?
 9 MR. ABBOTT:
 10 A. As I say -
 11 COFFEY, Q.C.:
 12 Q. According to this?
 13 MR. ABBOTT:
 14 A. Yes, it's indicated that I did, yes. And
 15 again, that was generally my approach, when an
 16 issue came up from the medical association
 17 dealing with medical matters in a health
 18 authority, I would suggest strongly, you know,
 19 to Mr. Ritter, you know, in terms of getting
 20 information, you know, contact the relevant
 21 vice president for medical affairs, and if
 22 there was anything, obviously any further
 23 follow-up that he needed from me or the
 24 department, we would do that. And if I may,
 25 if you--in terms of George Tilley's e-mail to

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1 me and, you know, his tone and trying to
 2 define the issue and the problem, and I was--
 3 and was, you know, for the two and half years
 4 there, very reliant on Mr. Tilley in terms of
 5 advising me or informing me of issues there.
 6 And so my sense, in looking at this, is that
 7 he was just sort of, you know, lowering the
 8 temperature, if I can use that analogy, on the
 9 issue. He wasn't comfortable or sure exactly
 10 what the issue was, and that came up in a
 11 briefing, but again, it's certainly reiterated
 12 here in this note.
 13 COFFEY, Q.C.:
 14 Q. And in terms of that and as you put it or--and
 15 I appreciate it, it's just a phrase, turn down
 16 the temperature, as it were.
 17 MR. ABBOTT:
 18 A. Yeah.
 19 COFFEY, Q.C.:
 20 Q. And that's certainly the over tenor of this?
 21 MR. ABBOTT:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. And he's pointing to lab officials kind of
 25 dealing with Ventana?

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1 MR. ABBOTT:
 2 A. Um-hm.
 3 COFFEY, Q.C.:
 4 Q. Want to insure that their new system is
 5 working properly. It's the third line there,
 6 that. Looking for information from more
 7 centres in the country about their
 8 experiences. He ends that bullet by saying,
 9 "Question is whether this is something that is
 10 isolated to us or not." And he talks then
 11 about weak positives as opposed to presumably
 12 positives that are not weak and a lot of
 13 people trying to get information. So your
 14 overall sense, then, you know, having read
 15 this on that Monday morning is what?
 16 MR. ABBOTT:
 17 A. That Eastern Health wasn't quite sure what the
 18 problem was or is and that they were exploring
 19 on a multiple avenues to find that out. And
 20 it speaks to, you know, previous that until
 21 we, collectively, the we being Eastern Health,
 22 the minister, the department if need be,
 23 understood what this was about, what do you
 24 do, where do you go. And that was sort of the
 25 box we were in at that point.

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1 COFFEY, Q.C.:
 2 Q. With respect to that, sir, and in terms of the
 3 matter of Mr. Ritter being, having him
 4 contacted you, I take it he contacted you in
 5 your capacity as deputy minister?
 6 MR. ABBOTT:
 7 A. Yes.
 8 COFFEY, Q.C.:
 9 Q. Did you ask him why he was calling you if it's
 10 Eastern Health, if it's Eastern Health's lab?
 11 MR. ABBOTT:
 12 A. On many occasions I would have, but not
 13 necessarily that one, but he had built--you
 14 know, we had a working relationship. He heard
 15 about an issue, he called me. I felt then and
 16 as I still do now, he knew who he should have
 17 called, but--to get, you know, information.
 18 It would be through either the clinical chief
 19 or the vice president of medical affairs.
 20 But, that was his, you know, his option, his
 21 choice and I referred him right to what I felt
 22 was the source.
 23 COFFEY, Q.C.:
 24 Q. Do you have any sense of why he called you?
 25 As you said, he would know the difference. I

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1 mean -
 2 MR. ABBOTT:
 3 A. Well, but he--but that was, that was his
 4 operating, shall we say, his operating style.
 5 And I'm sure -
 6 COFFEY, Q.C.:
 7 Q. Kind of start at the top, as we were?
 8 MR. ABBOTT:
 9 A. A top.
 10 COFFEY, Q.C.:
 11 Q. A top, okay. And perhaps from his perspective
 12 the top, but we'll hear from him on that.
 13 MR. ABBOTT:
 14 A. No, no, Mr. Ritter knows where the tops are.
 15 COFFEY, Q.C.:
 16 Q. Did, at that point, Mr. Ritter raise any
 17 concerns about or issues related to
 18 pathologists and pathology?
 19 MR. ABBOTT:
 20 A. Not in that conversation. We must earlier in
 21 the year, obviously that issue was discussed
 22 in their offices with me in a meeting and we
 23 were working on that issue.
 24 COFFEY, Q.C.:
 25 Q. So the issue of getting increase remuneration

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1 for pathologists had already come up?
 2 MR. ABBOTT:
 3 A. Oh, yes.
 4 COFFEY, Q.C.:
 5 Q. In the context -
 6 MR. ABBOTT:
 7 A. Much earlier in the year, yes.
 8 COFFEY, Q.C.:
 9 Q. Back in January, I suggest?
 10 MR. ABBOTT:
 11 A. Yes.
 12 COFFEY, Q.C.:
 13 Q. Of '05 and that had advanced a certain amount?
 14 MR. ABBOTT:
 15 A. Yes.
 16 COFFEY, Q.C.:
 17 Q. That issue had. So if we could look at,
 18 please, P-0801? And this is again just
 19 another variant of the same July 25th e-mail
 20 except this is one at the top of the page at
 21 3:37 p.m. you're forwarding Mr. Tilley's e-
 22 mail of earlier that day to Ms. Chaplin, Ms.
 23 Hennessey and Darrell Hynes. And you're
 24 asking an update is--you're saying an update
 25 is provided by George Tilley. Darrell, if

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1 you're speaking with the minister, would you
 2 let him know the status? Thanks."
 3 MR. ABBOTT:
 4 A. Yes.
 5 COFFEY, Q.C.:
 6 Q. So I take it that's the way, if Mr.
 7 Ottenheimer wasn't actually in his office
 8 right then and there, you'd -
 9 MR. ABBOTT:
 10 A. Unlike his successor, he wasn't into e-mails
 11 or Blackberries, so we had to go to plan B.
 12 COFFEY, Q.C.:
 13 Q. Which is have somebody nearby with one
 14 communicate with him?
 15 MR. ABBOTT:
 16 A. Yes.
 17 COFFEY, Q.C.:
 18 Q. Sir, if we could look, please, at Exhibit P-
 19 0332? Now this is on--see that up there,
 20 "John Abbott, meeting, George Tilley"?
 21 MR. ABBOTT:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. What sort of a document is this?
 25 MR. ABBOTT:

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1 A. That was in the, our electronic system. We
 2 could also, you know, some--put in notices for
 3 meetings.
 4 COFFEY, Q.C.:
 5 Q. I take it to kind of reserve the boardroom, as
 6 it were, amongst other things, potentially?
 7 MR. ABBOTT:
 8 A. Could be used for that, but just, that was--
 9 that's all that was was just within that
 10 system you could schedule and it would show up
 11 in your scheduler.
 12 COFFEY, Q.C.:
 13 Q. And this is, indicates a--it was entered by
 14 yourself. It's for August 5, 2005. It notes
 15 that between 10 a.m. and 11 a.m. there's going
 16 to be a meeting, George Tilley, re ER/PR lab
 17 issues in the health executive boardroom. Did
 18 the meeting occur, who attended? No, first of
 19 all, who set up the meeting? Perhaps I should
 20 ask that.
 21 MR. ABBOTT:
 22 A. I think, again, I can't speak to that detail
 23 as to who called whom on that at that point.
 24 But it was, you know, again, a follow-up, Mr.
 25 Tilley was ready to provide additional

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1 information and it was agreed, obviously, to
 2 have it in our boardroom, which would be
 3 standard because the minister was to attend.
 4 THE COMMISSIONER:
 5 Q. This is an August 5th meeting?
 6 COFFEY, Q.C.:
 7 Q. Yes.
 8 MR. ABBOTT:
 9 A. Yes. The details around that meeting for me
 10 are sort of sketchy, at best, for whatever
 11 reason. And but again, it was intended as,
 12 obviously, a follow-up from the July 21st and
 13 any subsequent information provided.
 14 COFFEY, Q.C.:
 15 Q. And now, by that July 25 e-mail when you
 16 forwarded it on to Carolyn, Darrell and Ms.
 17 Hennessey, I take it Ms. Moira Hennessey was
 18 now to be involved in this?
 19 MR. ABBOTT:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. As of the beginning of that week, Monday, July
 23 25. Did you have any discussions with her
 24 about she was brought into the picture as to -
 25 MR. ABBOTT:

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1 A. Again, I don't, you know, remember any
 2 particular conversation or briefing
 3 specifically with her on that. It may have
 4 been in passing because we were obviously in
 5 each other's company on, for a range of
 6 issues, but I don't--there's nothing specific
 7 comes to mind.
 8 COFFEY, Q.C.:
 9 Q. Now that--when she is kind of brought into it,
 10 what would she have available to her?
 11 MR. ABBOTT:
 12 A. If anything, it would have been whatever, you
 13 know, the briefing note that was provided on
 14 July 21st and any subsequent and maybe some of
 15 the e-mails in--from that point on. But if
 16 we--it seemed now that, you know, there would
 17 be some ongoing activity between, obviously,
 18 the department, the minister's office and
 19 Eastern Health that that would be her role to
 20 sort of manage that on behalf of the
 21 department to the degree we were going to be
 22 involved.
 23 COFFEY, Q.C.:
 24 Q. When you're given that three-page briefing
 25 note, where would the three pages be stored?

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1 MR. ABBOTT:
 2 A. In terms of--and I--not specific on this one,
 3 but generally what I would do with my material
 4 when I'm finished with it, would provide it to
 5 my secretary and she would either file it
 6 based on the subject matter and/or I would
 7 have said refer this to an individual. In
 8 this case most likely it would have gone to,
 9 you know, Ms. Hennessey. But I can't, unless
 10 I saw some actual tracking notation, I'm not
 11 sure if that, in fact, happened.
 12 COFFEY, Q.C.:
 13 Q. Do you know if your department, while you were
 14 deputy minister, ever actually had a file?
 15 MR. ABBOTT:
 16 A. Other than -
 17 COFFEY, Q.C.:
 18 Q. In the sense of on the ER/PR -
 19 MR. ABBOTT:
 20 A. Other than what would have been with--in Ms.
 21 Hennessey's section and the divisions that
 22 reported to her, it would be located there. I
 23 certainly didn't have one in my office.
 24 COFFEY, Q.C.:
 25 Q. Okay.

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1 THE COMMISSIONER:
 2 Q. There's no central registry for filing in the
 3 Department of Health?
 4 MR. ABBOTT:
 5 A. Yes, we do and we have a tracking system, or
 6 I'll again put it in the past, and but it
 7 wouldn't automatically go to a central
 8 registry until the division that was dealing
 9 with it felt that it was now appropriate to,
 10 in fact, do that. But, you know, and things
 11 were evolving because now we have--it's all,
 12 you know, on an electronic system so it's now,
 13 you can track documents much, much better.
 14 But at that point we weren't there on that.
 15 COFFEY, Q.C.:
 16 Q. So in July of 2005 and early August, 2005 the
 17 system was still paper based?
 18 MR. ABBOTT:
 19 A. Largely. There were some -
 20 COFFEY, Q.C.:
 21 Q. At tracking -
 22 MR. ABBOTT:
 23 A. There was some electronic monitoring, but it
 24 was at its very early stage.
 25 COFFEY, Q.C.:

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1 Q. So do you know if the department in terms of a
 2 registry file, as it were.
 3 MR. ABBOTT:
 4 A. Yes.
 5 COFFEY, Q.C.:
 6 Q. The Commissioner asked you about, do you know
 7 if the Department of Health ever had a
 8 registry file for ER/PR?
 9 MR. ABBOTT:
 10 A. I don't think we did.
 11 COFFEY, Q.C.:
 12 Q. Can you, you know, tell the Commissioner why
 13 that would be, why would there--I mean, it did
 14 certainly become a significant issue over
 15 time? From the beginning it was -
 16 MR. ABBOTT:
 17 A. Well, again, it speaks to, you know, the,
 18 shall we say, the ownership of the issue. The
 19 issue was Eastern Health's. Our involvement
 20 was, again, facilitating, obviously, the
 21 briefings with the minister, those kinds of
 22 things and that was the extent of it. We did
 23 not do any research on our behalf, developed
 24 our own file or monitoring other than
 25 generally through, you know, obviously, verbal

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1 briefings, conversations, e-mails and series
 2 of briefing notes. And they were all in terms
 3 of--looking back on it, obviously, all the
 4 notes were coming through one division, one
 5 ADM that was--so from a deputy minister
 6 perspective the minister of the day would know
 7 who to contact to get an update from within,
 8 you know, in terms of anybody holding any
 9 information in the department.
 10 THE COMMISSIONER:
 11 Q. And that would be Ms. Hennessey?
 12 MR. ABBOTT:
 13 A. Yes.
 14 COFFEY, Q.C.:
 15 Q. So with respect, then, to the August 5
 16 meeting, do you remember anything about it?
 17 MR. ABBOTT:
 18 A. I really don't recall very much on that, for
 19 whatever reason, I can't, I can't really
 20 explain. But it--unlike the 21st meeting of
 21 July, I have a lot of recall on that. But
 22 this particular one, I don't.
 23 THE COMMISSIONER:
 24 Q. Mr. Coffey, wherever you can find the
 25 appropriate place, we'll take the morning

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1 break.
 2 COFFEY, Q.C.:
 3 Q. Thank you. Right now, Commissioner, would be
 4 fine.
 5 THE COMMISSIONER:
 6 Q. All right. Fifteen minutes.
 7 (RECESS)
 8 THE COMMISSIONER:
 9 Q. Please be seated. Mr. Coffey.
 10 COFFEY, Q.C.:
 11 Q. Thank you, Commissioner. Now if we could
 12 bring up, please--so, Mr. Abbott, in terms of
 13 the August 5th matter, in terms of, you know,
 14 information that you as the former deputy
 15 minister or the then deputy minister and you
 16 have no records kept of the meeting as to how
 17 it came about, who called it?
 18 MR. ABBOTT:
 19 A. No, I don't.
 20 COFFEY, Q.C.:
 21 Q. And no memory of it?
 22 MR. ABBOTT:
 23 A. It's sketchy, at best.
 24 COFFEY, Q.C.:
 25 Q. Well, in terms of sketchy at best, what can

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1 you tell us about what, if anything, you do
 2 remember?
 3 MR. ABBOTT:
 4 A. Well, you know, that obviously a meeting was
 5 set up. We had it. Mr. Tilley was there, and
 6 I'm not quite sure who else was with him. I
 7 believe the minister would have been there,
 8 myself, maybe Ms. Hennessey, and it was sort
 9 of a status, you know, discussion, where
 10 things are in terms of the issue and where we
 11 are in terms of follow up on the disclosure
 12 and any public announcement on the issue.
 13 After that, I don't know a lot more.
 14 COFFEY, Q.C.:
 15 Q. And in terms of the matter of communicating
 16 with the patients about this, individual
 17 patients -
 18 MR. ABBOTT:
 19 A. Yes.
 20 COFFEY, Q.C.:
 21 Q. - what was the situation on that? I mean, on
 22 the 21st, that had been left hanging?
 23 MR. ABBOTT:
 24 A. Yes.
 25 COFFEY, Q.C.:

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1 Q. Because you said you've expressed your view at
 2 the meeting and -
 3 MR. ABBOTT:
 4 A. Yes, yeah.
 5 COFFEY, Q.C.:
 6 Q. - and this is now about--well, just over two
 7 weeks later.
 8 MR. ABBOTT:
 9 A. Yes.
 10 COFFEY, Q.C.:
 11 Q. Where was that then?
 12 MR. ABBOTT:
 13 A. Well, again, I think we questioned, you know,
 14 where they were, were they in a position to do
 15 that. Should there be or would there be--in
 16 terms of how we would do it, and I think the
 17 discussion got around to, you know, if you're
 18 doing individual notification, it would be by
 19 letter, and that's sort of my--that would be
 20 my answer on that point right now.
 21 COFFEY, Q.C.:
 22 Q. I'm sorry, so who raised the issue of sending
 23 letters? I mean, was it your view that
 24 letters would be better?
 25 MR. ABBOTT:

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1 A. I don't know who specifically put that, you
 2 know, maybe it should be done by letter on the
 3 table, but when we talked around patient
 4 notification, I know, just in terms of my
 5 approach on this, was that you would have to
 6 notify the individual and you would have to do
 7 it in writing so that they had the correct,
 8 ideally, and same information from one patient
 9 to another. So that's where I would come from
 10 on that. Whether I specifically suggested the
 11 letter in the first instance, I can't say.

12 COFFEY, Q.C.:

13 Q. But who's ever idea it was to start -

14 MR. ABBOTT:

15 A. Yes.

16 COFFEY, Q.C.:

17 Q. - would have taken credit for it, from your
 18 perspective, it was the preferred method to
 19 communicate with individual patients?

20 MR. ABBOTT:

21 A. Yes.

22 COFFEY, Q.C.:

23 Q. And for the reasons you've enunciated which is
 24 that there's consistency of approach?

25 MR. ABBOTT:

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1 A. Yes.

2 COFFEY, Q.C.:

3 Q. And there's a record that you've done it.

4 MR. ABBOTT:

5 A. Absolutely.

6 COFFEY, Q.C.:

7 Q. I presume from a patient's perspective, it's
 8 something for them, after they've read it
 9 once, if they want to go back and read it a
 10 second or third time, they could do that.

11 MR. ABBOTT:

12 A. It's tangible, yes.

13 COFFEY, Q.C.:

14 Q. It's tangible, and you could provide contact
 15 numbers if necessary.

16 MR. ABBOTT:

17 A. Well, provide--yeah, but -

18 COFFEY, Q.C.:

19 Q. Contact in the sense of -

20 MR. ABBOTT:

21 A. - we didn't get into the text, but that would
 22 be, yes, the assumption there.

23 COFFEY, Q.C.:

24 Q. And it's a list, you--if the Commissioner was
 25 to ask even now, you could sit down and

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1 actually list out a whole bunch of advantages.

2 MR. ABBOTT:

3 A. Sure.

4 COFFEY, Q.C.:

5 Q. Was there any objection to a letter, using
 6 that format?

7 MR. ABBOTT:

8 A. I don't think so. I think, again, the
 9 discussion might have got into--it probably--
 10 you know, trying to think through this, is
 11 that it got into when we do it, not
 12 specifically how.

13 COFFEY, Q.C.:

14 Q. And then the objection wouldn't--it wasn't so
 15 much to "no, we don't want to send letters.
 16 We'll send--we'll make phone calls instead."
 17 It was "no, we'll communicate with them." No
 18 discussion really, no objection to a letter,
 19 but "we're still not ready to send anything
 20 yet or communicate at all."

21 MR. ABBOTT:

22 A. Yeah, I think the issues around and then why
 23 that was the case in terms of concerns from, I
 24 believe, the oncologists and other -

25 COFFEY, Q.C.:

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1 Q. Okay, on that point, I'm going to ask you,
 2 what was the--do you recall what was the
 3 concern at that point, in the sense of why
 4 they needed more time?

5 MR. ABBOTT:

6 A. Again, my thought was that it got initially
 7 raised in the July 21st meeting, but I'm not
 8 100 percent sure there, but in this meeting,
 9 there would have been the reservation of how--
 10 it was the how then in is it better to have,
 11 from the clinical side and the oncology side,
 12 to have the physician notify their patients
 13 and whether it's the oncologists or others to
 14 do that, and so they wanted to be at a comfort
 15 level that in fact they had sufficient
 16 information to do that. These are their
 17 patients. They know them, know them best, you
 18 know, their pathology, those kinds of things.

19 COFFEY, Q.C.:

20 Q. So these sorts of reservations were being
 21 raised by one or more individuals from Eastern
 22 Health?

23 MR. ABBOTT:

24 A. Yes. Yes, and I think, as I said, I believe

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1 there was discussion around that. It wasn't
 2 the dominant discussion on July 21st, but it
 3 certainly was -
 4 COFFEY, Q.C.:
 5 Q. When it was raised, it started to be raised.
 6 MR. ABBOTT:
 7 A. Yes.
 8 COFFEY, Q.C.:
 9 Q. By this point, August 5, and certainly in
 10 August 5 it was raised.
 11 MR. ABBOTT:
 12 A. Yes.
 13 COFFEY, Q.C.:
 14 Q. So leaving the meeting of August 5, what did
 15 you understand the status was?
 16 MR. ABBOTT:
 17 A. Well, if I may just step back for a second.
 18 When I--obviously listening to what Eastern
 19 Health was saying, I knew--I could certainly
 20 appreciate what they were saying and
 21 understood it, but I also saw that this was
 22 the potentially weak link here is if it was
 23 done through individual physicians at their--
 24 based on sort of their knowledge, their time
 25 frames, their list of patients, versus a

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1 blanket approach where we make sure we cover
 2 everybody with the same information, and
 3 that's why the letter approach, I kept
 4 suggesting then and subsequently that if
 5 you're doing the notification, do that. That
 6 doesn't preclude the physician obviously
 7 making contact and explaining the letter and
 8 all those kinds of things. But we left the
 9 meeting to, yet again, have Eastern Health
 10 provide us with more information, where they
 11 are on sending out the assessments to Mount
 12 Sinai, those kinds of things.
 13 COFFEY, Q.C.:
 14 Q. Because by this point in time, by August 5,
 15 the idea of using Mount Sinai to do the
 16 retesting was known?
 17 MR. ABBOTT:
 18 A. Yes, and again, we viewed that as very
 19 positive and proactive, that okay, because of
 20 your concern and your uncertainty about your
 21 lab or our lab, then you are going to get
 22 Mount Sinai to do it. Now I had no basis to
 23 say that was the right place to go or not, but
 24 I obviously accepted what was said.
 25 COFFEY, Q.C.:

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1 Q. The assurance in that regard you were
 2 receiving from Eastern Health.
 3 MR. ABBOTT:
 4 A. The word "Mount Sinai" again, for me, connotes
 5 a certain quality and expertise.
 6 COFFEY, Q.C.:
 7 Q. So you had no reason to question -
 8 MR. ABBOTT:
 9 A. No.
 10 COFFEY, Q.C.:
 11 Q. - their choice or suggestion of using--and
 12 that's their choice of Mount Sinai, because it
 13 was their choice?
 14 MR. ABBOTT:
 15 A. Yes.
 16 COFFEY, Q.C.:
 17 Q. Eastern Health's. In terms of your
 18 understanding of the time frames at this
 19 point, because initially you said in July 21,
 20 you had gotten the sense that it would be--
 21 retesting would be done very quick, relatively
 22 quickly?
 23 MR. ABBOTT:
 24 A. Yes.
 25 COFFEY, Q.C.:

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1 Q. Now by August 5 and they're talking about
 2 Mount Sinai, what was the sense then?
 3 MR. ABBOTT:
 4 A. Again, they were talking that we can get the
 5 specimens ready to go and, you know, as
 6 they're ready to go and get the results back
 7 that then we would be in a position to
 8 disclose obviously the findings to the
 9 individual patient. We were talking in terms
 10 of start--at least I remember it as doing this
 11 sort of, you know, immediately, and then as
 12 results were coming back and we were talking,
 13 you know, a couple of weeks, if I got that
 14 correct, and then as each series of specimens
 15 were sent, the results. So we were talking
 16 weeks, you know, blocks of weeks, I guess, if
 17 I can put it that way. But, and that was sort
 18 of, for me, was in the time frame we were
 19 talking, you know, we should be able to
 20 understand exactly what was happening here and
 21 people notified or patients notified certainly
 22 during the months of August, into September.
 23 That was sort of the time frame, as I
 24 understood it then.
 25 COFFEY, Q.C.:

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1 Q. At that time, yes.
 2 MR. ABBOTT:
 3 A. Yeah.
 4 COFFEY, Q.C.:
 5 Q. And your understanding of that would be
 6 gleaned from what Eastern Health was
 7 communicating?
 8 MR. ABBOTT:
 9 A. Yes, and that was our only source.
 10 COFFEY, Q.C.:
 11 Q. What about the patients from outside the city,
 12 outside the old Health Care Corporation
 13 patient group? How was that going to work?
 14 MR. ABBOTT:
 15 A. Well, I would -
 16 COFFEY, Q.C.:
 17 Q. In terms of the timing.
 18 MR. ABBOTT:
 19 A. I don't think there was any discussion around
 20 the fact that there was either Eastern Health
 21 or not, that everything would be coordinated
 22 through Eastern Health lab. Whether or not
 23 they actually held the specimens or they would
 24 have to go to collect them from the other
 25 facilities wasn't a point that got raised as

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1 an issue or potentially the delay in the
 2 approach.
 3 COFFEY, Q.C.:
 4 Q. Okay, that's what I was--that's what I'm
 5 getting at is that at that point, it wasn't
 6 brought to your attention, at least that you
 7 can recall, that what we're doing in St.
 8 John's, we can accomplish in this time frame
 9 that you've just described, but we still have
 10 to get the material from outside St. John's
 11 and we're depending upon the other authorities
 12 to send it in?
 13 MR. ABBOTT:
 14 A. Yes, and -
 15 COFFEY, Q.C.:
 16 Q. That wasn't discussed?
 17 MR. ABBOTT:
 18 A. Not at that meeting, I believe, no.
 19 COFFEY, Q.C.:
 20 Q. Okay, and it didn't, at the time, from your
 21 overall approach, it didn't occur to you at
 22 the time to inquire about that?
 23 MR. ABBOTT:
 24 A. No.
 25 COFFEY, Q.C.:

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1 Q. What about the current testing, the status of
 2 current testing? I mean, if they're going to
 3 Mount Sinai to do the retests, what was your
 4 understanding at that time about current
 5 cases? What were they going to do with the
 6 current cases?
 7 MR. ABBOTT:
 8 A. Again, the sense I have is that they were, you
 9 know, going to continue. There hadn't been
 10 any discussion, I don't think, of stopping
 11 testing at that point, and I really don't
 12 think that got into the conversation.
 13 COFFEY, Q.C.:
 14 Q. If we could bring up, please, Exhibit P-0163?
 15 Mr. Abbott, I gather, again just because of
 16 the date and timing, this is probably August
 17 9th 2005, a e-mail from yourself to Dr.
 18 Williams?
 19 MR. ABBOTT:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. At 10:08 a.m. The subject is letters to
 23 patients, and you've written there, "just
 24 checking in to see if the letters to the
 25 patients respecting retesting of negative

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1 ER/PR test results are being sent. Please
 2 advise. Meanwhile, thanks for your continued
 3 assistance/advice in this matter." Signed
 4 John Abbott, and you've copied this to Moira
 5 Hennessey?
 6 MR. ABBOTT:
 7 A. Yes.
 8 COFFEY, Q.C.:
 9 Q. And what was the purpose of this, well other
 10 than the obvious one, to make the inquiry?
 11 What was the purpose of this?
 12 MR. ABBOTT:
 13 A. Again, you know, out of previous meeting, you
 14 know, we, I think, through the minister was
 15 saying, look, you know, we want the patients
 16 to be notified.
 17 COFFEY, Q.C.:
 18 Q. That this is going on?
 19 MR. ABBOTT:
 20 A. That this is going on, and that for me was a
 21 prompt to say "folks," you know, to Eastern
 22 Health that that's still on--where we think
 23 this should be heading and that was what the
 24 intent was there.
 25 COFFEY, Q.C.:

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1 Q. And yes, because the tenure of this is, in
 2 effect, to say--well, was it here were you
 3 asking here "are you going to send the
 4 letters" or you know, the presumption is
 5 "you're sending them, but have you done it
 6 yet?"
 7 MR. ABBOTT:
 8 A. I think it's--you know, that's a good point
 9 that you're raising.
 10 COFFEY, Q.C.:
 11 Q. I'm just asking.
 12 MR. ABBOTT:
 13 A. And to be honest, I'm not 100 percent sure,
 14 because I wanted to be--to make sure, you
 15 know, based on the discussion with the
 16 briefing with the minister, that they were
 17 keeping this front and centre as that he wants
 18 this to occur and are you allowing it or are
 19 you positioning it to occur. But coming out
 20 the meeting, it wasn't necessarily that, in
 21 fact, the letters are being sent and they will
 22 be sent next week.
 23 COFFEY, Q.C.:
 24 Q. And but it was your understanding in sending
 25 this sort of an e-mail to--and it's to Bob

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1 Williams, okay?
 2 MR. ABBOTT:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. Not Mr. Tilley. Why Dr. Williams as opposed
 6 to Mr. Tilley?
 7 MR. ABBOTT:
 8 A. I'm not sure why at that particular junction,
 9 because normally I would be going through, you
 10 know, communicating with Mr. Tilley, again
 11 because the view that he was more aligned with
 12 that issue, you know, lab issue and Dr. Cook
 13 and the oncologists and whatever, so and the
 14 fact I didn't copy it to Mr. Tilley, which
 15 normally I would in those instances, I guess,
 16 but I can't explain that any further.
 17 COFFEY, Q.C.:
 18 Q. What was your understanding, by this point in
 19 time, I mean we're over a week into August of
 20 '05, of who at Eastern Health, at least your
 21 sense at the time of who was primarily
 22 responsible? I appreciate Mr. Tilley was, you
 23 know, the CEO.
 24 MR. ABBOTT:
 25 A. Yeah, no, I -

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1 COFFEY, Q.C.:
 2 Q. But in terms of who was -
 3 MR. ABBOTT:
 4 A. Dr. Williams based on the support and advice
 5 certainly of Dr. Cook and certainly at that
 6 point in time.
 7 COFFEY, Q.C.:
 8 Q. Because this is a communications issue here,
 9 this disclosure to the patients about the -
 10 MR. ABBOTT:
 11 A. Yeah, but they--again, you know, how they were
 12 developed and the information that would have
 13 been in them would have been through Dr.
 14 Williams.
 15 COFFEY, Q.C.:
 16 Q. Okay, the kind of clinical information that
 17 would be in it?
 18 MR. ABBOTT:
 19 A. Yes.
 20 THE COMMISSIONER:
 21 Q. Let's solve my little small point about we're
 22 agreeing that this one is August 9th. Do I
 23 take it that, on your computer, you put the
 24 month, day and then year? Could I assume that
 25 all messages from you with three numbers in

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1 them, if they're not up above 12, I can go -
 2 MR. ABBOTT:
 3 A. Yeah, and that would be the system. I
 4 wouldn't have to do anything about that.
 5 THE COMMISSIONER:
 6 Q. I think that's consistently inconsistent
 7 throughout the systems.
 8 MR. ABBOTT:
 9 A. Yes, I suspect you're right there.
 10 THE COMMISSIONER:
 11 Q. Thank you.
 12 COFFEY, Q.C.:
 13 Q. Now so you're copying this too to Ms.
 14 Hennessey. So I take it she's being kept -
 15 MR. ABBOTT:
 16 A. Yeah, because she would have been at the
 17 meeting.
 18 COFFEY, Q.C.:
 19 Q. - and being kept in the loop as to your
 20 following up on this letter to patient issue?
 21 MR. ABBOTT:
 22 A. Yes, and you know, I think you need to be
 23 clear. I mean, you know, this reflects my
 24 bias that we go this way, so nudging them ever
 25 so--anyway, won't say--it was fairly, you

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1 know, direct in terms of that.
 2 COFFEY, Q.C.:
 3 Q. Yes, there's no two ways about it. Four days
 4 after the meeting, you're saying to Dr.
 5 Williams "have you got it done yet?"
 6 MR. ABBOTT:
 7 A. Yes.
 8 COFFEY, Q.C.:
 9 Q. I take it that--what was the response, if any,
 10 in that regard?
 11 MR. ABBOTT:
 12 A. I believe, and I know there was a subsequent
 13 meeting, which I was not in attendance, but
 14 that the issues obviously got addressed yet
 15 again.
 16 COFFEY, Q.C.:
 17 Q. So, and I appreciate there's a meeting of
 18 August 15th, which is, I think, the one you're
 19 talking about.
 20 MR. ABBOTT:
 21 A. Yes.
 22 COFFEY, Q.C.:
 23 Q. The minister attended and as you've indicated,
 24 you're not there.
 25 MR. ABBOTT:

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1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. Do you recall why you weren't there?
 4 MR. ABBOTT:
 5 A. I really don't know if it was just at another
 6 meeting or out of the office.
 7 COFFEY, Q.C.:
 8 Q. Okay, there's no -
 9 MR. ABBOTT:
 10 A. There was no particular reason why I wasn't
 11 there. If I was available, I would have been
 12 there obviously.
 13 COFFEY, Q.C.:
 14 Q. Because Ms. Hennessey apparently attended as
 15 well as the minister.
 16 MR. ABBOTT:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. Within your own department, who, at this
 20 point, was by that point, tasked with kind of
 21 carrying this matter or coordinating it or
 22 whatever phrase one wants to use?
 23 MR. ABBOTT:
 24 A. Yeah, it would have fallen to Ms. Hennessey.
 25 COFFEY, Q.C.:

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1 Q. Ms. Hennessey. There was a meeting on August
 2 15th 2005. Do you have any recollection--and
 3 I appreciate you weren't there, but what the
 4 purpose of that meeting was, your
 5 understanding of it?
 6 MR. ABBOTT:
 7 A. Again, you know, as I said earlier, as a
 8 follow up to the subsequent meetings and where
 9 Eastern Health was around the issue, because
 10 you know, there was--the operating premise, I
 11 guess, for us during the early part of August
 12 is that the patient notification would be, in
 13 one form or another, would be imminent and
 14 then once we knew that, that the minister
 15 would obviously have that information and if
 16 he needed to or had to respond in the public--
 17 and we never got to a stage of whether or not
 18 he would even actually say anything more than
 19 that. So that was our focus. We weren't
 20 focused on the ER/PR technical issues and
 21 solutions. We were focused on how this was
 22 being communicated or would be communicated.
 23 COFFEY, Q.C.:
 24 Q. And when you look at, like P-0163, it says
 25 "just checking in to see if the letters are

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1 being sent," in terms of are going to be sent
 2 at all versus have been sent, as you've
 3 indicated just now that certainly if letters
 4 were being sent, a decision was concretely
 5 made -
 6 MR. ABBOTT:
 7 A. That's right.
 8 COFFEY, Q.C.:
 9 Q. - for letters to be sent, the minister would
 10 have to know that because he would have needed
 11 to be briefed and have effectively briefing
 12 notes prepared for him on that?
 13 MR. ABBOTT:
 14 A. If need be, yes.
 15 COFFEY, Q.C.:
 16 Q. Because you'd have potentially hundreds of
 17 patients receiving letters.
 18 MR. ABBOTT:
 19 A. Yes.
 20 COFFEY, Q.C.:
 21 Q. And at that point, certainly it would go
 22 public, wouldn't it?
 23 MR. ABBOTT:
 24 A. I would -
 25 COFFEY, Q.C.:

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1 Q. The expectation would be?
 2 MR. ABBOTT:
 3 A. That was certainly the assumption.
 4 COFFEY, Q.C.:
 5 Q. And the Premier's office and the Cabinet
 6 secretariat would have to know that?
 7 MR. ABBOTT:
 8 A. Yes.
 9 COFFEY, Q.C.:
 10 Q. And so here in this context, in terms of
 11 sending this e-mail on August 9th, as none of
 12 those other things had been done yet? Cabinet
 13 secretariat hadn't been informed in any formal
 14 way?
 15 MR. ABBOTT:
 16 A. No.
 17 COFFEY, Q.C.:
 18 Q. Premier's office hadn't been informed in a
 19 formal way?
 20 MR. ABBOTT:
 21 A. No.
 22 COFFEY, Q.C.:
 23 Q. The minister didn't really have his own
 24 briefing note from the department?
 25 MR. ABBOTT:

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1 A. That's correct.
 2 COFFEY, Q.C.:
 3 Q. As of August 9th, then this suggests that you
 4 were asking Dr. Williams are you going to send
 5 it at all?
 6 MR. ABBOTT:
 7 A. Yes.
 8 COFFEY, Q.C.:
 9 Q. And you didn't receive or did you receive any
 10 response in writing?
 11 MR. ABBOTT:
 12 A. I don't remember having certainly any written
 13 response and I -
 14 COFFEY, Q.C.:
 15 Q. How about a verbal response?
 16 MR. ABBOTT:
 17 A. I don't think, at that point. I think we were
 18 talking, you know, shortly thereafter that, we
 19 were having another meeting when this issue
 20 would get raised yet again.
 21 COFFEY, Q.C.:
 22 Q. And the point, I take it, of the August 15th
 23 meeting then, I take it, was to bring the
 24 issue to a head, in the sense of, you know,
 25 are the patients going to be notified or

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1 aren't they?
 2 MR. ABBOTT:
 3 A. Well, that would be one of the subjects for
 4 sure.
 5 COFFEY, Q.C.:
 6 Q. And I understand you weren't at the meeting.
 7 The minister and Ms. Hennessey apparently did
 8 attend it. Before the meeting, had you
 9 communicated to Ms. Hennessey what your own
 10 view in this regard was?
 11 MR. ABBOTT:
 12 A. I really can't say, you know, in terms of a
 13 conversation, but I suspect she--you know,
 14 from the previous meeting, and this e-mail,
 15 that she would have a sense of that.
 16 COFFEY, Q.C.:
 17 Q. And by the time that August 15th meeting
 18 occurred, from your perspective, do you think
 19 the minister was clear about your own views on
 20 it? Or do you have any reason to believe he
 21 wasn't clear?
 22 MR. ABBOTT:
 23 A. No, because we were--as I said earlier, we
 24 were on the same page on this, mine was very
 25 immediate, and his was, well, just need some

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1 more information, but we were talking within
 2 the same, roughly the same period.
 3 COFFEY, Q.C.:
 4 Q. What was your understanding of what happened
 5 at the meeting, I appreciate you weren't
 6 there, but what was reported to you?
 7 MR. ABBOTT:
 8 A. Again, I'm not--I don't remember a lot about
 9 that other than the issue came up around
 10 notification and the process there, Eastern
 11 Health's, you know, continued uncertainty
 12 about doing it, the need to involve and have
 13 the oncologists and others fully involved in
 14 the process and that we, you know, there was
 15 now going to be, looked like we were going to
 16 wait until test results were back for now, for
 17 greater certainty. So I don't know if it's
 18 exactly that meeting or very shortly
 19 thereafter where the notion becomes more
 20 cemented, I guess, in people's minds around,
 21 well let's wait for test results and then
 22 let's do the notification.
 23 COFFEY, Q.C.:
 24 Q. And your understanding about -
 25 MR. ABBOTT:

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1 A. And if I may -
 2 COFFEY, Q.C.:
 3 Q. Sure.
 4 MR. ABBOTT:
 5 A. There was some, the logic of it was that,
 6 again, these were imminent and so we can
 7 obviously do that, obviously the timeframe is
 8 expanding, but that was sort of the
 9 perspective put on the, I think discussed and
 10 any discussions after that were sort of
 11 wondering, at least when we would have talked
 12 about it in the department, say with Moira
 13 Hennessey and myself or anybody else, is you
 14 know, are we on that slippery slope kind of
 15 scenario. But -
 16 COFFEY, Q.C.:
 17 Q. Slipper slope to where?
 18 MR. ABBOTT:
 19 A. Of it just being sort of dragged out longer
 20 than one would like, but it was, you know,
 21 again informed position of Eastern Health, the
 22 minister was certainly apprised and fully
 23 engaged, you know, in that discussion and
 24 wherever his comfort level was, that's where,
 25 you know, we would have to be as well.

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1 COFFEY, Q.C.:
 2 Q. And I appreciate the minister of the day is in
 3 our system is the one that's in charge.
 4 MR. ABBOTT:
 5 A. Yeah, and this was done and which was, you
 6 know, very deliberate that he was, this
 7 particular issue was, obviously fully engaged
 8 and so everybody could, both at the department
 9 level if there was a role for us on any basis,
 10 and certainly for Eastern Health, you know,
 11 where he was, and probably more important that
 12 he knew where they were on this issue.
 13 COFFEY, Q.C.:
 14 Q. Now at that point, by the time that August
 15 15th meeting ended and I appreciate you
 16 weren't there, but I mean, you're briefed
 17 about it afterward or you debriefed Ms.
 18 Hennessey, did you speak to the minister
 19 afterward about it?
 20 MR. ABBOTT:
 21 A. Again, I can't recall any specific
 22 conversation, but knowing again how we
 23 operated, we would have had some sort of
 24 conversation, but exactly when and what day, I
 25 could not say. But -

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1 COFFEY, Q.C.:
 2 Q. What was your overall sense in terms of how
 3 Mr. Ottenheimer -
 4 MR. ABBOTT:
 5 A. I would say that, you know, he was recognizing
 6 the merits of the Eastern Health position, if
 7 I can put it that way, but he knew, I think
 8 intuitively that it is not where he would
 9 prefer it to go, but he was still going to,
 10 you know, take the information and their
 11 advice at that juncture. And I was, for me,
 12 satisfied that he clearly understood the
 13 issues as best as I understood them, and that
 14 he was engaged in the matter.
 15 COFFEY, Q.C.:
 16 Q. In terms of, from your perspective, I mean, as
 17 August wore on, what was your view of the
 18 position Eastern Health had taken by the
 19 middle of August? I mean, as we get toward
 20 the end of August, what was your--as the
 21 deputy minister?
 22 MR. ABBOTT:
 23 A. You know, I felt that despite it being a
 24 reasoned and reasonable position on behalf of
 25 Eastern Health, it, to me, would not be the

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1 preferred position in terms of notifying
 2 patients.
 3 COFFEY, Q.C.:
 4 Q. Your preferred position was still notify the
 5 patients involved directly?
 6 MR. ABBOTT:
 7 A. Get, make sure that the patients have the
 8 information as it is affecting their health,
 9 their welfare and their families, that, you
 10 know, that that was important to do that on a
 11 timely basis and the time was now, shall we
 12 say, slipping even further.
 13 COFFEY, Q.C.:
 14 Q. And in terms of that matter, did you
 15 communicate that to Mr. Ottenheimer, that your
 16 view hadn't changed.
 17 MR. ABBOTT:
 18 A. Yeah, we would have discussed and again, as I
 19 said, it was, you know, generally his
 20 approach, as well in terms of early
 21 notification, those kind of things, but the
 22 reservations from Eastern Health, and again,
 23 as I said yesterday, I had the luxury of
 24 suggesting that, I did not have, you know,
 25 anybody saying behind me, now John, you've got

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1 to be careful here, we're not ready, we're not
 2 this, we're not that, verses obviously what I
 3 suspect was happening on the Eastern Health
 4 side. There were, you know, different
 5 perspectives, again, and these were informed
 6 positions, both from the oncology side of
 7 things, obviously, as I understood it was sort
 8 of really the driving force for their position
 9 at that time. So it was notification, but
 10 notification through the physician.
 11 COFFEY, Q.C.:
 12 Q. And what format that notification might take,
 13 whether it would be verbal or in writing,
 14 that--the discussion didn't get that far?
 15 MR. ABBOTT:
 16 A. No.
 17 COFFEY, Q.C.:
 18 Q. And you did foresee though, you've told us
 19 earlier that the potential pitfalls of
 20 entirely relying upon the physicians to do it.
 21 MR. ABBOTT:
 22 A. Sure.
 23 COFFEY, Q.C.:
 24 Q. Did the issue, after the August 15th, 2005
 25 meeting, did the issue arise or was it

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1 discussed within the Department of Health
 2 about if it does go public anyway, what is the
 3 state of preparedness by Eastern Health,
 4 what's their--have they communicated to us
 5 where they are with this?
 6 MR. ABBOTT:
 7 A. I don't think that type of conversation took
 8 place. My comfort level around that time is
 9 at least both Eastern Health and the
 10 minister's office would have at least
 11 sufficient information to be able to respond
 12 and that both parties were, you know, being
 13 engaged in this that we could respond rather
 14 quickly, if need be.
 15 COFFEY, Q.C.:
 16 Q. Now did you ever receive any written summary
 17 or briefing from anyone concerning what went
 18 on at the August 15th meeting?
 19 MR. ABBOTT:
 20 A. No.
 21 COFFEY, Q.C.:
 22 Q. And now you did understand by the time you
 23 found out what had happened on August 15th
 24 that the minister was prepared to continue to
 25 leave it in Eastern Health's hands, the timing

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1 of the disclosure.
 2 MR. ABBOTT:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. Notification. You understood that it was
 6 going to take--did you still understand it was
 7 still going to be done within August and
 8 September?
 9 MR. ABBOTT:
 10 A. Yes, definitely.
 11 COFFEY, Q.C.:
 12 Q. And though that the results would come back in
 13 waves or in groups, on discreet groupings, and
 14 that the patients would be told as the
 15 groupings, results came back.
 16 MR. ABBOTT:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. So that like group one would be told their
 20 results -
 21 MR. ABBOTT:
 22 A. At that time, yes.
 23 COFFEY, Q.C.:
 24 Q. Group two and group three and so on.
 25 MR. ABBOTT:

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1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. Now if a group, you understood there were
 4 hundreds and hundreds of patients involved
 5 here.
 6 MR. ABBOTT:
 7 A. Yes, and obviously the numbers were in that
 8 category.
 9 COFFEY, Q.C.:
 10 Q. And in terms of that then, was it your
 11 understanding that all patients, like group
 12 one, when their results come back, that
 13 everybody in group one would be told--whether
 14 the results changed or not, that they would be
 15 told?
 16 MR. ABBOTT:
 17 A. I really don't know the answer to that. I
 18 guess my take on it and going back early, it
 19 you notified early, you would notify all.
 20 COFFEY, Q.C.:
 21 Q. Everybody.
 22 MR. ABBOTT:
 23 A. So I would have been on that track, so I
 24 wouldn't have made a distinction between test
 25 results and then should or your should you

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1 not, and my view subsequently would not, you
 2 know, two and a half, whatever later, would
 3 not have changed on that point. Once you are
 4 sending an individual's, you know, specimen to
 5 another authority, then they would have a
 6 right to know that you did that and you would
 7 tell them why.
 8 COFFEY, Q.C.:
 9 Q. Bearing in mind when the first wave came back,
 10 the first group came back from Mount Sinai
 11 with the results, those patients, presumably
 12 would be told within a matter of, beginning I
 13 suppose the next day or two or three, whatever
 14 afterward, was your understanding. And 75 or
 15 100 patients are suddenly told the results,
 16 you would anticipate that that would go public
 17 at that point. That's very likely.
 18 MR. ABBOTT:
 19 A. That's a reasonable conclusion to make, yes.
 20 COFFEY, Q.C.:
 21 Q. But, sir, August 2005 passed and there was no
 22 communication with the premier's office or
 23 with cabinet secretariat about this still?
 24 MR. ABBOTT:
 25 A. No.

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1 COFFEY, Q.C.:
 2 Q. Can you tell the Commissioner why not at that
 3 point?
 4 MR. ABBOTT:
 5 A. Well, again the issue was being, you know,
 6 handled by Eastern Health, the minister was
 7 engaged, we were not at the point where, you
 8 know, this was--is a public issue and we were,
 9 we did not see, I did not see the need to go
 10 any further.
 11 COFFEY, Q.C.:
 12 Q. But you did know, though, that the cabinet
 13 secretariat was aware of it.
 14 MR. ABBOTT:
 15 A. Yes.
 16 COFFEY, Q.C.:
 17 Q. Because of that e-mail that got copied to you.
 18 MR. ABBOTT:
 19 A. Uh-hm.
 20 COFFEY, Q.C.:
 21 Q. On July 19th, so throughout this whole period
 22 of time we've been discussing since July 19th,
 23 you were aware that the cabinet secretariat
 24 knows about this -
 25 MR. ABBOTT:

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1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. You are aware that they had been told that any
 4 announcement, when it came, I think the word
 5 that is used is "minimized" or the significant
 6 might be minimized -
 7 MR. ABBOTT:
 8 A. That was in an e-mail.
 9 COFFEY, Q.C.:
 10 Q. Yes, but you were aware that they had been
 11 told this?
 12 MR. ABBOTT:
 13 A. Yes.
 14 COFFEY, Q.C.:
 15 Q. You're aware that there was a problem. By
 16 August 15th, you knew there was a problem.
 17 You've advanced to the point where Mount Sinai
 18 is doing a large amount of retesting.
 19 MR. ABBOTT:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. There is a problem. Yet it still wasn't
 23 appropriate to inform the premier's office or
 24 the cabinet secretariat in writing as to kind
 25 of what the status of this is?

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1 MR. ABBOTT:
 2 A. We did not feel and I speak for, you know, as
 3 deputy minister, I did not feel that that was
 4 required and obviously it did not inform -
 5 COFFEY, Q.C.:
 6 Q. Now as it turns out, I mean, from the vantage
 7 point of the middle of August of 2005, had the
 8 significance of any announcement been
 9 minimized? In the sense of had the problem
 10 gotten any smaller than -
 11 MR. ABBOTT:
 12 A. No, no, no.
 13 COFFEY, Q.C.:
 14 Q. Did the thought cross your mind, Mr. Abbott,
 15 as to what might, you know, what the
 16 ramification might be if this had gone public,
 17 say on August 20th and the premier's office
 18 and cabinet secretariat knew nothing further
 19 about it, before it went public?
 20 MR. ABBOTT:
 21 A. No. And if I, you know, offer another
 22 comment, I felt that they, both the cabinet
 23 secretariat and the premier's office would
 24 have confidence of the minister and the
 25 department, including myself, that we can,

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1 would and are able to manage these issues and
 2 to the extent that the premier's officer or
 3 the cabinet secretariat could and should be
 4 involved, we would know when and how to do
 5 that.
 6 COFFEY, Q.C.:
 7 Q. Well I'm not suggesting they wouldn't have
 8 confidence in your ability to manage the
 9 issue, it's to let them know that there is an
 10 issue and the nature and size of it, that's
 11 what I'm asking you, okay.
 12 MR. ABBOTT:
 13 A. And that's what I'm alluding to. Now the
 14 corollary is equally true in that, you know,
 15 the cabinet secretariat knew about this and
 16 could have inquired of us, where are you, what
 17 are you doing with it? But I didn't see that,
 18 the onus was certainly on them to do that.
 19 The onus was on us to do it if we felt it
 20 needed to be done.
 21 COFFEY, Q.C.:
 22 Q. What was your understanding by August 15th,
 23 2005, days immediately after that day, as to
 24 how much the cabinet secretariat knew about
 25 it?

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1 MR. ABBOTT:
 2 A. I assume they knew nothing, I mean, it wasn't
 3 a conscious--or a conscious thought, but I
 4 would not have suspected that they would have
 5 any information or detailed information on
 6 that.
 7 COFFEY, Q.C.:
 8 Q. So you're telling the Commissioner then by
 9 August, by the end of August, 2005, you had
 10 never discussed with Carolyn Chaplin, nor
 11 anyone else about what the cabinet secretariat
 12 by now or by that day knows about it, or the
 13 premier's office knows about this?
 14 MR. ABBOTT:
 15 A. I don't recall any conversation along those
 16 lines and as the issue was becoming more known
 17 to us and our comfort level, if I can use that
 18 word, with it, that you know was sort of still
 19 contained in a discussion between Eastern
 20 Health senior executive, the minister and
 21 myself and some other officials in the
 22 department, and we were, as a department, sort
 23 of monitoring the developments, as it were,
 24 for the minister, that's, you know, that's how
 25 we approached it and continued to do that over

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1 the summer.
 2 COFFEY, Q.C.:
 3 Q. Yeah, well I'm not asking about the end of the
 4 summer, you had not had any--you have no
 5 recollection of having any conversation with
 6 anyone, communication with anyone about
 7 whether or not or how much the premier's
 8 office knows about it, or the cabinet
 9 secretariat knows it, what is, admittedly,
 10 you've indicated, a very significant issue.
 11 MR. ABBOTT:
 12 A. Right, but I was in the position where we had
 13 information that if, as I said, if the issue
 14 broke, you know, in the media or elsewhere,
 15 that we would be in the position to be able to
 16 respond to the cabinet secretariat or
 17 premier's office very quickly as to what the
 18 issue was and what have you. There was no
 19 role, again my position or take on this is
 20 that there was no role for them, again it's an
 21 operational issue, they're tell us about it.
 22 The minister might have to comment on it, not
 23 the cabinet secretariat, not the premier's
 24 office and possibly not the premier, unless
 25 it, for whatever reason he felt he needed to

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1 at any point in time, and that's my point, and
 2 that's where the issue was, it was left with
 3 the minister and the department and the
 4 authority and that's what the expectation was
 5 and that continued, obviously, for some time.
 6 COFFEY, Q.C.:
 7 Q. And again, I'm just trying to--you told the
 8 Commissioner before the break this morning
 9 that but as well you understood that, at least
 10 this premier's expectation you understood was
 11 that it was a matter of potential public
 12 significance, that he wanted his office to
 13 know about it.
 14 MR. ABBOTT:
 15 A. Yes.
 16 COFFEY, Q.C.:
 17 Q. The details of it.
 18 MR. ABBOTT:
 19 A. Right.
 20 COFFEY, Q.C.:
 21 Q. You've acknowledged this was a matter of
 22 potential public significance, a very great
 23 public significance, I would suggest to you,
 24 would you agree?
 25 MR. ABBOTT:

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1 A. I gave you my term, you -
 2 COFFEY, Q.C.:
 3 Q. Okay, and yet, despite your understanding of
 4 the premier's view of it or his office's view
 5 of it, you were prepared to and chose
 6 consciously not to inform them.
 7 MR. ABBOTT:
 8 A. That the issue was going to remain within the
 9 department and minister's office for that
 10 period, yes.
 11 COFFEY, Q.C.:
 12 Q. And why is that, why wouldn't one just simply
 13 bang out an e-mail or pick up the phone and
 14 let them know that this is going on across
 15 this province.
 16 MR. ABBOTT:
 17 A. Uh-hm.
 18 COFFEY, Q.C.:
 19 Q. Involving hundreds of patients' health. I
 20 mean, even as a common courtesy wouldn't you
 21 expect or think you would be expected to have
 22 at least informed them that this is going on.
 23 MR. ABBOTT:
 24 A. Well, as I said, the judgment was that it was
 25 not required, I did not do it and that's my

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1 answer.
 2 COFFEY, Q.C.:
 3 Q. And did you ever tell Mr. Ottenheimer that you
 4 had been chair of the Health Care Corporation
 5 during three of the years involved in this?
 6 MR. ABBOTT:
 7 A. I don't think we had a conversation along
 8 those lines, what he recalled, I mean, he met
 9 me as chair for, certainly from his early
 10 initial appointment, but that would have been
 11 in the fall of 2004, obviously, but no, we did
 12 not discuss that one way or the other.
 13 COFFEY, Q.C.:
 14 Q. The fact that at least for 2002 and 2003, you
 15 didn't bring to his attention squarely, you
 16 know, listen Mr. Ottenheimer, I want you to
 17 know that I was chair of the board of the
 18 institution, that memo you saw in 2003,
 19 Ejeckam, I was chair at that time and I was
 20 chair during 2002, which is at least in the
 21 first year that they were really focused on.
 22 MR. ABBOTT:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. And you didn't bring that to his attention.

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1 MR. ABBOTT:
 2 A. Not in the way you're putting it. I believe
 3 he would have known I was chair at that, over
 4 the period, but it wasn't an issue that got
 5 raised by him or by me or anybody else for
 6 that matter.
 7 COFFEY, Q.C.:
 8 Q. And the idea you didn't bring to his
 9 attention, as his deputy minister, that look,
 10 it might be perceived arguably, be perceived
 11 or suggested perhaps, I might have a conflict
 12 of interest in this regard. You didn't bring
 13 that to his attention?
 14 MR. ABBOTT:
 15 A. I had no reason to, never thought it and nor
 16 did anybody else bring it to my attention.
 17 COFFEY, Q.C.:
 18 Q. Okay. If we could, please, Exhibit P-0335.
 19 This is an e-mail of September 1, 2005 from
 20 Ms. Hennessey to George Tilley, 9:56 a.m. and
 21 after the greeting she says, "the minister is
 22 inquiring when you'll be in a position to
 23 provide another update on this. Can you let
 24 me know. Thanks, Moira". And then if we
 25 could look please at P-0139. You'll see at

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1 the bottom of the page, Mr. Abbott, I'm going
 2 onto the next page actually, that first e-mail
 3 where's she's making the inquiry of September
 4 1 and then Mr. Tilley responds at 12:43 on
 5 September 1, 2005 and tells her the status of
 6 the matter. And then she, on September 2,
 7 7:26 the next morning, forwards Mr. Tilley's
 8 response to you with a note, "attached is
 9 update from George T. Please let me know
 10 whether you want me to arrange for them to
 11 come in to update the minister. I think we
 12 should arrange an update post September 10
 13 once they have some test results from Mount
 14 Sinai". Because Mr. Tilley had informed her
 15 the day before that "in excess of 200 blocks
 16 had gone to Mount Sinai, 50 percent of the
 17 total represented, expect to be a position to
 18 provide feedback on those tests September 10
 19 and working to get others from elsewhere in
 20 the province to forward on. In the meantime,
 21 we are waiting the visits of the external
 22 experts, physicians, September 15 and
 23 technologists, September 20, expecting their
 24 reports by mid October. All future specimens
 25 will be sent out of province on an interim

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1 basis. We are doing some fine tuning on the
 2 controls the new Ventana system, working on
 3 the assumption that it is overly sensitive.
 4 Dr. Williams has met with one lady to inquire
 5 about this issue. That it for now from
 6 George. Sent this to Moira and Moira is
 7 forwarding it to you".
 8 So, I take it during the last two weeks
 9 of August not a whole lot happening in this
 10 regard? Would I be correct in that?
 11 MR. ABBOTT:
 12 A. I would think that would be fair to say.
 13 COFFEY, Q.C.:
 14 Q. Do you have any memory of anything other than
 15 -
 16 MR. ABBOTT:
 17 A. No.
 18 COFFEY, Q.C.:
 19 Q. - what we've talked about? Okay. And in
 20 early September, Thursday, September 1, Ms.
 21 Hennessey makes her inquiry and this is the
 22 result, response. In terms of this she is
 23 told, "we are working to get others from
 24 elsewhere in the province to forward on".
 25 Now, what did that mean to you at the time?

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1 MR. ABBOTT:
 2 A. I'm assuming that they would be getting
 3 specimens from the other labs throughout the
 4 province.
 5 COFFEY, Q.C.:
 6 Q. Suggesting that up to that point they hadn't
 7 had them?
 8 MR. ABBOTT:
 9 A. You know, I'm reading the same e-mail you're
 10 reading.
 11 COFFEY, Q.C.:
 12 Q. Okay. Well, was it your understanding that
 13 they had not yet received -
 14 MR. ABBOTT:
 15 A. I'm reading the same, so I can't add anything
 16 to that.
 17 COFFEY, Q.C.:
 18 Q. Okay. The 50 percent of the total which is,
 19 if they sent 200, if 200 percent is 50, that's
 20 400 in total. Is that 400 from St. John's?
 21 Is that your understanding?
 22 MR. ABBOTT:
 23 A. I'm reading the same e-mail you are. I--but
 24 to answer your question, in light of the
 25 second, the third line of that, you could read

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1 it either 50 percent represents what's held in
 2 St. John's or 50 percent of the total. I'm
 3 more inclined to think, you know, and
 4 certainly based on numbers that we're talking
 5 400 number in St. John's and more from outside
 6 St. John's.
 7 COFFEY, Q.C.:
 8 Q. Up to that point, had you been given any
 9 understanding as to what proportion the St.
 10 John's tests were of the provincial total?
 11 MR. ABBOTT:
 12 A. No, not that I'm aware of, no. But you know,
 13 knowing population trends and all that, I
 14 mean, you could probably, sort of, do the
 15 math.
 16 COFFEY, Q.C.:
 17 Q. It would be about, yes, St. John's would be
 18 about half, wouldn't it? Give or take -
 19 MR. ABBOTT:
 20 A. Give or take, yes.
 21 COFFEY, Q.C.:
 22 Q. "In the meantime we are waiting the visits of
 23 the external experts". Now was this the first
 24 time you'd heard of the external experts or -
 25 MR. ABBOTT:

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1 A. No, well again, back in July, in terms of the
 2 briefing material, I think, at that time
 3 suggested that they were moving to bring
 4 experts in to review the lab.
 5 COFFEY, Q.C.:
 6 Q. And so this is September 2, but is the first
 7 time that you've--I mean there's a physician
 8 external expert, dated September 15 and a
 9 technologist external expert dated September
 10 20. First of all, the fact that they were
 11 using a physician and a technologist, was this
 12 the first time you learned this or had you
 13 learned this before?
 14 MR. ABBOTT:
 15 A. In terms of the distinction, possibly, I'm
 16 really not sure on that, but I wouldn't be
 17 surprised if that is around that time.
 18 COFFEY, Q.C.:
 19 Q. Now, at this point in time, you--having read
 20 that, you understood these external experts
 21 were to do what?
 22 MR. ABBOTT:
 23 A. Again, very high level that they would be
 24 reviewing the lab around ER/PR testing
 25 component and that would be it.

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1 COFFEY, Q.C.:

2 Q. And looking at that at the time, the beginning

3 of September 2005, expecting their reports by

4 mid October, did you understand that the

5 reports would be made available to yourselves

6 -

7 MR. ABBOTT:

8 A. I assume if we needed to see them or wanted

9 them or requested them, we would see them.

10 COFFEY, Q.C.:

11 Q. Now, the third paragraph says, well, "all

12 future specimens will be sent out of province

13 on an interim basis" and it goes on about

14 doing fine tuning on the controls of the new

15 Ventana system.

16 Was this the first you heard of the idea

17 of current tests being sent out?

18 MR. ABBOTT:

19 A. I think so. And it was, again, it was a

20 decision that Eastern Health made within their

21 purview to make and there was no, you know, no

22 direction or approval sought from the minister

23 or the department.

24 COFFEY, Q.C.:

25 Q. What was your understanding of why the

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1 retesting had to go outside Newfoundland at

2 all?

3 MR. ABBOTT:

4 A. Well, again, I don't think there was any

5 particular conversation that, given that this

6 was the main, you know, the lab that's doing

7 this on behalf of the province, that if there

8 is a problem and a concern about accuracy and

9 those things, then you find another lab.

10 Well, that would mean, by default, that it's

11 outside the province. As I said earlier, why

12 Mount Sinai versus anywhere else, that was

13 Eastern Health's call to make, I guess.

14 COFFEY, Q.C.:

15 Q. Okay. Was there a concern--was it your

16 understanding there was concern about the

17 ability of the then current machine, the

18 Ventana machine to accurately perform the

19 ER/PR tests?

20 MR. ABBOTT:

21 A. The current machine, that--no. Again, we're

22 looking back up until the introduction of the

23 Ventana. And I'm not sure if it came up in

24 the July 21 briefing or not, but then it was,

25 you know, the issue at some point gets raised

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1 about Ventana in terms of, obviously, are we

2 assured of its accuracy and the processes

3 around that. And that, sort of, comes through

4 in that particular e-mail, but whether it came

5 forward in the discussion on, say, the 21st or

6 one of the other meetings, I really can't

7 recall.

8 COFFEY, Q.C.:

9 Q. It's referenced in George Tilley's July 25 e-

10 mail to you, in fact, the Ventana sensitivity.

11 MR. ABBOTT:

12 A. Yes, but whether or not, again, how--what that

13 meant at that time, I didn't, sort of, hone in

14 on that.

15 COFFEY, Q.C.:

16 Q. In terms of that--now, here you're being told

17 on an interim basis anyway, Eastern Health is

18 for current and future specimens, effectively

19 be the current from time to time would be

20 "sent out of the province while we're doing

21 some fine tuning on the controls".

22 MR. ABBOTT:

23 A. Yes.

24 COFFEY, Q.C.:

25 Q. Suggesting that perhaps the Ventana is not

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1 entirely accurately on the ER/PR issue, tests,

2 right now. Was that your understanding of

3 that at the time?

4 MR. ABBOTT:

5 A. That would be my, you know, assumption there

6 based on that.

7 COFFEY, Q.C.:

8 Q. Had anyone, up to this point in time or even

9 subsequently ever advise you that the Ventana

10 machine is used for a lot of things other than

11 ER/PR?

12 MR. ABBOTT:

13 A. I don't think it was ever put to me that way

14 and whether or not I concluded that it was

15 only for ER/PR. So, the answer is no.

16 COFFEY, Q.C.:

17 Q. If we could look please Exhibit P-140. Mr.

18 Tilley, this is a series of e-mails, but the

19 one in particular referring to yourself is two

20 thirds of the way down the page. It's from

21 Moira Hennessey sent Monday, September 5,

22 2005, 8:58 a.m. to George Tilley, re: ER/PR

23 issue and she says, "George, thanks for this.

24 I have updated John A."--presumably is

25 yourself?

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1 MR. ABBOTT:
 2 A. Um-hm.
 3 COFFEY, Q.C.:
 4 Q. "Could we arrange another briefing for the
 5 minister post September 10 when you have some
 6 results from Mount Sinai. We also need to
 7 know when Eastern Health is going to notify
 8 patients as part of the briefing. Signed,
 9 Moira". So, Ms. Hennessey did brief you on
 10 the e-mail below that?
 11 MR. ABBOTT:
 12 A. Yes.
 13 COFFEY, Q.C.:
 14 Q. Okay. Do you recall anything else yourself
 15 and Ms. Hennessey spoke about at the time?
 16 MR. ABBOTT:
 17 A. No, I think we talk about the reply from
 18 George Tilley and we really needed to get
 19 them, you know, to brief the Minister, what
 20 this means for this particular issue and also
 21 to find out where they are in terms of the
 22 patient notification which is obviously still
 23 an outstanding matter.
 24 COFFEY, Q.C.:
 25 Q. And did you inform Mr. Ottenheimer about this?

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1 MR. ABBOTT:
 2 A. I'm not sure what was relayed to him other
 3 than again, we are going to have another
 4 briefing, but whether or not we provided him
 5 with the substance of the previous e-mail in
 6 terms of the numbers, probably not.
 7 COFFEY, Q.C.:
 8 Q. And because the area--that e-mail exchange
 9 began with one from Moira Hennessey on
 10 September 1 to George Tilley saying, the
 11 minister is inquiring when you'll be in a
 12 position to update or provide another update.
 13 So, that suggests Mr. Ottenheimer was still
 14 keen, as it were, on -
 15 MR. ABBOTT:
 16 A. Oh yes, yes.
 17 COFFEY, Q.C.:
 18 Q. And there wasn't a briefing though, I take it,
 19 on September 2, 2005 of the minister?
 20 MR. ABBOTT:
 21 A. No.
 22 COFFEY, Q.C.:
 23 Q. There was not.
 24 MR. ABBOTT:
 25 A. No, the e-mail would have been the--if we

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1 needed to refer to any information.
 2 COFFEY, Q.C.:
 3 Q. May I have--what then happened, as the month
 4 of September went on?
 5 MR. ABBOTT:
 6 A. Well, we were focused on getting the briefing,
 7 but outside of that, we did not take any
 8 specific or particular action.
 9 COFFEY, Q.C.:
 10 Q. And what happened in terms of the briefing
 11 then?
 12 MR. ABBOTT:
 13 A. It got--I know, you know, one of the--the
 14 material here, it was eventually, you know,
 15 trying to schedule that, but it got postponed,
 16 but I'm not--I'm just trying to recall now
 17 when, in fact, it did and I can't tell you -
 18 COFFEY, Q.C.:
 19 Q. What's your next memory then of what happens
 20 with this? Does it go public before the
 21 minister gets briefed?
 22 MR. ABBOTT:
 23 A. I know that, again, that there was media story
 24 early in October.
 25 COFFEY, Q.C.:

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1 Q. Yes. Do you know if--how did you become aware
 2 that there was going to be a media story?
 3 MR. ABBOTT:
 4 A. Either I got a heads up or, in fact, when the
 5 story broke, whether it was an inquiry to us
 6 or to Eastern Health and then we were advised
 7 of that.
 8 COFFEY, Q.C.:
 9 Q. Do you recall who you heard it from?
 10 MR. ABBOTT:
 11 A. I know it was--I believe there was an e-mail
 12 that would have indicated that we got an
 13 inquiry and I'm assuming it was with Carolyn
 14 Chaplin, but I can't--without seeing the
 15 document in front of me, I can't--if there is
 16 one, I can't answer that any further.
 17 COFFEY, Q.C.:
 18 Q. Okay. Now, Carolyn Chaplin, by this point in
 19 time, was where?
 20 MR. ABBOTT:
 21 A. There was a change in position. She had left
 22 and Ms. Tansey Mundon had come to the
 23 department, I believe, it was around that
 24 time.
 25 COFFEY, Q.C.:

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1 Q. Do you recall where Ms. Chaplin or know where
 2 Ms. Chaplin went?
 3 MR. ABBOTT:
 4 A. I believe she went to a private firm.
 5 COFFEY, Q.C.:
 6 Q. At this point in time?
 7 MR. ABBOTT:
 8 A. No, I may be wrong, I apologize. She may have
 9 gone over to the cabinet secretariat, if I--
 10 now that you prompted me on that. I had
 11 forgotten that.
 12 COFFEY, Q.C.:
 13 Q. Now, there's a--when the matter did and
 14 there's a series of e-mails, September 30,
 15 2005, e-mail exchanges back and forth between
 16 people about this gone public. How much
 17 notice did you--September 30, I gather,
 18 happened to be a Friday--how much notice did
 19 you have?
 20 MR. ABBOTT:
 21 A. Not much and I don't know if we're talking
 22 hours or a day or so, but whatever the e-mail
 23 traffic indicated, that's when I would have
 24 known, I believe.
 25 COFFEY, Q.C.:

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1 Q. And the management, as it were, of going
 2 public, in whose hands was that? What was
 3 your understanding, I mean, when you first
 4 hear about this--Mr. Ottenheimer has told the
 5 Commissioner that on October 2 when "The
 6 Independent" finally published this story, as
 7 he put it, it was the "weight off his
 8 shoulders" or he was greatly relieved or words
 9 to that effect.
 10 MR. ABBOTT:
 11 A. Yes.
 12 COFFEY, Q.C.:
 13 Q. When you finally hear on September 30 that
 14 this is about to go public, do you recall how
 15 you felt and who you understood was handling
 16 it and how they were handling it?
 17 MR. ABBOTT:
 18 A. In terms of--my immediate reaction was, you
 19 know, it was sort of our worst case scenario
 20 in terms of the information would be in, at
 21 least from my perspective, in the public
 22 through the media without patients necessarily
 23 being notified, some or all ideally. And in
 24 terms then of the inquiry, if it was going to
 25 be of Eastern Health, they would have

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1 responded to the inquiry. If the issue was
 2 raised with the minister then, obviously, he
 3 would indicate what, depending on the inquiry
 4 and the questions, he would respond at that
 5 time as would normally be the case.
 6 COFFEY, Q.C.:
 7 Q. Now, did you take any steps to make any, you
 8 know, to ensure that Mr. Ottenheimer was up to
 9 date?
 10 MR. ABBOTT:
 11 A. Other than because I knew he was apprised and
 12 knew what the issue was about so it wouldn't
 13 come totally out of the blue, if in fact, we
 14 pulled a briefing note for him at that time,
 15 I'm not sure. But we, once we--you know, the
 16 story had broken there would have been some
 17 briefing material, I believe, available for
 18 him. And we had sufficient information to
 19 advise and if he had to literally respond in
 20 the instant, he would have had sufficient
 21 information himself to be able to respond.
 22 COFFEY, Q.C.:
 23 Q. And in terms of first understood that this was
 24 now going public, were you told about how this
 25 had happened?

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1 MR. ABBOTT:
 2 A. Other than--was I told how? Other than, in
 3 terms of the media had been, a patient had
 4 been in contact with one of the media outlets
 5 and they were making an inquiry then of
 6 Eastern Health, I believe, that's my recall at
 7 that point.
 8 COFFEY, Q.C.:
 9 Q. The initial inquiry by the media had been to
 10 Eastern Health. It hadn't been to the
 11 department -
 12 MR. ABBOTT:
 13 A. No.
 14 COFFEY, Q.C.:
 15 Q. - itself.
 16 MR. ABBOTT:
 17 A. No.
 18 COFFEY, Q.C.:
 19 Q. Okay. You understood that?
 20 MR. ABBOTT:
 21 A. Yes.
 22 COFFEY, Q.C.:
 23 Q. And so it had been to Eastern Health. You
 24 understood then that Eastern Health then would
 25 respond or was responding.

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1 MR. ABBOTT:
 2 A. Yes, that was -
 3 COFFEY, Q.C.:
 4 Q. Did you make any inquiries as to what approach
 5 they were going to use or how this was to be
 6 handled?
 7 MR. ABBOTT:
 8 A. No, I don't think so. I mean, I knew, that
 9 they had the capacity, you know, to respond,
 10 but I didn't seek to find out specifically
 11 what they were going to say at that point.
 12 COFFEY, Q.C.:
 13 Q. And did you make any inquiries as to whether
 14 or not the premier's office or the cabinet
 15 secretariat or both had been apprised of this?
 16 MR. ABBOTT:
 17 A. No, no, I didn't make any inquiries as to
 18 that, no.
 19 COFFEY, Q.C.:
 20 Q. Can you tell the Commissioner why not?
 21 MR. ABBOTT:
 22 A. I don't know if I have an answer to the why
 23 not. We obviously waited for, you know, what
 24 was the issue and subsequently did advise, but
 25 didn't, for whatever reason, didn't feel that

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1 that was something we needed to do or should
 2 do at that point in time.
 3 COFFEY, Q.C.:
 4 Q. Why wouldn't you need to do it at that point
 5 in time, bearing in mind the criteria that -
 6 MR. ABBOTT:
 7 A. No, fair enough, but that was the judgment at
 8 that point.
 9 COFFEY, Q.C.:
 10 Q. Would it be because you understood that they
 11 already knew?
 12 MR. ABBOTT:
 13 A. Not specifically. Again, you know, with Ms.
 14 Chaplin being over in the cabinet secretariat,
 15 obviously there was that knowledge and she
 16 would have some information, obviously, around
 17 this. But as deputy minister, you know,
 18 sending e-mail or directing that a briefing
 19 note be sent over, I didn't do it at that
 20 point.
 21 COFFEY, Q.C.:
 22 Q. And Tansey Mundon was, of course, the new
 23 communications director.
 24 MR. ABBOTT:
 25 A. Yes.

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1 COFFEY, Q.C.:
 2 Q. How experienced was she as communications
 3 director in comparison to Ms. Chaplin?
 4 MR. ABBOTT:
 5 A. Well, you know, Ms. Chaplin, had, I believe,
 6 certainly more years of experience as well as
 7 having more experience health, portfolio both
 8 in Ontario and in our province. And Ms.
 9 Mundon came from tourism at the time, so yes,
 10 this was a whole new field for her.
 11 COFFEY, Q.C.:
 12 Q. Okay. But certainly by the end of September,
 13 2005, I take it she had the same, you know,
 14 kind of interaction relationship as Ms.
 15 Chaplin had had with yourself and Mr.
 16 Ottenheimer -
 17 MR. ABBOTT:
 18 A. Yes.
 19 COFFEY, Q.C.:
 20 Q. - and Darrell Hynes, Moira Hennessey?
 21 MR. ABBOTT:
 22 A. Yes. She came in and fitted in, you know, very
 23 quickly and got up to speed very quickly.
 24 COFFEY, Q.C.:
 25 Q. And would have had the same ready access to

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1 yourselves as Ms. Chaplin had had?
 2 MR. ABBOTT:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. If we could please, Exhibit P-0313. Now, this
 6 is one of those e-mails that the Commission
 7 received early in April of this year from, I
 8 gather, originated with Mr. Thompson, this is
 9 an e-mail from Carolyn Chaplin, Friday,
 10 September 30th, 2005 at 4:42 p.m., it's to
 11 Bruce Cooper, Elizabeth Matthews, Josephine
 12 Cheeseman, Robert Thompson, Sherree MacDonald.
 13 It's copied to Tansey Mundon, the subject is
 14 "Heads up - Eastern Health Issue" and it says,
 15 "Eastern Health has contacted us to advise
 16 that an issue that had been ongoing throughout
 17 the summer concerning ER/PR testing of breast
 18 cancer patients is about to hit the media.
 19 Late this afternoon, Eastern Health was
 20 contacted by "The Independent" inquiring
 21 whether the health authority had an issue with
 22 its mammogram screening. Dr. Kara Laing,
 23 oncologist, spoke with "The Independent" to
 24 respond. In addition NTV, Lynn Burry
 25 contacted the authority at 4:15 this

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1 afternoon. Eastern Health will be calling NTV
 2 back, but given the late hour of the day, it
 3 won't be possible for them to get a body for a
 4 clip tonight. They are going to offer comment
 5 for Monday's news." Signed, "Carolyn Chaplin,
 6 Director of Communications. Communications
 7 and Consultation Branch, Executive Council."
 8 So this at least was copied to Ms. Mundon?
 9 MR. ABBOTT:
 10 A. Yes.
 11 COFFEY, Q.C.:
 12 Q. On that Friday afternoon. Would you expect,
 13 have expected her to have at least brought
 14 this to your attention at the time, the
 15 contents of the e-mail?
 16 MR. ABBOTT:
 17 A. Not necessarily. And again, in terms of Ms.,
 18 you know, Carolyn Chaplin having said Eastern
 19 Health has contacted us -
 20 COFFEY, Q.C.:
 21 Q. Us as in executive council?
 22 MR. ABBOTT:
 23 A. Well, I don't know if it was us in terms of
 24 executive council. I wasn't reading it--I
 25 don't necessarily read that. And my first--

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1 when I just read that was whether or not, in
 2 fact, you know, maybe Tansey Mundon herself,
 3 you know, have let Carolyn Chaplin know and
 4 Carolyn in turn let that particular group
 5 know. But that's just, that's one way of
 6 looking at it. Now, whether Eastern Health
 7 called Carolyn Chaplin directly because of her
 8 previous affiliation and not knowing that she
 9 had switched portfolios, again, I don't know,
 10 I'm just sort of speculating on that. But it
 11 wouldn't, I would not have expected and
 12 Eastern Health itself would not have gone
 13 directly to, you know, the Cabinet Secretariat
 14 on an issue.
 15 COFFEY, Q.C.:
 16 Q. And you say she wouldn't necessarily have told
 17 you this, like, about this matter about to go
 18 public?
 19 MR. ABBOTT:
 20 A. Well, not, you know, not instantaneously.
 21 Now, whether or not she told me later or not,
 22 I mean, I have a sense I knew before the
 23 Independent story and so, excuse me, exactly
 24 when that happened, I couldn't say.
 25 COFFEY, Q.C.:

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1 Q. This is a Friday afternoon at 4:42 p.m.
 2 MR. ABBOTT:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. And I don't know what time on Sunday night the
 6 Independent goes to press, but presumably, you
 7 know, it is published on Sundays, apparently.
 8 MR. ABBOTT:
 9 A. Yeah. Um-hm.
 10 COFFEY, Q.C.:
 11 Q. So at the time it was published on a Sunday,
 12 so you either found out Friday evening, Friday
 13 afternoon, evening or sometime Saturday if it
 14 was before the news story?
 15 MR. ABBOTT:
 16 A. That's yeah. So again, I really not sure of
 17 that. And again, in this case, based on that
 18 time frame it could have been when, you know,
 19 the Independent itself, I read it there. But
 20 I don't recall that.
 21 COFFEY, Q.C.:
 22 Q. Wouldn't you have--see, you don't recall
 23 whether Ms. Mundon communicated this, the fact
 24 that this had gone public to you or not?
 25 MR. ABBOTT:

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1 A. Yes, I said, I don't know if she told me
 2 before, you know, literally before the event,
 3 if this was the first, in this case whether
 4 this was the first time she knew about it, I
 5 really, you know, I don't know.
 6 COFFEY, Q.C.:
 7 Q. And but if she did tell you, for example,
 8 after around, you know, after this e-mail from
 9 Carolyn Chaplin at 4:42 that afternoon,
 10 there'd be no need for you then to contact the
 11 premier's office or the Cabinet Secretariat
 12 because Ms. Mundon would know they all knew?
 13 MR. ABBOTT:
 14 A. One would suggest, based on that, yes.
 15 COFFEY, Q.C.:
 16 Q. Yes. Now, would you have anticipated, though,
 17 at the time, that you'd be called upon to
 18 provide a briefing note to the Cabinet
 19 Secretariat?
 20 MR. ABBOTT:
 21 A. Well, given that it was now in the media, that
 22 would be certainly the, you know, now would be
 23 into the next week.
 24 COFFEY, Q.C.:
 25 Q. Okay. If we could look at, please, P-0141?

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1 Sir, this is an e-mail from Denise Dunn,
 2 Friday, September 30th, 2005 at 5:04 p.m. to
 3 Mr. Tilley, Heather Predham, Moira Hennessey
 4 and Susan Bonnell.
 5 MR. ABBOTT:
 6 A. Um-hm.
 7 COFFEY, Q.C.:
 8 Q. And I refer you to it because, of course,
 9 Moira was your ADM.
 10 MR. ABBOTT:
 11 A. Yes.
 12 COFFEY, Q.C.:
 13 Q. The attachment is a briefing note, September
 14 30th, 2005 and it says, "Please see attached."
 15 Do you know--this is the briefing note, it's a
 16 page and a quarter long, do you know if that
 17 was delivered to you or given to you that day?
 18 MR. ABBOTT:
 19 A. I really don't recall. I looked at the time,
 20 you know, that it was e-mailed, so the chance
 21 of me seeing it would probably, I suspect, not
 22 that day for sure.
 23 COFFEY, Q.C.:
 24 Q. So you would have, probably before 5:04, left
 25 the office that day on a Friday?

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1 MR. ABBOTT:
 2 A. No, I'm not saying that. That would be a good
 3 day to get out that time of day. But just
 4 whether or not--again, just looking at the
 5 time frames and whether or not it was
 6 forwarded on to me, I don't recall at that
 7 time.
 8 COFFEY, Q.C.:
 9 Q. Now, at the time of this--perhaps you give the
 10 Commissioner some sense of this. At the time
 11 this story broke in the media, how much
 12 attention was paid to it within the
 13 department, how much of a topic?
 14 MR. ABBOTT:
 15 A. It was not on our top list of issues.
 16 COFFEY, Q.C.:
 17 Q. Well, when it broke, I mean, beginning at 4:42
 18 or thereabouts on Friday, September 30th, did
 19 it make it onto the top then -
 20 MR. ABBOTT:
 21 A. Well, I mean, you know, and I think we've just
 22 got to put it in perspective, that this is
 23 Friday evening, as obviously our offices are,
 24 you know, shutting down for the weekend. So
 25 it's, the timing in one sense couldn't have

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1 been worse because I, you know, even if people
 2 who got it when and what they were able to do
 3 with it, and the fact that the story was going
 4 to happen, you know, so be it, which is not
 5 uncommon, obviously, in any particular
 6 profession that these things happen late in
 7 the week. But it was, you know, it was, it
 8 will be yet another issue that we are going to
 9 have to work with the minister's office and in
 10 this case Eastern Health to manage from a
 11 communications perspective, obviously, for the
 12 following--early in the following week.
 13 COFFEY, Q.C.:
 14 Q. Okay. If we could bring up, please, Exhibit--
 15 it's the same exhibit, actually, P-0163. It's
 16 P-0141, I'm sorry. P-0163, please? I
 17 apologize, Commissioner. And now this is an
 18 e-mail, this is a series of e-mails from,
 19 involving Carolyn Chaplin, Tansey Mundon. And
 20 if we look down at that e-mail at the bottom
 21 of this page, it's page 5 of the exhibit, this
 22 is the one that Carolyn Chaplin sent and
 23 copied to Ms. Mundon at 4:41 p.m. about the
 24 fact that Eastern Health had been contacted by
 25 the media and was going public. Ms. Mundon

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1 responds at 4:59 saying, "Carolyn, I was just
 2 in the process of writing the same e-mail."
 3 And then Carolyn Chaplin at 5:01 comes back
 4 and says, "Thanks, Tansey. Are they preparing
 5 revised briefing note. It has been a while
 6 since they did one, I believe late July. And
 7 then Ms. Mundon responds to Ms. Chaplin at
 8 5:07 saying Eastern has prepared a note and is
 9 being revised. I'm a little puzzled about why
 10 Susan called you when she had already spoke to
 11 me".
 12 MR. ABBOTT:
 13 A. Uh-hm.
 14 COFFEY, Q.C.:
 15 Q. So if I could, please, page 7 of the same
 16 exhibit, the 5:01 p.m. e-mail from Carolyn
 17 Chaplin to Tansey Mundon is there and then
 18 there's one from Tansey Mundon to Moira
 19 Hennessey at 5:14 p.m. saying, "Moira, I
 20 believe the revised note is being sent to you
 21 directly from Eastern, perhaps you could share
 22 it with me, thanks." Tansey. And, now sir,
 23 if I could while I'm at it, the same exhibit,
 24 there's a number of different e-mails here I
 25 want to bring to your attention and then I

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1 have a question for you. Page 9,
 2 Commissioner, of Exhibit P-0163, this is an e-
 3 mail from Tansey Mundon to Carolyn Chaplin,
 4 September 30th, 2005 at 5:12 p.m. She says,
 5 "Maybe, I've been talking to Susan earlier,
 6 but we were playing telephone tag before we
 7 touch base on the NTV piece, earlier it was
 8 just the "Independent" and before the call
 9 back to Claire Gosse"--and when you look at
 10 that exchange of e-mails on that Friday in the
 11 afternoon, like that afternoon, were you
 12 aware, as the deputy minister at the time of
 13 this kind of exchanges going on between your
 14 director of communications, Eastern Health's
 15 director, your ADM and the cabinet secretariat
 16 and the premier's office?
 17 MR. ABBOTT:
 18 A. Probably not and would not be uncommon.
 19 COFFEY, Q.C.:
 20 Q. And it would not be uncommon why?
 21 MR. ABBOTT:
 22 A. Because that's the way the business in that
 23 communication's function and how they operated
 24 was very, you know, flexible in terms of who
 25 they, who they e-mailed and contacted. And,

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1 you know, in this case, these people were all,
 2 you know, certainly known to each other and it
 3 was encouraged, obviously, to have a free
 4 exchange of information amongst them.
 5 COFFEY, Q.C.:
 6 Q. And I take it when it's a communication's
 7 issue, then I take it that you wouldn't be
 8 surprised that you might be one of the latter
 9 people to know about it?
 10 MR. ABBOTT:
 11 A. That would be true.
 12 COFFEY, Q.C.:
 13 Q. If we could please, exhibit P-0163, I think I
 14 may even have it up there, yes, page 11 of the
 15 same exhibit. This is an e-mail from Tansey
 16 Mundon to Moira Hennessey, October 2nd, 2005
 17 at 2:53 p.m. and it's--subject is a briefing
 18 note and then there's the text of a briefing
 19 note, "ER/PR testing results, September 30th,
 20 2005" and it goes on toward, through one page.
 21 Now, sir, if Ms. Hennessey received this on
 22 October 2nd, would you have expected to
 23 eventually receive a copy of it as well?
 24 MR. ABBOTT:
 25 A. If she felt that I needed to, but not

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1 automatic.
 2 COFFEY, Q.C.:
 3 Q. Well would you have received a copy of the
 4 September 30th, 2005 briefing note period?
 5 This is just effectively a regurgitation of
 6 what Eastern Health had sent over.
 7 MR. ABBOTT:
 8 A. It looks that way, uh-hm.
 9 COFFEY, Q.C.:
 10 Q. So -
 11 MR. ABBOTT:
 12 A. Well at some point, you know, somebody would
 13 have thought, if they thought that I needed
 14 it, they would have provided it to me and as
 15 you can see, there's a lot of e-mail traffic
 16 and draft of notes sending to Moira Hennessey
 17 who was the contact, you know, on this issue
 18 at that point in time and it would be, you
 19 know, she and Ms. Mundon would determine when
 20 it's appropriate bringing to me and the
 21 minister and either me first, him second; or
 22 at the same time, him first, me maybe later on
 23 in the process. So it was, the process of
 24 forwarding briefing notes would, could vary.
 25 COFFEY, Q.C.:

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1 Q. I appreciate that the fact that you're just
 2 not copied on this, I take no issue with that,
 3 but what I'm getting at is whether, you know,
 4 somebody actually sent you a e-mail verses
 5 ensuring that if they didn't send you an e-
 6 mail with the attachment or the text of the
 7 September 30th briefing note, they certainly
 8 would have printed it off and given it to you?
 9 I mean, is it possible -
 10 MR. ABBOTT:
 11 A. That is possible, but, you know, the fact that
 12 a lot of this was being conducted by e-mail,
 13 whether or not it was e-mailed to me at that
 14 point, I don't think so.
 15 COFFEY, Q.C.:
 16 Q. No, at least there's no indication here -
 17 MR. ABBOTT:
 18 A. No.
 19 COFFEY, Q.C.:
 20 Q. - but, of course, we don't have all the e-
 21 mails and that's a practical, it had nothing
 22 to do with you, it was just a practical issue,
 23 okay.
 24 MR. ABBOTT:
 25 A. Yes.

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1 COFFEY, Q.C.:

2 Q. For example, your e-mail to Bob Williams we

3 looked at earlier this morning, you made

4 reference to it.

5 MR. ABBOTT:

6 A. Yes.

7 COFFEY, Q.C.:

8 Q. The Commission doesn't have that, I'm not

9 suggesting that is any reflection upon

10 yourself, it's just we don't, in the sense of

11 -

12 MR. ABBOTT:

13 A. What do you mean, a reflection on me?

14 COFFEY, Q.C.:

15 Q. No, in terms of whether you saved it or not or

16 whether--that's what I'm getting it in terms

17 of how these get saved or don't get saved.

18 MR. ABBOTT:

19 A. Right, but that wasn't--that particular one,

20 is that the meeting one or the one to Dr.

21 Williams.

22 COFFEY, Q.C.:

23 Q. The one to Bob Ritter -

24 MR. ABBOTT:

25 A. Oh yes, well it would be in the government's

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1 e-mail system. I didn't take any of that with

2 me.

3 COFFEY, Q.C.:

4 Q. So when you say, though, that you are not

5 copied on any of these or there is no

6 indication here that you received it.

7 MR. ABBOTT:

8 A. Yes.

9 COFFEY, Q.C.:

10 Q. Would that mean to you that you didn't receive

11 it by e-mail because it's not here?

12 MR. ABBOTT:

13 A. That's where I'm going with it, yes.

14 COFFEY, Q.C.:

15 Q. That's your understanding.

16 MR. ABBOTT:

17 A. Yes.

18 COFFEY, Q.C.:

19 Q. It is your view that if it was sent to you, it

20 should -

21 MR. ABBOTT:

22 A. I'm sorry?

23 COFFEY, Q.C.:

24 Q. If it was sent to you, it should still exist

25 on e-mails?

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1 MR. ABBOTT:

2 A. Oh yes, absolutely.

3 COFFEY, Q.C.:

4 Q. And if it wasn't sent to you, this is what I'm

5 getting at, even if it wasn't sent to you,

6 would someone have printed it off and said,

7 because it wasn't sent to John Ottenheimer

8 either, according to this.

9 MR. ABBOTT:

10 A. Uh-hm.

11 COFFEY, Q.C.:

12 Q. So would somebody have printed it off and

13 said, "Here, Mr. Ottenheimer" and "Here Mr. -

14 MR. ABBOTT:

15 A. That's possible, but I, you know, I don't have

16 it and I don't recall it at the moment and if

17 I'm looking at the dates here, we're talking,

18 you know, over the weekend. If the 30th was a

19 Friday and the 2nd obviously would be a

20 Sunday, a I guess, so -

21 COFFEY, Q.C.:

22 Q. And so do you know if you ever got the

23 briefing note, that's what I'm asking you,

24 that September 30th briefing note?

25 MR. ABBOTT:

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1 A. This particular one I don't, I don't recall.

2 I think the information was developed into

3 another briefing note, a departmental briefing

4 note later.

5 COFFEY, Q.C.:

6 Q. If we could, please, same exhibit, P-0163,

7 Commissioner, page 14. This is an e-mail from

8 Tansey Mundon to Darrell Hynes, and so you

9 know some sense of the sequence, at page 12 of

10 the same exhibit, there's a record that Ms.

11 Mundon on October 3rd, at 8:12 a.m., that

12 would be a Monday morning, had sent Mr. Hynes

13 a copy of that briefing note, September 30th

14 briefing note, saying, "Darrell, here's a

15 briefing note provided on issue in "The

16 Independent", Moira is back in the office

17 today and I'll discuss with her." So it's in

18 context then. At page 14 of the exhibit at

19 11:31 a.m., Ms. Mundon sends Mr. Hynes this e-

20 mail, "Darrell, with respect to the ER/PR

21 issue, Eastern Health will be doing a follow

22 up interview with NTV this afternoon. John,

23 Moira and I discussed this morning, and I have

24 left a message for Susan B., suggesting that

25 they now issue a press release (with

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1 frequently asked questions attached) to
 2 communicate to the public on this issue. An
 3 isolated interview may leave people with
 4 concerns and will result in inquiries, forcing
 5 a reactive response. Some of those inquiries
 6 may be addressed with a news release that
 7 provides further information about the process
 8 and the small number of people that may be
 9 affected." Signed Tansey.
 10 So does that help you recall what, if
 11 anything, was discussed on Sunday or Monday,
 12 October 2nd or 3rd?
 13 MR. ABBOTT:
 14 A. No, other than "The Independent" story itself,
 15 and again, because of my familiarity with the
 16 issue, whether I had the briefing note with
 17 all the current details, I was certainly aware
 18 enough about the issue and I was a reader of
 19 "The Independent" so obviously we knew on
 20 Monday that we were going to have to address
 21 this issue with the minister and see what
 22 would be the best approach here, in terms of
 23 having Eastern Health, you know, move towards
 24 public comment, disclosure, what have you, on
 25 the issue, and the issue of a press, a news

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1 release was put there because, you know,
 2 things are now out in public. We obviously
 3 can't do--the letter issue is well past us,
 4 and we are now--you know, Eastern Health
 5 should be out there indicating what the issue
 6 is, what they're doing about it, and those
 7 kinds of things.
 8 COFFEY, Q.C.:
 9 Q. Why couldn't a letter still be sent to each
 10 individual patient?
 11 MR. ABBOTT:
 12 A. Oh, I felt--point being, it is--that may
 13 still--that would still have to happen or at
 14 least they would have to be notified, but the
 15 point, that was intended, at least when it was
 16 first discussed, as to be, you know,
 17 proactive, if I can put it that way. Now that
 18 that--we've passed that stage and time period
 19 and now we need to at least go out and say, in
 20 a general message now, that this is what is
 21 happening, because of "The Independent" story.
 22 COFFEY, Q.C.:
 23 Q. So why then is the department and you, as the
 24 deputy minister, getting involved in this?
 25 MR. ABBOTT:

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1 A. Good question, but the point is that the--and
 2 this is, again, to Darrell Hynes and to
 3 communicate to the minister that this is our
 4 view there that this is what should happen,
 5 and in this case, Tansey Mundon did call,
 6 obviously based on the e-mail, contact them to
 7 say "look, you should consider this."
 8 COFFEY, Q.C.:
 9 Q. Yes. That so yourself and Ms. Hennessey and
 10 Ms. Mundon -
 11 MR. ABBOTT:
 12 A. Yes.
 13 COFFEY, Q.C.:
 14 Q. - according to this, suggests that sometime on
 15 Monday morning, October 3rd, the three of you
 16 at least discussed the matter of what perhaps
 17 should be the approach, in terms of public
 18 communication by Eastern Health and this
 19 suggests, the tone of this suggests or tenure
 20 suggests that you were at then, the three of
 21 you were of the same mind, that Susan Bonnell
 22 should be contacted and the suggestion made to
 23 her that it was your considered view, the
 24 three of you, that a news release, with
 25 frequently asked questions attached, be issued

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1 to communicate to the public on the issue.
 2 MR. ABBOTT:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. Now the idea of a reactive response, people
 6 being left with concerns and resulting in
 7 inquiries forcing a reactive response, did
 8 yourself and Ms. Hennessey and Ms. Mundon or
 9 any combination of you discuss what a reactive
 10 response was?
 11 MR. ABBOTT:
 12 A. Again, the term, as I read it and understood
 13 it, you know, now we are--rather than going
 14 out and saying we have an issue, the media has
 15 said "you have an issue. Now why didn't you
 16 tell us about it?" So you know, it was in
 17 that context. So you're reacting to a story
 18 as opposed to getting the information out and
 19 informing, shall we say, the news media.
 20 COFFEY, Q.C.:
 21 Q. I take it in that world, a reactive response
 22 is not desirable or it's desirable to avoid a
 23 reactive response?
 24 MR. ABBOTT:
 25 A. Well, I'm not going to get too far down in the

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1 communications world in terms of what's good
 2 and what's bad, but from a patient
 3 notification perspective, you know, around
 4 this issue, this would be viewed as more
 5 negative certainly than a positive way to go.
 6 THE COMMISSIONER:
 7 Q. Mr. Coffey, wherever you find a convenient
 8 spot, we'll take the luncheon break.
 9 COFFEY, Q.C.:
 10 Q. Now sir, here in this--and I appreciate the e-
 11 mail did not go from Tansey Mundon to
 12 yourself, it went to Mr. Hynes, but she does
 13 refer to--or ends with a comment that
 14 "provides further information about the
 15 process and the small number of people that
 16 may be affected." Now as of that Monday
 17 morning, what was your understanding about the
 18 numbers of people that might be affected by
 19 this?
 20 MR. ABBOTT:
 21 A. Well, I mean, we knew what the general numbers
 22 were. Again, it's hundreds, and as we said
 23 earlier, we're talking large numbers. Why
 24 that particular phase is there, I'm really not
 25 sure, and whether it was just in the context

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1 of the current samples being--the specimens
 2 being tested, but I can't speak to that.
 3 COFFEY, Q.C.:
 4 Q. Was it your understanding at the time that the
 5 number of people that would be affected was a
 6 small number?
 7 MR. ABBOTT:
 8 A. No, no. Again I was in that hundreds
 9 category, and again, how that word "affected"
 10 is used here, if it was those who had results
 11 and all that, but I don't think, you know, it
 12 would change--I don't think we were talking--
 13 again, it's not the appropriate phrase, but
 14 for whatever reason, it was used.
 15 COFFEY, Q.C.:
 16 Q. Thank you, Commissioner.
 17 THE COMMISSIONER:
 18 Q. It's quite late, so why don't we -
 19 COFFEY, Q.C.:
 20 Q. Oh sorry, Commissioner. I apologize,
 21 Commissioner.
 22 THE COMMISSIONER:
 23 Q. Well, I know you don't keep your eye on the
 24 clock, Mr. Coffey. I've noticed that. It's
 25 1:00 now. Why don't we reconvene at 2:15.

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1 COFFEY, Q.C.:
 2 Q. Thank you, Commissioner.
 3 (LUNCH BREAK)
 4 THE COMMISSIONER:
 5 Q. Please be seated. Mr. Coffey.
 6 COFFEY, Q.C.:
 7 Q. Thank you, Commissioner. So if we could,
 8 please, Exhibit--oh, right there, P-0163, page
 9 14. Mr. Abbott, then Ms. Mundon's comment to
 10 Darrell Hynes on October 3rd at 11:31 that
 11 "some of these inquiries may be addressed with
 12 a news release that provides further
 13 information about the process and the small
 14 number of people that may be affected." The
 15 reference to "the small number of people that
 16 may be affected," do you have any idea of
 17 where that notion or idea came from? Can you
 18 assist the Commissioner in any way?
 19 MR. ABBOTT:
 20 A. No, and I commented on that before the break,
 21 so I have nothing else to add.
 22 COFFEY, Q.C.:
 23 Q. Okay, that's fine. It certainly wasn't your
 24 idea, I take it? That you can recall, anyway.
 25 MR. ABBOTT:

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1 A. Mr. Coffey, this is the third time now I've
 2 answered it.
 3 COFFEY, Q.C.:
 4 Q. Okay.
 5 MR. ABBOTT:
 6 A. So my first answer is the answer.
 7 COFFEY, Q.C.:
 8 Q. And your first answer is you didn't see it
 9 that way and you didn't--that wasn't your
 10 idea? And I just want to be clear on this,
 11 because there is an e-mail here going back to
 12 July 19th that involves the word "a
 13 possibility that the significance of any
 14 announcement will be minimized," okay, and
 15 that e-mail is carboned to you -
 16 MR. ABBOTT:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. - and I have reason--have some understanding
 20 about what a witness is prepared to say about
 21 the information in it and who it originated
 22 with.
 23 MR. ABBOTT:
 24 A. Then tell me.
 25 COFFEY, Q.C.:

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1 Q. Okay. Well, Ms. Chaplin, that's why I asked
 2 you about it -
 3 MR. ABBOTT:
 4 A. Yes.
 5 COFFEY, Q.C.:
 6 Q. - and you said that you don't recall, but if
 7 she says you did, then -
 8 MR. ABBOTT:
 9 A. But are you talking now of the--which e-mail
 10 are you referring to?
 11 COFFEY, Q.C.:
 12 Q. The July 19th, the one that was carboned to
 13 you, 2:37 p.m.
 14 MR. ABBOTT:
 15 A. That's right, and we discussed that yesterday
 16 and if Ms.--that's fine. We are talking about
 17 this reference to "small number of people"
 18 here.
 19 COFFEY, Q.C.:
 20 Q. Yes.
 21 MR. ABBOTT:
 22 A. I've answered that to the best of my ability
 23 earlier and I don't have anything else to add.
 24 COFFEY, Q.C.:
 25 Q. So it wasn't your idea. Is that -

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1 MR. ABBOTT:
 2 A. I don't think so.
 3 COFFEY, Q.C.:
 4 Q. Okay. If we could bring up, please, Exhibit
 5 P-0142? Now this is actually the same day,
 6 October 3rd 2005. It's at 2:51 p.m. It's
 7 from Tansey Mundon to yourself and Moira
 8 Hennessey, Ed Hunt, Darrell Hynes and John
 9 Ottenheimer, and it's an update on ER/PR, and
 10 she says it's "for your information. As
 11 mentioned previously, Dr. Williams has done a
 12 follow-up interview with Carolyn Stokes. In
 13 addition, Eastern Health contacted Deanne
 14 Stokes Sullivan, The Telegram. She's going to
 15 do a follow-up piece in tomorrow's Telegram.
 16 No interest from any other media. John,"
 17 which I presume, would that be you or Mr.
 18 Ottenheimer?
 19 MR. ABBOTT:
 20 A. Good question, but I think I'm assuming it
 21 would be me, in this case.
 22 COFFEY, Q.C.:
 23 Q. And she goes on, "John, I discussed with Susan
 24 the merits of doing a news release. She
 25 advised that the strategy in July was that

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1 they would notify patients before they went
 2 public, so they decided against a news
 3 release. She indicated she had the support of
 4 the department with this approach. They now
 5 feel that 'the horse has left the barn' and
 6 that the media that were interested in the
 7 story have already covered it. I requested
 8 for frequently asked questions to be posted to
 9 the websites so that people would have easy
 10 access to information. I tend to agree with
 11 Susan this time with the news release. It
 12 seems as the opportunity for a news release to
 13 be issued in a proactive manner has passed. I
 14 believe we should continue to monitor the
 15 coverage and the reaction. If we did issue a
 16 news release at this point, it would be picked
 17 up by local newspapers and will probably draw
 18 attention to the issue unnecessarily." Signed
 19 Tansey.
 20 Now sir, you would receive this e-mail, I
 21 take it, on October 3rd or 4th?
 22 MR. ABBOTT:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. And as a particular, you're the first person

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1 named in it as an addressee, and the second
 2 paragraph presumably is a direct--addressed
 3 directly to you. Now what was this about here
 4 and what was your understanding of what this
 5 is about?
 6 MR. ABBOTT:
 7 A. Well, it would be follow up to the previous e-
 8 mail around where we made the suggestion and
 9 that Ms. Mundon e-mailed Susan Bonnell about
 10 the idea of other press release to get the
 11 information out. So that's really, as I see
 12 this, as the follow up to that.
 13 COFFEY, Q.C.:
 14 Q. And so the idea of using a news release, I
 15 take it, Tansey is conveying to you that
 16 having heard from Susan on this, she was in
 17 agreement with Susan's position that a news
 18 release should not go out?
 19 MR. ABBOTT:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. And however, they did accept the idea of the Q
 23 and A or frequently asked questions going on
 24 your website? Not your website, I'm sorry,
 25 their website, Eastern Health's.

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1 MR. ABBOTT:
 2 A. I don't know what transpired on that matter.
 3 COFFEY, Q.C.:
 4 Q. Now the reference to, in terms of the news
 5 release, they now feel that the horse has left
 6 the barn, and if a news release is issued at
 7 this point, it will be picked up by local
 8 newspapers and will probably draw attention to
 9 the issue unnecessarily. That suggests that
 10 there was a view within the department that
 11 that should not be done, that you don't want
 12 to draw attention to the issue unnecessarily.
 13 MR. ABBOTT:
 14 A. No, that's--I read that as her view or her
 15 opinion, but not -
 16 THE COMMISSIONER:
 17 Q. Her being Ms. Bonnell or Ms. Mundon?
 18 MR. ABBOTT:
 19 A. It would be Tansey Mundon.
 20 THE COMMISSIONER:
 21 Q. Okay.
 22 MR. ABBOTT:
 23 A. As I read this.
 24 COFFEY, Q.C.:
 25 Q. So it's her view, and you're, I take it,

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1 specifying here that it's not--because it's
 2 her view, it's not necessarily the
 3 department's?
 4 MR. ABBOTT:
 5 A. No.
 6 COFFEY, Q.C.:
 7 Q. Now having read that, did you--well, was it
 8 your view, first of all?
 9 MR. ABBOTT:
 10 A. No.
 11 COFFEY, Q.C.:
 12 Q. Did you take it up with Ms. Mundon?
 13 MR. ABBOTT:
 14 A. I know we would have had a conversation, you
 15 know, as a result of the development here, and
 16 I'm--not to use the word assuming, but the
 17 collective here in terms of who would--in
 18 terms of who are identified in the e-mail
 19 receiving that, would sort of gauge what their
 20 reaction would be as well, before we talked
 21 any further on what Eastern Health could do or
 22 should do.
 23 COFFEY, Q.C.:
 24 Q. Well, did you discuss--if you didn't agree
 25 with it, did you take it up with her?

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1 MR. ABBOTT:
 2 A. I would think -
 3 COFFEY, Q.C.:
 4 Q. You're the deputy minister.
 5 MR. ABBOTT:
 6 A. Yeah, I would say we discussed it. I can't,
 7 again, tell you specifically, you know, what
 8 hour or what day we discussed it, but that's
 9 what happened, I guess, with respect to that.
 10 I mean, it arrived. I looked at it.
 11 Obviously things were not where I thought they
 12 could or should be and we were now moving
 13 further away--I say we, in terms of Eastern
 14 Health, moving further away from how this
 15 issue could best be handled, from a
 16 notification and public reporting perspective.
 17 COFFEY, Q.C.:
 18 Q. So did you speak with--if you did speak with
 19 Ms. Mundon, what did you speak to her about?
 20 What did you tell her?
 21 MR. ABBOTT:
 22 A. Well, we would have discussed, you know, where
 23 Eastern Health now is on this particular
 24 issue, because any release would be theirs,
 25 not ours, and the fact that now it's not going

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1 to happen. But in terms of taking it any
 2 further at this point, no.
 3 COFFEY, Q.C.:
 4 Q. So from the perspective of--from your
 5 perspective as the deputy minister, I take it
 6 you're telling the Commissioner that that
 7 attitude was unacceptable, in terms of just
 8 not send out a press release simply because it
 9 might draw attention to the issue
 10 unnecessarily, from your perspective, that was
 11 inappropriate?
 12 MR. ABBOTT:
 13 A. What I'm saying is that was--what she
 14 expressed in her e-mail to, not only me, to
 15 others, it wasn't my view.
 16 COFFEY, Q.C.:
 17 Q. Did you tell her that you had a contrary view?
 18 MR. ABBOTT:
 19 A. As I said, we would have discussed, you know,
 20 the whole e-mail and in terms of what this now
 21 meant, but you know, I would have--you know,
 22 in the context of what she said or how she
 23 said it, I understood it. I didn't
 24 necessarily agree with it, but I did not take
 25 any action on it with her, except her view in

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1 terms of how she positioned that. Whether she
 2 drew from that conversation that she shouldn't
 3 have done it or whatever, possibly that may
 4 not have--she may not have reached that
 5 conclusion.
 6 COFFEY, Q.C.:
 7 Q. So you took no corrective action, from your
 8 perspective?
 9 MR. ABBOTT:
 10 A. No.
 11 THE COMMISSIONER:
 12 Q. Well, were you in a position to do so?
 13 MR. ABBOTT:
 14 A. Well, in terms of I could have--you know,
 15 based on this, could have corrected her and
 16 said, you know, "Tansey, you should e-mail
 17 back and that you're not speaking on behalf of
 18 the department," at least in terms of that
 19 particular perspective. But again, this was
 20 an internal, you know, her thoughts to me and
 21 to others in the department who she knew and
 22 who she worked with, and she expressed that
 23 view in an open fashion and I didn't object to
 24 the fact that she did it. I just didn't agree
 25 with her conclusion.

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1 COFFEY, Q.C.:
 2 Q. Okay. Well, the e-mail is to yourself and the
 3 other senior people in the department involved
 4 with this issue.
 5 MR. ABBOTT:
 6 A. Yes.
 7 COFFEY, Q.C.:
 8 Q. I think, in fact, she hit them all.
 9 MR. ABBOTT:
 10 A. Yes.
 11 COFFEY, Q.C.:
 12 Q. And she is your director, department's
 13 director of communications?
 14 MR. ABBOTT:
 15 A. Yes.
 16 COFFEY, Q.C.:
 17 Q. And if her attitude is, in fact, as this
 18 suggests, which is don't send out a press
 19 release because we want to avoid any more
 20 attention being drawn to the issue, and she is
 21 your department's communications director -
 22 MR. ABBOTT:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. - and you're the deputy minister, and you

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1 think that attitude is inappropriate and
 2 doesn't reflect the department's approach -
 3 MR. ABBOTT:
 4 A. I said it didn't reflect mine. This was an
 5 Eastern Health issue.
 6 COFFEY, Q.C.:
 7 Q. No, I'm asking about the department now, just
 8 if I could, just focus on the department
 9 please. Wouldn't it be important to ensure
 10 that the department's director of
 11 communications understood from the deputy
 12 minister of the day, you, that her attitude
 13 and her approach to this was unacceptable,
 14 because it would be important on a go-forward
 15 basis?
 16 MR. ABBOTT:
 17 A. You know, I didn't see it and wouldn't see it
 18 that way. She was in conversation or through
 19 e-mails with Eastern Health about this issue
 20 around press release and going back between
 21 the respective directors of communication, and
 22 this was the gist of that. But in terms of
 23 that particular phrase and the particular
 24 clause and how she positioned it, you know,
 25 she expressed it. I did not, you know,

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1 challenge her in that, but it was a point of
 2 view and I had my point of view and really, at
 3 the end of the day, it was going to be up to
 4 the minister to decide whether, in fact, from
 5 a communications point of view, for him,
 6 because the department itself would not be
 7 doing any communication on this issue, it
 8 would be the minister, in terms of his
 9 responsibility for Eastern Health. So for me,
 10 it wasn't a critical crisis issue to have to
 11 really do much with.
 12 THE COMMISSIONER:
 13 Q. Mr. Abbott, I think I'm confused about who is
 14 doing what. In the last line, when Ms. Mundon
 15 says "if we did issue a news release at this
 16 point, it would be picked up by local
 17 newspapers and would probably draw attention
 18 to the issue unnecessarily,"
 19 MR. ABBOTT:
 20 A. Yes.
 21 THE COMMISSIONER:
 22 Q. Is that we, Eastern Health?
 23 MR. ABBOTT:
 24 A. Yes.
 25 THE COMMISSIONER:

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1 Q. Is that we -
 2 MR. ABBOTT:
 3 A. That's how I interpret that, yes.
 4 THE COMMISSIONER:
 5 Q. As opposed to the department, as opposed to
 6 the minister as the ultimate head of -
 7 MR. ABBOTT:
 8 A. Yes.
 9 THE COMMISSIONER:
 10 Q. You interpret that "we" as Eastern Health?
 11 MR. ABBOTT:
 12 A. Yes, because it was in terms of -
 13 THE COMMISSIONER:
 14 Q. Eastern's Health reason.
 15 MR. ABBOTT:
 16 A. - the suggestion that there should be a press
 17 release and now we're finding that Eastern
 18 Health is saying "no, we" or Eastern Health
 19 "don't feel that's appropriate." There was
 20 no--I never suggested and never interpreted
 21 that as the department or the minister would
 22 be issuing a release.
 23 COFFEY, Q.C.:
 24 Q. Now on that point, because the sentence before
 25 that says "I believe," and presumably I in

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1 this context is Tansey, "believe we should
 2 continue to monitor the coverage and the
 3 reaction," which would be the media coverage,
 4 presumably, and the reaction?
 5 MR. ABBOTT:
 6 A. Yes.
 7 COFFEY, Q.C.:
 8 Q. And you pointed out to the Commissioner, the
 9 next "we" in the sentence that follows, "if we
 10 did issue a news release at this point," you
 11 would have interpreted that at the time as
 12 Eastern Health?
 13 MR. ABBOTT:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. Now faced with Eastern Health's refusal to
 17 issue a press release or your understanding
 18 they were refusing, was the subject canvassed
 19 about the notion or idea canvassed of maybe
 20 the department issuing one?
 21 MR. ABBOTT:
 22 A. No, I don't ever recall that being put in any
 23 discussion that I was party to.
 24 COFFEY, Q.C.:
 25 Q. And if you thought it was important to have a

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1 press release issued, which you had seen as
 2 important that morning, if it was important in
 3 the morning, why wasn't it important in the
 4 afternoon or important enough to say "well,
 5 okay, you do what you want, Mr. Tilley. But -
 6 MR. ABBOTT:
 7 A. Well, it was -
 8 COFFEY, Q.C.:
 9 Q. - we are responsible for public health as
 10 well, and we're going to issue one."
 11 MR. ABBOTT:
 12 A. Well, I want to be careful here. The point in
 13 the morning's e-mail was suggesting to Eastern
 14 Health -
 15 COFFEY, Q.C.:
 16 Q. Oh, I appreciate that, yes.
 17 MR. ABBOTT:
 18 A. - that they do that. They, in their wisdom
 19 had determined that they would not do that.
 20 And so--and that, based on what Tansey Mundon
 21 was told and relayed to me and others in the
 22 department, so I accepted that that's where
 23 that issue was going to rest for the moment.
 24 It would then be for the minister to decided,
 25 based on the same information, whether or not

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1 he felt that a release by Eastern Health or
 2 himself, for that matter, but basically
 3 Eastern Health, that they would proceed. So
 4 she was providing advice to all of us, but the
 5 critical person here is that the minister was
 6 given the same information and whether or not
 7 he felt, based on this, that he should, quote,
 8 unquote, override the officials at Eastern
 9 Health and direct or ask or consult with Mr.
 10 Tilley and others to, in fact, do a release.
 11 COFFEY, Q.C.:
 12 Q. In relation -
 13 MR. ABBOTT:
 14 A. It wasn't, again, from my role in the
 15 department, we would certainly not be doing
 16 the release. It was never, never discussed.
 17 COFFEY, Q.C.:
 18 Q. Did you ever take it up, having received this
 19 e-mail from Ms. Mundon from October 3rd, did
 20 you ever take it up with either Moira
 21 Hennessey, Ed Hunt, Darrell Hynes of, indeed,
 22 Mr. Ottenheimer further?
 23 MR. ABBOTT:
 24 A. We would have--again, I can't place it in
 25 time. Again, we would have discussed it

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1 probably with Darrell Hynes and the minister
 2 whether, you know, whether this is what the
 3 minister would have wanted and comfortable
 4 with and that he was made fully aware of it.
 5 And that would have been the extent of it.
 6 COFFEY, Q.C.:
 7 Q. So just so I'm clear, if I could, please, Mr.
 8 Abbott, on the morning of October 3rd, which
 9 is the day after the Independent story broke,
 10 you would have understood that having talked
 11 to Ms. Mundon and Ms. Hennessey that probably
 12 Ms. Mundon was going to contact Eastern Health
 13 and convey to them the consensus of opinion
 14 amongst the three of you that a press release
 15 should be issued?
 16 MR. ABBOTT:
 17 A. Yes. So to -
 18 COFFEY, Q.C.:
 19 Q. Okay. You then, in terms of that, I take it,
 20 that you only did so or would only have come
 21 to that conclusion because you perceived that
 22 there was a need that would be fulfilled, a
 23 public interest need that would be fulfilled
 24 by issuing such a press release?
 25 MR. ABBOTT:

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1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. Okay. This press release that afternoon,
 4 you're informed, is not going to be issued,
 5 correct?
 6 MR. ABBOTT:
 7 A. Yes.
 8 COFFEY, Q.C.:
 9 Q. And therefore that whatever that public
 10 interest was that you felt might be addressed
 11 by a press release, you then understood was
 12 not going to be addressed?
 13 MR. ABBOTT:
 14 A. That would be correct.
 15 COFFEY, Q.C.:
 16 Q. You understood, as well, didn't you, that this
 17 issue extended far beyond the borders of, the
 18 geographic borders of Eastern Health?
 19 MR. ABBOTT:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. A press release, if it was wide enough in
 23 terms of its distribution, and/or paid
 24 advertisements, if they were wide enough in
 25 their distribution, would blanket the

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1 province, wouldn't they, or could blanket the
 2 province?
 3 MR. ABBOTT:
 4 A. Certainly.
 5 COFFEY, Q.C.:
 6 Q. And could be used to address that public
 7 interest?
 8 MR. ABBOTT:
 9 A. Yes.
 10 COFFEY, Q.C.:
 11 Q. Which is a need for accurate information?
 12 MR. ABBOTT:
 13 A. Yes.
 14 COFFEY, Q.C.:
 15 Q. So by the end of the day on October 3rd you
 16 had accepted that that need would not be
 17 fulfilled despite your recognition as the
 18 person, as the chief bureaucrat, public
 19 servant responsible for the health care of the
 20 people of Newfoundland and Labrador?
 21 MR. ABBOTT:
 22 A. Well, it's a big--you know, the job was deputy
 23 minister of the department.
 24 COFFEY, Q.C.:
 25 Q. Yes. And -

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1 MR. ABBOTT:
 2 A. And, yes, and I, you know, right through the
 3 whole piece I would feel that way, felt that
 4 way and continue to feel that way. But as I
 5 said, I guess, repeatedly, that the end of the
 6 day Eastern Health had to be in the position
 7 to do that. They ran the lab, they had the
 8 information and they would have to provide
 9 that notification and reporting to the public.
 10 I was urging them to do that in my, you know,
 11 number of different ways, but it didn't
 12 happen.
 13 COFFEY, Q.C.:
 14 Q. Yeah. And this October 3rd e-mail exchange
 15 we've just looked at there's no suggestion
 16 here that Eastern Health was not capable of
 17 doing it or not possessed of sufficient
 18 information, was there?
 19 MR. ABBOTT:
 20 A. No.
 21 COFFEY, Q.C.:
 22 Q. No. So it's not a matter of capability?
 23 MR. ABBOTT:
 24 A. Not in terms of the way I was viewing it,
 25 whether they had actual results, but they

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1 certainly had the information that we, you
 2 know, there's an issue.
 3 COFFEY, Q.C.:
 4 Q. Yeah, you understood the information that
 5 could go in a news release?
 6 MR. ABBOTT:
 7 A. Sure.
 8 COFFEY, Q.C.:
 9 Q. And the only thing, at least in these e-mail
 10 exchanges, the one from Ms. Mundon that
 11 morning and the one from Ms. Mundon that
 12 afternoon reporting on Ms. Bonnell's response
 13 or reaction, the only explanation as to why
 14 they will not go public is it might
 15 unnecessarily draw attention to the issue?
 16 MR. ABBOTT:
 17 A. Well, I -
 18 COFFEY, Q.C.:
 19 Q. Is there any other, any other rationale or
 20 reason?
 21 MR. ABBOTT:
 22 A. That's, there is a reference, that's one
 23 component picked out by one person at a--I
 24 don't, I never have drawn the conclusion that
 25 that was necessarily the rationale for that.

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1 COFFEY, Q.C.:
 2 Q. Do you know of any other rationale?
 3 MR. ABBOTT:
 4 A. Well -
 5 COFFEY, Q.C.:
 6 Q. At that point in time?
 7 MR. ABBOTT:
 8 A. Well, again, based on what I had been told up
 9 until now in terms of having, you know, in
 10 terms of when Eastern Health was moving
 11 forward on the issue of having, you know, not
 12 only knowing that we have an issue in the lab,
 13 now we got into this period of waiting for
 14 results and individual notification versus
 15 public reporting. This reference to drawing,
 16 you know, sort of adverse attention or
 17 negative attention to the issue, you know,
 18 George Tilley never suggested that to me at
 19 any point. This was down, you know, shall we
 20 say, down in that world of communications,
 21 whatever, and that's their prerogative to use
 22 that language and analyze it from that
 23 perspective. It should not be, would not be
 24 the determination of how one came public--went
 25 public. And so, you know, I'd suggest you're

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1 reading a lot more into it than I certainly
 2 did at the time.
 3 COFFEY, Q.C.:
 4 Q. Well, sir, okay, if I could. This is October
 5 3rd.
 6 MR. ABBOTT:
 7 A. Yeah.
 8 COFFEY, Q.C.:
 9 Q. The newspaper was published the day before,
 10 the article. This is a Monday. Is there any
 11 other reason that you're aware of, that you
 12 can tell the Commissioner of, that was brought
 13 to your attention on October 3rd or 4th, like
 14 the beginning of that week or October 2nd, for
 15 that matter, the day before, as to why Eastern
 16 Health could not or would not issue a news
 17 release as your department had urged other
 18 than the one articulated in Ms. Mundon's e-
 19 mail, is there anything else that you were
 20 made aware of?
 21 MR. ABBOTT:
 22 A. I think I just put it--I'm trying to put it in
 23 the context of what Mr. Tilley and others had
 24 told us in terms of the overall issue. And so
 25 this was not--you know, I think I know where

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1 you're going with this. It was certainly not
 2 the driving factor. And I think -
 3 THE COMMISSIONER:
 4 Q. Wasn't the rationale you were given for not
 5 going public in the first place related to the
 6 fact that it was not public? How does that
 7 rationale hold up now that it had become
 8 public? Maybe I misunderstood you, but -
 9 MR. ABBOTT:
 10 A. No, no.
 11 THE COMMISSIONER:
 12 Q. - I understood the reasoning that there wasn't
 13 going to be this sort of preemptive use of
 14 news media for the purpose of advising people
 15 was because Eastern Health's stated preference
 16 was to deal with their patients first?
 17 MR. ABBOTT:
 18 A. Um-hm.
 19 THE COMMISSIONER:
 20 Q. Or at least those of them who they could
 21 identify?
 22 MR. ABBOTT:
 23 A. Yes.
 24 THE COMMISSIONER:
 25 Q. Before doing this, making this public, they

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1 preferred that route?
 2 MR. ABBOTT:
 3 A. Exactly, that's -
 4 THE COMMISSIONER:
 5 Q. But now that it was public, was there anything
 6 else in what they had said about not dealing
 7 with it that would give a reason for not at
 8 that stage going public? I know you were in
 9 favour of it yourself because it seemed to me
 10 that now that the information was out there,
 11 then what everyone can say about one's view
 12 that it should not go out before patients
 13 heard about it, now the patients knew.
 14 MR. ABBOTT:
 15 A. Yes.
 16 THE COMMISSIONER:
 17 Q. And the potential was that they would become
 18 very concerned without information, which I
 19 suppose is your reasoning for giving the press
 20 release?
 21 MR. ABBOTT:
 22 A. And I agree. And so that was--with you,
 23 Commissioner. And that was the point of, you
 24 know, suggesting that that they do the
 25 release.

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1 THE COMMISSIONER:
 2 Q. Um-hm.
 3 MR. ABBOTT:
 4 A. But with, you know, however that communication
 5 world works and how people, how they looked at
 6 the issue, again, and I don't know if Susan
 7 Bonnell was speaking on, again, on behalf of
 8 Eastern Health and Mr. Tilley or just that was
 9 her view and, you know, did we push on that,
 10 did I pick up the phone and call George Tilley
 11 to say, "George, have you seen this? What do
 12 you think?" I did not do that and vice versa,
 13 for that matter -
 14 THE COMMISSIONER:
 15 Q. But to come back to the point made by Mr.
 16 Coffey, in the course of this, other than the
 17 reason stated here, which is an expression of
 18 the view of one person, I agree.
 19 MR. ABBOTT:
 20 A. Right. Who was just new to this, you know,
 21 this issue and the portfolio, so -
 22 THE COMMISSIONER:
 23 Q. Are we talking about Ms. Mundon now or -
 24 MR. ABBOTT:
 25 A. Yes.

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1 THE COMMISSIONER:
 2 Q. Okay.
 3 MR. ABBOTT:
 4 A. Yes.
 5 THE COMMISSIONER:
 6 Q. In the communications to you up to this point
 7 from Eastern Health, had anybody articulated a
 8 reason why communication via the mass media
 9 should not be used at this stage other than
 10 this reason given here by Ms. Mundon -
 11 MR. ABBOTT:
 12 A. Well -
 13 THE COMMISSIONER:
 14 Q. - as a method of getting to the patients
 15 quickly?
 16 MR. ABBOTT:
 17 A. I guess in terms--and I'm having trouble
 18 understanding, sort of the question. You
 19 know, the -
 20 THE COMMISSIONER:
 21 Q. Well, I suppose it's the question that you
 22 would have been asking, why aren't we going--
 23 why aren't we trying this method of getting to
 24 the people who are affected by this?
 25 MR. ABBOTT:

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1 A. Yeah. So going back, there was suggestion to
 2 do the release, so that was where I was.
 3 THE COMMISSIONER:
 4 Q. Um-hm.
 5 MR. ABBOTT:
 6 A. Now, the premise of getting to the patients
 7 was, you know, in one sense the worse way of
 8 doing this through a release, but it would be
 9 to say that it is a public, you know, the
 10 public interest and you get it out there.
 11 THE COMMISSIONER:
 12 Q. Yeah, whatever one can say about getting to
 13 the patients before it became public -
 14 MR. ABBOTT:
 15 A. Yes.
 16 THE COMMISSIONER:
 17 Q. - now that it was public -
 18 MR. ABBOTT:
 19 A. Yes.
 20 THE COMMISSIONER:
 21 Q. - you had all these people out there who had
 22 been diagnosed with cancer who had been
 23 through the process now saying, "Is that me?"
 24 MR. ABBOTT:
 25 A. Yes.

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1 THE COMMISSIONER:
 2 Q. And it would seem to me that prima facie one
 3 method of at least giving some assurance to
 4 these people was to say this, this and this
 5 and this is how you can get in touch with us
 6 if you're worried.
 7 MR. ABBOTT:
 8 A. Right. No, and I understand that. And as I
 9 said, that's where I was in terms of a
 10 release. But when poles were put to Eastern
 11 Health, they suggested that, you know, that it
 12 should not proceed. And their reference or
 13 the reference there, anyway, the horse has
 14 left the barn and, you know, do we need to do
 15 it. So that's from their perspective. Ms.
 16 Mundon's reference here was her, you know,
 17 comment and was internal to the people who
 18 were listed there, and that was it.
 19 COFFEY, Q.C.:
 20 Q. So there was no other reason provided? Like,
 21 no other rationale provided beyond that one?
 22 MR. ABBOTT:
 23 A. No, no, I think you're--either I'm not
 24 explaining myself too well. The point is
 25 Eastern Health didn't say this would draw

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1 attention to the issue unnecessarily.
 2 COFFEY, Q.C.:
 3 Q. Oh, I'm not suggesting -
 4 MR. ABBOTT:
 5 A. Okay. So they, but they had made the
 6 determination that they weren't going with a
 7 release.
 8 COFFEY, Q.C.:
 9 Q. The horse has left the barn?
 10 MR. ABBOTT:
 11 A. Exactly.
 12 COFFEY, Q.C.:
 13 Q. Is the phrase.
 14 MR. ABBOTT:
 15 A. So in light of that or irrespective of that,
 16 the fact that she made that reference there,
 17 that was her speaking, you know, in terms of
 18 through the e-mail, you know, saying if we
 19 did, it would draw the thing unnecessarily.
 20 That was just her view expressed within this
 21 particular group, no more, no less. That is
 22 not the reason why release didn't go from
 23 Eastern Health's perspective, at least that
 24 was the conclusion I drew.
 25 COFFEY, Q.C.:

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1 Q. Okay. What conclusion did you draw about why
 2 a release did not go from Eastern Health other
 3 than the horse having left the barn?
 4 MR. ABBOTT:
 5 A. Basically, you know, it's out there now, the
 6 deed is done and, as I said, it was the worse
 7 case scenario, but that's for them to answer.
 8 COFFEY, Q.C.:
 9 Q. But did you engage them any further on it,
 10 you're the deputy minister of health?
 11 MR. ABBOTT:
 12 A. I think the better question is did the
 13 minister engage them on it.
 14 COFFEY, Q.C.:
 15 Q. Okay.
 16 MR. ABBOTT:
 17 A. Because it was, you know, it was--that's where
 18 it would be, and in terms of he was engaged on
 19 the issue, he knew how things were unfolding
 20 and now this is out there and is there some
 21 other--did he want Eastern Health to
 22 communicate differently to patients or the
 23 public. And so he--and that's really where
 24 that lay. In essence, you know, I suggested a
 25 course of action on different points. It

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1 wasn't going the way I saw it, and that's, you
 2 know, fair enough, so the corollary is then
 3 those who are in taking the lead on this,
 4 which is Eastern Health, then they will
 5 determine the course of action.
 6 COFFEY, Q.C.:
 7 Q. Did you on, you know, October 3rd, communicate
 8 to Mr. Ottenheimer the fact that you had, you
 9 know, through Tansey Mundon, communicate in
 10 your views on a news release to Eastern Health
 11 -
 12 MR. ABBOTT:
 13 A. I believe he was aware of that, yes.
 14 COFFEY, Q.C.:
 15 Q. Okay. And so he would have been aware, from
 16 your perspective, that you, your advice to
 17 Eastern Health -
 18 MR. ABBOTT:
 19 A. My suggestion.
 20 COFFEY, Q.C.:
 21 Q. Suggestion, advice.
 22 MR. ABBOTT:
 23 A. No, I'm -
 24 COFFEY, Q.C.:
 25 Q. I guess -

1 MR. ABBOTT:
 2 A. The words are important here.
 3 COFFEY, Q.C.:
 4 Q. Okay.
 5 MR. ABBOTT:
 6 A. And suggestion was the words that were used in
 7 the e-mail and that is what it was.
 8 COFFEY, Q.C.:
 9 Q. Okay. And so did you tell Ms. Mundon to use
 10 the word "suggest" "suggesting" as opposed to
 11 "we are advising"? Now because you're looking
 12 at this as -
 13 MR. ABBOTT:
 14 A. And it was that, you know, "we are
 15 suggesting".
 16 COFFEY, Q.C.:
 17 Q. Okay.
 18 MR. ABBOTT:
 19 A. Right. So did I specifically use and tell her
 20 what word to use in her e-mail, but that is
 21 exactly, it was an opinion, it wasn't, you
 22 know, a direction on behalf of the minister.
 23 THE COMMISSIONER:
 24 Q. So the distinction between the words "suggest"
 25 and "advise" in this context goes back to your

1 COFFEY, Q.C.:
 2 Q. And your understanding then at the time, just
 3 upon your recollection at least now, looking
 4 back at it, is that Mr. Ottenheimer would have
 5 been aware, you know, on October 3rd, that I,
 6 John Abbott, have suggested to Eastern Health
 7 a certain course of action and by this e-mail
 8 from Tansy Mundon, he would have realized that
 9 they didn't accept it.
 10 MR. ABBOTT:
 11 A. It didn't happen, that's right.
 12 COFFEY, Q.C.:
 13 Q. And your understanding with Mr. Ottenheimer,
 14 vis-a-vis the roles of both of you was that in
 15 that kind of a context or that kind of
 16 circumstance, if he wanted to take the matter
 17 up further, it was up to him?
 18 MR. ABBOTT:
 19 A. Absolutely.
 20 COFFEY, Q.C.:

1 view of the separate roles?
 2 MR. ABBOTT:
 3 A. Definitely.
 4 THE COMMISSIONER:
 5 Q. All right, thank you.

1 Q. Did you ever explicitly have the discussion
 2 with him?
 3 MR. ABBOTT:
 4 A. In general or this particular issue?
 5 COFFEY, Q.C.:
 6 Q. No, in general about how that would work, vis-
 7 a-vis yourself, health authorities and the
 8 minister?
 9 MR. ABBOTT:
 10 A. We would have had, you know, a number of
 11 conversations, different conversations based
 12 on issues that would have come forward and I
 13 felt that he clearly understood his role and
 14 his role vis-a-vis the department; vis-a-vis
 15 the health authorities.
 16 COFFEY, Q.C.:
 17 Q. And your view of your own role?
 18 MR. ABBOTT:
 19 A. Yes.
 20 COFFEY, Q.C.:
 21 Q. If we could, please, exhibit P-0802. Now this
 22 is an e-mail from Tansy Mundon to yourself,
 23 Tara Furlong, Moira Hennessey, Ed Hunt,
 24 Darrell Hynes and John Ottenheimer. It's
 25 October 5, 2005, 4:41 p.m. The subject is

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1 "CBC Online Story, Newfoundland Cancer Lab
 2 Produces False Results" and Ms. Mundon writes,
 3 "FYI this story is based on today's Telegram
 4 story, I was speaking with Susan B. this
 5 afternoon. She advised CBC did not do an
 6 interview for this story to date. Eastern
 7 Health has received six calls today and five
 8 calls yesterday. The nature of the calls was
 9 primarily around confusion around mammography
 10 testing as opposed to ER/PR and Peter Gullage
 11 did call Eastern this afternoon, requested an
 12 interview on the issue for a story he is doing
 13 for the "Globe and Mail". His focus seems to
 14 be on the impact on patients. Dr. Williams
 15 did an interview with him this afternoon, but
 16 Susan had not talked to him as of ten minutes
 17 ago. Essentially you can look for two stories
 18 in today's "Globe", this one and another on
 19 the ATIPP request for MCP billings." So I
 20 take it then this sort of an e-mail is in
 21 keeping with Ms. Mundon's suggestion on the
 22 afternoon of October 3rd that "we should
 23 continue to monitor the coverage and the
 24 reaction."
 25 MR. ABBOTT:

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1 A. From her perspective for, primarily, you know,
 2 obviously I would be informed, but it was
 3 certainly to keep the minister updated.
 4 COFFEY, Q.C.:
 5 Q. Now on page 2 of this, this is copied to, cc'd
 6 to Carolyn Chaplin and Josephine Cheeseman.
 7 MR. ABBOTT:
 8 A. Yes.
 9 COFFEY, Q.C.:
 10 Q. Who were in the -
 11 MR. ABBOTT:
 12 A. Cabinet secretariat.
 13 COFFEY, Q.C.:
 14 Q. Cabinet secretariat at that point. And the
 15 purpose of, from your perspective as a deputy
 16 minister, what would be the purpose of keeping
 17 the cabinet secretariat apprised of such a
 18 thing?
 19 MR. ABBOTT:
 20 A. Just again, it was at the communication's
 21 level, just part of their ongoing working
 22 relationship.
 23 COFFEY, Q.C.:
 24 Q. Now, sir, look back at the text of Ms.
 25 Mundon's e-mail, the nature--the first

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1 paragraph ends with a reference to "The nature
 2 of the calls was primarily around confusion
 3 around mammography testing as opposed to
 4 ER/PR." Did that, in your view of things,
 5 cause you any concern, you had been talking or
 6 thinking about news releases or press releases
 7 -
 8 MR. ABBOTT:
 9 A. Uh-hm.
 10 COFFEY, Q.C.:
 11 Q. - which might help to alleviate any confusion,
 12 you know, seeing that, did that cause you any
 13 concern?
 14 MR. ABBOTT:
 15 A. Well, you know, certainly it was an indicator
 16 of in the absence of the information out in
 17 the public that these situations were going to
 18 arise.
 19 COFFEY, Q.C.:
 20 Q. And having seen that, did you take any steps
 21 to again communicate with Eastern Health about
 22 the idea of sending something solid out?
 23 MR. ABBOTT:
 24 A. No, not at that time, no.
 25 COFFEY, Q.C.:

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1 Q. Sir, what then happened? This is the first
 2 week or so after it became public, what then
 3 happened?
 4 MR. ABBOTT:
 5 A. Well we were, you know, subject to receiving
 6 any information that Eastern Health wanted to
 7 make available to us and then later on,
 8 obviously as we were getting ready for the
 9 House of Assembly to open, we would have been,
 10 you know, developing some briefing materials
 11 for the minister at that time, but I can't
 12 speak to any specific day or there would have
 13 been some conversations with George Tilley and
 14 myself, amongst other issues as to what's the
 15 status and how are things progressing on this
 16 issue in terms of results and the reviews that
 17 were underway.
 18 COFFEY, Q.C.:
 19 Q. If we could, Registrar please, exhibit P-0124.
 20 Now this particular exhibit, Mr. Abbott, has a
 21 number of briefing notes of various sorts.
 22 The first of them is a briefing note "ER/PR
 23 Testing Results, September 30th, 2005", it's
 24 that one I didn't look at in detail, but we
 25 saw earlier attached to an e-mail. This one

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1 is Department of Health and Community
 2 Service's briefing note, October 3rd, 2005,
 3 it's two pages long. It's prepared by Moira
 4 Hennessey and approved by John Abbott. So is
 5 there any significance to the words "approved
 6 by"?

7 MR. ABBOTT:
 8 A. Well the protocol was obviously it would be
 9 drafted by a person and then vetted by their,
 10 and approved by their supervisor, which in
 11 this case, in Ms. Hennessey's drafted me as
 12 her supervisor.

13 COFFEY, Q.C.:
 14 Q. So here, this is the first one prepared by
 15 your department, apparently.

16 MR. ABBOTT:
 17 A. I would think so, yes.

18 COFFEY, Q.C.:
 19 Q. In terms of this, from the Department of
 20 Health's perspective, the week of October 2nd,
 21 3rd, is there way of a departmental employee
 22 or official quickly checking to see what, if
 23 any, briefing notes exist within the
 24 department on a particular issue?

25 MR. ABBOTT:

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1 A. The norm would be, you know, going to the
 2 division that may be seen as holding that
 3 material. They're checking with our registry,
 4 if in fact it was held there, other than that,
 5 it would have been by sort of recall and who
 6 might have been involved at any point in time.

7 COFFEY, Q.C.:
 8 Q. So there's kind of master repository of
 9 briefing notes on particular subjects.

10 MR. ABBOTT:
 11 A. No, no and they generally were kept either by
 12 the division and as each, as time moved on, so
 13 the responsibility, for instance doing the
 14 briefing notes for, like the House of Assembly
 15 and who would, responsibility for that, so it
 16 changed and evolved over time, so your point,
 17 there was no consistency of central depository
 18 in terms of the briefing notes.

19 THE COMMISSIONER:
 20 Q. So, just to make sure I'm clear, there would
 21 obviously be in the Department of Health,
 22 other large department, all kinds of divisions
 23 dealing with different kinds of issues.

24 MR. ABBOTT:
 25 A. Yes.

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1 THE COMMISSIONER:
 2 Q. And briefing notes would come in respect of a
 3 particular subject of a division which was
 4 related to that issue.

5 MR. ABBOTT:
 6 A. Yes, and it's known to happen from time to
 7 time that two divisions might have got asked
 8 the same type of question, to prepare a
 9 briefing note unbeknownst to each other.

10 THE COMMISSIONER:
 11 Q. And the hope was they would be consistent?

12 MR. ABBOTT:
 13 A. The hope was that somebody would pick it up,
 14 but no, that would be--I wouldn't even go
 15 that, as far to say they were consistent, is
 16 that in fact, that the right person was doing
 17 the right note for the right purpose at that
 18 point in time.

19 THE COMMISSIONER:
 20 Q. Okay.

21 COFFEY, Q.C.:
 22 Q. And I ask that because if you look at P-0163
 23 please? Page 6. Now this is this e-mail
 24 exchange between--or exchanges of September
 25 30th, 2005. The second one there, 5:01 p.m.

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1 is one from Carolyn Chaplin, I gather to Tansy
 2 Mundon saying "Thanks, Tansy, are they
 3 preparing the revised briefing note. It's been
 4 awhile since they did one, I believe late
 5 July." At that point in time, September 30th,
 6 that's why I ask in terms of you had, as
 7 deputy minister, to check, how would you try
 8 to find out when the last one was or what the
 9 most current was?

10 MR. ABBOTT:
 11 A. I would go to, in this case, I would have gone
 12 to one of two people, would have been Moira
 13 Hennessey or Tansy Mundon or her predecessor
 14 would have been Carolyn Chaplin, but because
 15 the issue from the department's perspective
 16 was sort of parked or housed with Moira
 17 Hennessey's division, it would have gone
 18 directly to her. So that would be where I
 19 would certainly start within the department.

20 COFFEY, Q.C.:
 21 Q. Now, sir, in looking at that October 3rd
 22 briefing note, if we could, please, it's P-
 23 0124, page 4, thank you. Certainly as you've
 24 approved of this, you would have read it at
 25 the time?

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1 MR. ABBOTT:
 2 A. I would like to say yes and I'm assuming yes,
 3 but it has known to happen from time to time,
 4 notes did go past me, even saying I approved
 5 them, but they had been sent to the recipient,
 6 as it were. But I would have received it and
 7 I would have reviewed it and obviously if I
 8 had any issues with it, we'd ask the change be
 9 made and if need be, call it back.
 10 COFFEY, Q.C.:
 11 Q. Now the recipient of this particular type of
 12 note would be whom?
 13 MR. ABBOTT:
 14 A. Well this would have been for, most likely the
 15 minister and this could very well have gone
 16 then outside to cabinet secretariat and we,
 17 and they in turn would normally, if need be,
 18 and depending on their requirements, forward
 19 on to the premier's office.
 20 COFFEY, Q.C.:
 21 Q. Now this, by October 3rd, 2005, you
 22 understood, as the deputy minister, what was
 23 the nature of the problem and the potential or
 24 the likely cause of it or did you have any
 25 understanding at all in that regard?

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1 MR. ABBOTT:
 2 A. Well other than what I was briefed, you know,
 3 in that meeting of July 21st and any
 4 subsequent, you know, briefings and
 5 information coming from that, so that was the
 6 extent of my knowledge and knowledge base or
 7 information around that.
 8 COFFEY, Q.C.:
 9 Q. If we look under "Background" here on page 4
 10 of the exhibit, it says in the fourth bullet,
 11 "A representative from Ventana visited the
 12 laboratory in July to review use and practices
 13 of the Ventana system. In their written
 14 report, they stated that they found the system
 15 to be operating as expected and that the
 16 procedures used by technicians were
 17 appropriate and as trained." Now I take it,
 18 did you understand from that that the Ventana
 19 system then, at least from the Ventana's
 20 representative was fine.
 21 MR. ABBOTT:
 22 A. Again, all I knew was what those couple of
 23 sentences stated, and I accept that as fact
 24 and did not question that one way or the
 25 other.

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1 COFFEY, Q.C.:
 2 Q. Now, sir, looking at current status, if I
 3 could please, at the bottom of the page there,
 4 back to the actual patient's results, the
 5 second last bullet, "An external peer review
 6 of the chief pathologist of the British
 7 Columbia Cancer Institute and chief
 8 technologist from Mount Sinai Hospital was
 9 conducted September 15th to the 22nd, 2005, to
 10 review current practices and procedures within
 11 the laboratory service. Debriefing was held
 12 after each review and a full report from each
 13 is expected in the next few weeks." Now, and
 14 having read that, did you cause any inquiries
 15 to be made as to what the debriefing involved,
 16 what they were told during their debriefing?
 17 MR. ABBOTT:
 18 A. No.
 19 COFFEY, Q.C.:
 20 Q. Why not?
 21 MR. ABBOTT:
 22 A. Again, I view that as an internal matter to
 23 Eastern Health and I didn't see the need to
 24 inquire any further, for my purposes.
 25 COFFEY, Q.C.:

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1 Q. In terms of the number of people affected, at
 2 least as set out here, current status, first
 3 bullet, page four. It indicates that, when
 4 you look down through on the fourth line, "153
 5 samples have been reported by Mount Sinai, 73
 6 have been reviewed and it appears that of
 7 those there were 16 to 20 individuals whose
 8 treatment could be impacted. And sample for
 9 1997 and 1998 from the St. John's hospitals
 10 will soon be sent for retesting". I take it
 11 by this point in time you realized that this
 12 is going to be a lot longer than six weeks.
 13 MR. ABBOTT:
 14 A. Well, here we were in October and we were
 15 first briefed in July. So yeah, you could see
 16 that this was obviously the time span was
 17 increasing.
 18 COFFEY, Q.C.:
 19 Q. Were any steps taken to address with Eastern
 20 Health any possible approaches that might
 21 shorten the period?
 22 MR. ABBOTT:
 23 A. I recall a conversation around that, say you
 24 know, can this be--particularly when we were
 25 hearing about delays at Mount Sinai and maybe,

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1 if it was exactly this time or a little bit
 2 later, you know, what is it we can do to
 3 expedite this, get the results out. I know
 4 there were inquiries made of Mount Sinai, but
 5 based on what I think Dr. Williams would have
 6 reported back, that they're doing what they
 7 can and then subsequently, I think, they ran
 8 into some of their own operational challenges.
 9 And the retesting got backlogged. But again,
 10 there wasn't--the concern was, yeah, at least
 11 from my perspective that there's a continued
 12 delay in bringing this to resolution. But in
 13 terms of the approach Eastern Health was now
 14 involved in in terms of--the impression was
 15 that they're doing what they can to get the
 16 results and them back as quickly as possible.
 17 COFFEY, Q.C.:
 18 Q. Now, looking at this, I'm going on to the
 19 second page which is the second bullet under
 20 "Current Status". It says, "78 samples from
 21 1997 to 2004 from Gander and Carbonear are in
 22 the process of being submitted and specimens
 23 from Grand Falls Windsor have just been
 24 received and will also be sent to Mount
 25 Sinai". Did that raise any concerns in the

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1 department about, to ask about well, why is it
 2 taking that long for these other authorities
 3 to submit their samples when the whole--you
 4 have understood originally that by the end of
 5 September, the results might be back.
 6 MR. ABBOTT:
 7 A. No, other than they were in the process now,
 8 these were basically the facts.
 9 COFFEY, Q.C.:
 10 Q. And no inquiries were made further as to why
 11 it took them that long?
 12 MR. ABBOTT:
 13 A. No.
 14 COFFEY, Q.C.:
 15 Q. And to be fair, to the other authorities, when
 16 I say that long, there will be evidence as to
 17 when actually, they were actually asked to
 18 send the material in. Do you have any
 19 knowledge of when that was?
 20 MR. ABBOTT:
 21 A. No.
 22 COFFEY, Q.C.:
 23 Q. There will be a letter which will show that
 24 it's the beginning of September actually.
 25 Here in the second bullet on the second page,

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1 page 5, second page of the briefing note. It
 2 says, "Eastern Health is also sending letters
 3 to the surgeons and other attending physicians
 4 on this 16 to 20 individuals whose treatment
 5 would be impacted based on the Mount Sinai
 6 testing results. The physicians will then
 7 determine the follow up action for these
 8 patients. The focus is on notifying patients,
 9 of alive patients regarding the findings.
 10 This process will continue as test reports are
 11 received from Mount Sinai". And it goes on,
 12 "there could be some potential litigation
 13 issues for the families of deceased patients
 14 once the families are notified". What was
 15 your understanding at this point, the
 16 beginning of October, as to how the deceased
 17 patients, their tissue samples were being
 18 addressed here?
 19 MR. ABBOTT:
 20 A. Other than the tests--all--you know, all
 21 patients impacted from the period, from '97
 22 forward would be tested, but in terms of, at
 23 this point, having a discussion around
 24 deceased patients and contact with families.
 25 There had not been any discussion that I was

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1 party to. So, this information then had been
 2 provided, you know, from Eastern Health, put
 3 in our briefing note as is, I suspect.
 4 COFFEY, Q.C.:
 5 Q. Sir, the--and I stand to be corrected--what
 6 was your understanding at the time as to what
 7 Eastern Health's position was vis-a-vie
 8 notifying patients of the results, the
 9 patients who were alive?
 10 MR. ABBOTT:
 11 A. Well, -
 12 COFFEY, Q.C.:
 13 Q. Results could either be no change in result or
 14 change from -
 15 MR. ABBOTT:
 16 A. I was working on the understanding, impression
 17 that, you know, all patients would have been
 18 notified.
 19 COFFEY, Q.C.:
 20 Q. And you would have gotten that impression from
 21 where, do you recall?
 22 MR. ABBOTT:
 23 A. Well again, right from the beginning. That's
 24 what we were talking about, is how we notify
 25 all patients, not knowing where the, what the

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1 results were. So, in my thinking, hadn't
 2 really moved from that to the various subsets.
 3 COFFEY, Q.C.:
 4 Q. Now sir, this is October 3rd, it's a briefing
 5 note for the minister. I'm on the same
 6 exhibit, if I could, at page six of the same
 7 exhibit, Commissioner, is a briefing note,
 8 Department of Health and Community Services.
 9 The title is "Testing of Breast Cancer
 10 Patients at St. John's Hospital, the issue is
 11 media coverage regarding potential breast
 12 cancer diagnostic errors within Eastern
 13 Regional Integrated Health Authority". And up
 14 here, copied to, and there's a list of people,
 15 beginning with the premier, Ross Reid, Brian
 16 Crawley, Elizabeth Matthews, Robert Thompson,
 17 Susan Barnes, J. Paddock--excuse me, that's
 18 Sandra Barnes, thank you, Administrator--Ms.
 19 MacDonald, Gary Cake and J. Mullaly. The
 20 briefing note for the cabinet secretariat and
 21 this is dated--I'll just look on the next page
 22 here--the bottom of it, other than a slight
 23 addition to the heading and the very end of
 24 it.
 25 MR. ABBOTT:

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1 A. Um-hm.
 2 COFFEY, Q.C.:
 3 Q. The text appears to be the same as the October
 4 3 one. "Prepared by M. Hennessey, J. Abbott,
 5 Department of Health and Community Services,
 6 reviewed by B. Cooper, S. MacDonald, cabinet
 7 secretariat, October 5, 2005". So, sir, did
 8 you have any involvement in preparing this?
 9 MR. ABBOTT:
 10 A. I will say not physically, no.
 11 COFFEY, Q.C.:
 12 Q. How about approving of it going?
 13 MR. ABBOTT:
 14 A. Well yes, it was based, again, on the previous
 15 note. It was the assumption that, from the
 16 department and because of the issue at that
 17 point, whatever--and part of the reason,
 18 prepared by, as I said I believe yesterday,
 19 was that if the reader wanted to contact the
 20 author or authors, that's why that was
 21 generally put there.
 22 COFFEY, Q.C.:
 23 Q. Were you ever contacted by anybody about this?
 24 MR. ABBOTT:
 25 A. No.

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1 COFFEY, Q.C.:
 2 Q. Now sir, the idea and I appreciate we've
 3 looked at those e-mails involving the idea of
 4 a press release and your suggestion to Eastern
 5 Health. How about the idea of sending an
 6 actual letter to individual patients. Did
 7 that resurrect itself at this point in time?
 8 MR. ABBOTT:
 9 A. No, I think that was--that idea really had
 10 been exhausted and hadn't come forward after
 11 this.
 12 COFFEY, Q.C.:
 13 Q. I appreciate in early August, had run into a,
 14 I'll say, just a roadblock or in the sense of
 15 it hadn't proceeded because the oncologists
 16 views to wait for results, as the Commissioner
 17 was suggesting to you a while ago that by this
 18 point in time, the public at large knows or -
 19 MR. ABBOTT:
 20 A. Yes.
 21 MR. ABBOTT:
 22 A. - could know about this and there was no
 23 secret that the results were going to take
 24 some time to get back. So, the idea of again,
 25 communicating in a direct fashion in a

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1 concrete fashion, in a -
 2 MR. ABBOTT:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. - comprehensible fashion with individual
 6 patients. Did the issue come up again of
 7 sending a letter?
 8 MR. ABBOTT:
 9 A. Not really after this period. The issue is
 10 out there now. Eastern Health is dealing with
 11 it as best and as it determines. We will
 12 monitor from the, you know, the public
 13 reaction point of view. This note was done
 14 and sent to the central agencies and we were
 15 in a, sort of, a holding pattern around this.
 16 And any action we would take or the minister
 17 for that matter, seemed to be dependent on
 18 what information Eastern Health would provide
 19 or could provide.
 20 COFFEY, Q.C.:
 21 Q. Why would the department be monitoring the
 22 issue if it's Eastern Health's issue?
 23 MR. ABBOTT:
 24 A. For the minister so that the minister was
 25 apprised, kept apprised and in the event of an

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1 inquiry or if he had to speak on that issue,
 2 he would have that readily available. From
 3 the department perspective, we did not--
 4 weren't monitoring for anything that the
 5 department itself might be doing or could do
 6 or should do.
 7 COFFEY, Q.C.:
 8 Q. So, you're in a holding pattern.
 9 MR. ABBOTT:
 10 A. Yeah, so basically saying, well, as events
 11 unfolded, we would monitor that from the
 12 communications perspective. And unless we
 13 were directed otherwise, that's basically
 14 where we were.
 15 COFFEY, Q.C.:
 16 Q. Directed otherwise by whom?
 17 MR. ABBOTT:
 18 A. The minister or I guess, the premier.
 19 COFFEY, Q.C.:
 20 Q. If we could please, Exhibit P-804. This is an
 21 e-mail from yourself to Moira Hennessey,
 22 Sherree MacDonald and Ross Reid. Now, Ms.
 23 MacDonald is whom?
 24 MR. ABBOTT:
 25 A. Sherree MacDonald was working in the cabinet

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1 secretariat at that time.
 2 COFFEY, Q.C.:
 3 Q. And she was responsible for what, do you know?
 4 MR. ABBOTT:
 5 A. She was in the social policy secretariat
 6 office within the cabinet secretariat. And
 7 she was, sort of, our liaison with the cabinet
 8 office at that time.
 9 COFFEY, Q.C.:
 10 Q. And so the purpose in sending an e-mail such
 11 as this to her would be what?
 12 MR. ABBOTT:
 13 A. I'm not quite sure why in this case -
 14 COFFEY, Q.C.:
 15 Q. Because the e-mail is actually directed to
 16 Ross Reid.
 17 MR. ABBOTT:
 18 A. Yes, because he--but we, you know, again the
 19 same with Moira Hennessey, because she was in
 20 the cabinet office and was familiar with the
 21 issue, we had obviously sent the previous
 22 briefing material to her. I included her.
 23 COFFEY, Q.C.:
 24 Q. And as she was responsible for social -
 25 MR. ABBOTT:

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1 A. I believe the social policy, so in terms of a
 2 number of departments, she would liaise with,
 3 we being one of them.
 4 COFFEY, Q.C.:
 5 Q. So, it was your understanding that Ms.
 6 MacDonald, at the time, would be the cabinet
 7 officer, is that the phrase or whatever -
 8 MR. ABBOTT:
 9 A. I don't know, in terms of her title at that
 10 particular time -
 11 COFFEY, Q.C.:
 12 Q. An assistant secretary -
 13 MR. ABBOTT:
 14 A. Yeah, I wasn't sure, now again, which one,
 15 where she was at that point in time.
 16 COFFEY, Q.C.:
 17 Q. But it was your understanding that within that
 18 office, she was the person who was responsible
 19 for monitoring the Department of Health matter
 20 that might be of interest to the cabinet
 21 secretariat.
 22 MR. ABBOTT:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. And that's why you'd pick her as opposed to

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1 Gary Cake at this point?
 2 MR. ABBOTT:
 3 A. Yes, I would think so, yes.
 4 COFFEY, Q.C.:
 5 Q. And the reason, I gather, for your e-mail was
 6 occasioned by the e-mail below from Ross Reid
 7 to yourself, October 12, 2005 at 10:52 a.m.
 8 MR. ABBOTT:
 9 A. Um-hm.
 10 COFFEY, Q.C.:
 11 Q. And this e-mail sets out the background. In
 12 the first paragraph, "On Friday, I had a
 13 call"--that would be I, Ross Reid--"had a call
 14 from a good friend and was asked if I would
 15 meet with a colleague of hers who was quite
 16 upset by the recent developments with breast
 17 cancer testing. Last night I spent two and a
 18 half hours with them". And he goes on to talk
 19 about this "woman"--he says women there, but I
 20 suspect that's a typo--"began undergoing tests
 21 and for ten months she was told there was
 22 nothing wrong with her, until she was
 23 diagnosed as having breast cancer. She was a
 24 breast feeding mother of blank number and she
 25 tested negative for ER/PR receptors.

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1 Underwent an extensive treatment of surgery,
 2 chemo and radiation. At all times she made
 3 informed decisions about her therapy and care,
 4 always choosing the most aggressive options".
 5 And this goes on at some point, at some
 6 length, doesn't it, by Mr. Reid?
 7 MR. ABBOTT:
 8 A. Yes.
 9 COFFEY, Q.C.:
 10 Q. About his friends' concerns and in fact,
 11 towards the bottom of this page, he
 12 articulates, he says "this woman has three
 13 concerns at this point. The mistake is a
 14 serious one that will have an impact on
 15 hundreds of women and their families. She
 16 believes that she never would have been told
 17 if she did not ask, did not press for
 18 information about her own medical condition.
 19 The question is not just that those with
 20 changed results be told, but that all be told.
 21 It is their right to expect this level of
 22 disclosure and respect. And the retesting is
 23 taking time as Mount Sinai is 'very busy' and
 24 this is time that many women do not have. She
 25 believes it is not good enough to wait for one

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1 hospital lab. That every effort should be
 2 made to make up for the five months of therapy
 3 some women may have lost. And the overall
 4 effect on this person is that she has lost all
 5 confidence in the health care system and has
 6 trouble trusting even the most basic advice.
 7 For instance, she wonders why she should
 8 accept that Mount Sinai is capable of doing
 9 the test properly, not because she is
 10 suspicious of Mount Sinai, but because of who
 11 is telling her to trust them. This is not a
 12 hysterical person, it seems, she is not
 13 affected by this medically and continues to be
 14 well. She is a mother of blank and has a
 15 demanding professional career. This woman
 16 made a deliberate decision to play lead role
 17 in her care"--just going to turn the page
 18 here--"from the beginning by asking questions
 19 and making choices. She expects to be able to
 20 do that throughout her care and treatment. I
 21 pass this on as a perspective perhaps not
 22 always considered and would appreciate
 23 guidance on how to proceed. Thanks, R", which
 24 would be Mr. Reid.
 25 A I take it at that time Mr. Reid was in

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1 what position?
 2 MR. ABBOTT:
 3 A. He was deputy minister to the premier in the
 4 premier's office
 5 COFFEY, Q.C.:
 6 Q. Now, and this--and I do apologize for having
 7 gone over it, but something that I do want to
 8 bring to your attention in terms of what you
 9 were advised by Mr. Reid at this point
 10 concerning communications he had had from his
 11 friend. In that e-mail, in the third
 12 paragraph, he wrote to you, "on Wednesday she
 13 read in the paper that since May there had
 14 been questions about the validity of the
 15 negative tests. She immediately phoned he
 16 oncologist who she could not immediately
 17 reached and was referred to a 'point person'
 18 at Eastern Health who clearly said all the
 19 wrong things including a number of which were
 20 simply not correct. After 14 hours she did
 21 speak to her oncologist who informed her that
 22 her test samples were some of the first sent
 23 away for testing and the results had not
 24 changed. She still has not heard back from
 25 Eastern Health despite assurance she would".

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1 And so having received this you wrote to Mr.
 2 Reid saying, "Thanks Ross for this
 3 information. Your friend's issues and
 4 concerns are one shared by us at the
 5 department as well as Eastern Health. We have
 6 a lot to learn from this experience. As for
 7 next steps, rather than me trying to respond
 8 to the technical issues at play, I would
 9 strongly urge your friend to contact Dr. Bob
 10 Williams at Eastern Health who is the most
 11 knowledgeable about this and has met with other
 12 patients' families on this matter. For your
 13 info. new technology has proven to cause
 14 Eastern Health to retest and that within that
 15 new system, some quality issues have come to
 16 the fore".
 17 Now sir, on October 12, then, Mr. Reid
 18 communicated in writing to you at least what
 19 he reported as being the experience of a lady
 20 had dealt with concerning her contact with
 21 Eastern Health. Do you see that there in that
 22 paragraph, "on Wednesday"?
 23 MR. ABBOTT:
 24 A. Yes.
 25 COFFEY, Q.C.:

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1 Q. Did you do anything about that other than
 2 refer Mr. Reid to Dr. Williams?
 3 MR. ABBOTT:
 4 A. No.
 5 COFFEY, Q.C.:
 6 Q. Why did you not take that issue up, the issue
 7 of potential mis-information or incorrect
 8 information with Eastern Health?
 9 MR. ABBOTT:
 10 A. I guess in terms of that, you know, Mr. Reid
 11 was writing to me on an individual, on a
 12 personal matter. I felt that it would be best
 13 addressed, as my e-mail to him suggests, that
 14 this issue be taken up with Dr. Williams. And
 15 I didn't feel, at that point that it was
 16 something that I needed to address with Dr.
 17 Williams directly or Eastern Health directly.
 18 COFFEY, Q.C.:
 19 Q. Well, as deputy minister, why not?
 20 MR. ABBOTT:
 21 A. That was just the conclusion I reached, I
 22 guess, at that time. And it was, again, it
 23 was brought on a personal level and wasn't
 24 brought formally and that's what I felt was
 25 the most appropriate.

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1 COFFEY, Q.C.:
 2 Q. Well, whether it was brought on a personal
 3 level or not, he was contacting you, I take
 4 it, that is Mr. Reid was because you were
 5 deputy minister of health?
 6 MR. ABBOTT:
 7 A. Yes.
 8 COFFEY, Q.C.:
 9 Q. And you might be able to point him in the
 10 right direction. And I appreciate that you
 11 referred him to Dr. Williams, but in the
 12 course of that and he does articulate what are
 13 reported shortcomings.
 14 MR. ABBOTT:
 15 A. Um-hm.
 16 COFFEY, Q.C.:
 17 Q. You're aware of these shortcomings. This is
 18 ten days after "The Independent" story.
 19 MR. ABBOTT:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. Yet you've taken no steps to communicate with
 23 Eastern Health about these shortcomings?
 24 MR. ABBOTT:
 25 A. That's correct.

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1 COFFEY, Q.C.:
 2 Q. And it's because you attributed it to being a
 3 personal matter?
 4 MR. ABBOTT:
 5 A. The way it came to me from Mr. Reid, I--and
 6 though I did share it with Mr. Hennessey and
 7 Ms. MacDonald for, again, for their
 8 information, but no specific direction, in
 9 terms of Ms. Hennessey, to follow up on it.
 10 COFFEY, Q.C.:
 11 Q. And the idea, you've just pointed out, the
 12 idea that this shortcoming, that at least Mr.
 13 Reid was reporting, well as deputy minister to
 14 the premier, presumably he would have been
 15 aware of the shortcoming himself, he's
 16 reporting it to you.
 17 MR. ABBOTT:
 18 A. Yeah, but again, I was--on this one, I took it
 19 that Mr. Reid was e-mailing me on a, you know,
 20 on a personal matter and, dare I say, and not
 21 as deputy minister to the premier. He wanted
 22 some information to help his friend and that
 23 was the context in which I looked at this.
 24 COFFEY, Q.C.:
 25 Q. And I don't doubt that Mr. Reid was so

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1 contacting you in his personal capacity, but
 2 you're communicating with Moira Hennessey.
 3 MR. ABBOTT:
 4 A. Yes.
 5 COFFEY, Q.C.:
 6 Q. And you're not doing so on a personal
 7 capacity. And Ms. MacDonald is not being
 8 communicated with here in a personal capacity,
 9 is she?
 10 MR. ABBOTT:
 11 A. No.
 12 COFFEY, Q.C.:
 13 Q. So, in terms of you saw fit to ensure that the
 14 cabinet officer or assistant secretary,
 15 whatever the title Ms. MacDonald held, it was
 16 communicated with her and with your ADM.
 17 MR. ABBOTT:
 18 A. Yes.
 19 COFFEY, Q.C.:
 20 Q. But yet you did not bring the matter, the
 21 shortcoming issue or, well complaint about
 22 shortcoming issue to Eastern Health?
 23 MR. ABBOTT:
 24 A. No.
 25 COFFEY, Q.C.:

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1 Q. Okay. Do you think now, looking back on it,
 2 that it might have been a good idea to?
 3 MR. ABBOTT:
 4 A. Well, I won't speculate on what I could or
 5 should have done, but I'll tell you what I
 6 did.
 7 COFFEY, Q.C.:
 8 Q. Okay.
 9 THE COMMISSIONER:
 10 Q. Mr. Coffey, when you can find a convenient
 11 spot, we'll take a break.
 12 COFFEY, Q.C.:
 13 Q. So you don't have any regrets in that regard?
 14 MR. ABBOTT:
 15 A. I just answered the question.
 16 COFFEY, Q.C.:
 17 Q. I take it then that you don't.
 18 MR. ABBOTT:
 19 A. Mr. Coffey, I don't think that's a fair
 20 question, the way you put it and I really do
 21 object to that.
 22 COFFEY, Q.C.:
 23 Q. Well, if we could, just before we break,
 24 Commissioner, Mr. Abbott, one of the things
 25 that the Commissioner is tasked at doing is,

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1 of course, coming up with recommendations.
 2 And certainly as the former deputy minister of
 3 health who was involved in this matter, it
 4 might be of some assistance to her if upon you
 5 now having the ability to look back and do, at
 6 any point, recognize anything that well, now,
 7 that I think about it, it might have been an
 8 idea to have done something differently, it
 9 might be of some assistance to her and may be
 10 even the public at large, eventually, if we
 11 could so learn about it.
 12 So, what I'm asking you is, as the deputy
 13 minister of the day, responsible for health
 14 care in that capacity and you're advised ten
 15 days after this goes public by a sophisticated
 16 individual, Mr. Reid would be that, about the
 17 shortcoming in Eastern Health's approach to
 18 this, upon reflection, do you think it might
 19 have been advisable to have you or Ms.
 20 Hennessey, at least, discuss the matter with
 21 Eastern Health.
 22 MR. PRITCHARD:
 23 Q. Commissioner, this question has been asked and
 24 answered. If Mr. Coffey doesn't like the
 25 answer, he doesn't need to keep asking the

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1 same question over and over.
 2 THE COMMISSIONER:
 3 Q. I agree that the question has been asked and
 4 the witness put his position, but I do
 5 appreciate the fact that Mr. Coffey is coming
 6 back to the witness with an invitation to give
 7 me his best advice. If he chooses not to give
 8 me his best advice, that's fine, but frankly,
 9 this whole thing would have been for not
 10 unless I can come up with recommendations
 11 which are useful and can work in a practical
 12 way within the system. And it's people like
 13 this witness who understand how the system
 14 works. I am hoping nobody is assuming that by
 15 magic I somehow know how the Department of
 16 Health and how Eastern Health work on a
 17 practical level because if the recommendations
 18 coming out of this Commission do not work on
 19 the ground, then we will have been here for
 20 months and months and months for nothing. So,
 21 that's the point of the question. It's not
 22 what you would have done, so much as looking
 23 at, are there better ways of doing it.
 24 MR. ABBOTT:
 25 A. And I accept what you're saying, but the way

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1 Mr. Coffey presented it was with, did I have
 2 regrets -
 3 THE COMMISSIONER:
 4 Q. Well, that was the last way he put it to you,
 5 but the first time when you first said, I
 6 think you didn't want to answer it, it was
 7 would you had done something different and
 8 that's really what I'm interested in is, was
 9 there a better way of doing it or as, frankly,
 10 I took your earlier view, which was it's not
 11 the job of the deputy minister to do that kind
 12 of thing? Now, if that's what you want to
 13 tell me, that's fine, but if there are other
 14 things that a deputy can do, then I'd really
 15 appreciate knowing what that was?
 16 MR. ABBOTT:
 17 A. No, and I appreciate, you know, that sort of
 18 clarification. In terms of this particular
 19 circumstance, it was not uncommon for me when
 20 issues were brought forward about concerns,
 21 complaints around a process in a health
 22 authority or a decision that I would either
 23 directly contact Mr. Tilley or one of his VPs,
 24 in the case of Eastern Health, or any of the
 25 other CEOs, or ask or direct one of my staff

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1 to do that. In this particular case the way
 2 it came forward was--if I can step back. If
 3 Mr. Reid had said, "John, what is happening at
 4 Eastern Health?"
 5 THE COMMISSIONER:
 6 Q. Um-hm.
 7 MR. ABBOTT:
 8 A. I would have said, "Fair enough, I will find
 9 out for you." What he was asking me here was
 10 "I have a friend who is in, you know, need for
 11 some information, some clarification, how best
 12 to address that?" So and it was in that
 13 context. I then just shared that information
 14 with two other individuals and that's how I
 15 dealt with that. And I get that as a deputy
 16 minister, my colleagues and others have come
 17 to me with their particular, quote, unquote,
 18 personal issue on behalf of a family member or
 19 a friend and I treat that in quite differently
 20 than somebody coming forward in their official
 21 capacity or a general public coming forward.
 22 So I, in essence, did not take that then as
 23 really suggesting that I should do it. It was
 24 not uncommon for me and I think if you talk
 25 to, hear from any of the other CEOs on that

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1 point, I was not reticent about picking up a
 2 phone and saying, "Look, this issue has come
 3 to our attention, I want to bring it to your
 4 attention, and can you please inform me what
 5 is happening?" So at the same time I think we
 6 were hearing that there were, you know, there
 7 were issues around, around the retesting
 8 results and the process and from time to time
 9 they would have been brought to any
 10 conversation I had with Mr. Tilley and at
 11 other levels. So if you separate out this
 12 particular case, I certainly believe and it's
 13 certainly my role or my role at that time is
 14 to bring these issues forward to the CEO,
 15 either directly or ensure that they are done
 16 so. But this particular one just happened to
 17 be the way it came, it came to me.
 18 THE COMMISSIONER:
 19 Q. Well, now, somewhere along the way, and
 20 frankly, I forget which witness it was, but
 21 certainly one from Eastern Health, I got the
 22 impression that it was not uncommon to get
 23 communications from the Department of Health
 24 and not reading too much into it that
 25 increasingly the Department of Health seemed

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1 to be into their business, as it were.
 2 MR. ABBOTT:
 3 A. Um-hm.
 4 THE COMMISSIONER:
 5 Q. Impression being where they felt Department of
 6 Health should not have been.
 7 MR. ABBOTT:
 8 A. Right. And that--and I understand and heard
 9 that. And there were more issues coming
 10 through the minister's office, we want an
 11 answer, go to Eastern Health or Central Health
 12 or whatever to find out what's going on and
 13 see what can happen. But from my role as
 14 deputy and my direction to staff was not to--
 15 be careful of crossing the line, as it were.
 16 If we have to seek information and give
 17 clarification on policy, fine, but not to get
 18 into directing solutions.
 19 THE COMMISSIONER:
 20 Q. Okay. So you would say in respect of this
 21 kind of inquiry, you've dealt with it, as you
 22 said, on the personal thing, and those what
 23 you did was facilitate that person getting
 24 answers from the particular authority?
 25 MR. ABBOTT:

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1 A. Yes.
 2 THE COMMISSIONER:
 3 Q. But had Mr. Reid, who held a particular
 4 position within government said to you, "What
 5 in the world is going on at Eastern Health?"
 6 you would have approached it differently?
 7 MR. ABBOTT:
 8 A. Yes. And certainly given his, you know and -
 9 THE COMMISSIONER:
 10 Q. And that was because of the lines of authority
 11 when in government effectively Mr. Reid's
 12 question would have been a directive to do
 13 something?
 14 MR. ABBOTT:
 15 A. Again, or certainly would suggest that he is
 16 interested, he is interested, maybe his--
 17 obviously his, the office is interested and we
 18 should find out as much as we can as soon as
 19 we can.
 20 THE COMMISSIONER:
 21 Q. Is there a place, then, for the Department of
 22 Health, absent the minister expressing the
 23 interest, in getting involved in authority
 24 business because you have information which
 25 leads you to believe there's a problem within

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1 the authority or, whether reliable or not, but
 2 you have reason to believe there is a problem
 3 inside the authority, can you, in the
 4 Department of Health, without going through
 5 the minister, try to resolve that, see if it's
 6 a problem?
 7 MR. ABBOTT:
 8 A. I would certainly bring that to the attention
 9 of the CEO.
 10 THE COMMISSIONER:
 11 Q. Okay.
 12 MR. ABBOTT:
 13 A. And most likely, depending on the nature of
 14 it, could very well have a conversation about
 15 it, get their, you know, perspective on this.
 16 And more of than not they'll say, "John, thank
 17 you. Leave it with me, we'll get to it and if
 18 there's something else that you need to know
 19 or--we will get back to you." And if it
 20 reoccurred, shall we say, or if there needed
 21 to be follow-up, I would, you know, I would
 22 undertake to do that. And we had--and again,
 23 we've had a number of, obviously, situations
 24 where individuals, for one reason or another,
 25 would have come to the department about an

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1 issue that--from a health authority and we
 2 would inquire, you know, what steps or process
 3 did you go to get your issue addressed or
 4 resolved. And but if it was left with the
 5 minister's office or me or to get an answer,
 6 generally we would either e-mail or pick up
 7 the phone to say, "Look, this person has come
 8 forward, they had some issues. Can you, you
 9 know, one, fill us in on what the issue might
 10 be, and secondly, you know, how have you or
 11 can you address this person's concern?" And
 12 that happened, I would say, happened quite
 13 frequently and it was not uncommon for me to--
 14 certainly if--and I don't know who logs these
 15 in, but the minister's office gets numerous,
 16 numerous patient or client issues and people
 17 are expecting him to solve it for them that
 18 day. And they would be -
 19 THE COMMISSIONER:
 20 Q. I understand that, Mr. Abbott. And I can see
 21 there's a difference because maybe it's a
 22 judgment call, I don't know, but I'm quite
 23 confident probably every--not only the
 24 minister of health but probably every minister
 25 gets dozens and dozens of calls or even

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1 members about not being able to get this, that
 2 or the other thing, either from the Department
 3 of Health or from some department in
 4 government and they expect their member or the
 5 minister to solve their problems for them.
 6 MR. ABBOTT:
 7 A. Yes.
 8 THE COMMISSIONER:
 9 Q. But in this case the question which is being
 10 asked by Mr. Reid related to something that
 11 you knew was a giant problem.
 12 MR. ABBOTT:
 13 A. Yes.
 14 THE COMMISSIONER:
 15 Q. So I suppose my question is whether or not,
 16 given the nature of the problem you were
 17 dealing with, is there a point at which the
 18 deputy minister has to take action or does
 19 everything have to be done between the
 20 minister and the authority? Is there a role
 21 at all for the deputy minister in solving
 22 problems of this nature?
 23 MR. ABBOTT:
 24 A. Yeah, and that's a large part of my job was
 25 problem solving. But the point here, if it's

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1 an issue in a health authority, then it is
 2 incumbent upon me, if it comes to my
 3 attention, to, you know, to make sure that the
 4 health authority is aware of it and is going
 5 to address it. If they can't because of
 6 whatever issue and they need our assistance,
 7 that's one thing, but invariably they can sort
 8 of generally solve these issues. But
 9 directing a solution, may suggest some
 10 solutions, but directing a solution was not in
 11 my purview. And I've offered many solutions
 12 to many problems, you know, that a health
 13 authority may be dealing with that have come
 14 through the minister's office or my office.
 15 But in terms of directing a particular
 16 solution, no, that would be advice or opinion
 17 or suggestion to a CEO, but it would be up to
 18 them to determine the, shall we say, the
 19 solution that would be implemented.
 20 THE COMMISSIONER:
 21 Q. And is there a place for the deputy to go to
 22 the minister and say, "I think you've got a
 23 problem within this authority"?
 24 MR. ABBOTT:
 25 A. Yes, and I have had on occasion to do that.

1 THE COMMISSIONER:

2 Q. So if you see a problem, other than
3 suggestions, your route is to go to the
4 minister and say, "In my opinion, there is a
5 problem within this authority which has to be
6 addressed."?

7 MR. ABBOTT:

8 A. And, yes, and we have, you know, there have
9 been examples in my tenure were, in fact, you
10 know, he's had to pick up the phone and call
11 the board chair or possibly the CEO, but
12 generally the board chair to say, "It's come
13 to my attention that there is an issue here
14 and I need to talk to you about it and we need
15 to find a resolution."

16 THE COMMISSIONER:

17 Q. Okay. But that did not happen in this case?

18 MR. ABBOTT:

19 A. No, it did not.

20 THE COMMISSIONER:

21 Q. All right.

22 MR. ABBOTT:

23 A. And if I may, and is that in this, this
24 particular issue aside here, is that the
25 minister was aware that, obviously, there are

1 issues around ER/PR and it is not going, it is
2 not going well in terms of how it's being
3 executed and because of delays and because of
4 the delay in notification. So he was fully
5 aware of that. For whatever reason, he did
6 not feel, certainly up to this point, to pick
7 up the phone and say, you know, whatever he
8 wanted to say or could say at that point. But
9 it's not in the absence of having, you know,
10 the information. He may not have had this
11 particular information that's in this
12 particular e-mail, but there were, you know,
13 there were certainly undercurrents there that
14 this issue was not where people would have
15 liked it to be at that point in time. And the
16 minister has to exercise that, obviously, that
17 responsibility and they do it judiciously, in
18 my view, but that is certainly their role and
19 responsibility to do that with or without my
20 suggestion or advice.

21 THE COMMISSIONER:

22 Q. Why don't we take a short break?

23 (RECESS)

24 THE COMMISSIONER:

25 Q. Please be seated. Mr. Coffey?

1 COFFEY, Q.C.:

2 Q. Thank you, Commissioner. If we could, please,
3 Exhibit, that's it, P-0804 is there? Yes.
4 Mr. Abbott, just on this e-mail that you sent
5 at 11:04 that morning, the last sentence
6 reads, "For your info, new technology has
7 proven to cause Eastern Health to retest and
8 within that new system some quality issues
9 have come to the fore." What was--where did
10 you get that understanding?

11 MR. ABBOTT:

12 A. Well, you know, it was a very crude attempt to
13 try to put it in a little bit of context for
14 Mr. Reid, but it wasn't really intended or
15 designed to be defacto, I guess, explanation
16 of the issue at hand. So, very crude approach
17 here.

18 COFFEY, Q.C.:

19 Q. So I take it, though, I appreciate even the
20 English is not as well written as many things
21 you do write are.

22 MR. ABBOTT:

23 A. Um-hm.

24 COFFEY, Q.C.:

25 Q. You're trying to convey to Mr. Reid for his

1 information the fact that there is new
2 technology?

3 MR. ABBOTT:

4 A. Yeah.

5 COFFEY, Q.C.:

6 Q. And in the course of that being used,
7 something happened to cause Eastern Health to
8 begin retesting?

9 MR. ABBOTT:

10 A. Yes.

11 COFFEY, Q.C.:

12 Q. Yes. And within that, and in doing that
13 retesting potential quality issues had arisen?

14 MR. ABBOTT:

15 A. Yes.

16 COFFEY, Q.C.:

17 Q. And that's, okay, that's--which is really
18 just, I take it, a translation of one of the
19 first paragraphs of--a condensed version of
20 one of the first paragraphs of those briefing
21 notes?

22 MR. ABBOTT:

23 A. Yes.

24 COFFEY, Q.C.:

25 Q. Okay. If we could, please, Exhibit P-0859?

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1 This is a couple of e-mails of October 12th
 2 2005, but the second on the page, Mr. Abbott,
 3 the one at October 12th '05 at 15:07 hours
 4 from Tansy Mundon to a number of people senior
 5 in the department, including yourself, and the
 6 subject is media requests. She says "in case
 7 we didn't realize that CBC was back, they are,
 8 and the number of media requests reflects it.
 9 Here are the requests received and the
 10 responses," and there are a number of them.
 11 One of them is "Eastern Health inquiry, CBC
 12 Radio, Mark Quinn, EPR (it hasn't gone away).
 13 Mark is doing a debrief of the issue and has
 14 caught onto the fact that this may be an issue
 15 nationally. Dr. Williams spoke to him earlier
 16 today. I expect this story to air tomorrow
 17 morning."
 18 First of all, in terms of the idea that
 19 Ms. Mundon would be keeping the senior people
 20 in the department apprised of media requests,
 21 was that routine?
 22 MR. ABBOTT:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. And on that, Mr. Abbott, because I mean, the

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1 materials are replete with, and I think you've
 2 alluded to this already, e-mails being
 3 forwarded to a number of people and very often
 4 including yourself involving communications,
 5 you know, stories here, you know, transcripts
 6 and so on and so forth.
 7 MR. ABBOTT:
 8 A. Yes.
 9 COFFEY, Q.C.:
 10 Q. What was your own practice, in terms of
 11 dealing with those? Because I do want to--
 12 just as you pointed out, just because it's
 13 sent to you, you would have received it and
 14 you say you open all your e-mails, but it
 15 doesn't mean you read it all word for word.
 16 MR. ABBOTT:
 17 A. Well, two things. That was meaning inquiring,
 18 you know, it was sort of a list, but we would
 19 be provided excerpts or transcripts of all
 20 media coverage of stories related to Health
 21 and Community Services, so they would have
 22 been e-mailed again throughout the department
 23 on a daily, pretty well daily basis. So I
 24 would generally would scroll down through that
 25 and see what was relevant and just note that

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1 for myself.
 2 COFFEY, Q.C.:
 3 Q. And in terms of the stories in the news, as it
 4 were, kind of keep yourself -
 5 MR. ABBOTT:
 6 A. Yes.
 7 COFFEY, Q.C.:
 8 Q. And if one caught your eye, for some reason,
 9 you might read it. But in terms of that
 10 issue, because I want the Commissioner, if I
 11 can, to fully appreciate your work practice,
 12 you weren't somebody who read, religiously
 13 read through all the text of a CBC story or a
 14 "Globe and Mail" story or whatever?
 15 MR. ABBOTT:
 16 A. Depending on if the issue, you know, was
 17 health and very specific to it, then I would
 18 generally, you know, try to read that.
 19 COFFEY, Q.C.:
 20 Q. Okay. Now in this particular type of e-mail,
 21 as you pointed out, this is slightly
 22 different. It's not so much a reporting on
 23 stories as media requests.
 24 MR. ABBOTT:
 25 A. Yes.

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1 COFFEY, Q.C.:
 2 Q. Of the department. Now Eastern Health
 3 inquiries, what does that mean here? Is that
 4 an inquiry to Eastern Health or -
 5 MR. ABBOTT:
 6 A. That's how I read that, yes.
 7 COFFEY, Q.C.:
 8 Q. So was there some arrangement whereby any
 9 request of a health authority by the media
 10 would be communicated to the department in
 11 order for -
 12 MR. ABBOTT:
 13 A. Again, the practice was for the directors of
 14 communications in the health authorities to
 15 keep our director of communications apprised
 16 of those inquiries and a large part of that is
 17 often the inquiry would--the media inquiry
 18 would go to the health authority and at the
 19 same time, either the same inquiry from the
 20 same person may come to the department or a
 21 follow up. So it was just for a heads up.
 22 COFFEY, Q.C.:
 23 Q. Would you, in general, ever be expected to act
 24 upon any of these, you know, being apprised of
 25 a particular media request? As a deputy

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1 minister, would you be expected to actually
 2 act upon it, unless it was directed to you
 3 yourself?
 4 MR. ABBOTT:
 5 A. No, the media and media relations and any
 6 inquiries along those lines were with our
 7 director who handled all of those, and more
 8 often than not would liaise and report to the
 9 minister or the minister's executive assistant
 10 that this was in fact happening, because
 11 again, he was the spokesperson on the
 12 department's side in particular.
 13 COFFEY, Q.C.:
 14 Q. Okay, and it was sent to you then as
 15 information only purposes?
 16 MR. ABBOTT:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. If we could, please, Exhibit P-0121? Now sir,
 20 and I appreciate this never made its way--
 21 well, I'm going to ask you, but I don't have
 22 any reason to believe that this ever made its
 23 way to you. It's a review of
 24 immunohistochemistry lab, the General
 25 Hospital, prepared for Dr. Williams by Terry

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1 Gulliver and Dr. Cook, October 13th 2005. I
 2 take it you wouldn't have received a document
 3 like this?
 4 MR. ABBOTT:
 5 A. No.
 6 COFFEY, Q.C.:
 7 Q. Okay. The reason I just wanted to--if we
 8 could just look, please, at page seven, just
 9 because there are some dollar figures here
 10 that I want to ask you about. Under
 11 conclusions, these two gentlemen have advised
 12 Dr. Williams that "if all the recommendations
 13 outlined above are implemented, the General
 14 Hospital site should be able to offer
 15 immunohistochemistry service equivalent with
 16 that available at the laboratory at Mount
 17 Sinai. Overall adjustments required to be
 18 added to base budget," and you see a figure
 19 there of \$282,200?
 20 MR. ABBOTT:
 21 A. Yes.
 22 COFFEY, Q.C.:
 23 Q. And then if we just go onto the next page, it
 24 concludes with "one-time cost associated with
 25 staff training, 48,000. One-time cost capital

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1 purchase for 40,000." And "we look forward to
 2 a favourable response to this proposal." And
 3 this does relate to the immunohistochemistry
 4 lab overall, in particular ER/PR as one aspect
 5 of that type of testing. In terms of money,
 6 and I just refer to this now, up to this
 7 point, up to that point in time, which is
 8 October of '05, had the issue of financial
 9 sources, in terms of dealing with the ER/PR
 10 response come up?
 11 MR. ABBOTT:
 12 A. Not in my company, no.
 13 COFFEY, Q.C.:
 14 Q. Mr. Ottenheimer has told the Commissioner that
 15 at one point he did raise with Mr. Tilley, you
 16 know, put to him like is this a financial
 17 matter or a financial issue? And he was told
 18 no. Do you recall that being raised? And
 19 again, I can't recall if he said you were or
 20 weren't there -
 21 MR. ABBOTT:
 22 A. No, and again, it didn't come up, and I never,
 23 at any point, thought that it was a dollar
 24 issue or a financial issue. Staffing was a
 25 possibility, but not in terms of financial

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1 ability to address whatever needed to be
 2 addressed.
 3 COFFEY, Q.C.:
 4 Q. If there was to be a need for financial
 5 resources to address the problem, in the sense
 6 of to figure out what had happened and, you
 7 know, to deal with the matter on an ongoing
 8 basis, on a go-forward basis, how would that
 9 come to your attention as deputy minister?
 10 MR. ABBOTT:
 11 A. It would come to me if in fact the CEO would
 12 write or communicate to me to say, "all things
 13 being equal here, I need an additional, in
 14 this case, \$282,000 to address a problem in
 15 the lab which you are familiar with," and we
 16 agree that needs to be addressed. I would not
 17 expect--you know, looking at the dollar
 18 amounts here and the overall budget, that that
 19 shouldn't happen. He should have the fiscal
 20 capacity to reallocate to solve that, but as I
 21 said, all things being equal, if they couldn't
 22 do that, then they would write us and we would
 23 then adjust their budget. It could then
 24 subsequently be picked up in their next budget
 25 request, which would say "even though we've

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1 done the internal reallocation this year, we
 2 do need--see reference to base adjustment for
 3 next year." That would show up in their
 4 budget request and then would go on that
 5 track.
 6 COFFEY, Q.C.:
 7 Q. That would be an increase to the base budget?
 8 MR. ABBOTT:
 9 A. Yes.
 10 COFFEY, Q.C.:
 11 Q. That kind of thing, on an ongoing basis. The
 12 one time ones which, I think, here total
 13 \$88,000.
 14 MR. ABBOTT:
 15 A. Yeah.
 16 COFFEY, Q.C.:
 17 Q. Well, in fact, even both figures added
 18 together are about 360 or so.
 19 MR. ABBOTT:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. Within a budget of a billion dollars, give or
 23 take so many tens of millions, I take it that
 24 you would expect--or wouldn't anticipate that
 25 there'd be a need to actually ask for another

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1 \$380,000?
 2 MR. ABBOTT:
 3 A. No, and I mean, we've had--you know, we get
 4 those quite often throughout the year and for
 5 those that the CEO and I have agreed that need
 6 to be addressed and he or she is sensing that
 7 they have a fiscal challenge here, I will say
 8 "look, undertake the initiative. We'll note
 9 that you may need the money. We'll see where
 10 you are the next quarter and if, in fact, we
 11 need to adjust your budget, we will. And if
 12 we need to adjust your base budget in the
 13 coming budget, we'll do that."
 14 COFFEY, Q.C.:
 15 Q. And in terms of the entire ER/PR matter, you
 16 know, up to the point and as it subsequently
 17 unfolded, leaving aside the issue of
 18 pathologists remuneration, which I appreciate
 19 is--and I will be asking you about that,
 20 leaving that aside, did Eastern Health ever or
 21 any of the other boards for that matter, ever
 22 come to you while you were deputy minister or
 23 bring to your attention, look, we need more
 24 money?
 25 MR. ABBOTT:

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1 A. Not for this, no.
 2 COFFEY, Q.C.:
 3 Q. If we could, please, Exhibit P-0307? Now Mr.
 4 Abbott, this is an e-mail of--or two e-mails
 5 actually of October 14th 2005. Now the first
 6 one is at 10:02 a.m. from Ms. Cheeseman,
 7 Josephine Cheeseman, to yourself saying "when
 8 you get a chance, let me know what issue/topic
 9 you would like raised at the communications
 10 retreat next week. Thanks, Josephine." And
 11 you responded at 3:10 that day to her saying
 12 "item for retreat. The issues around
 13 communications related to patient safety
 14 issues (example or eg. current ER/PR, breast
 15 cancer testing). Is there an established
 16 protocol as to when patients and the media are
 17 informed? What is the relationship between
 18 the department and the regional integrated
 19 health authorities when these issues arise,
 20 etcetera. Carolyn will be help on this
 21 question." Signed John Abbott.
 22 I have several questions about this.
 23 First of all, Carolyn in this context would be
 24 Carolyn Chaplin?
 25 MR. ABBOTT:

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1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. Who worked in Ms. Cheeseman's office?
 4 MR. ABBOTT:
 5 A. Yes.
 6 COFFEY, Q.C.:
 7 Q. Secondly, the communications retreat, now
 8 first of all, did it occur, as you recall?
 9 MR. ABBOTT:
 10 A. I really don't know.
 11 COFFEY, Q.C.:
 12 Q. Okay. The idea of a communications retreat
 13 though, what was that about?
 14 MR. ABBOTT:
 15 A. I think this was something Ms. Cheeseman was
 16 planning for, I don't know if just government
 17 communications directors or others, and I
 18 really do not recall at this point, but who
 19 was to be involved in that, and we had had a
 20 conversation where she raised that maybe in
 21 the Friday briefings with the deputies that
 22 she's proceeding with that and we had
 23 conversation as to what are some potential
 24 topics and that was the basis of those e-
 25 mails, as I remember them.

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1 COFFEY, Q.C.:

2 Q. And the e-mail to you was "let me know what

3 issue/topic you would like raised at the

4 communications retreat next week" and you

5 certainly specified or articulated

6 communications related to patient safety

7 issues. The example you use was current ER/PR

8 breast cancer testing and you articulated then

9 wanting to deal with the issue of what

10 protocols when patients and media should be

11 informed and so on. So I take it that this

12 was something, by this point in time, middle

13 of October, that you had reflected on at some,

14 at least to a certain extent?

15 MR. ABBOTT:

16 A. Yes, and I believe had had conversation maybe

17 with Carolyn Chaplin before she left, you

18 know, that this is certainly a learning here

19 in this particular issue and raising it up to

20 a patient safety issue, an adverse event,

21 really how should we be communicating what are

22 the standards, what are the protocols, what

23 are other jurisdictions doing, those kinds of

24 things.

25 COFFEY, Q.C.:

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1 Q. You said "is there an established protocol?"

2 MR. ABBOTT:

3 A. Yes.

4 COFFEY, Q.C.:

5 Q. In this context, I take it you would have

6 known that there, at least locally, was no

7 established protocol. You weren't asking

8 Josephine Cheeseman.

9 MR. ABBOTT:

10 A. Well I was raising it as a topic and the

11 question was what is the protocol, you know,

12 is it an appropriate one what authorities are

13 using, is that still, valid, relevant in the

14 year 2005, again what is, in terms of the

15 protocol, vis-a-vis government/department in

16 relation to a health authority or a health

17 issue or patient issue. So it is, I viewed it

18 as fairly broad there.

19 COFFEY, Q.C.:

20 Q. And in fact, as it turns out, it's perhaps one

21 of the subject matters of the inquiry itself.

22 MR. ABBOTT:

23 A. Yes.

24 COFFEY, Q.C.:

25 Q. At the time as the deputy minister in the fall

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1 of '05, did you have any understanding that

2 there was any kind of protocol to deal with

3 the issue or a large scale adverse event?

4 MR. ABBOTT:

5 A. From a health authority perspective?

6 COFFEY, Q.C.:

7 Q. Yes.

8 MR. ABBOTT:

9 A. Formally and in terms of actually seeing and

10 knowing it, I probably hadn't really thought

11 about it, you know, specifically or asked to

12 see it, but--and in the absence of us ever

13 discussing that, I think I probably would have

14 went away with the conclusion that there

15 probably isn't one or at least an effective

16 one in place, but I don't think I never asked,

17 you know, show me Eastern Health's protocol.

18 COFFEY, Q.C.:

19 Q. And I appreciate that and in terms of that,

20 you, you certainly never saw one.

21 MR. ABBOTT:

22 A. No.

23 COFFEY, Q.C.:

24 Q. No one ever offered you one.

25 MR. ABBOTT:

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1 A. No.

2 COFFEY, Q.C.:

3 Q. And what about the Health Care Corporation's,

4 Eastern Health's--well, major predecessor.

5 MR. ABBOTT:

6 A. Again, I don't ever recall seeing or asking

7 about one when I was chair, no.

8 COFFEY, Q.C.:

9 Q. And you said you did not see one, Eastern

10 Health didn't provide one and you don't recall

11 asking whether they had one that might be

12 applicable. The other health authorities, you

13 didn't do that either, the same thing.

14 MR. ABBOTT:

15 A. No, no.

16 COFFEY, Q.C.:

17 Q. How about across the country, did you ever go

18 and ask -

19 MR. ABBOTT:

20 A. No, no and that was the purpose of, you know,

21 the discussion and obviously from a

22 communication, in terms of director of

23 communication, I would have, you know, the

24 expectation there if there was something

25 available that she might certainly know about

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1 it and advise me and say, John, you know,
 2 there is something in place or not. Again,
 3 that conversation never or least that was
 4 never brought to my attention, either directly
 5 by Eastern Health or our own communication's
 6 people.
 7 COFFEY, Q.C.:
 8 Q. You certainly, in terms of when Ms. Cheeseman
 9 asked you, John, do you have a topic, it was
 10 certainly something that you thought
 11 appropriate to, it might be worthy of some
 12 discussion and attention.
 13 MR. ABBOTT:
 14 A. Yes, and we could learn from that.
 15 COFFEY, Q.C.:
 16 Q. And I take it having posited or having, you
 17 know, framed this, it never actually did get
 18 addressed at that point in time, that you can
 19 recall?
 20 MR. ABBOTT:
 21 A. No, no, it didn't.
 22 COFFEY, Q.C.:
 23 Q. And on that point, Mr. Abbott, as I appreciate
 24 you're not a, you wouldn't style yourself a
 25 communication's consultant or expert.

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1 MR. ABBOTT:
 2 A. No.
 3 COFFEY, Q.C.:
 4 Q. Who would you, if you wanted an answer to that
 5 or a framework at the time, who within the
 6 Newfoundland government would you have gone to
 7 for it?
 8 MR. ABBOTT:
 9 A. I would have, well for me, I would have gone
 10 to Carolyn Chaplin. Outside of our own
 11 director, I would have talked to Carolyn
 12 Chaplin on that.
 13 COFFEY, Q.C.:
 14 Q. And as you have indicated, you did speak to
 15 Carolyn about it before she left.
 16 MR. ABBOTT:
 17 A. Yes, yes.
 18 COFFEY, Q.C.:
 19 Q. And I take it she was as unsure about it,
 20 perhaps -
 21 MR. ABBOTT:
 22 A. Well we didn't talk in terms of protocols, it
 23 was how, you know, but it was in terms of, in
 24 light of this event that we are now going
 25 through, how do you communicate and how do you

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1 communicate better to patients and the public?
 2 And we got to know that, we got to do it
 3 better because these issues are only going to
 4 continue, this is not a one-up event.
 5 COFFEY, Q.C.:
 6 Q. In relation to that, in July of 2005, before I
 7 gather she left in August of 2005, what was
 8 Carolyn Chaplin's advice, do you recall on the
 9 communication's issue? Communications with
 10 patients, communications with the public, what
 11 was Ms. Chaplin's advice to you and to the
 12 minister?
 13 MR. ABBOTT:
 14 A. I believe she was for, you know, moving
 15 towards early notification, but making sure it
 16 is done right, that we had full information,
 17 those kinds of things. And she would be, you
 18 know, and knowing her and her participation
 19 and discussion, primarily after the briefing
 20 would be around, yes, we have to do this, we
 21 have to do this now. She was familiar with,
 22 you know, coming out of, say the Ontario
 23 government in terms of the issues they would
 24 have faced from time to time.
 25 COFFEY, Q.C.:

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1 Q. Yes.
 2 MR. ABBOTT:
 3 A. When she was there, so she had a very good
 4 sense of health issues, patient safety issues
 5 and what have you. So that's why I said I
 6 wouldn't--she would be and we were all, I
 7 think and shall we shall the department side
 8 as to moving this forward as soon as possible.
 9 COFFEY, Q.C.:
 10 Q. And you did here in your e-mail to Ms.
 11 Cheeseman, refer to "is there an established
 12 protocol as to when patients and media are
 13 informed, what is the relationship between the
 14 department and RIHA's when these issue arise?"
 15 What were you referring to there, what did you
 16 have in mind?
 17 MR. ABBOTT:
 18 A. More around the communication of who, you
 19 know, takes the lead, the role, you know, the
 20 minister and I'd say the department again, I
 21 would have, you know, viewed them in terms of
 22 the minister, what role, although we do have a
 23 role in supporting that, and obviously in some
 24 cases we could argue Eastern Health Authority
 25 was, for whatever reason, not up to the task

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1 and the department could be taking on a
 2 greater role. Because we face, again, we face
 3 on a public health issues, we also have the
 4 same kinds of issues arise and then who
 5 speaks, is it the authority or the department
 6 and there's an understanding there between the
 7 officers of health and the provincial medical
 8 officers of health who will speak on what
 9 issues.
 10 COFFEY, Q.C.:
 11 Q. And I take it it cuts across geographic lines.
 12 MR. ABBOTT:
 13 A. And, you know, sort of populations.
 14 COFFEY, Q.C.:
 15 Q. Population wise.
 16 MR. ABBOTT:
 17 A. Population health perspective, then yes, and
 18 so if it's provincial in scope and nature,
 19 then we obviously would have somebody
 20 generally the center speak, which would be
 21 minister or a designated official.
 22 COFFEY, Q.C.:
 23 Q. And you did refer Ms. Cheeseman to Ms. Chaplin
 24 saying, you posit here, "Carolyn will be able
 25 to help on this question." So it was your

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1 view that in fact Ms. Chaplin might have
 2 something positive to add.
 3 MR. ABBOTT:
 4 A. And could form whatever the, how you would
 5 frame the issues up in terms of a retreat.
 6 COFFEY, Q.C.:
 7 Q. If we could please, exhibit P-0308. Now I,
 8 again this is an e-mail from Heather Predham,
 9 October 18th, 2005, it's to Kara Laing,
 10 Patricia Pilgrim, Dr. Robert Williams and
 11 Susan Bonnell. The subject is "Patient
 12 Letter" and I refer to that here, just simply
 13 because this is an e-mail from Heather
 14 Predham, October 18th, 2005 to the people I
 15 have just identified. The subject is "Patient
 16 Letter" and Ms. Predham writes to her
 17 colleagues saying, "I have attached a draft
 18 letter with the suggested changes." And it
 19 goes on about changes and so on. But it
 20 suggest, when you read through the text, Mr.
 21 Abbott, that your idea of a letter to
 22 individual patients apparently resurrected
 23 itself, I'm not saying that you had
 24 resurrected it at all, but it apparently had
 25 come up again within Eastern Health by the

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1 middle of October. Were you aware of that?
 2 Were you made aware of that do you recall?
 3 MR. ABBOTT:
 4 A. No, I don't recall that activity at that time.
 5 COFFEY, Q.C.:
 6 Q. And I take it it's entirely possible that
 7 they, for whatever reason internally began to
 8 talk about it again and they wouldn't bring it
 9 up with you.
 10 MR. ABBOTT:
 11 A. No.
 12 COFFEY, Q.C.:
 13 Q. If we could, please, exhibit P-0354, well
 14 actually if I could, I apologize, I'm sorry,
 15 exhibit P-0358, page two in the exhibit. And
 16 this is an e-mail from, again, George Tilley
 17 to Deborah Thomas-Pennell October 18th, 2005,
 18 2:21 p.m. Subject is "Re: Ad scenarios". He
 19 writes to Ms. Pennell saying, "Deborah, I
 20 favour scenario two as well, have we kept the
 21 department in the loop on the plan?" Signed
 22 George. And the plan, I gather is set out
 23 below in an e-mail from Ms. Predham to a
 24 number of senior people, Mr. Tilley, Dr.
 25 Williams, Denise Dunn and Heather Predham

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1 regarding ad scenarios, October 18th, 2005 at
 2 2:03 p.m., and she spells out three ad
 3 scenarios. Of course, Mr. Tilley's response
 4 setting out which scenario he favours, "Have
 5 we kept the department in the loop on the
 6 plan"? So were you aware that there was a
 7 plan to buy air time while Eastern Health
 8 around, you know, getting toward the middle,
 9 end of October?
 10 MR. ABBOTT:
 11 A. Not around the air time. It was again, I'm
 12 just trying to place the timeframe about, you
 13 know, ads concerning ER/PR to patients for
 14 call in, but that would be the only thing that
 15 I was aware of.
 16 COFFEY, Q.C.:
 17 Q. I'm sorry, you were aware, I apologize?
 18 MR. ABBOTT:
 19 A. Just in terms of, it was a suggestion and an
 20 activity around putting ads in the local
 21 papers, in terms of notifying patients around
 22 ER/PR issue, in terms of if you have any
 23 concerns, issues, questions, here's who to
 24 contact. That was the only plan that I was
 25 aware of.

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1 COFFEY, Q.C.:

2 Q. I understand because we had those e-mails or

3 exchanges early in October, we talked about

4 those earlier. Now this is about two weeks

5 later, roughly and there's apparently a plan

6 by Eastern Health to, at least, use some kind

7 of advertising, not so much as press releases,

8 advertising now, and Mr. Tilley has asked

9 whether the department is being kept in the

10 loop, I'm just asking you do you recall if you

11 were kept in the loop on it?

12 MR. ABBOTT:

13 A. No, no.

14 COFFEY, Q.C.:

15 Q. So, now after the ER/PR issue went public,

16 October 2nd, 2005, were you ever contacted by

17 Peter Dawe about the matter?

18 MR. ABBOTT:

19 A. I don't think so, but I do stand to be

20 corrected on that.

21 COFFEY, Q.C.:

22 Q. And certainly in terms of the documentation we

23 have suggests that he had much more--I

24 shouldn't say much more, he had contact with

25 Mr. Tilley and Dr. Williams and so on and I'll

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1 be dealing with them on it, but I'm just

2 asking yourself -

3 MR. ABBOTT:

4 A. No, and the reason I don't think so, but I did

5 have, you know, conversations and meetings

6 with Mr. Dawe over my tenure on several

7 issues, but nothing recalling on ER/PR

8 specifically.

9 COFFEY, Q.C.:

10 Q. Do you know if anyone else met with Mr. Dawe?

11 MR. ABBOTT:

12 A. With respect to ER/PR?

13 COFFEY, Q.C.:

14 Q. Yeah, ER/PR.

15 MR. ABBOTT:

16 A. I don't know, he would have had periodic

17 meetings with the minister, whether it got

18 raised with him at that time, there were other

19 officials in the department he would have been

20 in contact with and would be meeting with.

21 COFFEY, Q.C.:

22 Q. Did you ever have, like lunch with Mr. Dawe to

23 talk about initiatives involving cancer care?

24 MR. ABBOTT:

25 A. Had meetings in my office and we were talking

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1 about cancer control strategy and how we would

2 get that process started.

3 COFFEY, Q.C.:

4 Q. Do you recall when that was?

5 MR. ABBOTT:

6 A. That was early in my tenure and I'm going to

7 say maybe as early as January of 2005.

8 COFFEY, Q.C.:

9 Q. Yes. How about after that?

10 MR. ABBOTT:

11 A. As I said, we would have had some

12 conversations, some meetings over the period,

13 either with me, directly or with the minister

14 and myself on, you know, a number of issues,

15 primarily on the cancer control strategy and

16 then if there were, you know, whatever other

17 issues of the day that he wanted to bring

18 forward.

19 COFFEY, Q.C.:

20 Q. Did you ever discuss, do you recall like in

21 the course of those meetings or discussions

22 with Mr. Dawe, the topic of ER/PR ever come

23 up?

24 MR. ABBOTT:

25 A. No, that's what I said, I don't recall that

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1 specific topic with him.

2 COFFEY, Q.C.:

3 Q. How about in terms of what he might have been

4 saying in the media? Because he, beginning,

5 not in October, by November of '05, certainly

6 at times was critical of Eastern Health's

7 approach, you recall that? You would have

8 been aware of that?

9 MR. ABBOTT:

10 A. Oh yes, and critical, you know, and comment on

11 other initiatives or lack thereof.

12 COFFEY, Q.C.:

13 Q. And do you ever recall discussing his

14 approach, you know, in the media to this issue

15 with him?

16 MR. ABBOTT:

17 A. I did have one meeting when we talked

18 generally about, shall we say his approach and

19 some concerns or reservations being raised by

20 the minister's office.

21 COFFEY, Q.C.:

22 Q. And what was that about?

23 MR. ABBOTT:

24 A. Again, it was about and I can't tell you

25 exactly when that happened, but from the

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1 minister's and government's perspective, they
 2 were doing, you know, a lot of investments,
 3 spending and advocating for improvements in
 4 cancer care. Mr. Dawe was in the media and
 5 being, you know, critical at times and felt
 6 that it would be important that Mr. Dawe
 7 understand that from the minister's
 8 perspective that it, some of the criticisms
 9 were causing some consternation and it was not
 10 really helping the minister or in some cases
 11 undermining the minister with his colleagues
 12 in terms of when he was seeking support for
 13 his initiatives. And that was sort of the
 14 gist of that. And because Peter Dawe and I
 15 knew each other, I felt it was appropriate
 16 that and in my role as well to say, look, you
 17 know, you should at least know that this is
 18 there, but--and I understand and respect your
 19 right and the Cancer Society's right and sort
 20 of obligation in terms of its mandate to
 21 advocate for the client group that they're
 22 certainly serving.
 23 COFFEY, Q.C.:
 24 Q. I'm sorry, I -
 25 MR. ABBOTT:

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1 A. That they had the right and obligation
 2 obviously to advocate for, you know, that
 3 particular client group. It was the perceived
 4 criticism of government that was becoming an
 5 irritant.
 6 COFFEY, Q.C.:
 7 Q. And you're, in effect, asked to be the
 8 messenger in relation to that?
 9 MR. ABBOTT:
 10 A. Yes.
 11 COFFEY, Q.C.:
 12 Q. And because, well amongst others, you knew Mr.
 13 Dawe?
 14 MR. ABBOTT:
 15 A. Yes.
 16 COFFEY, Q.C.:
 17 Q. On a personal level. Who was the minister at
 18 the time?
 19 MR. ABBOTT:
 20 A. Minister Ottenheimer.
 21 COFFEY, Q.C.:
 22 Q. And you were asked to do this by whom?
 23 MR. ABBOTT:
 24 A. By the minister.
 25 COFFEY, Q.C.:

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1 Q. By John Ottenheimer?
 2 MR. ABBOTT:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. And this, I'm going to suggest to you that
 6 this exchange or this meeting occurred
 7 probably in December of '05 or January of '06.
 8 Would that be about right?
 9 MR. ABBOTT:
 10 A. Yeah, that seems about right, yes.
 11 COFFEY, Q.C.:
 12 Q. And at that point in time, in November and
 13 December of 2005, early in January of 2006,
 14 Mr. Dawe was in the media being critical of
 15 Eastern Health's approach on the ER/PR issue?
 16 MR. ABBOTT:
 17 A. That seems right.
 18 COFFEY, Q.C.:
 19 Q. Yes. In fact, I'm going to suggest to you
 20 that during that time frame, certainly
 21 November and December 2005, early 2006, any
 22 comments that Mr. Dawe had that were critical
 23 were not of the department per se. The
 24 department didn't come in for any criticism at
 25 all in this at that stage.

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1 MR. ABBOTT:
 2 A. No.
 3 COFFEY, Q.C.:
 4 Q. And they weren't critical of the government
 5 per se?
 6 MR. ABBOTT:
 7 A. Well, that was--and I'm making a distinction,
 8 the department, but it would be my, you know,
 9 recollection that it was government. Yes, it
 10 was critical of Eastern Health and ER/PR, but
 11 there were also other criticisms of government
 12 actions, medical transportation issues, you
 13 know, those kinds of things.
 14 COFFEY, Q.C.:
 15 Q. In the main though, the chief irritant at the
 16 time, as it were, was ER/PR?
 17 MR. ABBOTT:
 18 A. Not necessarily. I didn't see it from, you
 19 know, at least from, I'll say from the
 20 government end that that was--that the
 21 criticism of ER--of Eastern Health was
 22 certainly an irritant to Eastern Health. I
 23 didn't see it as an irritant necessarily from
 24 the government side. But you know, I
 25 appreciate that it's hard sometimes to

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1 distinguish between that, but that was how I
 2 understood the concern about the criticisms.
 3 COFFEY, Q.C.:
 4 Q. So Mr. Ottenheimer had given you to understand
 5 that--what? That Mr. Dawe's behaviour was
 6 making it difficult for Mr. Ottenheimer?
 7 MR. ABBOTT:
 8 A. Primarily, yes.
 9 COFFEY, Q.C.:
 10 Q. And you conveyed that to Mr. Dawe?
 11 MR. ABBOTT:
 12 A. Yes.
 13 COFFEY, Q.C.:
 14 Q. Do you recall exactly how you conveyed that?
 15 MR. ABBOTT:
 16 A. It was in my office, you know, "Peter, thank
 17 you for coming here. The reason why I've
 18 asked you here is that there is concern by the
 19 minister about how you're criticizing, not
 20 that you're criticizing. We expect that, but
 21 some of your language tends to go further than
 22 we think is warranted and we want--and because
 23 what you say is certainly heard throughout the
 24 province, and you're a legitimate advocate and
 25 spokesperson for cancer issues, we wanted to,

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1 you know, on behalf of the minister, to bring
 2 that to your attention," and that's the nature
 3 of the discussion.
 4 COFFEY, Q.C.:
 5 Q. And was it explained to Mr. Dawe as to what in
 6 particular? I mean, you had no problem with
 7 him complaining. It's just the manner in
 8 which he was complaining, and I say you, I
 9 don't mean you personally.
 10 MR. ABBOTT:
 11 A. Yeah, it was the manner. It was some of the
 12 language he was using that I think the
 13 minister felt was going beyond the--should I
 14 say, going beyond the veil.
 15 COFFEY, Q.C.:
 16 Q. Did any examples--were any examples used as to
 17 -
 18 MR. ABBOTT:
 19 A. I may have used one or two, but I couldn't
 20 tell you what they were right now, and it
 21 would have been probably a very recent--you
 22 know, depending when the meeting was, within
 23 that previous week or two. And the other
 24 context of that is, of course, that Mr. Dawe
 25 and his president and whatever would have met

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1 with the minister. Their meetings were very
 2 cordial, you know, more than cordial. They
 3 were good constructive meetings, and Mr. Dawe
 4 was very supportive of what, you know, what
 5 the minister was doing and the department was
 6 doing, what government was doing and we're
 7 involved in cancer control strategy, the
 8 process, and what have you, and then within
 9 days, you know, there was these criticisms
 10 were coming forward and the minister was
 11 having trouble juxt--you know, if you had a
 12 criticism, well then tell me that in the
 13 meeting. Don't have the meeting and then go
 14 out and then criticize, and these meetings
 15 were very open. They weren't--and the
 16 minister was very open, you know. If you have
 17 issues, let me know. Let's discuss them.
 18 COFFEY, Q.C.:
 19 Q. And did you ever ask Mr. Ottenheimer why he
 20 wanted you to be the messenger as opposed to
 21 himself? Because the meetings you describe
 22 are very cordial -
 23 MR. ABBOTT:
 24 A. Yes.
 25 COFFEY, Q.C.:

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1 Q. - between him and -
 2 MR. ABBOTT:
 3 A. Yeah, part of the job. No more than that.
 4 COFFEY, Q.C.:
 5 Q. Okay, and what was Mr. Dawe's reaction?
 6 MR. ABBOTT:
 7 A. I thought he understood what I was saying. He
 8 took it very well. He said he didn't--he
 9 obviously wasn't intending to obviously get
 10 the minister, you know, upset, as it were, and
 11 said, you know, I think he--it's fair enough
 12 to say that he thanked me for that heads up
 13 and he will be mindful of that, and I said not
 14 that we want him to change what he was doing,
 15 just you know, some of the language he was
 16 using was of concern to the minister.
 17 COFFEY, Q.C.:
 18 Q. He certainly wanted him to change the manner
 19 in which he was doing what he was doing?
 20 MR. ABBOTT:
 21 A. Well, you know, it was the language he was
 22 using was really what I focused on.
 23 COFFEY, Q.C.:
 24 Q. And you can't recall now, give the
 25 Commissioner a concrete example of what -

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1 MR. ABBOTT:
 2 A. No, I can't. But, and I said, the evidence
 3 might be there in terms of around medical
 4 transportation for people with cancer who are
 5 obviously coming in and out of Seat. John's.
 6 That one rings a bell, but whether that was
 7 the time period which was used for an example,
 8 it may have been something else. But he
 9 clearly understood the context in which I was
 10 doing it, the example or two that I might have
 11 used and would have said something to the
 12 effect, "Well, I didn't really mean it that
 13 way." I said, "Well, you know, Peter, I
 14 appreciate that, but these are the words you
 15 used and that's what's out there and people
 16 are listening to you and we are listening to
 17 you and we're just asking you to be just
 18 mindful of that in your future interviews,"
 19 those kinds of things.
 20 COFFEY, Q.C.:
 21 Q. Now, what would the--put--was it conveyed to
 22 Mr. Dawe at that time what the potential
 23 ramifications were for him or his organization
 24 if he didn't moderate his behaviour?
 25 MR. ABBOTT:

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1 A. No, I -
 2 COFFEY, Q.C.:
 3 Q. What was the message here in terms of -
 4 MR. ABBOTT:
 5 A. I don't think there was any, you know, other
 6 message than that. We knew he was going to
 7 continue to do his advocacy and criticisms of
 8 government and others as needed and we would
 9 continue to work with him as we did.
 10 COFFEY, Q.C.:
 11 Q. Exhibit P-0145, please? This is an e-mail of
 12 October 28th, 2005 at 3:49 p.m.. It says,
 13 "Are you available to brief the minister on
 14 November 14th in preparation of the reopening
 15 of the House of Assembly, say late morning?
 16 We may also be holding a separate workshop on
 17 wait times that day for you and your
 18 colleagues in light of the FPT ministers of
 19 health agreement on wait times." And the
 20 first e-mail at the top of the page, not first
 21 in time, is 4:02 p.m. from Betty Donahue to
 22 Angela Bull. Who are these people?
 23 MR. ABBOTT:
 24 A. Betty Donahue was my assistant secretary and
 25 Angela Bull held the same position with the

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1 minister.
 2 COFFEY, Q.C.:
 3 Q. And at that point in terms of available to
 4 brief the minister, I take it this, your e-
 5 mail was to whom, do you recall?
 6 MR. ABBOTT:
 7 A. To George Tilley.
 8 COFFEY, Q.C.:
 9 Q. Okay. If we could, please, look at P-0808?
 10 This is an e-mail, sir, from Tansy Mundon,
 11 October 31st, 2005, 11:04 a.m. to Deborah
 12 Thomas Pennell and Susan Bonnell, copied to
 13 Mr. Hynes, yourself, Moira Hennessey and Tara
 14 Furlong. The subject is "Open Line, Breast
 15 Cancer Screening", importance, "high",
 16 attachments "Open Line, Breast Cancer
 17 Screening" is the attachment. It says,
 18 "Susan, Deborah, please see attached e-mail
 19 regarding a caller on open line regarding
 20 ER/PR testing. The host is asking other women
 21 to call in so we should keep an eye on this.
 22 Thanks, Tansy." And then the attachment, look
 23 at page 2, is an e-mail from Doris Walsh to a
 24 number of individuals, including Carolyn
 25 Chaplin, Josephine Cheeseman and others. And

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1 it's copied, though, to Tansy Mundon. And it
 2 says, "Mercedes, breast cancer screening,
 3 don't know at this point if it was human error
 4 or machine. Mention to Dr. Williams
 5 appearance on Out of the Fog, this is one of
 6 the people who tested negative back in
 7 February and is still waiting to hear about
 8 the retesting. Has an aggressive cancer and
 9 needs those results. Who audited the labs to
 10 check on the standards? Worried that she did
 11 not get the proper treatment. Should probably
 12 be on Tamoxifen. Surprised that more women
 13 are not calling in. Host asked other women to
 14 call in." Now, sir, the idea that on a Monday
 15 morning at about 11:00 in the morning that you
 16 would get a transcript of a call or summary of
 17 a call to an open line show that morning
 18 regarding ER/PR, would you get very many of
 19 these sorts of e-mails?
 20 MR. ABBOTT:
 21 A. Now, again, when that open line, whether in
 22 fact it was that morning or it was over the
 23 weekend and what have you, I couldn't say.
 24 But we were doing, you know, the central
 25 agency communications group were obviously

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1 doing monitoring and advising us through that.
 2 So I was getting all of those references
 3 pretty well right through the piece, not only,
 4 obviously, on breast cancer but anything
 5 affecting the, shall we say, the health
 6 portfolio.
 7 COFFEY, Q.C.:
 8 Q. So this one ends with a summary, "Host asked
 9 other women to call in" we look back at page
 10 1, Tansy writes at 11:04 a.m. she ends with,
 11 "The host is asking other women to call in so
 12 we should keep an eye this."
 13 MR. ABBOTT:
 14 A. Um.
 15 COFFEY, Q.C.:
 16 Q. Now, the "we" in this context would be the
 17 Department of Health, I take it, senior, or
 18 certainly some people in the senior
 19 management?
 20 MR. ABBOTT:
 21 A. No. She--well -
 22 COFFEY, Q.C.:
 23 Q. Or is it Deborah
 24 MR. ABBOTT:
 25 A. Susan, I'm reading that as Susan Bonnell and

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1 Deborah Thomas.
 2 COFFEY, Q.C.:
 3 Q. Okay.
 4 MR. ABBOTT:
 5 A. At Eastern Health. So as I'm looking at this,
 6 our central communication's group alerted us
 7 to this, we alerted Eastern Health in the
 8 event that they weren't aware of that.
 9 THE COMMISSIONER:
 10 Q. Why would you do this?
 11 MR. ABBOTT:
 12 A. Well again, as part of, from the communication
 13 side it was just a free-flow of information at
 14 that level. If they knew of something
 15 happening here, they would advise the other
 16 and vice versa.
 17 THE COMMISSIONER:
 18 Q. But this intended to in any influence what
 19 occurs, what happens? I can understand what's
 20 being talked about in the media, in terms of
 21 preparation of the minister in the sense of
 22 the minister may be getting questions.
 23 MR. ABBOTT:
 24 A. Yes.
 25 THE COMMISSIONER:

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1 Q. And he or she would want to be prepared for
 2 that, so I can quite understand why the sort
 3 of, what seems like rather, from the outside,
 4 rather intense following of what's happening
 5 in the media.
 6 MR. ABBOTT:
 7 A. Uh-hm.
 8 THE COMMISSIONER:
 9 Q. But is there another purpose for it?
 10 MR. ABBOTT:
 11 A. Just to keep everybody on the same page that
 12 this issue is in the public domain, there is
 13 an open line in this case, it's on the open
 14 line, we need to ensure that Eastern Health is
 15 aware of that. It is quite conceivable that,
 16 you know, the host of Open Line may say, you
 17 know, ask the minister to call in, which
 18 wouldn't be of a surprise to us.
 19 THE COMMISSIONER:
 20 Q. But does it make a difference, does this
 21 suggest in any way that determinations about
 22 what is to be done, either by the department
 23 of Eastern Health is somehow affected by who
 24 calls Open Line?
 25 MR. ABBOTT:

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1 A. Dare I say and I'm going to say unfortunately,
 2 yes, it is, again if you're talking about
 3 transformation in our governance, in our
 4 administration, the Open Line Shows are having
 5 a significant impact on what government
 6 departments, ministers' offices are following
 7 and it's a, I won't say a recent trend, but
 8 fairly recent trend and exponential in the
 9 sense that if you see now, hear now in terms
 10 of their prevalence of open line shows in
 11 Newfoundland and you will see that MHAS,
 12 ministers, the premier are calling in and
 13 using those open lines as a forum to get out
 14 their messages, but they're also using it as a
 15 form to find out what's happening in the
 16 Public.
 17 THE COMMISSIONER:
 18 Q. Well, let's bring it down to ER/PR for
 19 example, would whether or not ten women or no
 20 women and men, because ER/PR did affect some
 21 men.
 22 MR. ABBOTT:
 23 A. Yes.
 24 THE COMMISSIONER:
 25 Q. Calls an open line show have any impact on a

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1 decision on how or if to communicate with
 2 people?
 3 MR. ABBOTT:
 4 A. It could very well be a factor and that's the
 5 judgment of the, of I'll say minister of the
 6 day in terms of how they dealt with that,
 7 whether it's ER/PR or any other issue in terms
 8 of their perception of what they now need to
 9 do. And there's, you know, the literature is
 10 starting to develop on that and there's been
 11 some forums in St. John's around this issue
 12 because it's recognized, it is having a
 13 significant impact on how government does
 14 business.
 15 THE COMMISSIONER:
 16 Q. And by extension, how Eastern Health does
 17 business.
 18 MR. ABBOTT:
 19 A. And the public sector in general, yes, and
 20 certainly taking the lead from their
 21 respective ministers and some ministers were
 22 more in tune and are more in tune with that
 23 forum than others. Some rely on it quite
 24 extensively and others are, will, well if
 25 there's a transcript provided to me, but

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1 that's it, but others are much more in tune on
 2 a realtime basis.
 3 THE COMMISSIONER:
 4 Q. Mr. Coffey, it's about 4:55, so I'm -
 5 COFFEY, Q.C.:
 6 Q. And I'm about to go on to the November 2005
 7 briefing, so -
 8 THE COMMISSIONER:
 9 Q. This would be a good place to break?
 10 COFFEY, Q.C.:
 11 Q. It would be, thank you.
 12 THE COMMISSIONER:
 13 Q. All right, Mr. Coffey, because there's another
 14 witness scheduled for next week and it's
 15 obvious we haven't completed with this one,
 16 can you give me some rough estimate?
 17 COFFEY, Q.C.:
 18 Q. I'll be Monday.
 19 THE COMMISSIONER:
 20 Q. Monday?
 21 COFFEY, Q.C.:
 22 Q. Yes, I'll be Monday.
 23 THE COMMISSIONER:
 24 Q. All right, thank you, Mr. Abbott. 9:30 on
 25 Monday morning.

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

Inquiry on Hormone Receptor Testing

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