COMMISSION OF INQUIRY

ON HORMONE RECEPTOR TESTING

BEFORE THE HONOURABLE JUSTICE CAMERON - COMMISSIONER

September 19, 2008

Appearances:

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

Rolf Pritchard/Jackie Brazil . . . . Her Majesty in Right of NL

Peter Browne/Jane Hennebury . . . . . . Doctors Kara Laing et al

Daniel Simmons/Beth Whalen . . . . . Eastern Regional Integrated
. . . . Health Authority

Laura Brocklehurst. . . . . Members of the Breast Cancer
. . . . Testing Class Action

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

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Certificate

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1 THE COMMISSIONER:
2 Q. Please be seat. Ms. Chaytor.
3 CHAYTOR, Q.C.:
4 Q. Good morning, Commissioner. The next witness
5 is Joy McCarthy.
6 DR. JOY MCCARTHY (SWORN) EXAMINATION BY SANDRA CHAYTOR,
7 Q.C.
8 CHAYTOR, Q.C.:
9 Q. Good morning, Dr. McCarthy.
10 DR. MCCARTHY:
11 A. Good morning.
12 CHAYTOR, Q.C.:
13 Q. We have a number of new exhibits this morning,
14 please, Commissioner, that I would ask to have
15 entered. There's C-0230 and P-2600 through to
16 P-2608, inclusive.
17 THE COMMISSIONER:
18 Q. Entered.
19 EXHIBIT ENTERED AND MARKED C-0230.
20 EXHIBITS ENTERED AND MARKED P-2600 THROUGH P-2608,
21 INCLUSIVE.
22 CHAYTOR, Q.C.:
23 Q. Thank you. Registrar, if you could bring up,
24 please, 2600? Doctor, this is a copy of your
25 updated curriculum vitae. And perhaps if you

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1 could just take us through the highlights,
2 telling us about your educational and
3 professional background and your current
4 position at Eastern Health?
5 DR. MCCARTHY:
6 A. Sure. From 1992 to 1996 I got my MD at
7 Memorial University. From 1996 to 1999 I
8 completed three years of internal medicine at
9 Dalhousie in Halifax, Nova Scotia. From 1999
10 to 2001 I completed my medical oncology
11 training at the University of Toronto. In
12 July of 2001 I returned home to Newfoundland
13 to start working initially for the NCTRF and
14 now has become, as you know, Eastern Health.
15 In 2004 I became the physician director of
16 clinical trials at the Cancer Clinic as well
17 as my fulltime medical oncology position. As
18 well, in 2001 I have a position as a clinical
19 assistant professor with Memorial University,
20 which is a part-time appointment.
21 CHAYTOR, Q.C.:
22 Q. Okay. And about how many hours per week would
23 you devote to your clinical assistant
24 professor position?
25 DR. MCCARTHY:

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1 A. One to two.
2 CHAYTOR, Q.C.:
3 Q. And, Doctor, during your training in Toronto
4 from 1999 through to June, 2001 did you do any
5 particular training breast cancer?
6 DR. MCCARTHY:
7 A. Yes, I did. I was interested in breast cancer
8 early on so I focused on those professionals
9 who their focus was breast cancer. For
10 example, I did six months with Maureen, Dr.
11 Maureen Trudeau at Sunnybrook. I spent three
12 months with Dr. Marty Blackstein at Mount
13 Sinai Hospital. I spent six months with the
14 Credit Valley, Mississauga oncologists, of
15 which one had a fellowship in breast cancer,
16 Dr. Higgins, and as well Dr. Bob Myers is also
17 published in breast cancer. And as well with
18 Dr. Michael Crump for three months at Princess
19 Margaret Hospital.
20 CHAYTOR, Q.C.:
21 Q. I'm sorry, what was the name of the last
22 physician?
23 DR. MCCARTHY:
24 A. Dr. Michael Crump, C-R-U-M-P.
25 CHAYTOR, Q.C.:

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1 Q. Okay. And, Doctor, if we look down through
2 then, currently clinical committee activities
3 that you're involved in, from June, 2006 to
4 the present it indicates that you're co-chair
5 of the Breast Disease Site Group. And I'm
6 going to ask you a little bit later to explain
7 to us the purpose of that group and the
8 ongoing work of the group. We understand Dr.
9 Carter had been your co-chair. Do you
10 currently have a co-chair, has her position
11 been replaced?
12 DR. MCCARTHY:
13 A. That was going to be done this month but it
14 was deferred, because of this, to next month
15 we plan to search for the co-chair.
16 CHAYTOR, Q.C.:
17 Q. Okay.
18 DR. MCCARTHY:
19 A. Request some offers.
20 CHAYTOR, Q.C.:
21 Q. So currently you're the only chair, I take it?
22 DR. MCCARTHY:
23 A. Correct.
24 CHAYTOR, Q.C.:
25 Q. Okay. And then 2005 to present you are the

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1 chair of oncology grand rounds. Perhaps you
2 could explain for us what are oncology grand
3 rounds?
4 DR. MCCARTHY:
5 A. Oncology grand rounds is similar to the
6 internal medicine ground rounds, which is a
7 monthly, for us, although weekly for internal
8 medicine forum, about an hour long, whereby an
9 oncologist or a health care professional in
10 oncology would present information surrounding
11 a particular topic of their choice. For
12 example, the first one that was every done I
13 did in 2005 which was on use of Trastuzumab in
14 the adjuvant setting for breast cancer. So
15 pharmacists could present radiation oncology,
16 gyne oncology, palliative care, surgical
17 oncology, medical and radiation oncology, as
18 well as any visiting speakers.
19 CHAYTOR, Q.C.:
20 Q. Okay. And this, I notice it says that you
21 became the chair in September, 2005. Did the
22 oncology grand rounds exist prior to
23 September, 2005 or was this a new endeavour?
24 DR. MCCARTHY:
25 A. No, I initiated this endeavour.

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1 CHAYTOR, Q.C.:
2 Q. You initiated it.
3 DR. MCCARTHY:
4 A. It did not exist before I came, before 2005.
5 CHAYTOR, Q.C.:
6 Q. And what was it, why did you initiate it and
7 what value did you see in it and why in
8 September, 2005?
9 DR. MCCARTHY:
10 A. Not quite sure about the timing of why
11 September, 2005. The rationale behind it was
12 I felt that we needed a forum to share
13 information, a forum whereby all health care
14 professionals in treatment of cancer patients
15 could participate, share new information with
16 everyone and also have it be part of the Royal
17 College accreditation process. So this is a
18 Royal College accredited activity.
19 CHAYTOR, Q.C.:
20 Q. So you would receive points which would go
21 towards your continuing medical education
22 through the oncology grand rounds?
23 DR. MCCARTHY:
24 A. Correct.
25 CHAYTOR, Q.C.:

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1 Q. And, Doctor, did the timing, was the timing at
2 all influenced in your mind by what had
3 happened and was happening with respect to the
4 ER/PR issue in terms of the need to share
5 information and have a forum in which that
6 could happen?
7 DR. MCCARTHY:
8 A. I don't recall that as being a driving factor.
9 It's possible that it may have played a role
10 here, but I don't recall this being a driving
11 factor.
12 CHAYTOR, Q.C.:
13 Q. Okay, but was it an initiative that you had
14 thought of earlier or had tried to initiate in
15 an earlier phase but it just didn't get off
16 the ground?
17 DR. MCCARTHY:
18 A. I had thought of it earlier and it just didn't
19 get off the ground. It was round about this
20 time that I pushed for it.
21 CHAYTOR, Q.C.:
22 Q. Yes. And was there any impediment to it
23 getting off the ground at an earlier point in
24 time, for example, did you have a lack of
25 resources or was there a lack of will within

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1 the group for this to happen?
2 DR. MCCARTHY:
3 A. There was no lack of will at any time. This
4 had been discussed informally previously.
5 It's just with manpower issues, my maternity
6 leaves and so on, just timing. But everybody
7 was very much for this.
8 CHAYTOR, Q.C.:
9 Q. Okay. And were there any particular resources
10 that you would need that were forthcoming as
11 of September, 2005?
12 DR. MCCARTHY:
13 A. Dr. Laing's assistant, Delores Rice, agreed to
14 take on arranging these and looking after
15 booking the room, sort of the semantics around
16 that, which was--she's a key player in this
17 and I really needed somebody to help in terms
18 of the organization. And once she was, you
19 know, available to do this, which she may have
20 been earlier had I asked her, that was really
21 the key piece that I needed, plus I needed to
22 take the initiative with regards to the Royal
23 College and the accreditation process.
24 CHAYTOR, Q.C.:
25 Q. Okay. And from July, 2004 to the present

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1 you're also the chair of the scientific
2 advisory committee, HBMCC. And perhaps you
3 could tell us what that, what's the purpose of
4 that committee?
5 DR. MCCARTHY:
6 A. The HBMCC is the Dr. H. Bliss Murphy Cancer
7 Clinic, that's why that's put in there. This
8 committee arose from my new position as the
9 physician director of clinical trials. We
10 recognized the need for a committee to--an
11 approval process, if you will, of trials and
12 general clinical trials, business and we put
13 together a committee with all stakeholders
14 involving clinical trials to come together
15 every three months or so to discuss new
16 trials, to discuss ongoing trials and whether
17 or not to close any and so on.
18 CHAYTOR, Q.C.:
19 Q. Okay, and the next committee you're a member
20 of, I take it, for a year, from September,
21 2004 to 2005, and it's the NCTRF clinic
22 management information systems committee.
23 Perhaps you could tell us what was the mandate
24 of that committee?
25 DR. MCCARTHY:

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1 A. I don't remember all of the details of that
2 committee. I do remember discussions of
3 issues such as OPUS, our notes from the Cancer
4 Clinic being available in other areas, having
5 Meditech be able to liaise with other Meditech
6 systems, those sorts of things being
7 discussed, but I didn't spend very long on
8 this committee and I'm not quite sure what
9 happened to it, actually.
10 CHAYTOR, Q.C.:
11 Q. Okay, and was that committee involved at all
12 in trying to improve the information
13 management within Cancer Clinic and the Cancer
14 Clinic charts?
15 DR. MCCARTHY:
16 A. That was my understanding.
17 CHAYTOR, Q.C.:
18 Q. Okay. And you don't know if that committee
19 still exists?
20 DR. MCCARTHY:
21 A. I do not know.
22 CHAYTOR, Q.C.:
23 Q. And you're certainly not a member since 2005?
24 DR. MCCARTHY:
25 A. No, I'm not.

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1 CHAYTOR, Q.C.:
2 Q. Okay. The next committee then that I'd like
3 to ask you about is from October, 2005 to the
4 current time you are co-chair of tumour board
5 rounds for the Cancer Centre. And who is the
6 other chair of the tumour board rounds?
7 DR. MCCARTHY:
8 A. There end up being three, actually. The co-
9 chair at the beginning was Dr. Stewart Rorke,
10 and originally it was breast cancer and
11 gastroenterology type cancers one week
12 alternated with melanoma and sarcoma the other
13 week. This did not last very long because it
14 was too hard to coordinate. So Dr. Rorke and
15 I agreed to co-chair a general weekly rounds
16 of all tumour types. Soon after that Dr.
17 Brent Tomkins got on board because he's very
18 interested in tumour board rounds and asked to
19 participate, as well, so it became agreeable
20 that we would have three so that if one was
21 away, one of the other two could chair the
22 rounds, so you would always have record
23 keeping and so on. We were the record keeper,
24 the clerical person as well as the chair. Dr.
25 Tomkins -

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1 CHAYTOR, Q.C.:
2 Q. I'm sorry, do you keep minutes, do you keep
3 minutes of meetings?
4 DR. MCCARTHY:
5 A. We do now. That evolved. Dr. Tomkins
6 actually came up with that idea of in terms of
7 dictating all of the rounds. So the past
8 three years we've actually dictated the rounds
9 so that the secretary would type them up, the
10 chair would read them over, make any
11 corrections and sign them. And it would be
12 around each patient. There would not be
13 minutes of who said what off the patient
14 topic, it would be just around each patient.
15 CHAYTOR, Q.C.:
16 Q. Okay, and so that practice started around
17 2005?
18 DR. MCCARTHY:
19 A. 2005, 2006.
20 CHAYTOR, Q.C.:
21 Q. Okay. And who attends the tumour board
22 rounds?
23 DR. MCCARTHY:
24 A. Medical oncologists, radiation oncologists,
25 surgeons, palliative care physicians, gyne

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1 oncologists, radiologists, pathologists,
2 geneticists.
3 CHAYTOR, Q.C.:
4 Q. And can you say anything in terms of the
5 attendance at tumour board rounds and whether
6 or not it has improved over time? Perhaps
7 when you started out with your tumour board
8 rounds in October, 2001 how did attendance
9 compare to where it is today?
10 DR. MCCARTHY:
11 A. Attendance is continually improved over the
12 years and now it's very well attended.
13 Radiology at first was very difficult to get
14 them on board in terms of the timing, but
15 we've changed the time several times and now
16 we have fairly consistent radiology
17 attendance. I find they're very well attended
18 and they're very well received and often
19 overbooked because so many people want to
20 participate.
21 CHAYTOR, Q.C.:
22 Q. Okay, and how long has that been the case,
23 that you're having attendance to the point
24 that they're overbooked?
25 DR. MCCARTHY:

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1 A. At least the past year.
2 CHAYTOR, Q.C.:
3 Q. Okay, and, Doctor, this started in October,
4 2001 or you became the co-chair. Was there
5 any tumour board rounds prior to October,
6 2001? You came here in July of 2001. When
7 you arrived, were there any tumour board
8 rounds happening?
9 DR. MCCARTHY:
10 A. No.
11 CHAYTOR, Q.C.:
12 Q. Okay. And how did that compare to your
13 experience during your residency in Toronto?
14 DR. MCCARTHY:
15 A. There were regular tumour board rounds which
16 were site specific, so there was breast only
17 tumour board, lung only tumour board,
18 etcetera, and these were on a weekly basis.
19 Given the size of a place like Princess
20 Margaret Hospital, they all had to be site
21 specific and were well attended, and I was
22 used to going to several of these per week.
23 So when I first came, that was a glaring thing
24 that had to be remedied, in my opinion.
25 CHAYTOR, Q.C.:

1 Q. Yes, and then did you work to make sure that
2 that happened and you were instrumental in
3 actually bringing on tumour board rounds here
4 in St. John's?
5 DR. MCCARTHY:
6 A. Yes.
7 CHAYTOR, Q.C.:
8 Q. And, Doctor, do other physicians outside of
9 St. John's take part in the tumour board
10 rounds via teleconference?
11 DR. MCCARTHY:
12 A. Yes.
13 CHAYTOR, Q.C.:
14 Q. Or video conference?
15 DR. MCCARTHY:
16 A. Yes. Gander, Grand Falls, Corner Brook, Port-
17 aux-Basques, Burin, those are some, plus the
18 St. Clare's site also often hooks up via
19 video.
20 CHAYTOR, Q.C.:
21 Q. Okay, and, Doctor, you used the word "glaring"
22 that this was a glaring omission in your
23 opinion?
24 DR. MCCARTHY:
25 A. Um-hm.

1 CHAYTOR, Q.C.:
2 Q. So obviously you saw this as being a very
3 valuable endeavour?
4 DR. MCCARTHY:
5 A. Valuable and essential.
6 CHAYTOR, Q.C.:
7 Q. Okay, and tell us why, why is it so essential?
8 DR. MCCARTHY:
9 A. Because there was currently at that time, in
10 July of 2001, no official forum to get all
11 players of the oncology care team together to
12 discus complex cases. And at first we had
13 intended tumour boards to be also a way to
14 share information, which is now what oncology
15 grand rounds has become in terms of if a new
16 treatment has come up, to discuss it and so
17 on. We still do that to a small degree at
18 tumour board, but there was that intent, as
19 well, at the beginning.
20 CHAYTOR, Q.C.:
21 Q. Okay, and, Doctor, once you were successful in
22 getting tumour board rounds off here in St.
23 John's or for the province, first I guess I
24 should ask you that, did everyone from outside
25 St. John's participate right from the

1 beginning or was that something that came on
2 over time?
3 DR. MCCARTHY:
4 A. I don't recall when teleoncology was really up
5 and running. That was the intent at the
6 beginning. This is fairly new, though, in
7 terms of teleoncology and having the video
8 teleconferencing, but that was coming, but
9 that was the intent at the beginning. Exactly
10 when that started officially, I can't recall.
11 CHAYTOR, Q.C.:
12 Q. Okay. And in terms of years, can you say has
13 it been going on for two years or five years
14 that you've been joining in with the rest of
15 the physicians across the province?
16 DR. MCCARTHY:
17 A. I can't recall.
18 CHAYTOR, Q.C.:
19 Q. Okay, Doctor, once you got this off the ground
20 in October, 2001, was there ever a period of
21 time in which there was an interruption and
22 tumour board rounds no longer took place?
23 DR. MCCARTHY:
24 A. Not that I can think of.
25 CHAYTOR, Q.C.:

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1 Q. And Dr. Laing has told the Commissioner that
2 she recalled there was a period of time where,
3 I think in her words, they were shelved or
4 stopped, the medical--I think it was the
5 medical director at the time for cancer care
6 seemed to have some issue with the rounds. Do
7 you recall anything about that?
8 DR. MCCARTHY:
9 A. That was before I came.
10 CHAYTOR, Q.C.:
11 Q. That was before you came?
12 DR. MCCARTHY:
13 A. Yeah. That was in that 2000, 2001 time
14 period. Dr. Tang, as it was explained to me,
15 did not fell that these should continue and
16 stopped them. And then when I came on, I
17 pressed on with the issue.
18 CHAYTOR, Q.C.:
19 Q. Okay, and so that was before your time. And
20 once you got if off the ground in October,
21 2001, it has been a regular weekly event?
22 DR. MCCARTHY:
23 A. Yes.
24 CHAYTOR, Q.C.:
25 Q. And, Doctor, when did the technology become

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1 available to be able to link in everybody
2 across the island?
3 DR. MCCARTHY:
4 A. Again, I would be completely guessing as to
5 exactly the time period. It would be a total
6 guess.
7 CHAYTOR, Q.C.:
8 Q. So was it available when you arrived here in
9 July of 2001?
10 DR. MCCARTHY:
11 A. To my memory, no.
12 CHAYTOR, Q.C.:
13 Q. Okay, so it came sometime after that?
14 DR. MCCARTHY:
15 A. Yes.
16 CHAYTOR, Q.C.:
17 Q. Okay. So when you arrived in St. John's,
18 there wasn't the tumour board rounds. Was
19 there any other forum by which oncologists
20 could have communication with pathologists?
21 DR. MCCARTHY:
22 A. Other than one-on-one phone calls, none that
23 I'm aware of.
24 CHAYTOR, Q.C.:
25 Q. Okay. Doctor, during your residency how much

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1 exposure would you have had to laboratory
2 medicine?
3 DR. MCCARTHY:
4 A. None.
5 CHAYTOR, Q.C.:
6 Q. Okay. And do you have any opinion as to
7 whether or not that might, in fact, be
8 worthwhile for oncologists to have exposure to
9 laboratory medicine during their training?
10 DR. MCCARTHY:
11 A. I think it would be worthwhile.
12 CHAYTOR, Q.C.:
13 Q. Okay, and why is that?
14 DR. MCCARTHY:
15 A. I think to have a better appreciation of what
16 pathologists and technologists do to have an
17 idea of the testing processes, perhaps to help
18 explain them to your colleagues, your
19 patients. I think that would be helpful.
20 CHAYTOR, Q.C.:
21 Q. And, Doctor, during your training, and you
22 were trained and spent time in institutions,
23 facilities across, well, in central Canada and
24 as well as Dalhousie for your internal
25 medicine component, did you ever even see the

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1 inside of the lab?
2 DR. MCCARTHY:
3 A. Only to go over and try and get test results,
4 but not to see the workings of the lab, the
5 running of the lab or anything like that.
6 CHAYTOR, Q.C.:
7 Q. When you were doing your residency, then, in
8 Toronto, and that's 1999 to 2001, did you--
9 what method was being used in Toronto for
10 carrying out ER/PR testing at that time?
11 DR. MCCARTHY:
12 A. My recollection was immunohistochemistry.
13 CHAYTOR, Q.C.:
14 Q. Okay, and do you recall what percentage they
15 were using to determine positivity?
16 DR. MCCARTHY:
17 A. Ten percent.
18 CHAYTOR, Q.C.:
19 Q. Okay, and when you arrived in St. John's in
20 July of 2001, what was being utilized as the
21 cutoff for positivity here?
22 DR. MCCARTHY:
23 A. I can tell you what I was using.
24 CHAYTOR, Q.C.:
25 Q. Yes.

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1 DR. MCCARTHY:
2 A. Ten percent.
3 CHAYTOR, Q.C.:
4 Q. And do you know what others were using?
5 DR. MCCARTHY:
6 A. To my knowledge, ten percent, as well.
7 CHAYTOR, Q.C.:
8 Q. Okay. And did you receive any pathology
9 reports referring to a 30 percent cutoff?
10 DR. MCCARTHY:
11 A. Yes.
12 CHAYTOR, Q.C.:
13 Q. And did that cause you any concern or did you
14 ask any questions around that?
15 DR. MCCARTHY:
16 A. When tumour board rounds were going on, there
17 were some informal questions about that and I
18 remember occasionally myself or other
19 oncologists saying they used ten percent as
20 their cutoff. I do not recall anybody
21 objecting to that or questioning that. I just
22 explained that it was my practice to use ten
23 percent and there was no voiced disagreement
24 with that.
25 CHAYTOR, Q.C.:

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1 Q. Okay, and do you recall if there was anything
2 that happened in terms of communication
3 amongst the oncologists to ensure that
4 everyone is on the same page, that this is ten
5 percent, like a memo going out, an e-mail,
6 anything to say there shouldn't be any
7 confusion here, we're using a ten percent
8 cutoff?
9 DR. MCCARTHY:
10 A. There was no paper trail or e-mail to my
11 recollection. It was discussed at tumour
12 board and to my recollection all oncologists
13 were on the same page as using ten percent, at
14 least when I started.
15 CHAYTOR, Q.C.:
16 Q. By July of 2001?
17 DR. MCCARTHY:
18 A. Um-hm.
19 CHAYTOR, Q.C.:
20 Q. Okay. And were you sometimes still receiving,
21 though, pathology reports that--well, first of
22 all, how were pathology reports being reported
23 to you in terms of the results on an ER/PR
24 test?
25 DR. MCCARTHY:

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1 A. They were different types. There were some
2 that would just say positive or negative
3 without numbers, some that would say numbers
4 and they would put in brackets positive or
5 negative, and others would have just numbers
6 and no other comment.
7 CHAYTOR, Q.C.:
8 Q. So it varied?
9 DR. MCCARTHY:
10 A. Yes.
11 CHAYTOR, Q.C.:
12 Q. Okay. And on the ones that would just say
13 positive or negative, what would you do when
14 you would receive that, how would you
15 interpret positive and negative?
16 DR. MCCARTHY:
17 A. My recollection at the time was that I made an
18 assumption that pathologists were using ten
19 percent, as well. I did not know any
20 different, if they were using 30 percent,
21 other than ten percent. That was not
22 communicated to me verbally or otherwise.
23 Other than occasionally seeing that statement
24 that they would put in from time to time from
25 a paper saying that it was believed that 30

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1 percent should be the cutoff, but I was not
2 aware that they were reporting it that way.
3 CHAYTOR, Q.C.:
4 Q. Okay, and Doctor, did you ever have occasion
5 to pick up the phone and call a pathologist
6 and say "well, what does this mean? What do
7 you mean by positive?"
8 DR. MCCARTHY:
9 A. I might have, but I do not recall any specific
10 instance where I did that.
11 CHAYTOR, Q.C.:
12 Q. Okay, and do you recall whether or not anybody
13 brought that up at tumour board rounds to say
14 "we're still getting these reports which say
15 positive and negative. We need this to be
16 reported in a different--or in a quantitative
17 manner"?
18 DR. MCCARTHY:
19 A. There were, as I said before, informal
20 discussions of us saying that we used ten
21 percent and this is what we would continue to
22 use. There was no pathologist there saying
23 that they were going to change things or alter
24 things in any way. So there was nothing
25 formally done, to my recollection.

1 CHAYTOR, Q.C.:
2 Q. And Doctor, the current practice, what in the
3 current practice is considered to be a
4 positive result?
5 DR. MCCARTHY:
6 A. We have just drafted a hormonal therapy
7 guideline, which is still not out yet. It's
8 waiting for formatting. Within that, we had
9 agreed, as a group, that we would consider one
10 percent or greater as being a positive result.
11 However, in clinical practice, we go ahead and
12 discuss hormonal therapy if the patient is ten
13 percent or greater. We consider one to ten
14 percent to be weakly positive, and we bring
15 all of those to tumour board to discuss.
16 CHAYTOR, Q.C.:
17 Q. Okay. So any of the--in the way we could call
18 a grey area of one to ten percent, all of
19 those cases are brought to tumour board to
20 discuss?
21 DR. MCCARTHY:
22 A. Yes.
23 CHAYTOR, Q.C.:
24 Q. Okay. If we could have, please, P-2601? And
25 Doctor, perhaps you could tell us what this

1 document is. It says Eastern Health Clinical
2 Practice Guidelines in Oncology, Breast
3 Cancer, and table of contents, screening,
4 diagnosis, surgery, radiation, systemic
5 therapy, hormonal therapy and chemotherapy.
6 Do you know what this document is?
7 DR. MCCARTHY:
8 A. Yes. This arose from the breast site group,
9 and was drafted by Ms. Cynthia Higdon, our
10 guidelines coordinator for breast cancer.
11 This was an initiative whereby we got together
12 as a group for three or four hours to discuss
13 hormonal therapy in breast cancer, and Cynthia
14 took that information that we discussed,
15 drafted a guideline and there's been several
16 reviews and re-reviews and several of us have
17 read over this. To my knowledge though, it's
18 still not been released to the general
19 population of physicians and we still don't
20 have a website to put this on or anything like
21 that yet.
22 CHAYTOR, Q.C.:
23 Q. Okay. So it's still in draft?
24 DR. MCCARTHY:
25 A. Yes.

1 CHAYTOR, Q.C.:
2 Q. And I notice that there's no date on the
3 document, but can you tell me when this
4 started out? When did Cynthia start the draft
5 and when did your group get together? Is it
6 sometime in the past year, past two years?
7 DR. MCCARTHY:
8 A. It's within the past two years for sure. My
9 guess is sometime late 2006, 2007, but I can't
10 recall the exact date of when we first met as
11 a group of physicians, nurses, pharmacists, to
12 even discuss this issue. It was sometime in
13 late 2006 or 2007.
14 CHAYTOR, Q.C.:
15 Q. Yes, your group, I think, was officially off
16 the ground June of 2006 and your first meeting
17 was probably, I think, sometime a couple of
18 months after that.
19 DR. MCCARTHY:
20 A. But we had a meeting separate from the breast
21 site group to discuss -
22 CHAYTOR, Q.C.:
23 Q. Oh, okay.
24 DR. MCCARTHY:
25 A. - this particular guideline.

1 CHAYTOR, Q.C.:
2 Q. Okay, and I just wanted to ask you, and I'm
3 going to ask you some more questions about the
4 guidelines and where the breast disease site
5 group is now, in terms of their mandate and
6 their work, but just at page six here, because
7 it's on the point of the cut off, and under
8 adjuvant hormone therapy, recommendations and
9 supporting evidence. It says that "patients
10 should be referred to medical oncology in a
11 timely fashion to allow first assessment to
12 take place within 10 to 12 weeks post
13 surgery," and it goes on to say that "for
14 those patients who have estrogen and/or
15 progesterone positive disease, adjuvant
16 hormonal therapy will be discussed. The
17 threshold for ER and PR positivity has been
18 debated in the past, but the group has decided
19 that any result of one percent or over will be
20 considered positive and could indicate
21 eligibility for hormonal manipulation." So
22 that's correct?
23 DR. MCCARTHY:
24 A. Exactly.
25 CHAYTOR, Q.C.:

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1 Q. All right, and then if we could look, please,
2 at P-2599, page one, and this is "clinical
3 practice guideline for the use of hormonal
4 therapy in the treatment of breast cancer in
5 the adjuvant setting. Eastern Health Breast
6 Cancer Disease Site Group." So this is
7 actually coming from the disease site group,
8 the clinical practice guideline. Are those
9 still in draft as well or are those signed off
10 on?
11 DR. MCCARTHY:
12 A. To my knowledge, they're all still in draft
13 and that we're waiting for some sort of
14 formatting process.
15 CHAYTOR, Q.C.:
16 Q. And what's that about, like a formatting
17 process? What's involved in that and why is
18 there a delay because of that?
19 DR. MCCARTHY:
20 A. Sharon Smith has been involved in this, mainly
21 because I believe they're trying to figure out
22 what type of format Eastern Health wants these
23 put in, in terms of what it looks like on
24 paper, and then to figure out how it's going
25 to be distributed and made known.

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1 CHAYTOR, Q.C.:
2 Q. Yes, but in terms of the content and the
3 guideline for the treating physician to have
4 that, can't that be distributed to you without
5 figuring out how it's going to look on paper?
6 DR. MCCARTHY:
7 A. That's what I thought. I'm just -
8 CHAYTOR, Q.C.:
9 Q. That would be your preference, I take it?
10 DR. MCCARTHY:
11 A. Yes, but we've been waiting for this
12 formatting process to be finalized.
13 CHAYTOR, Q.C.:
14 Q. Okay, and Doctor, if I'd just take you down
15 here, because under recommendations and
16 supporting evidence, it again talks about the
17 assessment to take place 12 weeks, with
18 before. So I think it's put down as 12 weeks
19 here. It says "for patients who have estrogen
20 and/or progesterone positive disease, adjuvant
21 hormonal therapy will be discussed." So
22 that's the same. "The threshold for ER and PR
23 positivity has changed and evolved over the
24 past several years. The breast site group has
25 decided to accept the St. Gowan 25, 2005

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1 recommendations in which patients which
2 hormone receptor staining found to be greater
3 than ten percent are considered hormone
4 positive and should be offered hormonal
5 treatment. Those with one to ten percent
6 staining are deemed to be hormone response
7 unknown and may still be offered hormonal
8 manipulation, while those with less than one
9 percent no detectable hormone receptor
10 staining are considered to be negative and
11 therefore do not derive benefit from hormonal
12 therapy."
13 So I'm just wondering, is this more
14 reflective of the current practice or is the
15 first guideline that I brought you to where it
16 just talked about the one percent?
17 DR. MCCARTHY:
18 A. Well, this is still reflective. It still says
19 similar information, and that you would still
20 consider one to ten percent for hormonal
21 manipulation. However, we now take that group
22 and present them at tumour board, to get the
23 group's opinion.
24 CHAYTOR, Q.C.:
25 Q. Okay, and will that also be included in your

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1 guideline when it's finally signed off on,
2 that those people are to be sent to tumour
3 board rounds?
4 DR. MCCARTHY:
5 A. That's a good question. I'm going to discuss
6 that with the group at our next meeting and
7 obviously with Dr. Laing as well to see if we
8 should put in that extra statement.
9 CHAYTOR, Q.C.:
10 Q. Okay. Just want to go back a minute to your
11 training to figure out or ask you some
12 questions about what you would have been
13 taught about the importance of hormone
14 receptor testing, and whether you were taught
15 anything in terms of types of breast cancers
16 that you would expect to be more likely ER
17 positive tumours?
18 DR. MCCARTHY:
19 A. The two types that we were taught routinely
20 that were more likely to be hormone receptor
21 positive were lobular, as you've heard before,
22 and tubular, and of course, general ductals
23 who were well differentiated who are also more
24 likely. The exact numbers that were often
25 discussed in my teaching were between 80 to 90

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1 percent on average, we'll say 85 percent, but
2 certainly not 100 percent.
3 CHAYTOR, Q.C.:
4 Q. Okay, and for which group, the 80 to 90?
5 DR. MCCARTHY:
6 A. For the lobular types.
7 CHAYTOR, Q.C.:
8 Q. For the lobular, okay, and how about for the
9 others?
10 DR. MCCARTHY:
11 A. For the others, again, similar numbers, 85 to
12 90 percent.
13 CHAYTOR, Q.C.:
14 Q. Okay, and Doctor, prior to, if you think back
15 before all of this happens and the index case,
16 as it's been referred to, if you had received
17 an ER/PR result that didn't meet your
18 expectations, if you were expecting that, you
19 know, really this--whether it's because of the
20 type of cancer or because the person was PR
21 positive that an ER test came back and was
22 negative, what would you have done in that
23 situation, if the result did not meet your
24 expectation?
25 DR. MCCARTHY:

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1 A. I'm trying to remember if I had any cases that
2 I would have called the pathologist on that
3 issue. It's possible, but I don't recall any
4 specific cases.
5 CHAYTOR, Q.C.:
6 Q. Okay. So do you recall whether or not you
7 ever requested to have an ER/PR test repeated?
8 DR. MCCARTHY:
9 A. Again, it's possible that I did, but I don't
10 recall the specific cases, any specific cases.
11 CHAYTOR, Q.C.:
12 Q. And Doctor, if you did, do you--if you had had
13 a changed result, do you think you would have
14 recalled that? If you had a test done and it
15 came back different, do you think that's
16 something would stick out in your mind?
17 DR. MCCARTHY:
18 A. I think it would depend on the clinical
19 context of why I would have called, why it
20 didn't make sense to me at that time, and what
21 the circumstances were, but I don't recall any
22 right now, before this time period.
23 CHAYTOR, Q.C.:
24 Q. And so it could be that you did request a test
25 to be repeated, had a changed result, but you

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1 would not remember that happening?
2 DR. MCCARTHY:
3 A. I don't recall any specific cases.
4 CHAYTOR, Q.C.:
5 Q. Doctor, currently, what portion of your
6 patients are breast cancer patients?
7 DR. MCCARTHY:
8 A. 80 percent.
9 CHAYTOR, Q.C.:
10 Q. Okay, and has that evolved over time as well?
11 We've heard Dr. Laing say how there's more of
12 a focus now in particular disease sites, and
13 so when you first started, back in July 2001,
14 what portion of your patients would have been
15 breast cancer at that point in time?
16 DR. MCCARTHY:
17 A. 50 to 60 percent.
18 CHAYTOR, Q.C.:
19 Q. Okay, and Doctor, prior to then 2005, did you
20 ever hear of any concerns regarding the lab or
21 regarding the results being produced by the
22 lab?
23 DR. MCCARTHY:
24 A. I don't recall any specific discussion about
25 anything other than the one statement that

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1 this memory came up after the index case. At
2 the time, I understood that it meant--the
3 comment was--I'll tell you the comment first,
4 and then how I interpreted it. The comment
5 was made by Dr. Greenland in tumour board and
6 he -
7 CHAYTOR, Q.C.:
8 Q. And Dr. Greenland is a radiation oncologist?
9 DR. MCCARTHY:
10 A. Radiation oncologist, yeah, who at that time -
11 CHAYTOR, Q.C.:
12 Q. And he also happens to be your brother?
13 DR. MCCARTHY:
14 A. My brother, yeah, and he was treating a lot of
15 breast cancer at that time, although his
16 practice has changed, and he said "is there"--
17 something like this, "is there a lot of ER/PR
18 negative breast cancer in this province?"
19 This would have been roughly 2003. I remember
20 that only because of where they were taking
21 place, in the old physics lab. And why this
22 memory came back to me, after the index case,
23 I don't know, but it came back to me somehow
24 and I took it to mean that we just had a lot
25 of aggressive cancer in the province, blaming

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1 our genetics, you know, and I remember
2 thinking "yeah, we might have a really strong
3 genetic problem, and you know, there's a lot
4 of more nasty cancers, a lot more ER/PR
5 negative cancers," and he was just sort of
6 musing, and Dr. Ford Elms replied and said
7 there was a problem with the testing, but it
8 was fixed, and we were all happy that it was
9 fixed. Nobody questioned it. Nobody even
10 discussed it, and nobody else really responded
11 to his statement, that I can recall.
12 CHAYTOR, Q.C.:
13 Q. Okay. So Doctor, did--so nobody asked, how
14 long has this been a problem or how long had
15 the problem been going on before it was fixed?
16 DR. MCCARTHY:
17 A. No, nobody asked any questions.
18 CHAYTOR, Q.C.:
19 Q. And nobody asked what was the nature of the
20 problem?
21 DR. MCCARTHY:
22 A. Nobody asked any questions.
23 CHAYTOR, Q.C.:
24 Q. And nobody asked "what does that mean in terms
25 of the tests that we relied on the week

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1 before, the month before or the year before
2 you detected and fixed the problem?"
3 DR. MCCARTHY:
4 A. Again, nobody asked any questions.
5 CHAYTOR, Q.C.:
6 Q. Doctor, in April or mid April 2003, there was
7 the first meeting of a Surgical Pathology
8 Review Committee, and Dr. Siddiqui was the
9 representative from the oncology group,
10 medical oncology group on that committee. Did
11 Dr. Siddiqui ever bring to your attention or
12 discuss with you anything that was happening
13 in that committee?
14 DR. MCCARTHY:
15 A. No.
16 CHAYTOR, Q.C.:
17 Q. So the fact that that committee had discussed
18 a suspension in ER/PR testing along with some
19 other stains in 2003, that wasn't brought to
20 your attention by Dr. Siddiqui at that time?
21 DR. MCCARTHY:
22 A. No.
23 CHAYTOR, Q.C.:
24 Q. Okay. Doctor, was it brought to your
25 attention, other than the comment at the group

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1 that you just described, where your brother
2 raised--or Dr. Greenland raised the question,
3 did anything else ever come to your attention
4 about concerns in the laboratory in 2003?
5 DR. MCCARTHY:
6 A. Not that I can recall.
7 CHAYTOR, Q.C.:
8 Q. Okay, and if we could have, please, P-0113?
9 And Doctor, these are what are being referred
10 to as the Ejeckam memos, and there's a series
11 of three of them, the first being April 4th,
12 2003, and it's sent to all pathologists in the
13 province and copied to Barry Dyer and the
14 technical staff, and it says "kindly note that
15 immunohistochemical stains with the following
16 antibodies," including ER and PR, "have
17 remained unreliable, erratic and therefore
18 unhelpful for diagnostic purposes. Consequent
19 on the above, staining with these antibodies
20 shall stop forthwith until we can solve the
21 reliability, sensitivity and specificity
22 problems."
23 Doctor, did you see this memo at the
24 time, in 2003, or otherwise were the contents
25 of it brought to your attention?

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1 DR. MCCARTHY:
2 A. No.
3 CHAYTOR, Q.C.:
4 Q. Okay, and Doctor, as a clinician practising in
5 the same institution that would be relying
6 upon these results, would it be of interest or
7 import to you to have had this brought to your
8 attention?
9 DR. MCCARTHY:
10 A. Yes.
11 CHAYTOR, Q.C.:
12 Q. And Doctor, had it been brought to your
13 attention, what would you have done?
14 DR. MCCARTHY:
15 A. I would have asked more questions. I would
16 have asked Dr. Ejeckam specifically who wrote
17 the memo more questions about what happened
18 and the extent of it.
19 CHAYTOR, Q.C.:
20 Q. And Doctor, we'll hear more about this, I'm
21 sure, as we talk about how the index case
22 comes about and what happens in the aftermath
23 of the index case. Do you believe that had
24 you known about Dr. Ejeckam's concerns in
25 2003, had that been brought to your attention,

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1 that perhaps you would have been instrumental
2 in asking for further cases to be reviewed at
3 that time?
4 DR. MCCARTHY:
5 A. It depends on what Dr. Ejeckam would have told
6 me when I went to ask him about the problem.
7 So that would be purely speculation, but I
8 would have asked more questions about the
9 extent of the problem and met with my
10 colleagues, including Dr. Laing and Dr.
11 Zulfiqar especially, but all of my oncology
12 colleagues to discuss this further.
13 CHAYTOR, Q.C.:
14 Q. And Doctor, it says "have remained unreliable,
15 erratic and therefore unhelpful for diagnostic
16 purposes." So the idea that this is something
17 "have remained" not something that's happened
18 one occasion. It appears it's "have
19 remained." You would have been asking
20 questions, I take it, about "well, how long
21 has this been going on? Can I rely on the
22 reports that you've given to me previously?"
23 DR. MCCARTHY:
24 A. Yes.
25 CHAYTOR, Q.C.:

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1 Q. Okay, and that's his second--there's a second
2 memo too, Doctor, May 2nd '03, and actually,
3 before I leave the first memo, when Doctor,
4 did you become aware of the existence of this
5 memo or the subject matter discussed in the
6 memo?
7 DR. MCCARTHY:
8 A. By the media, the first time I heard about it,
9 when Premier Williams was discussing one of
10 the memos, was the first -
11 CHAYTOR, Q.C.:
12 Q. So that's in May of 2007?
13 DR. MCCARTHY:
14 A. That was the first time I'd heard about it,
15 but the first time I'd ever seen these memos
16 was through my legal counsel during this
17 process.
18 CHAYTOR, Q.C.:
19 Q. Okay. So you didn't even know about the
20 existence of the memos, nor the content or
21 subject matter discussed in the memos until
22 May of 2007?
23 DR. MCCARTHY:
24 A. Correct.
25 CHAYTOR, Q.C.:

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1 Q. Okay, and the first time you physically then
2 saw the memos was during getting ready for
3 this process?
4 DR. MCCARTHY:
5 A. Correct.
6 CHAYTOR, Q.C.:
7 Q. Okay. Doctor, the June 19th, 2003 memo, which
8 is found at page five of the exhibit is only
9 addressed to Dr. Gulliver, by Dr. Ejeckam, and
10 it's copied to a number of people, including
11 Doctors Robb, Cook, Parai and Barry Dyer, the
12 manager, and in this, at paragraph six on page
13 seven of the exhibit, Dr. Ejeckam writes
14 "diagnosis based on inappropriate immunostain
15 will surely jeopardize patient care and may
16 even expose the HCCSJ to litigation.
17 Therefore, it will be ill advised to operate
18 an unreliable and erratic immunohistochemical
19 procedures in our laboratory." And Doctor, I
20 take it then at the time of this, in 2003, or
21 any time prior to 2007, this wasn't brought to
22 your attention?
23 DR. MCCARTHY:
24 A. No.
25 CHAYTOR, Q.C.:

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1 Q. Okay, and again, had it been brought to your
2 attention, what, if anything, would you have
3 done?
4 DR. MCCARTHY:
5 A. Again, I would have asked more questions,
6 requested more information from Dr. Ejeckam
7 and my pathology colleagues and discussed it
8 with my colleagues.
9 CHAYTOR, Q.C.:
10 Q. And Doctor, in 2003, you have your tumour
11 board rounds up and running. You've been
12 instrumental in doing that and they've been
13 happening for about a two-year period at that
14 point. Did Dr. Ejeckam attend your tumour
15 board rounds?
16 DR. MCCARTHY:
17 A. Not that I can recall.
18 CHAYTOR, Q.C.:
19 Q. He never attended?
20 DR. MCCARTHY:
21 A. Not that I can recall.
22 CHAYTOR, Q.C.:
23 Q. Do you recall any other pathologist bringing
24 this issue up at tumour board rounds, other
25 than the comment by Dr. Elms?

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1 DR. MCCARTHY:
2 A. No.
3 CHAYTOR, Q.C.:
4 Q. And Doctor, I asked you whether or not you,
5 yourself, had ever had occasion to have an
6 ER/PR test repeated prior to 2005, and you
7 can't recall whether or not you would have.
8 Do you know whether or not you heard of anyone
9 else having had a test repeated, any other
10 oncologists?
11 DR. MCCARTHY:
12 A. Not that I can recall.
13 CHAYTOR, Q.C.:
14 Q. Okay, and Dr. Laing has told the Commissioner
15 about a situation regarding a patient, and I
16 believe her case was in 2002. She had
17 received an ER/PR test on her biopsy specimen,
18 which was positive, and then the mastectomy
19 specimen also had an ER/PR test and that was
20 negative, and this caught Dr. Laing's
21 attention, and she asked to have--and it was
22 on the same tumour, the biopsy and the
23 mastectomy specimen. This caught her
24 attention and she asked to have the mastectomy
25 test repeated, and that came back again

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1 negative. Do you recall anything about that
2 case or that case being discussed with you at
3 the time or at any later point?
4 DR. MCCARTHY:
5 A. I don't--I would be guessing if I told you I
6 did remember. I mean, it's ringing a bell,
7 but again, the exact details of the case, I
8 don't recall.
9 CHAYTOR, Q.C.:
10 Q. Okay, and I believe you may have later, at
11 some later point, and maybe it was during a
12 leave of absence of Dr. Laing, but at some
13 point, you became involved in the patient's
14 care or wrote to another institution outside
15 the province on this particular patient and
16 referred to the fact that there were two
17 conflicting reports. Does that ring any bell?
18 DR. MCCARTHY:
19 A. Again, if it's the same patient I'm thinking
20 of, I recall about that, but again, the
21 details, I don't recall. But if it's the same
22 patient I'm thinking of, I believe that lady
23 moved out of province shortly after I met her.
24 CHAYTOR, Q.C.:
25 Q. Yes, and at the time, did that strike you as a

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1 little strange that there were these two
2 different reports, to the point that you would
3 put it in the correspondence to the outside
4 institution?
5 DR. MCCARTHY:
6 A. Well, I would have put it in the
7 correspondence to the outside institution only
8 because I felt it was important to put all the
9 information in there. That's how I do the
10 majority of my letters when a patient
11 especially is transferring care, but whether
12 or not it struck me unusual at the time, I
13 can't recall.
14 CHAYTOR, Q.C.:
15 Q. Doctor, I take it sometimes you treat patients
16 who originate from the Clarenville area?
17 DR. MCCARTHY:
18 A. Correct.
19 CHAYTOR, Q.C.:
20 Q. Were you aware, over the years, in treating
21 those patients that their ER/PR tests were
22 taking place at Mount Sinai?
23 DR. MCCARTHY:
24 A. Yes, I found that out after the fact, once
25 this process started.

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1 CHAYTOR, Q.C.:
2 Q. Okay. So while you were treating those
3 patients in 2001 through to 2005, you weren't
4 aware of that?
5 DR. MCCARTHY:
6 A. No.
7 CHAYTOR, Q.C.:
8 Q. And how did it come to your attention?
9 DR. MCCARTHY:
10 A. Because when they were compiling lists of who
11 to retest, and that would be Heather Predham
12 and Dr. Cook, I think I asked at one point
13 "where are the Clarenville patients? I
14 haven't seen anybody from Clarenville." And
15 they said because they were already sent to
16 Mount Sinai, so they didn't need to be redone.
17 CHAYTOR, Q.C.:
18 Q. Okay. Doctor, how would you describe, over
19 the years, the working relationship amongst
20 the medical oncologists within your group?
21 DR. MCCARTHY:
22 A. We've always had a good relationship, like
23 from the first time I arrived. There were
24 some difficulties with our former chief, Dr.
25 Tang, who left, in terms of differences of

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1 opinion on how things should be done, for
2 example, tumour board rounds. We had a
3 difference of opinion on that. He left
4 shortly after, and the group continued to
5 grow, and we continued to take on, you know,
6 more initiatives, such as oncology grand
7 rounds and continued to improve our working
8 relations and our communications, and so it
9 went from being good, quite good, to getting
10 better and better, and I would say we have an
11 excellent working relationship. We all get
12 along very well. We communicate well, and
13 talk regularly on a daily basis.
14 CHAYTOR, Q.C.:
15 Q. Okay. So you interact very frequently with
16 each other?
17 DR. MCCARTHY:
18 A. Yes.
19 CHAYTOR, Q.C.:
20 Q. And I take it, in addition to your formal
21 avenues for bouncing cases off one another,
22 you also would have lots of opportunity for
23 informal conversation and a chance to walk
24 into a colleague's office and say, you know,
25 "I'd like to pick your brain about this

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1 particular patient," if it was something that
2 was unusual?
3 DR. MCCARTHY:
4 A. That happens on a daily basis.
5 CHAYTOR, Q.C.:
6 Q. And if we could have, please, C-175. Doctor,
7 this is a final surgical report belonging to a
8 patient whose name has been redacted, and I'll
9 just take you to the addendum to the report.
10 You'll see addendum #1, and this is on page 2
11 of the exhibit, entered on May 6th, 2003, "The
12 stains have been delayed due to unavailability
13 in the lab. When compared to controls, the
14 specimen is negative for HER2/neu, ER and PR",
15 and then on May 9th, 2003, three days later,
16 the ER and PR were repeated due to quality
17 assurance issues. "The repeated stains show
18 the following; ER positive in 80 percent of
19 the cells, ER(sic) positive in 10 percent of
20 the cells. This replaces the previous report.
21 Phone to Cancer Clinic voice mail on May 9th,
22 2003". Doctor, do you recall whether or not,
23 and I've given you the name of the patient
24 before we came in this morning, do you know
25 whether or not this is your patient?

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1 DR. MCCARTHY:
2 A. I don't remember.
3 CHAYTOR, Q.C.:
4 Q. Doctor, if you had received a phone call, and
5 unfortunately we don't know what the voice
6 mail message would have been, but if it had
7 indicated that it was repeated due to quality
8 assurance issues, would that have caused you
9 to ask any more questions?
10 DR. MCCARTHY:
11 A. I would think so.
12 CHAYTOR, Q.C.:
13 Q. And, Doctor, the idea of three days later
14 receiving a change in results, whichever
15 oncologist received this, which I take it in
16 this case all other factors being equal, might
17 be of clinical significance in terms of the
18 treatment of the patient, would you expect
19 that to raise questions to the treating
20 oncologist?
21 DR. MCCARTHY:
22 A. I would expect so. I don't recall this case
23 or the circumstances, so I--I'm just
24 speculating.
25 CHAYTOR, Q.C.:

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1 Q. And you don't recall anyone speaking to you
2 about it, none of your colleagues saying look
3 what I just received, says that the ER and PR
4 were repeated due to quality assurance issues
5 and three days later I have a different
6 result, nobody brought that to your attention?
7 DR. MCCARTHY:
8 A. No.
9 CHAYTOR, Q.C.:
10 Q. And had it been brought t your attention,
11 Doctor, do you think that's something you
12 would remember?
13 DR. MCCARTHY:
14 A. I would think so, but again I don't recall.
15 CHAYTOR, Q.C.:
16 Q. If we could have, please, C-228. Doctor, this
17 is another patient and I mentioned her name to
18 you this morning as well, and I understand, by
19 the way, you have a high patient caseload and
20 you haven't had a chance to review the
21 person's chart to familiarize yourself, but I
22 just want to show you this one as well because
23 again there's a repeat in 2003 of the ER/PR
24 test. This time the first one was entered,
25 the first results was entered on March 17th,

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1 2003, and it says estrogen and progesterone
2 immunoperoxidase method, ER occasional
3 positive cells, less than 1 percent, and then
4 PR, 15 percent positivity, and it's indicated
5 no controls available, and then it's repeated
6 on May 28th, 2003, and it says, "As requested,
7 repeat estrogen and progesterone receptors by
8 immunoperoxidase staining, estrogen receptors
9 are now 40 percent positive, progesterone
10 receptors, 73 percent positivity", and,
11 Doctor, normally if it says "as requested",
12 who would you expect would be requesting--
13 once the addendum has been entered on the
14 chart, who would be requesting a repeat?
15 DR. MCCARTHY:
16 A. I would be guessing one of the treating
17 physicians, be it the surgeon, the medical or
18 the radiation oncologist.
19 CHAYTOR, Q.C.:
20 Q. Yes, and then you'll see in brackets, it says
21 that the controls are now positive. If you
22 received a report which says no controls
23 available, would that cause you any question
24 as to can I rely on this test, or what does
25 that mean exactly?

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1 DR. MCCARTHY:
2 A. In 2003, it would not have because in 2003 I
3 did not recognize the importance of the
4 controls.
5 CHAYTOR, Q.C.:
6 Q. Okay.
7 DR. MCCARTHY:
8 A. Knowing what I know now in retrospect, that
9 would have raised a flag to me at that time,
10 but at that time when I wasn't aware, that
11 would not have raised a red flag.
12 CHAYTOR, Q.C.:
13 Q. Okay, and perhaps who the treating physician
14 was that it raised a red flag, we don't know,
15 and maybe that's why it caused the repeat
16 because it does indicate then that the
17 controls have been checked and they're
18 positive on the repeat. Doctor, and again
19 this case and this happens then in 2003 as
20 well, the first one that I showed you was also
21 in May of 2003, and this one while the first
22 test was repeated in March--was conducted in
23 March, the repeat is done in May of 2003,
24 nothing sticks out in your mind in terms of a
25 discussion with any colleague regarding this

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1 particular change in results?
2 DR. MCCARTHY:
3 A. No.
4 CHAYTOR, Q.C.:
5 Q. And if we could have, please, C-174. Doctor,
6 whose office is adjacent to yours?
7 DR. MCCARTHY:
8 A. Dr. Siddiqui is to my right, Dr. Farrell is to
9 my left.
10 CHAYTOR, Q.C.:
11 Q. And has that been the case back in 2002/2003?
12 DR. MCCARTHY:
13 A. Yes.
14 CHAYTOR, Q.C.:
15 Q. Okay, and this particular case at C-174, we
16 know to be Dr. Zaidi's case, and where would
17 he be in relation to your office? I know he's
18 left now, but --
19 DR. MCCARTHY:
20 A. I think he moved at least two, if not three
21 different times. He was completely out of the
22 area of the doctors the first time, and the
23 second time he was quite a distance away,
24 around the hall up towards the corridor. The
25 third time he was in the--a 90 degree angle to

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1 me again, a distance away from me. So he had
2 three different offices during his stay.
3 CHAYTOR, Q.C.:
4 Q. And at this point in time then in 2002 is the
5 first time that this ER/PR test is conducted.
6 You'll see here August 29th, 2002, is entered
7 on the patient's chart, "Immunohistochemical
8 staining for progesterone receptors is
9 positive in approximately 15 percent of
10 lesional cells. Immunohistochemical staining
11 for estrogen receptors is negative", and then
12 that test is repeated almost a year later, or
13 certainly ten months later, on June 11th,
14 2003, and it says at the request of Dr. Zaidi.
15 "Immunohistochemical staining for estrogen and
16 progesterone receptors has been repeated.
17 Estrogen receptors show faint positivity in
18 approximately 10 to 15 of lesional cells, and
19 progesterone receptors are unequivocally
20 positive in approximately 75 percent".
21 Doctor, did Dr. Zaidi ever discuss this case
22 with you?
23 DR. MCCARTHY:
24 A. No.
25 CHAYTOR, Q.C.:

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1 Q. Was it otherwise at any point brought to your
2 attention?
3 DR. MCCARTHY:
4 A. No.
5 CHAYTOR, Q.C.:
6 Q. Again, Doctor, this repeat happens June 11th,
7 2003, so follows closely on the other two. If
8 in that time period, or any time period, it
9 had come to your attention that within a month
10 we've got three examples here of repeats and
11 the results changing, would that have been of
12 concern to you?
13 DR. MCCARTHY:
14 A. Yes.
15 CHAYTOR, Q.C.:
16 Q. What would you have caused to have happen at
17 that point, Doctor?
18 DR. MCCARTHY:
19 A. During one of our regular meetings with my
20 oncology colleagues we would have discussed
21 it, and come to some ideas what we should do,
22 but I would be guessing that we would have
23 contacted the pathologist, such as Dr. Cook or
24 whoever the pathologists were that signed off
25 on these tests to discuss it with them as

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1 well.
2 CHAYTOR, Q.C.:
3 Q. And in this case here, it was Dr. Elms, and I
4 understand with the index case when the repeat
5 happened there, it was Dr. Elms, the original
6 reporting pathologist who was contacted?
7 DR. MCCARTHY:
8 A. Yes, that's correct.
9 CHAYTOR, Q.C.:
10 Q. Doctor, do you have any reason to think that
11 you would have treated those cases or
12 responded to those cases any different than
13 you did in the aftermath of the index case?
14 DR. MCCARTHY:
15 A. I think if we had seen--I believe you showed
16 me that was the second or the third of the
17 cases. I think if I had been aware of two or
18 three cases during the same time period in a
19 row that the results had changed, I think I
20 would have done the same thing that I did
21 after the index case, discussed it with my
22 colleagues and contacted the pathology
23 department.
24 CHAYTOR, Q.C.:
25 Q. Doctor, why would it take two or three cases,

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1 as opposed to one case?
2 DR. MCCARTHY:
3 A. The issue with the--are we going to talk about
4 the index case now, how that was different to
5 us?
6 CHAYTOR, Q.C.:
7 Q. Yeah, well, then perhaps you could explain why
8 would there have been a difference?
9 DR. MCCARTHY:
10 A. Okay, the index case to us was a bit different
11 because she was considered to be a lobular,
12 and when Dr. Hudis sent Dr. Laing the e-mail,
13 this was new information about this--the
14 possibility of the 100 percent or all lobulars
15 being positive, that was new information to
16 us, we had not heard that before, and that's
17 why the index case was different because she
18 was lobular and because of the new
19 information. Ductals don't have the same high
20 degree of positivity and if these were--I
21 don't remember if these were well, or
22 moderate, or poorly differentiated or what
23 their differentiation was, that one there as
24 well. If you'd seen two or three well
25 differentiated patients in a row that the

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1 results didn't make sense, then that would
2 have also raised a red flag to me. One would
3 not. To give you an example, within the past
4 two to three months I've had a well
5 differentiated ductal carcinoma patient
6 reviewed by Dr. Beverley Carter and signed off
7 at Mount Sinai as being ER/PR negative.
8 CHAYTOR, Q.C.:
9 Q. Okay.
10 DR. MCCARTHY:
11 A. So you know these--from time to time there is
12 a percentage that are indeed negative. So one
13 from time to time would not raise a red flag.
14 Several in a row probably would.
15 CHAYTOR, Q.C.:
16 Q. And in your recent case, did you cause that
17 test to be repeated?
18 DR. MCCARTHY:
19 A. Well, I called Dr. Carter. The first thing I
20 did was call --
21 CHAYTOR, Q.C.:
22 Q. At least it raised the question.
23 DR. MCCARTHY:
24 A. Oh, absolutely. The first thing I did was
25 call Dr. Carter to confirm that she had

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1 reviewed the result and that a separate
2 pathologist had reviewed the result at Sinai.
3 So I had two pathologists saying this was
4 negative, and I remember discussing with her,
5 do we need a third, and her saying to me, no,
6 we've had two, that's enough.
7 CHAYTOR, Q.C.:
8 Q. So you had a pathologist review the
9 interpretation of the test, but the test
10 itself wasn't repeated?
11 DR. MCCARTHY:
12 A. To my knowledge, no, it was not.
13 CHAYTOR, Q.C.:
14 Q. And what about current findings in terms of
15 lobulars, have you seen a negative lobular
16 since?
17 DR. MCCARTHY:
18 A. I have.
19 CHAYTOR, Q.C.:
20 Q. Okay, and tell us about that, what happened?
21 DR. MCCARTHY:
22 A. Again I discussed it with the pathologist.
23 Whether it was Dr. Carter, I can't recall, but
24 again it was reviewed by the pathologist here
25 and reviewed by the pathologist at Sinai.

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1 CHAYTOR, Q.C.:
2 Q. So that test came out of Mount Sinai, and did
3 you ask to have the test itself repeated?
4 DR. MCCARTHY:
5 A. I don't recall if I asked to have it repeated
6 or not. I just wanted to know that there was
7 at least two opinions on that. There was
8 another pathologist here at one point named
9 Dr. Bibi Naghibi. We used to call her Dr.
10 Bibi. I remember discussing an atypical
11 lobular negative case at that time and raising
12 the question to her at that point as well
13 after all this started, and her saying, yes,
14 there are occasional atypical lobular patients
15 who would be negative and there were two
16 opinions.
17 CHAYTOR, Q.C.:
18 Q. Okay. So you received a negative ER back from
19 Mount Sinai?
20 DR. MCCARTHY:
21 A. Uh-hm.
22 CHAYTOR, Q.C.:
23 Q. And I take it that's recently, and did you
24 contact the pathologist up there or have any
25 discussion with that pathologist?

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1 DR. MCCARTHY:
2 A. No.
3 CHAYTOR, Q.C.:
4 Q. You asked Dr. Carter to review it?
5 DR. MCCARTHY:
6 A. Yes.
7 CHAYTOR, Q.C.:
8 Q. So is there any practice right now, or any
9 policy, I should say, in place to say any
10 lobulars, just repeat it if it's negative?
11 DR. MCCARTHY:
12 A. No, no such policy exists to my knowledge.
13 CHAYTOR, Q.C.:
14 Q. And do you think that might be a good idea?
15 DR. MCCARTHY:
16 A. It would be my opinion that if you have two
17 pathologists with expertise in breast cancer
18 who both agree with the test results, I would
19 be happy with that, and I think the
20 pathologists themselves, if that's a procedure
21 that they felt was important and they would
22 like to discuss that with us, perhaps even at
23 the Breast Site Group meeting it might be a
24 good forum to discuss that, that we could
25 discuss that issue further.

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1 CHAYTOR, Q.C.:
2 Q. Okay, Doctor, then perhaps you can explain to
3 us your knowledge of the circumstances
4 surrounding and giving rise to Peggy Deane's
5 case?
6 DR. MCCARTHY:
7 A. So as you're aware, both Dr. Laing and I
8 shared her care between maternity leaves and
9 so on. She presented with metastatic lobular
10 carcinoma, started on chemotherapy. I became
11 involved shortly after she started
12 chemotherapy the first time, and again when
13 Dr. Laing--at times when Dr. Laing was away.
14 We were getting towards the end of her
15 treatment options. She had asked for any
16 further opinions and I suggested that she go
17 to Princess Margaret Hospital or Sunnybrook or
18 another large cancer centre for another
19 opinion, and I suggested Dr. Trudeau, since I
20 had worked with her, and was--I guess she was
21 a mentor of mine, and she agreed and readily
22 accepted that. So I was the one who actually
23 wrote the letter to Dr. Trudeau to ask for an
24 opinion. Dr. Trudeau essentially agreed with
25 myself and Dr. Laing in terms of what we'd

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1 done so far and what our treatment options
2 were, which were limited at that point, and
3 she'd returned--she was in the hospital and
4 again asked us, so what now, are there any
5 other options, and that's when Dr. Laing said
6 I'm going to e-mail my colleague in the United
7 States, Dr. Cliff Hudis, and that's when it
8 all started with regards to the--he wrote back
9 the one statement saying I believe the lobular
10 case should be positive.
11 CHAYTOR, Q.C.:
12 Q. And did you see that e-mail at the time?
13 DR. MCCARTHY:
14 A. No, no.
15 CHAYTOR, Q.C.:
16 Q. And what did - how did you understand that Dr.
17 Laing knew Dr. Hudis?
18 DR. MCCARTHY:
19 A. She had met him at various meetings, and, I
20 mean, I'd heard his name in several circles in
21 terms of publications and seeing him at large
22 meetings myself, so I thought, well, that's a
23 great idea, he would be a great one to contact
24 if you can get a hold of him, and she readily
25 did get a hold of him and he e-mailed back

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1 fairly quickly, to my understanding, and when
2 he said that, we just looked at each other and
3 thought 100 percent, never heard that, have
4 you heard that, and she said no. I said, wow,
5 we better--you know, we better get her
6 retested. So that's when that process
7 started. Dr. Elms was involved at that point,
8 Dr. Rorke was involved at that point, as was
9 Dr. Greenland, as he was her radiation
10 oncologist. So there were four oncologists
11 and at least one pathologist involved in her
12 case at that point.
13 CHAYTOR, Q.C.:
14 Q. And did you understand that Dr. Hudis had said
15 that all lobulars, 100 percent of them are ER
16 positive?
17 DR. MCCARTHY:
18 A. That was my understanding of what she said
19 that he had not seen a negative lobular.
20 CHAYTOR, Q.C.:
21 Q. That he had never seen one himself in his
22 practice?
23 DR. MCCARTHY:
24 A. Uh-hm.
25 CHAYTOR, Q.C.:

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1 Q. And did Dr. Laing tell you about any
2 subsequent discussions or meetings that she
3 had with Dr. Hudis in which this subject was
4 brought up?
5 DR. MCCARTHY:
6 A. She did. She told me about meeting with him
7 at an international meeting of some sort, and
8 was discussing it with him and the issue of
9 the tissue samples being retested came up and
10 how they came back at 100 percent positive,
11 and they were all lobular tissue samples.
12 CHAYTOR, Q.C.:
13 Q. And so you understood from her that there had
14 been a retest of tissue samples at Dr. Hudis'
15 institution, Sloan-Kettering?
16 DR. MCCARTHY:
17 A. Yes.
18 CHAYTOR, Q.C.:
19 Q. And were those tissue samples known to be
20 previously negatives and positives, and that
21 now they were all 100 percent positives?
22 DR. MCCARTHY:
23 A. My understanding was that these were tissue
24 banked lobular samples that were just all
25 tested and became--and were 100 percent. Is

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1 shouldn't say "became", they were 100 percent.
2 There was no discussion, to my knowledge, of
3 all being negative to begin with, or being a
4 mixed sample, or what the results were to
5 begin with. It was just that when they were
6 tested, they were all ER/PR positive or
7 hormone receptor positive to some degree.
8 CHAYTOR, Q.C.:
9 Q. And did you have any understanding as to when
10 that testing had taken place at Sloan-
11 Kettering?
12 DR. MCCARTHY:
13 A. I don't know, and I have not seen this as
14 published data.
15 CHAYTOR, Q.C.:
16 Q. So at the time that Ms. Deane's case comes up
17 originally in 2002, your understanding of
18 lobulars then that could be--anywhere from
19 around 85 percent of them could be ER
20 positive?
21 DR. MCCARTHY:
22 A. Correct, and I didn't question her case as
23 well because it was poorly differentiated,
24 which if you're going to be in the 15 percent,
25 to my knowledge at that point, that would be a

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1 possibility.
2 CHAYTOR, Q.C.:
3 Q. And so after Dr. Hudis says he's never seen
4 one, he's never seen a negative lobular, that
5 was surprising to you?
6 DR. MCCARTHY:
7 A. Uh-hm.
8 CHAYTOR, Q.C.:
9 Q. So I take it, Doctor McCarthy, you had seen
10 negative lobulars--besides Peggy Deane's, you
11 had seen negative ER lobulars in your
12 practice?
13 DR. MCCARTHY:
14 A. Correct.
15 CHAYTOR, Q.C.:
16 Q. So, Doctor, what happens then after Peggy
17 Deane--and Peggy Deane has the retest. Were
18 you then involved at all in the communication
19 of the information to the patient?
20 DR. MCCARTHY:
21 A. Yes, I was.
22 CHAYTOR, Q.C.:
23 Q. Perhaps you could tell the Commissioner about
24 that?
25 DR. MCCARTHY:

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1 A. Myself and Dr. Laing, when we heard that there
2 was another treatment option for her, were
3 quite happy to hear this to be able to go up
4 and tell her we may have another treatment for
5 you. We discussed it with Dr. Rorke who was
6 the attending physician at the time because
7 she was an in-patient, and we also discussed
8 it with Dr. Greenland, and we all decided to
9 go up together, myself and Dr. Laing and Dr.
10 Greenland and we went in the room, and her
11 husband was there, and we told her. We told
12 her that, your know, your retest has come back
13 and it's positive, and they were quite happy
14 to hear that.
15 CHAYTOR, Q.C.:
16 Q. I take it because it offered her another
17 treatment?
18 DR. MCCARTHY:
19 A. Correct.
20 CHAYTOR, Q.C.:
21 Q. And she was aware that she was being retested,
22 I understand, before the retest actually took
23 place?
24 DR. MCCARTHY:
25 A. Yes.

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1 CHAYTOR, Q.C.:
2 Q. So, Doctor, then in the days and weeks that
3 followed Peggy Deane's retest, what happened?
4 DR. MCCARTHY:
5 A. I can tell you in general. Exactly what
6 happened day to day, I won't be able to tell
7 you, but a general idea of what happened was
8 it took a while for this to sink in, this
9 didn't sink in from day one what the
10 significance of this was. We had several
11 conversations, myself and Dr. Laing, we had
12 conversations with the other oncologists,
13 specifically Dr. Greenland, R. Rorke, Dr.
14 Zulfiqar. They all knew about this case, and
15 somewhere within the following couple of weeks
16 was when that memory of the tumour board in
17 2003 somehow it came to me, and I said to Dr.
18 Laing--I remember this statement, "Could that
19 have some significance with regards to this
20 case", and she said, well, when was it, and I
21 was trying to figure out when it was and I was
22 a bit murky on the details trying to narrow it
23 down, and then I recalled the physics lab.
24 Then we thought, well--we started to talk,
25 well, there's one lobular, could there be

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1 more, can you think of any other lobulars, and
2 this took some time. So this was in the--
3 say, we're into early May by now, we were
4 having these conversations, and we were both
5 trying to think of other cases, and, of
6 course, with the volume that you're dealing
7 with on a daily basis of patients, peripheral
8 clinic patients, you know, hundreds of follow-
9 ups, new patients coming on board, this was
10 not an easy task and we didn't have a way to
11 pull these out of the system. These weren't--
12 lobular specific wasn't captured on the
13 registry. So this would be our own memory,
14 and just to see if we could get an idea if
15 this was a one--a one off, we'll say, a one
16 case. That's when the second case came to my
17 mind roughly about the same time that we
18 called Dr. Cook.
19 CHAYTOR, Q.C.:
20 Q. Okay, and I want to talk to you about the
21 second case. Doctor, I just want to ask back
22 when you had Peggy Deane's retest, did you
23 have any communications with Dr. Elms around
24 that?
25 DR. MCCARTHY:

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1 A. I spoke with him at one point about the
2 result, and I remember him saying this might
3 even be a ductal rather than a lobular. There
4 was some conversation about that, but he
5 wanted to look more into that to confirm that,
6 and in the end she still stayed as a--I
7 believe a lobular with ductal features, and
8 that the results definitely changed, but in
9 terms of the implications or that or anything
10 more about that other than the specific case,
11 I don't recall any other conversation.
12 CHAYTOR, Q.C.:
13 Q. And, Doctor, regardless if it's ductal or
14 lobular, the result has changed, and it
15 clearly had changed?
16 DR. MCCARTHY:
17 A. Yes.
18 CHAYTOR, Q.C.:
19 Q. Did you ask Dr. Elms how could that be, how
20 could you have one test saying something
21 that's clearly different from the other?
22 DR. MCCARTHY:
23 A. I don't remember asking him that specifically
24 at the time. This came up in my conversation
25 with Dr. Laing subsequent to dealing with

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1 Peggy's case specifically. Within the several
2 weeks post was when we were discussing how
3 could this be, and could it be more. These
4 were the questions that we--these were the
5 gist of our conversations, and we had many,
6 and that's when we came to the decision that
7 we need to move further with this and call Dr.
8 Cook.
9 CHAYTOR, Q.C.:
10 Q. And I'll ask you about your discussion about
11 Dr. Cook, and the idea, though, too that in
12 this time period then after Peggy Deane, you
13 start--is when you recall this issue that had
14 come up before that Dr. Elms had said there
15 had been a problem, did you ask then when
16 you're speaking to Dr. Elms, or did you call
17 him back and say, Dr. Elms, what was that all
18 about back in 2003?
19 DR. MCCARTHY:
20 A. I don't remember if I called him up
21 specifically about that. I know I discussed
22 that with him since, and his memory of that
23 was not very strong, but I don't remember
24 specifically when I discussed that with him.
25 CHAYTOR, Q.C.:

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1 Q. So you've since brought it up with him and
2 said, Ford, do you remember, remember you
3 brought an issue up before?
4 DR. MCCARTHY:
5 A. Yeah.
6 CHAYTOR, Q.C.:
7 Q. And what was his response?
8 DR. MCCARTHY:
9 A. He says he doesn't remember much about it at
10 all. He couldn't elaborate further.
11 CHAYTOR, Q.C.:
12 Q. And how about your brother, Dr. Greenland,
13 have you asked him his recollections on it?
14 DR. MCCARTHY:
15 A. Again he doesn't have a good memory of that,
16 and I still can't explain why I remember that.
17 I can't explain it.
18 CHAYTOR, Q.C.:
19 Q. Okay, and has anyone else who was in
20 attendance, have you asked anyone else --
21 DR. MCCARTHY:
22 A. Nobody else remembers this but me.
23 CHAYTOR, Q.C.:
24 Q. Doctor, then your second patient--if we could
25 bring up, please, C-243. Doctor, just one

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1 other thing on Peggy Deane's case, how
2 positive did you understand her ER test to be?
3 DR. MCCARTHY:
4 A. Strongly positive was my understanding, but I
5 don't recall the exact numbers.
6 CHAYTOR, Q.C.:
7 Q. And do you know whether or not a number was
8 actually given?
9 DR. MCCARTHY:
10 A. I don't recall.
11 CHAYTOR, Q.C.:
12 Q. And, Doctor, this is patient #1, we're calling
13 her, and we gave a list. Did you get provided
14 with a list of patient #1 to patient #5 and
15 who they actually would be?
16 DR. MCCARTHY:
17 A. I saw those when Dr. Laing gave her testimony.
18 CHAYTOR, Q.C.:
19 Q. So you understand who we're referring to as
20 patient #1, who I believe might be your second
21 patient after Peggy Deane, the second patient
22 who gets tested?
23 DR. MCCARTHY:
24 A. I believe so. I can't remember which patient
25 is which, but I believe she's on that list,

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1 yes.
2 CHAYTOR, Q.C.:
3 Q. Yes, she is the one that according to our
4 records is next tested and she's retested on
5 May 13th, and, Doctor, she was in to see you
6 on May 4th, and you'll see that we've just
7 redacted everything there.
8 DR. MCCARTHY:
9 A. Right.
10 CHAYTOR, Q.C.:
11 Q. Because there was no--nothing at all related
12 to this ER/PR issue, no mention of any
13 potential retest.
14 DR. MCCARTHY:
15 A. Right.
16 CHAYTOR, Q.C.:
17 Q. And then if we go to page two of the exhibit,
18 she's back to see you on May 11th, 2005, and
19 at this point in time there is reference to
20 her being ER/PR negative, and then down here
21 it says, "I do note that her previous cancer
22 was lobular, and even though it said that she
23 was ER/PR negative, I think we should repeat
24 this because in 2002 there were some problems
25 with the assay. We have had a previous case

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1 of lobular carcinoma that was read as being
2 negative, which was actually positive on
3 review. Thus I will consult pathology
4 urgently today. I will see her again once her
5 CAT scan is done, and we will stop
6 chemotherapy for now". So, Doctor, the first
7 question that I have for you on this is Peggy
8 Deane had been retested back in April, so you
9 would have been aware of that back in mid to
10 late April, this is May 4th, she's in to see
11 you, at this point in time she's a lobular,
12 obviously. I take it it hadn't--as you said,
13 it took a while for it to sink in.
14 DR. MCCARTHY:
15 A. Uh-hm.
16 CHAYTOR, Q.C.:
17 Q. So at this point in time, the significance of
18 Peggy Deane's case and how it may relate to
19 this particular patient hadn't sunk in?
20 DR. MCCARTHY:
21 A. It was. I'll tell you what happened here
22 because I went back and looked at her chart.
23 Her routine visit to see me would be every
24 three weeks. Chemo would have fallen on May
25 11th. When you see metastatic breast cancer

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1 patients, whether they're lobular or ductal,
2 tubular, or--it's not something that's in the
3 forefront of your mind, it's the fact that
4 they're metastatic and what type of treatment
5 and how they're doing. This was an extra
6 visit on that day. This lady had a lot of
7 fluid that had to be drained and she was under
8 a lot of distress. So that was the issue that
9 I dealt with only on that visit. So I would
10 not have sat down, poured through the chart,
11 and it wouldn't have hit me at that time that
12 she was lobular. I knew I knew it, but the
13 fact that she was lobular at that particular
14 visit, that was the reason why it didn't sink
15 in at that time. It was around about this
16 time period too, the first week May, into the
17 second week of May, that we were having
18 discussions about finding more lobulars, which
19 is why on the May 11th visit, I was starting
20 to pay attention specifically to--especially
21 in the metastatic groups, but all of them,
22 about the difference between the lobulars and
23 the ductals, which is why on May 11th I did
24 what I did.
25 CHAYTOR, Q.C.:

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1 Q. And I believe there was another patient that
2 we took Dr. Laing to, who Dr. Laing saw on May
3 6th.
4 DR. MCCARTHY:
5 A. Uh-hm.
6 CHAYTOR, Q.C.:
7 Q. So two days after you had seen this patient,
8 she had a patient in that she saw and she made
9 a note that she was going to request to have
10 her ER/PR test repeated. So I take it in that
11 first week then of May, you and--this was a
12 subject of discussion between yourself and
13 Laing?
14 DR. MCCARTHY:
15 A. Yes.
16 CHAYTOR, Q.C.:
17 Q. Okay. Doctor, you write here on page two of
18 the exhibit, the May 11th visit, "I think we
19 should repeat this because in 2002 there were
20 some problems with the assay". Doctor, what's
21 that referring to?
22 DR. MCCARTHY:
23 A. I don't know why I put that there. I could
24 have had a conversation perhaps with Dr. Elms
25 at that point. That would be a guess, I don't

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1 know where I got that from.
2 CHAYTOR, Q.C.:
3 Q. And did Dr. Elms tell you there had been
4 problems in 2002 with the assay?
5 DR. MCCARTHY:
6 A. I don't know. I'm not quite sure again where
7 I got that particular statement from, and it
8 would have been me guessing there was problems
9 because of the index case being in 2002. So
10 we know there was at least a problem with that
11 one. Why I would have said "some problems", I
12 don't know.
13 CHAYTOR, Q.C.:
14 Q. Doctor, had you had your recollection by this
15 point in time of, you know, the recollection
16 that, well, yeah, I remember something having
17 been discussed, maybe it was 2002, not 2003?
18 DR. MCCARTHY:
19 A. I think I referred to 2002 because that was
20 the index case.
21 CHAYTOR, Q.C.:
22 Q. So you're not sure if this information about
23 there being a problem with the assay in 2002,
24 if that came out of a discussion with Dr. Elms
25 or anyone else?

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1 DR. MCCARTHY:
2 A. I don't recall exactly why I said that
3 particular statement.
4 CHAYTOR, Q.C.:
5 Q. Okay, and, Doctor, in terms of thinking then
6 maybe it related to Peggy Deane's case, would
7 you know whether Peggy Deane's case--when this
8 test is done, whether or not there's one test
9 done at a time or ten ER/PR tests run in the
10 same batch?
11 DR. MCCARTHY:
12 A. I don't know.
13 CHAYTOR, Q.C.:
14 Q. Would you have known that in 2005?
15 DR. MCCARTHY:
16 A. I don't know.
17 CHAYTOR, Q.C.:
18 Q. Do you know that today?
19 DR. MCCARTHY:
20 A. I don't know.
21 CHAYTOR, Q.C.:
22 Q. You still don't know how many tests are run at
23 any given time?
24 DR. MCCARTHY:
25 A. I don't know.

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1 CHAYTOR, Q.C.:
2 Q. And whether or not they're normally done in a
3 batch?
4 DR. MCCARTHY:
5 A. I don't know.
6 CHAYTOR, Q.C.:
7 Q. And in terms of seeing a problem with a
8 particular test, would that be important to
9 know if you knew that five, six, seven other
10 tests were run at the same time as one that
11 had a problem?
12 DR. MCCARTHY:
13 A. I would guess in terms of saying, well, if
14 there's a problem with the one in the batch,
15 could there be problems with others in the
16 batch, that would be my thought process had I
17 known that, yeah.
18 CHAYTOR, Q.C.:
19 Q. Would cause you probably to question all the
20 more about, well, are there others?
21 DR. MCCARTHY:
22 A. Yes.
23 CHAYTOR, Q.C.:
24 Q. Okay. Doctor, patient #1, you were urgently
25 going to request a repeat. Did you do that?

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1 DR. MCCARTHY:
2 A. Yes.
3 CHAYTOR, Q.C.:
4 Q. And tell us about that, who did you contact to
5 arrange that, and what happened?
6 DR. MCCARTHY:
7 A. I would have contacted the pathologist, if I
8 could get a hold of them, who read her first -
9 her original pathology and reported the ER/PR,
10 or I would have contacted Drs. Cook or Carter.
11 I don't recall which one I contacted, and I
12 don't recall if I actually wrote a consult or
13 if I made a phone call.
14 CHAYTOR, Q.C.:
15 Q. So you don't recall specifically who you spoke
16 with?
17 DR. MCCARTHY:
18 A. No.
19 CHAYTOR, Q.C.:
20 Q. Okay, and we understand that on her pathology
21 report, her retest was carried out and
22 actually reported on her chart, or was entered
23 on the chart by May 13th, and was entered by
24 Dr. Cook. Does that assist in who you may
25 have spoken with?

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1 DR. MCCARTHY:
2 A. I would be surmising then that I spoke with
3 Dr. Cook.
4 CHAYTOR, Q.C.:
5 Q. So within two days her retest is in and it's
6 entered on the chart. How did you learn about
7 it? Do you recall then anybody calling you
8 back and letting you know--you've told them, I
9 take it, this is urgent?
10 DR. MCCARTHY:
11 A. Uh-hm.
12 CHAYTOR, Q.C.:
13 Q. It's been done in a very timely manner. Were
14 you phoned or did you have to wait to receive
15 it through the usual course?
16 DR. MCCARTHY:
17 A. I remember finding the results very quickly.
18 Whether I checked my box and it was just there
19 quickly, I don't remember, but I know that I
20 did find out very quickly.
21 CHAYTOR, Q.C.:
22 Q. Okay, and you've now got your second test and
23 it's changed.
24 DR. MCCARTHY:
25 A. Uh-hm.

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1 CHAYTOR, Q.C.:
2 Q. What happens?
3 DR. MCCARTHY:
4 A. Well, I believe it was that afternoon that I
5 had called Dr. Cook, and we decided to arrange
6 for a meeting and I would have met with this
7 patient soon after I got her results to tell
8 her.
9 CHAYTOR, Q.C.:
10 Q. And, Doctor, I understand her results came
11 back quite strongly positive, 90 and 90, at
12 least on the retest in St. John's. So do you
13 recall then following up with Dr. Cook and
14 talking to him about this? Did you then ask
15 him, well, how can this be, we now have
16 another test that's wrong, what's the problem?
17 DR. MCCARTHY:
18 A. That's what I called him about on May 11th.
19 CHAYTOR, Q.C.:
20 Q. And what did he tell you?
21 DR. MCCARTHY:
22 A. We should have a meeting. He was as concerned
23 as I was.
24 CHAYTOR, Q.C.:
25 Q. Did he offer you any explanation about what's

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1 happening here?
2 DR. MCCARTHY:
3 A. None.
4 CHAYTOR, Q.C.:
5 Q. And did you have that subsequent meeting then
6 with him, did you sit down and meet with him?
7 DR. MCCARTHY:
8 A. Yes.
9 CHAYTOR, Q.C.:
10 Q. And who else was in attendance?
11 DR. MCCARTHY:
12 A. Drs. Laing, Carter, Cook, myself, and Mr.
13 Barry Dyer.
14 CHAYTOR, Q.C.:
15 Q. And I think that's the meeting that happens on
16 May 17th. So in between that, in between your
17 discussion then with him to get the test done
18 on May 11th and May 17th, you phone him back,
19 May 13th, I take it, when you get the results
20 or shortly thereafter, any discussion with him
21 as to what could be happening here, or it's
22 just we're going to all sit down and have a
23 meeting?
24 DR. MCCARTHY:
25 A. No, the only discussion was there's something

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1 going on, we need to sit down and come up with
2 a game plan.
3 CHAYTOR, Q.C.:
4 Q. Doctor, when you communicated to patient #1
5 that she too had changed results, what was her
6 reaction?
7 DR. MCCARTHY:
8 A. Very happy. She was so relieved that I could
9 stop the chemotherapy. She was so happy. I
10 don't recall them asking them asking many
11 questions about what happened. I think at
12 some point they did, and I would have said at
13 that point I don't know.
14 CHAYTOR, Q.C.:
15 Q. And, Doctor, on this day, May 11th, when she's
16 in to see you, and you're--did you tell her
17 that you're going to repeat, did you tell her
18 the information that's here in the progress
19 note?
20 DR. MCCARTHY:
21 A. I think I did tell her that I was going to
22 retest. I don't think I told her it's going
23 to change. I didn't want to give her any
24 false hope. I just said I'm just going to
25 look into this further and I'll let you know.

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1 I don't think she understood the significance
2 of what I was doing in terms of a major thing
3 possibly changing because it took a while to
4 explain it to her after I got the results
5 back, but I did tell her--I believe I told her
6 that I was going to look into it further.
7 CHAYTOR, Q.C.:
8 Q. And what was her reaction to that?
9 DR. MCCARTHY:
10 A. Whatever you say, do what you have to do.
11 CHAYTOR, Q.C.:
12 Q. And I take it she was hopeful at that point
13 that perhaps this could be an option for her?
14 DR. MCCARTHY:
15 A. Yes.
16 CHAYTOR, Q.C.:
17 Q. Doctor, before I leave this patient, I
18 understand that she was also further retested
19 on August 18th, 2005, by Mount Sinai?
20 DR. MCCARTHY:
21 A. Yes.
22 CHAYTOR, Q.C.:
23 Q. And would you have asked that that happen, or
24 was that done as part of the review?
25 DR. MCCARTHY:

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1 A. I think it was done as part of the review. I
2 don't recall specifically asking it to go to
3 Sinai.
4 CHAYTOR, Q.C.:
5 Q. Okay, and those results came back and
6 according to our records, she was--still
7 remained positive ER, 60 percent positive ER,
8 not quite as strong as in St. John's, but 60
9 percent, but her PR was less than 1 percent?
10 DR. MCCARTHY:
11 A. Uh-hm.
12 CHAYTOR, Q.C.:
13 Q. And would that result as well have been
14 communicated to the patient?
15 DR. MCCARTHY:
16 A. I don't recall communicating that to her, no.
17 CHAYTOR, Q.C.:
18 Q. And what would have been the purpose at that
19 point in time in August, 2005? I take it
20 she's already started on her treatment, her
21 anti-hormonal treatment. What would be the
22 purpose then of having her repeated in August
23 of 2005?
24 DR. MCCARTHY:
25 A. I'm not sure why that was done. I don't

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1 recall specifically requesting that. I do
2 recall at some point there was a question of
3 the Ventana System being oversensitive, and
4 having too many positives. There was some
5 discussion with Drs. Cook and Carter on that,
6 and that they were looking further into that
7 and sending results to Sinai, but why her
8 particular case went at that time, I don't
9 know.
10 CHAYTOR, Q.C.:
11 Q. And the fact that her PR at 90 percent of the
12 Ventana, on Mount Sinai's was 1 percent, did
13 that cause you any concern in terms that
14 discrepancy in the results?
15 DR. MCCARTHY:
16 A. Again it was clarified to me when Drs. Cook
17 and Carter said to me, we are wondering if the
18 Ventana System is over-calling, and that's
19 sort of what was leading down the path of
20 sending things to Sinai.
21 CHAYTOR, Q.C.:
22 Q. But did that cause you then any concern about
23 any patients who had been tested on the
24 Ventana in terms of their PR results?
25 DR. MCCARTHY:

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1 A. It didn't raise any red flags, no.
2 CHAYTOR, Q.C.:
3 Q. Because we understand that a patient might be
4 treated or the practice was to treat if the PR
5 was positive or the ER was positive?
6 DR. MCCARTHY:
7 A. Correct.
8 CHAYTOR, Q.C.:
9 Q. So that didn't cause you think, well, what
10 about patients, what about the accuracy of the
11 PR since we've been using this Ventana System?
12 DR. MCCARTHY:
13 A. Again I was aware that the Ventana System at
14 that point was being considered to over-
15 calling, so I assumed that they were looking
16 into that further.
17 CHAYTOR, Q.C.:
18 Q. And would be reviewing the past cases on PR as
19 well on the Ventana?
20 DR. MCCARTHY:
21 A. No, I don't know if that ever was discussed,
22 not to my knowledge, anyway.
23 CHAYTOR, Q.C.:
24 Q. Okay. Doctor, this patient, patient #1 also
25 then is panelled. Her case is panelled,

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1 December 18th, 2005. Were you aware of that?
2 DR. MCCARTHY:
3 A. I didn't think the panel was until the fall of
4 2005.
5 CHAYTOR, Q.C.:
6 Q. Yes, December 18th, 2005.
7 DR. MCCARTHY:
8 A. Oh, December.
9 CHAYTOR, Q.C.:
10 Q. December, I'm sorry, December, yes.
11 DR. MCCARTHY:
12 A. Oh, December, oh--she could well have been. I
13 don't recall.
14 CHAYTOR, Q.C.:
15 Q. And her panel letter that came out of that
16 process recommended that she be offered
17 hormonal treatment, but at that point in time
18 you would have already had her on Femara?
19 DR. MCCARTHY:
20 A. Correct.
21 CHAYTOR, Q.C.:
22 Q. Yes, okay. Did you at--did you see any
23 purpose in having her panelled in December?
24 She's been put on her treatment back in June.
25 DR. MCCARTHY:

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1 A. I believe that everybody got on the list who
2 were retested at Sinai. That was my belief
3 system. So that everybody, regardless if they
4 had already started or not, was panelled and
5 you saw a lot of examples of that with Dr.
6 Laing's testimony in terms of people who they
7 recognized they'd already been started on
8 something, so they'd already been dealt with,
9 if you will, in terms of their hormone
10 receptor result.
11 CHAYTOR, Q.C.:
12 Q. Okay, and if we could then look at C-245,
13 please. Doctor, this is the patient we're
14 referring to as patient #3.
15 DR. MCCARTHY:
16 A. Uh-hm.
17 CHAYTOR, Q.C.:
18 Q. And she's seen by you on June 22nd then, 2005,
19 and her diagnosis is metastatic breast
20 carcinoma with chest wall recurrence only.
21 "It was originally felt to be ER/PR negative,
22 but recently retested in the past couple of
23 weeks and she is actually strongly positive
24 for both ER and PR", and your plan is, "I have
25 previously presented her case in tumour board

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1 because I do not know how to use the ER/PR
2 positivity information at this time. The
3 group agreed that I would give her Femara with
4 the Herceptin as long as she is responding".
5 So, Doctor, what do you recall about this
6 particular case? Obviously, by June 22nd,
7 she's also been retested and there's been a
8 change in her results.
9 DR. MCCARTHY:
10 A. So this was one of the first ductal cases, I
11 believe, that we retested, and with this
12 particular 82 (phonetic) with chest wall
13 recurrence, which was a very, very difficult
14 situation to treat, very distressful to the
15 patient, I was running out of chemo options,
16 and when I had heard that some of the lobulars
17 were coming back, we were starting to think
18 could it be ductal too because our original
19 thinking it was the lobular cases that were
20 affected by this in terms of the retesting,
21 and we were thinking could there be others,
22 and I said, well, I'm going to retest her, I'm
23 going to ask for her to be retested. The
24 interesting case with her, in particular, was
25 that she was HER2 positive as well, which is

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1 why I mentioned the drug, Herceptin, there and
2 that's the issue I was referring to with
3 regards to how do I use this ER/PR positivity
4 because using hormonal therapy and Herceptin
5 together was not then and is not now standard
6 of care.
7 CHAYTOR, Q.C.:
8 Q. Okay. So and that's why you brought it to
9 your colleagues at the tumour board to
10 discuss?
11 DR. MCCARTHY:
12 A. Correct. So all of the group at the tumour
13 board would have heard about this case, as
14 well.
15 CHAYTOR, Q.C.:
16 Q. At least at that point in time?
17 DR. MCCARTHY:
18 A. At least at that point in time. They would
19 have heard about it before, but others,
20 including other pathologists, other
21 oncologists would have heard about this case,
22 as well.
23 CHAYTOR, Q.C.:
24 Q. So sometime before June 22nd, 2005 you had
25 brought this particular patient number three's

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1 case to the tumour board rounds because you
2 were seeking advice and input from your
3 colleagues. And whoever was in attendance at
4 that, pathologists, oncologists, would have
5 known that this issue is going on?
6 DR. MCCARTHY:
7 A. Correct.
8 CHAYTOR, Q.C.:
9 Q. Okay. And, Doctor, her retest had been also
10 strongly positive, she was 80 percent ER and
11 100 percent PR, according to the in-house
12 retest on the Ventana system. And I take it
13 you communicated that to the patient and she
14 was--and after having consulted the tumour
15 board, she was put on treatment, hormonal
16 treatment?
17 DR. MCCARTHY:
18 A. Correct.
19 CHAYTOR, Q.C.:
20 Q. And did you tell that patient before that you
21 were considering having her retested?
22 DR. MCCARTHY:
23 A. I don't recall specifically telling her ahead
24 of time.
25 CHAYTOR, Q.C.:

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1 Q. Okay. And what was her reaction once you did
2 tell her?
3 DR. MCCARTHY:
4 A. They were shocked and they were quite upset.
5 CHAYTOR, Q.C.:
6 Q. Okay, and why was that?
7 DR. MCCARTHY:
8 A. One of the first questions, I believe, her
9 husband asked was, "Well, why didn't she get
10 this before she had her recurrence?"
11 CHAYTOR, Q.C.:
12 Q. Okay, and, Doctor, what were you able to tell
13 him?
14 DR. MCCARTHY:
15 A. Not very much. I told him I didn't know what
16 had happened. I told him I didn't know what
17 the problem was and that this was an evolving
18 issue.
19 CHAYTOR, Q.C.:
20 Q. And, Doctor, have you since had occasion to
21 talk to him or her and offer any explanation
22 as to how it could have happened?
23 DR. MCCARTHY:
24 A. Unfortunately this lady passed away earlier
25 on, long before now, either in 2005 or 2006,

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1 and, of course, I would have met with her and
2 her husband as things went on. It's my
3 understanding, though, that he may have called
4 the Cancer Clinic administration about this
5 issue. He did not call me specifically other
6 than our regular clinic visits.
7 CHAYTOR, Q.C.:
8 Q. Okay, and how did you learn about that, that
9 he had made contact with the administration?
10 DR. MCCARTHY:
11 A. Dr. Laing.
12 CHAYTOR, Q.C.:
13 Q. Okay, and do you know what the administration
14 told him in terms of how this could have
15 happened?
16 DR. MCCARTHY:
17 A. I don't know what the content of those
18 conversations were.
19 CHAYTOR, Q.C.:
20 Q. So by the time then, Doctor, you had any
21 understanding or any insight into what may
22 have happened, by that time it was too late
23 for you to relay it to your patient?
24 DR. MCCARTHY:
25 A. Correct.

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1 CHAYTOR, Q.C.:
2 Q. Doctor, she was also retested on August 16th,
3 2005, so mid August, as well, at Mount Sinai
4 and she was found to be 40 percent ER and less
5 than one percent PR. And I'm wondering again
6 whether or not then within a couple of days of
7 one another you've had another PR result
8 that's negative at Mount Sinai which was
9 showing to be 100 percent positive in her case
10 here in St. John's, and did that cause you any
11 further concern as to, well, what's going on
12 with the PRs?
13 DR. MCCARTHY:
14 A. I don't recall thinking about that particular
15 issue, not then, and not acknowledging that
16 particular Sinai result as being another PR
17 difference.
18 CHAYTOR, Q.C.:
19 Q. Okay. And again, she was also panelled on
20 December 18th, 2005 and a Panel letter came
21 out on her saying how she'd already been
22 informed and treated, there was no need of any
23 further recommendation. And I take it you
24 would have received the Panel letter on this
25 patient?

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1 DR. MCCARTHY:
2 A. I assume so.
3 CHAYTOR, Q.C.:
4 Q. And do you know had she already passed away by
5 then?
6 DR. MCCARTHY:
7 A. I can't recall exactly when it was that she
8 passed away.
9 CHAYTOR, Q.C.:
10 Q. Doctor, Dr. Baker mentioned in his evidence
11 that it was his recollection that prior to the
12 ER/PR issue being brought to his attention by
13 Dr. Cook that he had received contact from, he
14 thought, perhaps you or Dr. Laing, to request
15 one of his patients or one of the tests he had
16 originally done be retested. Do you recall,
17 did you make any contact with Dr. Baker in
18 this time frame?
19 DR. MCCARTHY:
20 A. Since the index case it's possible. I don't
21 recall any specific conversation with Dr.
22 Baker about this, no.
23 CHAYTOR, Q.C.:
24 Q. Okay, so if he happened to be the original
25 pathologist on one of your patients in this

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1 time period that you're pulling cases on, you
2 would have made the contact with him and asked
3 him to have a repeat arranged?
4 DR. MCCARTHY:
5 A. That's possible, yes.
6 CHAYTOR, Q.C.:
7 Q. Possible, but you have no distinction
8 recollection as to talking to him on that?
9 DR. MCCARTHY:
10 A. No.
11 CHAYTOR, Q.C.:
12 Q. What about any other pathologist, so was it--
13 you were phoning whichever pathologist did the
14 original pathology, is that how that was
15 happening?
16 DR. MCCARTHY:
17 A. At that time if that pathologist was
18 available, or often I would just go ahead and
19 call Doctors Cook or Carter. I had their
20 phone numbers memorized by this point.
21 CHAYTOR, Q.C.:
22 Q. Okay, and, Doctor, then you have your meeting
23 with Dr. Cook and Dr. Carter and Barry Dyer
24 and yourself and Dr. Laing, you all meet on
25 May 17th?

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1 DR. MCCARTHY:
2 A. Correct.
3 CHAYTOR, Q.C.:
4 Q. Okay, and tell us what you recall of that
5 meeting?
6 DR. MCCARTHY:
7 A. That meeting was in level one conference room
8 of the Cancer Clinic. I remember that meeting
9 well because it was a very pertinent meeting
10 to the start of all this. I remember the tone
11 of the meeting to be quite, quite sombre,
12 quite serious. And but everybody in the room
13 shared the same concerns once Dr. Laing and I
14 explained the index case and I also explained
15 my memory of the 2003 issue that I described
16 with Dr. Greenland.
17 CHAYTOR, Q.C.:
18 Q. So you brought that up at that meeting?
19 DR. MCCARTHY:
20 A. I did, I did. Nobody had any other
21 recollection but me and that's as much as I
22 could come up with at that time. I remember
23 everybody sharing concerns, nodding heads,
24 saying, "Yes, this is very serious. We need
25 to get action on this right away." And I

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1 remember coming out of the meeting thinking
2 this is good, we have a start, we are going to
3 move forward. And at that point Dr. Carter was
4 going to retest some cases and it was decided
5 either at that meeting or later that I would
6 be the point person for the initial cases in
7 terms of contact.
8 CHAYTOR, Q.C.:
9 Q. Okay, and so the outcome of having that
10 meeting was that a number of other cases will
11 be retested to see what the results are, and
12 you will be the person that they'll report the
13 results to?
14 DR. MCCARTHY:
15 A. Correct. And Dr. Laing and I agreed to come
16 up with as many cases as we could put our, you
17 know, thinking caps on to come up with the
18 cases that we thought would be urgent.
19 CHAYTOR, Q.C.:
20 Q. Okay, and again, how did you go about doing
21 that, was it just trying to recollect
22 particular patients or patients would walk
23 into your clinic and you would think, well,
24 here's one, she's a lobular, she's a--we
25 should put her on the list?

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1 DR. MCCARTHY:
2 A. All of the above.
3 CHAYTOR, Q.C.:
4 Q. All of the above, okay. And I take it there
5 was no systematic way that you could identify
6 the patients who most urgently needed to be
7 retested?
8 DR. MCCARTHY:
9 A. Correct.
10 CHAYTOR, Q.C.:
11 Q. Doctor, in the meeting you said that you and
12 Dr. Laing explained the index case. What
13 exactly was it that you told?
14 DR. MCCARTHY:
15 A. We basically told, I guess, a Coles Notes
16 version of her case and Dr. Laing's e-mail
17 with Dr. Hudis, how it came to be, what his
18 statement was about lobular cancers, how this
19 was new information to us. And at first we
20 were talking about the idea of it just being
21 lobulars. I mean, we didn't know if there was
22 a difference between testing on lobulars
23 versus ductal. I mean, again, our knowledge
24 of the lab was quite limited. So we were
25 discussing that issue and where to go from

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1 here.
2 CHAYTOR, Q.C.:
3 Q. Okay, and, Doctor, at this point in time, of
4 course, you would have had patient number
5 one's result back or at least it was entered
6 on her chart May 13th. Do you recall asking
7 anyone, Dr. Cook is the pathologists in the
8 room, Barry Dyer is the manager, lab manager,
9 do you recall asking how could this happen,
10 how--explain yourselves, how could you have
11 negative--how could these tests be changing
12 and how go from negative to positive?
13 DR. MCCARTHY:
14 A. We did.
15 CHAYTOR, Q.C.:
16 Q. Okay.
17 DR. MCCARTHY:
18 A. And they didn't have any answers for us at
19 that point.
20 CHAYTOR, Q.C.:
21 Q. And Dr. Cook, you said you brought up your
22 recollection of there having been some problem
23 in 2003 and nobody shared that recollection?
24 DR. MCCARTHY:
25 A. Exactly.

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1 CHAYTOR, Q.C.:
2 Q. And Dr. Cook didn't say to you, "Yes, Dr.
3 Carter, we're aware of that because Dr.
4 Ejeckam, in fact, shut the lab down for a
5 period of time in 2003"?
6 DR. MCCARTHY:
7 A. I don't remember them bringing that up at all.
8 CHAYTOR, Q.C.:
9 Q. Even though you mentioned a vague recollection
10 of there being a problem in 2003?
11 DR. MCCARTHY:
12 A. Correct.
13 CHAYTOR, Q.C.:
14 Q. Doctor, at the time the decision is made in
15 that meeting to do some retests, were there
16 any particular time periods going to be
17 focused on or any particular types of
18 patients?
19 DR. MCCARTHY:
20 A. Not that I can recall. We did focus on the
21 lobular issue, although we didn't decide at
22 that meeting that they were going to be our
23 only focus. But my recollection was that Dr.
24 Carter was going to pick a sample and retest
25 them.

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1 CHAYTOR, Q.C.:
2 Q. Okay. So no discussion with the oncologists
3 as to focusing in on 2002 cases?
4 DR. MCCARTHY:
5 A. Well, yes, that was only because that was the
6 index case and that was why we came up with
7 that year. But there was some discussion of
8 other years, but I do recall that 2002 being
9 the index case was the year that we discussed,
10 in particular.
11 CHAYTOR, Q.C.:
12 Q. And, Doctor, was that also--that was also the
13 year, I believe, of your second case, too, she
14 was a 2002 case, as well, I believe. May
15 24th, my notes say, 2002. So she was a 2002
16 case. So I take it the cases you had at that
17 point in time were 2002s?
18 DR. MCCARTHY:
19 A. Correct.
20 CHAYTOR, Q.C.:
21 Q. Okay. Doctor, you said the tone of the
22 meeting was sombre and serious and obviously
23 everybody shared the same concerns for the
24 patients. Do you recall at any point that the
25 meeting became confrontational in any way?

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1 DR. MCCARTHY:
2 A. Not at all.
3 CHAYTOR, Q.C.:
4 Q. Okay, and, Doctor, are you aware of what Mr.
5 Dyer has stated in his evidence as to an
6 incident between yourself and him that
7 occurred at that meeting?
8 DR. MCCARTHY:
9 A. I'm aware of what he said, yes.
10 CHAYTOR, Q.C.:
11 Q. Okay, and because he says that at one point in
12 time you pointed your finger at him and said,
13 "This is your fault." What--do you have any
14 recollection of anything along those lines
15 happening in that meeting?
16 DR. MCCARTHY:
17 A. No, that did not happen.
18 CHAYTOR, Q.C.:
19 Q. Okay. And if we could look, please, at P-
20 2147? And this is Mr. Dyer's note of the
21 meeting, May 17th, 2005. Doctor, do you have
22 any notes from the meeting?
23 DR. MCCARTHY:
24 A. No, I don't.
25 CHAYTOR, Q.C.:

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1 Q. Okay, and he's got an arrow drawn with a line
2 from your name and then it's "Pointed finger,
3 this is your fault." And, Doctor, you're
4 saying that did not happen?
5 DR. MCCARTHY:
6 A. No.
7 CHAYTOR, Q.C.:
8 Q. Have you ever at any point in time had such a
9 confrontation with Mr. Dyer?
10 DR. MCCARTHY:
11 A. No.
12 CHAYTOR, Q.C.:
13 Q. Okay, so are you able to offer any explanation
14 as to what he's referring to?
15 DR. MCCARTHY:
16 A. I have absolutely no idea what he's referring
17 to here. I've been racking my brain over this
18 to try and figure over this to try and figure
19 out what I could have said or anybody could
20 have said that would have lead him to say this
21 and I can't think of anything.
22 CHAYTOR, Q.C.:
23 Q. Okay, and if we could have, please, P-0067?
24 THE COMMISSIONER:
25 Q. Sorry, before you just move on past, did you

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1 know Mr. Dyer, in any event?
2 A. No. This is the first time I'd met him. And
3 I knew he was involved in management of lab,
4 but what even his job description was or what
5 he was responsible for, that was not stated at
6 the beginning of the meeting and so I really
7 didn't even know what he was responsible for.
8 THE COMMISSIONER:
9 Q. So you'd never sort of seen this person before
10 this meeting?
11 DR. MCCARTHY:
12 A. Never.
13 THE COMMISSIONER:
14 Q. Thank you.
15 DR. MCCARTHY:
16 A. Never met him.
17 CHAYTOR, Q.C.:
18 Q. Okay.
19 THE COMMISSIONER:
20 Q. Sorry, I've interrupted again.
21 CHAYTOR, Q.C.:
22 Q. That's okay. And P-0067, Doctor, is a copy of
23 a letter of Dr. Cook to Dr. Williams, it's
24 dated May 24th, 2005. And he refers in here
25 to your meeting of May 17th and also the

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1 telephone conversation that you did receive or
2 that he received from you, sorry, on May 11th.
3 So it appears that it was Dr. Cook that you
4 called regarding patient number one. And I
5 just want to go through a little bit of this
6 with you and see if there's anything in here
7 that is different from your recollections of
8 anything that you could expand upon. "So on
9 May 11th, 2005, I received a phone call from
10 Dr. Joy McCarthy, medical oncologist,
11 informing me of an ER/PR reported negative in
12 a patient with infiltrating lobular carcinoma
13 of the breast diagnosed in 2002." I take it
14 now, Doctor, that would be patient number one
15 that we've looked at, her progress note?
16 DR. MCCARTHY:
17 A. I think--I wonder if that could have been the
18 index case.
19 CHAYTOR, Q.C.:
20 Q. Oh, okay, I'm sorry. Yes, that could be the
21 index case, sorry. Yes, it is, sorry. "When
22 retested in May, 2005, the ER and PR were
23 reported as strongly positive." The reference
24 here to the index case then being retested in
25 May of 2005?

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1 DR. MCCARTHY:
2 A. I guess he was recalling that, but I believe
3 she was actually tested in April of 2005.
4 CHAYTOR, Q.C.:
5 Q. Okay, and then he goes on to speak about
6 patient number one, I believe. "Dr. McCarthy
7 also expressed concern over what appears to be
8 a high rate of infiltrating lobular carcinomas
9 that were reported as ER and PR negative."
10 Actually, he comes to that later. So "Dr.
11 McCarthy also expressed concern over what
12 appears to be a high rate of infiltrating
13 lobular carcinomas that were reported as ER
14 and PR negative." Do you know what that's
15 referring to?
16 DR. MCCARTHY:
17 A. No, I don't recall saying this to him. That
18 only statement that we would have said to him
19 during the phone call would have been perhaps
20 the e-mail from Dr. Hudis saying that there
21 should be a high rate, and he indicated 100
22 percent. Why I said 95 percent is because I
23 believe the word in that e-mail at some point,
24 too, was that he said rare, so whether you say
25 95, 99, I found it hard to believe that the

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1 number was actually 100 percent.
2 CHAYTOR, Q.C.:
3 Q. And before we move on to that sentence,
4 though, I'm just wondering, this statement
5 here that he's attributing to you or the
6 concern that he understood you to be
7 expressing that a high rate of the
8 infiltrating lobulars being reported as ER and
9 PR negative?
10 DR. MCCARTHY:
11 A. Well, there was only two.
12 CHAYTOR, Q.C.:
13 Q. Okay, but could this be in reference to your
14 recollection of what you were recalling Dr.
15 Greenland having said back in 2003 about is
16 anyone noticing a lot of ER negatives?
17 DR. MCCARTHY:
18 A. There was no mention of lobular at that point.
19 CHAYTOR, Q.C.:
20 Q. Okay. It was just ER negative -
21 DR. MCCARTHY:
22 A. There was no distinction.
23 CHAYTOR, Q.C.:
24 Q. - overall?
25 DR. MCCARTHY:

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1 A. It was just patients in general. So I think
2 that was inferring what I told him about Dr.
3 Hudis.
4 CHAYTOR, Q.C.:
5 Q. But why would you, just because Dr. Hudis made
6 a statement that he had never seen a lobular
7 invasive which is ER negative, why would that
8 give you any indication as to there appears to
9 be a high rate of negatives in your
10 institution?
11 DR. MCCARTHY:
12 A. I don't know why Dr. Cook worded it that way.
13 CHAYTOR, Q.C.:
14 Q. Okay.
15 DR. MCCARTHY:
16 A. I don't recall saying that specific statement
17 to him.
18 CHAYTOR, Q.C.:
19 Q. Okay, and you had no such knowledge, certainly
20 as of May 11th, 2005, that that may or may not
21 be the case?
22 DR. MCCARTHY:
23 A. No.
24 CHAYTOR, Q.C.:
25 Q. Then it says, "She stated that usually 95

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1 percent of lobular carcinomas are ER and PR
2 positive while five percent are negative."
3 And you're saying that while you understood
4 the e-mail of Dr. Hudis or at least the
5 content of it that had been relayed to you by
6 Dr. Laing that he was saying he had never seen
7 one, you found it difficult to think it was
8 actually 100 percent?
9 DR. MCCARTHY:
10 A. Yes, I did. And from my knowledge today I
11 would still stand by that. Although, the
12 words that were used were he said "rare" at
13 one point and he did say that he had not seen
14 one. So when--I believe during the
15 conversation with Dr. Cook he said, "Well, how
16 high should it be?" and I would have said "95
17 to 100 percent," but I said "very high." And
18 that's where he came up with that statement
19 there.
20 CHAYTOR, Q.C.:
21 Q. Yes. And I guess by May 11th, while you
22 haven't had any retests on the patients, you
23 know of Peggy Deane was lobular negative, you
24 know of patient number one has come to your
25 attention on May 11th as being lobular

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1 negative and -
2 DR. MCCARTHY:
3 A. I don't recall, though, I don't think on May
4 11th I would have known that she converted,
5 though.
6 CHAYTOR, Q.C.:
7 Q. Right, no, but you knew she was negative?
8 DR. MCCARTHY:
9 A. Um-hm.
10 CHAYTOR, Q.C.:
11 Q. You knew she's lobular and she's negative.
12 And would you have also known about patient
13 number two, Dr. Laing's case, who she had seen
14 on May 6th and noted to be lobular and
15 negative?
16 DR. MCCARTHY:
17 A. It's possible I knew about that one, as well.
18 Because Dr. Laing, I believe, was with me when
19 I made this phone call.
20 CHAYTOR, Q.C.:
21 Q. Okay, and Dr. Cook then would have been on the
22 speaker phone, is that how that worked?
23 DR. MCCARTHY:
24 A. Whether or not he was on speaker phone or I
25 just had him on the phone and sort of talking

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1 back and forth, I don't recall.
2 CHAYTOR, Q.C.:
3 Q. One moment. Sorry, Doctor.
4 DR. MCCARTHY:
5 A. No problem.
6 CHAYTOR, Q.C.:
7 Q. Just some confusion about my question. Were
8 either Dr. Cook or Dr. Laing on speaker phone?
9 DR. MCCARTHY:
10 A. I don't believe so. I think I had Dr. Cook on
11 the phone, Dr. Laing was sitting next to me.
12 CHAYTOR, Q.C.:
13 Q. In your office?
14 DR. MCCARTHY:
15 A. Yes.
16 CHAYTOR, Q.C.:
17 Q. Yes. And, Doctor, so at this point in time
18 then by May 11th you knew of three patients
19 who were lobular who were ER negative?
20 DR. MCCARTHY:
21 A. It could be that that's true.
22 CHAYTOR, Q.C.:
23 Q. Well I take it on May 11th if Dr. Laing is
24 sitting with you and on May 6th she had
25 noticed one, she would have shared that

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1 information with you?
2 DR. MCCARTHY:
3 A. Yes.
4 CHAYTOR, Q.C.:
5 Q. Okay. So perhaps that's what's being referred
6 to then in terms of any--you expressing
7 concern that there appears to be a high rate
8 of lobular carcinomas reported as ER and PR
9 negative?
10 DR. MCCARTHY:
11 A. That could be.
12 CHAYTOR, Q.C.:
13 Q. That's could be, okay. "Dr. McCarthy
14 requested that two other patients with
15 infiltrating lobular carcinoma who were
16 reported as ER and PR negative in 2002 also be
17 retested." And we know, of course, that
18 patient number one was repeated because her
19 results are in May 13th. Do you recall was
20 there a second request?
21 DR. MCCARTHY:
22 A. I guess I must have made a second request, but
23 I don't remember exactly who that patient was
24 at this time.
25 CHAYTOR, Q.C.:

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1 Q. And could it possibly have been then patient
2 number two who was Dr. Laing's patient?
3 DR. MCCARTHY:
4 A. It could be, although I think you said that
5 patient number two was tested on May 6th?
6 CHAYTOR, Q.C.:
7 Q. No. She's seen by Dr. Laing on May 6th and
8 her results actually aren't recorded until
9 sometime after.
10 DR. MCCARTHY:
11 A. Oh, so that could be it, then, could be.
12 CHAYTOR, Q.C.:
13 Q. "I also expressed concern over this and
14 suggested that we meet to discuss this
15 further." So does this accurately capture
16 everything that you would have said to Dr.
17 Cook in your telephone discussion of May 11th?
18 DR. MCCARTHY:
19 A. From my recollection, yes. If we said
20 anything else, I don't recall.
21 CHAYTOR, Q.C.:
22 Q. Okay. Then it continues on and refers to your
23 May 17th, 2005 meeting was held, "which
24 included myself, Dr. Bev Carter, our resource
25 person for breast pathology, Mr. Barry Dyer,

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1 Divisional Manager for anatomical pathology
2 and Doctors McCarthy and Laing, Medical
3 Oncologists. During that meeting I brought
4 forth that a second patient originally
5 reported as ER and PR negative in 2002 were
6 now strongly positive for breast receptors on
7 retesting." So, Doctor, is this how you
8 learned about the results of patient number
9 one?
10 DR. MCCARTHY:
11 A. It's possible. I don't know if I knew before
12 that or not.
13 CHAYTOR, Q.C.:
14 Q. Well, do you know of any other patient, apart
15 from the ones that you had requested to have
16 retested that Dr. Cook had retested on his
17 own?
18 DR. MCCARTHY:
19 A. Not that I can recall.
20 CHAYTOR, Q.C.:
21 Q. Okay. "Much of this discussion at this
22 meeting centred on the impact of estrogen
23 receptors on breast cancer treatment." So,
24 Doctor, do you recall that, was there a lot of
25 discussion around what it means -

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1 DR. MCCARTHY:
2 A. Yes.
3 CHAYTOR, Q.C.:
4 Q. Okay, and I take it that was you and Dr. Laing
5 trying to explain that to the pathologists and
6 Mr. Dyer in terms of the import of the test?
7 DR. MCCARTHY:
8 A. Yes.
9 CHAYTOR, Q.C.:
10 Q. Did you feel, Doctor, that you had to convince
11 them to do this?
12 DR. MCCARTHY:
13 A. No. As a matter of fact, I remember being
14 quite impressed with how seriously they took
15 this situation, all three of them, and how
16 concerned they were and that they really
17 seemed to get how meaningful this is.
18 CHAYTOR, Q.C.:
19 Q. Okay. "It is estimated that approximately 50
20 to 85 percent of all breast cancers,
21 particularly infiltrating ductal and lobular
22 carcinomas exhibit estrogen receptors and that
23 such tumours are commonly found in
24 postmenopausal women." Would that have been
25 information that you or Dr. Laing would have

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1 given?
2 MR. BROWNE:
3 Q. Excuse me, Ms. Chaytor, I think Dr.
4 (unintelligible) testified to that on
5 questioning from Mr. Crosbie. That was
6 quantitated from a textbook he had himself.
7 It wasn't -
8 CHAYTOR, Q.C.:
9 Q. Yes, I was wondering what this witness'
10 recollection might be on that.
11 DR. MCCARTHY:
12 A. Numbers we would have shared during that
13 meeting were in the order of 70 to 75 percent,
14 but in my teaching in the Halifax years was
15 actually 60 percent. Dr. Laing had heard
16 numbers like 75, 80 percent. So you can see
17 the variation. And that's likely also was
18 where this number came from.
19 CHAYTOR, Q.C.:
20 Q. I'm sorry, Doctor, could you just say that
21 again?
22 DR. MCCARTHY:
23 A. Well, we would have talked about different
24 numbers.
25 CHAYTOR, Q.C.:

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1 Q. Yes.
2 DR. MCCARTHY:
3 A. You know, when I was in Halifax, the first
4 number ever explained to me by Dr. Bruce
5 Colwell, who did a lot of breast cancer in
6 Halifax, was 60 percent for all comers, pre,
7 post, everybody for ER or PR, and/or ER
8 positive. Dr. Laing was, her belief system
9 was 70 to 75 percent. But if you look in the
10 literature, there's quite a range.
11 CHAYTOR, Q.C.:
12 Q. Okay, so the idea of a 50 percent wouldn't
13 have come from you or Dr. Laing?
14 DR. MCCARTHY:
15 A. No.
16 CHAYTOR, Q.C.:
17 Q. Okay. And you weren't aware of any literature
18 that would have suggested that?
19 DR. MCCARTHY:
20 A. No.
21 CHAYTOR, Q.C.:
22 Q. Okay, so at most the range, to your knowledge,
23 would have been 60 percent, up?
24 DR. MCCARTHY:
25 A. Yes.

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1 CHAYTOR, Q.C.:
2 Q. Yes.
3 THE COMMISSIONER:
4 Q. Ms. Chaytor, where you can find a convenient
5 spot -
6 CHAYTOR, Q.C.:
7 Q. Okay. And, Doctor, prior to going then to the
8 meeting on May 17th, 2005 had you done any
9 review of the literature to familiarize
10 yourself on the issue of hormone receptor
11 positivity rates?
12 DR. MCCARTHY:
13 A. Yes, I had looked up different papers and
14 again saw the variation for lobular. The
15 numbers that I had found a bit later than 2005
16 and up, I saw a paper from 2005, another one
17 from 2007, that number was 92 percent. I have
18 never seen a paper that said 100 percent.
19 CHAYTOR, Q.C.:
20 Q. On lobulars it was 92?
21 DR. MCCARTHY:
22 A. On lobular, um-hm.
23 CHAYTOR, Q.C.:
24 Q. Okay, and so in terms of the statement that 95
25 percent of lobular carcinomas, that being

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1 attributed to you, what you were able to
2 ascertain it would be around 92 percent?
3 DR. MCCARTHY:
4 A. Yes, 92 percent was what I learnt later, after
5 looking this up.
6 CHAYTOR, Q.C.:
7 Q. Okay.
8 DR. MCCARTHY:
9 A. But at that time, I thought it was 85 to 90
10 percent. The 95 percent would have come out
11 of the e-mail from Dr. Hudis.
12 CHAYTOR, Q.C.:
13 Q. Okay, and the issue of this range of all
14 breast cancers, did you look that issue up?
15 DR. MCCARTHY:
16 A. I had never seen the range of that span in any
17 of the literature that I reviewed, but
18 different papers would say different numbers.
19 CHAYTOR, Q.C.:
20 Q. And you didn't come across any paper that said
21 50 to 85?
22 DR. MCCARTHY:
23 A. No, not myself, no.
24 CHAYTOR, Q.C.:
25 Q. Okay, and then it says "a high percentage of

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1 tumour with estrogen receptors may regress
2 after hormonal manipulation, whereas only a
3 small number, approximately five percent of
4 those that are negative respond." Would that
5 have been information that you and/or Dr.
6 Laing would have given?
7 DR. MCCARTHY:
8 A. Not that I can recall.
9 CHAYTOR, Q.C.:
10 Q. And do you agree with that statement? Does it
11 appear to be accurate?
12 DR. MCCARTHY:
13 A. Yes.
14 CHAYTOR, Q.C.:
15 Q. Okay. "The highest response rates are in
16 patients with tumours exhibiting both ER and
17 PR receptors," and I take it that's not
18 anything that's--that's accurate?
19 DR. MCCARTHY:
20 A. Yes, in the metastatic setting, yes.
21 CHAYTOR, Q.C.:
22 Q. Yes, okay. "Breast cancer patients with high
23 level hormone receptors have a slightly better
24 prognosis than those without receptors," and
25 again, would that be information that you and

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1 Dr. Laing would have been giving?
2 DR. MCCARTHY:
3 A. I don't know if we used the word "slightly" or
4 not, but we would have indicated a better
5 prognosis.
6 CHAYTOR, Q.C.:
7 Q. Okay. "Receptor status will influence at what
8 stage chemotherapy will be given to a patient.
9 Those patients that are ER and PR negative
10 would be given chemotherapy, with its side
11 effects, much earlier in the course of
12 treatment. It is possible that the patient
13 who is ER and PR positive and responds
14 favourably to hormone manipulation may not
15 require the full chemotherapeutic regime."
16 And would that have been information that you
17 and/or Dr. Laing would have discussed in your
18 meeting of May 17th?
19 DR. MCCARTHY:
20 A. We did discuss this issue, in terms of how the
21 ER/PR results also impact chemotherapy
22 treatment. That was discussed. I don't know
23 if I would have put it in exactly this way,
24 because in terms of this "earlier in the
25 course of treatment," I don't know what he

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1 meant by that, and some ER/PR positive
2 patients get chemo as well.
3 CHAYTOR, Q.C.:
4 Q. Okay, and the sentence that it's possible a
5 patient who is ER and PR positive and responds
6 favourably might not then need or require the
7 full chemotherapeutic regime, is that correct?
8 DR. MCCARTHY:
9 A. That's true.
10 CHAYTOR, Q.C.:
11 Q. That's true, okay, and then it goes on to talk
12 about "prior to March/April 2004, all ER and
13 PR receptors in the province were tested using
14 the DAKO manual system. The staining
15 procedure took place at the histology lab,
16 General Hospital site. Interpretation of
17 these stains were made by pathologists who
18 were assigned the cases." And then it goes on
19 to talk about the new Ventana system coming in
20 in March or April 2004. Was that discussed
21 with you and Dr. Laing in the meeting?
22 DR. MCCARTHY:
23 A. Not that I can recall.
24 CHAYTOR, Q.C.:
25 Q. Okay. "Immunoperoxidase staining coupled with

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1 peroxidase label to a primary antibody which
2 then binds to a specific antigen in the
3 cancerous lesion and one of the vital steps is
4 to expose or unmask as many of these antigens
5 as possible in order to increase the
6 sensitivity of the procedure." So this kind
7 of discussion about the actual technique
8 required in doing the test, was there any
9 discussion by the pathologist or Mr. Dyer on
10 that? Was there any explanation given back to
11 you and Dr. Laing, "here's what we have to do
12 to do this test"?
13 DR. MCCARTHY:
14 A. Not that I can recall.
15 CHAYTOR, Q.C.:
16 Q. Okay, and then again, this is in the letter to
17 Dr. Williams, and it says "in early 2003, Dr.
18 Ejeckam, our point man for immunoperoxidase
19 testing at the General Hospital site,
20 discontinued testing of the ER and PR
21 receptors with the manual method, for a six-
22 week period. A memo was circulated to all
23 pathologists across the province stating this.
24 The technique was temporarily halted because
25 of erratic staining, which required

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1 readjustments of the titration and staining
2 times. Once Dr. Ejeckam felt confident in the
3 reliability of the staining, the test was
4 reintroduced."
5 So this whole issue about Dr. Ejeckam, I
6 take it from your earlier testimony, that
7 wasn't told to you in the May 17th meeting or
8 at any point afterwards?
9 DR. MCCARTHY:
10 A. No.
11 CHAYTOR, Q.C.:
12 Q. And then he says "at the conclusion of the
13 meeting, it was decided to retest all the ER
14 and PRs for the year 2000 and possibly 2001"--
15 I'm sorry, for the year 2002 and possibly
16 2001. Do you recall any discussion about
17 possibly going into 2001?
18 DR. MCCARTHY:
19 A. It's possible we discussed 2001, but I don't
20 recall that specifically.
21 CHAYTOR, Q.C.:
22 Q. "I have no idea at this point in time in
23 knowing whether these are a few isolated cases
24 or whether we're dealing with a much bigger
25 issue. For now, we have agreed that if there

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1 is a receptor conversion, that the oncologists
2 would inform the patient that we have retested
3 the ER and PR receptors under our newer, more
4 sensitive technique." Doctor, did you agree
5 with that?
6 DR. MCCARTHY:
7 A. No, I didn't tell the patients that. I don't
8 remember saying that that's what we would tell
9 people. We didn't agree on anything, because
10 there had been no explanation to us at that
11 point.
12 CHAYTOR, Q.C.:
13 Q. Okay, and Doctor, you don't even recall any
14 discussion about the different machines or the
15 different techniques of doing the test?
16 DR. MCCARTHY:
17 A. No.
18 CHAYTOR, Q.C.:
19 Q. Okay, and so his suggestion that it's been
20 agreed, ever who has agreed to it, you hadn't
21 agreed to it?
22 DR. MCCARTHY:
23 A. No, I don't remember having--talking about
24 that and saying that that was the reason.
25 CHAYTOR, Q.C.:

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1 Q. Doctor, at any point in time, did anyone ever
2 offer that as an explanation to you as being
3 the reason that perhaps the newer system was
4 more sensitive than the DAKO?
5 DR. MCCARTHY:
6 A. I remember at some point somebody was--and I
7 don't remember who it was. I remember
8 somebody saying could this be a possibility,
9 but I don't remember anybody stating this was
10 the reason, and that's the reason we're going
11 to go with. No, I don't recall anything
12 definitive like that.
13 CHAYTOR, Q.C.:
14 Q. And did you ever tell any patient that that
15 was the reason or hold that out as a likely
16 reason?
17 DR. MCCARTHY:
18 A. If I discussed that with the patient as to any
19 particular patient, it would have been "well
20 what are the possibilities?" and I would have
21 thrown out a few possibilities. That might
22 have been one of them, but I would have said,
23 in the end, I don't know.
24 CHAYTOR, Q.C.:
25 Q. Okay, and he goes on to say "if it is

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1 identified that we have a much more
2 significant conversion factor problem
3 involving many patients, we would need to seek
4 advise and guidance from QA/QI on how best to
5 disclose this information, as it involves
6 breast cancer patients across the province."
7 Do you recall any discussion about having to
8 involve QI during your meeting?
9 DR. MCCARTHY:
10 A. No.
11 CHAYTOR, Q.C.:
12 Q. Okay, and then in closing, Dr. Cook makes
13 recommendations for IHC testing, including
14 external proficiency testing and monitoring
15 program. Was that discussed with you?
16 DR. MCCARTHY:
17 A. No.
18 CHAYTOR, Q.C.:
19 Q. Okay, and were you aware that there had been
20 no external proficiency testing and monitoring
21 program for the immunoperoxidase testing?
22 DR. MCCARTHY:
23 A. No.
24 CHAYTOR, Q.C.:
25 Q. And he goes on then to talk about three other

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1 recommendations, including training of
2 technologists and CME funding, and
3 establishing a separate area. Were any of
4 those recommendations discussed?
5 DR. MCCARTHY:
6 A. No.
7 CHAYTOR, Q.C.:
8 Q. Okay. Thank you, Commissioner.
9 THE COMMISSIONER:
10 Q. Okay. We'll take 15 minutes.
11 (BREAK)
12 THE COMMISSIONER:
13 Q. Ms. Chaytor.
14 CHAYTOR, Q.C.:
15 Q. Thank you, Commissioner. Doctor, just before
16 we broke, I had taken you through the content
17 of Dr. Cook's letter of May 24th in which he
18 summarized discussions that happened in the
19 May 17th meeting. Is there anything else
20 that's not in his letter that you recall being
21 discussed in the meeting?
22 DR. MCCARTHY:
23 A. No.
24 CHAYTOR, Q.C.:
25 Q. Okay, and if we could just go back, please, to

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1 P-2147? And this is Mr. Dyer's notes of the
2 meeting, and Mr. Dyer says that "looks like a
3 negative ER/PR issue. Peggy Deane sent for
4 second opinion. Comes back ER should be
5 positive." A reference to 2002, and I've
6 already taken you to this reference. Then
7 "May 2002, doing all ER/PR basically." He
8 says "DAKO system from 1996 to 2003. All
9 negatives must be repeated, ER/PR controls."
10 Do you remember any--he seems to be indicating
11 that there was some mention of the DAKO system
12 in the time period in which the DAKO system,
13 or at least 1996 to 2003, "all negatives must
14 be repeated ER/PR controls."
15 DR. MCCARTHY:
16 A. I don't remember specifically discussing that.
17 CHAYTOR, Q.C.:
18 Q. Okay, and then there's three patients' names
19 that we've redacted here, and he indicates
20 "send away for second opinions" for those
21 three patients. Do you recall any discussion
22 about sending patients away for second
23 opinions?
24 DR. MCCARTHY:
25 A. No, I don't know what he means by that.

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1 CHAYTOR, Q.C.:
2 Q. Okay, and then he has noted "60 percent
3 positive, 40 percent negative."
4 DR. MCCARTHY:
5 A. I would have likely explained that was my
6 initial teaching, although I have heard as
7 high as 70-75 percent for overall cases.
8 CHAYTOR, Q.C.:
9 Q. Okay. So that this could be the reference to
10 the 60 percent that you referred to earlier?
11 DR. MCCARTHY:
12 A. I think so, yes.
13 CHAYTOR, Q.C.:
14 Q. And then "June 2003, back six months at a
15 time." Does that ring any bells as to what
16 that might be referring to?
17 DR. MCCARTHY:
18 A. No.
19 CHAYTOR, Q.C.:
20 Q. And you recall no reference to the June 2003
21 period coming up in the meeting?
22 DR. MCCARTHY:
23 A. No.
24 CHAYTOR, Q.C.:
25 Q. "Negative metastatic requests are ASAP" and

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1 then there's three patients' names, negative,
2 and then again "negative, send away for second
3 opinion" and then can't really see this, but
4 it just seems to be referring to MCP surgical
5 numbers, and positive result, and then "same
6 as above" for the last. So the idea of
7 anybody being sent away or sending away for
8 second opinions, that doesn't seem familiar to
9 you?
10 DR. MCCARTHY:
11 A. No, I just remember talking about retesting,
12 but sending away, I don't recall what that
13 would have meant.
14 CHAYTOR, Q.C.:
15 Q. Okay. So most of the content of this note,
16 the date seems fine?
17 DR. MCCARTHY:
18 A. Um-hm.
19 CHAYTOR, Q.C.:
20 Q. The people in attendance seems fine. The
21 reference to the Peggy Deane case, and the
22 reference to, I take it, 60 percent might be
23 in reference to something you said, but the
24 rest of it doesn't seem familiar to you or the
25 discussions that was taking place in the

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1 meeting?
2 DR. MCCARTHY:
3 A. We did discuss some patients for retesting,
4 but I don't recall this sending away for
5 second opinion. I don't recall what that was
6 about.
7 CHAYTOR, Q.C.:
8 Q. So you don't recall any recollection that--or
9 you don't recall any discussion at the time as
10 to whether to do the patients in house or send
11 them out?
12 DR. MCCARTHY:
13 A. My understanding that we would start in house.
14 CHAYTOR, Q.C.:
15 Q. Okay, and do you recall any discussion at all
16 about sending them out instead of doing them
17 in house?
18 DR. MCCARTHY:
19 A. Not that I can recall.
20 CHAYTOR, Q.C.:
21 Q. If we could have, please, 2095, page six?
22 Okay, and this is a letter, June 14th, 2005,
23 and again, it's Dr. Cook writing to Dr.
24 Williams and Doctor, in this letter, he's
25 writing further to his letter of May 24th,

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1 2005. He says "we reviewed reports of the
2 estrogen and progesterone receptors in 160
3 breast cancer patients that originated from
4 the division of anatomical pathology
5 laboratory medicine program at the Health Care
6 Corporation. These 160 cases are also
7 confirmed to be to patients and attending
8 surgeons within the Health Care"--I think it
9 should be "to be patients" or "be patients of"
10 perhaps. "These 160 cases are also confined,"
11 that's my problem, sorry, it's "confined to
12 patients and attending surgeons within the
13 Health Care Corp. Of the 160 cases that have
14 estrogen and progesterone receptors, 50
15 percent of these are reported as ER/PR
16 negative. This is following a preliminary
17 review of the pathology reports. It also
18 seems that most of the negative ER/PR results
19 started some time around June 24th, 2002."
20 Now Doctor, I just wanted to ask you
21 that, were you made aware of this review and
22 the issue of any analysis of positivity rates
23 at this point in time, the middle of June?
24 It's less than a month after your meeting.
25 DR. MCCARTHY:

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1 A. Not that I can recall.
2 CHAYTOR, Q.C.:
3 Q. And the idea that most of the negative ER/PR
4 results started sometime around June 24th,
5 2002, was that ever told to you?
6 DR. MCCARTHY:
7 A. The only reference to 2002 that I would recall
8 was the index case and the subsequent case
9 that I had, which would have been patient
10 number one. I don't recall this information,
11 no.
12 CHAYTOR, Q.C.:
13 Q. Okay, and up to me showing this to you today,
14 has this information ever been brought to your
15 attention?
16 DR. MCCARTHY:
17 A. I don't remember seeing a copy of this before
18 perhaps in discussions with my legal counsel,
19 but not prior to that.
20 CHAYTOR, Q.C.:
21 Q. Okay. "On the surface, a negative rate of 50
22 percent, though not the greatest, is not too
23 bad when you compare a 60 percent positive and
24 40 percent negative rate, according to figures
25 provided by Dr. Joy McCarthy." So this 60 and

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1 40 percent, that's in keeping with your
2 recollection of what you would have stated to
3 him?
4 DR. MCCARTHY:
5 A. Yes.
6 CHAYTOR, Q.C.:
7 Q. And in keeping, it appears, with Dr.--or Mr.
8 Dyer's note as well.
9 DR. MCCARTHY:
10 A. Yes.
11 CHAYTOR, Q.C.:
12 Q. "We also need to correlate these figures more
13 with our population. There may very well be a
14 large number of women who have high grade
15 lesions who would normally be negative for
16 estrogen and progesterone receptors." Now do
17 you recall discussing that at all with Dr.
18 Cook, as to needing to correlate the figures,
19 figuring out your population demographics?
20 DR. MCCARTHY:
21 A. No.
22 CHAYTOR, Q.C.:
23 Q. And do you know whether or not, in fact, that
24 happened? Whether there was any analysis in
25 that regard?

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1 DR. MCCARTHY:
2 A. In terms of grade?
3 CHAYTOR, Q.C.:
4 Q. Yes.
5 DR. MCCARTHY:
6 A. No.
7 CHAYTOR, Q.C.:
8 Q. Okay, and Doctor, today, up until today now,
9 is there any reason that you know of, or any
10 research that has ever been carried out to
11 suggest that Newfoundland patients would have
12 anything other than typical or average
13 positivity rates?
14 DR. MCCARTHY:
15 A. I have not seen any research with regards to
16 Newfoundland patients that would indicate that
17 it would be any different than any others.
18 CHAYTOR, Q.C.:
19 Q. Okay, and then he goes on to say "we also have
20 cases that are ER/PR negative for 1999 and
21 2000 and have converted following retesting
22 with the new Ventana system. These are
23 specific cases that are identified and are
24 requested for retesting by the oncologists.
25 If the receptors have converted on retesting,

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1 the referring oncologist is notified and an
2 addendum report is issued. In regards to the
3 large number of cases for the year 2002, a
4 list of patients who have converted with the
5 newer methodology are forwarded to Dr. Joy
6 McCarthy. I had informed Dr. Gardiner of the
7 situation on May 25th, 2005 and updated him on
8 June 8th, 2005. There is also significant
9 communication between ourselves and the
10 oncologists regarding the issue." And he'll
11 keep Dr. Williams updated.
12 And so Doctor, your role after the
13 meeting on May 17th, you indicated that you
14 would then be the point person for receiving
15 the results of the retesting that was
16 happening in house, and I take it that, in
17 fact, happened?
18 DR. MCCARTHY:
19 A. Yes.
20 CHAYTOR, Q.C.:
21 Q. And if we could look at, please, P-2452? I'm
22 just going to take you first to page two, and
23 I'll come back to page one. Page two is a
24 letter of June 29th, 2005, and it's written to
25 yourself and it's a list of patients and it's

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1 then signed off by both Doctors Carter and Dr.
2 Cook, and I take it you're familiar with this
3 document, Doctor?
4 DR. MCCARTHY:
5 A. Yes.
6 CHAYTOR, Q.C.:
7 Q. Okay, and we believe this to be the first of
8 three such letters that went to you in this
9 time period.
10 DR. MCCARTHY:
11 A. Yes.
12 CHAYTOR, Q.C.:
13 Q. Regarding the retest results. So it says "as
14 per our previous discussions, repeat estrogen
15 receptor and progesterone receptor has been
16 carried out on the following patients
17 initially identified as estrogen receptor
18 negative. The results are as follows:" and
19 then there's the list of all the patients that
20 had been done up to June 29th, 2005. Doctor,
21 what did you do when you received this letter?
22 DR. MCCARTHY:
23 A. I went down the list using our OPUS computer
24 chart to figure out which oncologist would
25 have been responsible for each patient, and

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1 brought it to the attention of the oncologist
2 who was caring for that patient to make sure
3 they were aware of results of the ones who had
4 changed. If there were ones that were not
5 followed by the Cancer Clinic and had never
6 been seen at the Cancer Clinic or had moved
7 and were somewhere else, I sent a letter back
8 to Dr. Cook and Carter to say "these are the
9 ones that we have not been caring for."
10 CHAYTOR, Q.C.:
11 Q. Okay, and your intention doing that, in
12 sending a letter back to them was for them to
13 do what?
14 DR. MCCARTHY:
15 A. To make sure that they notified the
16 appropriate physicians involved, since they
17 were not being cared for at the Cancer Clinic,
18 they must have been cared for by other
19 physicians.
20 CHAYTOR, Q.C.:
21 Q. And Doctor, did you bring to the attention of
22 each oncologist that you were able to
23 identify, did you bring to their attention
24 just the ones with changes, or all of them?
25 For example, if we look at patient one and

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1 patient two on this list, they've both--
2 they've converted to positive. Patient three
3 and four appear to have remained negative. So
4 would the negatives have also--would you have
5 tracked down the oncologists for them and let
6 them know they have been retested but there
7 doesn't appear to be any change?
8 DR. MCCARTHY:
9 A. I don't recall doing that. My focus was to
10 find the ones whose results had changed, and
11 as explained to me and as we had discussed,
12 because I was part of the discussions, that
13 would be my focus was to make sure that the
14 ones who had changed had appropriate follow
15 up.
16 CHAYTOR, Q.C.:
17 Q. Okay, and Doctor, did you ask any question
18 upon receipt of the letter as to what they
19 meant by positive?
20 DR. MCCARTHY:
21 A. That's a good question. I didn't.
22 CHAYTOR, Q.C.:
23 Q. Okay, and you see that some, in this one,
24 positive was identified as ten percent
25 moderate to strong, and to strong positivity.

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1 So that seems to be the definition they've
2 given of positive in that particular case. And
3 down here, positive--but they're saying weak
4 to moderate 30 percent, and then negative. So
5 we see a reference in the same correspondence
6 to both a 30 percent and a ten percent.
7 Doctor, the patients--and I take it some of
8 those patients would have been your patients?
9 DR. MCCARTHY:
10 A. Yes.
11 CHAYTOR, Q.C.:
12 Q. Did you--and you would have followed up
13 yourself with those patients, the ones that
14 had changes in their results?
15 DR. MCCARTHY:
16 A. Yes.
17 CHAYTOR, Q.C.:
18 Q. Okay, and how did you go about doing that?
19 Did you pull their charts and bring them in
20 right away, or did you wait for their next
21 scheduled appointment or how was that handled?
22 DR. MCCARTHY:
23 A. The ones with changes, I would have tried to
24 contact them to get them in as soon as I
25 could, to my recollection. The patients who

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1 didn't have changes, I don't recall notifying
2 them specifically.
3 CHAYTOR, Q.C.:
4 Q. Okay, and at any point in time, do you recall
5 speaking to the ones without changes?
6 DR. MCCARTHY:
7 A. I don't recall that, no.
8 CHAYTOR, Q.C.:
9 Q. Okay. So at this point in time, had there
10 been a decision made to tell the patients who
11 hadn't had changes?
12 DR. MCCARTHY:
13 A. No, there had been no decision made.
14 CHAYTOR, Q.C.:
15 Q. Okay. So the only ones that were to be
16 notified at this point in time were the
17 patients with changes?
18 DR. MCCARTHY:
19 A. Correct.
20 CHAYTOR, Q.C.:
21 Q. Okay, and what did you tell your patients
22 then, those that are coming before you in--I
23 guess it's probably into early July by the
24 time you see them. What did you tell them, in
25 terms of what had happened here?

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1 DR. MCCARTHY:
2 A. Well, I told them that their results had
3 changed. I explained to them that we, earlier
4 on, had a couple of cases that had changed and
5 that we were looking into the matter further,
6 and this was early in the process of trying to
7 sort out the issue itself, what went wrong,
8 and the impact. If those patients asked me
9 what happened, I would have again said "I
10 don't know" and then I would have went on to
11 discuss the difference in their results and
12 what that meant in terms of their treatment
13 plan.
14 CHAYTOR, Q.C.:
15 Q. Okay, and Doctor, I take it you held all those
16 discussions face to face with the patient?
17 DR. MCCARTHY:
18 A. With my patients, if that was possible. Now
19 if they were from out of town or for some
20 reason I couldn't get them in soon enough,
21 there may have been the occasional one that I
22 would have done this over the phone, but I
23 can't recall specifically.
24 CHAYTOR, Q.C.:
25 Q. Okay. But you tried, whenever possible, to

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1 have the discussion face to face?
2 DR. MCCARTHY:
3 A. Yes.
4 CHAYTOR, Q.C.:
5 Q. And Doctor, at this point in time, these
6 appear to be the first retests that have taken
7 place. You're not aware of anything earlier,
8 other than the couple that were discussed in
9 your May 17th meeting. This is the next
10 batch, I take it, June 29th? It's the first
11 time we get a real batch of patients?
12 DR. MCCARTHY:
13 A. Yes.
14 CHAYTOR, Q.C.:
15 Q. And Doctor, this is now the end of June 2005.
16 So it's about six weeks since you alerted Dr.
17 Cook to this issue. Were you concerned about
18 the pace at which this is happening?
19 DR. MCCARTHY:
20 A. I don't recall being concerned at that time.
21 I had no idea how long it would take to do
22 individual tests. The time seemed to vary, so
23 I wasn't quite sure how they were doing it. I
24 didn't know--I wasn't given any--I was not
25 given any expectation of time, either shorter

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1 or longer, from Doctors Carter and Cook.
2 CHAYTOR, Q.C.:
3 Q. Okay, and again, you wouldn't have been aware
4 that the machine could accommodate many
5 patients at one time?
6 DR. MCCARTHY:
7 A. I did not know that.
8 CHAYTOR, Q.C.:
9 Q. Okay. If we could just go back then to the
10 first page of this, and this is an example,
11 July 15th 2005. You're writing to Dr. Cook,
12 and you write "list of patients ER positive
13 status. I refer to your correspondence dated
14 June 29th, 2005, which lists a number of
15 patients identified as ER negative. I wish to
16 identify two names which appear on that list
17 that are not patients of the Dr. H. Bliss
18 Murphy Cancer Centre. Please check your
19 records on these two patients to identify the
20 referring physician. We cannot take
21 responsibility for these patients with regards
22 to notifying them of this new information."
23 And I take it that's an example of
24 correspondence that you sent to Dr. Cook when
25 you couldn't--when you didn't have those

1 patients as patients at the Cancer Centre?
2 DR. MCCARTHY:
3 A. Correct.
4 CHAYTOR, Q.C.:
5 Q. And I take it, Doctor, if they're not patients
6 at the Cancer Centre, that included patients
7 who would have been seen in peripheral clinics
8 as well? Those patients, if they were
9 patients of the Cancer Centre, regardless if
10 it was in St. John's or Corner Brook, that
11 wouldn't matter? Those are your patients and
12 -
13 DR. MCCARTHY:
14 A. If they were followed by the oncologists,
15 yeah. If they were followed by the
16 oncologists at our Cancer Clinic and seen by
17 the oncologists of our Cancer Clinic, it would
18 be considered our patients.
19 CHAYTOR, Q.C.:
20 Q. Okay, and up to this point in time then, June
21 29th 2005, upon getting this letter, how many
22 patients prior to this would you have been
23 aware of having had changes in their test
24 result?
25 DR. MCCARTHY:

1 A. Gosh, I don't know. Other than the two or
2 three that we discussed, I don't recall
3 knowing of any others, but there could be. I
4 don't recall.
5 CHAYTOR, Q.C.:
6 Q. Doctor, when you look down through, how many
7 of those ended up positive? Were you
8 concerned -
9 DR. MCCARTHY:
10 A. Is this the first 25?
11 CHAYTOR, Q.C.:
12 Q. The first 25.
13 DR. MCCARTHY:
14 A. My understanding that 16 of the 25 results
15 changed.
16 CHAYTOR, Q.C.:
17 Q. And were you concerned by that?
18 DR. MCCARTHY:
19 A. Yes.
20 CHAYTOR, Q.C.:
21 Q. And if we could look at P-2602, please? And
22 then this is August 5th, 2005, and you're
23 writing again to Dr. Cook and "among a number
24 of supplementary pathology reports I recently
25 received from your department, I wish to bring

1 to your attention the following," and "this
2 patient is deceased, and I see no reason to
3 pursue this. This patient has never been seen
4 by a medical oncologist here at the Cancer
5 Centre. This patient has relocated. This
6 patient was never seen by a medical
7 oncologist" and you give the name of the
8 doctor whose patient she is. "We cannot take
9 responsibility for these patients or their
10 families with regards to notifying them of
11 this new information."
12 First of all, Doctor, you say that this
13 has come from "a number of supplementary
14 pathology reports I recently received from
15 your department." So were you, in addition to
16 getting the letters with the list of patients,
17 also receiving pathology reports?
18 DR. MCCARTHY:
19 A. I believe I was. I believe they were sending
20 me the results, the addendum, if you will, and
21 I believe at that time I was making sure that
22 those addendums went to the appropriate
23 oncologist, if one was involved.
24 CHAYTOR, Q.C.:
25 Q. Okay. So what you were doing, upon receipt of

1 the list, you were checking to see which
2 oncologist had most recently been involved, I
3 take it, in the patient's care?
4 DR. MCCARTHY:
5 A. I was like the triage person.
6 CHAYTOR, Q.C.:
7 Q. Yes, okay, and so "among a number of
8 supplementary pathology reports," were you
9 getting supplementary pathology reports in
10 addition to the people on the list or were
11 those supplementary pathology reports in
12 relation to the people on the list?
13 DR. MCCARTHY:
14 A. I believe it was in relation, but I'm not 100
15 percent certain of that.
16 CHAYTOR, Q.C.:
17 Q. Okay. So these people who are listed here
18 should also appear on the correspondence
19 that's going back and forth between you and
20 Doctors Cook and Carter?
21 DR. MCCARTHY:
22 A. I believe so. Again, unless I knew who they
23 were or saw the list, I can't say for 100
24 percent certainty.
25 CHAYTOR, Q.C.:

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1 Q. And Doctor, with respect to the patient who is
2 deceased, you write "I see no reason to pursue
3 this." So Doctor, in terms of notifying that
4 patient's next of kin, you--it was your
5 opinion that that was unnecessary?
6 DR. MCCARTHY:
7 A. Well, at that time, our goal was to find
8 people who required a treatment change. So
9 from a clinical point of view, I saw no reason
10 to pursue that. We had not had any
11 discussions about notification of the
12 deceased, how to do that, what way to do that
13 at this point. So my job, as I understood it
14 at that point, was to find the patients who
15 had a treatment change, make sure their
16 physician knew of it, and to make sure that
17 that information got to where it needed to be,
18 because the pathologists did not know which
19 oncologists were caring for which patients.
20 CHAYTOR, Q.C.:
21 Q. Okay, and Doctor, then there's one reference
22 to a patient having been relocated and another
23 one who you're able to identify the physician,
24 but it's not a medical oncologist at the
25 hospital or at the Cancer Care Centre. So in

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1 terms of your responsibility for contacting
2 people, you understood it's the people within
3 the Cancer Centre being treated currently by
4 medical oncologists. Otherwise, put the ball
5 back in Dr. Cook's court and he'll look after
6 whatever has to be done to let those other
7 people know?
8 DR. MCCARTHY:
9 A. Correct.
10 CHAYTOR, Q.C.:
11 Q. Okay, and Doctor, are you aware of whether or
12 not all of the people, for example, the first
13 list of 25, 16 with changed results, are you
14 aware of whether or not all 16 of those were
15 notified in the summer of 2005 of their
16 changes in results?
17 DR. MCCARTHY:
18 A. I do not know. I can only speak for my own
19 patients and I would have done my best to make
20 sure that they knew.
21 CHAYTOR, Q.C.:
22 Q. Okay, and did you--were you tasked with
23 following up with those physicians or keeping
24 track of this patient has been contacted, that
25 kind of thing?

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1 DR. MCCARTHY:
2 A. No.
3 CHAYTOR, Q.C.:
4 Q. Okay, and do you know if anyone was tasked
5 with doing that?
6 DR. MCCARTHY:
7 A. I would have assumed that Dr. Cook and Dr.
8 Carter, who were generating these lists, would
9 have taken responsibility for that.
10 CHAYTOR, Q.C.:
11 Q. Okay. So did you get back to Doctors Cook and
12 Dr. Carter and say "I have now reached the
13 following patients"?
14 DR. MCCARTHY:
15 A. Well, what I told them is I would let you know
16 which--I wasn't calling all the patients
17 myself. I was making sure that their
18 physician was notified.
19 CHAYTOR, Q.C.:
20 Q. Yes, but with respect to your own patients,
21 did you let them know who you had contacted?
22 DR. MCCARTHY:
23 A. Well, what I told them is that I would find
24 the oncologist, including myself, and tell
25 them to tell the patient or to, you know,

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1 contact the patient, and that I would send
2 them a list of those patients that we could
3 not contact.
4 CHAYTOR, Q.C.:
5 Q. Okay, or that there was--was it who you could
6 not contact or who there was no medical
7 oncologist assigned responsibility for
8 contacting?
9 DR. MCCARTHY:
10 A. Well, you see the various reasons that I put
11 here.
12 CHAYTOR, Q.C.:
13 Q. Yes. So your--I just want to understand that
14 your task was to find an oncologist who was
15 responsible for that patient, inform them
16 "this patient has had a change in results.
17 You need to communicate this to your patient."
18 That was your task as opposed to following up
19 to make sure, in fact, the contact had
20 happened?
21 DR. MCCARTHY:
22 A. Correct.
23 CHAYTOR, Q.C.:
24 Q. That was not your responsibility?
25 DR. MCCARTHY:

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1 A. Correct.
2 CHAYTOR, Q.C.:
3 Q. And in terms of anyone coordinating who has
4 been contacted and who hasn't, are you aware
5 of whether or not anybody was doing that?
6 DR. MCCARTHY:
7 A. I'm not aware of anybody specifically, no.
8 CHAYTOR, Q.C.:
9 Q. Okay, and did anyone come to you at any point
10 in time and say "Dr. McCarthy, have your
11 patients on this list been contacted?"
12 DR. MCCARTHY:
13 A. Dr. Laing and I would have discussed it and we
14 would have discussed it with each other about
15 whether or not our patients would have been
16 notified, but in terms of others, not that I
17 can recall.
18 CHAYTOR, Q.C.:
19 Q. And in doing that, was that Dr. Laing--did you
20 perceive that as Dr. Laing, in her role as, I
21 think she's still Director of Medical Oncology
22 at that point, was she asking you that in
23 terms of her role as Director of Medical
24 Oncology as to whether or not your patients
25 have been contacted or are you and her just

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1 having a conversation about "have you
2 contacted your patients? I've got mine
3 contacted"?
4 DR. MCCARTHY:
5 A. The latter.
6 CHAYTOR, Q.C.:
7 Q. Okay, and if we could have then, please, P-
8 0508? Doctor, this one is a little more
9 difficult to see, but I believe it's July
10 18th, 2005, and it would be your next list
11 that's provided to you by Doctors Cook and
12 Carter, and there's more patients then on this
13 page, on this letter, I should say, and again,
14 upon receipt of this letter, what did you do?
15 DR. MCCARTHY:
16 A. Exactly the same as what I did before, went to
17 the computer, sat down with the list, went
18 through each one of them to figure out if
19 there was an oncologist caring for that
20 patient, and make sure they were notified.
21 CHAYTOR, Q.C.:
22 Q. Okay, and did you also make note to yourself
23 as to how many had, in fact, now changed?
24 DR. MCCARTHY:
25 A. I don't recall specifically making note of

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1 that. I was just trying to make sure that the
2 patients whose results changed, that that
3 information got communicated to the
4 appropriate oncologist.
5 CHAYTOR, Q.C.:
6 Q. And Doctor, I guess I put it to you this way
7 then, was there anything in the content of
8 this letter that caused you to think "well,
9 maybe we don't have a problem after all"?
10 DR. MCCARTHY:
11 A. I don't remember ever thinking, once this all
12 started, that we didn't have a problem.
13 CHAYTOR, Q.C.:
14 Q. Okay. So you never wavered on that?
15 DR. MCCARTHY:
16 A. I believed we had a problem.
17 CHAYTOR, Q.C.:
18 Q. Yes, and you were consistent on that
19 throughout. There was never a point in time
20 when you thought there's no problem?
21 DR. MCCARTHY:
22 A. There was never a point of time that I thought
23 there was no problem.
24 CHAYTOR, Q.C.:
25 Q. Had you ever heard anyone else articulate

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1 doubt as to whether in fact there was a
2 problem or if there was a problem, the extent
3 of the problem may not be as significant?
4 DR. MCCARTHY:
5 A. Later on in this process, it would have been
6 after the panelling was well underway, there
7 were some discussions about the percentages
8 during different years and which years had
9 bigger problems than others, but there was
10 never a question of was there a problem. I
11 don't recall anybody doubting that.
12 CHAYTOR, Q.C.:
13 Q. Okay, and Doctor, now in this letter, it
14 appears that you're getting a mixture.
15 Sometimes they're telling you percentages.
16 You'll see here the fourth patient listed
17 moderate nuclear staining in 60 percent and
18 strong nuclear staining in 80 percent, and
19 whereas patient number two is just positive
20 and positive, and so you're getting a
21 variation in the manner in which it's being
22 reported to you. Did that catch your
23 attention at the time?
24 DR. MCCARTHY:
25 A. At the time, no, it didn't.

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1 CHAYTOR, Q.C.:
2 Q. Okay, and I take it, Doctor, it's not a lot
3 different than what you were experiencing
4 anyhow in how you were receiving pathology
5 reports?
6 DR. MCCARTHY:
7 A. Correct.
8 CHAYTOR, Q.C.:
9 Q. And if there were--in this case, these are
10 signed off by Dr. Carter and Dr. Cook. Did
11 you understand that Dr. Carter and Dr. Cook
12 were reading all of those tests?
13 DR. MCCARTHY:
14 A. That was my understanding.
15 CHAYTOR, Q.C.:
16 Q. Okay, and if you were also receiving the
17 pathology reports with the addendum to
18 accompany each of these tests, perhaps if they
19 were lined up, for example, patient number
20 one, what's written here, 100 percent strong
21 nuclear positivity, 100 percent strong nuclear
22 positivity, that might be exactly what was
23 written on the addendum?
24 DR. MCCARTHY:
25 A. I did not take the addendums as I received

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1 them and check them off. So I didn't take the
2 list and the addendum and put them side by
3 side and see if they corresponded to exactly
4 the same information. I just made sure that
5 that addendum got to the appropriate
6 physician.
7 CHAYTOR, Q.C.:
8 Q. Okay, and so you went by what was actually
9 written on the letter and then made sure that
10 that particular patient's addendum went to the
11 appropriate physician?
12 DR. MCCARTHY:
13 A. If all the addendums came to me, and if--I
14 mainly used the list to make sure that any
15 patients with changes, that their oncologist
16 got notified appropriately.
17 CHAYTOR, Q.C.:
18 Q. And how did you physically go about that? How
19 did you get that pathology report out of your
20 hands and into theirs?
21 DR. MCCARTHY:
22 A. If it was an actual addendum report that I
23 received, I would take it and put it in their
24 box, but I would also communicate that
25 information verbally, either walking down to

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1 their office in the clinic or picking up the
2 phone.
3 CHAYTOR, Q.C.:
4 Q. Okay, did you send any e-mails?
5 DR. MCCARTHY:
6 A. Not that I can recall.
7 CHAYTOR, Q.C.:
8 Q. Okay.
9 DR. MCCARTHY:
10 A. But it's possible.
11 THE COMMISSIONER:
12 Q. Sorry, just a point of clarification on the
13 question about your understanding that Dr.
14 Carter and Dr. Cook would be the persons
15 reading the tests, on the retest.
16 DR. MCCARTHY:
17 A. Correct.
18 THE COMMISSIONER:
19 Q. Are you indicating that one or the other of
20 them or that, in fact, it would be a double
21 read?
22 DR. MCCARTHY:
23 A. My understanding was that it was a double
24 read.
25 THE COMMISSIONER:

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1 Q. All right. Thank you.
2 CHAYTOR, Q.C.:
3 Q. And, Doctor, there's just a couple here. If
4 we look at page 2 of the exhibit, the fourth
5 patient on that page with surgical number
6 SS70002, the estrogen receptor status is shown
7 to be faint nuclear positivity in ten percent
8 of cells, strong nuclear positivity in five
9 percent of cells. Doctor, would you have
10 considered this to be a patient with changed
11 results?
12 DR. MCCARTHY:
13 A. So that's the ER and the PR receptor status
14 now, I take it?
15 CHAYTOR, Q.C.:
16 Q. Yes.
17 DR. MCCARTHY:
18 A. It would have to depend on what the previous
19 ER and PR were. Do you know what they were?
20 CHAYTOR, Q.C.:
21 Q. Not right offhand. So what would you do to
22 satisfy yourself as to whether or not this has
23 to be a patient that you bring to somebody's
24 attention?
25 DR. MCCARTHY:

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1 A. Well, I would look them up on the computer.
2 CHAYTOR, Q.C.:
3 Q. Okay, and if, for example, this patient had
4 been zero ER at the time, what would you have
5 to see, I guess is a better way of asking you,
6 what would you have to see to satisfy yourself
7 that this a changed result, what would the
8 original result have had to have been?
9 DR. MCCARTHY:
10 A. Less than ten.
11 CHAYTOR, Q.C.:
12 Q. On ER?
13 DR. MCCARTHY:
14 A. And/or PR.
15 CHAYTOR, Q.C.:
16 Q. And/or PR. So if the ER had been less than
17 ten but the PR higher, it may not have been a
18 change in results?
19 DR. MCCARTHY:
20 A. Or if the PR was higher and now it's five
21 percent, and now it's ten percent, if that
22 patient had anything greater than ten on the
23 previous report, I would not consider that a
24 change in terms of treatment.
25 CHAYTOR, Q.C.:

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1 Q. Okay, so if this person, for example, had had
2 zero ER and a PR of 40 or 50, you would not
3 have considered this a change in result?
4 DR. MCCARTHY:
5 A. No, because we were still using ten as the
6 hard cutoff.
7 CHAYTOR, Q.C.:
8 Q. Right. And you would have assumed that the
9 treating physician treated the person as
10 positive because their PR had been positive?
11 DR. MCCARTHY:
12 A. Yes.
13 CHAYTOR, Q.C.:
14 Q. Okay. And did you pull their charts, for
15 example, in a situation like this, did you
16 pull their charts to see whether or not that
17 was the case or you just looked at the
18 pathology report and satisfied yourself?
19 DR. MCCARTHY:
20 A. I'm pretty sure I looked at the clinic notes
21 and things, too, because I had to figure out
22 who was looking after the patient and you
23 wouldn't be able to determine that from the
24 pathology report.
25 CHAYTOR, Q.C.:

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1 Q. Yes, okay. So you would have had available to
2 you more than just the pathology reports to
3 make that determination?
4 DR. MCCARTHY:
5 A. No, all the OPUS clinic notes.
6 CHAYTOR, Q.C.:
7 Q. Okay.
8 DR. MCCARTHY:
9 A. The first assessment summaries, progress notes
10 and so on.
11 CHAYTOR, Q.C.:
12 Q. Okay. And then what about this person, faint
13 positivity in five percent of cells, would you
14 have interpreted that then as a positive ER?
15 DR. MCCARTHY:
16 A. No. At that time less than ten was negative
17 clinically, from a clinical point of view.
18 And again, it would have depended on what the
19 original results were, but I was using ten as
20 the hard cutoff for both.
21 CHAYTOR, Q.C.:
22 Q. Okay, and so then moderate positivity in ten
23 percent of cells, you would -
24 DR. MCCARTHY:
25 A. That would be considered positive to me.

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1 CHAYTOR, Q.C.:
2 Q. That would be considered positive. And
3 depending what the original test said, you
4 would determine whether or not this was, in
5 fact, a change in results, depending on what
6 the original PR had been?
7 DR. MCCARTHY:
8 A. That's how I was doing it.
9 CHAYTOR, Q.C.:
10 Q. Okay.
11 THE COMMISSIONER:
12 Q. Do I take it, Dr. McCarthy, that we're now
13 talking about ten percent and most, if not all
14 of these particular patients had been
15 originally tested in 2002. But later there
16 would be people who would have been tested
17 earlier. At that stage were you still
18 thinking ten or were you switching over to 30
19 where that was -
20 DR. MCCARTHY:
21 A. I have never, in my training, or any other
22 time, have thought of 30 as being the cutoff.
23 THE COMMISSIONER:
24 Q. All right. So, that for the purposes of this
25 exercise -

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1 DR. MCCARTHY:
2 A. I was using ten.
3 THE COMMISSIONER:
4 Q. - you would have consistently used ten?
5 DR. MCCARTHY:
6 A. Yes.
7 THE COMMISSIONER:
8 Q. All right, thank you.
9 CHAYTOR, Q.C.:
10 Q. And, Doctor, on that point about the 30
11 percent, you had never in your training heard
12 of it or had been taught it. Had you ever, in
13 any literature since come across the 30
14 percent as being an appropriate cutoff?
15 DR. MCCARTHY:
16 A. No.
17 CHAYTOR, Q.C.:
18 Q. And, Doctor, I take it the same then, you
19 would have, in terms of communication of these
20 results to the patients, you would have told
21 your patients and you would have expected that
22 the oncologist that you notified would have
23 done the same and relayed this information to
24 the patients?
25 DR. MCCARTHY:

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1 A. Yes.
2 CHAYTOR, Q.C.:
3 Q. Doctor, was there at any point in time did
4 anyone communicate to you not to do that, to
5 hold off on communicating these results from
6 the patient pending the review taking place at
7 Mount Sinai?
8 DR. MCCARTHY:
9 A. Not that I can recall.
10 CHAYTOR, Q.C.:
11 Q. Okay, so you went ahead with any that were
12 tested on the Ventana system in the summer of
13 2005, any patients that were tested and you
14 received letters for, you notified your
15 patients and you instructed the other
16 oncologists to do the same?
17 DR. MCCARTHY:
18 A. From what I can recall, yes. I noticed on the
19 first letter that you had up, you saw my
20 handwriting a lot on the side. I'm surprised
21 that I don't see my handwriting, although
22 there could have been another copy.
23 CHAYTOR, Q.C.:
24 Q. This might be another copy. It may not be
25 your copy.

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1 DR. MCCARTHY:
2 A. Because I was writing little notes, you know,
3 as I went. So I don't see, I guess, my
4 evidence that I did that with this particular
5 one. Although, if I received this letter, I
6 would have done.
7 CHAYTOR, Q.C.:
8 Q. I think this copy, actually, is Dr. Bob
9 Williams' copy, according to the stamp here.
10 DR. MCCARTHY:
11 A. Okay.
12 CHAYTOR, Q.C.:
13 Q. So it's not your copy of the document.
14 DR. MCCARTHY:
15 A. But my recollection is I took each list, went
16 through them as I previously discussed.
17 CHAYTOR, Q.C.:
18 Q. Okay, and perhaps then we'll just go back to
19 your handwriting on the last exhibit. It's P-
20 2452, page 2, I believe. Yes. And, Doctor,
21 are these your check marks, too?
22 DR. MCCARTHY:
23 A. I think so, yes.
24 CHAYTOR, Q.C.:
25 Q. And what would you be indicating by the check

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1 marks?
2 DR. MCCARTHY:
3 A. I think I was checking the ones that--I was
4 either checking the ones that didn't change or
5 I was checking the ones that had already been
6 notified. I don't recall what my check marks
7 were for exactly there.
8 CHAYTOR, Q.C.:
9 Q. I think we can eliminate the first one then,
10 the first option because it appears these
11 patients had a change.
12 DR. MCCARTHY:
13 A. Were they just saying estrogen receptor status
14 positive, progesterone receptors -
15 CHAYTOR, Q.C.:
16 Q. Okay.
17 DR. MCCARTHY:
18 A. I don't know what the original ones were.
19 CHAYTOR, Q.C.:
20 Q. Oh, okay, yes. That's true, because if their
21 progesterone had been positive before, you
22 would have thought no change?
23 DR. MCCARTHY:
24 A. Right. I don't know, depends on what the
25 originals were.

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1 CHAYTOR, Q.C.:
2 Q. Okay. Would you have checked to ensure that
3 the patient had, in fact, been treated with
4 anti-hormonal therapy?
5 DR. MCCARTHY:
6 A. I believe I would have.
7 CHAYTOR, Q.C.:
8 Q. Okay. I'm just thinking if you--did you--the
9 possibility of a patient who you may have
10 assumed the oncologist treated on the basis of
11 their progesterone receptor status may not
12 have, in fact, been treated for whatever other
13 reason and -
14 DR. MCCARTHY:
15 A. Again, I would have been reading through their
16 OPUS notes, as well.
17 CHAYTOR, Q.C.:
18 Q. Yes. So would you have, in any event,
19 regardless, just let the patient--let the
20 other oncologist know based on the change in
21 the estrogen receptor status or you were
22 looking at both?
23 DR. MCCARTHY:
24 A. I was mainly looking at those whose numbers
25 changed that would direct their treatment in a

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1 different way.
2 CHAYTOR, Q.C.:
3 Q. Okay. And then we'll see the two that are
4 negative, negative here, there's no check
5 marks. And then I don't know if you would
6 ever be able to read, but maybe you can read.
7 DR. MCCARTHY:
8 A. "On, on Tam" means on Tamoxifen.
9 CHAYTOR, Q.C.:
10 Q. Okay, all right, so that's helpful. Right
11 here it's "On Tam"?
12 DR. MCCARTHY:
13 A. Yeah.
14 CHAYTOR, Q.C.:
15 Q. So it appears you were checking to see that
16 the patient was already -
17 DR. MCCARTHY:
18 A. Yes.
19 CHAYTOR, Q.C.:
20 Q. So if you discovered that, I take it you
21 didn't make any contact with the oncologist?
22 DR. MCCARTHY:
23 A. Not that I can recall. That was not my focus
24 at that time.
25 CHAYTOR, Q.C.:

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1 Q. Okay. And, Doctor, do you have any idea
2 what's written over in the left margin on that
3 patient?
4 DR. MCCARTHY:
5 A. "Already" I think that says, "Already on Tam."
6 CHAYTOR, Q.C.:
7 Q. "Already on Tam" as well.
8 DR. MCCARTHY:
9 A. I think.
10 CHAYTOR, Q.C.:
11 Q. And then there's a circle and a star by this
12 patient and -
13 DR. MCCARTHY:
14 A. Because I had down "Not our patient."
15 CHAYTOR, Q.C.:
16 Q. Okay. And does it say "Not" -
17 DR. MCCARTHY:
18 A. I can't--something "tolerate Tam," something,
19 "Dr." something's patient. I don't -
20 CHAYTOR, Q.C.:
21 Q. Perhaps "Dr. Kwan's"?
22 DR. MCCARTHY:
23 A. I don't know, I don't know.
24 CHAYTOR, Q.C.:
25 Q. Okay. And then what about the next one,

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1 Doctor?
2 DR. MCCARTHY:
3 A. That says, "Dr. Tomkins" something "August,
4 '05."
5 CHAYTOR, Q.C.:
6 Q. Okay.
7 DR. MCCARTHY:
8 A. "Tomkins/Zaidi" that looks like "second week
9 of" something.
10 CHAYTOR, Q.C.:
11 Q. Okay. So are you making notes as to when the
12 patient is scheduled to see the oncologist, is
13 -
14 DR. MCCARTHY:
15 A. Could be, could be.
16 CHAYTOR, Q.C.:
17 Q. Okay.
18 DR. MCCARTHY:
19 A. It's possible.
20 CHAYTOR, Q.C.:
21 Q. And do you know what you -
22 DR. MCCARTHY:
23 A. I think that says "On Arimidex."
24 CHAYTOR, Q.C.:
25 Q. All right, so you're checking to see that

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1 they're on Arimidex. So in that case, I just
2 want to be clear, so in that case if the
3 patient is already on the medication, you
4 didn't contact the medical oncologist to tell
5 them of the change?
6 DR. MCCARTHY:
7 A. Not to my recollection, no.
8 CHAYTOR, Q.C.:
9 Q. Okay. You were looking for the people who
10 would required change in treatment?
11 DR. MCCARTHY:
12 A. Correct.
13 CHAYTOR, Q.C.:
14 Q. So that might explain if there were patients
15 who had changes in results out of this list
16 who were not contacted in the summer of 2005,
17 it might be because you looked at it and said
18 they don't need a change, they're already on
19 their treatment?
20 DR. MCCARTHY:
21 A. Again, our focus at that time was to find
22 patients whose treatment would be affected.
23 CHAYTOR, Q.C.:
24 Q. Yes, okay. And this, Doctor, are you able to
25 decipher that for us?

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1 DR. MCCARTHY:
2 A. I think that was a lady who looks like she
3 moved to Halifax.
4 CHAYTOR, Q.C.:
5 Q. Okay.
6 DR. MCCARTHY:
7 A. Something, could be "Negative" B-X would mean
8 biopsy in my shorthand. And then it looks
9 like it says it could be--I don't think it
10 says "or Tam" I think it says "On Tam," on
11 Tamoxifen.
12 CHAYTOR, Q.C.:
13 Q. "On Tamoxifen" okay. And then a star and
14 something else and circled, this patient.
15 What does this say, do you -
16 DR. MCCARTHY:
17 A. You know, that's not my handwriting there. I
18 don't know -
19 CHAYTOR, Q.C.:
20 Q. That looks like Dr. Cook's handwriting.
21 DR. MCCARTHY:
22 A. I don't know what that means. That looks like
23 "Left mastectomy, infiltrating duct ca,
24 September, 2002." That looks like what it
25 says to me, but that's not my handwriting.

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1 CHAYTOR, Q.C.:
2 Q. And perhaps Dr. Cook was making a note for you
3 on this particular patient?
4 DR. MCCARTHY:
5 A. Could be. We went through this list together
6 at some point. It's possible.
7 CHAYTOR, Q.C.:
8 Q. Okay, and then here we have, is that Dr.
9 Laing's name?
10 DR. MCCARTHY:
11 A. "Will notify August, '05. Dr. Greenland will
12 notify" something, something.
13 CHAYTOR, Q.C.:
14 Q. Okay.
15 DR. MCCARTHY:
16 A. I think it's Arimidex or Tam as possibilities.
17 And "Laing will notify August, '05."
18 CHAYTOR, Q.C.:
19 Q. Okay.
20 DR. MCCARTHY:
21 A. I guess I would have seen when the next
22 appointment time was coming up and I would
23 have told the respective oncologist the
24 results and so that they could notify them at
25 that particular visit.

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1 CHAYTOR, Q.C.:
2 Q. And this looks like it's a Clarenville
3 patient.
4 DR. MCCARTHY:
5 A. Yeah, that's interesting.
6 THE COMMISSIONER:
7 Q. Dr. McCarthy, as I understand, you are
8 indicating that you were looking for patient
9 who would require a change in treatment, that
10 was your focus, those were the ones where you
11 made sure that the oncologist was aware of the
12 new result so that they could take action?
13 DR. MCCARTHY:
14 A. Yes.
15 THE COMMISSIONER:
16 Q. And the others you weren't notifying in the
17 capacity as the point person?
18 DR. MCCARTHY:
19 A. Correct.
20 THE COMMISSIONER:
21 Q. But would I be correct in assuming that there
22 would be, in any event, an addendum going on
23 their chart, so at some point the treating
24 oncologist would, in fact, learn this
25 information?

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1 DR. MCCARTHY:
2 A. That's possible. If it came to me, I would
3 have put it in their box myself.
4 THE COMMISSIONER:
5 Q. Okay.
6 DR. MCCARTHY:
7 A. And they would have gotten it that way.
8 However, as you were told, I think Dr.
9 Siddiqui brought this up, often times
10 addendums would come and go to the surgeon and
11 not come to us. So there may have been times,
12 if I did not get this addendum, that it would
13 have gone back to the surgeon and a copy would
14 not have come to the oncologist.
15 THE COMMISSIONER:
16 Q. Okay. Thank you.
17 CHAYTOR, Q.C.:
18 Q. So if you received all of the pathology
19 reports with addendums accompanying this list,
20 you would have, whatever you received was
21 taken and put in the box for the oncologist if
22 there were a treating oncologist assigned to
23 these patients?
24 DR. MCCARTHY:
25 A. Correct.

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1 CHAYTOR, Q.C.:
2 Q. And, Doctor, in terms of your own patients who
3 were either confirmed negative or did not
4 require at treatment change because perhaps
5 they were already on Tamoxifen for some other
6 reason, did you nonetheless communicate to
7 them at some point in time that the results of
8 the retest, that they had been retested and
9 what the results were?
10 DR. MCCARTHY:
11 A. For these early patients where are our, I
12 guess we'll call our fact finding mission to
13 look for, you know, the initial scope of the
14 problem, before the Panel started, I don't
15 recall specifically doing that. Again, my
16 focus was solely on those patients whose
17 treatment would have changed. When it came
18 time to the Panel, Dr. Laing specifically told
19 us to notify all patients. However, it was
20 her feeling and we all agreed that the
21 treatment changes would be the priority in
22 terms of bringing them back sooner. Those
23 whose results didn't change from a treatment
24 point of view could wait to the next available
25 appointment time, whenever they were booked.

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1 CHAYTOR, Q.C.:
2 Q. Okay. And if we could have, please, P-2452?
3 No, that's the one that we already looked at.
4 Registrar, I'm looking for the--okay. No,
5 that's fine. I think it might be then P-0508.
6 Okay, 0535, try 0535. I'm looking for the
7 July 29th letter. I think it's 0535. Third
8 time lucky. There we go.
9 DR. MCCARTHY:
10 A. Okay.
11 CHAYTOR, Q.C.:
12 Q. Okay, this is what I understand to be the
13 third such letter that went to you in the
14 summer of 2005, July 29th, 2005. "As per our
15 previous discussions repeat ER and PR has been
16 carried out on the following initially
17 identified as ER negative." And then there's
18 a list of patients, over three pages. And
19 this particular copy is not signed. But,
20 Doctor, I take it you recall receiving this
21 third list?
22 DR. MCCARTHY:
23 A. Yes.
24 CHAYTOR, Q.C.:
25 Q. And again, would you have handled this in the

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1 same manner as you did the first two lists?
2 DR. MCCARTHY:
3 A. I would assume so. Again, without my hand
4 scratches, I can't tell you for absolute sure,
5 but I assume so.
6 CHAYTOR, Q.C.:
7 Q. If we could have then, please, P-0539.
8 Actually, let's look at 513 first, please.
9 Doctor, these are handwritten notes of Dr.
10 Williams and he has had them transcribed.
11 Page two is a typed version of the notes, and
12 this is a conference call that happened on
13 July 27th, 2005, at 5 p.m. and there are a
14 number of people taking part and you and Dr.
15 Laing are indicated to take part via
16 telephone. After having your meeting of May
17 17th, did you have any further meetings or
18 group discussions such as conference calls on
19 this issue from May 17th up until July 27th?
20 DR. MCCARTHY:
21 A. We would have had discussions amongst a group
22 of oncologists, but no official meetings, no
23 official conference calls with anybody from
24 Eastern Health or with pathology that I can
25 recall.

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1 CHAYTOR, Q.C.:
2 Q. So I take it then, this is the first time you
3 would have taken part in a discussion with
4 individuals such as Terry Gulliver, Dan Boone,
5 Deborah Thomas, Susan Bonnell, Heather
6 Predham, Alan Kwan, Dr. Gardiner, and Dr.
7 Williams on this issue?
8 DR. MCCARTHY:
9 A. Correct.
10 CHAYTOR, Q.C.:
11 Q. Okay, and Mr. Tilley, we're not sure--his name
12 is crossed off the list. Do you recall if Mr.
13 Tilley took part in this conference call?
14 DR. MCCARTHY:
15 A. Well, we were on the phone, so I can't
16 remember if it was even said to me, you know,
17 such and such is here, because we were--it
18 looks like we were on the phone.
19 CHAYTOR, Q.C.:
20 Q. And you, yourself, didn't take notes of any of
21 those discussions?
22 DR. MCCARTHY:
23 A. No.
24 CHAYTOR, Q.C.:
25 Q. And this indicates that there was an overview

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1 of our data, an average of 73 percent. Do you
2 recall a discussion around that?
3 DR. MCCARTHY:
4 A. No.
5 CHAYTOR, Q.C.:
6 Q. And Dr. Cook gave results of discussions with
7 Dr. Walters in Montreal. Any of this do you
8 recall being discussed?
9 DR. MCCARTHY:
10 A. I don't remember this meeting very well, so I
11 don't remember all of this detail.
12 CHAYTOR, Q.C.:
13 Q. And then it indicates here Sloan-Kettering, no
14 information. You said earlier that Dr. Laing
15 told you about a subsequent discussion with
16 Dr. Hudis. Do you recall when Dr. Laing told
17 you about that?
18 DR. MCCARTHY:
19 A. No, I don't.
20 CHAYTOR, Q.C.:
21 Q. And in terms of dating it, would it have been
22 around the same time as the index case, would
23 it have been a year later, two years later?
24 DR. MCCARTHY:
25 A. I remember it being some time in 2005 before

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1 or during the early panel time. So either
2 before or during the fall of 2005, but beyond
3 that --
4 MR. BROWNE:
5 Q. Sorry, Ms. Chaytor, iff we go back and look at
6 Dr. Williams' note, that may be in reference
7 to Dr. Cook, Dr. Cook's efforts around that
8 time to talk to labs, like the Mayo Clinic and
9 Sloan-Kettering.
10 CHAYTOR, Q.C.:
11 Q. Yes, I think Dr. Cook says he's--that's what -
12 -
13 MR. BROWNE:
14 Q. In terms of polling information of their
15 testing.
16 CHAYTOR, Q.C.:
17 Q. Yes, what's written here you mean.
18 MR. BROWNE:
19 Q. Yes.
20 THE COMMISSIONER:
21 Q. That wasn't the question, though.
22 CHAYTOR, Q.C.:
23 Q. That's not my question. Okay, so Doctor, I'm
24 sorry --
25 DR. MCCARTHY:

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1 A. No, I don't recall exactly when it was, but I
2 do recall it being either around about the
3 time of the panelling or not long before.
4 CHAYTOR, Q.C.:
5 Q. Okay. So in terms of her telling you that
6 information, could it be that it was told to
7 you in around this time period, July of 2005,
8 June, 2005?
9 DR. MCCARTHY:
10 A. I can't narrow it down any further than that.
11 CHAYTOR, Q.C.:
12 Q. Okay. Now then, please, if we could go to P-
13 0539. These again are Dr. Williams notes and
14 at page three we have the typed version, and
15 this appears to be a meeting on August 1st,
16 2005, and at least yourself and Dr. Cook, Dr.
17 Carter, are in attendance. Do you recall
18 having a meeting on August 1st, 2005, with
19 Drs. Cook and Carter?
20 DR. MCCARTHY:
21 A. Very vague recollection.
22 CHAYTOR, Q.C.:
23 Q. And, Doctor, do you recall perhaps attending a
24 meeting of a larger group on that date as
25 well?

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1 DR. MCCARTHY:
2 A. Again my recollection is very vague.
3 CHAYTOR, Q.C.:
4 Q. So on August 1st, 2005, in this meeting with
5 Drs. Cook and Carter, and there may have been
6 others, but there's comments attributed to the
7 three of you, "Positive is positive. Some
8 disagreements with the PRs. As long as one ER
9 and PR is positive, this is okay". Do you
10 recall, or if you can't recall, fine, but can
11 you shed any light as to what those comments
12 might mean?
13 DR. MCCARTHY:
14 A. No, I don't--I don't know.
15 CHAYTOR, Q.C.:
16 Q. So some discussion about, well, what does
17 positive mean, and you suggesting "positive is
18 positive".
19 DR. MCCARTHY:
20 A. I don't know what I meant there. I don't
21 know.
22 CHAYTOR, Q.C.:
23 Q. Perhaps were you addressing any issue of what
24 may be reported on the pathology repots that
25 you were receiving?

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1 DR. MCCARTHY:
2 A. Again I don't recall.
3 CHAYTOR, Q.C.:
4 Q. "Some disagreements with the PRs". Do you
5 recall what that may be in relation to?
6 DR. MCCARTHY:
7 A. I don't recall.
8 CHAYTOR, Q.C.:
9 Q. "As long as one ER or PR is positive, this is
10 okay".
11 DR. MCCARTHY:
12 A. What I would have meant by that is that as
13 long as one of them is positive and we treated
14 the patient based on that, then that would not
15 have affected the patient's treatment if one
16 or the other changed.
17 CHAYTOR, Q.C.:
18 Q. And it indicates here that you're very
19 comfortable with future plan and Mount Sinai.
20 DR. MCCARTHY:
21 A. They had asked what we thought about sending
22 the results out to Sinai. I believe there was
23 some discussion about them being an accredited
24 lab, so--that their results had been
25 validated, and that's why I would have said

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1 that, the fact that they were going to send
2 our results to Sinai.
3 CHAYTOR, Q.C.:
4 Q. Dr. Carter is attributed with making the point
5 there has been known variability in the
6 results over the years. Do you recall the
7 discussion around that?
8 DR. MCCARTHY:
9 A. No, I don't.
10 CHAYTOR, Q.C.:
11 Q. And, Doctor, if Dr. Carter had made such an
12 assertion that there had been known
13 variability in the results over the years, is
14 that something you would have asked questions
15 of her about in terms of how has it been
16 known, how long has it bee known, why wasn't
17 it brought to our attention?
18 DR. MCCARTHY:
19 A. Again I don't recall.
20 CHAYTOR, Q.C.:
21 Q. And it says, "Tumour board discussion talked
22 about issue which has been found". Do you
23 recall what that referred to?
24 DR. MCCARTHY:
25 A. No.

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1 CHAYTOR, Q.C.:
2 Q. You would have been the chair of the tumour
3 board at this point in time?
4 DR. MCCARTHY:
5 A. Yeah, I don't--I don't know which tumour board
6 she was referring to, whether it was my memory
7 of the 2003, whether it was something more
8 recent. I don't know.
9 CHAYTOR, Q.C.:
10 Q. Okay. So, Doctor, you've indicated you have a
11 vague recollection of attending a larger
12 meeting on August 1st, 2005. So perhaps you
13 can share with us what it is that you do
14 recall?
15 DR. MCCARTHY:
16 A. Very little, only just a few things coming
17 back after reading this because before I was
18 showed these notes from Dr. Williams, I did
19 not remember specifically this meeting at all.
20 CHAYTOR, Q.C.:
21 Q. Okay, meaning the smaller meeting, or is this
22 your recollection--were there two meetings?
23 DR. MCCARTHY:
24 A. I don't even remember that kind of detail.
25 CHAYTOR, Q.C.:

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1 Q. So this does jog your memory somewhat as to
2 issues that were discussed?
3 DR. MCCARTHY:
4 A. Yeah, it's coming back that we had this
5 meeting, but the exact context, who said what,
6 I don't have a very good memory of that.
7 CHAYTOR, Q.C.:
8 Q. So, Doctor, is there anything other than
9 what's in the notes, and I believe this to be
10 --might, in fact, be a different meeting the
11 same day. The larger meeting, do you recall
12 who would have been in attendance at it?
13 DR. MCCARTHY:
14 A. Again I don't remember the difference between
15 these two meetings. I don't have good memory
16 of this.
17 CHAYTOR, Q.C.:
18 Q. Doctor, do you recall the CEO, Mr. Tilley,
19 being present?
20 DR. MCCARTHY:
21 A. I remember being at meetings where he was
22 there. The specific one, I don't recall.
23 CHAYTOR, Q.C.:
24 Q. Meetings where he was there to discuss the
25 ER/PR issue?

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1 DR. MCCARTHY:
2 A. I remember there was--he was at a meeting that
3 I was at before once or twice. Again the
4 details, what was said, I can't recall.
5 CHAYTOR, Q.C.:
6 Q. So a meeting on or about the 1st of August,
7 2005, in which Mr. Tilley would have been
8 present--how common would it have been up to
9 that point in time for you to attend any
10 meeting with Mr. Tilley?
11 DR. MCCARTHY:
12 A. I would have gone to any meetings that Dr.
13 Laing requested me to go to. That's all I can
14 say.
15 CHAYTOR, Q.C.:
16 Q. But how common would it have been--how common
17 an occurrence would it be for you to meet with
18 Mr. Tilley?
19 DR. MCCARTHY:
20 A. Very uncommon.
21 CHAYTOR, Q.C.:
22 Q. Very uncommon, okay, and do you know whether
23 or not this, in fact, other than the telephone
24 conference call that he may or may not have
25 been on, in terms of sitting down with a face

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1 to face meeting with Mr. Tilley in the room,
2 was the first occasion for that to happen in
3 your career have been about this ER/PR issue?
4 DR. MCCARTHY:
5 A. I believe so, yes.
6 CHAYTOR, Q.C.:
7 Q. And the details of that meeting escape you?
8 DR. MCCARTHY:
9 A. Given the fact that it was three years ago,
10 yes, they do.
11 CHAYTOR, Q.C.:
12 Q. Doctor, do you recall any confrontation
13 occurring at the meeting or any issues that
14 became somewhat contentious and Mr. Tilley
15 having to play a role, a mediation role?
16 DR. MCCARTHY:
17 A. I don't recall that at all.
18 CHAYTOR, Q.C.:
19 Q. So nothing at all along those lines?
20 DR. MCCARTHY:
21 A. Not that I can recall. I don't remember any
22 confrontation.
23 CHAYTOR, Q.C.:
24 Q. Throughout the entire time of you attending
25 any meetings on this issue, do you recall any

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1 meeting in which there was any confrontation
2 or an sense of unease amongst the participants
3 at the meeting?
4 DR. MCCARTHY:
5 A. No.
6 THE COMMISSIONER:
7 Q. Ms. Chaytor, wherever you can find a spot,
8 we'll break, we'll break for lunch.
9 CHAYTOR, Q.C.:
10 Q. Thank you. Doctor, did anyone ever consult
11 you or ask you your opinion as to whether or
12 not the patients should be told in advance
13 that their samples are going to be retested?
14 DR. MCCARTHY:
15 A. Yes, I remember discussing this with Dr. Laing
16 and with the other oncologists as well. I
17 remember discussing this with Drs. Cook and
18 Carter. I do not recall when, whether it was
19 in a forum together or on separate occasions,
20 but I remember discussing this with those
21 people. It was our position, myself and Dr.
22 Laing, initially that we thought, well, we're
23 going to get the results in a short period of
24 time we hope and let's get all the information
25 and then notify the patients. We had already

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1 been notifying patients individually up to
2 that point, so we were quite comfortable doing
3 that, but in terms of notifying patients ahead
4 of time, that was not something that we
5 advocated for at that time.
6 CHAYTOR, Q.C.:
7 Q. And when you say that you thought you were
8 going to be getting the results in a short
9 period of time, what was your understanding as
10 to what constituted a short period of time,
11 how long was this going to take?
12 DR. MCCARTHY:
13 A. My understanding was a month to two months,
14 and that we would have the results back and
15 that we would have all the information to
16 present to individual patients.
17 CHAYTOR, Q.C.:
18 Q. And who told you that, that it would be a
19 month or two months?
20 DR. MCCARTHY:
21 A. My recollection was Dr. Cook.
22 CHAYTOR, Q.C.:
23 Q. And if we could look, please, at P-0570.
24 Again these are Dr. Williams notes, and the
25 typed version is at page three. It's the

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1 meeting of August 15th, 2005, and it doesn't
2 involve--you're not one of the attendees
3 although your name is mentioned here. It's a
4 meeting with the Minister of Health of the day
5 and others, including Dr. Laing. Were you
6 aware that this meeting was going to be taking
7 place and that Dr. Laing had been asked to
8 attend?
9 DR. MCCARTHY:
10 A. Yes.
11 CHAYTOR, Q.C.:
12 Q. And what did you understand was the purpose of
13 this meeting?
14 DR. MCCARTHY:
15 A. Well I was told about it after the fact, and I
16 was told that it was a meeting to discuss the
17 issue in general. I wasn't told that there
18 was a mandate or something that had to come
19 out of this meeting, that the whole issue was
20 discussed with the Minister, and that's my
21 understanding of what that--the goal of that
22 meeting was to update the minister.
23 CHAYTOR, Q.C.:
24 Q. And, Doctor, up to this point in time when you
25 first became alerted that there might be an

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1 issue, you contacted Dr. Cook and you may have
2 contacted other pathologists involved in the
3 original test. There was discussion amongst
4 the oncologists. You would have attended at
5 least one meeting and been on a conference
6 call with people--with other people from
7 within Eastern Health. Had you had any
8 discussions with anyone, other than patients,
9 external to Eastern Health on this issue?
10 DR. MCCARTHY:
11 A. Not that I can recall.
12 CHAYTOR, Q.C.:
13 Q. Dr. Laing advised in this meeting, or it's
14 written that Dr. McCarthy, Dr. Ganguly agreed
15 with waiting to send something out until we
16 have more information. I take it, Doctor,
17 that would be consistent, that you were hoping
18 to have information to tell the patients
19 within a short period of time?
20 DR. MCCARTHY:
21 A. Correct.
22 CHAYTOR, Q.C.:
23 Q. Thank you, Commissioner.
24 THE COMMISSIONER:
25 Q. We'll meet again at 2:15.

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1 (BREAK)
2 THE COMMISSIONER:
3 Q. Ms. Chaytor.
4 CHAYTOR, Q.C.:
5 Q. Thank you. Good afternoon, Doctor. Doctor,
6 the August 1st meeting or the meeting that
7 took place somewhere around August 1st, is
8 there anything at all about that meeting that
9 you recall that we haven't already discussed
10 that would be of importance or interest to the
11 Commissioner to know?
12 DR. MCCARTHY:
13 A. Not that I can recall.
14 CHAYTOR, Q.C.:
15 Q. On the issue of whether to disclose to
16 patients beforehand that they were, in fact,
17 being retested, was there any concern
18 expressed by oncologists or treating
19 physicians, or for that matter anyone, that
20 they would be flooded with phone calls and how
21 that might impact on an already very hectic
22 schedule for the doctors?
23 DR. MCCARTHY:
24 A. That was discussed informally amongst our
25 group as a possible issue to be concerned

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1 with. It was certainly not, I guess, a main
2 topic of discussion. We were more concerned
3 at that time with having all the information.
4 That was our main focus. In order to have a
5 conversation whereby you could make an
6 informed decision with your patient, we really
7 wanted all the information, and that was what
8 we talked about a lot, was wanting to have
9 more information. That seemed to be the main
10 topic, but, yes, there was some discussion of
11 that latter issue as well.
12 CHAYTOR, Q.C.:
13 Q. And, Doctor, up to this point in time, well,
14 by August 15th, 2005, when Dr. Laing speaks to
15 the Minister on that issue, up to that point
16 in time, three batches of patients, close to
17 60 patients, had already been retested in-
18 house and you had been provided the list of
19 those patients and you had contacted your own
20 patients, Dr. Laing had contacted hers, and
21 other oncologists had--to your knowledge or
22 your understanding, would have been contacting
23 theirs as well. So there were a number--
24 quite a number of patients up to that point in
25 time then that may already know about this.

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1 Was there any concern discussed that, well,
2 you know, if there's ten, twelve, or more
3 patients that already know about this, it's
4 only a matter of time they're all going to be
5 speaking to one another, it's a close network
6 of breast cancer patients in this province,
7 they're going to find out in a roundabout way
8 if we don't tell them directly?
9 DR. MCCARTHY:
10 A. I remember that issue coming up at some point.
11 I don't remember by who, but we were saying
12 ourselves--we'd been disclosing all along,
13 we'd been telling patients all along, the ones
14 that we had the results back, and that we had
15 met with. So that issue was raised and it was
16 my recollection that there was a lot of
17 discussion about the timing of notification of
18 patients. It was not a matter of if, it was
19 always a matter of when. There was a lot of
20 discussion back and forth, but it was again
21 felt by us, the oncologists, that more
22 information was needed to present to the
23 patients and if that time period would be as
24 short as they initially indicated, that's what
25 we wanted to do.

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1 CHAYTOR, Q.C.:
2 Q. And who did you--who did you understand--I
3 know you said it was Dr. Cook, but who did you
4 understand had given Dr. Cook this time frame
5 of one to two months?
6 DR. MCCARTHY:
7 A. My understanding was that it was his
8 discussions with Mount Sinai.
9 CHAYTOR, Q.C.:
10 Q. Okay, and as your patients continued in then
11 through the fall to come and see you, through
12 August or even late summer, August, September,
13 and into the fall, before this becomes a
14 public issue on October 2nd, the patients who
15 are coming to see you, did you discuss the
16 whole retesting process with them? Would you
17 look at their chart and see, well, this is a
18 patient that could well be a candidate for
19 retesting and did you have any discussions
20 with those patients?
21 DR. MCCARTHY:
22 A. I believe I did. I can't tell you any
23 specific circumstance, but I believe I would
24 have, and would have told patients that people
25 are being retested. The extent of what I

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1 would have told them, or anything in terms of
2 an explanation as to why, I don't recall what
3 I would have said at that point.
4 CHAYTOR, Q.C.:
5 Q. And, Doctor, at any point in time, did anyone
6 express any concern as to this is taking a lot
7 longer than what we had anticipated?
8 DR. MCCARTHY:
9 A. At that point, we would have been into the
10 panelling process and --
11 CHAYTOR, Q.C.:
12 Q. So that's mid October and beyond?
13 DR. MCCARTHY:
14 A. In October, and I remember at that time not
15 knowing how many patients that were even to be
16 panelled. That was never discussed with me.
17 I still had--I still had it in my mind at
18 least that it was going to be done in the fall
19 and completed in the fall. So that's kind of
20 where my head was, but I was relying on Dr.
21 Cook and Heather Predham to provide me with
22 new information if there was new information
23 to come up on that issue.
24 CHAYTOR, Q.C.:
25 Q. And throughout this whole review, did you have

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1 discussions with Heather Predham?
2 DR. MCCARTHY:
3 A. During our panel meetings, yes.
4 CHAYTOR, Q.C.:
5 Q. And other than that, would you have had any
6 discussions yourself with Ms. Predham?
7 DR. MCCARTHY:
8 A. Not that I can recall.
9 CHAYTOR, Q.C.:
10 Q. At any point in giving your opinion as to when
11 the patients should best be informed after you
12 have information, as you say, at any point in
13 giving that opinion did anyone--did you hear
14 talk of the insurance company, or HIROC, or
15 any position they may have in terms of timing
16 of disclosure and manner of disclosure?
17 DR. MCCARTHY:
18 A. I had never actually never even heard the name
19 of the insurance company until this process.
20 I didn't know--I'd never heard of HIROC,
21 didn't know what they were. Their involvement
22 was not explained to me in any way. I wasn't
23 even aware of their involvement in any way.
24 CHAYTOR, Q.C.:
25 Q. So in terms of my question as to whether or

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1 not you learned of any position they may have
2 --
3 DR. MCCARTHY:
4 A. I did not.
5 CHAYTOR, Q.C.:
6 Q. You did not, okay. Were you ever consulted as
7 to the parameters of the review in terms of
8 which patients should be retested?
9 DR. MCCARTHY:
10 A. No, this was told to me by Dr. Cook.
11 CHAYTOR, Q.C.:
12 Q. And what did Dr. Cook tell you, who was going
13 to be retested?
14 DR. MCCARTHY:
15 A. As explained to me, it would be all the
16 patients between 1997 and 2005 who were ER
17 negative. I did question that. I wanted to
18 know why specifically ER negative because we
19 did not treat the ER and PR separately in a
20 clinical fashion. I still don't fully
21 understand that.
22 CHAYTOR, Q.C.:
23 Q. Okay, and perhaps you can just explain that a
24 bit more to us. I take it you thought it was
25 no need to retest anyone if their PR was

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1 positive?
2 DR. MCCARTHY:
3 A. That was my belief, or retest everybody. I
4 never understood the separation between the ER
5 and the PR.
6 CHAYTOR, Q.C.:
7 Q. So either do them all and look at the ER and
8 the PR status, or just check for whoever is
9 negative on one or the other, don't just
10 concentrate on ER?
11 DR. MCCARTHY:
12 A. Again it was never explained to me why that
13 decision was made.
14 CHAYTOR, Q.C.:
15 Q. But you did express some concern to Dr. Cook
16 about the parameters?
17 DR. MCCARTHY:
18 A. That's right, I asked him why, why are we just
19 doing the ER negatives, and I still don't
20 fully understand why. I don't remember
21 getting an answer to that.
22 CHAYTOR, Q.C.:
23 Q. He didn't give you any answer to it?
24 DR. MCCARTHY:
25 A. No, and I wasn't quite fully understanding of

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1 the years either, why 1997 to 2005. That was
2 not explained to me either, but I assumed it
3 had something to do with the way they did the
4 testing in the lab at that time, of which I
5 had no knowledge.
6 CHAYTOR, Q.C.:
7 Q. And did he indicate to you whether or not
8 there would be any--he's saying negative, ER
9 negatives. Did he have any discussion with
10 you as to what was being defined as negative
11 and whether or not that differed over a time
12 period?
13 DR. MCCARTHY:
14 A. Later in the process, I learned that they were
15 using 30 percent at one period of time and 10
16 percent in another. Again since I had no
17 knowledge or experience with the 30 percent
18 number, I wasn't quite sure when that cutoff
19 time was.
20 CHAYTOR, Q.C.:
21 Q. Okay, yes, in terms of your own practice when
22 you arrived here in July of 2001, you always
23 used 10 percent?
24 DR. MCCARTHY:
25 A. Correct.

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1 CHAYTOR, Q.C.:
2 Q. Doctor, what would have been the benefit of
3 going with your approach in terms of looking
4 at both ER and PR status?
5 DR. MCCARTHY:
6 A. I don't know if there would have been a
7 benefit, I don't know, because in my clinical
8 practice, if you were PR positive, you were
9 going to get offered, or discussed with, I
10 should say, treatment. You were going to be
11 offered at least a discussion about it. So if
12 those patients were PR positive and they would
13 have been offered treatment, they would not
14 have missing out on a treatment if their ER in
15 turn was positive. That was my point of view
16 on that.
17 CHAYTOR, Q.C.:
18 Q. Okay, so were you thinking that if they looked
19 at the PR status, chances are that person
20 probably would have already been on therapy
21 and it may have cut back on or culled out a
22 lot of people who didn't need to be retested
23 for the purpose of finding a new treatment?
24 DR. MCCARTHY:
25 A. Yes.

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1 CHAYTOR, Q.C.:
2 Q. Okay. If we could have, please, P-0069. This
3 is a letter written to Dr. Cook, July 14th,
4 2005, and it's by Dr. Carter, copied to Dr.
5 Williams, and it outlines her plan for a
6 review of the matter and she writes, "As per
7 our many recent discussions, I agree with you
8 that our estrogen receptor status reports
9 prior to 2003 require immediate investigation.
10 Our recent examples of 16 patients converting
11 from estrogen receptor negative to estrogen
12 receptor positive status is quite concerning.
13 Factors identified on those slides clearly
14 show problems with the technique of estrogen
15 receptor testing and the interpretation of
16 same. I've been unable to review the
17 paperwork. I am, therefore, eager to review
18 the estrogen receptor status of all patients
19 seen in our lab from May, 1997, when
20 immunohistochemical staining for estrogen
21 receptor status first became available, up
22 until March, 2004, when analysis and
23 readjustment of the estrogen receptor status
24 protocol was carried out by Dr. Ejeckam. I
25 think that it is vital that we expediently

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1 review these cases and let patients know as
2 quickly as possible if any change in their
3 estrogen receptor status. As quickly as
4 possible, I would like to know of the estrogen
5 receptor status of every patient tested in our
6 lab between 1997 and 2004, and from that
7 information, I would also like an estimate of
8 the total positive cases given out per year.
9 I would need all the reports pulled from the
10 computer, patient demographics, all of the
11 slides from the cases, including the estrogen
12 receptor slides need to be pulled and
13 organized", and she goes on about blocks being
14 pulled as well, and it will be necessary to
15 have a computerized database to assist her
16 with the project. Were you aware that Dr.
17 Carter as going to be carrying out such a
18 review?
19 DR. MCCARTHY:
20 A. This is the first I've seen of this.
21 CHAYTOR, Q.C.:
22 Q. And is it also the first that you've heard of
23 this, that Dr. Carter was to be involved in
24 such a review?
25 DR. MCCARTHY:

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1 A. Not that I can recall.
2 CHAYTOR, Q.C.:
3 Q. I'm sorry?
4 DR. MCCARTHY:
5 A. Not that I can recall. I know that Dr. Carter
6 was involved in the retesting, but I wasn't
7 aware that she had initiated this.
8 CHAYTOR, Q.C.:
9 Q. That was she doing anything internal, an
10 internal investigation into the issue?
11 DR. MCCARTHY:
12 A. I knew she was involved in something of that
13 nature, but any kind of detail like this, I
14 had no prior knowledge.
15 CHAYTOR, Q.C.:
16 Q. What did you understand that she was doing?
17 DR. MCCARTHY:
18 A. I knew that she was looking into the issue.
19 Again details, what she was doing, why she was
20 doing it, the specifics of it were not shared
21 with me.
22 CHAYTOR, Q.C.:
23 Q. Do you recall at the August 1st meeting any
24 discussion around what Dr. Carter was doing
25 and any results that she was coming across?

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1 DR. MCCARTHY:
2 A. Again my recollection of that meeting is very
3 vague.
4 CHAYTOR, Q.C.:
5 Q. And do you recall any heated discussions or
6 disagreements involving--in which either Dr.
7 Carter took part at that meeting or involving
8 Dr. Carter?
9 DR. MCCARTHY:
10 A. No, I don't.
11 CHAYTOR, Q.C.:
12 Q. And do you recall hearing that Dr. Carter, in
13 fact, had given up on this particular project?
14 DR. MCCARTHY:
15 A. I knew that Dr. Carter resigned her position
16 on the panel and that she was going to be
17 involved at some point as a consultant only,
18 but in terms of this project, no, I was not
19 aware of that.
20 CHAYTOR, Q.C.:
21 Q. And what was your understanding as to why she
22 resigned from the panel?
23 DR. MCCARTHY:
24 A. I don't know why.
25 CHAYTOR, Q.C.:

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1 Q. Okay. Were you are of any--was there any kind
2 of disagreement at the panel involving Dr.
3 Carter or anything like that?
4 DR. MCCARTHY:
5 A. Not that I can recall.
6 CHAYTOR, Q.C.:
7 Q. And not while you were in attendance, I take
8 it?
9 DR. MCCARTHY:
10 A. No.
11 CHAYTOR, Q.C.:
12 Q. Doctor, were you in terms of trying to
13 identify then the patients who would need to
14 be retested, was your assistance sought in any
15 way?
16 DR. MCCARTHY:
17 A. No.
18 CHAYTOR, Q.C.:
19 Q. Did anyone ask you to try and identify your
20 own patients?
21 DR. MCCARTHY:
22 A. Early in the process when we first met with
23 Dr. Cook, but during the panel process, no.
24 CHAYTOR, Q.C.:
25 Q. So those that we saw the three letters on, in

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1 that process you were involved in identifying
2 those?
3 DR. MCCARTHY:
4 A. Some of those may have been mine that I
5 identified, yes.
6 CHAYTOR, Q.C.:
7 Q. But in terms of the retesting, the mass
8 retesting to take place at Mount Sinai, were
9 you asked to assist in any way in checking
10 lists or trying to identify any patients of
11 your own for retesting at Mount Sinai?
12 DR. MCCARTHY:
13 A. No, not at all.
14 CHAYTOR, Q.C.:
15 Q. And, Doctor, in terms of patients coming
16 through the door to your clinic, reviewing
17 their chart before they come in or while
18 they're there, are you--and we've seen some
19 charts in terms of the progress notes that end
20 up in the chart. Would you be reviewing the
21 most recent progress note in the chart when
22 the patient comes in to see what the current
23 status is or the most recent information that
24 you would have on the patient?
25 DR. MCCARTHY:

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1 A. If I used the computer, then the most recent
2 one typed would have been there. It wouldn't
3 necessarily have been on the chart, but it
4 would have been in the computer.
5 CHAYTOR, Q.C.:
6 Q. Yes.
7 DR. MCCARTHY:
8 A. I believe most of the time I used the
9 computer, so that would likely have been the
10 most recently dictated note that was typed.
11 Whether there was ones in the system that had
12 not been typed, I don't know.
13 CHAYTOR, Q.C.:
14 Q. Yes. And is it your practice that in the
15 first category of diagnosis that we see on
16 those progress notes, is it your practice that
17 you include their hormone receptor status in
18 that paragraph?
19 DR. MCCARTHY:
20 A. Most of the time I would, yes.
21 CHAYTOR, Q.C.:
22 Q. So in terms of identifying patients with a
23 certain, a negative ER receptor status as they
24 come through the door and you have their most
25 recent progress note available to you, would

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1 it have been very difficult if you had been
2 asked to do that for you to able to identify
3 your current patients at least in that
4 fashion?
5 DR. MCCARTHY:
6 A. My current patients I would usually have it in
7 the first line of the progress note, the most
8 recent one. If I, for some reason, didn't
9 have it there, it would be quite easy to go
10 back to the pathology section and look that
11 up.
12 CHAYTOR, Q.C.:
13 Q. So it wouldn't have been an onerous task for
14 you to do that?
15 DR. MCCARTHY:
16 A. No.
17 CHAYTOR, Q.C.:
18 Q. Had you been asked to do it?
19 DR. MCCARTHY:
20 A. Asked to do it by whom?
21 CHAYTOR, Q.C.:
22 Q. Well, by whomever in terms of trying to
23 identify your current patients who may be a
24 candidate for retesting?
25 DR. MCCARTHY:

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1 A. But then you would have to get all the charts
2 and find all those charts, so it would be easy
3 at the time you were seeing the patient.
4 CHAYTOR, Q.C.:
5 Q. Yes.
6 DR. MCCARTHY:
7 A. But to go through hundreds, thousands of
8 charts in that fashion to look at up, that
9 would have been very difficult and very time
10 consuming.
11 CHAYTOR, Q.C.:
12 Q. But in terms of you identifying your current
13 patients as they're coming through the door -
14 DR. MCCARTHY:
15 A. As they're coming through the door -
16 CHAYTOR, Q.C.:
17 Q. - if you had been asked to do that -
18 DR. MCCARTHY:
19 A. - to see them?
20 CHAYTOR, Q.C.:
21 Q. Yes.
22 DR. MCCARTHY:
23 A. Oh, yeah, that would have been no problem as
24 they're coming through the door.
25 CHAYTOR, Q.C.:

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1 Q. So in terms of--and I would take it that the
2 current patients are certainly patients who,
3 for whatever reason, are either in follow-up
4 or currently -
5 DR. MCCARTHY:
6 A. In treatment, yeah.
7 CHAYTOR, Q.C.:
8 Q. - in treatment -
9 DR. MCCARTHY:
10 A. Exactly, yes.
11 CHAYTOR, Q.C.:
12 Q. Doctor, of course this did become an issue of
13 public discussion as of October 2nd, 2005.
14 Were you aware before The Independent
15 published its story that that was going to
16 happen?
17 DR. MCCARTHY:
18 A. No.
19 CHAYTOR, Q.C.:
20 Q. So how did you learn about it now becoming a
21 matter of public discussion?
22 DR. MCCARTHY:
23 A. Somebody told me it was in The Independent. I
24 don't remember who it was that told me that.
25 CHAYTOR, Q.C.:

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1 Q. And did you in any way change, then, your
2 interactions with your patients who were
3 coming to see you in terms of discussing the
4 issue?
5 DR. MCCARTHY:
6 A. Not that I can recall.
7 CHAYTOR, Q.C.:
8 Q. And do you recall did you receive much contact
9 from your patients in the aftermath of the
10 October 2nd, newspaper story?
11 DR. MCCARTHY:
12 A. I believe there was some more phone calls,
13 some more questions by patients as they came
14 through the door.
15 CHAYTOR, Q.C.:
16 Q. And what was it that the patients wanted to
17 know, what were they asking?
18 DR. MCCARTHY:
19 A. Whether or not they were affected, if their
20 results changed. We had some phone calls just
21 from general cancer patients wondering if it
22 was more than breast cancer, those sorts of
23 things.
24 CHAYTOR, Q.C.:
25 Q. Okay, and when you would receive these

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1 inquiries from patients, would you pass along
2 that information to anyone else, that a
3 certain patient had called and whether or not
4 you thought they should be part of the retest
5 group?
6 DR. MCCARTHY:
7 A. Well, I would have gone on a patient-by-
8 patient basis and if there was anybody who
9 called in who I thought should have been, you
10 know, on the list, I would have likely checked
11 to make sure they were on the list.
12 CHAYTOR, Q.C.:
13 Q. Yes. And then who would you pass on that
14 information to?
15 DR. MCCARTHY:
16 A. Either Don Cook or Heather Predham.
17 CHAYTOR, Q.C.:
18 Q. So you understood that it was Dr. Cook and Ms.
19 Predham who were coordinating the
20 identification of the patients?
21 DR. MCCARTHY:
22 A. Yes.
23 CHAYTOR, Q.C.:
24 Q. Okay. And, Doctor, after it became a matter
25 of public discussion and there was some

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1 publicity around it then the first week of
2 October, were you given any instructions as to
3 how to handle patient inquiries?
4 DR. MCCARTHY:
5 A. At some point I know that there was a hotline
6 that the QI department had set up. I can't
7 recall if it was at that point or if it was
8 later, but there was one point when the
9 panelling process started that we were advised
10 that there would be a phone number for
11 patients to call.
12 CHAYTOR, Q.C.:
13 Q. Okay, and, Doctor, did your patients ask you
14 how did this happen?
15 DR. MCCARTHY:
16 A. They did.
17 CHAYTOR, Q.C.:
18 Q. And what did you tell them?
19 DR. MCCARTHY:
20 A. I don't know.
21 CHAYTOR, Q.C.:
22 Q. Okay. And, Doctor, did that go on--like, how
23 long did you give them that response, "I don't
24 know"?
25 DR. MCCARTHY:

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1 A. All I would tell them is that during the
2 panelling process when this had--you know,
3 even as we were going along I would say we're
4 looking into it, first of all, they're looking
5 into the scope of the problem. I mean, we
6 still at that point didn't know the scope of
7 the problem. And that was one of the things
8 to be determined, I mean, who was affected,
9 how many patients were affected, how many
10 results changed. You know, we had none of
11 that knowledge at that point. That was one
12 piece. The second piece was what exactly
13 happened. It was my understanding that Dr.
14 Cook was working on that issue, was consulting
15 with other professionals in other labs to sort
16 that part out. But the ongoing issue of that,
17 I don't recall any discussions in particular
18 to that.
19 CHAYTOR, Q.C.:
20 Q. And at any point in time did anybody provide
21 you with any information which may shed some
22 light on the answer to the question of what
23 happened?
24 DR. MCCARTHY:
25 A. I know that Dr. Banerjee and Trish -

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1 CHAYTOR, Q.C.:
2 Q. Wegrynowski.
3 DR. MCCARTHY:
4 A. Thank you. Wegrynowski both did reviews. I
5 was invited at one point to a meeting with Dr.
6 Banerjee, about halfway through the meeting, I
7 was invited late, so I did not get a chance to
8 review the document and I was not given a copy
9 of either document to review. But it was my
10 understanding at that point that there were
11 multiple issues within the lab and quality
12 assurance and so on, it wasn't just one thing
13 or one issue, it was a multitude of things.
14 CHAYTOR, Q.C.:
15 Q. Okay, so you were invited to a meeting with
16 Dr. Banerjee but the meeting was halfway
17 through before you were invited?
18 DR. MCCARTHY:
19 A. Yes.
20 CHAYTOR, Q.C.:
21 Q. Who invited you?
22 DR. MCCARTHY:
23 A. I can't remember if Dr. Laing called me and
24 asked me to go, if Dr. Williams called me
25 himself, it could have been one of those two.

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1 And I remember getting the phone call saying
2 "Can you come to this meeting now" and just
3 going. And the meeting was well under way.
4 Dr. Nash Denic was there at the time, Dr. Don
5 Cook. And I believe the issue was just
6 arising of communication between oncologists
7 and pathologists. That's where the idea of
8 the breast site group was born.
9 CHAYTOR, Q.C.:
10 Q. Was born in that meeting with Dr. Banerjee?
11 DR. MCCARTHY:
12 A. Yes. And Dr. Williams was there.
13 CHAYTOR, Q.C.:
14 Q. Okay. And, Doctor, is that the meeting in the
15 fall of 2005 with Dr. Banerjee or does that
16 take place in the spring of 2006?
17 DR. MCCARTHY:
18 A. I believe it was the first one.
19 CHAYTOR, Q.C.:
20 Q. The first one?
21 DR. MCCARTHY:
22 A. I believe so, but I could be mistaken.
23 CHAYTOR, Q.C.:
24 Q. And what was the issue about the communication
25 between the oncologists and the pathologists,

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1 what is it that you remember being discussed?
2 DR. MCCARTHY:
3 A. So when I came and they introduced me around
4 the table, they were just--they said to me,
5 "We were just discussing ongoing communication
6 and guideline development" and these sorts of
7 issues were being discussed at that time, so I
8 joined in the conversation at that point. It
9 was not a technical discussion, it was a
10 discussion of how do oncologists,
11 pathologists, you know, interact and do we
12 have guidelines, those sorts of questions.
13 And Dr. Denic and I sort of at the same time
14 said, "Yeah, we need to get together on this"
15 and then Dr. Williams said, "That sounds like
16 a good idea." And Nash and I both said to
17 each other that we would contact each other
18 after this meeting at some point when we, you
19 know, we could and move forward on this.
20 CHAYTOR, Q.C.:
21 Q. Okay, so I take it because there were no
22 guidelines?
23 DR. MCCARTHY:
24 A. There was no guidelines that I knew of.
25 CHAYTOR, Q.C.:

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1 Q. Yes. And none that you'd ever seen or been
2 told about?
3 DR. MCCARTHY:
4 A. No.
5 CHAYTOR, Q.C.:
6 Q. And there were concerns about the lines of
7 communication between the oncologists and the
8 pathologists?
9 DR. MCCARTHY:
10 A. I don't know about concerns. I mean, we'd
11 always gotten along well.
12 CHAYTOR, Q.C.:
13 Q. Yes.
14 DR. MCCARTHY:
15 A. But there wasn't that many forums other than
16 tumour board rounds to talk to each other and
17 to--and mainly, I guess, for guideline
18 development, but to come up with, you know,
19 policies, guidelines, share information with
20 each other, because the tumour board rounds
21 are mainly patient based.
22 CHAYTOR, Q.C.:
23 Q. Yes. And guidelines, I guess, to do what,
24 like, what would your--how would those
25 guidelines assist with bridging any

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1 communications gaps or allowing for more
2 communication between the oncologists and
3 pathologists?
4 DR. MCCARTHY:
5 A. Well, the meetings themselves would be a form
6 of communication and sort of liaising, so the
7 very fact that we would be meeting together.
8 And not just oncologists and pathologists but
9 all the members of the health care team
10 involved in the care of breast cancer
11 patients, so that in itself. But in terms of
12 guidelines, it wasn't just treatment
13 guidelines that he was talking about, it was
14 also to discuss pathology guidelines, synoptic
15 reporting, you know, those sorts of things
16 could also be discussed at our meeting. Not
17 that Dr. Banerjee suggested that we completely
18 rewrite everything ourselves, you know. I
19 think him or somebody else said that, you
20 know, you could get existing guidelines,
21 modify those to suit your--you know, this was
22 just some chat around the table.
23 CHAYTOR, Q.C.:
24 Q. Okay, and you got called to sort of urgently
25 go to this meeting and give your input on the

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1 issue. Was Dr. Laing also there?
2 DR. MCCARTHY:
3 A. No.
4 CHAYTOR, Q.C.:
5 Q. Okay. So there was no other oncologists in
6 the room?
7 DR. MCCARTHY:
8 A. No.
9 CHAYTOR, Q.C.:
10 Q. Just yourself. And did--and I take it this is
11 an issue that you did have a fairly strong
12 opinion on and you saw this as being a very
13 good idea to go forward with?
14 DR. MCCARTHY:
15 A. Yes.
16 CHAYTOR, Q.C.:
17 Q. Okay, and, Doctor, what else was discussed
18 then with Dr. Banerjee?
19 DR. MCCARTHY:
20 A. That's the only issue that I can recall.
21 CHAYTOR, Q.C.:
22 Q. And in terms of you recall there being
23 multiple issues in terms of things going on in
24 the lab then and quality assurance issues, do
25 you recall that taking place or any discussion

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1 on those issues while you're there with Dr.
2 Banerjee?
3 DR. MCCARTHY:
4 A. No, I don't recall that. I remember getting
5 most of that information from Dr. Laing,
6 because I believe at one point she met with
7 Trish Wegr--if you could say the name again?
8 CHAYTOR, Q.C.:
9 Q. Wegrynowski.
10 DR. MCCARTHY:
11 A. Wegrynowski. And communicated that back to
12 us, the oncologists.
13 CHAYTOR, Q.C.:
14 Q. Okay. And you, yourself, didn't meet with Ms.
15 Wegrynowski?
16 DR. MCCARTHY:
17 A. No.
18 CHAYTOR, Q.C.:
19 Q. And if we could look at, please, P-2148? And
20 this is Dr. Cook's writing. And it appears to
21 be the exit, external review, Dr. Diponkar
22 Banerjee, exit meeting, September 16th, 2005,
23 I believe. And on page 2 we have March 31st,
24 2006. And it's Trish Wegrynowski. And then
25 on page 3 we have April 25th, 2006, exit

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1 meeting, 11 a.m. and a list of people. And
2 this list includes yourself. The first page,
3 I'm not sure if we have a list of attendees.
4 DR. MCCARTHY:
5 A. Well, I was only at one, so it must have been
6 the 2006 one.
7 CHAYTOR, Q.C.:
8 Q. Okay. And you say that you only came in after
9 or halfway through this meeting?
10 DR. MCCARTHY:
11 A. Correct.
12 CHAYTOR, Q.C.:
13 Q. And, Doctor, is this--this appears to be your
14 name, Dr. McCarthy, perhaps?
15 DR. MCCARTHY:
16 A. I think that's me.
17 CHAYTOR, Q.C.:
18 Q. Think that's you. So that appears to be
19 comments attributed to you at the meeting.
20 And just seeing here, we have Dr. Banerjee,
21 Dr. Williams, Dr. Cook, Dr. Fontaine, Dr.
22 Ejeckam and this is an error, obviously,
23 should be Dr. Carter, I would think, Dr. Bev
24 Carter. But your recollection was that Nash
25 Denic was also in attendance?

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1 DR. MCCARTHY:
2 A. I'm sure Nash was there. Although, again,
3 could be my memory -
4 CHAYTOR, Q.C.:
5 Q. You thought it was -
6 DR. MCCARTHY:
7 A. - I thought he was--could have been Dr. Cook,
8 but I thought it was Nash that I was speaking
9 with.
10 CHAYTOR, Q.C.:
11 Q. Okay. And, Dr. McCarthy, I think the note
12 says "Meet with all oncologists. Meeting
13 sponsored by" is that a pharmaceutical
14 company?
15 DR. MCCARTHY:
16 A. I don't know what that word is.
17 CHAYTOR, Q.C.:
18 Q. Okay. And it is difficult for -
19 MR. BROWNE:
20 Q. "Meeting by rounds".
21 CHAYTOR, Q.C.:
22 Q. "Meeting sponsored by" I thought, is it?
23 Anyhow.
24 MR. BROWNE:
25 Q. Rounds, yes.

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1 CHAYTOR, Q.C.:
2 Q. It could be "rounds", yeah, by -
3 THE COMMISSIONER:
4 Q. What word are we talking about?
5 CHAYTOR, Q.C.:
6 Q. The top word here, yeah. And I don't know,
7 Doctor, if you're able -
8 DR. MCCARTHY:
9 A. This was discussion of the different cutoffs,
10 yes, and nobody could agree, yeah. I had been
11 to a couple of the advisory boards whereby
12 this issue of cutoff was discussed and there
13 was no national standard.
14 CHAYTOR, Q.C.:
15 Q. No guideline on what cutoff should be?
16 DR. MCCARTHY:
17 A. Um-hm.
18 CHAYTOR, Q.C.:
19 Q. Okay. So you brought this up in the meeting
20 with Dr. Banerjee, is that right?
21 DR. MCCARTHY:
22 A. Yes.
23 CHAYTOR, Q.C.:
24 Q. "Nobody could agree" it says, "In Ontario
25 weakly positive, one to nine percent; moderate

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1 10 to 40 percent. Ontario pathologists would
2 still treat under ten percent." So this is
3 information that you were discussing with the
4 group?
5 DR. MCCARTHY:
6 A. Yes, guidelines, see I referred to guidelines
7 there and that sort of thing.
8 CHAYTOR, Q.C.:
9 Q. Okay. Is there anything else then about -
10 DR. MCCARTHY:
11 A. "Need" looks like it says "Need correlation" I
12 think that says "between pathologists and
13 oncologists on how to report." So -
14 CHAYTOR, Q.C.:
15 Q. Those were the types of issues -
16 DR. MCCARTHY:
17 A. And there you go, "Banerjee said breast
18 pathologists must get together with
19 oncologists to discuss ongoing issues."
20 That's my recollection of what we discussed at
21 that point.
22 CHAYTOR, Q.C.:
23 Q. "And have to do literature review to decide
24 what cutoffs to do."
25 DR. MCCARTHY:

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1 A. Yes.
2 CHAYTOR, Q.C.:
3 Q. And -
4 DR. MCCARTHY:
5 A. And there you go, the breast site group?
6 DR. MCCARTHY:
7 A. Yeah.
8 CHAYTOR, Q.C.:
9 Q. Set up a breast site group.
10 DR. MCCARTHY:
11 A. So it must have been Dr. Cook that I discussed
12 it with, although for some reason I thought it
13 was Dr. Denic.
14 CHAYTOR, Q.C.:
15 Q. Okay. So is there anything else then out of
16 that meeting that you can recall?
17 DR. MCCARTHY:
18 A. No.
19 CHAYTOR, Q.C.:
20 Q. That's about--that summarizes it?
21 DR. MCCARTHY:
22 A. Yes.
23 CHAYTOR, Q.C.:
24 Q. Okay. And, Doctor, we know that, of course,
25 this arose out of the external review carried

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1 out by Dr. Banerjee back in the fall of 2005.
2 And, of course, as you've mentioned, there was
3 also the review of Ms. Wegrynowski. And you
4 were told some things from that review by Dr.
5 Laing, who had attended her exit interview.
6 Did you--were you ever shown the actual
7 reports which came out of those reviews?
8 DR. MCCARTHY:
9 A. I believe I saw them, and if I did, I did not
10 read them to any great detail. I might have
11 skimmed down, but I don't recall the exact
12 content. But I remember that there were
13 reports. I remember possibly one being shown
14 to me, but not--I didn't actually sit down and
15 read either of them.
16 CHAYTOR, Q.C.:
17 Q. Okay, and when would that have been?
18 DR. MCCARTHY:
19 A. I can't narrow it down any more. It was done
20 after they came, between then and we'll say
21 this past year.
22 CHAYTOR, Q.C.:
23 Q. So sometime between the fall of 2005 and -
24 DR. MCCARTHY:
25 A. Whenever they completed their reports.

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1 CHAYTOR, Q.C.:
2 Q. So was it while the review is still happening?
3 DR. MCCARTHY:
4 A. No, I did not see them during -
5 CHAYTOR, Q.C.:
6 Q. In late 2005, 2006?
7 DR. MCCARTHY:
8 A. I did not see them during the review time, no.
9 CHAYTOR, Q.C.:
10 Q. Okay, and who gave you the reports to skim
11 through?
12 DR. MCCARTHY:
13 A. I think I spoke with Dr. Carter about it at
14 one point and she said, you know, here's sort
15 of a summary, but I never took the report
16 away. I never brought the report home or
17 anything like that, because I wasn't clear who
18 was supposed to be seeing these at this point.
19 CHAYTOR, Q.C.:
20 Q. But Dr. Carter had them and shared -
21 DR. MCCARTHY:
22 A. I believe Dr. Carter had a copy, yes.
23 CHAYTOR, Q.C.:
24 Q. And shared it with you, and would that be in
25 the context then, your contact with Dr.

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1 Carter, would that be through your breast site
2 disease group?
3 DR. MCCARTHY:
4 A. No, this would have -
5 CHAYTOR, Q.C.:
6 Q. Before that?
7 DR. MCCARTHY:
8 A. It could--no, it could have been. I mean, I
9 met with Dr. Carter so many times. It would
10 be hard to tell which particular time.
11 CHAYTOR, Q.C.:
12 Q. I'm just trying to figure the context in which
13 it would have come up for discussion between
14 the two of you, such that she would have the
15 reports and be able to show you.
16 DR. MCCARTHY:
17 A. It might have been me just inquiring.
18 CHAYTOR, Q.C.:
19 Q. And why would you inquire?
20 DR. MCCARTHY:
21 A. Because my patients were inquiring.
22 CHAYTOR, Q.C.:
23 Q. And you would want to know the answer to give
24 your patients?
25 DR. MCCARTHY:

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1 A. I wanted to have some idea of what--you know,
2 what had happened for patients who wanted some
3 kind of a detail.
4 CHAYTOR, Q.C.:
5 Q. And then having acquired some information, did
6 you provide that to your patients when they
7 inquired?
8 DR. MCCARTHY:
9 A. To a very small degree of what I understood,
10 since I had still no understanding of the day-
11 to-day goings on of the lab. I did not know
12 the process of immunohistochemistry. I could
13 only give them very limited knowledge, which
14 was my own, which was limited knowledge, that
15 there was problems with those processes. I
16 did not go specifically into what the problems
17 were because again, I don't fully understand
18 them myself.
19 CHAYTOR, Q.C.:
20 Q. Yes, and so what types of examples would you
21 give to your patients when they would inquire?
22 DR. MCCARTHY:
23 A. I would say things like there was problems
24 with the processing of the slides and in some
25 cases, interpretation of the slides, different

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1 things like that, and I would be very general,
2 because again, my knowledge of it was quite
3 general.
4 CHAYTOR, Q.C.:
5 Q. Yes, and in terms of any issues of the
6 pathologist not paying enough attention or
7 inadequate attention to internal controls, did
8 that mean anything to you, as to what
9 significance that might have?
10 DR. MCCARTHY:
11 A. I don't recall discussing that with any
12 particular patient. I remember hearing about
13 this issue. When, I don't know, but I don't
14 recall specifically saying that to a patient.
15 I do remember telling the patients that this
16 was believed to be multi-factorial and not
17 just one thing.
18 CHAYTOR, Q.C.:
19 Q. Did you ask Dr. Carter what that meant?
20 DR. MCCARTHY:
21 A. The controls issue? Yes, later on she
22 explained to me about internal and external
23 controls. This is well into, I would say,
24 2006, if not 2007, by the time that was
25 explained to me, the difference between

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1 internal and external controls, and why
2 attention should be paid to them. But at the
3 time, of this time period, I did not
4 understand what those meant.
5 CHAYTOR, Q.C.:
6 Q. Okay. But Doctor, as a treating oncologist,
7 you felt it necessary to ask some questions
8 about what had happened?
9 DR. MCCARTHY:
10 A. Yes.
11 CHAYTOR, Q.C.:
12 Q. And where, if possible, to be able to then
13 explain that in the best you could to your
14 patients?
15 DR. MCCARTHY:
16 A. Yes.
17 CHAYTOR, Q.C.:
18 Q. And Doctor, I'd like to just turn then now and
19 ask you about your involvement in the
20 Physician Review Panel, and we've been calling
21 that the panel to try and avoid confusion with
22 any rounds, and just before I leave that
23 though, why did you explain to your patients
24 that you understood it was multi-factorial,
25 the reasons behind the problem? Why explain

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1 it to be multi-factorial?
2 DR. MCCARTHY:
3 A. Because in my informal discussions with
4 pathologists, that was their belief system at
5 that time, that this wasn't just one thing.
6 CHAYTOR, Q.C.:
7 Q. And do you have any different understanding
8 today?
9 DR. MCCARTHY:
10 A. No, I still, from my understanding from what
11 I've heard so far, that it still was multiple
12 issues regarding policies, procedures in the
13 lab, the way the tissue was processed, the way
14 it was put on slides, the controls issue.
15 There seem to me to be multiple issues and not
16 just one.
17 CHAYTOR, Q.C.:
18 Q. Okay, and Doctor, the issue of lack of quality
19 assurance program in the laboratory medicine
20 program, was that something that you heard
21 about as being an issue?
22 DR. MCCARTHY:
23 A. This was something that I heard via Trish -
24 CHAYTOR, Q.C.:
25 Q. Wegrynowski.

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1 DR. MCCARTHY:
2 A. Why I can't remember that name, I don't know.
3 CHAYTOR, Q.C.:
4 Q. It took us a while too.
5 DR. MCCARTHY:
6 A. Was that she had inquired about standard
7 operating procedures and lack of standard
8 operating procedures, and that was the first
9 time I had heard that.
10 CHAYTOR, Q.C.:
11 Q. Okay. If we could have, please, P-2585?
12 Doctor, how did you come to be a member of the
13 panel?
14 DR. MCCARTHY:
15 A. I was asked by Dr. Laing. I was shown, more
16 recently, a letter from Dr. Williams who also
17 wrote us a letter asking us to be part of the
18 panel, but the first person who approached me
19 was Dr. Laing.
20 CHAYTOR, Q.C.:
21 Q. Okay. So before you ever received your letter
22 from Dr. Williams, you had already been
23 approached by Dr. Laing?
24 DR. MCCARTHY:
25 A. Correct.

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1 CHAYTOR, Q.C.:
2 Q. And you had already agreed to participate?
3 DR. MCCARTHY:
4 A. Correct.
5 CHAYTOR, Q.C.:
6 Q. Okay, and I'm not going to take you through
7 all of the panel meetings that you sat in on,
8 and up until a certain point, when it becomes
9 problematic in your schedule, you were a
10 fairly regular attendee at those meetings.
11 DR. MCCARTHY:
12 A. Correct.
13 CHAYTOR, Q.C.:
14 Q. And at some point, Dr. Zulfiqar, I think,
15 fills in for you because you have a scheduling
16 problem. On this particular day--actually,
17 it's the page four of this document. Page
18 four, yes, that's right. So on this
19 particular day, it's the second meeting. It's
20 October 20th, 2005, and you are in attendance,
21 as is Dr. Laing and others, and on page four,
22 just one point I wanted to canvas with you.
23 It's a patient who was originally negative 30
24 percent and then 60, 80 and then the
25 recommendation was "review of the patient's

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1 chart revealed that she was offered treatment
2 with Tamoxifen by Dr." is it Wasil?
3 DR. MCCARTHY:
4 A. Wasil, yes.
5 CHAYTOR, Q.C.:
6 Q. Wasil on May 3rd, 2001, and refused treatment.
7 No treatment or follow up was recommended at
8 this time." The follow up physician was to be
9 yourself, but no letter was to be sent to you.
10 Do you recall the circumstances as to -
11 DR. MCCARTHY:
12 A. No, I don't, and I can't understand why it
13 would be written there follow up me, yet no
14 letter to me. So I can't explain that at all.
15 CHAYTOR, Q.C.:
16 Q. Okay, and you don't have any independent
17 recollection around that particular case?
18 DR. MCCARTHY:
19 A. No.
20 CHAYTOR, Q.C.:
21 Q. Doctor, when you came together as a panel, was
22 there any discussion around this whole
23 business of will we use one percent or ten
24 percent as the cut off?
25 DR. MCCARTHY:

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1 A. In 2005, ten percent was still our hard cut
2 off. I don't recall, at that time, suggesting
3 or anybody suggesting that we should go back
4 to one percent.
5 CHAYTOR, Q.C.:
6 Q. Okay.
7 DR. MCCARTHY:
8 A. I mean, backwards to one percent.
9 CHAYTOR, Q.C.:
10 Q. To reduce to one percent.
11 DR. MCCARTHY:
12 A. To reduce to one percent.
13 CHAYTOR, Q.C.:
14 Q. As opposed to going--returning to it.
15 DR. MCCARTHY:
16 A. Yeah.
17 CHAYTOR, Q.C.:
18 Q. Okay, and what did you understand in receiving
19 the pathology reports from Mount Sinai, what
20 were they reporting as positive?
21 DR. MCCARTHY:
22 A. They were reporting anything greater than one-
23 -so one percent or greater. So the other
24 possible would be zero or less than one, and
25 those would be negative.

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1 CHAYTOR, Q.C.:
2 Q. But that didn't become the subject of
3 discussion for the panel, "the lab that these
4 reports are emanating from uses one percent,
5 perhaps they're optimized for one percent.
6 Should we be using one percent?"
7 DR. MCCARTHY:
8 A. At that time, I don't recall any discussions
9 regarding that.
10 CHAYTOR, Q.C.:
11 Q. Okay. Have you since heard any discussion
12 around that issue?
13 DR. MCCARTHY:
14 A. Only with drafting our hormonal therapy
15 guidelines, which we've discussed before,
16 which were drafted in 2007.
17 CHAYTOR, Q.C.:
18 Q. And what has been the discussion around that,
19 in terms of drafting of those guidelines?
20 DR. MCCARTHY:
21 A. Well, as we looked at before, ten percent was
22 still a number that we were quite familiar
23 with and were still using, but we would
24 consider treatment from one to ten percent and
25 that we would present those at tumour board

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1 rounds.
2 CHAYTOR, Q.C.:
3 Q. Okay, but it wasn't specifically in relation
4 to what Mount Sinai was reporting at the time?
5 DR. MCCARTHY:
6 A. No.
7 CHAYTOR, Q.C.:
8 Q. And whether or not that should have been used
9 or not used in panelling the patients?
10 DR. MCCARTHY:
11 A. No, because we were thinking of it in a
12 clinical context rather than a pathology
13 context.
14 CHAYTOR, Q.C.:
15 Q. And if we could have, please, P-2459?
16 THE COMMISSIONER:
17 Q. Excuse me, but just while it's slipping
18 through my head. At this point, were you
19 aware of what criteria had been used to select
20 the persons who were being retested?
21 DR. MCCARTHY:
22 A. What I was told were the years, 1997 to 2005,
23 and those patients who were ER negative. The
24 exact difference between the 30 percent and
25 the ten percent was not explained to me at

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1 that time. I learnt that much later.
2 THE COMMISSIONER:
3 Q. Okay, thank you.
4 CHAYTOR, Q.C.:
5 Q. And this is the fourth panel meeting. It's
6 November 3rd, 2005, and this is the minutes
7 from that, and you are, in fact, the acting
8 chair. Ms. Predham is in attendance. Doctors
9 Carter, Felix, Kwan and Ms. Parsons is the
10 recording secretary, and Dr. Laing was out of
11 the country on November 3rd, 2005, and "Dr.
12 Joy McCarthy chaired the meeting, and there
13 were a total of 21 charts reviewed. Dr.
14 McCarthy advised that she and Dr. Laing had
15 seen, informed and dealt with four of these
16 patients, so they were not officially
17 panelled." So Doctor, if you had already
18 dealt with your patient, received the results,
19 informed them, taken whatever action was felt
20 appropriate, you didn't see the need to bring
21 that patient to the panel for panelling?
22 DR. MCCARTHY:
23 A. I guess not, no.
24 CHAYTOR, Q.C.:
25 Q. And what did you understand would be your role

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1 if you're acting as chair of the panel?
2 DR. MCCARTHY:
3 A. My understanding was that the role of the
4 panel itself was to find patients whose
5 treatment would change and who would benefit
6 from hormonal therapy, so it would be to make
7 sure that we captured those patients who were
8 not already informed, and make sure that
9 letters were generated to indicate any change
10 in the treatment plan to the appropriate
11 physician.
12 CHAYTOR, Q.C.:
13 Q. And in signing off then on the letters that
14 you signed, as having been acting chair, what
15 would you do to ensure yourself that the
16 information in the letter was accurate with
17 what had in fact come from the meeting?
18 DR. MCCARTHY:
19 A. I believe in those circumstances, I had my own
20 little note of negative, positive, which I
21 believe I shredded after the letters were
22 generated, and I would have checked off
23 against that.
24 CHAYTOR, Q.C.:
25 Q. And you were also asked, it appears, to sign

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1 the minutes.
2 DR. MCCARTHY:
3 A. Correct.
4 CHAYTOR, Q.C.:
5 Q. When you chaired, and again, what would you do
6 to ensure that the information in the minutes
7 was accurate, prior to you signing off?
8 DR. MCCARTHY:
9 A. Well, again, I would have read down through,
10 looked at my own little note that I would have
11 kept because we had--they actually gave us
12 little list at the time that we would go
13 through and we could follow along, patient by
14 patient, and I would have written down little
15 notes to myself on each one. I believe in
16 some panels, I even wrote myself the numbers
17 when I reviewed the numbers.
18 CHAYTOR, Q.C.:
19 Q. Okay. So who gave you this list?
20 DR. MCCARTHY:
21 A. Dr. Cook and Heather Predham would have had
22 those lists and they would have given those to
23 us when we got there.
24 CHAYTOR, Q.C.:
25 Q. So when you arrived at the panel you were

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1 given those lists?
2 DR. MCCARTHY:
3 A. When we arrived at the panel, yes.
4 CHAYTOR, Q.C.:
5 Q. And you would make notes yourself on your
6 sheet of paper?
7 DR. MCCARTHY:
8 A. Yes.
9 CHAYTOR, Q.C.:
10 Q. And then afterwards, you destroyed those?
11 DR. MCCARTHY:
12 A. Yes.
13 CHAYTOR, Q.C.:
14 Q. You didn't keep those.
15 DR. MCCARTHY:
16 A. Yes.
17 CHAYTOR, Q.C.:
18 Q. And so you would cross reference that with
19 what showed up in the minutes to make sure it
20 was in keeping with what you had understood
21 from the meeting?
22 DR. MCCARTHY:
23 A. Correct.
24 CHAYTOR, Q.C.:
25 Q. And Doctor, it says there were 21 patients

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1 panelled on this particular day, and your
2 meeting started at five and ended at six, and
3 is that--would that have been a typical
4 meeting that this number of patients and about
5 an hour or so spent in your meeting?
6 DR. MCCARTHY:
7 A. I remember being there much longer than that.
8 I don't remember ever getting home before
9 seven, but how long we were there for, I don't
10 know. I'm not sure why those particular times
11 were recorded, and my focus, when I read
12 through these minutes, would have been to
13 check, like you said, the accuracy of the
14 information to the best of my knowledge, but I
15 don't recall looking at the times.
16 CHAYTOR, Q.C.:
17 Q. Okay, and there certainly are other meetings
18 that we've seen have gone on for an hour and a
19 half or an hour and 35-45 minutes kind of
20 thing, and your recollection is?
21 DR. MCCARTHY:
22 A. About two hours, sometimes longer.
23 CHAYTOR, Q.C.:
24 Q. You'd be home around seven?
25 DR. MCCARTHY:

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1 A. 7-7:30.
2 CHAYTOR, Q.C.:
3 Q. Okay. If we could look at, please, P-2561?
4 And you also chaired on this occasion. It's
5 the seventh meeting of the panel. It's
6 December 1st, 2005, and on this particular
7 occasion, it's only yourself, Ms. Predham and
8 Doctors Cook and Carter and then, of course,
9 Ms. Parsons is your recording secretary. So
10 on this occasion, it's yourself and--in terms
11 of physicians, two pathologists present, and
12 there's four cases, it appears done on this
13 case. In terms of making any recommendation
14 as to whether or not a patient should have a
15 change in treatment, who, on the panel, on
16 this date, would have been able to make such a
17 recommendation?
18 DR. MCCARTHY:
19 A. Me.
20 CHAYTOR, Q.C.:
21 Q. Okay, and Doctor, this took place a little
22 earlier in the day. It's indicated to be
23 3:30, and it says "with no further patients to
24 review, the meeting then adjourned 4:25" and
25 there were four patients on that day.

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1 DR. MCCARTHY:
2 A. I'd say about an hour for those four would
3 have been about right.
4 CHAYTOR, Q.C.:
5 Q. About right, okay, and Doctor, it says "no
6 further patients to review," so I take it, as
7 of December 1st, there's a slow down in the
8 results that you're receiving from Mount
9 Sinai?
10 DR. MCCARTHY:
11 A. It appears that way, yes.
12 CHAYTOR, Q.C.:
13 Q. Okay, and do you recall, at this stage then,
14 that it was becoming a subject of concern in
15 trying to get through these patients and get
16 all of the retesting done and the results out
17 to the patients?
18 DR. MCCARTHY:
19 A. I think there were some informal discussions
20 about that, you know, how many more were
21 there, because I really had no idea what the
22 total number was that had to be retested. The
23 numbers weren't shared with me, so I would
24 never have any idea at what point in time we
25 were even getting close. So I remember, you

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1 know, how many more to come, I don't remember
2 getting any firm answers on that, but again,
3 at that point, we were just focusing in on our
4 day-to-day clinic work, trying to get our
5 patients looked after and, you know, usually
6 after hours, getting this done as well.
7 CHAYTOR, Q.C.:
8 Q. And Doctor, do you know, is this your writing
9 on the side next to this patient?
10 DR. MCCARTHY:
11 A. No.
12 CHAYTOR, Q.C.:
13 Q. Okay, and Doctor, on this occasion, the first
14 patient had no change in treatment. She was
15 already treated with Tamoxifen and Femara for
16 metastatic disease. There was a
17 recommendation by yourself, it says the panel,
18 but you've indicated you'd be the person, that
19 she be offered Tamoxifen. The third patient,
20 it says "this lady was discussed November 17th
21 by the panel and the follow up letter was
22 deferred pending receipt of the results from
23 Mount Sinai," and so the recommendation now on
24 December 1st, is "no change in treatment plan
25 is recommended, patient is currently on Femara

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1 for recurrent disease," and the last one for
2 the day was "a review of the patient's chart
3 revealed that she had developed a second
4 cancer to the right breast in 2005. The panel
5 recommended she be offered--the panel
6 recommended the lady be offered treatment with
7 Tamoxifen upon completion of therapy for the
8 second cancer."
9 And if we could have then, please, C-
10 0152? Doctor, this is a list of charts for
11 review, Physician Review Panel, Thursday,
12 December 1st, 2005, and you'll see most of the
13 page is redacted, except this is, we
14 understand, Dr. Cook's handwritten notes on
15 the middle to bottom of the page. Is this the
16 type of list that you would be given or was it
17 something like that, like a list of names?
18 DR. MCCARTHY:
19 A. I just remember it being longer than that.
20 CHAYTOR, Q.C.:
21 Q. Yes, but on this particular occasion, December
22 1st, '05, you would have only had four
23 patients.
24 DR. MCCARTHY:
25 A. Oh, for that particular--yeah, I guess that

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1 would be something similar. I don't recall
2 that particular list though.
3 CHAYTOR, Q.C.:
4 Q. Okay, would it come like this though, charts
5 for review, Physician Review Panel, the date
6 of the panel and then a list of the names? Is
7 that the type of list?
8 DR. MCCARTHY:
9 A. I don't remember exactly what would be on the
10 top, but there would be a list of patients and
11 results.
12 CHAYTOR, Q.C.:
13 Q. And it may vary from time to time, in terms of
14 what the list actually looked like, but on
15 this particular occasion, we see there's 1-2-
16 3-4 redacted. We haven't redacted this
17 patient's name because she has testified here
18 at the Commission, Janet Henley-Andrews, and
19 it's written next to it, and I believe this to
20 be perhaps Dr. Cook's writing, DCIS, and then
21 Dr. Felix being the surgeon, and over here, ER
22 60 percent, PR 25 percent, and Doctor, I just
23 took you through the four patients who were
24 panelled, and it doesn't appear that Ms.
25 Henley-Andrews was panelled on December 1st,

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1 2005.
2 DR. MCCARTHY:
3 A. Because she was DCIS.
4 CHAYTOR, Q.C.:
5 Q. Okay. So she would have been on your list and
6 -
7 DR. MCCARTHY:
8 A. I don't even remember if I saw her on the
9 list. I don't know if, just for whatever
10 reason, somebody said she's DCIS. I don't
11 remember the exact list, but we did not--
12 panelling DCIS was not part of our mandate.
13 CHAYTOR, Q.C.:
14 Q. And would any discussion then with respect to
15 this patient and the fact that she wouldn't be
16 panelled, would that be reflected in the
17 minutes?
18 DR. MCCARTHY:
19 A. I can't recall. I just remember thinking this
20 patient has DCIS. Any patient who would have
21 shown up with DCIS, you know, we would have--
22 we don't do ER/PR on DCIS, so would have seen
23 no need for the patient to be panelled.
24 CHAYTOR, Q.C.:
25 Q. And even if there were a result from Mount

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1 Sinai with respect to this patient, the
2 decision would have been not to panel her and
3 not to discuss her case?
4 DR. MCCARTHY:
5 A. From my understanding and my recollection,
6 that's correct.
7 CHAYTOR, Q.C.:
8 Q. And do you have any independent recollection
9 of this, the discussion that may have taken
10 place regarding Ms. Henley-Andrews?
11 DR. MCCARTHY:
12 A. No.
13 CHAYTOR, Q.C.:
14 Q. If we could have, please, C-0230, please? And
15 this is a number of letters from the tumour
16 board panel which involve--where you are
17 written to, because you've been given, I take
18 it, responsibility to follow up on the panel's
19 recommendation, and if we look then first, and
20 I'll just--there's just a couple of those I
21 wanted to ask you about. On page two of the
22 exhibit, October 21st 2005, "this particular
23 patient was diagnosed with cancer of the right
24 breast in March of 2002. The original report
25 of the estrogen and progesterone receptors of

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1 the right breast showed negative staining for
2 both, and a repeat from Mount Sinai was also
3 negative for both. She was diagnosed with
4 cancer of the left breast in June of 2004.
5 The original report of the estrogen and
6 progesterone receptors of the left breast
7 showed negative staining and ten percent
8 staining respectively. Mount Sinai will be
9 retesting this specimen. This patient was
10 discussed at the Physician Review Panel on
11 October 20th, 2005. Review of the patient's
12 chart reveals she is currently being treated
13 with Tamoxifen, so no change in treatment is
14 recommended based on the reports of the right
15 breast. The recommendation of the panel
16 regarding the left breast is that if retesting
17 shows ER receptors as positive"--sorry, "ER or
18 PR receptors as positive, and/or, the patient
19 will continue with Tamoxifen, and if the
20 estrogen and progesterone receptors are
21 negative, the patient should discontinue
22 treatment of Tamoxifen," and so Doctor, in
23 terms of, I take it what the panel is
24 recommending here is that there also be
25 retesting carried out with respect to the left

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1 breast specimen?
2 DR. MCCARTHY:
3 A. Yes.
4 CHAYTOR, Q.C.:
5 Q. Okay, and in terms of this patient, she's
6 being treated with Tamoxifen. Would that be
7 because the left breast specimen showed ten
8 percent positivity in PR?
9 DR. MCCARTHY:
10 A. Yes.
11 CHAYTOR, Q.C.:
12 Q. And again, she was diagnosed in June of 2004,
13 and at that point, you were clearly--you were
14 always using ten percent as your cut off?
15 DR. MCCARTHY:
16 A. Yes.
17 CHAYTOR, Q.C.:
18 Q. And then if we look at the next page, and
19 again this is written to you and signed by Dr.
20 Laing, and in the corner, it's a letter of
21 October 27th, 2005. "Letter sent out, noticed
22 incorrect MCP afterwards." Is this your
23 writing?
24 DR. MCCARTHY:
25 A. No.

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1 CHAYTOR, Q.C.:
2 Q. And the post-it note attached here, "please
3 leave upfront of chart until patient seen by
4 Dr. Ganguly," is it, PKG?
5 DR. MCCARTHY:
6 A. Yes.
7 CHAYTOR, Q.C.:
8 Q. November 16th, okay, and is this your writing?
9 DR. MCCARTHY:
10 A. No.
11 CHAYTOR, Q.C.:
12 Q. And then November 3rd, 2005, "to see Dr.
13 Ganguly in November 2005 and he agreed to tell
14 her this report. No change in treatment," and
15 then this is your signature, I take it?
16 DR. MCCARTHY:
17 A. Yes, that's my writing.
18 CHAYTOR, Q.C.:
19 Q. So this is your writing. So tell us, Doctor,
20 what's happening here in terms of getting the
21 information to the patient?
22 DR. MCCARTHY:
23 A. So what I did there, with this particular
24 case, was I looked up the patient's chart, and
25 I saw that she was booked to see Dr. Ganguly,

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1 who shared the care of this patient. We were
2 both caring for this patient. Since he had an
3 appointment coming up quite soon, I went to
4 him and asked him verbally "would you please
5 communicate this information to the patient?"
6 and he said yes, he would. So I put that
7 there to say that I did that.
8 CHAYTOR, Q.C.:
9 Q. Okay, and you put a note on the letter --
10 DR. MCCARTHY:
11 A. Yes.
12 CHAYTOR, Q.C.:
13 Q. Indicating that you had done that?
14 DR. MCCARTHY:
15 A. Yes.
16 CHAYTOR, Q.C.:
17 Q. And was that your practice--if you weren't
18 going to relay this information yourself, if
19 the letter came to you where you were expected
20 to be the person to relay the information, if
21 you passed the responsibility on to someone
22 else, would you make a note?
23 DR. MCCARTHY:
24 A. I would hope so. I would have tried to.
25 CHAYTOR, Q.C.:

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1 Q. And then, Doctor, on page four of the exhibit
2 is a patient who it says was diagnosed with
3 breast cancer, May, 2001. The original report
4 of ER and PR showed 20 and zero staining
5 respectively, and repeat for Mount Sinai
6 showed 80 and 5 respectively, and she was
7 discussed by the panel recently, "As this
8 patient has already been treated with
9 Tamoxifen, there's no need to change her
10 treatment". Doctor, again this is May, 2001.
11 You started your job in July, 2001. So this
12 person in terms of being treated with a 20
13 percent ER, wether it was you by then or some
14 other oncologists, I take it she was treated
15 because she was a 20 percent ER positivity?
16 DR. MCCARTHY:
17 A. Correct.
18 CHAYTOR, Q.C.:
19 Q. And on page five of the exhibit, it's a lady
20 diagnosed with breast cancer, April, 2002.
21 The original report showed negative for both
22 and repeat for Mount Sinai was 70 and less
23 than 1 respectively, and it says, "We
24 understand this lady has been informed of the
25 above results and treated appropriately.

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1 Therefore, no recommendation from the panel.
2 So I take it there were times when a patient
3 of yours came before the panel, but you had
4 already given the appropriate--informed them
5 of the results and given them the appropriate
6 treatment?
7 DR. MCCARTHY:
8 A. Correct.
9 CHAYTOR, Q.C.:
10 Q. And on page seven, it involves a patient and
11 it says here--there's a handwritten note. The
12 letter is January 27th, 2006, addressed to
13 yourself from Dr. Laing and the handwritten
14 note says May 3rd, 2006, notes say "Part of MA
15 21 study, sent copy of letter to clinical
16 trials department", and then there's initials.
17 Can you tell us what's that referring to?
18 DR. MCCARTHY:
19 A. The MA 21 study is a chemotherapy trial that
20 we were participating in. It was an adjuvant
21 breast cancer study looking at three different
22 types of chemotherapy. So any time a clinical
23 trials patient, if there was any change in
24 anything regarding that particular patient,
25 whether it be their pathology, or radiology,

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1 or anything at all, that information would
2 need to be communicated back to the clinical
3 trials department so that they could inform
4 the appropriate authorities with regards to
5 the study, and make sure as well that the
6 patient was informed. They followed up on
7 every single trials patient.
8 CHAYTOR, Q.C.:
9 Q. So this particular clinical trial, would there
10 have been some concern that somebody's hormone
11 receptor status might impact either their
12 eligibility to be in the trial or --
13 DR. MCCARTHY:
14 A. For this particular study, the hormone
15 receptor status would not have impacted their
16 eligibility for the study, but we would have
17 communicated that information back to the
18 investigators.
19 CHAYTOR, Q.C.:
20 Q. Were there any other clinical trials that were
21 being run in which the hormone receptor status
22 may have impacted their eligibility to take
23 part?
24 DR. MCCARTHY:
25 A. Yes, MA 27 study that was ongoing as well.

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1 That was the study that looked specifically at
2 hormone therapy with regards to Tamoxifen
3 versus Arimidex in post-menopausal women as
4 adjuvant therapy. So if those hormone
5 receptors results were incorrect, that could
6 have had an impact on that patient's
7 eligibility and participation in that study.
8 CHAYTOR, Q.C.:
9 Q. And would it also then have impacted any
10 outcomes derived from this study?
11 DR. MCCARTHY:
12 A. Possibly, yes.
13 CHAYTOR, Q.C.:
14 Q. And I take it, of course, the people running
15 or responsible for that clinical trial would
16 also have been informed in this manner of any
17 changes in the people in their group?
18 DR. MCCARTHY:
19 A. Yes.
20 CHAYTOR, Q.C.:
21 Q. And was there a--like, was there a list, like,
22 how would this come to your attention that
23 this particular individual is part of a
24 clinical trial?
25 DR. MCCARTHY:

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1 A. It would be in their chart. It's usually
2 stamped right on the front. If you miss that,
3 it's usually in multiple notes.
4 CHAYTOR, Q.C.:
5 Q. And do you know--you are involved--you're the
6 chair of the Clinical Trial Committee, is that
7 what it's called?
8 DR. MCCARTHY:
9 A. Yeah, yes.
10 CHAYTOR, Q.C.:
11 Q. And do you know whether or not there were a
12 number of patients in the MA 27, is it, the MA
13 27 trial, do you know if there were a number
14 of patients who had to come out of that trial?
15 DR. MCCARTHY:
16 A. I can't think of any.
17 CHAYTOR, Q.C.:
18 Q. And has there been any inquiry made?
19 DR. MCCARTHY:
20 A. Well, the Clinical Trials Department would
21 have been aware of each MA 27 patient and they
22 were aware of this issue, so--they were
23 actually checking themselves at the same time
24 as these patients were being checked.
25 CHAYTOR, Q.C.:

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1 Q. Okay, and this is page 11 of this exhibit and
2 this involves a person who also appears to be
3 part of a trial. "A review of the patient's
4 health record revealed she is involved in the
5 TAC versus FAC BCIRG adjuvant trial", all
6 pretty well greek to me, "Please notify
7 investigators of the change in her hormonal
8 status and if hormonal therapy is started".
9 DR. MCCARTHY:
10 A. That's another chemotherapy trial, so again
11 hormone receptor status would not have
12 affected eligibility in that case.
13 CHAYTOR, Q.C.:
14 Q. So why would the--I understand the importance,
15 though, of letting them know any change, but
16 why would it be in bold from the panel to make
17 sure that this happened?
18 DR. MCCARTHY:
19 A. Again because the importance of recordkeeping
20 in a study, in particular any time treatment
21 may be affected of any type regarding a
22 patient who is on a study, it's essential
23 information for the study. They would look at
24 that in the study as to which patients got
25 hormonal therapy, which ones didn't.

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1 CHAYTOR, Q.C.:
2 Q. Okay, and written on this--and this letter is
3 sent to you February 17th, 2006, and there's
4 an indication that the patient called, March,
5 I believe it's 3rd, and inquired of her status
6 and inquired re; status. Letter has been sent
7 after panelling, I believe it says, message
8 left for Joy McCarthy. Do you recall anything
9 about that?
10 DR. MCCARTHY:
11 A. If this is the patient I'm thinking of, this
12 is a patient I'm still actively following.
13 All study patients, you continue to actively
14 follow so they don't get discharged at any
15 point unless anything unfortunate should
16 happen in terms of recurrence and succumbing
17 to their disease, but I do--if it's the lady
18 I'm thinking of, I do recall her calling in
19 and I do recall that this was an issue and
20 following up with that patient at some point.
21 CHAYTOR, Q.C.:
22 Q. So I take it from February 17th, 2006, when
23 the panel wrote the letter, and March 3rd,
24 there had been an inquiry before you were able
25 to get the information to her in that couple

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1 of weeks?
2 DR. MCCARTHY:
3 A. I think this was a lady who was on yearly
4 follow up at this point, so it wouldn't have
5 been someone that as coming to my clinic on a
6 much narrower time scale in terms of every
7 three months or --
8 CHAYTOR, Q.C.:
9 Q. Okay.
10 DR. MCCARTHY:
11 A. Anything like that.
12 CHAYTOR, Q.C.:
13 Q. And then the final letter is page 13, and this
14 one is written, June 9th, 2006, to yourself,
15 signed again by Dr. Laing, and this particular
16 patient showed 10 percent negative in her
17 original ER/PR respective, and the tumour was
18 tested twice by Mount Sinai and both times the
19 results showed the levels of estrogen and
20 progesterone to be under 1 percent and 0
21 percent respectively. "This patient was
22 discussed at the panel on June 8th, 2006. A
23 review of the patient's health record revealed
24 that she had inflammatory breast cancer at
25 diagnosis and was treated with Tamoxifen. She

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1 was four and a half years from diagnosis with
2 no evidence of recurrence. The panel felt
3 that she should complete her five years of
4 Tamoxifen because although the estrogen
5 staining is very low, it's not zero", and what
6 do you recall about this patient, Doctor?
7 DR. MCCARTHY:
8 A. I mean, as you can see, that certainly wasn't
9 our conventional practice.
10 CHAYTOR, Q.C.:
11 Q. Yeah.
12 DR. MCCARTHY:
13 A. You know, wasn't then, isn't now. Although I
14 don't remember this particular patient
15 specifically, I do remember this discussion
16 because this was the only one like this that I
17 can remember. I remember we did discuss this
18 a fair bit going back and forth saying, you
19 know, she's four and a half years, she's
20 inflammatory, she's a very high risk of
21 recurrence, you know, what do we do, and after
22 much discussion with absolutely no data or
23 evidence to go on, this was our decision.
24 Again a bit of the art of medicine, rather
25 than the science here for this particular

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1 case, but I remember this case only because it
2 was an unusual decision that we made.
3 CHAYTOR, Q.C.:
4 Q. So she continued, I take it, for the next six
5 months?
6 DR. MCCARTHY:
7 A. To my recollection, yes.
8 CHAYTOR, Q.C.:
9 Q. And if I could have, please, P-1591. Doctor,
10 this is an e-mail, which I'll take you to this
11 portion. It's from Dr. Denic, March 29th,
12 2006, to a number of what appeared to be
13 pathologists across the province, and there
14 may be others in there, but it looks to me
15 like it's most pathologists, and it says,
16 "There has been some confusion from the Cancer
17 Clinic who the repots from Mount Sinai
18 Hospital should go to. Therefore, the Cancer
19 Clinic will be sending a letter to all
20 pathology lab directors outlining the
21 directions how the ER/PR and HER2/neu repots
22 from the Mount Sinai Hospital should be
23 handled. In the meantime, if you have
24 questions, you can call Dr. Joy McCarthy", and
25 your phone number. What's that about, Dr.

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1 McCarthy?
2 DR. MCCARTHY:
3 A. I remember this. This is the first time that
4 I've actually seen that e-mail, but I remember
5 this because we weren't getting the original
6 Mount Sinai repots, they weren't coming to us
7 at all. We don't know where they went, we
8 don't know who they were going to but we
9 weren't copies on a regular basis. Sometimes
10 we'd get them; sometimes we wouldn't.
11 CHAYTOR, Q.C.:
12 Q. And are these on the current patients as
13 opposed to the retest patients, you mean?
14 DR. MCCARTHY:
15 A. Probably all of the above.
16 CHAYTOR, Q.C.:
17 Q. All of the above.
18 DR. MCCARTHY:
19 A. You know, we weren't actually seeing the-- you
20 know, we might have seen them during the
21 panel, but to my recollection they weren't all
22 consistently coming back to the chart.
23 CHAYTOR, Q.C.:
24 Q. So coming back to the treating physician?
25 DR. MCCARTHY:

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1 A. Yes.
2 CHAYTOR, Q.C.:
3 Q. Okay.
4 DR. MCCARTHY:
5 A. Okay, so I expressed some concern about this
6 and felt that everybody should have the
7 original Mount Sinai on the chart, and come to
8 each physician. So I made this inquiry about
9 what was happening to them and what their
10 policy was on this, and this is what led to
11 that.
12 CHAYTOR, Q.C.:
13 Q. So who did you take that up with?
14 DR. MCCARTHY:
15 A. Dr. Denic.
16 CHAYTOR, Q.C.:
17 Q. Took that up with Dr. Denic, okay, and so you
18 were not getting the original Mount Sinai
19 report--you would normally get it, I would
20 take it, if the test was done in-house, you'd
21 get a hard copy of it in your mailbox.
22 DR. MCCARTHY:
23 A. But what was happening was the pathologist was
24 taking the Sinai report and re-dictating that.
25 CHAYTOR, Q.C.:

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1 Q. Okay.
2 DR. MCCARTHY:
3 A. So they would say--for example, Bev Carter,
4 she signed off on many of these. She would
5 say, "The results from Mount Sinai are as
6 follows", and she would dictate that out. It
7 would be typed up in-house and that would be
8 what would come to us in the Meditech System.
9 So the Sinai reports themselves were not
10 coming through the Meditech System. So unless
11 we got a paper trail, we never actually got
12 them in a consistent way.
13 CHAYTOR, Q.C.:
14 Q. Okay, so what was coming back from Mount Sinai
15 was then being transcribed onto Meditech by
16 the pathologist --
17 DR. MCCARTHY:
18 A. By the pathologist.
19 CHAYTOR, Q.C.:
20 Q. By the local pathologist?
21 DR. MCCARTHY:
22 A. Yes.
23 CHAYTOR, Q.C.:
24 Q. And you wanted to see the original report from
25 Mount Sinai?

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1 DR. MCCARTHY:
2 A. Yes.
3 CHAYTOR, Q.C.:
4 Q. And, Doctor, why?
5 DR. MCCARTHY:
6 A. There was one whereby I think a number was
7 missing. I think it said something zero--
8 there was one whereby it looked like a typo,
9 and I believe it was one that Don Cook had and
10 there was a typo, and--I have no idea how I
11 picked up on this or why, but I said, oh, this
12 doesn't--whatever way it was put, it didn't
13 make sense, so I went looking for the Mount
14 Sinai repot and that's when I realized it
15 wasn't in the chart, it wasn't in on my
16 filing, I had no idea how to get it, and
17 that's when I made this call.
18 CHAYTOR, Q.C.:
19 Q. You brought the issue up. If we could look,
20 please, at P-2369. I may have the wrong
21 exhibit, doctor, I'm sorry. It appears that
22 that's not the right exhibit. I'll check that
23 on the break, anyhow. But there is another
24 exhibit which refers to you having brought
25 transcription errors to Dr. Denic's attention.

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1 And I take it that's the same issue, that you
2 had noted a transcription error in the
3 pathology report and you brought it to his
4 attention, I take it it's the same issue?
5 DR. MCCARTHY:
6 A. Well, I would believe so.
7 CHAYTOR, Q.C.:
8 Q. It only happened on one occasion?
9 DR. MCCARTHY:
10 A. That I can remember.
11 MR. SIMMONS:
12 Q. 2639.
13 CHAYTOR, Q.C.:
14 Q. 2639, thank you. I'm doing it again,
15 reversing my numbers.
16 DR. MCCARTHY:
17 A. I remember there was one that caused me to
18 call about it, but whether or not there were
19 others.
20 CHAYTOR, Q.C.:
21 Q. Thank you, Mr. Simmons. And this is then
22 around the same time, March 27th, 2006. And
23 Dr. Denic is again writing to a number of
24 individuals which appear to be pathologists.
25 "ER/PR and HER2/neu reports follow-up. Please

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1 be advised that due to some problems arising
2 from inaccurate transcription or
3 interpretation of the reports from ER/PR and
4 HER2/neu received from Mount Sinai the Cancer
5 Clinic is requesting that the original report
6 from Mount Sinai be sent along with your
7 pathology reports." And I he's also sending a
8 template for reporting. So I take it that's
9 the same issue that you brought to his
10 attention?
11 DR. MCCARTHY:
12 A. Correct.
13 CHAYTOR, Q.C.:
14 Q. Okay, thank you.
15 THE COMMISSIONER:
16 Q. Ms. Chaytor, we'll take the afternoon break
17 wherever you can find a spot.
18 CHAYTOR, Q.C.:
19 Q. Okay. Perhaps I'll just do one more then,
20 please. It's--because I think this is an
21 issue that you've already spoken to. But it's
22 P-2073. And this is Dr. Cook's handwritten
23 notes, "Spoke to Joy McCarthy April 10th," I
24 believe, "2006. Attended a recent meeting
25 where standard practice amongst oncologists" I

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1 don't know if you can help with the writing
2 there?
3 DR. MCCARTHY:
4 A. I think it's "to treat with Tamoxifen with
5 ER/PR greater than, equal to one percent.
6 This goes" I think he's saying "NCIC guideline
7 where ten percent is the cutoff" which it
8 still is. "Many labs are just reporting" -
9 CHAYTOR, Q.C.:
10 Q. "Just reporting."
11 DR. MCCARTHY:
12 A. - "as positive or negative. If this is the
13 case, we may have to change our reports as
14 positive or negative and not give a
15 percentage. We will discuss this further.
16 Joy claims that oncologists have no real good
17 evidence to show why they are using greater
18 one percent," true. I don't know this -
19 CHAYTOR, Q.C.:
20 Q. So this part -
21 DR. MCCARTHY:
22 A. - bit in the middle about positive or
23 negative. I don't remember ever discussing
24 that.
25 CHAYTOR, Q.C.:

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1 Q. Okay.
2 DR. MCCARTHY:
3 A. We always like to have the numbers.
4 CHAYTOR, Q.C.:
5 Q. Okay, yes. So this part here about the
6 greater or equal than one percent is part of
7 what came up in another exhibit that I showed
8 you -
9 DR. MCCARTHY:
10 A. Right.
11 CHAYTOR, Q.C.:
12 Q. - about you having discussed with Dr. Cook?
13 DR. MCCARTHY:
14 A. Right. These were ongoing discussions with
15 oncologists across the country about this one
16 percent issue. Some more labs were moving
17 towards that. In Ontario labs were divided,
18 to my understanding, and the NCIC was still
19 using ten percent. And I believe Dr. Laing
20 gave you the example, the Beatrice study which
21 is a current study we're doing which again the
22 cutoff is ten percent. So as you can see
23 there is not a clear standard.
24 CHAYTOR, Q.C.:
25 Q. Okay.

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1 DR. MCCARTHY:
2 A. But more labs, to our knowledge, were using--
3 were going back to one. I mean -
4 THE COMMISSIONER:
5 Q. Beginning to use one.
6 DR. MCCARTHY:
7 A. Thank you. Beginning to use one.
8 CHAYTOR, Q.C.:
9 Q. Doctor, but this reference to "many labs just
10 reporting positive or negative. If this is
11 the case, we may have to change our report as
12 not percentage," you don't know where he would
13 have gotten that?
14 DR. MCCARTHY:
15 A. I have no idea. I don't remember ever saying
16 that.
17 CHAYTOR, Q.C.:
18 Q. Okay. And you say that we, meaning, I would
19 take it, the oncologists, you always like to
20 have the numbers?
21 DR. MCCARTHY:
22 A. Yes.
23 CHAYTOR, Q.C.:
24 Q. Okay. And why, Doctor, what's the benefit of
25 having the numbers?

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1 DR. MCCARTHY:
2 A. Well, that came more out of this whole issue,
3 seeing the exact numbers now was more helpful
4 to us because now you start to wonder if every
5 pathologist understands what positive and
6 negative is compared to your understanding,
7 because you can see the differences over the
8 years. It's mainly because of that.
9 CHAYTOR, Q.C.:
10 Q. And does it impact treatment if a patient is
11 ten percent as opposed to 90 percent, is that
12 a factor that gets weighed into whether or not
13 you treat?
14 DR. MCCARTHY:
15 A. Not in my practice, no. But it would impact
16 whether a patient goes on a study. So if a
17 patient is five percent, they would not be
18 able to get onto a hormonal therapy study such
19 as MA27 and if they were 11 percent, I don't
20 think I've ever seen an 11 percent, but if
21 there was 11 percent, they wouldn't be able to
22 get on Beatrice.
23 CHAYTOR, Q.C.:
24 Q. Okay, but in terms of whether or not they are
25 a candidate for anti-hormonal therapy, if

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1 their ER -
2 DR. MCCARTHY:
3 A. Ten percent or greater is still my standard of
4 care. The one to tens I bring to tumour
5 board.
6 CHAYTOR, Q.C.:
7 Q. Okay. Thank you. This is a good place.
8 THE COMMISSIONER:
9 Q. Take the afternoon break.
10 (RECESS)
11 THE COMMISSIONER:
12 Q. Please be seated. Ms. Chaytor.
13 CHAYTOR, Q.C.:
14 Q. Thank you, Commissioner. If we could have,
15 please, P-0481? Doctor, I understand that you
16 were invited to take part in an ethics consult
17 around this issue, and that took place
18 sometime around May or June, 2006?
19 DR. MCCARTHY:
20 A. Correct.
21 CHAYTOR, Q.C.:
22 Q. And what do you recall about that and how it
23 was that you became involved?
24 DR. MCCARTHY:
25 A. Well, it was recognized that an oncologist

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1 needed to be present at this meeting who dealt
2 with breast cancer patients. Dr. Laing was
3 the original point person but she was either
4 going to be away or could not attend so she
5 asked if I would go to this meeting.
6 CHAYTOR, Q.C.:
7 Q. Okay, and what do you recall happening at the
8 meeting, what was discussed and what was the
9 outcome?
10 DR. MCCARTHY:
11 A. Before I went to the meeting, it was my
12 understanding that we would be discussing the
13 deceased patients in terms of retesting of
14 them, notification of them, and the ethics
15 around that, so that was my understanding upon
16 going to it. In terms of who I remember being
17 there, it was myself; Dr. Natalie Bandrauk,
18 who is a internist, intensivist/ethicist; Rick
19 Singleton; Doctors, I believe Cook; and I
20 believe Denic. I can't remember exactly now.
21 I recall meeting for the first time Dan Boone,
22 who I understood at that time to be a lawyer
23 with Eastern Health. And those were the main-
24 -you know, I'm sure there were others. If you
25 show me the--I remember reading this before,

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1 but that just comes off the top of my head.
2 And it was Rick Singleton who lead this
3 meeting.
4 CHAYTOR, Q.C.:
5 Q. Okay. And, Doctor, then this is page 2 of the
6 exhibit and it's entitled "Pastoral Care and
7 Ethics Department, Eastern Health." And this
8 particular version is dated May 29th, 2006.
9 To Dr. Williams from Rick Singleton. And
10 present are Dan Boone, Heather Predham,
11 yourself, Dr. Cook, Dr. Denic, Natalie
12 Bandrauk -
13 DR. MCCARTHY:
14 A. It's Bandrauk, that's -
15 CHAYTOR, Q.C.:
16 Q. Bandrauk, yes. And Rick Singleton
17 facilitating. And so what did you understand
18 then, what was it about the deceased that you
19 were going to have the ethics consult around?
20 DR. MCCARTHY:
21 A. One of the things that was asked of me was
22 there any medical reason to look at the
23 results of the deceased, in other words, would
24 have any impact on the families in terms of
25 genetics or -

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1 CHAYTOR, Q.C.:
2 Q. Family history and these factors?
3 DR. MCCARTHY:
4 A. Family history and that sort of thing. And I
5 indicated, no, that there would not be any,
6 you know, medical reason from that point of
7 view to retest the deceased. And then we went
8 on to discuss about notification of patients,
9 so if all of the deceased patients were
10 retested, what would we do with those results
11 in terms of with regards to the patients'
12 families. And that was the main focus of the
13 discussion. There was a lot of discussion
14 from Dr. Bandrauk and Rick Singleton about the
15 principles of ethics, educating us, if you
16 will, about the principle of ethics and which
17 principles were involved in this particular
18 case, and basically the right of families to
19 know versus their right not to know. That
20 might sound a bit strange, but it was our
21 feeling that there may be families out there
22 who were not seeking this information and we
23 wondered that if we contacted them in some
24 way, that this could possibly cause them harm.
25 The ethicists agreed with that, in fact,

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1 supported that with their ethical principles.
2 So there was just a lot of back and forth
3 going on with regard to that issue.
4 CHAYTOR, Q.C.:
5 Q. Okay. And what did the group determine in
6 terms of whether or not to retest the deceased
7 samples at all?
8 DR. MCCARTHY:
9 A. I don't remember the final decision on that.
10 I remember more about the fact that some
11 deceased patients were already retested and
12 what to do with that information and how to
13 decide what to do with that information. And
14 my recollection was that both principles were
15 important, the right to know and the right not
16 to know, and that we would certainly address
17 families who came looking for the information
18 as quickly as possible and meet with them at
19 their request to discuss this, but not to give
20 the information--send the information to
21 families or call up the families if they had
22 not requested it first because of the right
23 not to know.
24 CHAYTOR, Q.C.:
25 Q. Okay. So and you're right, there were, I

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1 think, well, well over 100, perhaps as much as
2 over 170 of deceased patients that had been
3 retested up to this point in time. So I take
4 it the group was determining, well, what do we
5 do with that information that we have and do
6 we now retest the rest of the deceased
7 samples?
8 DR. MCCARTHY:
9 A. I don't recall who made the final decision on
10 retesting of the rest of them.
11 CHAYTOR, Q.C.:
12 Q. Okay. And I won't take you through all this,
13 but will--there are a couple of points in
14 here. "Important facts to the history and
15 understanding of the case include the
16 following. There were no mistakes or
17 technical errors at the root of this problem."
18 Who would have been asserting that as an
19 important fact in the history to know?
20 DR. MCCARTHY:
21 A. I wonder if Dr. Cook and Dr. Denic might have
22 spoken about, you know, possible things that
23 were going on in the lab. I'm speculating
24 that this might have been there were no
25 intentional human errors that they were aware

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1 of at that time. That's a speculation about
2 that. But Dr. Cook and Dr. Denic did speak to
3 the, you know, the issues in the lab that were
4 being speculated in terms of what the causes
5 of this problem was.
6 CHAYTOR, Q.C.:
7 Q. Okay. And the idea there were no mistakes or
8 technical errors at the root of this problem,
9 Doctor, do you understand that to be an
10 accurate statement?
11 DR. MCCARTHY:
12 A. Well, we know now there were a lot of
13 technical problems that were at the root of
14 this problem, so I'm not quite sure why that
15 statement was written. I don't remember that
16 actually being said.
17 CHAYTOR, Q.C.:
18 Q. Okay. And did you receive a copy of this
19 report after it was prepared?
20 DR. MCCARTHY:
21 A. No.
22 CHAYTOR, Q.C.:
23 Q. And so in terms of getting an opportunity to
24 review it and sign off and say, yes, that's an
25 accurate recollection of what happened, you

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1 didn't get an opportunity to do that?
2 DR. MCCARTHY:
3 A. No, I did not.
4 CHAYTOR, Q.C.:
5 Q. And so you don't recall that statement being
6 said or at least not in that fashion?
7 DR. MCCARTHY:
8 A. Correct.
9 CHAYTOR, Q.C.:
10 Q. Yes. And so whether or not that was an issue
11 or it may or may not have made a difference in
12 the outcome, are you able to say if, in fact,
13 some of the members taking part in the
14 discussion were under the impression that no
15 mistakes or technical errors were at the root
16 of the problem?
17 DR. MCCARTHY:
18 A. The discussion that I recall was that the
19 exact issues were not fully outlined yet, that
20 there were issues, there were technical
21 issues, there were things that they were
22 looking into. But in terms of exactly what
23 the problem was or the problems were, I don't
24 recall being discussed in any great detail. I
25 don't recall that being the focus of the most

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1 of the discussion. It was more around the
2 ethical principles.
3 CHAYTOR, Q.C.:
4 Q. And, Doctor, as of June, 2006 you would have
5 been familiar with Trish Wegrynowski's
6 findings as well as Dr. Banerjee's findings?
7 DR. MCCARTHY:
8 A. Yeah. At one point, I think I said before,
9 although not very clearly, I did see the
10 recommendations, not the full report, but the
11 recommendations. But again, I don't recall
12 reading them in any detail. It was Dr. Carter
13 said this is just a short list of the
14 recommendations. And I don't recall myself
15 contributing any of that information at this
16 time.
17 CHAYTOR, Q.C.:
18 Q. Okay. So two points arise from that. First
19 of all I'd just like to finish this question
20 to you. The idea of there being no mistakes
21 or technical errors at the root of the
22 problem, by June, 2006 you wouldn't have
23 understood that to be correct, you would have
24 thought there are issues?
25 DR. MCCARTHY:

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1 A. There are issues.
2 CHAYTOR, Q.C.:
3 Q. There are issues, there were problems?
4 DR. MCCARTHY:
5 A. That was my understanding at that point, yes.
6 CHAYTOR, Q.C.:
7 Q. Yes, okay. And what did you understand in
8 terms of what might come into play in terms of
9 disclosure and disclosure obligations if, in
10 fact, there is a mistake or a technical error
11 or any kind of error at the root of a change
12 in a patient's results?
13 DR. MCCARTHY:
14 A. This was not my understanding as to what this
15 meeting was about. This meeting, to my
16 understanding, was to discuss how to handle
17 notification of the patients of the deceased
18 families and the ethical principles of the
19 right to know and the right not to know. I
20 don't recall a great discussion regarding
21 errors, what the errors were, if any errors
22 were there, I don't recall that discussed in
23 any great detail.
24 CHAYTOR, Q.C.:
25 Q. But if there were errors at the root, would

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1 that influence the decision as to the
2 obligation to disclose?
3 DR. MCCARTHY:
4 A. I can't see how that would influence the
5 ethical principles, no.
6 CHAYTOR, Q.C.:
7 Q. So what's your understanding in terms of, for
8 example, if you had a patient now and there
9 were a mistake made in either that patient's
10 treatment or in that patient's diagnosis and
11 unfortunately that patient were to die and you
12 discover that there's been this error made, is
13 there an obligation for that to be disclosed
14 to the patient's family?
15 DR. MCCARTHY:
16 A. On a go forward basis, on individual patients,
17 my understanding is, yes, that's what you
18 would do. So if we had an in-patient, for
19 example, and something happened whereby we
20 felt it was an error that happened, we would
21 disclose that to the family. This is a very
22 unique situation where people were gone back
23 and retested. This was something that we
24 needed advice and help on and that's why this
25 meeting took place.

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1 CHAYTOR, Q.C.:
2 Q. Yes. And so, Doctor, even if we think about
3 your patients involved in this and you, for
4 example, you shared the care of Peggy Deane,
5 if--and Peggy Deane, unfortunately, died
6 within about three months of her error being
7 disclosed, if that hadn't come to light after,
8 until after Mrs. Deane, in fact, had died, is
9 there any doubt in your mind that you would
10 not have disclosed that to Dr. Deane?
11 DR. MCCARTHY:
12 A. I guess in -
13 THE COMMISSIONER:
14 Q. (Inaudible).
15 CHAYTOR, Q.C.:
16 Q. Yes, I'm sorry.
17 THE COMMISSIONER:
18 Q. What would you have done?
19 CHAYTOR, Q.C.:
20 Q. Yes, what would you have done.
21 THE COMMISSIONER:
22 Q. I think it's a better way of putting it.
23 DR. MCCARTHY:
24 A. Well, I find that hard to answer since Peggy
25 was a moving forward, that was a go forward

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1 basis. So we saw Peggy, we got the results,
2 we disclosed right away, it was moving
3 forward. This is a going back. I mean, we
4 had some patients from '97, '98. Do those
5 families want to know the results. That was
6 the discussion of this meeting. This was a
7 unique situation. This was not a going
8 forward, this was not a, you know, case by
9 case, your active patients.
10 THE COMMISSIONER:
11 Q. So are you saying that had it not been--had it
12 been the situation that was described by Ms.
13 Chaytor, there would have been no doubt what
14 would have been done at the time? If you did
15 not know about the difference in the results
16 until after Ms. Deane had died -
17 DR. MCCARTHY:
18 A. Well, that's what we were discussing here.
19 THE COMMISSIONER:
20 Q. Yeah. So -
21 DR. MCCARTHY:
22 A. This is what--there was doubt. We had
23 questions about this issue, which is why this
24 meeting was called.
25 THE COMMISSIONER:

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1 Q. So you're saying that -
2 DR. MCCARTHY:
3 A. We had doubts about families who may not--who
4 may have grieved, finished the grieving
5 process and were not interested in this
6 information.
7 THE COMMISSIONER:
8 Q. So your answer is in respect of Mrs. Deane,
9 had that come to light after she had died -
10 DR. MCCARTHY:
11 A. She would have been -
12 THE COMMISSIONER:
13 Q. - then you would have had the same problem?
14 DR. MCCARTHY:
15 A. Exactly. She would have been part of this
16 group, the same group of patients that we were
17 meeting about.
18 CHAYTOR, Q.C.:
19 Q. So you may or may not have told her husband?
20 DR. MCCARTHY:
21 A. I mean, this was something that was happening
22 while she was there, within days to weeks of
23 having happened. I mean, if you're talking
24 something that happened ten years ago, like in
25 some of these cases, this is why this meeting

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1 was taking place was to get ethicists to help
2 us with this issue.
3 CHAYTOR, Q.C.:
4 Q. How long would have to pass after the person's
5 death and the errors discovered in order for
6 that to make a difference?
7 DR. MCCARTHY:
8 A. Again, no idea. This was something that we
9 had no experience in, this was something that
10 had not happened before, to our knowledge, in
11 discussion with any of our colleagues both in
12 Newfoundland and outside, no one had ever gone
13 back to retest like this before. We knew of
14 nobody to get advice from. So when dealing
15 with the deceased patients, we recognized,
16 okay, we need some help here, we need some
17 advice here, we need to discuss the ethics of
18 this and this is why this meeting was called.
19 CHAYTOR, Q.C.:
20 Q. Doctor, you came back around to a question I'd
21 asked you before the break, and I had
22 understood that you had seen portions or
23 skimmed through the reports of the experts?
24 DR. MCCARTHY:
25 A. It was just the recommendations.

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1 CHAYTOR, Q.C.:
2 Q. Okay, and what is it that made you realize
3 that and now say that, what happened?
4 DR. MCCARTHY:
5 A. My lawyer asked me, "Did you see the whole
6 report or did you see the recommendations?"
7 and I said, "Oh, I'm sorry, I didn't clarify
8 that. I just saw a copy of the
9 recommendations."
10 CHAYTOR, Q.C.:
11 Q. And how do you know, have you now seen the
12 reports and seen the sheet of recommendations?
13 DR. MCCARTHY:
14 A. Because she specifically said, "This is the
15 recommendations, not the report." Because I
16 remember her saying, somebody saying "The
17 report is not available for everybody." She
18 said, "Here's the recommendations. You can
19 just have a look at that." But there was some
20 discussion about the whole report and who was
21 allowed to see it and who wasn't allowed to
22 see it.
23 MR. BROWNE:
24 Q. If I can clarify, Ms. Chaytor, in answer to
25 the dialogue that went here, the witness can

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1 go back, I think the transcript will bear this
2 out, mentioned initially in her answer
3 "summary" and that's what prompted me to ask -
4 DR. MCCARTHY:
5 A. It's a summary, yes.
6 CHAYTOR, Q.C.:
7 Q. Okay. If we could have, please--or sorry,
8 before we leave the ethics consult, do you
9 recall, Doctor, any issue coming up, any
10 information that Dr. Denic was bringing
11 forward that Dan Boone objected to? Do you
12 recall any issue of that happening?
13 DR. MCCARTHY:
14 A. No, I don't.
15 CHAYTOR, Q.C.:
16 Q. Okay. An issue regarding Dr. Denic having a
17 report that he began to read from or anything
18 like that and Mr. Boone having an issue with
19 it?
20 DR. MCCARTHY:
21 A. Gosh, nothing comes to mind.
22 CHAYTOR, Q.C.:
23 Q. Okay. And if we could have then, please, P-
24 1163? And this is an e-mail, Doctor, from
25 Sharon Smith to a number of individuals, and

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1 you're not included there. It's dated August
2 7th, 2006. And it says, "I spoke with Joy
3 McCarthy to see if there are any calls coming
4 in from patients in relation to all this media
5 attention and she tells me, no, and if there
6 are, she'll let me know. I asked her to let
7 me or Pat know if calls do come in." And
8 again, this is August, 2006 period. So it
9 appears at this point in time there was some
10 media attention around this issue again. And
11 you advised or were asked whether or not
12 you're getting any calls from patients, but
13 there didn't appear to be any at that time?
14 DR. MCCARTHY:
15 A. I guess during that particular inquiry there
16 wasn't.
17 CHAYTOR, Q.C.:
18 Q. Okay. And if we could have, please, P-1175?
19 and this is an e-mail from Ms. Predham to
20 Diane Smith, forwarding on an e-mail from Ms.
21 Predham to Pam Elliott, Patricia Pilgrim dated
22 September 21st, 2006. And she says, she
23 writes, "I have to tell you both about an
24 incident that is unfolding as we speak. Joy
25 McCarthy called me lunch time about a lady who

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1 was admitted today with metastasis after being
2 diagnosed with breast cancer in 2000. I
3 believe Jonathan Greenland is looking after
4 her. He noticed she was ER/PR negative but
5 thought she was missed in our review. He
6 called Joy to check on the process and Joy
7 called me. She was retested and the results
8 came back in October, 2005 that she was
9 positive. She was panelled and a letter went
10 to Kara Laing November 4th as her attending to
11 inform he of this. Kara was not chairing the
12 Panel that week, it was Joy that signed off on
13 the letter. It appears that Kara did not see
14 her and we are checking to see if Kara got the
15 letter and Joy will be following up with her
16 secretary." What do you recall about this
17 situation, Doctor?
18 DR. MCCARTHY:
19 A. I do recall this situation. I recall when
20 Jonathan called me. This lady was an in-
21 patient at the time and he was caring for her
22 and wondered whether or not Dr. Laing received
23 the results, whether or not she met with the
24 patient, whether or not--what the results
25 were. And, of course, I did not know this

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1 lady, so first thing I did was look her up in
2 the computer and I didn't see anything, any
3 notes from Dr. Laing. So I called Heather and
4 asked did the letter go out, did Kara received
5 it. And Heather said it went out, doesn't
6 know if Kara received it. So my next call was
7 to Delores, who is Kara's secretary, and said,
8 you know, "Did she get the letter? Can you
9 find the letter?" and she went to work on
10 that. I understand that Kara was on her way
11 back, wherever she was at that point, she was
12 back soon. Jonathan did not ask me to see the
13 patient. He just said, "Okay, Kara is on her
14 way back. We'll have Kara deal with it as
15 soon as she gets back." After this she got
16 back, she, Kara, Dr. Laing, realized that she
17 did not see this letter or this letter got
18 missed in some way and went up and disclosed
19 this to the patient.
20 CHAYTOR, Q.C.:
21 Q. Okay. Doctor, in or around August of 2006 did
22 anyone ever inquire of you about how many
23 patients may have been affected by this whole
24 ER/PR issue or greatly affected by the ER/PR
25 issue?

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1 DR. MCCARTHY:
2 A. The only--I mean, my fellow oncologists asked
3 if I knew the numbers, of which I was not very
4 familiar, but I had discussed this with
5 Heather Predham, so any information I would
6 have gotten on numbers would have come from
7 her.
8 CHAYTOR, Q.C.:
9 Q. Okay. And what do you recall -
10 DR. MCCARTHY:
11 A. So I understood her to be the gatekeeper of
12 the numbers and the lists.
13 CHAYTOR, Q.C.:
14 Q. Okay. And -
15 DR. MCCARTHY:
16 A. And the number that she told me was, I don't
17 know if it was at that point or later was that
18 117 patients had a treatment change.
19 CHAYTOR, Q.C.:
20 Q. Okay, and the idea of those number, of course,
21 having a treatment change, I understand that
22 that did come from Ms. Predham to you. What
23 about any discussion about, well, out of those
24 or out of all of the patients tested how many
25 may have been most affected by this?

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1 DR. MCCARTHY:
2 A. No, that number was never--I never asked that,
3 nobody asked that of me and I don't recall
4 asking that of Ms. Predham.
5 CHAYTOR, Q.C.:
6 Q. I'm just wondering if Ms. Predham may have
7 sought your advise as to whether or not -
8 DR. MCCARTHY:
9 A. No.
10 CHAYTOR, Q.C.:
11 Q. - or even those that were most impacted by
12 this?
13 DR. MCCARTHY:
14 A. No.
15 CHAYTOR, Q.C.:
16 Q. And do you recall any discussion about that
17 ever coming up around the tumour panel?
18 DR. MCCARTHY:
19 A. Not that I recall.
20 CHAYTOR, Q.C.:
21 Q. The Panel.
22 DR. MCCARTHY:
23 A. Yeah, the Panel. Not that I can recall.
24 CHAYTOR, Q.C.:
25 Q. Okay. And do you recall Dr. Kwan's suggestion

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1 that we--that you try and track those
2 impacted, while they might not need a change
3 in treatment, but those who have been
4 otherwise impacted?
5 DR. MCCARTHY:
6 A. I don't recall Dr. Kwan saying this. The
7 first time I had heard of that was during Dr.
8 Laing's testimony. And again, my
9 understanding that the person sort of keeping
10 track of all the different results was Heather
11 Predham. But my, I guess, opinion or advice
12 on which patients were affected the most, as I
13 agree with Dr. Laing's previous statement,
14 that all patients were affected. But in terms
15 of who was affected the most, no one has ever
16 asked my opinion on that.
17 CHAYTOR, Q.C.:
18 Q. Okay. And if we could have then, please, P-
19 1175, sorry, 1177? And this is a fax cover
20 sheet to Joyce from Nancy Parsons, September
21 28th, 2006. "Joyce, as we discussed, we are
22 interested in knowing if all of the attached
23 patients have been contacted with their
24 retesting results even if there are no
25 recommendations. Thanks, Nancy." And this is

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1 September 28th, 2006. Who would Joyce be in
2 this context?
3 DR. MCCARTHY:
4 A. Oh, that's my--one of the two secretaries
5 working in medical oncology.
6 CHAYTOR, Q.C.:
7 Q. Okay. And then there's a post-it, it appears,
8 over this.
9 DR. MCCARTHY:
10 A. That's my writing.
11 CHAYTOR, Q.C.:
12 Q. That's your writing. "Nancy, Heather, Debbie,
13 all patients on this list have been notified.
14 Thanks." And that's you signature, I take it?
15 DR. MCCARTHY:
16 A. Yes.
17 CHAYTOR, Q.C.:
18 Q. Okay. And your extension number. So, Doctor,
19 there's also up in the corner here, it's--and
20 I take it it's your assistant who's made the
21 note. "Dr. McCarthy, do you need all these
22 charts pulled to confirm??" What did you do
23 to be able to assure the people in quality
24 that, in fact, all the patients had been
25 notified?

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1 DR. MCCARTHY:
2 A. Looked at the charts.
3 CHAYTOR, Q.C.:
4 Q. Okay, so you did, in fact, have all the charts
5 pulled?
6 DR. MCCARTHY:
7 A. Whether I looked at all of the notes on OPUS
8 or I pulled all the charts or a combination of
9 both, I'm sure it was a combination. It might
10 have been very easy to see from the OPUS
11 notes. For example, myself or Dr. Laing would
12 have dictated a note, it might have been very
13 easy to see that those patients I would not
14 have needed a chart. If there was ones where
15 it wasn't quite as easy to see, somebody
16 handwrote something, for example, then I would
17 have needed to have seen the chart.
18 CHAYTOR, Q.C.:
19 Q. Okay. And the list, in terms of the list that
20 was provided to you for this, who did the list
21 come from?
22 DR. MCCARTHY:
23 A. Looks like Nancy Parsons sent me the list.
24 CHAYTOR, Q.C.:
25 Q. Okay, and do you know whether or not the list

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1 was, was it just your patients that you were
2 being asked to check?
3 DR. MCCARTHY:
4 A. I don't know. I remember doing this, but I
5 don't remember why she asked me, I don't
6 remember who was on the list.
7 CHAYTOR, Q.C.:
8 Q. Okay. And do you know whether or not it would
9 have been comprehensive, for example, in
10 reading down through it did you--were you able
11 to identify anyone who wasn't on the list that
12 you thought should be?
13 DR. MCCARTHY:
14 A. Not that I can recall. I don't think it was
15 every patient.
16 CHAYTOR, Q.C.:
17 Q. You don't think it was every patient?
18 DR. MCCARTHY:
19 A. I can't see how I could have gone through,
20 how many were retested, over 1000, I -
21 CHAYTOR, Q.C.:
22 Q. So perhaps just your patients?
23 DR. MCCARTHY:
24 A. I would think it was just mine.
25 CHAYTOR, Q.C.:

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1 Q. Okay. And whether or not it was all of your
2 patients, would you have been able to
3 determine that?
4 DR. MCCARTHY:
5 A. No, because I don't even know--I still to this
6 day don't have a list of all my patients.
7 CHAYTOR, Q.C.:
8 Q. Who have been retested? And have you -
9 DR. MCCARTHY:
10 A. Of any sort.
11 CHAYTOR, Q.C.:
12 Q. And is that something that you've ever
13 requested or thought might be helpful for you
14 to be able -
15 DR. MCCARTHY:
16 A. It was my understanding that Heather Predham,
17 that one of her things to do was to be to take
18 all the lists of the patients and follow-up to
19 make sure that each person had been contacted.
20 CHAYTOR, Q.C.:
21 Q. Yes.
22 DR. MCCARTHY:
23 A. I assume that this was part of that process
24 that they asked me to look after this
25 particular group.

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1 CHAYTOR, Q.C.:
2 Q. Yes. But in terms of you being able to access
3 a list of your patients on any given day,
4 you're not able to do that?
5 DR. MCCARTHY:
6 A. No.
7 CHAYTOR, Q.C.:
8 Q. And is that anything you've ever asked anyone
9 and thought that would be a good idea for me
10 to be able to figure out which are my
11 patients?
12 DR. MCCARTHY:
13 A. Yes. Yes. Again, that's come out with the
14 need for this database and those sorts of, you
15 know, IT type of issues that's come out of
16 this, that that's something we're going to
17 work towards to be able to have easier
18 notification of patients, keep, you know, a
19 database of all patients, including breast
20 cancer patients, that's something that's, I
21 guess, on our wish list.
22 CHAYTOR, Q.C.:
23 Q. And that's not something that your
24 administrative assistants could do for you?
25 DR. MCCARTHY:

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1 A. I have no idea how they would be able to get a
2 comprehensive list of every patient who's been
3 seen by me. I don't know how they would do
4 that.
5 CHAYTOR, Q.C.:
6 Q. I guess they could do the current ones, they
7 could do current patients?
8 DR. MCCARTHY:
9 A. I would guess. But then you'd be looking at
10 the, what about the ones out in the peripheral
11 clinics, I don't know how they would get
12 those, I don't know.
13 CHAYTOR, Q.C.:
14 Q. Okay. If we could have, please, P-2603? And
15 this is an e-mail from Debbie Parsons to
16 Heather Predham, October 3rd, 2006. "Hi
17 Heather, Received a call from Dr. Joy McCarthy
18 this morning advising she did not get the
19 original letter on a particular patient. On
20 the patient's chart was only the copy that was
21 sent to Dr. Tomkins. My records show that the
22 letter was mailed to Dr. McCarthy. Dr.
23 McCarthy called back to say that she called
24 the lady this morning and apparently she was
25 notified by Dr. Tomkins that the Panel

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1 recommended treatment with Tamoxifen. The
2 lady refused Tamoxifen at that time, according
3 to Joy. Joy advised also that her ER/PR
4 results were not on the patient's chart and no
5 notes at all about her being notified of the
6 Panel's recommendation. She still insists
7 that she did not get the original letter and
8 it must have been lost from my office to
9 hers." What do you recall about this, Doctor?
10 DR. MCCARTHY:
11 A. I can't--I remember this patient. I can't
12 remember how she came to my attention, though,
13 because this lady did not contact us. She had
14 already been notified, this conversation had
15 already taken place with Dr. Tomkins of which
16 I wasn't aware. I'm wondering now if she
17 might have been one of the ones on that list
18 that you just showed me on the previous
19 exhibit.
20 CHAYTOR, Q.C.:
21 Q. Because that was September 28th, 2006 that you
22 were asked to do that?
23 DR. MCCARTHY:
24 A. Yes. And this is October, so -
25 CHAYTOR, Q.C.:

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1 Q. October 3rd.
2 DR. MCCARTHY:
3 A. Could have been one of the ones on the list.
4 And when I looked up this lady's information
5 on the computer, there was no information, so
6 that's when I requested her chart. So I went
7 through her chart from top to bottom searching
8 for the letter with my signature on it, no
9 such letter was on the chart, no such letter
10 was in my filing box. There has been no
11 signed letter that I could find that I had
12 received this letter. There was one, there
13 was a--I saw that was cc'd to Dr. Tomkins, I
14 did see his signature on a letter on the chart
15 that he signed, but no notes from him. So the
16 first thing I did was call the patient,
17 because I think I had fallen on the floor at
18 this point almost in a faint because I figured
19 this lady had been completely missed and I was
20 quite--this caused me a lot of stress. And so
21 I called her and she was, she was totally
22 understood why I was calling her, remembered
23 her entire conversation with Dr. Tomkins,
24 explained to her--explained to me that her
25 feeling was that she was too far out to

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1 consider Tamoxifen. This was a lady of a good
2 understanding of what Tamoxifen was for and of
3 her disease and all the rest of it and she was
4 quite content with her conversation with Dr.
5 Tomkins, had all of her questions answered.
6 And so I said--thanked her, asked her if she
7 had any further questions, if she wanted to
8 follow-up with me. No, she was quite content
9 the way things were. Advised me she'd call me
10 if she needed me, and we hung up the phone. I
11 dictated a letter right away. And at some
12 point called Debbie about this.
13 CHAYTOR, Q.C.:
14 Q. Okay. And, Doctor, this says that you advised
15 that her ER/PR results were not on the
16 patient's chart?
17 DR. MCCARTHY:
18 A. No.
19 CHAYTOR, Q.C.:
20 Q. So the results from the retest weren't even on
21 the chart?
22 DR. MCCARTHY:
23 A. No.
24 CHAYTOR, Q.C.:
25 Q. Okay. And did that get rectified?

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1 DR. MCCARTHY:
2 A. I believe so. I never--I mean, after I went
3 this far, I didn't request the chart back
4 again to look for it.
5 CHAYTOR, Q.C.:
6 Q. And it says that the letter was mailed to you.
7 Is that, in fact, what was happening with
8 those Panel letters, that they would actually
9 be mailed out of Eastern Health to be mailed
10 back to the oncologists?
11 DR. MCCARTHY:
12 A. I think it would have gone through internal
13 mail. So there's an internal and an external
14 mail system, so within the hospital it would
15 go through internal mail. Most of that gets--
16 if it goes to health records would get opened
17 by health records and put in the appropriate
18 slot. So that's where our box is, out in
19 health records, it should be in the box.
20 CHAYTOR, Q.C.:
21 Q. Okay. So saying that the letter got lost from
22 Debbie Parson's office to yours -
23 DR. MCCARTHY:
24 A. Would have been sometime in that internal--
25 somewhere in that internal mailing system.

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1 CHAYTOR, Q.C.:
2 Q. Through the internal mail. And if we could
3 have, please, P-1269? And, Doctor, this is an
4 e-mail from Ms. Predham, June 6th, 2007 to a
5 number of individuals, including Dr. Howell,
6 Patricia Pilgrim, Dr. Denic, Dr. Laing. And
7 its "New issue on ER/PR. Nancy received a call
8 from a patient who attended a breast cancer
9 retreat in Port-aux-Basques over the weekend.
10 While there one cancer survivor present spoke
11 to the group and said something like 'I was
12 tested positive and was taking'" I think that
13 should be "Tamoxifen." "'You can't assume that
14 because you tested positive that you are fine.
15 I received a call from my doctor, Dr.
16 McCarthy, who said that I was retested and
17 needed to stop taking Tamoxifen right away.'
18 We don't know the lady's name but there was
19 one of Dr. McCarthy's patients who was
20 diagnosed as positive but came back negative.
21 Upon review the slide was always negative. It
22 was misread or it may have been a
23 retroconverter." What do you recall in terms
24 of the circumstances around this particular
25 patient?

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1 DR. MCCARTHY:
2 A. If this is the same one I'm thinking of,
3 because it was mentioned here that there was
4 only one and there is one that I can think of,
5 this is a lady who had two breast cancers and
6 was, I believe, a low expression of the,
7 either the estrogen or the progesterone
8 receptor of ten percent and she was placed on
9 Tamoxifen for that because ten percent is my
10 cutoff. And it's a lady who lives out of town
11 and so I remember previously that she had
12 issues getting back and forth, so I called her
13 and explained the situation to her and as this
14 e-mail suggests, I advised her to stop taking
15 Tamoxifen.
16 CHAYTOR, Q.C.:
17 Q. Okay. And if we could have then, please, P-
18 2605? And I take it, Dr. McCarthy, most
19 patients who had to have the change in their
20 treatment, they--you met with them face-to-
21 face, you didn't make phone calls?
22 DR. MCCARTHY:
23 A. Yeah, I mean, I guess geography and their
24 distance from the centre was one issue and
25 their financial means to get back and forth

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1 another, and sometimes how sick they were was
2 another. You know, I took all those things
3 into consideration when I decided whether or
4 not to call somebody or ask them to come in.
5 CHAYTOR, Q.C.:
6 Q. Yes, and this person needed to come off the
7 medication, so I guess you wanted to get that
8 message to her -
9 DR. MCCARTHY:
10 A. To her as soon as possible.
11 CHAYTOR, Q.C.:
12 Q. - as soon as possible, okay. And this e-mail,
13 then, Nancy Parsons, there's an e-mail to
14 Nancy Parsons, I should say, August 23rd,
15 2007. "Hi Nancy, If you're unable to reach me
16 by phone, feel free to e-mail with the test
17 results concerning my mother. Again, I'm
18 confused why her letter stated that her test
19 results changed from clinically negative to
20 clinically positive. I'd like to know the
21 numbers of the ER and PR testing on the
22 initial test and the retest." And then it's
23 an e-mail to you from Nancy, August 23rd, 2007
24 forwarding that e-mail and saying, "Dr.
25 McCarthy, girl will be satisfied with an e-

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1 mail from you just to answer the question
2 below." And so you recall getting this and
3 following up with the person?
4 DR. MCCARTHY:
5 A. Yes.
6 CHAYTOR, Q.C.:
7 Q. Okay. And if we could look at then, please,
8 P-2606? And had this been a patient, this
9 woman's mother been a patient that you had
10 treated yourself?
11 DR. MCCARTHY:
12 A. So if you see in the body of my letter, I had
13 to recall this--I mean, I remembered this
14 lady, but I had to recall her chart to get all
15 the details because I was one of many
16 physicians who cared for her. And I went back
17 and, as you can see from the response to this
18 lady's daughter, who was the one who was
19 making the inquiry, I went back through the
20 chart and saw, you know, went through the
21 events with her in the e-mail and explained to
22 her that even though the numbers changed, her
23 treatment did not change.
24 CHAYTOR, Q.C.:
25 Q. Okay, and what letter was she referring to

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1 that had caused her to be confused?
2 DR. MCCARTHY:
3 A. That would have been the one that came out
4 from Eastern Health that I believe Dr. Laing
5 spoke of yesterday about referring to the
6 Class Action lawsuit.
7 CHAYTOR, Q.C.:
8 Q. The one that went out from Ms. Marion Crawley,
9 I guess?
10 DR. MCCARTHY:
11 A. Correct.
12 CHAYTOR, Q.C.:
13 Q. Yes, okay. Right, so then you write back to
14 Nancy then, it's the same day. "Hi Nancy,
15 Here's the reply. Could you cut and paste
16 into another e-mail from you as I am not keen
17 on patients or their families getting my e-
18 mail address either. I've been hounded before
19 by patients via e-mail and thus stopped giving
20 it out to the majority." Doctor, did you find
21 that with respect to the ER/PR issue -
22 DR. MCCARTHY:
23 A. No.
24 CHAYTOR, Q.C.:
25 Q. - that you were overwhelmed or -

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1 DR. MCCARTHY:
2 A. Oh, no, no, no. This was, I took my e-mail
3 address off my business cards back in 2001
4 because when I was giving it out, patients--to
5 explain that. I know it sounds a bit strong
6 to say that. But I had several patients who
7 would send me--would basically block my e-mail
8 with internet searches of alternative
9 therapies and get quite angry with me if I
10 didn't read them all and respond to them all
11 right away and I was overwhelmed by that.
12 CHAYTOR, Q.C.:
13 Q. By that, okay.
14 DR. MCCARTHY:
15 A. And that's why I stopped giving out. It had
16 nothing to do with this issue.
17 CHAYTOR, Q.C.:
18 Q. Okay. So then in terms of the number of
19 requests or contacts regarding this -
20 DR. MCCARTHY:
21 A. There was none, no.
22 CHAYTOR, Q.C.:
23 Q. Okay. And so you write back to her and you
24 say "This issue did not affect your mother's
25 treatment plan in any way. The original

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1 biopsy was ER ten percent and PR 80. The
2 pathology department tested all who were ER
3 weakly positive or negative regardless of the
4 PR. ER stands for estrogen and PR for
5 progesterone. From our viewpoint we don't
6 care as long as one of them is positive and
7 that's how she was treated back in 2000." And
8 you weren't here so you weren't the original
9 treating oncologist. "Now the results are ER
10 50 and PR 90, as told me by Nancy Parsons. I
11 do not have a copy of the latter results, but
12 it did not change anything that was done all
13 along. I hope this answers your question.
14 Only the ER changed, but it did not change
15 treatment at all. Dr. Aladina was the
16 original oncologist. He gave her the
17 appropriate chemo and Tamoxifen." So she had
18 received Tamoxifen. "He has left since 2001.
19 At the time ER ten percent was considered
20 negative by some, but this thinking has
21 evolved a lot and now we use one percent as
22 the cut off, but there is little data to
23 support what the true cut off number should
24 be." Doctor, the "at the time ER ten percent
25 was considered negative -

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1 DR. MCCARTHY:
2 A. I should have said less than. There's a--I
3 should have had a little less than.
4 CHAYTOR, Q.C.:
5 Q. All right, "and in Ontario, for example, they
6 use ten percent as the cut off." Now at this
7 point in time, in 2007, August 2007, was it
8 your understanding that Ontario was using ten
9 percent as the cut off?
10 DR. MCCARTHY:
11 A. In certain labs, they were, that was my
12 understanding. But in particular, in
13 Kingston, Ontario, is the NCIC, the National
14 Cancer Institute of Canada, and their studies
15 use ten percent, which is where I came up with
16 that, as well as just general discussions with
17 my colleagues.
18 CHAYTOR, Q.C.:
19 Q. Okay, and the lab at which her retest would
20 have been carried out was using one percent,
21 Mount Sinai?
22 DR. MCCARTHY:
23 A. The lab, but the clinicians, and still in many
24 centres, still use ten percent.
25 CHAYTOR, Q.C.:

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1 Q. And you indicate here to this particular
2 family member, "we now use one percent as the
3 cut off."
4 DR. MCCARTHY:
5 A. Um-hm.
6 CHAYTOR, Q.C.:
7 Q. So at this point in time, in August 2007, the
8 switch had been made to one percent?
9 DR. MCCARTHY:
10 A. Well, that's--again, as I said before, ten
11 percent was still ones we didn't bring--
12 greater, we were not bringing to tumour board,
13 but one to nine, we'll say, we were still
14 bringing to tumour board.
15 CHAYTOR, Q.C.:
16 Q. Okay, and then you go on to speak about her
17 mother and the e-mail to her. Is there
18 anything else then about this that you recall
19 about this situation?
20 DR. MCCARTHY:
21 A. I got another e-mail back from Nancy Parsons.
22 I'm not sure if you have a copy of that one
23 there, from this lady, who had made this
24 inquiry, saying that she was satisfied with my
25 response.

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1 CHAYTOR, Q.C.:
2 Q. Yes, okay.
3 DR. MCCARTHY:
4 A. And Nancy considered the issue resolved or
5 closed or however it was she put it in the e-
6 mail.
7 CHAYTOR, Q.C.:
8 Q. Okay. This woman, it appears, had passed away
9 in 2006. So the letter that she's receiving
10 then in August of 2007, and I believe the lady
11 had referred to it being almost a year after
12 her mother's death, she had assumed, I believe
13 she had said, if her mother had had any
14 change, she would have been contacted. So if
15 we could just go back to that for a moment.
16 It's at, I believe, P-2605. I'm sorry, it's
17 in her reply, I believe, that she sent to you.
18 It's 2607 maybe. Yes.
19 Yes, she does reply on August 24th and
20 Nancy forwards it on to you, and she says "I
21 was aware of the issue with breast cancer
22 retesting from the beginning and I had assumed
23 that if my mother was affected in any way,
24 that she would have been contacted prior to
25 now. Having said that, it was a shock this

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1 week to receive the letter, a year after she
2 has passed away, stating that her test results
3 had changed. With all the media hype around
4 this issue, it was difficult to decipher what
5 this letter meant. Ms. Parsons suggested a
6 case consult to review my mother's case and I
7 appreciate your willingness to do so.
8 However, I do not feel a need to relive the
9 past 14 years that my mother was ill if there
10 is no new information that you can offer. She
11 held those involved in her care in the highest
12 regard and understood that every treatment
13 option possible was considered for her" and
14 she thanks you for your timely response.
15 Doctor, did that catch your attention, in
16 terms of this woman had not been contacted.
17 She had died--this is August 2007, and they
18 had assumed that they hadn't had any contact,
19 so that there must not have been any change.
20 Did that catch your attention?
21 DR. MCCARTHY:
22 A. I don't remember if this lady--was this lady
23 panelled? I don't even remember if she was
24 panelled or not, first of all, so that might
25 have been--if she wasn't panelled, I don't

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1 know if a letter went out to anybody. That's
2 my first question. So I don't know the answer
3 to that. And the second thing is that in
4 terms of the patients getting letters after
5 they had passed away, I don't know why that
6 was done either. So those are two things
7 right now on reading this. Again, when I was
8 in my crazy busy days, I remember reading this
9 thinking "oh, okay, she doesn't want to meet
10 with me. She was happy with my response" and
11 that's all I remember taking out of it at that
12 time. But looking at this now, it makes me
13 wonder why she wasn't contacted.
14 CHAYTOR, Q.C.:
15 Q. Yes, okay, and if we could have, please, P-
16 2604? This is an e-mail from Ms. Crowley to
17 yourself, August 20th, 2007, and she says
18 "attached is a confidential list of those
19 cancer patients and/or families who were sent
20 the letter explaining about the class action
21 law suit. Please do not circulate this list.
22 It is for your use only. Any further
23 inquiries, you can direct to Ms. Predham."
24 What was that about? Why did you require a
25 list of the patients who had received the

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1 letter about the class action law suit?
2 DR. MCCARTHY:
3 A. I called Mrs. Crowley because a patient had
4 come in with the letter about the--I think it
5 was clinically negative to clinically positive
6 and their screening test being incorrect.
7 This patient was extremely upset. This was a
8 metastatic breast cancer patient who was
9 already undergoing a lot of suffering and was
10 very upset by this letter. This particular
11 patient did not convert from clinically
12 anything to anything, and couldn't understand
13 why she got the letter, and I couldn't
14 understand it either, and I thought "oh, well,
15 this could be the start of"--I mean, after
16 meeting with this patient and trying to--you
17 know, she showed me the letter. She had it in
18 her hand, trying to figure out what it meant.
19 This was the first I'd heard of it. I had not
20 heard of any letter going out. Nobody
21 discussed the letter with me. Nobody gave me
22 the heads up that my own patients were going
23 to be getting this letter. So this was quite
24 upsetting to the patient, most importantly,
25 but also upsetting to me, because I didn't

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1 know who else would have this letter, who this
2 letter went to, who decided the letter should
3 go out. I knew nothing about it. So when I
4 spoke with Mrs. Crowley, I said "I would like
5 to know which of my patients will be getting a
6 copy of this letter," so I would have an idea
7 of, you know, who's going to be calling me,
8 who I'm going to be seeing, who may have
9 questions about this, and she could not tell
10 me which of my patients were on the list. She
11 said "all I can do is send you the master list
12 and you can go through it yourself and figure
13 out who belongs--you know, who you're looking
14 after and who you're not."
15 CHAYTOR, Q.C.:
16 Q. And Doctor, did you say that the patient that
17 came to see you that alerted your attention to
18 this, was not--hadn't gone from clinically
19 negative to clinically positive in anything?
20 It wasn't just -
21 DR. MCCARTHY:
22 A. No, her treatment really, to my recollection,
23 was not affected by this, and I mean, she was
24 aware of--this patient was aware of the
25 retesting, but she understood that it wasn't a

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1 treatment that--you know, she didn't miss out
2 on a treatment like Tamoxifen. There wasn't
3 anything like that. So she couldn't
4 understand why she got this, and when she saw
5 the word "screening" one of the first
6 questions she asked me was "do I have breast
7 cancer? What does this mean? I mean, was my
8 mammogram wrong?" and all these sorts of
9 questions. This patient was extremely upset.
10 CHAYTOR, Q.C.:
11 Q. Okay, so the issue of though--and we have
12 heard about the issue of the screening part of
13 the letter, and the exception that you and
14 other oncologists took to that. But this
15 issue of her not having gone clinically
16 negative to clinically positive, she may in
17 fact, in terms of her numbers, but what you're
18 saying is that she had already received
19 appropriate treatment?
20 DR. MCCARTHY:
21 A. This lady had already received appropriate
22 treatment.
23 CHAYTOR, Q.C.:
24 Q. Okay, and did you contact anyone else besides
25 Ms. Crowley about your concern?

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1 DR. MCCARTHY:
2 A. My colleagues. I wanted to know if anybody
3 else had seen this letter, and if they knew
4 something that I didn't know.
5 CHAYTOR, Q.C.:
6 Q. Okay, and did you contact Ms. Pilgrim?
7 DR. MCCARTHY:
8 A. I might have.
9 CHAYTOR, Q.C.:
10 Q. Or Dr. Howell?
11 DR. MCCARTHY:
12 A. I might have. I don't recall if I did or I
13 didn't.
14 CHAYTOR, Q.C.:
15 Q. Okay. Heather Predham?
16 DR. MCCARTHY:
17 A. Well, Heather actually found out about this
18 quite soon afterwards because she called--
19 Heather called me when she returned from her--
20 I think she was on holidays at this time.
21 Heather returned, called me when she came back
22 from her holidays and Heather, in turn, was
23 quite upset because Ms. Crowley was upset.
24 Everybody was upset at this point. Because
25 Heather knew that we, the physicians, were--we

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1 didn't agree with the content of this letter
2 and were not consulted and Heather told me
3 that Marion Crowley did what she was told to
4 do, and it was really her responsibility,
5 Heather's responsibility, and that she wanted
6 to take responsibility for this and take it
7 away from Ms. Crowley.
8 CHAYTOR, Q.C.:
9 Q. Okay, and did Heather explain to you who had
10 drafted the letter and why the letter went out
11 with the wrong information in it?
12 DR. MCCARTHY:
13 A. Heather told me that it was the lawyers that
14 wrote the letter. Which lawyers, I don't
15 know.
16 CHAYTOR, Q.C.:
17 Q. Okay.
18 DR. MCCARTHY:
19 A. But it was lawyers, they said involving
20 Eastern Health, and they were told to do so,
21 but again, which lawyers, whether it be
22 insurance, whether it be Eastern Health,
23 whether it be a class action, I was never
24 clear on which lawyers.
25 CHAYTOR, Q.C.:

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1 Q. Did you understand that it was people
2 defending the class action on behalf of
3 Eastern Health?
4 DR. MCCARTHY:
5 A. I don't remember if I got specifics on which
6 lawyers were advising Ms. Crowley to write--
7 you know, to send out this letter.
8 CHAYTOR, Q.C.:
9 Q. Okay, and if we'd just look, please, at P-
10 1420? And this is the letter of September
11 19th, 2007 that went out by a number of
12 oncologists, and it is copied, in fact, to the
13 acting CEO, Louise Jones, along with a number
14 of other people, and Doctor, you were
15 involved, I understand, in drafting this? Is
16 that right?
17 DR. MCCARTHY:
18 A. Yes.
19 CHAYTOR, Q.C.:
20 Q. Okay, and other than receiving feedback or a
21 response from Ms. Predham, who's copied on the
22 letter, did any of the other of those
23 individuals, Louise Jones, Pat Pilgrim, Sharon
24 Smith, Dr. Howell, anyone else here contact
25 you to discuss this letter?

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1 DR. MCCARTHY:
2 A. No, not that I can recall. We did receive a
3 letter back from Ms. Crowley.
4 CHAYTOR, Q.C.:
5 Q. If I could have, please, P-2725? And it says
6 "all ER/PR 2007/2008 primary invasive
7 carcinoma of the breast" and on page five of
8 this, there's a particular case which had an
9 ER from the Health Sciences Centre of zero
10 percent, ER from Mount Sinai of 30, PR Health
11 Sciences zero, and PR from Mount Sinai zero,
12 and then it says, the comment section, "sent
13 for repeat to Sunnybrook on August 21st, 2008.
14 Case discussed with Dr. McCarthy,
15 interpretation problem." Do you recall
16 anything about this case?
17 DR. MCCARTHY:
18 A. Yes. I received a phone call from Dr. Nash
19 Denic about this case. This was a lady who
20 had breast cancer, had the appropriate
21 chemotherapy and surgery, and although it's
22 not on this particular document, had an
23 initial biopsy result saying that her results
24 were either five percent and zero or zero and
25 five percent. The lady was tumour boarded.

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1 The tumour board decided that she should be
2 offered Tamoxifen. She was put on Tamoxifen
3 in a timely fashion and had a recurrence
4 within a couple of months. The recurrence was
5 removed surgically and I believe this original
6 zero and zero either was on the mastectomy
7 specimen or on the recurrence in the axilla.
8 I can't recall which. Dr. Denic said that
9 there was a report from Sinai which he did not
10 put in the computer, and I understood at that
11 time it was not a final report, it was not a
12 report that was being put in the Meditech,
13 that there was zero percent and a faint
14 staining of 30 percent. So I asked him what
15 that meant. He said he didn't know. Dr.
16 Carter had signed off on the previous result
17 as being zero and zero. I said "well, find out
18 what it means. If necessary, get another
19 opinion, and please get back to me." So this
20 is a work in progress.
21 CHAYTOR, Q.C.:
22 Q. Okay. So there's still no word on the
23 outcome?
24 DR. MCCARTHY:
25 A. No, and I've never seen the zero and 30 in

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1 writing until now. It was not put in the
2 computer.
3 CHAYTOR, Q.C.:
4 Q. Okay. All right, and if we could, I have a
5 number of questions then, Doctor, for you on
6 the breast disease site group and that's the
7 questions I planned to ask of you. So if we
8 could turn, please, to P-1140? And we've
9 spoken briefly already about this group, and I
10 understand from your evidence that it came out
11 of a recommendation of Dr. Banerjee. Had you,
12 yourself, though thought of such a group prior
13 to it being a suggestion of Dr. Banerjee?
14 DR. MCCARTHY:
15 A. It was an idea that had come to me before,
16 because there were site groups that were
17 existing in other places where I had trained,
18 including both Halifax and in Ontario.
19 However, in the early years when we didn't
20 have enough people to become as subspecialized
21 as to what we have become now, I didn't even
22 recognize it as a possibility until, we'll say
23 2004-2005 onwards. The first time I was ever
24 told that I could be given the resources to
25 start such a group was at the Banerjee--Dr.

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1 Banerjee meeting with Dr. Williams, and that I
2 was verbally told by Dr. Williams that "if you
3 need resources, we will get them for you."
4 CHAYTOR, Q.C.:
5 Q. Okay, and this letter of July 5th, 2006 is
6 written by yourself and Dr. Carter as co-
7 chairs of the breast disease site group, and
8 copied to a number of individuals, and you
9 write to Dr. Williams "At a recent ad hoc
10 meeting, great enthusiasm was expressed by
11 many specialty groups for creating a breast
12 site disease site group at Eastern Health. As
13 you recall, the impetus for this group came
14 from your office as a result of multiple
15 meetings concerning ER and PR laboratory
16 testing and the care of patients with breast
17 cancer in this province. Please see attached
18 the proposal for development and staffing
19 needs for the group. We look forward to your
20 reply and meeting at your convenience."
21 So what was your purpose then in writing
22 to Dr. Williams at this point in July of '06?
23 DR. MCCARTHY:
24 A. Basically to explain to him that we wanted to
25 get this started, that we'd already had an

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1 initial meeting to look for interest from
2 other groups, and to tell him what we thought
3 initially we might need to get this up and
4 running.
5 CHAYTOR, Q.C.:
6 Q. Okay, and then attached you have the
7 development of a breast disease site group for
8 Eastern Health and the first meeting, as you
9 indicate, had already taken place in June of
10 2006, and "the aims of the group are to
11 develop evidence-based clinical practice
12 guidelines for the care and treatment of
13 Newfoundland and Labrador women and men with
14 breast cancer and to develop strategies for
15 collecting and analysing existing breast
16 cancer data within Eastern Health in an effort
17 to clearly outline the burden of breast cancer
18 for Newfoundlanders."
19 So I take it, what this group is mandated
20 to do is to come up with clinical practice
21 guidelines, do some research, collect and
22 analyze information and, I guess, be the
23 source of information, in terms of
24 disseminating any information that you may
25 have that's relevant to the practice?

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1 DR. MCCARTHY:
2 A. Correct.
3 CHAYTOR, Q.C.:
4 Q. Okay, and so this group, unlike, for example,
5 your tumour board rounds, this group wouldn't
6 be involved in looking at any particular case
7 or looking at the treatment for any particular
8 case?
9 DR. MCCARTHY:
10 A. Correct.
11 CHAYTOR, Q.C.:
12 Q. Okay, and then it indicates that you and Dr.
13 Carter are to be the co-chairs and the
14 representation would be representation from
15 the medical oncology, pathology, oncology
16 nursing, medical genetics, pharmacy, radiation
17 oncology, palliative care, and surgery, and
18 "it is hoped to add membership from
19 radiology," it says, and Doctor, do you
20 currently have membership from all of these
21 areas, except, I believe you said earlier
22 there was an issue with radiology?
23 DR. MCCARTHY:
24 A. Oh no, we have radiology and -
25 CHAYTOR, Q.C.:

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1 Q. Have radiology now.
2 DR. MCCARTHY:
3 A. - and screening -
4 CHAYTOR, Q.C.:
5 Q. And screening, okay.
6 DR. MCCARTHY:
7 A. - are on that list now as well.
8 CHAYTOR, Q.C.:
9 Q. Okay, so there is representation from all
10 these groups?
11 DR. MCCARTHY:
12 A. Yes, yes, quite regularly, yes.
13 CHAYTOR, Q.C.:
14 Q. And how active is your group?
15 DR. MCCARTHY:
16 A. We meet on a monthly basis. We did not meet
17 over the summer due to people being away, and
18 our first meeting was supposed to be, I
19 believe, last week or this week, but it's been
20 deferred now to October. Since Dr. Carter has
21 resigned, one of our first issues on that
22 agenda would be to get another co-chair to see
23 if anybody is interested.
24 CHAYTOR, Q.C.:
25 Q. Okay, and did you also get the breast research

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1 at Memorial University of Newfoundland and the
2 Cancer Surveillance Program, is that the
3 screening group?
4 DR. MCCARTHY:
5 A. The screening group, yes, and research, I
6 guess what we meant by that would have been
7 possibly genetics and we have that
8 representation as well.
9 CHAYTOR, Q.C.:
10 Q. Okay, and Doctor, were you successful in
11 getting the resources that you needed to be
12 able to carry on with this group?
13 DR. MCCARTHY:
14 A. In part. We have secured a guidelines
15 coordinator, which was the start that we
16 requested, Ms. Cynthia Higdon, but we don't
17 have any IT. We also have clerical support,
18 which is--we also, we don't have any IT
19 support identified, but I think until we get
20 the guidelines actually finalized and ready
21 for prime time, I mean, the next step, in my
22 view, would be like a website, and that sort
23 of thing, so we're going to need IT support.
24 So it's evolving. Ms. Sharon Smith has now
25 been instrumental in securing these resources

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1 and been working with us on a regular basis to
2 secure these resources.
3 CHAYTOR, Q.C.:
4 Q. Okay, and you indicated about clinical
5 guidelines. "They are viewed as useful tools
6 for making care more consistent and efficient
7 and for closing the gap between what
8 clinicians do and what scientific evidence
9 supports" and I understood that prior to this
10 endeavour by your group, there weren't
11 clinical guidelines in place?
12 DR. MCCARTHY:
13 A. No, we were following other people's
14 guidelines of your choice. For example, I
15 might follow Cancer Care Ontario. Somebody
16 else might follow the BC Cancer Agency, but
17 there wasn't any consistency.
18 CHAYTOR, Q.C.:
19 Q. As to all of you following the same
20 guidelines?
21 DR. MCCARTHY:
22 A. Correct.
23 CHAYTOR, Q.C.:
24 Q. Okay, and I take it that it's important that
25 everyone be on the same page, following the

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1 same clinical guideline in the same
2 institution?
3 DR. MCCARTHY:
4 A. That's what we believe, yes.
5 CHAYTOR, Q.C.:
6 Q. And the Provincial Strategy for Cancer Control
7 has also recommended guideline development as
8 an essential component of cancer care for the
9 province, and I won't take you through the
10 whole diagram--whole diagram, whole document,
11 sorry. "At present, approximately 25 clinical
12 practice guidelines have been identified as
13 being needed within Eastern Health. These
14 range from pathological assessment of breast
15 specimens to use of novel pharmaceuticals, to
16 identification and investigation of high risk
17 families. These guidelines will be used
18 throughout Eastern Health and hopefully
19 throughout the province," and I understood
20 from what you've told us earlier that there
21 are no guidelines yet that have been fully
22 signed off on, but there are some that are in
23 draft?
24 DR. MCCARTHY:
25 A. Correct. Breast MRI and the hormonal therapy,

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1 and as well the chemotherapy ones are getting
2 close.
3 CHAYTOR, Q.C.:
4 Q. Okay. So there's three.
5 DR. MCCARTHY:
6 A. And I understand as well that before she left,
7 Bev Carter had a series of guidelines for the
8 lab as well. Now how far we are into the
9 approval process of that, I'm not sure,
10 because we haven't addressed that fully, to my
11 knowledge, at a breast site group meeting.
12 CHAYTOR, Q.C.:
13 Q. Okay. So what you have seen copies of, in
14 draft, are three out of the 25?
15 DR. MCCARTHY:
16 A. Yes, and we put 25, I mean, that--we just, Bev
17 and I thought we needed to come up with some
18 kind of a number to give them an idea. I
19 mean, there's probably a lot more than that,
20 but we just wanted to--when we sort of made a
21 rough idea, when we just sort of made a list,
22 that was what we came up with.
23 CHAYTOR, Q.C.:
24 Q. Okay. So it might, in fact, be more than 25?
25 DR. MCCARTHY:

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1 A. Yes.
2 CHAYTOR, Q.C.:
3 Q. This was your proposal that it would be at
4 least this.
5 DR. MCCARTHY:
6 A. Yes.
7 CHAYTOR, Q.C.:
8 Q. And this was in June 2006 that you're putting
9 forward the proposal from--to Dr. Williams.
10 Doctor, why is it taking so long to get the
11 clinical guidelines in place?
12 DR. MCCARTHY:
13 A. Well, part of the problem is--I mean, in the
14 first six months, we were just getting our
15 feet wet trying to come up with how we were
16 going to run this site group. We were trying
17 to develop, I guess, a terms of reference. We
18 were coming up with a priority list of which
19 guidelines we needed to do and then the
20 extremely difficult part is actually getting
21 the people together to do it. So to do the
22 hormonal therapy guidelines, we had to get
23 together physicians who treated breast cancer
24 with hormonal therapy, pharmacists, nurses,
25 and we had to get them all in the same room

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1 and hash that out. That's step one. Step two
2 is somebody's got to write it, research it,
3 everybody possible bit of it, and make sure
4 that they're actually written out. That takes
5 a long time. Step three is everybody's got to
6 read them, and come up with all the different
7 changes. Step four is to get them--the final
8 draft completed and no more changes. Step
9 five would be to actually get them into a
10 format that can be used by everybody, and then
11 step six would be to get them on a website.
12 CHAYTOR, Q.C.:
13 Q. Doctor, what about the idea of using the
14 clinical practice guidelines, current clinical
15 practice guidelines from a well-respected
16 institution and reviewing those and adapting
17 those to your own use?
18 DR. MCCARTHY:
19 A. That's what we've been doing, in part. Some
20 places had very comprehensive guidelines.
21 Some did not, and we did use existing
22 guidelines to make our own.
23 CHAYTOR, Q.C.:
24 Q. And it's nonetheless still that time consuming
25 of a process?

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1 DR. MCCARTHY:
2 A. Oh, very.
3 CHAYTOR, Q.C.:
4 Q. Okay, and the breast disease site group terms
5 of reference is here at page five, and it
6 indicates "to develop evidence-based clinical
7 practice guidelines" and it includes your
8 objectives being "to determine priorities for
9 guideline development, review national and
10 international guidelines and provide direction
11 for local adaptation, approve practice
12 guidelines for local provincial use, provide
13 direction for dissemination and evaluation of
14 guidelines, and develop strategies for
15 collection and analysis of breast cancer data
16 within Eastern Health."
17 Doctor, how are the guidelines to be
18 disseminated amongst all the people who should
19 in fact have the information?
20 DR. MCCARTHY:
21 A. My belief was that this would go on a website
22 as part of a link to the Eastern Health
23 website, and as well, the plan was to
24 distribute these guidelines to all physicians
25 who were involved in the care of breast cancer

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1 patients.
2 CHAYTOR, Q.C.:
3 Q. Okay, and Doctor, then it's a list of
4 membership here and we've reviewed that.
5 "This committee reports to" it's question
6 marks. Who does your committee report to?
7 DR. MCCARTHY:
8 A. It was decided that it would be the VP Medical
9 Services, so now it would be Dr. Oscar Howell.
10 I guess back at the start, it would have been
11 Dr. Bob Williams.
12 CHAYTOR, Q.C.:
13 Q. Okay, and how is it that you report to him?
14 DR. MCCARTHY:
15 A. There were some discussion of reporting to the
16 Medical Advisory Committee and those sorts of
17 things, but it was decided since the
18 initiative came from Dr. Bob Williams' office,
19 that's who we should report back to via Sharon
20 Smith, our program director.
21 CHAYTOR, Q.C.:
22 Q. And so would Dr. Howell be up to date and
23 informed on the status of the group and some
24 of the stumbling blocks that the group is
25 running into in trying to achieve its mandate?

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1 DR. MCCARTHY:
2 A. Yes, via Ms. Sharon Smith. She would be our
3 contact person there.
4 CHAYTOR, Q.C.:
5 Q. If I could have, please, P-2108? And this is
6 an executive management committee meeting of
7 November 21st, 2006, and present at this is
8 Mr. Tilley, at the time as CEO, and a number
9 of other persons, including Dr. Oscar Howell,
10 and there's a presentation. Dr. Laing and
11 amongst other doctors are present to present
12 on the ER/PR issue on this date, and Dr. Kara
13 Laing's presentation focused on a number of
14 things, and it's mentioned here "the tumour
15 group/breast disease group continues to review
16 and monitor ER/PR and HER2/neu. From all
17 indications, the level of competence from the
18 oncologists and the laboratory testing is
19 better than it was previously."
20 So the tumour group/breast disease group
21 continuing to review and monitor ER and PR and
22 HER2/neu, do you know what that would be
23 referencing, in terms of your breast disease
24 group?
25 DR. MCCARTHY:

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1 A. No idea.
2 CHAYTOR, Q.C.:
3 Q. Okay, and I take it that's not the--that's
4 not, and never was, the mandate of your group?
5 DR. MCCARTHY:
6 A. No.
7 CHAYTOR, Q.C.:
8 Q. If I could have, please, 2441? I'm sorry,
9 that's the same, just another copy of what we
10 had. 1134, please? And I believe this to be
11 your initial meeting, June 8th, it appears,
12 four p.m.
13 DR. MCCARTHY:
14 A. Um-hm.
15 CHAYTOR, Q.C.:
16 Q. So you're going to have your first meeting,
17 members of the breast tumour site group
18 committee. I take it is that the same group,
19 breast tumour site group committee?
20 DR. MCCARTHY:
21 A. Yes, this was the meeting to find out who was
22 interested.
23 CHAYTOR, Q.C.:
24 Q. Okay, and included here for topics are what
25 constitutes ER/PR positivity.

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1 DR. MCCARTHY:
2 A. That's with regards to hormone therapy
3 guidelines. So we were discussing is our cut
4 off still ten percent or should we move back
5 to one percent.
6 CHAYTOR, Q.C.:
7 Q. Okay, and then if we could look, please -
8 DR. MCCARTHY:
9 A. I keep saying that, but you guys know what I
10 mean by now when I say back to one percent.
11 CHAYTOR, Q.C.:
12 Q. Yes. P-2089, please? This is the minutes
13 from your--no, it's not. 2089, sorry. It
14 should be the minutes from your first meeting.
15 DR. MCCARTHY:
16 A. Okay.
17 CHAYTOR, Q.C.:
18 Q. Okay, and this is the group you said to
19 determine if there was interest to proceed,
20 June 8th, 2006, and there's a couple of
21 pathologists linked in from St. Clare's via
22 video conference, and the nomination of the
23 committee, Dr. McCarthy agreed to act as chair
24 while Dr. Bev Carter was nominated as co-
25 chair. What does MOCO -

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1 DR. MCCARTHY:
2 A. Oh, that's our Royal College points, so I
3 can't tell you exactly what MOCOMP stands for,
4 but we have to have ongoing CME. It's part of
5 that.
6 CHAYTOR, Q.C.:
7 Q. Okay, and so you're advising that as members
8 of this committee, points would be assigned
9 based on attendance at the meetings?
10 DR. MCCARTHY:
11 A. Yes.
12 CHAYTOR, Q.C.:
13 Q. And again, the topic of what constitutes ER/PR
14 positivity, and it says here "Dr. McCarthy
15 said that radiology needs to be represented on
16 this committee" and we understand that's now
17 happening, and "she is hoping that ER/PR
18 status may be a topic they could address and
19 present to the members." How would that be
20 something that radiology could speak to?
21 DR. MCCARTHY:
22 A. Oh, I think she's put those two in the same
23 line. They are separate issues.
24 CHAYTOR, Q.C.:
25 Q. I was hoping to learn something new there,

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1 something you hadn't heard, "Dr. Greenland
2 suggested taking existing guidelines from
3 Cancer Care Ontario or BC Cancer Agency
4 website and modifying them to meet the needs
5 of this province. Dr. Bev Carter felt that
6 research by the Steering Committee for Breast
7 Cancer in Women in 2001 could be adapted, but
8 needs to be updated. It was agreed that a
9 standardized approach based on these
10 guidelines be developed". So is this where
11 you looked for assistance in taking others and
12 modifying them?
13 DR. MCCARTHY:
14 A. Yes.
15 CHAYTOR, Q.C.:
16 Q. And then at the top of page three of the
17 exhibit, here we go, "Dr. McCarthy said that
18 this is an opportune time to start this
19 consensus guideline development. The
20 Department of Health have asked for specific
21 guidelines for each site, and starting off
22 with breast initially is a good place to
23 start". What's that referring to, what do you
24 understand the Department of Health has asked
25 for?

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1 DR. MCCARTHY:
2 A. I don't know why that was put there. I can
3 only assume that I meant Eastern Health. I
4 don't know why that was put there.
5 CHAYTOR, Q.C.:
6 Q. So that should read, "Eastern Health has asked
7 for specific guidelines for each", and is that
8 the breast site?
9 DR. MCCARTHY:
10 A. Yes, exactly. So in other words, it was--I
11 think that's supposed to be Eastern Health,
12 but I think it was that breast cancer is the
13 first site, that we start off with a breast
14 site group, and other types of cancers would
15 also be addressed at some point.
16 CHAYTOR, Q.C.:
17 Q. "And Dr. Ganguly feels that government has
18 given us directive to be part of cancer
19 control strategy, and Dr. McCarthy agreed that
20 we are acknowledging the recommendation of the
21 Cancer Control Strategy which, in fact, is the
22 reason for this group".
23 DR. MCCARTHY:
24 A. Well, it's one--we put in our original
25 proposal, if you'll refer back, that the

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1 Cancer Control Strategy did recommend this
2 group. It's one of the things we put in our
3 proposal saying that Dr. Bob Williams office,
4 this came out of his mandate, but as well the
5 Cancer Control Strategy also recommended this.
6 CHAYTOR, Q.C.:
7 Q. Okay, "The suggestion was made that maybe we
8 could be part of Atlantic Canada and use their
9 guidelines, however, it was felt by many
10 present that this would not work and that this
11 centre needs to develop its own guidelines
12 based on best clinical evidence". Doctor, is
13 there an Atlantic Canadian group that you
14 could work with on this effort?
15 DR. MCCARTHY:
16 A. I'm not aware of an Atlantic Canadian group
17 per se for guidelines, but Halifax actually
18 has quite a series of guidelines that they've
19 been drafting because they send us copies of
20 those.
21 CHAYTOR, Q.C.:
22 Q. I'm sorry, Halifax has sent you copies of this
23 as well?
24 DR. MCCARTHY:
25 A. Yeah, they send me copies. Even though I

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1 didn't request them per se, they've been
2 sending me copies of different guidelines
3 mainly because they're looking for different
4 oncologists and cancer care specialists across
5 the country to read their guidelines
6 independently and give them suggestions.
7 CHAYTOR, Q.C.:
8 Q. Okay, and if we could look at P-2601, please.
9 THE COMMISSIONER:
10 Q. Ms. Chaytor, it's getting near the end of the
11 day, so do you want to launch into this
12 particular one or save it for the next
13 occasion?
14 CHAYTOR, Q.C.:
15 Q. Commissioner, I have about what I would think
16 to be five to ten minutes left.
17 THE COMMISSIONER:
18 Q. Let's see what the room says about how much
19 more time we need. Mr. Pritchard?
20 MR. PRITCHARD:
21 Q. I won't have any questions, Commissioner.
22 MS. BRAZIL:
23 Q. We won't have any questions either.
24 THE COMMISSIONER:
25 Q. Mr. Pritchett.

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1 MR. PRITCHETT:
2 Q. No questions.
3 THE COMMISSIONER:
4 Q. Ms. Newbury.
5 MS. NEWBURY:
6 Q. Probably about fifteen minutes.
7 THE COMMISSIONER:
8 Q. Ms. Brocklehurst.
9 MS. BROCKLEHURST:
10 Q. No questions, Commissioner.
11 MR. PIKE:
12 Q. No questions.
13 THE COMMISSIONER:
14 Q. Mr. Browne.
15 MR. BROWNE:
16 Q. At this point no questions.
17 THE COMMISSIONER:
18 Q. So we're looking at approximately another
19 twenty minutes. What's the call, do you want
20 to press on or do you --
21 CHAYTOR, Q.C.:
22 Q. I think the witness would prefer to continue.
23 DR. MCCARTHY:
24 A. I'm game.
25 THE COMMISSIONER:

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1 Q. All right, press on.
2 DR. MCCARTHY:
3 A. Thank you very much.
4 CHAYTOR, Q.C.:
5 Q. And this is a document I brought your
6 attention to earlier this morning, Doctor, and
7 I've brought it to your attention terms of the
8 cutoff that we've talked about today. At page
9 five there's also the issue regarding--sorry,
10 I'm leaving it alone--are you doing that or--
11 all right, I'll do it. Page five, DCIS, and
12 LCIS, and the role of Tamoxifen and the
13 management of both, and stated here,
14 "Presently it is unclear whether or not
15 testing for estrogen and progesterone
16 receptors should be performed routinely on
17 DCIS/LCIS specimens. The group recommended
18 that testing should not be performed on LCIS
19 since 99 percent are known to be ER/PR
20 positive. Currently testing for hormone
21 receptor status on LCIS/DCIS specimens is not
22 standard in most centres in the country and
23 there is no evidence to suggest that knowing
24 this result will affect the outcome.
25 Therefore, the group has decided to not

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1 recommend carrying out routine receptor
2 testing on DCIS. However, if an individual
3 physician requests it, the pathology
4 department will provide testing on a case by
5 case basis following referral", and I
6 understand that these are still in draft, but
7 has this practice, in fact, been adopted?
8 DR. MCCARTHY:
9 A. Yes.
10 CHAYTOR, Q.C.:
11 Q. And is this any change in practice, is this
12 guideline any change in what you were doing
13 all along?
14 DR. MCCARTHY:
15 A. No, it just wasn't clear, it wasn't clarified
16 before now.
17 CHAYTOR, Q.C.:
18 Q. And what do you mean by that, how wasn't it
19 clear, was there inconsistency in practice?
20 DR. MCCARTHY:
21 A. There were some medical oncologists who were
22 routinely asking for it, and when we discussed
23 this as a group, they said at their centres
24 that they had seen it being done, but they
25 could not come up with a reason why they were

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1 asking for it or why it would change their
2 management. So in the end, it was decided
3 that unless there was a particular reason,
4 that we would not standardly test for it. The
5 pathologists had brought this to our attention
6 that some oncologists were asking for it.
7 CHAYTOR, Q.C.:
8 Q. Okay, and page six, the heading is adjuvant
9 hormone therapy, and then on page seven, we
10 have hormone therapy in metastatic setting,
11 and, Doctor, what's the difference? Perhaps
12 you could explain that to us?
13 DR. MCCARTHY:
14 A. Adjuvant hormone therapy would occur after the
15 patient's definitive treatment, such as
16 surgery, and this patient would be potentially
17 --it would be potentially curative.
18 Metastatic setting would be patients whereby
19 you were offering hormone therapy as a
20 treatment, but there would not be a curative
21 intent.
22 CHAYTOR, Q.C.:
23 Q. If I could have then, please, P-2591, and,
24 Doctor, this document talks about the breast
25 site group being formed in the fall of 2006

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1 and it being a collection of health
2 professionals that we've already spoken of,
3 and the purpose of the group, to develop the
4 evidence-based clinical practice guidelines
5 and the objectives, which is a--paraphrasing
6 really the term of reference that I brought
7 you to. It says, "Limited resources were a
8 significant challenge to the objectives of the
9 group. Although provincial funding had
10 procured a clinical practice guideline
11 coordinator position, while our expert members
12 of other specialities volunteered generously
13 of their time from busy work schedules.
14 Therefore, a small sub-committee or guidelines
15 team was created to oversee the adaptation
16 process where applicable", and so, Doctor, is
17 there anything else in terms of the resources
18 that created a significant challenge that we
19 haven't already discussed?
20 DR. MCCARTHY:
21 A. No, I think I alluded to this already. We
22 have a guidelines coordinator. Again breast
23 cancer, we feel is going to be as much as
24 she's going to be able to handle. When it
25 comes to other tumours sites, we're going to

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1 need more coordinators, and we do need an IT
2 person, we need continued clerical support,
3 those sorts of things.
4 CHAYTOR, Q.C.:
5 Q. Okay, and if we could have, please, P-2596,
6 and this speaks again of the CDIS issue and
7 the LCIS issue. The recommendation that's
8 written here says, "All patients seem to be
9 candidates for treatment for DCIS/LCIS, will
10 be offered Tamoxifen", and then the amount and
11 how long--for five years, consecutive years.
12 So, Doctor, while it's not recommended that
13 ER/PR testing be carried out, this is just a
14 recommendation in terms of treatment for any
15 DCIS/LCIS to be offered Tamoxifen?
16 DR. MCCARTHY:
17 A. Correct.
18 CHAYTOR, Q.C.:
19 Q. And so - but would again depend in terms of
20 all patients, DCIS patients, but who would be
21 eligible would be determined by the treating
22 physician, regardless of hormone receptor
23 status?
24 DR. MCCARTHY:
25 A. Correct.

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1 CHAYTOR, Q.C.:
2 Q. And P-2599, please. Doctor, a question I had
3 for you on all of those, and I realize they're
4 just in draft form, they do not have dates as
5 of this point in time, and I take it that's
6 because they have not been signed off on?
7 DR. MCCARTHY:
8 A. My understanding from Ms. Sharon Smith is that
9 we're waiting for them to be formatted,
10 however, it is that Eastern Health wants them
11 to be dispersed. That's what we've been
12 waiting on. I haven't seen anything final yet
13 on that.
14 CHAYTOR, Q.C.:
15 Q. Okay, and I take it when they are formatted
16 and finalized, signed off on, then they'll
17 have dates?
18 DR. MCCARTHY:
19 A. Dates, and then we would have to put an
20 automatic review process in place to keep
21 these guidelines up to date.
22 CHAYTOR, Q.C.:
23 Q. To keep them current.
24 DR. MCCARTHY:
25 A. To keep them current.

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1 CHAYTOR, Q.C.:
2 Q. And that was going to be my next question, how
3 often then would they have to come up for
4 review?
5 DR. MCCARTHY:
6 A. I'm not sure if we've decided that yet. I
7 think before we decide that, I would get
8 advice from other guidelines groups such as
9 Halifax, CCO, and BC Cancer Agency, as to how
10 often they have--they do theirs.
11 CHAYTOR, Q.C.:
12 Q. And this whole issue of the formatting, how
13 long has it been out of the hands of your
14 group, how long have you been waiting on this
15 formatting?
16 DR. MCCARTHY:
17 A. That's a good question. I'd be guessing if I
18 said six months.
19 CHAYTOR, Q.C.:
20 Q. That would be your best guess?
21 DR. MCCARTHY:
22 A. That would be my best guess.
23 CHAYTOR, Q.C.:
24 Q. And who's responsible--who's doing the
25 formatting?

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1 DR. MCCARTHY:
2 A. Ms. Sharon Smith.
3 CHAYTOR, Q.C.:
4 Q. Okay.
5 DR. MCCARTHY:
6 A. As well--in coordination Cynthia Higdon, who
7 is the guidelines coordinator.
8 CHAYTOR, Q.C.:
9 Q. And I just brought up this one--we have
10 received the others that you referred to, the
11 other three--the three guidelines, but this
12 one is one that talks about use of hormonal
13 therapy in the treatment of breast cancer in
14 the adjuvant setting. So this one appeared to
15 be most relevant to the Commission's mandate
16 and it includes what constitutes a hormone
17 receptor positive breast cancer, and I brought
18 you to that section earlier today on the
19 bottom of the first page. Doctor, do you see
20 this effort in terms of the clinical guideline
21 development, clinical practice guideline
22 development, as being a quality assurance
23 measure?
24 DR. MCCARTHY:
25 A. I would say, yes, in a way it does - it is a

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1 quality assurance measure because it provides
2 a guideline whereby all treatment physicians
3 of breast cancer can refer to in terms of
4 standard treatment of breast cancer patients,
5 and I think it also provides information to
6 other physicians caring for breast cancer
7 patients who are not actively treating them
8 per se with chemotherapy or hormone therapy,
9 but they are helping to monitor these
10 patients. I'm mainly referring to family
11 physicians, so I think it's helpful to be able
12 to disburse that information. We get a lot of
13 questions from family physicians as to what
14 we're doing with the hormone testing, what
15 we're doing with the Tamoxifen, the new drugs,
16 and--because they're not as up to date on that
17 as we are.
18 CHAYTOR, Q.C.:
19 Q. Okay, and so, of course, this would be posted
20 on the website and it would be readily
21 accessible then to whoever wanted to have it?
22 DR. MCCARTHY:
23 A. Yes.
24 CHAYTOR, Q.C.:
25 Q. Are there other quality assurance measures

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1 that you have given some thought to that you
2 would like to see put in place for cancer care
3 in the province?
4 DR. MCCARTHY:
5 A. Morbidity and mortality rounds that Dr. Laing
6 discussed already. Those were rounds that I
7 was used to participating in in other centres
8 in other areas where I trained. To call them
9 morbidity and mortality rounds may even be
10 outdated. You might want to call them quality
11 assurance rounds, quality improvement rounds.
12 Those might be better terms to use now in this
13 day and age, and I think that we need to work
14 towards more policies and procedures for
15 general day to day issues in the clinic of,
16 for example, generation of chemotherapy
17 letters, actual giving the chemotherapy--I
18 mean, some of these may already exist, but we
19 need to update them and generate any other new
20 ones that we see fit, and I would be happy to
21 assist our administrative team in any way they
22 think I may be of help.
23 CHAYTOR, Q.C.:
24 Q. And, Doctor, what's your view on chart audits?
25 DR. MCCARTHY:

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1 A. What's new in my understanding is this
2 Atlantic Review of Physicians, not specific to
3 oncologists, but physicians in general. This
4 is fairly new. Originally I believe it was
5 for family physicians, but now they're looking
6 at specialists as well. It's my understanding
7 that at least one, if not two of our own
8 oncologists, will be subject to that review
9 and this review is random, not based on
10 anything other than just random picking of
11 physicians to review.
12 CHAYTOR, Q.C.:
13 Q. Okay, and, Doctor, would you have any
14 difficulty participating as a physician
15 yourself in having your charts audited?
16 DR. MCCARTHY:
17 A. None.
18 CHAYTOR, Q.C.:
19 Q. And would you welcome that?
20 DR. MCCARTHY:
21 A. Yes.
22 CHAYTOR, Q.C.:
23 Q. And, Doctor, is there anything else you can
24 think of looking back on this, and I know
25 you've had a lot of time to reflect on this,

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1 and is there anything else thinking back that
2 if it had been in place from an oncology point
3 of view, or from the oncology group, if you
4 had had certain things in place, you may have
5 picked up on this issue earlier?
6 DR. MCCARTHY:
7 A. I think perhaps a database that was more
8 comprehensive, that may have been helpful. I
9 think that if we earlier in the years had
10 become more site based, in other words, if we
11 had enough oncologists and not such a rapid
12 turnover of physicians, both pathologists and
13 oncologists, that may have played a role. I
14 think that was out of our hands. I think
15 improvement in information technology would be
16 key on a moving forward basis, and in terms of
17 a triage process, that's one that didn't come
18 up until now, I triage the majority of breast
19 cancer patients. In other words, when the
20 charts come through, they come to my desk
21 first. Still today in 2008, the ER/PR and
22 HER2/neu tests are not always on that chart
23 when I see it. That may have been a way to
24 pick this up sooner. So having to send them
25 out to Sinai just slowed things down. So, you

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1 know, in hindsight, it would be nice to have
2 all these things moving smoothly, perhaps
3 having one person reviewing these, perhaps
4 even a secondary look - in other words, have a
5 secondary review of results may also be
6 helpful, and that's something that we
7 discussed with the pathology team. I don't
8 think we're there yet.
9 CHAYTOR, Q.C.:
10 Q. What has to happen to get you there?
11 DR. MCCARTHY:
12 A. I think we need to move forward in terms of
13 guidelines, get those in place. We need to
14 continue our work at the Breast Site Group,
15 and that would be one of the topics of the
16 Breast Site Group.
17 CHAYTOR, Q.C.:
18 Q. And, Doctor, how long have you been doing the
19 triaging?
20 DR. MCCARTHY:
21 A. Well, whenever we decided to start doing it,
22 which would have been in 2001/2002. However,
23 I would have had three maternity leaves during
24 that time, so there would have been other
25 physicians doing it then, and whenever I'm

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1 away, such as a week like this, there would be
2 another physician doing it. Again the--only
3 the basics would be back on most of the
4 charts, such as the mastectomy pathology, and
5 the surgery type. Often the ER/PR result and
6 HER/2neu are still missing from those triage
7 charts.
8 CHAYTOR, Q.C.:
9 Q. So all of the breast cancer patients since
10 2001/2002 charts would first come to you?
11 DR. MCCARTHY:
12 A. For the most part. Again this has evolved
13 over time. There were other physicians
14 sharing that with me originally. Radiation
15 oncologists were also participating. I had
16 three maternity leaves whereby for six months
17 periods there would be completely different
18 physicians doing it. My last one was finished
19 in July, 2007. So we'll say since July, 2007,
20 I've ben doing the majority of it.
21 CHAYTOR, Q.C.:
22 Q. And if you--what you're saying is if the ER/PR
23 results had been on the chart when you triaged
24 the chart, it's possible you would have,
25 having all those charts, picked up on certain

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1 issues?
2 DR. MCCARTHY:
3 A. It is possible.
4 CHAYTOR, Q.C.:
5 Q. Doctor, is there anything else that is
6 relative to the mandate of the Commission that
7 you would like to speak on or have knowledge
8 of that I haven't already covered with you?
9 DR. MCCARTHY:
10 A. Not that I can think of.
11 CHAYTOR, Q.C.:
12 Q. Thank you for your time.
13 DR. MCCARTHY:
14 A. Thank you.
15 THE COMMISSIONER:
16 Q. Ms. Newbury.
17 DR. JOY MCCARTHY - EXAMINATION BY MS. JENNIFER NEWBURY
18 MS. NEWBURY:
19 Q. Good afternoon, Dr. McCarthy. My name is
20 Jennifer Newbury, and I represent the Canadian
21 Cancer Society, Newfoundland and Labrador
22 Division.
23 DR. MCCARTHY:
24 A. Hello.
25 MS. NEWBURY:

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1 Q. I have a couple of questions for you starting
2 with your knowledge, I guess, and involvement
3 with the panel, and you apparently treated
4 some of the patients and made decisions in
5 consultations with your patients prior to
6 having received the panel letter with its
7 recommendation, and I'm just wondering if you
8 ever made any treatment decisions for patients
9 in conjunction with the patient without that
10 case ever being panelled?
11 DR. MCCARTHY:
12 A. Yes.
13 MS. NEWBURY:
14 Q. Okay, and what types of situations would you
15 have done that?
16 DR. MCCARTHY:
17 A. Those early patients, you recall the early
18 batches that were sent to me, there were many
19 of those that I would have treated without
20 having them being panelled.
21 MS. NEWBURY:
22 Q. Okay, and they were never subsequently
23 referred on to the panel for the purpose of
24 confirming the decision that had been made?
25 DR. MCCARTHY:

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1 A. Not that I can recall, no.
2 MS. NEWBURY:
3 Q. And in terms of those situations that you had
4 actually already treated or discussed with the
5 patient the change of treatment prior to
6 having received the panel letter, how did that
7 come about? Were those special consultations
8 that had been pulled because or pulled out of
9 the queue, I guess because they were thought
10 to be at a higher risk of changing their ER/PR
11 results in the case of a lobular patient, for
12 example.
13 DR. MCCARTHY:
14 A. Yes, patient No. 1, for example.
15 MS. NEWBURY:
16 Q. Okay, and were there any situations where you
17 just happened to receive the retest results,
18 revised pathology report from Mount Sinai
19 before the panel had a chance to meet?
20 DR. MCCARTHY:
21 A. Yes.
22 MS. NEWBURY:
23 Q. Okay, so there's two types of situations,
24 there were the consultations and then the
25 routine cases that you happen to receive the

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1 report first.
2 DR. MCCARTHY:
3 A. Yes.
4 MS. NEWBURY:
5 Q. Now I wonder if you made any observations
6 about the dates that you received revised
7 pathology reports, when you understood those
8 tests--retests to have taken place and when
9 you received panel letters, was there any sort
10 of routine order that you received those
11 documents?
12 DR. MCCARTHY:
13 A. You mean when I would get pathology results
14 verses panel letters, which I would get first?
15 MS. NEWBURY:
16 Q. Yes.
17 DR. MCCARTHY:
18 A. It varied.
19 MS. NEWBURY:
20 Q. It did, okay. Did you ever receive the
21 revised pathology report after you received
22 the panel letter?
23 DR. MCCARTHY:
24 A. Not consistently, there were times when I had
25 to go looking for it because often the

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1 pathology report would go back to the surgeon,
2 rather than to the oncologist. So it wasn't
3 consistently coming back to me.
4 MS. NEWBURY:
5 Q. And do you know in any of those cases that you
6 had to look for, had those reports ever been
7 prepared and signed after the panel had
8 already met, or was it just at the surgeon -
9 DR. MCCARTHY:
10 A. Well they would have to have the results in
11 order to do the panel, so I can't see how the
12 pathology report would come out after the
13 panel because they would need that report to
14 do the panel.
15 MS. NEWBURY:
16 Q. And are there any situations that you are
17 aware of that the revised pathology report
18 went to the panel first before it went to
19 either you or one of the other treating
20 physicians, such as a surgeon or radiation or
21 oncologist?
22 DR. MCCARTHY:
23 A. Well that happened quite frequently where we
24 didn't know that the patient was panelled
25 until after the panel letter came out.

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1 MS. NEWBURY:
2 Q. Okay.
3 DR. MCCARTHY:
4 A. So you receive the letter and say, oh, this
5 patient was panelled and then you'd go looking
6 for the results and the chart and the patient
7 and so on.
8 MS. NEWBURY:
9 Q. Okay, so there are some instances then that
10 neither you nor the radiation oncologist or
11 surgeon involved in the treatment of a patient
12 received the revised pathology report until
13 after you had already received the panel
14 letter?
15 DR. MCCARTHY:
16 A. I can't speak for the surgeons because it's
17 often the surgeon's name would be on the
18 pathology report, including the addendum, so
19 for example, if it was Al Felix, Felix's name
20 would still be on the addendum. In some cases
21 you would see "cc Dr. McCarthy" "cc Dr.
22 Laing", that didn't happen all the time.
23 MS. NEWBURY:
24 Q. Okay. And if you had received some of those
25 revised pathology reports that perhaps had

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1 gone to the surgeon first, do you think that
2 you might have met with the patient and made a
3 decision with the patient about a change of
4 treatment before getting a panel letter?
5 DR. MCCARTHY:
6 A. Yes.
7 MS. NEWBURY:
8 Q. And you felt comfortable doing that, I assume?
9 DR. MCCARTHY:
10 A. Yes.
11 MS. NEWBURY:
12 Q. Did you think the panel, the tumour panel
13 recommendation was necessary for all of your
14 cases or some of the cases?
15 DR. MCCARTHY:
16 A. I think it was a necessary process to make
17 sure that we captured as many patients as
18 possible. I was hoping that we would capture,
19 you know, all patients, the ones that we
20 hadn't see already. I was quite comfortable
21 an oncologist or a surgeon who was comfortable
22 with making the decision had seen it and dealt
23 with it before it got to the panel; I was
24 quite comfortable with that.
25 MS. NEWBURY:

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1 Q. Okay.
2 DR. MCCARTHY:
3 A. But the panel process to me was necessary for
4 capturing all others who may not have gone
5 through that.
6 MS. NEWBURY:
7 Q. Those who may be no longer under active
8 treatment and discharged from the cancer
9 clinic?
10 DR. MCCARTHY:
11 A. Possibly or not looked to the oncologist for
12 six months down the line, a year down the
13 line.
14 MS. NEWBURY:
15 Q. So it was more to ensure that all of the
16 patients have been addressed appropriately.
17 DR. MCCARTHY:
18 A. Yes.
19 MS. NEWBURY:
20 Q. Was that your primary understanding of the
21 value of the panel from your perspective?
22 DR. MCCARTHY:
23 A. Yes, and to offer a treatment recommendation
24 if none had already been undertaken.
25 MS. NEWBURY:

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1 Q. Did you have any concerns that perhaps the
2 process of having pathology reports that were
3 revised go to the panel first might be causing
4 some delay in some instances where you might--
5 you, yourself, if you'd received the revised
6 pathology report earlier, you could have made
7 a decision with your patient earlier as to
8 whether or not any treatment change was
9 necessary.
10 DR. MCCARTHY:
11 A. I don't recall thinking that at the time, no.
12 MS. NEWBURY:
13 Q. Okay, and looking back at it now, I guess
14 you've had a couple of years to, I guess deal
15 with patients over that period of time, do you
16 think that that's a possibility?
17 DR. MCCARTHY:
18 A. In retrospect it is a possibility, but I don't
19 recall any specific instances with my
20 patients.
21 MS. NEWBURY:
22 Q. And were you involved in selecting the
23 patients or the categories of patients whose
24 retest results would be forwarded to the panel
25 for a review?

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1 DR. MCCARTHY:
2 A. No.
3 MS. NEWBURY:
4 Q. I'm just wondering upon receipt of the panel
5 letters, what was your practice with the
6 different types of letters? I understand some
7 might have recommended a treatment change;
8 some may have recommended no change of
9 treatment; others you may have already dealt
10 with. And in each of those instances, how did
11 you handle the situation when you received the
12 panel letter?
13 DR. MCCARTHY:
14 A. Well Dr. Laing gave us, the oncologists,
15 specific recommendations. If there was a
16 treatment change, you were to contact that
17 patient as soon as possible and advise the
18 patient of the treatment change. If there was
19 no treatment change, so to give you the
20 example of the ER positive 90 percent where
21 they already got Tamoxifen, now they were 30
22 and 90, she felt--and we agreed, that the next
23 available clinic appointment would be adequate
24 to explain that to the patient since the
25 treatment did not change.

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1 MS. NEWBURY:
2 Q. Okay, and I understand from earlier evidence
3 from Dr. Siddiqui that the appointments
4 typically for a patient who is being followed
5 would be perhaps every six months and it might
6 alternate between a radiation oncologist and a
7 medical oncologist?
8 DR. MCCARTHY:
9 A. Or even yearly.
10 MS. NEWBURY:
11 Q. Or even yearly, okay. And in some cases where
12 there was no recommended change of treatment,
13 was it your understanding that if they didn't
14 have an appointment for three months down the
15 road or eight months down the road, that the
16 information would be relayed to that patient
17 at that next appointment?
18 DR. MCCARTHY:
19 A. Yes.
20 MS. NEWBURY:
21 Q. And what was your understanding to be the
22 protocol according to Dr. Laing?
23 DR. MCCARTHY:
24 A. Yes.
25 MS. NEWBURY:

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1 Q. Was that relayed to you in a meeting or was
2 there any written record of that?
3 DR. MCCARTHY:
4 A. There was no written, we discussed this during
5 the panel itself, and as well, we discussed it
6 at our oncology meetings after rounds, so that
7 the other oncologists would be in the loop.
8 MS. NEWBURY:
9 Q. So it was your understanding then that your
10 colleagues all would have understood that to
11 be the direction of all -
12 DR. MCCARTHY:
13 A. Yes.
14 MS. NEWBURY:
15 Q. And what about--did you understand that anyone
16 else would be communicating with the patients
17 to advise them, obviously not the
18 recommendation, that would be your role,
19 whether or not there was a recommendation, but
20 would anyone be contacting patients to just
21 tell them that yes, you've been retested or,
22 you know, there's been no change in your -
23 DR. MCCARTHY:
24 A. Yes, my understanding was that Heather Predham
25 and the QI team would be contacting the

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1 patients whose results did not change and say
2 you were negative then, you're negative now,
3 just to follow up on those people.
4 MS. NEWBURY:
5 Q. And when did that process start?
6 DR. MCCARTHY:
7 A. My understanding was that that was starting
8 at, you know, when this panel was getting
9 underway, fairly early in the process.
10 MS. NEWBURY:
11 Q. So that would include then patients whose
12 cases had been referred to a panel, there was
13 a change in the actual results, but no change
14 in treatment and all of those patients would
15 then be contacted by -
16 DR. MCCARTHY:
17 A. Well those patients who had oncologists would
18 be contacted by the oncologists at their next
19 clinic visit.
20 MS. NEWBURY:
21 Q. Okay.
22 DR. MCCARTHY:
23 A. Patients who didn't get a panel letter, for
24 example, they were negative to begin with,
25 negative now, those, to my understanding, did

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1 not get panel letters.
2 MS. NEWBURY:
3 Q. Right.
4 DR. MCCARTHY:
5 A. I understood that Ms. Predham and the QI team
6 would be contacting those patients themselves.
7 MS. NEWBURY:
8 Q. Okay. I guess the concern or the question
9 that I have is how would a patient whose
10 results had changed, albeit there would be no
11 recommended change of treatment, how would
12 those patients know or first learn that there
13 would be no change in treatment for them?
14 DR. MCCARTHY:
15 A. At their next clinic visit.
16 MS. NEWBURY:
17 Q. Okay. And was there any concern that there
18 are a lot of patients out there who were
19 anxious to get the information and they might
20 be, you know, quite worried about knowing what
21 impact the ER/PR retesting would have upon
22 them?
23 DR. MCCARTHY:
24 A. Any patients who called in, who inquired, who
25 wanted to speak with us, we dealt with those,

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1 we spoke with them, we met with them at their
2 request.
3 MS. NEWBURY:
4 Q. Okay, but they would not necessarily know, you
5 know, where the process was, whether or not
6 the results were available at that time?
7 DR. MCCARTHY:
8 A. Well there was a hotline that they would call
9 and Mr. Parsons would advise them of that.
10 MS. NEWBURY:
11 Q. Okay. Was there ever any discussion about
12 adopting another approach, in terms of those
13 patients who had a change in result but no
14 change of treatment?
15 DR. MCCARTHY:
16 A. Not that I can recall.
17 MS. NEWBURY:
18 Q. Okay, and upon receipt of the panel letter, I
19 understood that those were recommendations, as
20 opposed to, you know, a definitive statement
21 as to required treatment or not for the
22 patient. Would you review the file to confirm
23 that you agreed with the panel's
24 recommendation immediately?
25 DR. MCCARTHY:

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1 A. If they were my patients?
2 MS. NEWBURY:
3 Q. Yes.
4 DR. MCCARTHY:
5 A. Of course.
6 MS. NEWBURY:
7 Q. Okay, so you wouldn't wait until the next
8 visit to do that?
9 DR. MCCARTHY:
10 A. Well when I got the panel letter, the first
11 thing I would do is look that patient up on
12 the computer and see what I was doing with
13 that patient, what their treatment plan was
14 and so on.
15 MS. NEWBURY:
16 Q. And was that ever suggested to you or given to
17 you as a direction as an oncologist?
18 DR. MCCARTHY:
19 A. Yes, Dr. Laing explained that to us, the
20 group.
21 MS. NEWBURY:
22 Q. Okay. And I take it from your evidence that
23 you would treat a PR positive patient in the
24 same manner as an ER positive patient?
25 DR. MCCARTHY:

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1 A. Correct.
2 MS. NEWBURY:
3 Q. So if they were negative ER, but a positive
4 PR, then you would offer them the same
5 treatment, you know, obviously if there are no
6 risks for that particular treatment?
7 DR. MCCARTHY:
8 A. Correct.
9 MS. NEWBURY:
10 Q. And that would be, during this period of time
11 that would have been, ten percent or greater
12 would be considered positive?
13 DR. MCCARTHY:
14 A. Correct.
15 MS. NEWBURY:
16 Q. And do you know if that was the practice of
17 your colleagues or the other oncologists at
18 the cancer clinic?
19 DR. MCCARTHY:
20 A. Yes.
21 MS. NEWBURY:
22 Q. And how long had that been your practice?
23 DR. MCCARTHY:
24 A. I've never known any other practice.
25 MS. NEWBURY:

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1 Q. And are you aware that there's been any
2 evolution of that at the cancer clinic or
3 whether -
4 DR. MCCARTHY:
5 A. I've learned historically after I got there
6 that people had been using 30 percent prior to
7 my arrival and even early after that, because
8 again, we had no tumour board rounds started
9 up yet, we had no, you know, Dr. Tang was not
10 really organizing us in that fashion at that
11 time. We weren't having regular meetings, so
12 this was all lacking initially when I came,
13 but I did learn throughout this process and
14 even at the time that some people had been
15 using 30 percent, but again, my practice was
16 10 percent.
17 MS. NEWBURY:
18 Q. Okay, were you ever aware that the oncologists
19 would be treating PRs, PR positive an
20 differently than ER positives?
21 DR. MCCARTHY:
22 A. No.
23 MS. NEWBURY:
24 Q. And there were--there's been some information
25 and I won't take you to the exhibit in the

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1 interest of time, about some, I guess PR
2 retroconversions, the ER results were zero or
3 less than five or less than ten, and the PR
4 results were, say 75 or 50, 60 or 25, 60,
5 greater than 60. Would you expect and then
6 upon retesting at Mount Sinai they converted
7 to zero?
8 DR. MCCARTHY:
9 A. I saw those when you showed those to Dr.
10 Laing, yes.
11 MS. NEWBURY:
12 Q. Would you have an expectation, just knowing
13 what was happening in the process that those
14 types of cases would be referred to the panel?
15 DR. MCCARTHY:
16 A. I would assume so. I don't recall those--I
17 mean, I don't recall seeing those cases before
18 you showed them to Dr. Laing.
19 MS. NEWBURY:
20 Q. Okay.
21 DR. MCCARTHY:
22 A. So I don't recall those specifically.
23 MS. NEWBURY:
24 Q. But it would be an understanding based upon
25 what the exercise was all about that they

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1 would be -
2 DR. MCCARTHY:
3 A. Yes.
4 MS. NEWBURY:
5 Q. And based on your practice, that you expect
6 that some of those may very well have been
7 treated as if they had been ER positive.
8 DR. MCCARTHY:
9 A. Yes.
10 MS. NEWBURY:
11 Q. And that would have to be reconsidered.
12 DR. MCCARTHY:
13 A. Yes.
14 MS. NEWBURY:
15 Q. And there were some other--there was a couple
16 of other categories, there was a category of
17 an ER of 10, a PR of 10 converting to zero,
18 zero.
19 DR. MCCARTHY:
20 A. Yes.
21 MS. NEWBURY:
22 Q. Would that be in the same category?
23 DR. MCCARTHY:
24 A. Well I had one of those, that was I believe 10
25 and zero and converted to zero and zero, so -

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1 MS. NEWBURY:
2 Q. And you treated that patient -
3 DR. MCCARTHY:
4 A. I had treated her with Tamoxifen and had to
5 advise her to come off of it, yes.
6 MS. NEWBURY:
7 Q. And what about the category of less than 10
8 for ER and less than 10 for PR, would that be
9 in the same category?
10 DR. MCCARTHY:
11 A. Again, less than 10 to me would have been
12 negative to begin with. So if they were less
13 than 10 and went to zero, to me, that would
14 not have been a, what we call a
15 retroconverter.
16 MS. NEWBURY:
17 Q. Right, so that would likely have been treated
18 as negative before.
19 DR. MCCARTHY:
20 A. Yes.
21 MS. NEWBURY:
22 Q. I know that the one to 10 percent -
23 DR. MCCARTHY:
24 A. Is now in a grey zone.
25 MS. NEWBURY:

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1 Q. Less than 10 is now a grey area, was that ever
2 a grey area before -
3 DR. MCCARTHY:
4 A. Not to my knowledge, no.
5 MS. NEWBURY:
6 Q. Thank you, Dr. McCarthy. Those are all the
7 questions I have.
8 THE COMMISSIONER:
9 Q. Mr. Browne, are you still of the same view?
10 MR. BROWNE:
11 Q. I am still of the same view, but I do believe
12 Dr. McCarthy does have a statement she may
13 read, if the Commissioner wishes.
14 THE COMMISSIONER:
15 Q. Yes, by all means.
16 DR. MCCARTHY:
17 A. Thank you. Thank you to the Commission for
18 the opportunity to speak on this issue. I
19 would like to acknowledge all of the patients
20 and their families who had been affected by
21 this ordeal. I know how difficult this has
22 been for you all and I am thankful to have
23 been able to participate in your ongoing care.
24 It's amazing to me how my patients have showed
25 such concern towards me during this process,

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1 rather than worrying about themselves and
2 thanks to my colleagues who have been helping
3 look after my patients, they've been so
4 supportive.
5 Throughout this process my belief in
6 health care quality improvement has been
7 reinforced. The people of this province
8 deserve a top notch cancer care program. All
9 services, including the laboratory, as you've
10 heard, diagnostic imaging, nursing and
11 pharmacy are essential and require up to date
12 resources for high quality cancer care. Very
13 important ongoing challenges, such as lack of
14 a primary nurse model in oncology and lack of
15 enough of oncology pharmacy resources also
16 face us today. I echo Dr. Laing's
17 recommendations to you, the Commission, and
18 recognize the importance of your
19 recommendations for the people of this
20 province and I hope that there will be a
21 process in place to ensure that somebody
22 follows up on your recommendations and that
23 they are in put in place after this is all
24 said and done.
25 To my current and future patients, I

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1 would like to reassure you that I am committed
2 to staying in Newfoundland and Labrador and
3 will continue to work with my colleagues and
4 the staff at the Cancer Care Program to
5 provide care to our patients. This is my home
6 and I am proud to live and work here. I
7 believe the people of this province are worth
8 staying and fighting for. Thank you.
9 THE COMMISSIONER:
10 Q. Thank you very much, Dr. McCarthy. As I said
11 to your colleague yesterday, we really do need
12 the input of all who are involved and I do
13 appreciate your taking the time to come and
14 add your perspective.
15 DR. MCCARTHY:
16 A. Thank you.
17 THE COMMISSIONER:
18 Q. 9:30 on Monday. Thank you.

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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 19th day of September, A.D., 2008
6 before the Honourable Justice Margaret A. Cameron,
7 Commissioner, at the Commission of Inquiry, St.
8 John's, Newfoundland and Labrador and was
9 transcribed by me to the best of my ability by
10 means of a sound apparatus.
11 Dated at St. John's, Newfoundland and Labrador
12 this 19th day of September, A.D., 2008
13 Judy Moss

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